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Protecting Our National Parks for Future Generations®

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Winter Use Planning Team
P.O. Box 168
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Dear Winter Use Planning Team:

Please accept these comments from National Parks Conservation Association on the draft Winter Use Plan Environmental Impact Statement for Yellowstone and Grand Teton National Parks and the John D. Rockefeller Jr. Memorial Parkway.

Since 1919, NPCA and our over 325,000 members have worked to protect and enhance America's National Park system for present and future generations. NPCA has participated in every aspect of the winter use planning effort, and we incorporate by reference our comments on the DEIS, FEIS, 2000 Proposed Rule, DSEIS, FSEIS, 2003 Proposed Rule, Draft EA, Final EA, 2004 Proposed Rule, 2005 EIS scoping comments and the DEIS Preliminary Alternatives. NPCA has also submitted extensive comments along with our conservation partners on this DEIS, which we also incorporate by reference here.

NPCA appreciates the long, difficult and often times painful planning effort led by the National Park Service, now moving towards its second decade. Throughout that process, it has consistently been shown that the best available science, the law, NPS policy and the

overwhelming majority of American public all argue for a phaseout of snowmobiles and transition to snowcoaches for Yellowstone, Grand Teton and the John D. Rockefeller Jr. Memorial Parkway.

While the bulk of our comments focus on areas of needed improvement and shortcomings of the DEIS, we believe it's important to start our comments articulating support for aspects of the preferred alternative that will improve protections for park resources and improve visitor experience.

1) THE PROPOSAL TO CLOSE SYLVAN PASS IN WINTER IS CONSISTENT WITH NPS LAW AND POLICY

NPCA strongly supports the Park Service's proposal to close the Park's east entrance, Sylvan Pass, during the winter season, based on the considerable risk to Park Service employees in keeping the pass free of avalanche danger as well as the excessive $200,000 annual cost to keep the pass open for just 13 winter visitors per day. NPS has clearly articulated the policy, law and rationale, which now disclosed through the NEPA document, would leave any final decision that fails to include the closure vulnerable to challenge.

A) YNP's avalanche control program stands alone in the NPS system

No other discretionary oversnow corridor in the U.S. uses active avalanche control measures. Other applications are for State and Federal Highways with varying traffic loads of 400 to 25,000 vehicles per day, as community access , economic commerce and interstate travel. Further, no other National Park uses explosives for avalanche control purposes, save for Yosemite where "Det Cord" is employed to move snow off a large rock slab on Tioga Pass during clearing operation. More recently, Glacier National Park has denied, through an EIS process soon to be completed, a proposal from BNSF to use explosives, including artillery to bombard (in similar fashion as the current Sylvan Pass Program) avalanche paths adjacent to the ROW corridor in Steven's Canyon, based in part, on NPS 2006 Management Policies.

Permitting continued avalanche control will set a dangerous precedent for the national park system, given the multiple impacts of disclosed in the DEIS. A decision to close Sylvan Pass will eliminate the temptation in other NPS units to use avalanche control explosives anywhere in the NPS System. Should NPS reverse course and continue the avalanche control program, NPCA believes that grooming programs on other NPS units and on other public lands would be permitted to use explosives for avalanche control based on the Yellowstone experience

B) Risk to NPS personnel

For the past 30 years, Yellowstone has developed a stellar track record for employee safety as it relates to avalanche control on Sylvan Pass. Some point to this track record as a way to justify continuing the program. That is nonsensical. Once a clear and entirely

avoidable danger to NPS personnel is identified, it is the obligation of NPS to do all it can to assure it is keeping employees out of harms' way. To ask NPS employees to risk their lives so that 13 recreationists per day can access Yellowstone is absolutely unjustifiable and indeed an embarrassing self-serving ask.

NPCA supports Yellowstone National Park's contention that operational constraints requiring travel under avalanche paths to reach the existing artillery gun mount is an unacceptable risk to worker health and safety. Not only is gaining access to the howitzer an unacceptable risk, but the ongoing challenge of dealing with unexploded ordinance poses yet another unreasonable risk to employees. In May 2006, the discovery of a dud resulted in a 24-hour closure of the road—a heavy price for the gateway communities to pay during a time approaching the 'peak' season to support a program that averaged just 3 entries during the 2006-07 season.

The NPS must do all it can to err in favor of protecting employee safety and health. The DEIS makes a sound and reasonable case that requiring NPS employees to travel under 20 avalanche paths just to reach avalanche control equipment is an unreasonable risk.

C) At a time of ongoing budget challenges, the benefits don't justify the costs of the program

As with all NPS units, Yellowstone is suffering from a chronic annual operating shortfall, estimated to be nearly $23 million. The east entrance is open just 90 days in the winter and visitation has averaged a scant 13 people per day for the past three years. Last season, that number shrank to around 3 entries per day. Park administrators currently spend $200,000 annually on Sylvan Pass avalanche control, or an average of $170 per visitor, to keep Sylvan open in the winter. Already the park's chronic funding shortfalls have resulted in cutbacks in seasonal rangers and permanent law enforcement. Last year, the Park Service announced it no longer had the money to plow the Wyoming portion of the Beartooth Highway. The cost of maintaining Sylvan Pass in winter is an unjustifiable strain on the park's limited budget given the extremely limited benefits to the very few who choose to access Yellowstone via Sylvan Pass.

D) The DEIS finds that Park county's winter tax revenues would be unaffected by closing Sylvan Pass.

Park county's winter tax revenues have continued to grow despite low use at the east entrance in winter. According to Wyoming Department of Revenue statistics, county hotel and motel tax collections saw a 40.7 percent increase from 2002-2006 for January-March. These significant economic benefits have been incurred despite a drop in winter visitation through the east entrance.

At the same time, the Park Service continues to demonstrate tremendous commitment and investment in providing safe and appropriate access through the east entrance. It has invested $37 million for improvements to the east entrance road for summer use, and has plans to chip in another $23-$29 million. Improvements are focused on providing safe and effective access for the 98 percent of annual park visitors who travel over Sylvan

during the summertime (as many visitors enter the park in one busy summer day as the entire 90-day winter season from the east entrance).

It is also important to note that unaffected in this decision will be non-motorized recreational access into Yellowstone's east entrance and there are considerable opportunities for gateway community entrepreneurs to capitalize on this use. Also, Mammoth Hot Springs Hotel accounts for 41% of Park county's overall winter lodging tax revenues, and that will be completely unaffected by the Sylvan closure.

E) Closure of Sylvan Pass is consistent with the NPS 2006 Management Policies, which provides such guidance for park managers.

Policy 1.5 addressing appropriate use of park lands states:

"In its role as steward of park resources, the …Service must insure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values. When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must predominate."

Policy 1.4.7.1 addresses unacceptable impacts.

"The impact threshold at which impairment occurs is not always readily apparent. Therefore the Service will apply a standard that offers greater assurance that impairment will not occur. The Service will do this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment. …unacceptable impacts are impacts that, individually or cumulatively, would

- Be inconsistent with a park's purposes or values, or
- Impede the attainment of a park's desired future conditions for natural and cultural resources as identified through the park's planning process, or
- Create an unsafe or unhealthful environment for visitor or employees, or
- Unreasonable interfere with an appropriate use, or the atmosphere or peace and tranquility, or natural soundscape maintained in wilderness and natural, historic or commemorative locations within the park."

I)Specific impacts from avalanche control that are inconsistent with the Management Policies

a) Noise: Noise from the 105mm howitzer is generated at the time of firing and again at the instant of detonation of the 2.3 Kg. explosive contained the projectile. For example, the Glacier National Park DEIS on the BNSF Stevens Canyon avalanche control proposal[1] displays in Table 4-7 (US Army 2003) 105mm Howitzer decibel rating (dBC) as follows at distance:
1000 feet: 130.5 dBC
2000 feet: 129.0 dBC

[1] The preferred alternative (B) to the BNSF proposal to use explosives to trigger avalanches in GNP denies this use except in case of extenuating circumstances with imminent threat to human life or resources.

3000 feet: 125.5 dBC
8000 feet 119.5 dBC

We assume noise generated from the 105 mm howitzer at Sylvan Pass would be of similar levels, and would also be similar from explosives dropped from a helicopter.

The use of explosive control measures including artillery and helicopter delivery methods in Yellowstone National Park is an inappropriate and unacceptable activity and counter to the NPS Management Policies which mandate protection of resource and park values as the predominating factor when weighed against manipulative alternatives.

b) Health and Safety

The issue of health and safety is real and serious. The DEIS provides sufficient discussion of this concern. One consideration, among many in relation to safety is the distance from this remote location to medical facilities. This remote location on a recreational travel route is in contrast to hard surface corridors where mission travel and support systems are less than an hour to target areas, and medical facilities are slightly further. Public users, maintenance personnel and avalanche control workers are in potential jeopardy should an unanticipated burial, injury or even delay occur. This remote location coupled with the absence of meaningful real time weather data and observations, and a lack of dedicated National Weather Service and/or Avalanche Center forecasting program specific to Sylvan Pass can contribute to diminished effectiveness of the control missions and could lead to unanticipated incidents involving the public or NPS personnel.

There is no doubt that the experience of the control crews contribute to the excellent safety record thus far, but as in any risk situation dependent on human factors for avoidance, it is inevitable that near misses will occur, and in fact have been documented on pages 97-98 of the DEIS.

As is pointed out in the DEIS using helicopter delivery of explosives[2] as a component of the control program is inherently dangerous due to the adverse flying conditions of low level maneuvering in high elevation terrain possibly during unfavorable weather conditions. Though, this risk is shifted to contractors, rather than NPS personnel, the potential cost to human life and property is no less valued by society.

The decision to terminate the Sylvan Pass avalanche control program as displayed in several of the winter-use alternatives is responsible, appropriate and well supported by NPS law, regulation and intent.

c) Wildlife

It is important that the DEIS also consider non-impairment to park wildlife as it relates to the management policies. Impacts to wildlife, however unlikely, could come directly from being struck be flying shrapnel from detonating howitzer shells. The shrapnel zone of about 450 yards is a dangerous place for any living being. Impact on sub-nivian mammals is unknown, but should be suspected. The pika is a mammal known to be

sensitive to climate change factors, and favors rock/talus habitat that is the nature of the Sylvan Pass avalanche paths. It is possible that big horn sheep may be present in the vicinity, and that the general area could contain grizzly bear den sites. Other impacts could come from noise disturbance, and the general commotion associated with avalanche control missions

Conclusion- Sylvan Pass Closure

In conclusion, the proposal to end the avalanche control program and eliminate motorized access through Sylvan Pass during the winter season is reasonable, is supported by science, the law, NPS policies and common sense.

2) CLOSURE OF GIBBON CANYON (THE GATES EXPERIMENT)

A 2005 study completed by Gates et al. indicates that, "…systematic research has not been carried out on the ability of bison to move through snow under the variety of circumstances present in Yellowstone National Park." (Gates et al, p. 252) In addition, this report recommends an "adaptive management experiment should be designed to test the permeability of the Firehole to Mammoth corridor under variable snow conditions with a specific focus on the road section from the Madison Administrative Area and Norris Junction." (p. 253).

In response to the report, the DEIS proposes in all action alternatives to close Gibbon Canyon in order to conduct management experiments to answer the need identified in the Gates report.

NPCA supports this proposal and believe that it is an appropriate use of adaptive management. We would like to see more specifics put forth in the final EIS on potential study design, length of closures, etc., in order to better understand what is being contemplated and to make sure this is well communicated to the public from the start.

3) PROPOSAL TO CLOSE THE IN-PARK PORTION OF THE CONTINENTAL DIVIDE SNOWMOBILE TRAIL

Action alternatives describe the excessive costs involved with keeping the Continental Divide Snowmobile Trail (CDST) open through NPS lands and the associated use levels of the CDST. Given the excessive costs and the low use, it makes no sense whatsoever to continue the CDST program through NPS lands. In addition, doing so would be a violation of the law and NPS policies. NPCA supports NPS proposal to discontinue operations associated with the CDST.

4) UNGUIDED OR NON-COMMERCIALLY GUIDED SNOWMOBILE USE AND NEPA DISCLOSURE

We appreciate and support the NPS commitment and justification to keep the guiding requirement for all snowmobiles throughout the snowmobile phaseout period in the parks. While NPS has determined that it will nonetheless study the use of unguided or non-commercially guided snowmobile use in the park in the NEPA analysis, implementing an alternative that includes this provision would be clearly illegal. Based

on the analysis in the DEIS and by the direct experience of three years of guided snowmobiling, NPS already has rightly concluded that full commercial guiding is a critical component of resource protection.

The DEIS discusses the benefits of commercial guiding under Alternative 1, including: "…good opportunities to view wildlife and scenery, generally safe touring conditions, good opportunities for quiet and solitude,…and…schedules which leave large periods of time free from OSV noise, periods of quiet and opportunities for solitude…" (DEIS, p. 303).

Also, in its August 2004 Environmental Assessment, the Park Service called for all future snowmobile use to be commercially guided adding that this requirement, "applies the lessons learned in the winter of 2003-2004 relative to commercial guiding, which demonstrated, among other things, that 100 percent commercial guiding was very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the parks."

Separately, former NPS Director Fran Mainella published a letter stating, "...the essentially unregulated snowmobile use of the past, and its attendant effects, must not be allowed to continue...We required trained guides to escort groups of snowmobilers into and through the park to ensure that they would avoid disrupting wildlife."

Yellowstone's Chief of Planning and Compliance, John Sacklin, has stated that the guiding requirement is "fundamental to controlling the issue of inappropriate behavior." In sum, the benefit of 100 percent commercial guiding has already been studied and NPS has concluded emphatically why it is a necessary component of any continued snowmobile use. While NPS may have chosen to analyze unguided snowmobile access as a component of alternatives within the DEIS, NPS has already clearly established the legal, policy and experience-based track record which automatically preclude any form of unguided or non-commercially guided snowmobile access from consideration in any selected alternative, although during the snowmobile phaseout period prior to implementation of the snowcoach only alternative, the guiding requirement must remain in place.

The remainder of NPCA's substantive comments mirror those submitted on behalf of NPCA and a coalition of other park protection and conservation organizations. We have pasted below the entirety of those comments to be considered as a part of NPCA's comments below:

Dear Winter Use Planning Team:

Please accept these comments from the National Parks Conservation Association, the Coalition of National Park Service Retirees, the Greater Yellowstone Coalition, the Wilderness Society, Natural Resources Defense Council, Sierra Club, the Jackson Hole Conservation Alliance and the Winter Wildlands Alliance on the draft Winter Use Plan

Environmental Impact Statement for Yellowstone and Grand Teton National Parks and the John D. Rockefeller Jr. Memorial Parkway. Collectively, our organizations represent over 2 million Americans. We incorporate by reference our comments on the DEIS, FEIS, 2000 Proposed Rule, DSEIS, FSEIS, 2003 Proposed Rule, Draft EA, Final EA, 2004 Proposed Rule, 2005 EIS scoping and the DEIS Preliminary Alternatives. With regard to the Winter Use Plan DEIS, we respectfully submit the following comments for your consideration. Each of our individual organizations may also submit additional comments on their own behalf as well.

History, Summary

Yellowstone is now four years into a transition toward less intrusive snowcoach access and markedly improved park health. In the past four winters, 67 percent more visitors have opted to access the park by snowcoach while the number choosing to ride snowmobiles in Yellowstone has declined by nearly half. Gateway tour businesses have responded by shifting their investments and marketing strategies, acquiring new, state-of-the-art snowcoaches and refurbishing historic coaches. These tour operators have hired knowledgeable snowcoach guides, placed greater emphasis on interpreting Yellowstone's history, wildlife and geology and on introducing visitors to skiing, snowshoeing, wildlife viewing and photography opportunities while continuing to market snowmobile adventures on lands managed by the Forest Service adjacent to Yellowstone. As a result, the number of snowmobiles in Yellowstone over the past four seasons has leveled off at a fairly consistent 250 snowmobiles per day despite NPS allowing 720 per day. This significantly reduced number of snowmobiles has resulted in cleaner air, sharper views and an all-around more positive park experience for visitors. However, the DEIS makes clear that these improved conditions still include chronic problems with snowmobile noise even with a daily average of 250 snowmobiles in the park, and that air quality, natural soundscapes and conditions for wildlife would all deteriorate if Yellowstone's four-year trend were reversed and snowmobile numbers allowed to increase.

The inverse relationship between the declining presence and influence of snowmobiles and the increasing health of the Park was fully expected. Three NEPA analyses led NPS and the Environmental Protection Agency to conclude in 2000, 2003, and 2004 that removing snowmobiles from the Parks would result in a cleaner, quieter, healthier experience for visitors and wildlife. Both agencies determined that placing a daily cap on snowmobile numbers and requiring all snowmobiles to be less polluting and noisy than models used in previous winters would still result in significant air and noise pollution and place a greater burden on Yellowstone's winter-stressed wildlife.

The second and third studies incorporated additional noise and emissions data provided by the snowmobile manufacturers for their four-stroke snowmobiles. Both analyses verified NPS's conclusion in 2000 that allowing even limited numbers of these new snowmobiles, and requiring all to be accompanied by commercial guides, would fall short of the NPS responsibility to: "attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences." (Temporary Winter Use Plan Environmental Assessment at 39) Both supplemental analyses verified that curtailing further snowmobile use in

Yellowstone National Park and replacing it with additional snowcoach access: "yields the least impacts to air quality, water quality, and natural soundscapes." (EA at 39)

We continue to strongly support NPS's original 2000 decision to phase out snowmobiles and implement a snowcoach transit system. The 2007 DEIS verifies and adds to the comprehensive body of scientific data and analysis compiled over the past eight years of study and demonstrates that Alternative 2, the snowcoach alternative, is the only solution that reflects and complies with laws, regulations and policies that guide America's national parks while still maintaining public access to Yellowstone in winter. This is also the solution overwhelmingly favored by the American public.

There is no justification for departing from the commitment to phase out snowmobiles that the agency made in 2000. In Fund For Animals v. Norton, 294 F. Supp. 2d 92, 115 (D.D.C. 2003), the D.C. district court held that NPS has failed to explain how it can allow snowmobiling to continue consistent with its conservation mandate under the National Park Service Organic Act. As reaffirmed in the 2006 NPS Management Policies, the agency must avoid adverse impacts to park resources and values "to the maximum extent practicable." Four successive studies have concluded that a transition to snowcoaches impacts park resources and values the least while still maintaining ample public access and thus NPS is obliged to select the snowcoach-only alternative. The Wyoming district court's decision in International Snowmobile Manufacturers' Association v. Norton, 340 F Supp. 2d 1249 (D. Wyo. 2004) does not dictate otherwise. Even if there were *procedural* flaws in the decision-making process leading up to promulgation of the 2001 Snowcoach Regulation, those flaws do not bear on the *substance* of the phase-out decision, which is still mandated by the laws, Executive Orders, regulatory provisions and policies that require the highest level of protection for the Parks. Moreover, any procedural violations identified by the Wyoming court under the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA") have since been overtaken by successive NEPA processes which have served to bolster NPS's original decision in 2000 and further involve the public and cooperating agencies.

Following are the remainder of our collective substantive comments:

1) THE NPS IS LEGALLY PROHIBITED FROM ADOPTING ALTERNATIVE 1.

There are a number of legal restrictions on the NPS's authority to manage Yellowstone National Park, Grand Teton National Park and the Memorial Parkway, any one of which would be sufficient to prohibit the adoption of the DEIS's Alternative 1.

A) Washington D.C. District Court Ruling, Organic Act

Congress has prohibited the NPS from administering any part of the National Park System in derogation of the values and purposes for which those areas were established and has provided that such administration shall be conducted "in light of the high public value and integrity of the National Park System." (16U.S.C.§1a-1). That purpose, of course, is to "conserve the scenery and natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means

as will leave them unimpaired for the enjoyment of future generations." (16U.S.C.§1). While the DEIS recognizes that an adverse impact that would harm the integrity of any park resource or value could constitute impairment, 2007 DEIS at 153, the impact would be more likely to constitute impairment to the extent it has a "major" adverse effect upon a resource or value for which conservation is, among other things:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; or
- key to the natural or cultural integrity of the park.

The 2000 ROD concluded, as to what is now called "historic conditions," that "the use of snowmobiles and snow planes at present levels harms the integrity of the resources and values of these three parks and so constitutes an impairment of the resources and values, which is not permissible under the NPS Organic Act. In YNP the impairment is the result of impacts from snowmobile use on air quality, wildlife, the natural soundscape, and opportunities for enjoyment of the park by visitors." (2000 ROD at 18). In 2003, the U.S. District Court for the District of Columbia found that the NPS had failed to provide an adequate explanation for its departure from that conclusion when the NPS adopted its 2003 Rule. *The Fund for Animals v. Norton*, 294 F. Supp. 2d 92 (D.D.C. 2003).

The court also ruled that the 2003 ROD was arbitrary and capricious in light of the Parks' conservation mandate, as codified in statutes, regulations, executive orders and management policies. Because the D.C. court ordered implementation of the 2001 Rule, the public and NPS witnessed the beginning of a transition to snowcoaches throughout the Parks in the winter of 2003-2004. In the wake of a preliminary injunction issued by the U.S. District Court for the District of Wyoming later that same winter, the D.C. court, on June 30, 2004, modified its December 2003 ruling, requiring NPS to "promulgate a new Rule governing the 2004-2005 winter use season, not inconsistent with this Court's December 16, 2003, Opinion and Order, by a minimum of 30 days prior to the commencement" of the 2004-2005 season. Critically, the court stressed that NPS is still required to address the concerns stated by the Court in December, 2003 – <u>i.e. that there is no apparent explanation why snowmobile technology is suddenly sufficient to mitigate air and noise pollution from significant numbers of daily snowmobile entries into the Parks</u>. *see also* 323 F. Supp. 2d 7, 10 (D.D.C. 2004).

The past three winter seasons have been governed by Congressional riders that mandated implementation of NPS' three-year interim rule. The effect of these riders has precluded judicial review of the interim rule's compliance with the D.C. District Court's December 2003 and June 2004 rulings. However, the final rule that emerges from the ongoing NEPA process must be consistent with NPS's conservation mandate as set forth by the D.C. District Court. As set forth below, the 2007 DEIS fails to provide a logical justification for a departure from key aspects of the earlier impairment finding as to Alternative 1, contrary to the Court's directive. To the contrary, Alternative 1 would in fact impair the resources of Yellowstone.

B) <u>YNP Enabling Legislation</u>

Yellowstone's enabling legislation further limits the authority of the NPS concerning the regulation of that, our first National Park. Section 3 of Title 16 generally authorizes the NPS to regulate the National Park System consistent with Sections 1 and 1a-1. Section 22 of that title, however, expressly limits the NPS's authority under Section 3 further as it relates to Yellowstone. Section 22 provides that, as to Yellowstone, the NPS may adopt regulations under Section 3 "not inconsistent with" Section 22, which instructs the Secretary of the Interior to "make regulations providing for the preservation, from injury or spoliation, of all … natural curiosities, or wonders, within the park, and their retention in their natural condition." 16 U.S.C. § 22. By limiting Section 3's more general grant of regulatory authority, Congress made clear even after its adoption of the Organic Act that Yellowstone occupies a special status in the National Park System.[3] Consistent with Section 22, therefore, the NPS may not adopt regulations inconsistent with its obligation to provide for the preservation of the natural wonders in Yellowstone against injury or spoliation. Yet Alternative 1 would be inconsistent with that obligation.

C) Executive Orders

Executive Order 11644 imposes a further prohibition applicable more specifically to off-road vehicles, including snowmobiles, in the National Park System. That Executive Order prohibits the NPS from authorizing snowmobiles in YNP, GTNP or the Memorial Parkway unless the NPS "determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic or scenic values." EO 11644, § 3(a)(4). To implement that Executive Order, the NPS has provided by regulation that snowmobiles are prohibited in the National Park System "except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources." 36 C.F.R. § 2.18(c) (emphasis added). A special regulation adopting Alternative 1 would not be "consistent with" those values and would permit snowmobile use that would disturb wildlife and damage park resources. *See American Motorcyclist Ass'n v. Watt*, 543 F. Supp. 789 (C.D. Cal. 1982) (ORV plan held invalid for failing to comply with BLM regulation implementing Executive Order 11644).

D) Administrative Procedures Act

Even if the NPS were free to adopt Alternative 1 despite the legal prohibitions described above, the NPS may not do so if that decision is arbitrary and capricious, an abuse of discretion or contrary to law. In light of the fact that the only reason expressed in the DEIS for proceeding with Alternative 1 is to provide a "range of winter recreation opportunities," 2007 DEIS at i, and in light of the major adverse impacts of doing so, adoption of Alternative 1 would clearly constitute an abuse of discretion and an arbitrary and capricious act, in addition to being contrary to law for the reasons described above.

E) Alternative 1's Major Adverse Impact on Natural Soundscapes

The 2007 DEIS recognizes that the Organic Act "was written and enacted in an environment in which it was clear that the American people wanted places to go that were undisturbed and natural and which offered a retreat from the signs and stresses of

[3] *See also* 16 U.S.C. § 3 (expressly excluding Yellowstone from grazing authority otherwise provided the Secretary of the Interior).

everyday life." 2007 DEIS at 122. It also acknowledges that Congress directed the NPS to study the adverse effect on "natural peace and quiet and visitor experience" in the parks caused by air tour overflights. *Id.* "[N]atural quiet or natural sound conditions that would prevail without human presence is an appropriate baseline from which to gauge the impacts of human use." *Id.* The 2007 DEIS accordingly recognizes (at S-5) that natural soundscapes are a "key resource," just as did the 2006 Management Policies, *see e.g.* at § 4.9 (the NPS "will preserve, to the greatest extent possible, the natural soundscapes of parks;" the NPS "will take action to prevent or minimize all noise that through frequency, magnitude, or duration adversely affects the natural soundscape or other park resources or values").

Nevertheless, the 2007 DEIS concludes that Alternative 1 would not create any impairment of the natural soundscape and finds that alternative to have only a "moderate" adverse impact. *Id.* at 295, 314-15. That conclusion is wrong and is based on a flawed and impermissible analysis.

First, the 2007 DEIS fails to justify its departure from the 2000 ROD's impairment finding concerning the natural soundscape. The 2007 DEIS relies primarily on three changes from historic conditions in concluding that Alternative 1 would not create impairment of soundscapes: (1) the numerical limit to 720 snowmobiles and 78 snowcoaches per day, (2) the mandatory use of commercial guides, and (3) the mandatory use of BAT. Monitoring and adaptive management are also relied on. An analysis of these factors, however, demonstrates that they do not justify any departure from the prior soundscape-impairment finding.

Alternative 1's reduction in the number of snowmobiles from historic conditions cannot alone justify a departure from the impairment finding for soundscape. The reduction is relatively slight; the number of snowmobiles permitted would be 90% of historic conditions and the number of snowcoaches would be increased. Under historic conditions, there were 795 snowmobiles per day on average, plus 15 snowcoaches (DEIS at 313). Alternative 1 would permit 720 snowmobiles per day plus 78 snowcoaches. *See id.* at 314 (Alternative 1 sets daily limits that represent a use level "just under" the historic average number of snowmobiles).

Commercial guiding similarly cannot logically explain a departure from the prior soundscape-impairment finding. Commercial guiding is not likely to have any significant mitigating impact on soundscape issues. The DEIS argues that there might be some mitigating impact by reason of the fact that the grouping of snowmobiles in commercially guided groups will likely create intervals in which there will be no snowmobiles or snowcoaches. But with 720 snowmobiles per day, divided into groups of eight, there would be 90 snowmobile groups per day permitted in the park. Given the short period of daylight in winter, it is far more likely that snowmobile groups will be heard constantly in daylight hours than that there will be intervals of natural quiet between groups.

The DEIS places greatest weight on the use of BAT for a finding of no impairment of the soundscape. *See* 2007 DEIS at 315. But the DEIS itself makes clear that four-stroke

snowmobiles using BAT will continue to be extremely noisy. Four-stroke snowmobiles tested at approximately 73 dB in the 2003 ROD (at 22) and are now said to operate "at or below" that level. 2007 DEIS at 315. Two-stroke models are said to operate at 75-78 dB (*id.*). Because sound is measured on a logarithmic scale, and because, on that scale, an increase of 10 dB represents a doubling of the "loudness" of a sound, *see* 2007 DEIS at 125, the NPS concluded that the difference between 73dB and 75 to 78dB was "considered significant." 2003 ROD at 22. Accordingly, 73dB would similarly be significantly louder than 70dB. Yet the 2007 DEIS states that 70 dB is "noisy" and is the equivalent of hearing a "vacuum cleaner" in an indoor room. 2007 DEIS at 125. In other words, four-stroke snowmobiles create noise that is significantly louder — approximately one-third louder — than listening to a vacuum cleaner in an indoor room.[4]

The 2007 DEIS therefore fails to justify any departure from the soundscape-impairment finding made in the 2000 ROD. In addition, and apart from the 2000 ROD finding, the 2007 DEIS adopts a mode of analysis of soundscape impact that is at best highly questionable. The DEIS relies primarily on an analysis of park-wide audibility. Based on the percentage of the total park area in which oversnow vehicles would be audible at all, the DEIS concludes that the adverse impact of Alternative 1 is merely "moderate." 2007 DEIS at 272, 295. That conclusion is based on a definition of impacts under which sound audible over less than 20% of the entire park area is considered merely "moderate" in its impact. *See id.* at 262. Yellowstone National Park, however, occupies 2,221,776 acres. Twenty percent of the total park area is therefore approximately 445,000 acres. It takes an incredibly high noise level to have a "major impact" under this test. Just as an agency may not "rig" the results of an EIS by defining objectives in unreasonably narrow terms so that only one alternative would accomplish the goals of the agency, *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998), so an agency similarly cannot "rig" the results by defining objectives so broadly as to permit a favorite result. Instead, the agency must be reasonable in defining its objectives, consistent with the goals reflected in the underlying legislation. *Id.*; *Citizens Against Burlington, Inc. v. Busey IV*, 938 F.2d 190, 196 (D.C. Cir. 1991). And the agency must be reasonable in its choice of scientific methods for measuring impacts. *Citizens Against Burlington*, 934 F.2d at 201. Yet this total park area analysis is unreasonable and appears designed to reaffirm the 2004 temporary rule rather than objectively to analyze it.

The notion that sound impact should only be measured by considering the percentage of the total park area over which the sound is audible is particularly perverse in light of the fact that, as the 2007 DEIS admits, "although sound from OSV are audible within a relatively small portion of the parks' total acreage, they are concentrated to a large degree around travel corridors and park attractions and affect the areas most accessible by the vast majority of park visitors. Most areas used by winter visitors seeking solitude and quiet are within two miles of travel corridors." 2007 DEIS at 124. Moreover, those same travel corridors are the areas most heavily traveled by bison and other wildlife during the

[4] Moreover, the Volpe monitoring study (October 2006) points out that BAT and non-BAT snowmobiles occupy different portions of the sound spectrum; sound from non-BAT snowmobiles is attenuated more rapidly with increasing distance than BAT snowmobiles, while sound from BAT snowmobiles travels further than non-BAT snowmobiles. Volpe at 51.

winter months. [Gates et. al. 2006] Accordingly, assessing impairment during the winter months by evaluating audibility throughout the total park area can demonstrate that noise levels constitute impairment, but such an analysis cannot alone demonstrate that noise levels have been sufficiently reduced to prevent impairment.

The 2007 DEIS nevertheless concludes that Alternative 1 would be "beneficial" compared to current use, at 272 and 295, because modeled results under current use conditions are said to be 14.4% of the total park area, compared to 12.9% of the total park area under Alternative 1. *Id.* at 269 and 295. The Volpe study on which these numbers are based, however, does not support use of the 14.4% figure. Instead, that study concludes that under current conditions oversnow vehicles would be audible over 12.6% of the total park area, not the 14.4% figure used in the DEIS. Accordingly, Alternative 1 would not have a beneficial effect compared to current conditions. It would instead have an adverse effect. *See* Volpe Modeling Study, at 135 (Table 36).

It is true that the 2007 DEIS also considers audibility at a number of specific locations in the park. *See* 2007 DEIS at 270-71. That presentation shows, based on modeling, the percent of time that sound from oversnow vehicles would be audible under Alternative 1 for the 9:00 a.m. to 10:00 a.m. hour at 13 sites in Yellowstone. Based on these modeled figures, the DEIS states that under Alternative 1 oversnow vehicles would be audible 70% of the time in modeled travel corridors, 100% of the time at Madison Junction and 78% of the time at West Thumb. *Id.* at 270, 272. This is an enormous increase from the 45% time audible on travel corridors and 35% of time audible for West Thumb under current conditions. *Id.* at 272.[5] Moreover, the NPS's monitoring report established that oversnow vehicles were audible almost 100% of the time at Old Faithful during prime hours on popular weekends. *See* Burson, "Natural Soundscape Monitoring in Yellowstone National Park," December 2005-March 2006 at 25 (weekend of January 19, 2005) and 29 (weekend of February 14, 2003). These figures are comparable to those previously found to constitute impairment. *See* 2007 DEIS at 313-14 ("Historically, developed areas and travel corridors typically had OSV sounds audible at or near 100% of the time"). Not surprisingly, therefore, the DEIS concludes that the adverse impacts due to percent time audible would be "major" at Yellowstone. *Id.*

The DEIS concludes, however, not that there would be impairment under Alternative 1, but it would actually be "beneficial" compared to current use, arguing that the implementation of snowcoach BAT would substantially reduce overall OSV audibility. *Id.* at 272-73. But the model on which the figures are based already took into account the implementation of snowcoach BAT. *See* Volpe at xxvii. And that study concluded that there would be an enormous increase in percentage time audible under Alternative 1. Clearly, the BAT requirement alone is not sufficient for a finding of no impairment based on percent of time audible. *See National Parks Conservation Association v. FAA*, 988 F.2d 1523, 1533 (10th Cir. 1993) (agency's conclusion that aircraft noise would have no

[5] Note also that the 9:00 a.m. hour is not the busiest time at Old Faithful or other internal areas of Yellowstone National Park. Elsewhere, the DEIS states that 65.8% of snowmobiles enter the park during that hour and that the peak hour at Old Faithful is 11:30 a.m. to 12:30 p.m. 2007 DEIS at 193.

significant impact was irrational because agency provided no empirical evidence to support that conclusion).

Perhaps the NPS believes that, despite the "major" impact of Alternative 1 based on percent of time audible, there would be no impairment because of the NPS's finding that "impacts due to maximum sound levels would be minor." *Id.* at 272. If only a minor level of sound were heard constantly, so the argument would go, the overall impact might be tolerable. The DEIS "minor" impact conclusion is apparently drawn by comparing the highest modeled sound level reflected in Table 4-47, at 271 (<50dB in travel corridors, <35dB in developed areas), with the definitions of impact levels found in Table 4-42, at 262. But the NPS's own monitoring reports tell a very different story.

One of the NPS's stated goals of adopting a three-year temporary winter use plan was to "collect additional monitoring data on the strictly limited snowmobile and snowcoach use permitted under the plan…. The new monitoring information from the winter of 2003-2004 and the winter of 2004-2005 … will be used in preparation of a long-term analysis and permanent regulation for winter management in the parks." FONSI, November 2004, at 4-5. That monitoring was in fact conducted by NPS personnel. Yet the 2007 DEIS virtually ignores its own monitoring data. Indeed, while mentioning the Burson monitoring, the DEIS never explains why those monitoring conclusions are ignored in favor of the modeling report. *See League of Wilderness Defenders Blue Mountain Biodiversity Project v. Bosworth*, 383 F. Supp. 2d 1285, 1295 (D. Ore. 2005) (An agency must not only disclose opposing scientific opinion but "make a good faith, reasoned response to it.").

That NPS monitoring of actual experience demonstrated that "the maximum sound levels for oversnow vehicles exceeded 70dB at Old Faithful, along the groomed travel corridor between Madison Junction and the West Yellowstone entrance (Madison Junction 2.3) and between West Thumb and Old Faithful (Spring Creek)." Burson at 2. Again, 70dB noise is equivalent to listening to a vacuum cleaner in an indoor room. *See* 2007 DEIS at 125. Indeed, the NPS's monitoring report defines that level of noise as "an action with an easily recognizable adverse effect on the natural soundscape and potential for its enjoyment." Burson at 12. No wonder that the 2007 DEIS acknowledges that its modeling consistently underestimated the sound level as compared to field measurements. 2007 DEIS at 260.

Yet Alternative 1 would permit the number of snowmobiles to triple over that experienced during the period in which that monitoring was conducted. *See id.* at 138 (the average number of snowmobiles over the last three winters varied between 250 and 260 per day). Clearly, Alternative 1 would therefore lead to even higher percentages of audibility and of maximum sound level at Old Faithful and other popular locations and routes than under current conditions. *See id.* at 123 ("the percent time the vehicles are audible primarily depends upon their numbers on any given day").

Alternative 1 would therefore clearly continue the impairment of natural soundscapes found as to historic conditions in the 2000 ROD.[6]

F) Alternative 1's Major Adverse Impact on Wildlife

The 2007 DEIS acknowledges that Alternative 1 would, as to bison and elk, "cause increases in vehicle-caused mortality, wildlife displacement, behavior- or physiology-related energy costs." *Id.* at 227. A similar conclusion is reached with respect to wolves, *id.* at 237, lynx and wolverines, *id.* at 244, and bald eagles and swans, *id.* at 253. However, the DEIS defines wildlife impact levels based on the effect on the population of the species as a whole. For example, an effect on an individual — regardless of the extent of the effect, even death — is considered "negligible" so long as the effect "would not be of any measurable or perceptible consequence to the population." Similarly, at the other end of the scale, an effect on an individual could be considered a "major effect" only if it "will be measurable and have a substantial and possible permanent consequence to the population." *Id.* at 225. Wildlife impacts would be kept to "acceptable levels," says the DEIS, because there would be "no adverse population level impacts." *Id.* at 225.[7]

This assessment of impacts only based on the total populations of each species represents a radical departure from decades of NPS policy. The 2003 SEIS stated, for example that "park policies, regulations and EOs clearly state that disturbance to wildlife, regardless of population-level effects, is unacceptable in the national parks." (2003 SEIS at 206). *See also* 36 C.F.R. § 2.1 (prohibits disturbing wildlife); § 2.2(a)(1) (prohibits the "taking" of wildlife, defined in Section 1.4(a) as, among other things, harassing); Section 2.2(a)(2) (prohibits frightening or intentionally disturbing "wildlife nesting, breeding or other activities"). The 2004 EA stated that, even with required professional guides, the 720 snowmobiles per day alternative "is not expected to … accomplish[]" "the objective to minimize the avoidance, displacement, or harassment of wildlife from human disturbance." 2004 EA at 151. The NPS may not effectuate such a radical change in its approach to administering the National Park System without any rational explanation of such a change. *See Fund for Animals v. Norton*, 295 F. Supp. 2d at 105. Yet the 2007 DEIS does not even acknowledge that a change is being made.

Moreover, the NPS is not free to disregard the Yellowstone enabling act and the NPS's own snowmobile regulation and conclude that they would be permitted to harass and

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[6] Unlike Alternative 1, Alternative 2 reflects a significant change from historic conditions. That Alternative would eliminate the 795 snowmobiles per day experienced under historic conditions; impose BAT requirements on snowcoaches (unlike historic conditions); and would place a daily numerical limit and size restriction on snowcoaches. *See* 2007 DEIS at 315-16.

[7] By comparison, Alternative 2 is recognized as reducing the risk of vehicle-related mortality and displacement and habitat avoidance by bison and elk, as well as reducing behavioral and psychological responses. *Id.* at 227-28. Because of the larger visual profile of a snowcoach, however, there is a suggestion that a higher level of behavioral response might be induced. Despite the recognition that there would be significant differences between Alternative 1 and Alternative 2 as relates to bison and elk, Alternative 1 is said to have "negligible to moderate" adverse and short-term impacts, while Alternative 2 is said to have "none to moderate" adverse short-term impacts, *id.*

disturb, or even kill, individual animals so long as there are plenty of others in the population. *See* 16 U.S.C. § 22; 36 C.F.R. § 2.18(c).

In this regard, the studies performed by the NPS's own scientists, among others, are highly relevant. *See* White, *et al.*, "Behavioral Responses of Wildlife to Snowmobiles and Coaches in Yellowstone" (September 2006). The authors of that study suggested that regulations restricting the levels and travel routes of OSVs during the last several years "were effective at reducing disturbances to wildlife below a level that would cause measurable fitness effects. We acknowledge the potential for fitness effects to develop if OSVs or other stressors become more severe or prolonged. Thus, we recommend park managers consider maintaining OSV traffic levels at or below those observed during our monitoring." *Id.* at 21. The same conclusion is reached in Borkowski, *et al.* *See* 2007 DEIS at 101-02. The use levels observed during those studies were approximately 250 snowmobiles per day. Alternative 1, which would triple the number of snowmobiles per day, would be contrary to the recommendations of both studies. Yet the 2007 DEIS fails to provide any reasoned response to those studies. *See League of Wilderness Defenders Blue Mountain Biodiversity Project*, 383 F. Supp. 2d at 295; *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291, 1318 (W.D. Wash. 1994).

Alternative 1 would admittedly result in disturbance of wildlife. Even if the NPS had provided required explanations for its radical departure in the manner of analyzing wildlife impacts, which has not been provided, and even if the NPS had provided an explanation for its rejection of its own scientists' recommendation in that regard, which has not been done, the Yellowstone enabling act and the NPS's own regulation Section 2.18(c) prohibit the adoption of Alternative 1.

G) Alternative 1's Major Adverse Impacts on Air Quality

The 2007 DEIS states that "air quality is a key resource, in itself, as well as a highly prized (and expected) element of the park visitor experience." 2007 DEIS at S-5. The 2006 Management Policies state that the NPS "has a responsibility to protect air quality" under the Clean Air Act ("CAA") and that, accordingly, the NPS "will seek to perpetuate the best possible air quality in parks to (1) preserve natural resources and systems; (2) preserve cultural resources; and (3) sustain visitor enjoyment, human health, and scenic vistas…. In case of doubt as to the impacts of existing or potential air pollution on park resources, the Service will err on the side of protecting air quality and related values for future generations." 2006 Management Policies at § 4.7. See also Federal Land Managers Air Quality Related Values Workgroup: Phase I Report ("FLAG"), at 7 (2000) (to the same effect). Congress has made clear that it expects the NPS to "assume an aggressive role" in this regard. *See* DEIS at A-3.

The proposal to adopt Alternative 1, however, actually represents a retreat from these objectives, a retreat that will injure air quality at Yellowstone.

I) The 2007 DEIS Sets an Inappropriate "Desired Condition" by Seeking Merely a Reduction from Historical Pollution and Visibility Conditions,

Rather Than Attempting to Maintain the Highly Improved Current Conditions.

In establishing the "desired conditions," with respect to air quality, the 2007 DEIS merely states as the desired condition that "emission levels are reduced to protect air quality." 2007 DEIS at 5. The DEIS then repeatedly trumpets the fact that, under Alternative 1, emissions would be considerably less than historic conditions. *See, e.g., id.* at S-11. Clearly, emissions levels in 1999 were unacceptable and inconsistent with the "Clean Air Act, Executive Orders 11644 and 11989, the NPS's general snowmobile regulations, [and] NPS management objectives for parks." (2000 ROD at 18). Since snowmobile use has been greatly reduced in recent years, however, there has been a major improvement in air quality: The DEIS admits several times that "an overall reduction in snowmobiles from previous years" has (along with BAT and other factors) led to a "marked reduction in ambient pollution levels." (DEIS at 85).

The DEIS' statement of desired conditions as they relate to air quality, therefore, is inconsistent with the NPS's statutory and other legal obligations to avoid injuring the park's resources, of which air quality is admittedly a key element. And the NPS may not adopt Alternative 1 based on that DEIS merely because there would, thereunder, be an improvement over conditions which no longer exist, when that Alternative would clearly have a significantly adverse impact on air quality compared with current conditions.

Similarly, the DEIS' "Prevention of Significant Deterioration" analysis (which it must do because Yellowstone is a "Class 1" federal area) reveals very unambitious goals for visibility in the park. In its determination of the appropriate baseline against which to calculate the "increment consumption" (allowable addition) of PM10, the DEIS invents a number by extrapolating data from 1999, when snowmobile use was found to impair park resources. Measured against that baseline, the DEIS concludes that Alternative 1 would not lead to an unallowable increase in visibility obstruction. While that approach might meet the technical standards of the Clean Air Act, the NPS should be seeking to enhance, at a minimum- preserve, the recent improvements in visibility at Yellowstone. The Yellowstone enabling act requires regulations to preserve the park's natural condition, at least to the extent practicable. 16 U.S.C. § 22.

The DEIS predicts, however, that carbon monoxide concentrations generated by Alternative 1 would be *twenty-two times* the amount generated by Alternative 2, permitting snowcoaches but not snowmobiles. *Id.* at 196, Table 4-26 (Alt. 2 shows a maximum 1-hour carbon monoxide concentration of .3 ppm compared to 6.7 ppm under Alt. 1). The choice of Alternative 1 would clearly be inconsistent with the Yellowstone enabling act and the NPS's snowmobile regulation, among other things.

II) The Premises Underlying the Modeling Underestimate Actual Pollution.

Much of the reasoning in the DEIS is based on *predictions* of emissions, derived from modeling. In order to provide a "worst case scenario", modeling should be performed conservatively, or at least should account for known variations. The modeling employed

for purposes of the DEIS, however, fails to do so. There is instead every reason to believe that the modeled results understate the actual amount of pollution that would be caused by Alternative 1. Indeed, Table 4-24 demonstrates that, at least at one site, monitored actual conditions reflected more than 50% more particulate matter than predicted under the model. (2007 DEIS at 194).

One factor not accounted for in the modeling in the extreme winter conditions at Yellowstone, with high altitude and low temperature. The DEIS admits that "snowmobile laboratory test data utilized below may not reflect actual operating conditions in Yellowstone, Grand Teton and the Parkway, as high altitude and low winter temperatures in the parks are likely to decrease overall snowmobile engine performance and increase relative emissions." *Id.* at 190-91 (emphasis added).

In addition, the modeling is based on assumptions concerning the emissions from BAT-certified snowmobiles that are likely to result in lower pollution predictions than actual conditions. The NPS's recently released study establishes that emissions are likely to be higher than those assumed for purposes of the modeling. *See* "Portable Emission Measurements of Snowcoaches and Snowmobiles in Yellowstone National Park (Final Report, Cooperative Agreement H2350042097, January 2007)" ("2007 Emissions Report"). That study found that, for one model of snowmobile available for rent called the "Ski Doo Legend GT," it produced higher carbon monoxide ("CO") emissions during acceleration in speed (which were referred to as "transient emissions"). "[T]he more transient the operation of the Ski Doo snowmobile the higher the CO emissions will be as it will spend more operation time at the higher levels." 2007 Emissions Report at 33. However, that study pointed out that "these transient emissions are not included in the current BAT certification process since that engine dynamometer test is a steady state test…." *Id.* at 33-34. In fact, while current BAT requirements are 35.1 grams per mile ("g/mi") at 15 miles per hour, the 2007 Emissions Report found that the Ski Doo snowmobile had emissions of 53 g/mi. *Id.* at 31. Another BAT-approved snowmobile, the "Arctic Cat T660," was also tested for the 2007 report. The Arctic Cat exhibited much higher emissions when idling than when at low or cruise speeds. *Id.* at 31. Snowmobiles touring through the park will undoubtedly idle frequently to take in the scenery or pause for a photo.

The modeling analysis set forth in the 2007 DEIS therefore undoubtedly understates the impact of snowmobile emissions on air quality.

III) Carbon Monoxide and Particulate Matter Would Increase Dramatically Under Alternative 1 from Current Conditions, Even Based on the NPS's Modeling.

Carbon monoxide is a "colorless, odorless, and poisonous gas produced by incomplete burning of carbon in fuels. When CO enters the bloodstream, it reduces the delivery of oxygen to the body's organs and tissues. Health effects may include impairment to visual perception, manual dexterity, learning ability, and performance of complete tasks; headaches and fatigue; or respiratory failure and death…. [Particular matter ("PM")]

includes dust, dirt, soot, smoke, and liquid droplets from sources such as … vehicles. Health effects from PM emissions include reduced lung function, long-term risk of increased cancer rates, and the development or aggravation of respiratory problems." (2007 DEIS at 85).

Even based on the modeling relied on in the DEIS, Alternative 1 would almost *double* the amount of carbon monoxide at West Yellowstone under current conditions and would almost *triple* the amount at Flagg Ranch. *See* 2007 DEIS at 197, Table 4-29 (Alt. 1 predicted 8-hour CO concentration is 175% of current conditions at West Entrance and Site 1 and 270% at Flagg Ranch). In addition, Alternative 1 would increase the amount of fine particulate matter *by more than half*. *Id.* at 198, Table 4-32 (Alt. 1 predicted 24-hour PM2.5 is 161% of current conditions at West Entrance).

The DEIS concludes that, although adverse air quality impacts from emissions under Alternative 1 would be "moderate," this would not constitute an impairment to park resources. (*See* Table 4-39). Even if this is so, however, the NPS's obligations are not simply to stop short of impairment. The NPS must avoid in its regulatory scheme injury or spoliation to the natural resources of Yellowstone and must not authorize snowmobile use which would injure the park's resources. *See* 16 U.S.C. § 22; 36 C.F.R. § 2.18(c). Alternative 1 fails to meet those requirements.

2. NPS HAS AN AFFIRMATIVE DUTY TO ENFORCE ITS LEGISLATED CONSERVATION MANDATE - THE 2006 MANAGEMENT POLICIES CALL FOR HIGHEST PROTECTIONS AFFORDED TO PARK AIR, SOUNDSCAPES AND WILDLIFE.

Last year, our organizations applauded Secretary Kempthorne's decision to reaffirm the National Park Service's tradition of highest protection for national park resources and values by upholding the NPS Management Policies. These policies uphold the predominance of conservation of the 1916 NPS Organic Act, as amended - the keystone of national park stewardship. Our organizations are particularly concerned about the winter use decision, as it is the first potentially precedent-setting decision to be made under the 2006 Management Policies and its impact on future decisions at other NPS units. Therefore, it is all the more important for the NPS winter use decision to comport with the spirit and intent of the management policies, as this will have system-wide impacts.

The preferred alternative's provisions are contrary to the high standards set forth in the 2006 Management Policies to seek the "least impacting" vehicles and transportation systems, protect natural soundscapes "to the greatest extent possible" and achieve the "best possible air quality" in parks. In spite of scientific studies that have repeatedly verified that the park's winter quiet, air quality, wildlife resources and the public's health would all be better protected by expanding modern snowcoach access and phasing out snowmobile use in Yellowstone, the preferred alternative would reverse the significantly improved conditions in the park we have witnessed over the past several seasons that are directly attributed to the marked decrease in snowmobile use. The draft winter use plan demonstrates that the preferred alternative would exacerbate noise problems that already exceed park standards, result in many times more air pollution than snowcoach access and create pressures on wildlife that scientists have recommended should be avoided.

The National Park Service Management Policies – 2006 (MP-2006) incorporate legislative and policy direction about how parks will be, and will not be, managed. Relevant sections of these Management Policies follow, along with explanation regarding how the Winter Use Plans Draft Environmental Impact Statement contravenes this legislative and policy direction.

Section 1.4.1 (MP-2006 at 10) states [emphasis is added]:

> 1.4.1 The Laws Generally Governing Park Management
>
> The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916 and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978. The key management-related provision of the Organic Act is as follows:

> [The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified… by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1)
>
> Congress supplemented and clarified these provisions through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that act (the "Redwood amendment," contained in a bill expanding Redwood National Park), which added the last two sentences in the following provision. The key part of that act, as amended, is as follows:
>
> Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted above], to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and **administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established**, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1)

This section 1.4 of Management Policies represents the agency's interpretation of these key statutory provisions.

Derogation is further defined in Section 1.4.2 (MP-2006 at 10). Emphasis is added:

> 1.4.2 "Impairment" and "Derogation": One Standard

> Congress intended the language of the Redwood amendment to the General Authorities Act to reiterate the provisions of the Organic Act, not create a substantively different management standard. The House committee report described the Redwood amendment as a "declaration by Congress" that the promotion and regulation of the national park system is to be consistent with the Organic Act. The Senate committee report stated that under the Redwood amendment, **"The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system."**[8] So, although the Organic Act and the General Authorities Act, as amended by the Redwood amendment, use different wording ("unimpaired" and "derogation") to describe what the National Park Service must avoid, they define a single standard for the management of the national park system—not two different standards. For simplicity, Management Policies uses "impairment" (or a variation thereof), not both statutory phrases, to refer to that single standard.

Applicable parts of Section 1.4 (MP–2006 at 11-12) provide additional amplification of park resources and values and define and explain unacceptable impacts and impairment. Emphasis is added:

> 1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values
>
> The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment and applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values. However, the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values.
>
> The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The enjoyment that is contemplated by the statute is broad; it is the

[8] From the comprehensive scientific and technical evidence presented in the 2007 DEIS, and highlighted elsewhere in this document, we conclude that allowing snowmobiles in the parks **contravenes these legislative mandates** and **does derogate and impair the values and purposes** for which these parks have been established; and **does compromise the absolute duty of the Secretary** to safeguard these units of the National Park System.

enjoyment of all the people of the United States and includes enjoyment both by people who visit parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment and inspiration. **Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act.**[9]

1.4.3.1 Park Purposes and Legislatively Authorized Uses

Park purposes are found in the general laws pertaining to the national park system, as well as the enabling legislation or proclamation establishing each unit. In addition to park purposes, in many cases the enabling legislation or proclamation for a park unit may also identify uses that are either mandated or authorized. In the administration of mandated uses, park managers must allow the use; however, they do have the authority to and must manage and regulate the use to ensure, to the extent possible, that impacts on park resources from that use are acceptable.

In the administration of authorized uses, park managers have the discretionary authority to allow and manage the use, provided that the use will not cause impairment or unacceptable impacts. In determining whether or how to allow the use, park managers must consider the congressional or presidential interest, as expressed in the enabling legislation or proclamation, that the use or uses continue. Where there is strong public interest in a particular use, opportunities for civic engagement and cooperative conservation should be factored into the decision-making process.

1.4.4 The Prohibition on Impairment of Park Resources and Values

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will

[9] Given that an alternative exists to provide for access and enjoyment of visitors to remote areas in the parks – the snowcoach option – that is shown by scientific monitoring to be less impacting than snowmobiles, we conclude from the scientific and technical evidence presented in the 2007 DEIS that allowing snowmobiles in the parks **does** conflict with conserving the resources and must be eliminated to assure that conservation is predominant.

continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or inference) for the activity, in terms that keep the Service from having the authority to manage the activity so as to avoid the impairment.

1.4.5 What Constitutes Impairment of Park Resources and Values

The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.[10] Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

1.4.6 What Constitutes Park Resources and Values

The "park resources and values" that are subject to the no-impairment standard include

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- **the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental**

[10] By the definition in section 1.4.5 above, snowmobile use in the parks impairs park resources and values (air quality, soundscapes and wildlife) and the enjoyment of same by other park visitors and therefore must be prohibited.

quality of the national park system, and the benefit and inspiration provided to the American people by the national park system[11]; and

- any additional attributes encompassed by the specific values and purposes for which the park was established.

1.4.7 Decision-making Requirements to Identify and Avoid Impairments

Before approving a proposed action that could lead to an impairment of park resources and values, an NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values. **If there would be impairment, the action must not be approved.**

In making a determination of whether there would be impairment, an NPS decision-maker must use his or her professional judgment. This means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); consultations required under section 106 of the National Historic Preservation Act (NHPA), relevant scientific and scholarly studies; advice or insights offered by subject matter experts and others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision. The same application of professional judgment applies when reaching conclusions about "unacceptable impacts."

When an NPS decision-maker becomes aware that an ongoing activity might have led or might be leading to an impairment of park resources or values, he or she must investigate and determine if there is or will be an impairment. This investigation and determination may be made independent of, or as part of, a park planning process undertaken for other purposes. **If it is determined that there is, or will be, an impairment, the decision-maker must take appropriate action, to the extent possible within the Service's authorities and available resources, to eliminate the impairment**[12]**.** The action must eliminate the impairment as soon as reasonably possible, taking into consideration the nature, duration, magnitude, and other characteristics of the impacts on park resources and values, as well as the requirements of the National Environmental Policy Act, National Historic Preservation Act, the Administrative Procedure Act, and other applicable laws.

1.4.7.1 Unacceptable Impacts[13]

[11] We contend that because Yellowstone National Park is the world's first national park, its "high public value and integrity" is even more pronounced than for other national parks.

[12] As stated earlier, snowmobile use in the parks constitutes impairment and therefore the decision-makers must take appropriate action to eliminate that impairment.

[13] Even if snowmobile use is found to fall short of impairment, it has been shown to contribute unacceptable impacts that are inconsistent with the parks' purposes and values and interfere with the atmosphere of peace and tranquility and the natural soundscape in the parks.

The impact threshold at which impairment occurs is not always readily apparent. Therefore, the Service will apply a standard that offers greater assurance that impairment will not occur. The Service will do this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment, but are still not acceptable within a particular park's environment. Park managers must not allow uses that would cause unacceptable impacts; they must evaluate existing or proposed uses and determine whether the associated impacts on park resources and values are acceptable.

Virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that a particular use must be disallowed. **Therefore, for the purposes of these policies, unacceptable impacts are impacts that, individually or cumulatively, would**

- **be inconsistent with a park's purposes or values, or**
- impede the attainment of a park's desired future conditions for natural and cultural resources as identified through the park's planning process, or
- create an unsafe or unhealthful environment for visitors or employees, or
- diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or
- **unreasonably interfere with**
    - park programs or activities, or
    - an appropriate use, or
    - **the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.**
    - NPS concessionaire or contractor operations or services.

1.4.7.2 Improving Resource Conditions within the Parks

The Service will also strive to ensure that park resources and values are passed on to future generations in a condition that is as good as, or better than, the conditions that exist today.

Section 1.5 (MP-2006 at 13) describes appropriate uses in parks. Emphasis is added:

1.5 Appropriate Use of the Parks

> The National Park Service embraces appropriate use of the parks because these uses are key to the enjoyment of the parks and the appreciation and inspiration derived from the resources. Park resources have profound effects on those who experience them through appropriate park uses. An "appropriate use" is a use that is suitable, proper, or fitting for a particular park, or to a particular location within a park. Not all uses are appropriate or allowable in units of the national park system, and what is appropriate may vary from one park to another and from one location to another within a park.
>
> **In its role as steward of park resources, the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values. When proposed park uses and the protection of park resources and values come into conflict, the protection of resources and values must be predominant.**[14] A new form of park use may be allowed within a park only after a determination has been made in the professional judgment of the superintendent that it will not result in unacceptable impacts. The National Park Service will always consider allowing activities that are appropriate to the parks, although conditions may preclude certain activities or require that limitations be placed on them. Park superintendents must continually monitor all park uses to prevent unanticipated and unacceptable impacts. If unanticipated and unacceptable impacts emerge, the superintendent must engage in a thoughtful, deliberate process to further manage or constrain the use, or discontinue it.

Section 1.8 (MP-2006 at 14) describes the responsibilities of the National Park Service to demonstrate environmental leadership. Emphasis is added:

> 1.8 Environmental Leadership
>
> Given the scope of its responsibility for the resources and values entrusted to its care, the Service has an obligation to demonstrate and work with others to promote leadership in environmental stewardship. **The Park Service must set an example not only for visitors, other governmental agencies, the private sector, and the public at large, but also for a worldwide audience.** Touching so many lives, the Service's management of the parks presents a unique opportunity to awaken the potential of each individual to play a proactive role in protecting the environment.
>
> **Environmental leadership will be demonstrated in all aspects of NPS activities, including policy development; park planning; all aspects of park**

[14] Snowmobile use in the parks has been shown by the scientific and technical monitoring and analysis to cause unacceptable impacts and impairment, and to meet the requirement that when proposed (or in this case existing) park uses and the protection of park resources and values come into conflict, the protection of resources and values **must** be predominant. This is an affirmative responsibility by park managers and cannot be compromised.

operations; land protection; natural and cultural resource management; wilderness management; interpretation and education; facilities design, construction, and management; and commercial visitor services. In demonstrating environmental leadership, the Service will (1) fully comply with the letter and the spirit of the National Environmental Policy Act and the National Historic Preservation Act, and (2) continually assess the impact its operations have on natural and cultural resources so that it may identify areas for improvement.

Sections (MP-2006 at 22) under Chapter 2, Park System Planning, specify requirements for data analysis and public participation in decision-making. Emphasis is added:

2.1.2 Scientific, Technical, and Scholarly Analysis

Decision-makers and planners will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources.[15] Analysis will be interdisciplinary and tiered. At key points of planning and decision-making, the Park Service will identify reasonable alternatives and analyze and compare their differences with respect to

- consistency with the park's purpose,
- the quality of visitor experiences,
- the impacts on park resources,
- short- and long-term costs, and
- environmental consequences that may extend beyond park boundaries.

2.1.3 Public Participation

Public participation in planning and decision-making will ensure that the Service fully understands and considers the public's interests in the parks, which are part of the public's national heritage, cultural traditions, and community surroundings.[16] The Service will actively seek out and consult with existing and potential visitors, neighbors, American Indians, other people with traditional cultural ties to park lands, scientists and scholars, concessionaires, cooperating associations, gateway communities, other partners, and government agencies. The Service will work cooperatively with others to improve the condition of parks; to enhance public service; and to integrate parks into sustainable ecological, cultural, and socioeconomic systems.

[15] Scientific and technical analysis has been undertaken and park management now has an affirmative duty to appropriately consider the analyses and not ignore it, or interpret it in such a way to reach a predetermined conclusion.

[16] Written comment has been solicited and four public hearings have been conducted. Park management now has an obligation to consider the preponderance of the public preference in interpreting the comments and to consider that preference in the final decision.

With regard to impacts and impairment to the resources of the parks, Sections of Chapter 4 (MP-2006 at 36-57) address specific resources and values and the standards to be met. Emphasis added:

> 4.1.3 Evaluating Impacts on Natural Resources
>
> Planning, environmental evaluation, and civic engagement regarding management actions that may affect the natural resources of the national park system are essential for carrying out the Service's responsibilities to present and future generations. **The Service will ensure that the environmental costs and benefits of proposed operations, development, and resource management are fully and openly evaluated before taking actions that may impact the natural resources of parks.** This evaluation must include appropriate participation by the public; the application of scholarly, scientific, and technical information in the planning, evaluation, and decision-making processes; the use of NPS knowledge and expertise through interdisciplinary teams and processes; and the full incorporation of mitigation measures, pollution prevention techniques, and other principles of sustainable park management.
>
> **Every environmental assessment and environmental impact statement produced by the Service will include an analysis of whether the impacts of a proposed activity constitute impairment of park natural resources and values.** Every finding of no significant impact, record of decision, and National Historic Preservation Act Section 106 memorandum of agreement signed by the Park Service will contain a discrete certification that the impacts of the proposed activity will not impair park natural resources and values.
>
> 4.4.1 General Principles for Managing Biological Resources
>
> The National Park Service will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems. The Service will successfully maintain native plants and animals by
>
> - preserving and restoring the natural abundances, diversities, dynamics, distributions, habitats, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur;
> - restoring native plant and animal populations in parks when they have been extirpated by past human-caused actions; and
> - **minimizing human impacts on native plants, animals, populations, communities, and ecosystems, and the processes that sustain them.**[17]

[17] NPS suggests there would be no difference in the impacts to wildlife between its "preferred alternative" and allowing 120 snowcoaches per day, even though the latter alternative would involve less than one-sixth as much traffic. This comparison makes no mention of the scientists' recommendation that traffic should be limited to protect wildlife.

4.7.1 Air Quality[18]

The National Park Service has a responsibility to protect air quality under both the 1916 Organic Act and the Clean Air Act (CAA). **Accordingly, the Service will seek to perpetuate the best possible air quality in parks to (1) preserve natural resources and systems;** (2) preserve cultural resources; and (3) sustain visitor enjoyment, human health, and scenic vistas. Vegetation, visibility, water quality, wildlife, historic and prehistoric structures and objects, cultural landscapes, and most other elements of a park environment are sensitive to air pollution and are referred to as "air quality-related values." The Service will actively promote and pursue measures to protect these values from the adverse impacts of air pollution. **In cases of doubt as to the impacts of existing or potential air pollution on park resources, the Service will err on the side of protecting air quality and related values for future generations.**

Just as it weakened what constitutes a "major adverse impact" to natural soundscapes, with the result that 720 snowmobiles per day appears less damaging to park resources, NPS has modified Yellowstone's "Desired Condition" for wildlife and its "Definition of Impacts to Wildlife" so that increased winter traffic does not appear as problematic as NPS' wildlife scientists cautioned.

Specifically, the new "Desired Condition" for Yellowstone's wildlife simply states that impacts to wildlife "are mitigated" (with no clarity about what impacts need to be mitigated and no obligation that a particular level of success be achieved) and that "effective wildlife habitat for winter survival is protected" (leaving room for anything short of a population dying off). In addition, the new "Definition of Impacts to Wildlife" specifically links this new desired condition to its consequences for whole populations of animals. Together, these changes turn upside down NPS' prior assessment of its legal responsibilities toward wildlife. In the Supplemental EIS on Yellowstone Winter Use completed in 2003, NPS emphasized its responsibility to minimize adverse impacts to individual animals and not merely to populations, explicitly stating: "…park policies, regulations, and EOs [Executive Orders] clearly state that disturbance to wildlife, regardless of population-level effects, is unacceptable in the national parks." Moreover, CFR, Title 36, Section 2.2(a)(2) makes it clear that the NPS opposes disturbance to individual animals, making it illegal to engage in, "The feeding, touching, teasing, frightening or intentional disturbing of wildlife nesting, breeding or other activities."

Yellowstone's scientists have recommended that traffic either be capped at current levels or reduced to avoid expected increases in adverse impacts to individual animals including vehicle-caused mortality, displacement from habitat, and behavior- or physiology-related energy costs.

[18] The results of modeling reported in the DEIS reveal that NPS is choosing not to emphasize protection of clean air. Alternatives that limit snowmobile use to roughly current levels or phase out park snowmobiling in favor of increased snowcoach access would result, according to the DEIS, in significantly cleaner air than current conditions and dramatically cleaner air than Yellowstone would have with 720 snowmobiles. By proposing to continue snowmobile use, NPS is instead choosing to take air quality backward and to forgo options that would maintain or further enhance air quality. Simply put, continuing snowmobile use does not match the direction given to it by the Clean Air Act and does not, as the 2006 Management Policies direct, "seek to perpetuate the best possible air quality in the parks."

Superintendents will take actions consistent with their affirmative responsibilities under the Clean Air Act to protect air quality-related values in Class I areas.

4.9 Soundscape Management[19]

Park natural soundscape resources encompass all the natural sounds that occur in parks, including the physical capacity for transmitting those natural sounds and the interrelationships among park natural sounds of different frequencies and volumes. Natural sounds occur within and beyond the range of sounds that humans can perceive, and they can be transmitted through air, water, or solid materials. The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks.

The Service will take action to prevent or minimize all noise that through frequency, magnitude, or duration adversely affects the natural soundscape or other park resources or values, or that exceeds levels that have been identified through monitoring as being acceptable to or appropriate for visitor uses at the sites being monitored.

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[19] Noise from snowmobiles is currently audible 50 percent of the visiting day in 21.3 square miles of the park. If the preferred alternative were implemented, this would increase to 76.4 square miles. The DEIS acknowledges that this would affect "areas most accessible by the vast majority of park visitors" and that chronic engine noise would be heard in less than half as much of the park if snowmobiles were replaced with snowcoach access.

NPS has long acknowledged that noise from snowmobiles is "concentrated to a large degree around travel corridors and park attractions and affect the areas most accessible by the vast majority of park visitors...Most areas used by winter visitors seeking solitude and quiet are within two miles of travel corridors." Yet NPS has now added to its "Definition of Impacts on the Natural Soundscape" the category, "Percent of Total Park in which Oversnow Sound is Audible." With this change, snowmobile noise would not be considered to have a "Major Adverse" impact until it could be heard over 20 percent of the total park, which is more than 690 square miles, mostly backcountry where few winter visitors are present. This change moves the emphasis on noise impacts away from the park's most visited areas such as Old Faithful and Madison Junction, where snowmobile noise has frequently exceeded the previous definition of "major adverse impacts" even with an average of 250 snowmobiles per day, where NPS has learned that these noise problems would grow significantly worse with 720 snowmobiles and where, according to NPS' modeling, park attractions would be significantly quieter with a greater emphasis on snowcoach access.

This example reflects that NPS is boxed in by overwhelming evidence derived from several winters of monitoring and by consistent conclusions it has reached in modeling relative impacts of winter use alternatives (modeling conclusions which EPA has independently verified every step of the way). Rather than changing its preferred alternative to ensure that desired conditions are achieved, NPS is now modifying Yellowstone's desired conditions and definitions of impacts to justify a preferred alternative of 720 snowmobiles. The result misleads the public and decision makers; with the new impact definitions, NPS asserts in the DEIS' "Summary and Comparison of Impacts by Resource" that there is no difference in impacts to Yellowstone's natural soundscapes between 720 snowmobiles per day and the snowcoach alternative when in reality the former would result in 40 additional square miles in the most visited portions of the park where visitors would hear engine noise more than half of each day.

Chapter 8 (MP-2006 at 98-122) provides additional specific guidance relative to appropriate and inappropriate uses or impacts. Emphasis added:

> Use of the Parks
> *National parks belong to all Americans, and the National Park Service will welcome all Americans to experience their parks. The Service will focus special attention on visitor enjoyment of the parks while recognizing that the NPS mission is to conserve unimpaired each park's natural and cultural resources and values for the enjoyment, education, and inspiration of present and future generations.*

> 8.1.1 Appropriate Use
>
> The concept of appropriate use is especially important with regard to visitor enjoyment because, in accordance with the Organic Act, the fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by present and future generations.
>
> While providing opportunities for appropriate public enjoyment is an important part of the Service's mission, other park uses—unrelated to public enjoyment—may sometimes be allowed as a right or a privilege if they are not otherwise prohibited by law or regulation. **In exercising its discretionary authority, the Service will allow only uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts. Recreational activities and other uses that would impair a park's resources, values, or purposes cannot be allowed.** The only exception is when an activity that would cause impairment is directly and specifically mandated by Congress.
>
> The fact that a park use may have an impact does not necessarily mean it will be unacceptable or impair park resources or values for the enjoyment of future generations. Impacts may affect park resources or values and still be within the limits of the discretionary authority conferred by the Organic Act. In these situations, the Service will ensure that the impacts are unavoidable and cannot be further mitigated. **Even when they fall far short of impairment, unacceptable impacts can rapidly lead to impairment and must be avoided. For this reason, the Service will not knowingly authorize a park use that would cause unacceptable impacts.**
>
> 8.1.2 Process for Determining Appropriate Uses
>
> **All proposals for park uses will be evaluated for**

- consistency with applicable laws, executive orders, regulations, and policies;
- consistency with existing plans for public use and resource management;
- **actual and potential effects on park resources and values;**
- total costs to the Service; and
- **whether the public interest will be served.**

Superintendents must continually monitor and examine all park uses to ensure that unanticipated and unacceptable impacts do not occur. Superintendents should also be attentive to existing and emerging technologies that might further reduce or eliminate impacts from existing uses allowed in parks. **Unless otherwise mandated by statute, only uses that meet the criteria listed in section 8.2 may be allowed.**

Specific park uses will be guided by the following subsections of this chapter, and must comply also with the other chapters of these *Management Policies*.

8.2 Visitor Use

Enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of all parks. The Service is committed to providing appropriate, high-quality opportunities for visitors to enjoy the parks, and the Service will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society. **However, many forms of recreation enjoyed by the public do not require a national park setting and are more appropriate to other venues. The Service will therefore**

- **provide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks;**
- **defer to local, state, tribal, and other federal agencies; private industry; and nongovernmental organizations to meet the broader spectrum of recreational needs and demands.**[20]

To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that

- **are appropriate to the purpose for which the park was established; and**
- **are inspirational, educational, or healthful, and otherwise appropriate to the park environment**; and

[20] Snowmobile use is not "uniquely suited and appropriate" to the parks. Given that there are thousands of miles of trails and acres on public lands adjacent to the parks, snowmobile use can be deferred to these lands, consistent with the requirements of this section.

- will foster an understanding of and appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and
- **can be sustained without causing unacceptable impacts to park resources or values.**

The Service may allow other visitor uses that do not meet all the above criteria if they are appropriate to the purpose for which the park was established and they can be sustained without causing unacceptable impacts to park resources or values. For the purposes of these policies, unacceptable impacts are impacts that, individually or cumulatively, would

- **be inconsistent with a park's purposes or values, or**
- impede the attainment of a park's desired conditions for natural and cultural resources as identified through the park's planning process, or
- create an unsafe or unhealthy environment for visitors or employees, or
- diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or
- **unreasonably interfere with**
    - park programs or activities, or
    - an appropriate use, or
    - **the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park, or**
    - NPS concessionaire or contractor operations or services.

Management controls and conditions must be established for all park uses to ensure that park resources and values are preserved and protected for the future. **If and when a superintendent has a reasonable basis for believing that an ongoing or proposed public use would cause unacceptable impacts to park resources or values, the superintendent must make adjustments to the way the activity is conducted to eliminate the unacceptable impacts.** If the adjustments do not succeed in eliminating the unacceptable impacts, the superintendent may (1) temporarily or permanently close a specific area, or (2) place limitations on the use, or (3) prohibit the use.

8.2.2 Recreational Activities

The National Park Service will manage recreational activities according to the criteria listed in sections 8.1 and 8.2 (and 6.4 in wilderness areas). Examples of the broad range of recreational activities that take place in parks include, but are not limited to, boating, camping, bicycling, fishing, hiking, horseback riding and packing, outdoor sports, picnicking, scuba diving, cross-country skiing, caving, mountain and rock climbing, earth caching, and swimming. Many of these activities

support the federal policy of promoting the health and personal fitness of the general public, as set forth in Executive Order 13266.

Park managers will (1) identify what levels and types of sounds contribute to or hinder visitor enjoyment, and (2) monitor, in and adjacent to parks, noise-generating human activities—including noise caused by mechanical or electronic devices—that adversely affect visitor opportunities to enjoy park soundscapes. Based on this information, the Service will take action to prevent or minimize those noises that adversely affect the visitor experience or that exceed levels that are acceptable to or appropriate for visitor uses of parks.

8.2.2.1 Management of Recreational Use

Superintendents will develop and implement visitor use management plans and take action, as appropriate, to ensure that recreational uses and activities in the park are consistent with its authorizing legislation or proclamation and do not cause unacceptable impacts on park resources or values. Depending on local park needs and circumstances, these plans may be prepared (1) as coordinated, activity-specific documents (such as a river use plan, a backcountry use plan, a wilderness management plan, an off -road vehicle use plan, a winter use plan); (2) as action-plan components of a resource management plan or general management plan; or (3) as a single integrated plan that addresses a broad spectrum of recreational activities. Regardless of their format or complexity, visitor use management plans will (1) contain specific, measurable management objectives related to the activity or activities being addressed; (2) be periodically reviewed and updated; and (3) be consistent with the carrying capacity decisions made in the general management plan.

The Service will seek consistency in recreation management policies and procedures on both a Service-wide and interagency basis to the extent practicable. However, because of differences in the enabling legislation and resources of individual parks, and differences in the missions of the Service and other federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate when conducted in another.

The Service will consider a park's purposes and the effects on park resources and visitors when determining the appropriateness of a specific recreational activity. Superintendents will consider a wide range of techniques in managing recreational use to avoid adverse impacts on park resources and values or desired visitor experiences. Examples of appropriate techniques include visitor information and education programs, separation of conflicting uses by time or location, "hardening" sites, modifying maintenance practices, and permit and reservation systems.

Superintendents may also use their discretionary authority to impose local restrictions, public use limits, and closures and designate areas for a specific use or activity (see 36 CFR 1.5). Any restriction of appropriate recreational uses will be limited to what is necessary to protect park resources and values, to promote visitor safety and enjoyment, or to meet park management needs. To the extent practicable, public use limits established by the Service will be based on the results of scientific research and other available support data. **However, an activity will be restricted or prohibited when, in the judgment of the superintendent, its occurrence, continuation, or expansion would (1) violate the criteria listed in section 8.2,** or (2) conflict with the findings of a carrying capacity analysis with no reasonable alternative that would avoid or satisfactorily mitigate the violation or conflict.

8.2.3 Use of Motorized Equipment

The variety of motorized equipment—including visitor vehicles, concessionaire equipment, and NPS administrative or staff vehicles and equipment—that operates in national parks could adversely impact park resources, including the park's natural soundscape and the flow of natural chemical information and odors that are important to many living organisms. **In addition to their natural values, natural sounds (such as waves breaking on the shore, the roar of a river, and the call of a loon) form a valued part of the visitor experience. Conversely, the sounds of motor vehicle traffic, an electric generator, or loud music can greatly diminish the solemnity of a visit to a national memorial, the effectiveness of a park interpretive program, or the ability of a visitor to hear a bird singing its territorial song.** Many parks that appear as they did in historical context no longer sound the way they once did.

The Service will strive to preserve or restore the natural quiet and natural sounds associated with the physical and biological resources of parks. To do this, superintendents will carefully evaluate and manage how, when, and where motorized equipment is used by all who operate equipment in the parks, including park staff. Uses and impacts associated with the use of motorized equipment will be addressed in park planning processes. **Where such use is necessary and appropriate, the least impacting equipment, vehicles, and transportation systems should be used, consistent with public and employee safety. The natural ambient sound level—that is, the environment of sound that exists in the absence of human-caused noise—is the baseline condition, and the standard against which current conditions in a soundscape will be measured and evaluated.**[21]

8.2.3.1 Motorized Off-road Vehicle Use

[21] Based on all the scientific and technical analyses, it is clear that snowmobiles do not constitute the least impacting vehicles available for public access to more remote areas in the parks.

Off -road motor vehicle use in national park units is governed by Executive Order 11644 (Use of Off -road Vehicles on Public Lands, as amended by Executive Order 11989), which defines off -road vehicles as "any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain" (except any registered motorboat or any vehicle used for emergency purposes). **Unless otherwise provided by statute, any time there is a proposal to allow a motor vehicle meeting this description to be used in a park, the provisions of the executive order must be applied.**

In accordance with 36 CFR 4.10(b), routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves, and only by special regulation. **In accordance with the executive order, they may be allowed only in locations where there will be no adverse impacts on the area's natural, cultural, scenic, and esthetic values, and in consideration of other existing or proposed recreational uses.** The criteria for new uses, appropriate uses, and unacceptable impacts listed in sections 8.1 and 8.2 must also be applied to determine whether off -road vehicle use may be allowed. **As required by the executive order and the Organic Act, superintendents must immediately close a designated off -road vehicle route whenever the use is causing or will cause unacceptable impacts on the soil, vegetation, wildlife, wildlife habitat, or cultural and historic resources.**

8.2.3.2 Snowmobiles

Snowmobile use is a form of off -road vehicle use governed by Executive Order 11644 (Use of Off -road Vehicles on Public Lands, as amended by Executive Order 11989), and in Alaska also by provisions of the Alaska National Interest Lands Conservation Act (16 USC 3121 and 3170). Implementing regulations are published at 36 CFR 2.18, 36 CFR Part 13, and 43 CFR Part 36. **Outside Alaska, routes and areas may be designated for snowmobile and oversnow vehicle use only by special regulation after it has first been determined through park planning to be an appropriate use that will meet the requirements of 36 CFR 2.18 and not otherwise result in unacceptable impacts.** Such designations can occur only on routes and water surfaces that are used by motor vehicles or motorboats during other seasons.

Conclusion:
By implementing an alternative that phases out snowmobile use and replaces it with increasingly popular visitor and park friendly snowcoach access, NPS will not only succeed in affirming the 2006 Management Policies, but it will also ensure the application of sound science and comport with the will of the American people, who have

repeatedly voiced their expectation that the highest standards of protection be maintained in our nation's first national park.

3. NATIONAL ENVIRONMENTAL POLICY ACT-RELATED COMMENTS

A) Sylvan Pass Closure

Our organizations support the NPS proposal to analyze the safety concerns, costs and benefits of keeping Sylvan Pass, Yellowstone's east entrance, open during the winter season. Our individual organizations may file additional comments related to the Sylvan Pass closure for your consideration.

B) Closure of Gibbon Canyon (the Gates Experiment)

A 2005 study completed by Gates et al. indicates that, "…systematic research has not been carried out on the ability of bison to move through snow under the variety of circumstances present in Yellowstone National Park." (Gates et al, p. 252) In addition, this report recommends an "adaptive management experiment should be designed to test the permeability of the Firehole to Mammoth corridor under variable snow conditions with a specific focus on the road section from the Madison Administrative Area and Norris Junction." (p. 253).

In response to the report, the DEIS proposes in all action alternatives to close Gibbon Canyon in order to conduct management experiments to answer the need identified in the Gates report.

We support this proposal and believe that it is an appropriate use of adaptive management. We would like to see more specifics put forth in the final EIS on potential study design, length of closures, etc., in order to better understand what is being contemplated and to make sure this is well communicated to the public from the start.

C) Proposal to close the in-park portion of the Continental Divide Snowmobile Trail

Action alternatives describe the excessive costs involved with keeping the Continental Divide Snowmobile Trail (CDST) open through NPS lands and the low associated use levels of the CDST. Given the excessive costs and the low use, it makes no sense whatsoever to continue the CDST program through NPS lands. In addition, doing so would be a violation of the law and NPS policies. We support the proposal to discontinue NPS operations associated with the CDST.

D) Failure to analyze 4-year snowmobile average as component of an alternative

Given NEPA's requirements to analyze a reasonable range of alternatives, we are concerned that no alternative was developed to reflect the 4-year average of 250 snowmobiles under the current conditions—meaning without snowmobile and snowcoach use at each entrance.. This would have been an important touchstone for the

public to be able to weigh the relative impacts and costs and benefits associated with the different alternatives. Unfortunately, the DEIS concludes that such an alternative "…is approximated, to some degree, by alternatives 3A and 6…"

While both alternatives may approximate average snowmobile numbers, both alternative 3A and 6 are significantly different than conditions over the past 4 years. For example, alternative 3A contemplates the south entrance as the only access into the park and alternative 6 proposes to plow roads into Old Faithful. Consequently, neither alternative comes close to approximating the conditions found over the past 4 seasons in terms of average snowmobile numbers and under the current conditions.

We believe this is a serious flaw in the analysis and has led to a missed opportunity that would have provided the public and NPS with a good opportunity to clearly weigh the costs and benefits of the various alternatives. As it now exists, the public has no opportunity to compare the status quo with any of the proposed alternatives and it is assumed that alternative 1 is the 'status quo' alternative, when in reality, daily snowmobile entries would nearly triple under the preferred alternative.

E) The 2006 NPS Wildlife Report and failure to use the best available science

Shortly after the release of the DEIS to the cooperators, NPS made public the report: "Behavioral Responses of Wildlife to Snowmobiles and Coaches in Yellowstone" (September 2006). This report provides the most comprehensive and up to date data sets—four years worth-- that Yellowstone has available to determine the impacts of the different alternatives on key park wildlife.

The report concluded that the lower snowmobile traffic level of around 250 snowmobiles per day had helped reduce disturbance of wildlife:

"...below a level that would cause measurable fitness effects. We acknowledge the potential for fitness effects to develop if [oversnow vehicles] or other stressors become more severe or prolonged. Thus, we recommend park managers consider maintaining [oversnow vehicle] traffic levels at or below those observed during the monitoring." (Report, p. 20)

In addition, the report finds that "…bison respond less frequently (20 percent) to snowmobiles and coaches than swans (43 percent), elk (52 percent), coyotes (61 percent), or bald eagles (83 percent) due to fewer vigilance responses." In short, the report concludes that park wildlife, in significant numbers—in the case of bison 20%-- up to 83% for eagles—respond negatively to vehicular traffic. The report further noted that as winters wore on, elk exhibited greater sensitivity to vehicles.

Despite the clear evidence that vehicular traffic significantly disturbs sensitive park wildlife at their most vulnerable time of the year, and in the face of a recommendation that traffic levels remain at or below those observed during the period of the study, alternative 1 proposes a level of snowmobile traffic nearly three times higher than the

daily average of 250 snowmobiles that wildlife scientists had observed for the past four years.

This represents a significant failure of NPS to use the best available science to drive its decisions. In fact, it appears that throughout the wildlife portion of the DEIS, NPS chose to ignore the findings of the four year study altogether.

For example, the DEIS concludes that "Cumulative effects for bison and elk for alternative 2 would be the same as those for alternative 1." (DEIS, p. 228) Again, p. 245 concludes the same thing for lynx and wolverine and p. 254 concludes the same for eagles and swans.

Also, the DEIS at page 250 notes: "According to the best available information, impacts and cumulative effects on coyotes and ravens from these alternatives [1, 2, 3, 6] are predicted to be negligible, adverse, short-term and direct. The impacts associated with these alternatives are not predicted to be of sufficient magnitude to constitute unacceptable impacts or impairment of coyote or raven populations."

NEPA requires that NPS use the best available science to base its decisions on. In fact, as the above paragraph points out, NPS states that it used the 'best available information' to make its determination on the impacts of various alternatives on wildlife.

Yet, time after time, in direct contradiction of the recommendations of the 2006 report, the DEIS concludes that that there would be little difference in adverse impacts to wildlife between Alternatives 1 and 2. In fact, while the 2006 report is referenced in the DEIS bibliography, there is no direct mention of it or its conclusions in the Environmental Consequences section of the DEIS.

Failure to use this best available science to drive the development of the preferred alternative has led to a flawed analysis by NPS, not only in its duty to assure park wildlife are unimpaired for future generations but also in relation to its duties to use the 'best available science' under NEPA.

F) Cumulative Effects Analysis

A cumulative impact is described as "the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." (CEQ Regulations § 1508.7) Cumulative effects can result from individually minor, but collectively major, actions taking place over a period of time.

In the case of this DEIS, the NPS does indeed disclose potential cumulative impacts by major issue, by alternative. However, we are mystified that despite the disclosure of significantly different cumulative impacts by alternative, many of the same conclusions over effects throughout alternatives are drawn. For example, When assessing cumulative impacts over "Effects on Public and Employee Health and Safety", for Alternative 1, the

DEIS concludes: “For employees exposed to air toxics, noise, and rough roads, health effects may accumulate over the course of a season. Additionally, there is the potential for synergistic effects.” (DEIS, p.209). This section then concludes that because Sylvan Pass will be closed and BAT and guiding requirements will be in place for snowmobiles that the effects will be ‘minor, direct, short-term and adverse.’ (DEIS, p. 209). The DEIS then goes on to assess cumulative effects of Alternative 2, which expresses no similar concern over employee and visitor health as expressed over Alternative 1. Yet, the DEIS concludes that the cumulative effects under Alternative 2 “would be similar to those under alternative 1.” (DEIS, p. 210). This pattern is repeated in several other areas of cumulative effects analysis—in which significant cumulative impacts are disclosed under the preferred alternative, no such impacts are disclosed for Alternative 2, yet the overall conclusion is that the cumulative impacts of Alternative 2 are similar to those of Alternative 1.

It is critical that NPS clarify this disparity and reassess the conclusions of its cumulative impacts analysis to truly reflect the acknowledge disparity of cumulative effects between alternatives. The current analysis appears to ignore the very assessments NPS conducted.

6) GIVING APPROPRIATE WEIGHT TO NON-MOTORIZED RECREATION

Visitors in increasing numbers are enjoying the Parks in lower impact ways. Along with growth in snowcoach activity over the past three years, there is an increase in the number of non-motorized recreational users accessing Yellowstone and Grand Teton National Parks. For example, the decline in snowmobile use, combined with road grooming between Taggert Lake Trailhead and Signal Mountain Lodge is leading to a marked increase in cross country skiing, snowshoeing and walking in Grand Teton National Park. In 2005, a ski club in eastern Idaho began offering snowcoach-led trips into the parks based on the reality that choosing snowcoaches over snowmobiles would greatly diminish the impacts their members had on the Parks. In response to this demand, Xanterra has added a snowcoach skier shuttle service to allow skiers, snowshoers and winter hikers to more easily access the Park.

Our organizations urge the Park Service to use the Winter Use Plan as an opportunity to expand and improve services and facilities for healthy recreation like cross country skiing, snowshoeing and winter hiking by specifically supporting enhanced ski grooming, walking, and snowshoe trail accommodation. The DEIS generally lacks specifics, lacks recognition of the Park Service’s responsibility to provide appropriate non-motorized services and facilities, and lacks recognition these are desirable ways to accomplish the desired goals of the winter use plan. In short, the Draft EIS does not adequately address non-motorized use.

It is critical that NPS significantly improve upon any selected alternative to assure the final decision better serves skiers, winter hikers, and snowshoe visitors to Yellowstone and Grant Teton. While there is recognition in the purpose and need statement in the Winter Use Plan, “…enjoyment of these resources by those engaged in non-motorized activities,” the DEIS falls short in terms of specifics on how to accomplish this.

Frequently, the plan repeats: “Non-Motorized Access: Non-motorized winter use would continue to be managed in accordance with prior decisions and rules.”

We urge the Park Service to provide additional levels of detail regarding provision of additional opportunities for Nordic trail grooming targeting nonmotorized use on both Yellowstone and Grand Teton National Parks. For example, any winter use decision should include continued and reliable grooming of the first six miles of the East Entrance Road to provide cross-country skiers with groomed skate and classic skiing tracks.

As the evidence already shows, adding a more thoughtful combination of facilities and activities to promote non-motorized use will result in further increased skier, snowshoer and winter hiker visits to the park.

In regard to the DEIS alternatives, Alternative 2 offers all individuals the same opportunity to see Yellowstone in winter and provides an environmentally friendly way to access the park for skiing, snowshoeing and other winter adventures.

7) REGIONAL TRANSPORTATION SYSTEM

A coalition of area communities, local governments, government agencies and nonprofit organizations has been working to develop a regional transportation plan, the heart of which would be a fleet of updated, multi-season yellow bus/snowcoaches. When this vision is realized, this fleet could become an integral part of winter transportation in and around the Parks. In scoping comments, we requested that at least one action alternative include discussion and analysis of the benefits of phasing in this fleet, starting with 20-30 new vehicles as a demonstration, to a fully-funded, multi-season transportation system with the parks as the hub of this system. Unfortunately, no alternatives in the DEIS included this analysis. We again make the request that this be incorporated into at least one action alternative. The future of the regional transportation district concept is a fundamental building block for any long-term vision of winter use and transportation in the Parks, and therefore, is critical to include in the EIS for analysis and planning.

8) ECONOMIC ANALYSIS

The economic analysis in the DEIS confirms what previous studies have already found: Total Lodging Taxes are increasing for the park’s gateway communities. For example, the DEIS notes that Fremont County Idaho’s winter lodging tax collections in 2005-2006 “were over double the level seen in the four years prior to 2002…” (DEIS, p. 74). Similarly, Park County Wyoming shows an increase in lodging tax collections over the past several winters. In fact, the Mammoth Hot Springs Hotel accounts for 41% of the Park County lodging tax in winter. This number is unaffected by any proposed closure, as contemplated at the Park’s east entrance.

While seasonal entries at the West Yellowstone entries are still markedly down from their historic highs, they nonetheless have been steadily growing over the past three seasons. At the same time, resort tax collections, which cover most major tourist-related activities, show that there has not been a proportional decline in West Yellowstone’s revenue

during the park's winter season. In fact, resort tax collections increased from $388,222 to $425,933 between the winter of 2004-5 and 2005-6. This strongly suggests that there has been a significant offset (growth in revenue) presumably related to increasing snowcoach visitation and recreational use on lands adjacent to the Park.

In Teton and Park counties in Wyoming, hotel and motel sales/use tax receipts are reported quarterly. In both counties, the third quarter of the fiscal year (January-March) has produced, not declining, but surging revenue over the past three winters. As park visitation has shifted dramatically away from snowmobile trips and toward snowcoach tours, Park County's third-quarter revenue has grown 32 percent and Teton's has jumped a whopping 82 percent. Based on this information, it appears that NPS was also correct in emphasizing in previous studies that the size and diversity of the Jackson and Cody economies would largely negate any local economic impacts from curtailing snowmobile use within the Parks.

All of the above information strongly indicates that NPS has been correct in its past analyses – the protection NPS deems best for park resources and public health will have positive economic impacts while negative impacts would, at most, be minor and short-term. There is considerable evidence that growth independent of park visitation is now a major influence in West Yellowstone's winter economy. Further, there is fresh evidence suggesting that visitors will change readily from snowmobile use to other forms of winter access into Yellowstone or indeed may prefer these healthier and less intrusive alternatives.

9) NPS SHOULD ADOPT ALTERNATIVE 2

A) Alternative 2 would further improve Yellowstone's air quality

As snowmobile use has declined since 2003 and the number of visitors accessing the park by snowcoach has increased, Yellowstone's air has become significantly cleaner and healthier. The DEIS states that air quality would improve further if Alternative 2 is adopted. Carbon monoxide emissions would be reduced by 67 percent and hydrocarbon emissions by 88 percent on top of progress already made. DEIS at 201. Conversely, if Alternative 1 is adopted, the DEIS discloses that Yellowstone's cleaner air would deteriorate, with carbon monoxide emissions increasing 57 percent and hydrocarbon emissions growing by 200 percent. DEIS at 201. The 2006 NPS Policy on Air Quality states, "…the Service will seek to perpetuate the best possible air quality in parks…". The disparity in emissions reported in the EIS underscore that Alternative 2 would uphold this policy and adoption of Alternative 1 clearly would not. This NPS policy is omitted in the DEIS from the "Regulatory and Policy Overview" on Air Quality. DEIS at 82. NPS should ensure that the Final EIS includes the policy. The Final EIS should disclose that of the six alternatives analyzed, Alternative 2 would "perpetuate the best possible air quality" in Yellowstone. The Final EIS should also disclose in non-technical language readily understandable by decision makers and the public that Alternative 1, because of its emphasis of continued snowmobile use, would result in five times greater carbon monoxide emissions and 17 times greater hydrocarbon emissions than Alternative 2. NPS should adopt Alternative 2 because it is the only alternative that meets the

agency's affirmative responsibility to protect and perpetuate clean air in our national parks to the greatest degree possible. Yellowstone and Grand Teton National Parks are Class 1 airsheds. Congress intended that these areas be afforded the highest degree of air quality protection — far beyond the standards set for urban areas, dangerous work sites, and all other areas of the country.

B) Alternative 2 would provide motorized visitor access with dramatically less noise

The 2007 DEIS states: "historic conditions created unpleasant touring situations for visitors. Many complained about ubiquitous noise of snowmobiles…Present conditions are markedly different." DEIS at 313. Noise has indeed been much less pervasive the past four winters with a daily average of 250 snowmobiles. However, the DEIS reveals that visitors' *future* opportunities to experience Yellowstone's winter quiet and to hear and enjoy the park's natural sounds would be much greater under Alternative 2 with its emphasis on snowcoach access than with Alternative 1's allowance of up to 720 snowmobiles per day. Compared to Yellowstone's current improved natural soundscape, Alternative 1 would triple the number of square miles in the park where winter visitors would face vehicle noise during at least half of the visiting day. Compared to Alternative 2, Alternative 1 would result in over 40 square miles of additional park area being impacted by vehicle noise half the day or more. DEIS at 265. As noted in an earlier section of these comments, the DEIS acknowledges that this additional noise affects "areas most accessible by the vast majority of visitors. Most areas used by winter visitors seeking solitude and quiet are within two miles of travel corridors." DEIS at 124. NPS should ensure the opportunities of the "vast majority of visitors" to experience Yellowstone's intrinsic winter sounds and quiet by adopting Alternative 2. As stated in NPS' 2006 Management Policies: "Every visitor who so desires should have the opportunity to enjoy natural soundscapes and to hear the sounds of nature without impairment."

C) Alternative 2 would implement the recommendation of NPS scientists that numbers of vehicles be limited to protect wildlife

The 2006 recommendation by NPS scientists to cap traffic "at or below" the levels they analyzed in three successive winters (250 snowmobiles per day) in order to protect wildlife is only the latest in a succession of findings by NPS that the number of vehicles moving through wildlife corridors is fundamental to protecting the park's winter-stressed animals. In the 2003 Draft Supplemental EIS, NPS stated: "The DSEIS does show that, in contrast to the existing condition, reduced numbers of vehicles and administrative control over use will reduce the risk and incidence of harassment events." DSEIS at 527. NPS also addressed at that time its legal responsibilities toward wildlife: "Judging strictly by policy and other direction, any disturbance of wildlife appears to be unacceptable." DSEIS at 527. NPS also commented on the issue of population-level impacts versus its responsibilities to safeguard individual animals: "There need not be population-level impacts in order to find either impairment or adverse impacts on wildlife." DSEIS at 541. In light of these findings and the recent findings of NPS scientists who monitored impacts to elk, bison, coyotes, bald eagles and trumpeter swans caused by an average of 250 snowmobiles per day (the scientists concluded that a higher level of traffic could harm Yellowstone's wildlife) it is abundantly clear that NPS must choose an alternative that

either caps or reduces traffic below the levels analyzed in recent winters. Alternative 2 accomplishes this. It protects Yellowstone's wildlife while assuring public access to the park's interior with one-sixth as many vehicles as Alternative 1. NPS should adopt Alternative 2 based on its legal responsibilities toward wildlife and the recommendations of its scientists.

D) Alternative 2 balances best available protection of park resources with continued motorized access

The DEIS acknowledges that "the snowcoach only alternative impacted park resources and values the least, overall, while accommodating human recreational access at [historic] levels." DEIS at 57. This twin emphasis on providing the best available protection of Yellowstone's resources while also assuring motorized, oversnow access to the interior of the park led NPS to conclude in 2000, 2003 and 2004, in separate studies of winter use alternatives, that snowcoach access is the "environmentally preferred alternative" that would attain "the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences." In each of those NEPA processes, the EPA independently came to the same conclusion. We do not agree with the selection in the 2007 DEIS of Alternative 3B as the "environmentally preferred alternative." The DEIS acknowledges that Alternative 3B "is not as effective in sharing life's amenities as the other alternatives because of the lack of oversnow vehicle access…" DEIS at 57. NPS has once again determined in this analysis that the snowcoach alternative would yield dramatically lower impacts to Yellowstone's air quality, natural soundscapes and wildlife than a continuation of snowmobile use—while continuing to provide motorized public access to the park's major attractions. This continues to achieve "the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable or unintended consequences" and NPS should adopt Alternative 2 for this reason.

E) Alternative 2 provides reliable access despite Yellowstone's increasingly unreliable snow accumulation

Lack of snow is becoming a major concern for the snowmobile industry. The *Milwaukee Journal Sentinel* summed up: "Snowmobiling has suffered a meltdown from lackluster winters." (October 26, 2006) Last year, snowmobile sales in the U.S. reached their lowest point in 13 years. Indeed, snowmobiles sales in this country have been down nine of the last ten years. Yellowstone is not immune to less reliable snow accumulation. Several times in recent winters, the park has opened late or closed early to snowmobile use due to insufficient snow on its roadways. Modern snowcoaches have proven more flexible in low snow conditions. They can use rubber tracks and operate over very little snow. Or they can switch to tires and run on plowed roads. In recent winters they have been able to keep running in both circumstances when snowmobile use was not possible. Snowcoach access is thus proving to be more environmentally friendly and also a more reliable means of access particularly at the two ends of Yellowstone's winter season. NPS should not adopt a winter use policy that ties the visiting public to a form of access that is increasingly uncertain, particularly given the advance booking and long distance travel required for winter visits to Yellowstone, which most visitors will have just one opportunity in their lives to enjoy. Alternative 2 provides a more flexible and therefore

more reliable means for the public to access Yellowstone in the less predictable winter conditions that the park is experiencing.

F) Alternative 2 upholds laws, regulations and policies and thus provides the basis for a sustainable decision

In making its decision about a long-term winter use plan for Yellowstone and Grand Teton National Parks, NPS must comply with laws, Executive Orders, regulations and policies. A strong conservation mandate runs through each of these. The DEIS, meanwhile, offers new data about the environmental consequences of snowmobile and snowcoach access gleaned from three years of monitoring the impacts of each upon air quality, soundscapes and wildlife. This data has produced two indisputable conclusions. First: Alternative 1, allowing a level of snowmobile use that is nearly three times greater than the average of the past four years, would significantly increase air and noise pollution, degrade Yellowstone's improved conditions, and ignore a specific recommendation by wildlife scientists regarding how to safeguard the park's animals via a limit on traffic. Second: Alternative 2 would further improve Yellowstone's conditions and implement the advice given by wildlife scientists. Adopting Alternative 2 would thus uphold NPS' conservation mandate. NPS can defend such a decision through laws, Executive Orders, regulations and policies as well as scientific findings verified in over $10 million in studies, and preferences repeatedly expressed by an overwhelming percentage of the American public. In contrast, adopting Alternative 1 conflicts with law, science and the tide of public input. Its adoption risks taking the park, NPS, Yellowstone's gateway communities and above all the American public back into controversy and uncertainty. No one would benefit from this. Alternative 2 is legally defensible and therefore sustainable. NPS should adopt Alternative 2 as the best way to move the contentious and expensive winter use issue onto a path that is finally in sync with law, science and the form of access that 4 out of 5 Americans have been urging for eight years that Yellowstone embrace.

G) Inclusion of a BAT requirement has strengthened the superior protection of park resources afforded by Alternative 2

In our September 2005 scoping comments, we reiterated a comment we have made to NPS for years—that given the well-documented environmental benefits and increasing popularity of snowcoaches, NPS should require best available technology in new snowcoaches added to Yellowstone's fleet and encourage retrofitting of the park's historic coaches. We note that NPS has included snowcoach BAT in each DEIS alternative and commend you for this. BAT snowcoaches can of course further reduce impacts to air quality and soundscapes while minimizing the number of vehicles needed to provide public access to the park's attractions, thereby reducing pressures on wildlife. In this context, we want to again state that we believe NPS has a special obligation as the owner of the historic Bombardier coaches operated by Xanterra Parks and Resorts to set an example and pace of conversion for others to emulate. The fleet operated by Xanterra includes some of the loudest and dirtiest snowcoaches being operated in Yellowstone. This is not acceptable. Another owner and operator of Bombardier coaches has demonstrated through highly successful retrofits of the same vehicles that their historic

attributes can be preserved, their appeal to visitors enhanced, and their emissions reduced to a level that made his snowcoaches the cleanest oversnow vehicles—of any kind—operating in the park. We urge you again to remedy problems with the Xanterra fleet as soon as possible. Xanterra and NPS have taken a wonderful, immensely popular step by retrofitting the historic, yellow busses used in the summer season. We look forward to seeing you accomplish this with the NPS owned, Xanterra operated, yellow Bombardier snowcoaches.

H) Snowcoach access has provided dramatic improvements for visitation by groups and interpretation for all visitors

We question the basis for stating in the DEIS that under Alternative 2, "…opportunities to view wildlife and scenery may decrease." Snowcoach passengers do not have to drive. Nor do they have to watch the vehicle directly in front of them, as do snowmobile visitors. Snowcoach passengers can thus scan the park continuously for wildlife and enjoy its scenery. They can also speak more easily with their guide since they are not physically separated by one or more snowmobiles or by noise from the machines. This facilitates snowcoach guides pointing out wildlife and scenery and/or the reverse: snowcoach passengers spotting wildlife or other attractions and requesting stops for viewing or photography. An increasing number of snowcoach guides carry field guides and spotting scopes. Stopping to use these to view wildlife is often a significantly less cumbersome process with a single snowcoach than it is with up to eleven snowmobiles. In sum, in many important respects snowcoach tours seem to offer *increased* opportunities to view wildlife and scenery. Please include these in your assessment of Visitor Experience in the Final EIS.

Randy Roberson, a West Yellowstone tour operator, described a number of Visitor Experience trends in the *Billings Gazette* and we encourage you to consider these as well:

…[visitors] like being able to enter an often-frigid landscape in a heated coach. They like being relaxed and comfortable. It allows them to focus entirely on enjoying natural wonders they may see only this one time in their lives. They like that the new coaches are quiet, that conversation aboard them is easy. They like being perched high with enormous windows that afford commanding views out over Yellowstone's meadows, rivers and geyser basins. And they like having a knowledgeable guide aboard who can tell them—and their children—about the park's wildlife, geology and history.

> *This autumn, I attended the largest convention of tour providers in the country, held at the Salt Palace in Salt Lake City. Travel experts from throughout the country told me that Yellowstone's modern snowcoaches offer two key advantages. The first is the ability for groups to travel together easily. This is particularly important because groups increasingly want interpretation—an opportunity to learn and ask questions as they visit special places. The second advantage involves the rising sensitivity of travelers to*

their environmental impact; they want choices that allow them to protect the places they are enjoying.

I) Transition toward Alternative 2 has effectively been underway since 2003; NPS should take steps to complete this transition in 2007-08

New choices by visitors and corresponding shifts in investments and marketing strategies by gateway tour operators have led to a 67 percent increase in snowcoach visitation since 2003. In many respects, the transition initially adopted by NPS in 2000, away from park snowmobiling and toward a less intrusive and more educational winter access system utilizing snowcoaches, has largely occurred. The Billings Gazette summarized: "Snow coaches have become more popular for winter park tours, and area businesses have responded by investing in this mode of transportation. Snow coaches also have become cleaner and quieter and can comfortably transport families or larger groups of visitors with one engine…Having fewer snowmobiles and more snow coaches has changed Yellowstone for the better." Gateway tour operators no longer face an abrupt change from snowmobile to snowcoach access. The change has been occurring since 2003. Nevertheless, because the final rule generated by this EIS process will be completed just prior to the 2007-08 winter season with no time for sustained government or private sector marketing to shape that season's vacation planning, we support NPS' decision to implement essentially a one-year phase-in, on top of the four-year transition that has already taken place—by implementing the rule beginning with the 2008-09 winter season. We encourage NPS to use this one-year phase-in to revamp its explanation of winter use in Yellowstone both on the NPS web site and in direct communications with the media. NPS should use this communications effort to clear away years of uncertainty and contention and enhance the public's understanding of snowcoach access. The focus should include the experience that awaits visitors in accessing Yellowstone by snowcoach either for guided tours or to access skiing, snowshoeing and walking opportunities. NPS should give consistent emphasis to the certainty that has come through a final decision. It should also highlight and underscore the improved conditions and visitor experiences returning to Yellowstone in the form of cleaner air, restored quiet, and opportunities to view wildlife in more natural conditions. Following years of back and forth developments and mixed messages, the visiting public and gateway communities deserve to receive a consistent, sustained message from NPS so that, by the time the 2008-09 winter season arrives, everyone understands why Yellowstone has adopted snowcoach access and how it benefits visitors and protection of the park's unique wonders.

Thank you for consideration of our comments on the Draft Winter Use Environmental Impact Statement. We look forward to the conclusion of this process.

Sincerely,

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