

Appendix C

State Laws Preempted

On August 30, 2005, OGC attorney Ellen Hornstein, wrote in part *"The issue is whether the Forest Service has the authority to preempt state traffic laws in designating National Forest System roads for motor vehicle use. The answer is yes"*. Later she adds *"Thus, under the new rule, state traffic laws that conflict with designations of NFS roads for motor vehicle use will not apply to those roads"*. And, finally, she states *"Motorized mixed use may be legal or illegal under state law. Even if motorized mixed use is legal under state law and preemption of state law is not necessary to allow the use, the FS needs to assess whether the use is appropriate from an engineering and safety standpoint before designating an NFS road for that use."*

The above statements confirm what the CHP's Acting Deputy Commissioner's April 7, 2005, meant with the statement: *"In response, if these roads are open to passenger vehicle use and not specifically posted authorizing OHV use, they would not be legal roadways for OHVs."* However, per OGC, *"If motorized mixed use is allowed on an NFS road, state and local law enforcement officers will not be able to cite those using motor vehicles on that road in violation of state law because state law will not apply."*