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BLM's Western Oregon Plan Revisions
P.O. Box 2965
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January 11, 2008

Testimony of John F. (aka Jack) Duggan
BLM Neighbor
Resident Landholder
Regarding BLM's Western Oregon Plan Revisions (WOPR) DRAFT EIS

Background

Mr. Duggan was raised in northern California's redwood country and worked in sawmills and for the local newspaper until called to serve his country in Vietnam. After a year of journalism studies at North Texas State University, Duggan relocated to the family homestead at 5505 Forest Creek Road (legal description to follow). He secured an Associate of Science Degree in Forestry (1975) from Rogue Community College and a Bachelor of Science Degree in Communications (1983) from Southern Oregon State College. Duggan spent nearly 35 years in public information work, mostly for government agencies, including the U.S. Department of Defense and the City of Seattle.

Resident Land

Commonly known as 5505 Forest Creek Road, the Duggan land is legally described as The E-1/2 of the W-1/2 and the NW-1/4 of the SE-1/4, plus the northmost 12 acres of the SW-1/4 of the SE-1/4, Section 32, Township 37 South, Range 3 West, Willamette Meridian.

AND

The SE-1/4 of the SW-1/4 and the SW-1/4 of the SE-1/4, Section 30

Plus

The NW-1/4 of the NE-1/4 and the NE-1/4 of the NW-1/4, Section 31, T37S, R3W, W.M.

The first described parcel is not directly contiguous with BLM lands, but contains Forest Creek, which flows in part from BLM lands.

The second described parcel is contiguous with BLM lands in all of Section 30, T37S, R3W, W.M.

A road connecting the two parcels crosses BLM land in the W-1/2 of the W-1/2, Sec. 32, T37S, R3W. W.M.

OHV

The WOPR's DRAFT EIS proposes to designate 13 areas in the Medford District for "managed OHV use," while leaving the remainder of the District open to "designated roads and trails" only. This proposal lacks sufficient analysis to be included in a Record of Decision.

BLM acknowledges that recreational OHV use is damaging and conflicts with most other recreational activities on BLM lands. BLM's own data shows that recreational OHV use is among the least active of a variety of recreational activities occurring on BLM lands.

BLM acknowledges the "controversy" surrounding recreational OHV use in the Medford District. That controversy is most obvious in the extended EIS development for the proposed Timber Mountain/John's Peak managed recreational OHV area designation, where more than 1,600 resident landholders, including myself, have signed a petition (attached as JD Attachment A) in opposition to the proposed designation.

Most of the WOPR's proposed designations for recreational OHV use are inappropriate because the areas encompassed by the proposals include far too much private land, more than twice the proposed BLM lands included in the Timber Mountain/John's Peak proposal (@ 38,000 v. @ 16,000).

BLM invites considerable liability through their failure to manage recreational OHV use over the past 30 years. The WOPR proposals invite further liability through their imposition on neighboring landholders of an optional recreational dedication that qualifies as a nuisance under both Oregon and federal laws. Historical use citations (@30-40 years) by recreational OHV enthusiasts have been included in BLM's publications regarding recreational OHV use area, yet such citations lack documentation and statistical analysis.

The residents of Forest Creek Road had to petition the Jackson County Public Safety Committee (petition copy attached as JD Attachment B) for enforcement against recreational OHV use on the county maintained road. Forest Creek Road was included on an Motorcycle Riders Association (hereinafter MRA) map in 2000 that was presented as part of an Environmental Analysis from BLM prior to issuing a permit for events extending over five years. Jackson County reported that they had no contact with the MRA regarding the use of the County road.

On November 13, 2007, BLM closed more than 1,500 acres in the Forest Creek drainage to any OHV use. JD Attachment 1, incorporated herein as part of this testimony, shows significant damage to the area in April and May of 2006, more than a year prior to closure. This documents BLM's failure to manage recreational OHV use as required under 40 CFR and Executive Orders 11644 (2/8/72) and 11989 (5/24/77).

Further documentation of recreational OHV damage and trespass on Duggan land in Sections 30 & 31, T37S, R3W, W.M. are included as JD Attachment 2 and 3. Documentation of recreational OHV damage on private lands in Sections 29 & 30, T37S, R3W, W.M., are included as JD Attachment 4.

Additionally, resource damage and other conflicts with recreational use are extensively documented in the following articles and publications, incorporated herein by reference:

No Place Distant, *Island Press*, 2002

Off-Road Rules, *Mother Jones*, July/August 2007

Former public land officials decry damage from 'outlaw' riders, *Associated Press*, July 1, 2007

Press release, *Oregon State Department of Forestry*, August 18, 2005

Off-road to Ruin, *California Wilderness Coalition*, March, 2001

Making Tracks, Making Enemies, *NY Times*, January 2, 2004

Report fingers ORVs as major threat to wildlands, *ENN News*, Friday, May 26, 2000

Motocross foes get restraining order, *Medford Mail Tribune*, April 16, 2003

Study say ATVs damaging forests, *Atlanta Journal-Constitution*, January 15, 2002

Crime finds a playground in forests, too, *Oregonian*, August 19, 2005

Fighting winter erosion, *Medford Mail Tribune*, April 13, 2006

Utah County Sued For Damaging National Parks and Monuments, *Press release, Southern Utah Wilderness Alliance*, October 13, 2005

Sorry bud, but this road's closed, *Associated Press*, May 8, 2003

Rangers Take On Urban Woes in Wide Open Spaces, *NY Times*, July 26, 2006

National park police take aim at ATVs, *Associated Press*, January 14, 2007
Status and Summary Report, OHV Responsible Riding Campaign, *Monaghan & Associates*, November 15, 2001
"Unmanaged recreation, particularly off-road vehicles, are one of the four great threats to our National Forests." *Forest Service Chief Dale Bosworth*, March 2004
Case No. 3-134 / 02-0777, *Iowa Court of Appeals*, filed April 30, 2003
Humboldt County Motocross Track Shut Down, *Associated Press*, May 18, 1999
Hell on Wheels, *onearth*, Spring 2004
Off-road vehicles are engine driving BLM land debate, *Medford Mail Tribune*, March 5, 2003
Gale Norton Rouses Congress, *NY Times*, June 21, 2003
ATVs on Public Land: Two Views, *Medford Mail-Tribune*, April 4, 2004
Planners look at doubling quiet places in national forest, *Milwaukee Journal Sentinel*, October 30, 1999
California panel tightens off-road rules, *Associated Press*, February 14, 2003
Let It Rest and A Crime against the City, *Jacksonville Review & Sentinel*, August, 2007

Additional documentation of damage by recreational OHV use is being submitted by others as comments to the DRAFT EIS and are undoubtedly available in studies, articles and publications as a matter of public record.

While damage from recreational OHV use is a primary concern, most area residents cite noise as the most disturbing immediate impact of unregulated recreational OHV use. The noise impacts from recreational OHV use constitute nuisance as described under Oregon Revised Statute 467.010 and implementing Oregon Administrative Rules 340-35, incorporated herein by reference, wherein places "normally used for sleeping" are defined as "Noise Sensitive Property." Further, BLM can be held liable for this nuisance as evidenced by case law, incorporated herein by reference, in *Mark and Powers v. Oregon, ODFW and Dept of Lands, 96-2019; A114713, FILED: January 28, 2004.*

BLM is disingenuous in promoting designated areas for "managed use" while leaving all other areas "open to designated roads and trails." While BLM publications have made a point of saying that designated areas would not become destination sites for off-road recreation, the reality is that the mere listing of the Timber Mountain/John's Peak OHV Area (hereinafter TM/JP) in the Medford District's 1995 Resource Management Plan (hereinafter 1995 RMP) garnered a listing of the area by the Oregon Department of Parks and Recreation, as well as promotion of that listing in brochures (ATV Oregon – The Official Guide to Off Highway Vehicle Recreation) and on their web site. Similarly, the TM/JP area has been promoted in the publications and on the web site of the local MRA (sample attached as JD Attachment C). The documented evidence thus shows that the mere listing of an area, or of any of the 13 proposed areas in the DRAFT EIS, makes the area a de facto recreational OHV destination. My own observations since 1971 indicate an exponential increase in recreation OHV use surrounding Duggan land following the 1995 RMP listing.

Promotion of recreational OHV use in the Medford District has been actively lobbied by the MRA. Collusion by the MRA in the government process of developing the TM/JP area was in evidence when BLM included slides promoting the MRA during their first open house for Scoping of a DRAFT EIS for the TM/JP area. The MRA has continually promoted their agenda by citing historical use, yet no records exist providing statistics or documentation on that use. It is my observation that recreational OHV use 20, 30 or 40 years ago was less than ten percent of current levels. The MRA claims a membership of 1,400 people (Medford Mail-Tribune, January 9, 2008), yet more than 1,600 BLM neighboring landowners have signed a petition against the TM/JP area. Imagine how many thousands of people living near or next to BLM lands will oppose increased recreational OHV use for all of the 12 other proposed areas.

In addition to illegally presenting a public road as a venue for their events, the MRA shows that their actions do not match their rhetoric. The September 2003 issue of the MRA newsletter includes a photo of MRA riders in Idaho "draining" a motorcycle after crossing a stream, an known impact the MRA says they avoid. The current MRA newsletter includes a letter from the new President of the organization bragging about his past injuries, though the MRA threatened to recall Oregon State Senator Alan Bates for initiating legislation to set safety standards for children on off-road vehicles. The MRA has no credibility with anyone who closely follows both their actions and their public presence.

The argument that enforcement of recreational OHV use on BLM land is only possible through designating managed areas is without foundation. As noted earlier, BLM has the authority to enforce recreational OHV use. A federal judge agrees, as noted in "Judge agrees that BLM can kick off-roaders off public land" in the Medford Mail-Tribune, May 25, 2003, incorporated herein by reference. Whether or not BLM can secure state ATV Fund monies to assist in that enforcement is not germane to this DRAFT EIS, however the state ATV Fund rules do not require designated areas, only a management plan.

Further documentation of BLM's failure to adequately manage is contained in my Scoping Comments to the TM/JP area DRAFT EIS, incorporated herein by reference.

In summary, BLM is proposing to meet a demand for a recreational activity, an optional activity under the most generous definition of BLM's mission, without accurately assessing impacts to their resources and the resources of neighboring landowners. BLM proposes to intensify enforcement of recreational OHV use by designation specific areas while leaving the rest of their lands open to "designated roads and trails," where, it must be assumed, there would be less enforcement. The record clearly shows that BLM has failed to manage prior and existing recreational OHV use. To secure any public support beyond that of recreational OHV enthusiasts, BLM must demonstrate, by closing all their lands and opening only limited areas, and by active enforcement of those closures, that they can manage and control recreational OHV use. Anything less will surely lead to litigation and further damage to both public and private lands by unregulated recreational OHV use.

Timber Management

It is semantic bureaucratism to use the terms "stand replacement" or "regenerational harvest" for what is commonly known as a clearcut. The DRAFT EIS proposes a dramatic increase in clearcuts, which are not silviculturally viable in the Medford District. JD Attachment 5 shows the North face of Mount Isabelle, which BLM clearcut in 1985-86 and replanted at 330 trees per acre. The photo was taken May 6, 2006. Similar examples of the inability of timber land in Jackson and Josephine counties to recover from clearcuts are numerous. Thin granitic soils, heavy wildlife browse, harsh climate and aspects, and extremes of both heat and cold are not favorable for plantation-style timber production in the Medford District. A review of clearcuts in southern Oregon over the past 30 years will show that more fire-prone brush accumulates in clearcut sites than either natural or planted trees.

BLM continues to approach the timber management portion of their mission from a large area harvest perspective. The history of overcut lands, fire suppression and unhealthy, overstocked immature trees requires a different approach. Small sales to local loggers for more complete use of timber resources would provide a more stable economic benefit while increasing forest health.

The WOPR is predicated on an out-of-court settlement from an untried lawsuit claiming the Northwest Forest Plan fails to meet the requirements of the O&C Act for timber production. The O&C Act, however, requires BLM lands to be managed for "...permanent forest production.....in conformity with the principal (sic) of sustained yield." There is considerable disagreement in the forestry community as to the definition of "sustained yield." U.S. Congressman Jim Weaver successfully passed a bill defining sustained yield as "nondeclining even flow" of forest resources, meaning that the timber inventory would be maintained in the same conformation of age, class, species and size as historically documented with no more timber removed than would be replaced by natural processes. A more current definition of sustained yield is "total fiber content," meaning that the total wood volume of all lands would not be reduced by harvest, whether replaced by planting or natural regeneration. The latter definition assumes success in replanting and gives no weight to the other requirements of the O&C Act for "...protecting watersheds, regulating streamflows and contributing to the economic stability of local communities..." Total fiber content definitions of sustained yield lead to boom and bust cycles in timber production, which does not meet the definition of "economic stability." Nor does this DRAFT EIS adequately consider the unparalleled biodiversity of the southern Oregon region. On Duggan land alone there are at least eight species of conifers, as many hardwoods, plus virtually every animal and wildflower known to occur in the region. Throughout the southern Oregon region biodiversity has been a huge draw for non-motorized recreational activity and this plan fails to provide for that economic benefit.

In summary, BLM's timber management proposals in the DRAFT EIS appear predicated on short-term increases in timber resource extraction without regard to area or site specific impacts on soil, water, flora and fauna. BLM needs to develop plans that will restore already damaged lands and provide a predictable and truly sustainable supply of timber for the economic stability of the communities where there are BLM lands. This will require BLM to develop more site-specific, smaller timber sales developed in cooperation with neighboring landowners who have the on-the-ground experience to assist in timber management.

Riparian Areas

Riparian setbacks are an important requirement of the Oregon Forest Practices Act and are vital to preserving water resources and wildlife habitat. The DRAFT EIS proposes reducing or eliminating riparian setback requirements for timber harvesting. It is my observation over 30 years in the Timber Mountain and Mount Isabelle drainages, that harvesting within more than 50 feet of a streambed creates an initial increase in streamflow during the wet seasons and significant reduction of streamflow during dry seasons. I have observed this phenomena as a result of mining activities on Forest Creek and as a result of timber harvest along the Left Fork of Foothills Creek. Timber harvest activities by neighboring landowners along Forest Creek have produced in similar results.

Water is quickly becoming among the most scarce resources of our planet. BLM must act with great caution in any activities conducted near both intermittent and year-round streams. Riparian setbacks must be maintained as they were before the proposals contained in the DRAFT EIS.

Economics

BLM has presented the public with a DRAFT EIS that, if any of the alternatives are incorporated into a Record of Decision, will surely result in litigation. It is a terrible waste of government funds to develop a document that so clearly ignores prevailing science and documentation and the extensive experience of the public, both lay and professional. It will further waste government funds to knowingly put forth a Record of Decision that can most assuredly be expected to result in lawsuits.

The economics of BLM's timber management plans in this DRAFT EIS have already been discussed but bear repeating. BLM's plan does not reflect long-term stability and is not sustainable, thereby contributing to economic uncertainties in the communities where they hold land. This fact is further aggravated by the certainty that BLM's plans will result in litigation, extending the uncertainties for local economic concerns.

Public Process

After more than 35 years of public information work, much of that with government agencies, I find BLM's public process extremely frustrating. The Open House method does not provide for a public airing of viewpoints and nowhere in the process can members of the public feel their observations or comments have been heard. There is no debate with opposing factions to ferret out the truth. The lack of access to public records and a comprehensive airing of issues promotes cynicism even among the most trusting of individuals.

While the WOPR process has been better than that experienced with the TM/JP area process, it still fails to fully engage the public. BLM's public presence seems predicated on a reactionary system, responding to inquiries rather than initiating public contacts. While the WOPR process made numerous attempts to educate the public through press releases and other media, public outreach amounted to speaking to no more than a handful of local service groups.

BLM makes an elemental public relations error in publicizing numerous documents that characterize public input as "confused." The MRA has used similar tactics in attempting (unsuccessfully) to secure City of Jacksonville land to expand their holdings, saying that people are "confused" about their goals. It is insulting to the public to be told that, after taking the time to read through more than 1600 pages of often conflicting BLM analysis, we are confused. If the public is confused, it is only regarding why BLM continues to present unrealistic assessments of existing conditions and future outcomes of proposed projects. The public is not confused about what we see and hear on the ground. Most of the neighboring landowners have more on-the-ground experience with local resources than most career BLM employees in any given district. Rather than label them "confused," the BLM should be actively soliciting their "institutional memory" and applying their practical knowledge to management of their public land.

BLM lists numerous "cooperating agencies" in their documents, but makes no attempt to pro-actively communicate with neighboring landowners, a large and powerful constituency with on-the-ground expertise that would be extremely valuable to their mission. Groups such as the MRA have resources to lobby with BLM, but individual landowners feel abandoned by BLM in the development stages of their projects.

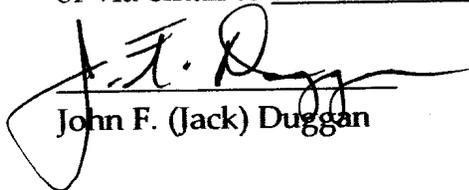
There is considerable distinction between "public information," and "public involvement." Indeed, public information itself can be either active or passive. BLM's public process is primarily a passive presentation of information and a call for individual comments, and in this WOPR process the BLM has emphasized that those comments must be "substantive." The public then receives only the decision of the public agency rather than a full accounting of how and why that decision was reached. Too often the substance of the issue must be deliberated in the courts.

Public involvement requires a more active role on the part of the public agency. BLM could learn a great deal from the public involvement process undertaken by John Armstrong at Seattle City Light when the utility built a new system control center in what was primarily a residential neighborhood. What could have been a contentious project became a project in which area residents felt a sense of ownership. This was accomplished by meeting people on their home ground, scheduling meetings to accommodate working people, setting agendas to provide the public with a sense of control, and being present throughout the process to deal with issues as they arose. BLM's process in both the TM/JP project and this WOPR fails miserably at meeting any definition of public "involvement."

Conclusion

BLM's WOPR, in DRAFT EIS form, does a grave disservice to the citizens of Western Oregon. BLM has failed to actively engage the public they work for in determining the future of their local public resources. BLM fails to provide equitable return on public tax money invested in their operations by proposing plans that will undoubtedly result in lawsuits. BLM is a bunch of government employees with a sacred trust to manage the largest single land ownership held by this nation for all of its people to generations untold. None of the alternatives presented in this DRAFT EIS provide a viable, reliable method for sustainable management. Either the Record of Decision will reflect that or BLM goes back to the drawing board. Anything else will surely result in a decade of litigation.

This testimony is submitted as substantive comments to BLM's Western Oregon Plan Revisions and is true and accurate to the best of my knowledge. Questions regarding this testimony may be addressed to Mr. Duggan at P.O. Box 524, Jacksonville, OR 97530 or via email to shanachie@ecoisp.com


John F. (Jack) Duggan

January 11, 2008

Copies of this testimony, with attachments, provided to the following:

Medford Mail Tribune

The Oregonian

Oregon State Governor Ted Kulongoski

U.S. Senator Ron Wyden

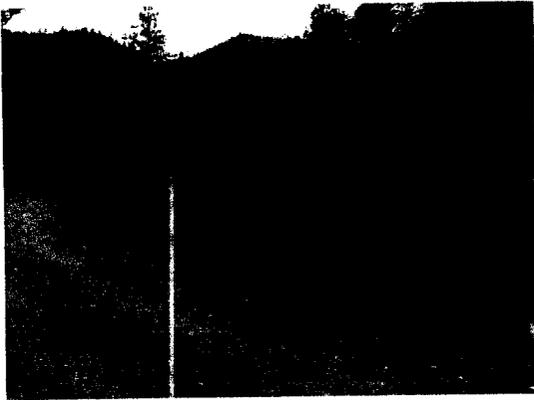
U.S. Senator Gordon Smith

U.S. Congressman Greg Walden

U.S. Congressman Peter DeFazio

File

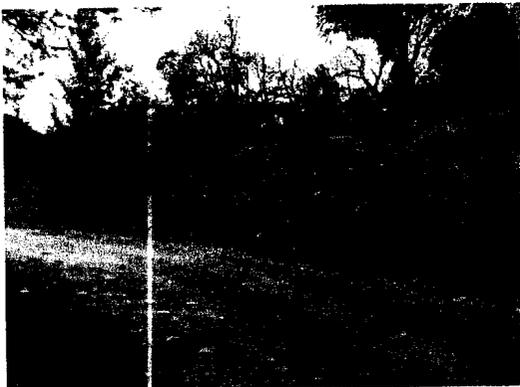
OHV Impacts BLM Closure Area



Longenecker Rd. @ junction
with Forest Creek Rd.



Bunny Meadows entry



Longenecker Rd. near junction
with Forest Creek Rd.



Longenecker Rd. near junction
with Forest Creek Rd.

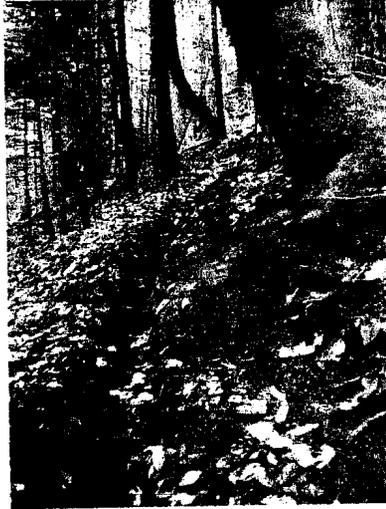


User created trail (@ 1999)
across Forest Creek Road
from Bunny Meadows



User created trail
leaving Bunny Meadows
West side of Forest Creek

OHV Trespass Impacts Duggan Land Sec. 30 & 31, T37S, R3W, W.M.



Blade on bayonet is 16-inche long
Overall length 19.5-inches



Trespassers create two trails



No Trespassing Sign ripped down



BLM sign clearly shows
trespass trail on Duggan land

OHV Trespass Impacts Duggan Land Sec. 30 & 31, T37S, R3W, W.M.



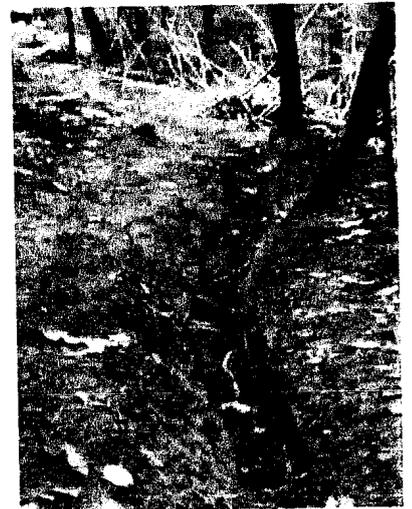
Visible erosion on Duggan land (June 2003 photos)



Trees cut to create
trespass trail
May 2001 photo



Trespass trail maintained
despite signage
March 2001 photo



Overall length of
bayonet 19.5-inches
May 2001 photo

OHV Impacts

Sec. 29 & 30, T37S, R3W, W.M.





Mount Isabelle cuts 1985-86 - Photo May 2006

No Circulators
for This Petition
Are Being Paid

Only sign this petition once.

THIS IS A JACKSON AND
JOSEPHINE COUNTY PETITION.
SIGNERS OF THIS PETITION
SHOULD BE REGISTERED
VOTERS IN ONE OF
THESE COUNTIES.

**TIMBER MOUNTAIN/JOHNS PEAK PETITION
SIGNATURE SHEET**

PETITION I.D. - TMJP

TO THE BUREAU OF LAND MANAGEMENT:

We, the undersigned residents of Jackson and Josephine Counties, hereby petition the Bureau of Land Management (BLM) to stop work on their Timber Mountain/John's Peak Off Highway Vehicle (OHV) Management Plan and Environmental Impact Statement and remove the arbitrary 1995 designation of 16,250 acres for OHV use, encompassing and negatively impacting those public lands, rural private landowners and the communities of Jacksonville, Rogue River, Gold Hill, Ruch, Applegate, Provolt, Murphy, and Grants Pass.

SIGNATURE	DATE SIGNED MO/DAY/YR	PRINT NAME	RESIDENCE ADDRESS (STREET AND NUMBER)	MAILING ADDRESS IF DIFFERENT	CITY AND ZIP CODE
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

I hereby certify that every person who signed this sheet did so in my presence and I believe that each person is a qualified voter in Jackson or Josephine County, Oregon. I also certify that I have received no compensation for these signatures.

CIRCULATOR SIGNATURE _____

PRINTED NAME OF CIRCULATOR _____

CIRCULATOR'S ADDRESS (Street, City, and Zip Code) _____

JD Attachment A

Forest Creek Road Petition to Regulate ORVs

The residents of Forest Creek Road have experienced an increasing number of unlicensed Off-Road Vehicles (ORVs - motorcycles and quads) driving on the County road, often at high rates of speed. For the past few years an open case has been maintained with the Jackson County Sheriff's office and numerous reports of unlicensed vehicles on Forest Creek Road have been submitted. Law enforcement response is often ineffective because the offenders have left the area.

The situation grows increasingly dangerous. Numerous incidents have been discussed by Forest Creek Road residents, most often tales of near misses when encountering these ORVs, particularly on the many curves of Forest Creek Road and when the ORVs enter the road from brush-shrouded trails.

This petition requests the Public Safety Committee take a more active approach to protecting the safety of Forest Creek Road residents and legal users of Forest Creek Road against illegal activity by unlicensed vehicles on an improved County road. We request the following:

- Signage: Warning signs to violators, citing ORS 821.055 ("Class I, Class II and Class III all-terrain vehicles may operate on any highway in this state that is open to the public and is not maintained for passenger car traffic.") Signs should be posted at the Bunny Meadows area at the beginning of Forest Creek Road, at the East Fork intersection and at the Oregon Belle Loop intersection.
- Emphasis Patrols: Jackson County Sheriff patrols on week-ends when there is high ORV use, with officers at various points along the roadway. Citations should be issued under ORS 821.190 and ORS 821.290.

The following residents of Forest Creek Road support presentation of this petition to the Public Safety Committee by Karen Giese and Lee Rickords.

Name (Print)	Forest Creek Rd. Address	Signature

D Attachment B

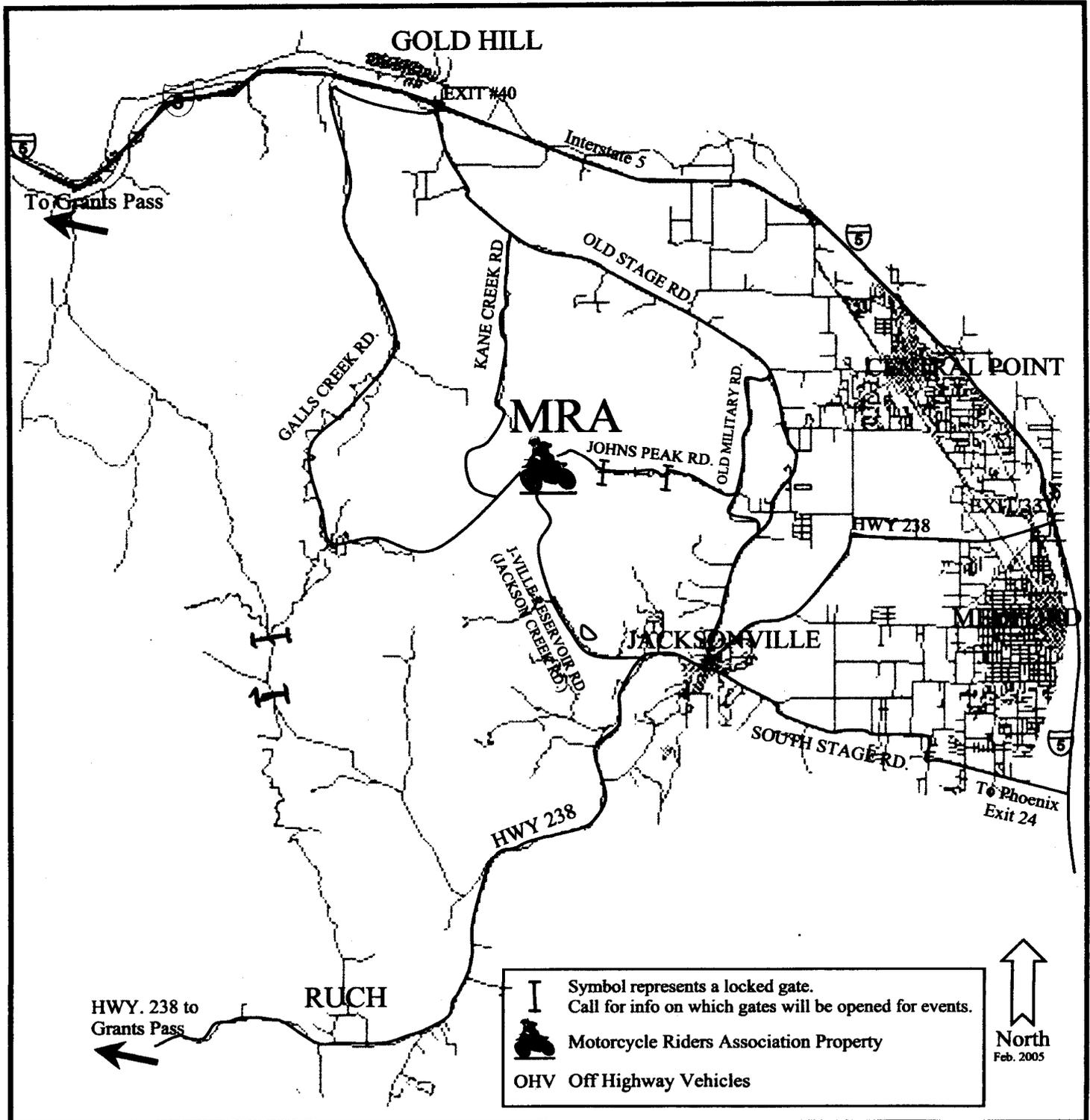
MOTORCYCLE



ASSOCIATION

RIDERS

TIMBER MOUNTAIN. / JOHNS PEAK OHV ACCESS



HWY. 238 to Grants Pass

- I Symbol represents a locked gate.
Call for info on which gates will be opened for events.
-  Motorcycle Riders Association Property
- OHV Off Highway Vehicles

North
Feb. 2005

P.O.Box 1471 Medford OR 97501

www.motorcyclersassoc.org

JD Attachment C