



August 2, 2019

USDA Forest Service  
NEPA Services Group C/O Amy Barker  
125 South State Street, Suite 1705  
Salt Lake City, UT 84138

Re: Comments on NEPA procedures revision (RIN 0596-AD31)

Dear Ms. Barker:

The above Organizations welcome the opportunity to voice the general support for the revisions to the USFS NEPA procedures guidance ("The Proposal") as we believe this Proposal would be a major step forward in management of many of these issues. The Organizations vigorously support the overall revision of the regulations in a single step, as this landscape level reform will reduce the need to make small determinations regarding the nature of the project. Too often these types of arbitrary distinctions, such as a trail bridge project a watershed restoration or trail construction, can cause significant issues in fixing the resource problem but also the long-term paper trail of any projects on the district. The impacts of flexibility of paper trail requirements can be VERY problematic when staff on districts change and have different views of projects. While overall the Proposal would be a major improvement, and hopefully reduce the analysis paralysis to often associated with basic operations, there are several issues that should be clarified or improved including:

1. The definition of "Potential Wilderness" must be provided and narrowly defined in order to ensure the effectiveness of the revisions as the Wilderness concept is one of the major hurdles that we continue to face in land management;
2. If Potential Wilderness is designated as a factor requiring additional NEPA analysis, other Congressional designations, such as special Management Areas, should be allowed to reduce NEPA requirements; and

3. The Authority to decommission routes with a categorical exclusion must be clearly restricted in order to ensure public input and to reduce the national trend of reducing access that has been present for decades.

The Organizations have partnered with the USFS and state level parks and recreation programs for decades in addressing trail related maintenance issues through the voluntary registration fees for OHVs and OSVs that have been adopted in the several states. These registration programs started around grooming of winter trails for OSV recreation in the 1970's and remain the only source of funding for winter grooming of routes on USFS lands. Seeing the success of these programs the OHV community soon adopted similar voluntary registration programs in the 1980s.

These are some of the longest, largest and strongest partnerships in place with USFS land managers. As an example, the Colorado Parks and Wildlife motorized program provides between \$4 and \$5 million in direct funding to USFS projects that results in almost 50 maintenance crews for summer and winter trails and extensive project specific funding. The California OHMVR program easily provides five times this amount of funding to the USFS offices in California. The State of Idaho program also provides the USFS more than \$1 for every resident of the state to support trail maintenance. Each of these State level partnerships is leveraged with countless volunteer hours and support, in a huge range of roles from volunteer labor on projects, to engineers volunteering time to design bridges and heavy equipment businesses working for the cost of fuel from the programs and many of the programs funded would simply cease to exist without this volunteer support. This volunteer support which multiplies the impact of this funding to have an impact on the ground of spending several times more money that comes from these programs.

While these programs have become major funding sources and long-term partners of the USFS, this relationship has resulted in a sensitivity to the less efficient portions of the NEPA process. Too often any projects undertaken are subjected to unusually high levels of NEPA analysis by overly cautious land managers, which we have come to refer to as "analysis paralysis". While the Organizations understand the reason for this analysis paralysis, this paralysis is highly frustrating and inefficient, even when funding for these projects is available. These programs are often becoming the **only** funding that is available for recreational maintenance efforts on many districts and as a result these programs are being asked to do more and more work with a somewhat consistent funding stream. As a result the efficiency of efforts becoming a larger and larger priority every day in order to continue to provide basic access to all users. The Organizations believe that the Proposal would be a step towards achieving this efficiency and avoiding analysis paralysis.

Prior to addressing the specific concerns, our Organizations have regarding the NEPA process to date and streamlining of the process moving forward, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 250,000 registered OHV users in Colorado seeking to

represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to ensure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport.

The Idaho Recreation Council ("IRC") is a recognized, statewide, collaboration of Idaho recreation enthusiasts and others that will identify and work together on recreation issues in cooperation with land managers, legislators and the public to ensure a positive future for responsible outdoor recreation access for everyone, now and into the future. For purposes of this correspondence TPA, COHVCO, CSA, and IRC will be referred to as "The Organizations". The Organizations are aware that the scope of NEPA review is heavily driven by federal legislation and as a result much of the statutorily required process is probably outside the range of discussion for the current request.

**1a. Additional examples of specific projects within the categories provides significant clarity and consistency in management.**

The Organizations are aware that significant opportunities for a leaner and more efficient NEPA process are available. Our experience is that often the NEPA process results in small maintenance type projects are receiving overly extensive analysis. By the time the maintenance is undertaken the cost of the project has doubled or tripled on the ground simply due to the passage of time. The Organizations believe that some of this caution with NEPA is the result of the ambiguity in many of the guidance documents available from USFS and related poor understanding of land managers in addressing many of the technical aspects of the NEPA process in terms of what can and cannot be done under lower levels of NEPA.

The Organizations are aware that the revised and expanded categories of each level of NEPA is a significant step towards a leaner more effective NEPA process and on the ground benefits of streamlining must be the goal of the proposal implementation. This more responsive form of

NEPA is a major benefit of the addition of the new categories now provided under §220.5(d)(21) through 220.5(d)(27). The Organizations believe that many of these categories address various commonly encountered challenges in performing basic maintenance of routes by our members. The Organizations would like to discuss the benefits of several of these provisions with greater detail in order to more fully support the benefits and why we believe this will support lower levels of analysis paralysis. The Organizations would note that while there are not examples provided for each change that is proposed, this is not an attempt to value any portion of the Proposal over other parts of the Proposal. Rather we are merely attempting to provide comments of a reasonable size and exhibit the value of the Proposal over all.

The Organizations also hope that the greater clarity and consistency in the application of the NEPA process will also result in significantly more consistent analysis of projects that cross multiple districts. This is a situation we frequently encounter in undertaking maintenance and it is one that is difficult to resolve by a rule making. It is unfortunate to admit that after a cross boundary event, such as a fire or flood, we have encountered one Ranger District where trail restoration is seen as an issue that can be done under a CE and an adjacent management unit requires an EA for similar levels of maintenance. This type of decision making appears at best arbitrary to the public and sends a message that the partnerships being developed between land managers and our Organizations are simply valued more on some districts than others. While we know this is not accurate, the perception is definitely there under these types of situations.

**Why 220.5(d)(22) expanding CE use for recreation facilities is valuable to the Organizations.**

The expanded authority and clarity for land managers to address maintenance issues at existing recreational facilities provided by 220.5(d)(22) with a CE is a major step forward. Not only are facilities such as toilets, dispersed camping opportunities and parking lots some of the most sought-after facilities for all users, these are also some of the facilities that need the most level of maintenance simply due to their levels of usage. Too often NEPA issues arise when there are possible water/wetland impacts or a variety of other resource concerns that could result from maintenance. Overly cautious land managers too frequently see basic maintenance as possibly expanding these impacts instead of prompt maintenance being the best way to avoid impacts. We hope the clarity of the regulations minimizes these types of issues.

Trailhead projects are also projects that lend themselves well to recognition of partnerships in a variety of ways which can lead to additional partner support in the future. Often these facilities area also the first contact that users of a location have with USFS efforts. If these facilities are

well maintained this instills a message to users, the user and facility are valuable and there is a greater desire to continue to maintain those facilities from partners. When these facilities are in disrepair or closed entirely, the opposite message is sent, and these challenges to existing partners are made worse when there is maintenance needed and partners want to help but have to wait for analysis to be completed and watch the facility continue to degrade over time. These issues are similar to the “broken window” theory in urban redevelopment that has been hugely effective in maintaining and rebuilding urban communities and the Organizations submit the basic concepts are equally applicable in recreational facilities on public lands. Clarity of this regulation will ensure the proper message is sent to users and that the message can be sent in the most effective manner possible.

**Why 220.5(d)(24) allowing CE usage for construction or realignment of up to 5 miles of USFS roads is valuable to the Organizations.**

The benefits of the clarity provided with this new provision regarding construction or realignment of routes simply cannot be overstated. The value of these provisions is exemplified in areas which have seen abnormally intense winter snows, such as those experienced in Colorado this year. These snowfalls resulted in abnormally large avalanches that often included underlying landslide type movement of soils/trees/rocks under the snow that heavily impacted many existing roads. Not only are volunteers providing funding that must go further every day, volunteers are willing adopting larger and larger projects simply to maintain recreational access. We are submitting the following pictures of a recent restoration project on TinCup Pass on the Salida Ranger District of the Pike San Isabel NF performed by Colorado Off-Road Enterprises and others where the road footprint remained generally intact and could be located with GPS. Volunteers were able to direct significant resources toward this project with USFS oversight and reopen the road faster and more effectively than ever could have been done if NEPA was required. These photos move from the avalanche conditions to reopening the route to the public.















While this project was a success, we are also aware of several other routes/areas where there might need to be a realignment of the route due to more significant impacts to the route tread or less up to date information being available on confirm the exact location of the old route tread. These are basic hurdles that often can be insurmountable under cautious management. Concerns around these issues are often expanded if there was a parking lot or other trailhead facility involved in an event like this. After significant events such as this, it is entirely possible that placing the road in the exact location it was in previously would simply not make sense as there may be no portion of the road bed remaining in that location. These are the types of questions that often result in a project that could be done with a CE being bumped up to an EA and we hope that the clarity of the new provisions of 220.5(d)(24) will help avoid these types of issues and allow reopening of routes impacted in a similar manner in a faster and more efficient way and allow volunteers to be involved in a more effective manner as well.

This project also provides a good example of why revision of several of the existing provisions of lower levels of NEPA in a single step is needed and valuable. Questions around basic classifications of the project such as “Is this project a realignment, reconstruction or heavy maintenance?” are less significant. By amending all the categorical exclusion examples at once, these types of distinctions such as this are less important.

**Why 220.5(d)(25) allowing a CE to be used for conversion of user created routes is valuable to the Organizations.**

This provision is a great example of why amending all portions of the regulations at once is important. Addressing user created routes specifically as an example of lower levels of CE avoids any concern about a realignment of a trail becoming user created and thus illegal or in need of higher levels of NEPA analysis. Too often best efforts in restoration of a site with limited documentation are seen as a user created route, by subsequent managers and have been put at risk. Again, the cumulative impacts of addressing all possible issues at once improves the odds of long-term success of an restoration project. While we are sure this user created allowance will draw significant criticism from those opposed to streamlining, the Organizations have provided extensive resources educating users that they are not allowed to create their own routes and that they need to stay on the trail and we don't see this provision as running contrary to that message.

While we are aware that often user created routes are often less than optimal in terms of placement and sustainability, there are also occasions where user created route can mitigate local impacts or are more sustainable for other reasons, such as the safety of users. An example of this would be a water related issues impacting the approved trail tread becoming much worse

due to natural forces at a local site. As a result of the seasonal water or storm issues users might seek to avoid the damaged or impassable local portion of the trail and seek to go around the damage simply for their own safety. We have certainly found situations where what was once a small puddle on the trail has become feet deep as the result of a storm and users encountering this situation and being forced to cross it to stay on the trail is obviously problematic. While we try and avoid this situation as much as possible by active maintenance of routes, clearly moving a trail to mitigate possible localized aquatic resource impacts or safety concerns is a good thing. This clarity about user created routes would also avoid any issues with larger projects, such as those pictured above, where trail treads might not be locatable despite best efforts and trails have been realigned. This should also not be classified as a user created route.

These provisions will also assist in addressing the situation where routes are assumed by managers to be user created unless otherwise proven. This is a little different twist on user created routes, which results from land managers being unable to identify the exact NEPA document that allowed a route to be in a specific location or rerouted and assuming the route must be user created. Often this documentation situation could result from recreational re-routes being analyzed as part of a timber sale or other project. While the merging of NEPA on this manner can make a ton of sense but can also result in more complications in identifying the exact plan supporting the re-route when managers have moved on from that district.

This assumption of undocumented routes being only user created can also result from staff changes at the district level, as often different land managers have different levels of comfort in using the lower levels of categorical exclusions that exist. What may be seen as a watershed restoration effort involving a trail, and subject to a lower level of CE by one land manager may be seen as a trail relocation and requiring a higher level of NEPA that did not occur and as a result the route should be closed until NEPA can be completed. This is clearly a situation that should be avoided as it can create undue stress with partners and could undermine the effectiveness of the entire NEPA streamlining efforts. Again by addressing all these possible fact patterns at once, the Organizations hope that small discretionary decisions become of lower priority in planning efforts and the entire process simply becomes more effective.

**Why 220.5(d)(12) allowing the permitting of events using existing facilities with a CE is valuable to the Organizations.**

The Organizations believe this provision will have an indirect, but significant benefit, mainly allowing more effective engagement partners on projects. In addition to addressing “on the ground” challenges more effectively by engaging partners, this provision of the Proposal addresses one of the more frustrating situations encountered by members of the Organizations



who partner with the USFS. The utilization of existing facilities for events should be streamlined with the addition of 220.5(d)(12)(iv) and hopefully mitigate a frustrating and too common occurrence. This example warrants specific recognition as permitting for events is a major challenge for any of the clubs and Organizations we work with. This challenge is made far more difficult by the fact that many of the clubs and partners that are seeking to hold fundraising events are also the major source of volunteer resources and grant based funding partnerships. The partnerships between USFS and these groups is severely strained when a club is told an extensive permit analysis is needed for an event because of the improvements, such as toilets, parking, signage or other resources that are commonly funded by the club through the state OHV program. Hopefully this provision mitigates the possibility of that type of conflict occurring.

### **1b. Streamlining NEPA will improve partnerships.**

The Organizations would also like to recognize one of the major intangible benefits of the Proposal, mainly that a more effective NEPA process will improve partnerships and volunteer efforts between local organizations and the USFS. This type of a benefit is only achieved by addressing all possible manners to view a project at once, such as amending user created routes, reroutes, construction and reconstruction guidelines at a single time. Addressing these categories in a piece meal fashion would undermine the effectiveness of the Proposal and reduce benefits to partnerships both existing and possible new partnerships. As we noted previously, volunteers are a huge component of effectively implementing funded projects on the ground for the USFS. One of the major barriers to using these volunteers has been the need to complete NEPA analysis on the project. It has been our experience that volunteers want to perform a meaningful project from which they can obtain tangible benefits to their recreational activity at the end of the project. A more streamlined NEPA process will allow this to happen more quickly and successful projects often allow clubs to obtain additional volunteers in the future.

While these less tangible benefits to volunteer projects may be more difficult to quantify, these benefits to volunteer projects are very important to the USFS both through their Sustainable Trails Efforts and the Congressional mandates for land managers to more effectively use volunteers in meaningful projects provided in the National Trails Stewardship Act of 2016.<sup>1</sup> This is the epitome of a win/win situation for the USFS and should not be overlooked.

---

<sup>1</sup> See, NATIONAL FOREST SYSTEM TRAILS STEWARDSHIP ACT PUBLIC LAW 114–245—NOV. 28, 2016 @§4.

## **2. Conditions based management definition is welcomed.**

The Organizations welcome the definition of “Conditions based management” in §220.3 as we believe this definition is a major step forward in implementing. It has been our experience that too often areas are designated for a particular use in the relevant forest management and these decisions become major barriers to effective management of issues subsequent to the finalization of a resource plan. While we are aware that often this landscape analysis is insufficient for on the ground implementation of the management decisions, too often these landscape decisions that ease site specific planning are also ignored in site specific planning. Rather than land managers being allowed to perform lower levels of NEPA analysis for projects that are already approved in forest level analysis, land managers seek to perform a full EIS for the project.

The Organizations also believe the addition of this definition will allow for greater cumulative impacts from the revision. Not only is this re-review of the planning process completely unnecessary and a poor use of limited resources, the failure to recognize previous analysis can lead to decisions made on a site-specific level that are directly in contrast to the land management decisions for this area. This simply must be avoided.

## **3. Clarifying the ability to decommission with a CE does not streamline but rather fails to recognize that resources available for recreation have significantly declined for decades.**

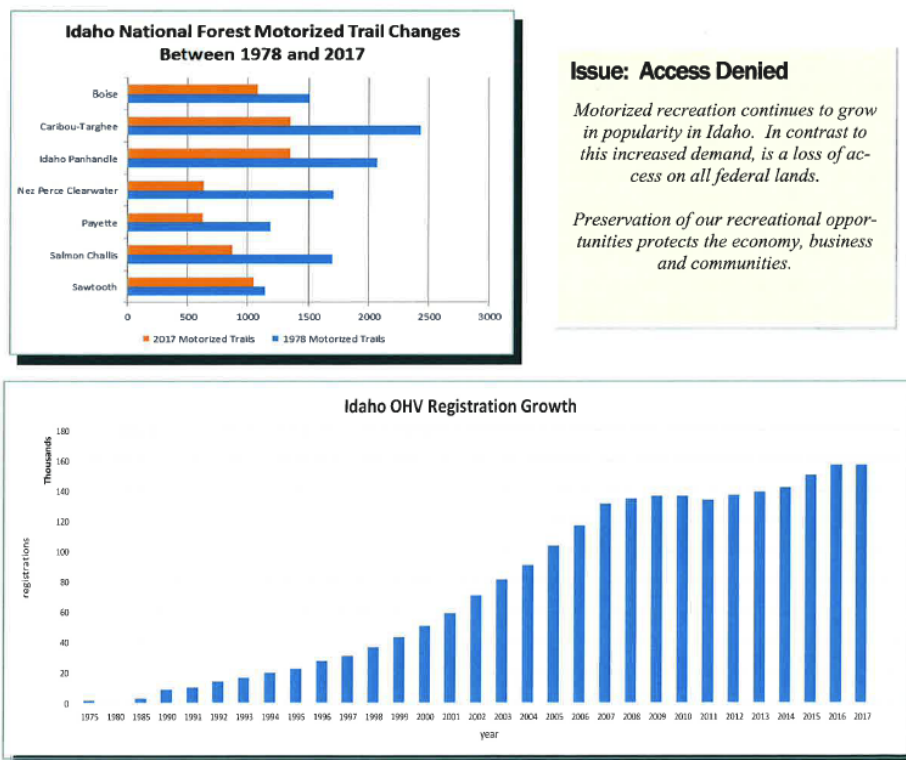
Throughout the Proposal, the concept of decommissioning roads, trails, facilities and other resources is consistently identified as a usage of a categorical exclusion. While the Organizations are aware the inclusion of decommissioning may be necessary to create the appearance of balance in the Proposal, this inclusion really lacks any basis as a management concern. It has been our experience that there is a critical shortage of basic maintenance resources in many areas, as a result of the funding challenges faced by the agency, has made it very easy to decommission routes. In addition to this funding shortage, often these recreational access resources have been the target of some of the most intensive management and analysis of any resource on public lands. Often the lack of clarity around what could be done under NEPA to protect these resources has caused these resources to be lost or closed previously.

The inclusion of decommissioning of resources as an allowed usage of a CE also fails to further the landscape level changes that have driven a lot of the EADM discussions with the Forest Service. An important component of this landscape discussion has been that the “normal course of business” was changing at the Forest Service, which was a welcome message to the motorized community. Too often motorized access has been addressed with management by closure type



mentalities, which has resulted in many heavily used areas being overwhelmed by users due to previously heavy-handed closures. By including the decommissioning of routes in each category, the message is sent to land managers that the normal course of business remains viable and acceptable and fails to address the historical trend of landscape level closures of access.

The Organizations submit that this new clarity on decommissioning might induce further restrictions to public access and it is the cumulative impacts of decades worth of unmanaged closures that we are now forced to try and correct. Too often recreational closures were seen as the first line of defense to challenges that were often unrelated to recreational access. The significant impacts of the management by closure philosophy are significant and become more problematic when the increasing demands for recreational access to public lands is taken into account. The State of Idaho recently released a comparison of the miles of trails that were available in 1978 and remain available in 2017, which is provided below.



The imbalance of routes and registered OHVs is troubling when viewed in isolation. When this downward trend is compared to the explosive population growth that has been seen in many western states, the imbalance becomes even more problematic. With comparative trends that are so far out of balance, the Organizations are very concerned about any steps that could further push this relationship out of balance. As a result, the Organizations are asking these provisions be removed from the Proposal, as the cumulative impacts of the previous ability to easily close

resources have been significant. The Business as normal mentality simply must be addressed at every opportunity.

If provisions addressing continued decommissioning of resources are determined necessary for the Proposal, the Organizations would request that additional documentation be required in these processes. It has been the Organizations experience that the use of categorical exclusions for this activity are already lacking transparency and too often the public is not aware of possible decommissioning of resources until they seek to use the resource and the facility has a padlock or closure gate. This should be avoided if possible.

**4a. A realistic definition of Potential Wilderness must be provided or the term should be dropped from planning efforts.**

The Proposal introduces a generally new term to the management of Forest Service lands, mainly that of "Potential Wilderness". This is very concerning as this term is not defined in the regulations and could mean very different things to different groups of people and significantly undermine many of the benefits that could flow from the Proposal. The Organizations understand the Congressional designation of Wilderness Areas, the designation of Wilderness Study Areas and even the recommendation of areas for Wilderness designation as part of the USF planning process. While we understand the previous terms, we are not aware of any basis for potential Wilderness and believe this category of management will create significant confusion in the application of the Proposal. Does this mean recommended Wilderness areas in a forest plan, citizen proposals for Wilderness, or areas where proposals have been created by Congress which Congress may or may not have acted upon? We are simply unsure and submit this concept must be defined in a manner that is consistent with the existing Resource Management Plan for the area, as the Proposal consistently relies on the RMP for the management of many other issues on the forest, and the Organizations submit Wilderness should be treated no differently.

The Organizations are aware that the concept of Wilderness is one of the most difficult planning concepts that line officers are working with on the landscape given the wide-ranging type of proposals and large number of Wilderness proposals that are in many areas. Often the Wilderness concept is provided far more weight than other multiple uses on the landscape and this weighting is often in direct contradiction to the forest plan direction for the area. For purposes of these comments we are condensing these concepts into three general categories:



1. Recommended Wilderness in RMP- often this is the narrowest scope of Wilderness and the most intensively reviewed;
2. Citizen Proposal – these are often a wish list of areas created by a small user group and is unrelated to conditions on the ground- many of these proposals have been reviewed in the forest planning process and not included in the Preferred Alternative for good reasons; and
3. Legislation Proposed – even when proposals reach this level, legislative proposals can fail to move for decades. It is our position that these failed legislative proposals provide more proof of a lack of desire to designate these areas as Wilderness than a viable legislative proposal.

The Organizations vigorously assert that only in areas where the lands are “Recommended for Wilderness” designation in the relevant RMP should Wilderness be recognized as a factor weighing in favor of higher levels of NEPA. This position is consistent with the recognition of the relevant forest plan as the controlling factor for the analysis of many other factors, as exemplified by the discussion on pg. 11 of the Proposal. The Organizations simply are unable to identify why all uses would be governed by the Forest Plan with the exception of Wilderness, as such a position would artificially elevate Wilderness as a management priority for the USFS. We don’t believe that was the intent and again sends the wrong message to the public.

The concept of Potential Wilderness also puts the USFS in the untenable legal position of providing a citizen Wilderness proposal in a stronger position in planning or NEPA analysis than possible previous Congressional actions identifying the area for “non-Wilderness Multiple usages”. This is all too frequent a position as many citizen Wilderness proposals are seeking designation of the same lands that were released for non-wilderness multiple use by Congress as part of previous Congressional actions. There is simply no situation where a citizen Wilderness proposal, in any form, should be provided greater weight in planning and NEPA than fully passed Federal Law that has been passed by Congress and signed by the President. Any assertion to the contrary on this issue lacks basis in law or fact.

A second reason that Wilderness must only be weighed in favor of higher levels of NEPA analysis in areas recommended in the forest plan is provided by the fact that even areas that Congress has proposed to be designated can languish for extended periods of time without serious action by Congress. There are literally dozens of examples of these types of Legislative efforts, and the fact that legislation can be proposed and not move sometimes for decades creates more of a basis for a lack of support for the Proposal than a basis for changes in land management. An example of such a piece of legislation would be the Colorado Wilderness Act that has been

proposed by Congresswoman Dianna DeGette of Colorado since 1999.<sup>2</sup> If there is a better example of a piece of legislation that should NOT be relied on for any decision making by the USFS we are not aware of such legislation. If such a proposal was recognized in any planning process it would be more support for the Proposal that has ever been received in Congress.

The Organizations also believe that the introduction of the concept of “Potential Wilderness” also creates a conflict of scale into the streamlining discussion as clearly the intent of the Proposal is clarify when the use of lower levels of NEPA for smaller projects. Given that the minimum threshold for a Wilderness designation is 5,000 acres the Organizations must question how a landscape of this size would be altered by a small project. If the area is truly a potential Wilderness the maintenance of a trail or water feature or a small timber sale will not alter its character.

#### **4b. Other Congressional designations must be recognized in the application of NEPA.**

The Organizations are not opposed to a more restrictive application of NEPA requirements in areas that are designated as a Recommended Wilderness area in relevant Forest Planning or the basis of Congressional designation as Wilderness or Wilderness Study areas. The Organizations also vigorously assert Congressional actions identifying areas for other usages must also be recognized in the application of NEPA as well. If an area has been the basis for a specifically identified usage by Congress and the action being analyzed under NEPA is in furtherance of that action, the failure of the Congressional designation to be relied on to further streamline NEPA is inappropriate at best. All Congressional actions should be treated similarly with regard to NEPA.

The Organizations mention this issue as Congress has made many additional land designations for federal lands beyond the mere identification of Wilderness areas. While Wilderness areas are often the only Congressional action that is recognized by those seeking restrictions on public access, these other designations are equally applicable and valuable to the users who have obtained these other designations, often in attempts to balance usages in a piece of Wilderness legislation. A complete review of these designations is simply too extensive for these comments so the Organizations are going to provide a few of examples of these Congressional actions addressing management of both USFS and BLM lands:

- i. California Desert Protection Act of 1994;<sup>3</sup>
- ii. Hermosa Special Management Area;<sup>4</sup>

---

<sup>2</sup> <https://degette.house.gov/legislative-issues/protecting-colorado-s-wilderness>

<sup>3</sup> See, California Desert Protection Act of 1994; Public Law 103-433.

<sup>4</sup> See, National Defense Authorization Act; Public Law 113-291 §3062.

- iii. Designated crossing points on the Pacific Crest Trail;<sup>5</sup>
- iv. Release of lands for non-Wilderness Multiple use;<sup>6</sup>
- v. Numerous National Recreation Areas; National Conservation Areas designated by Congress;
- vi. Congressional actions identifying specific usages of areas, such as designation of almost 210,000 acres for OHV recreation as part of S.47 of 2019; and<sup>7</sup>
- vii. Use of jetboats and backcountry airstrips in the Frank Church/River of No Return Wilderness.<sup>8</sup>

The Organizations are aware that the Congressional designations for the uses of lands for non-wilderness usages is exceptionally diverse in nature and if these designations were addressed more specifically, the identification of these categories would simply render the current rule ineffective. It would simply become too large to understand or manage. The Organizations would obviously like to avoid such a situation but submit that these Congressional designations must be protected in the same manner as a Wilderness designation. As a result, the Organizations submit that these designations must be recognized in the rulemaking, even if only in a blanket manner with the additional of language recognizing this action. Without this recognition certain Congressional actions are given far more weight than others, which is inappropriate at best and reduces the effectiveness of the rulemaking as extensive additional NEPA will be undertaken to justify actions that are consistent with Congressional designations and determinations regarding the lands that have been previously made.

#### **4c. Roadless Rules are different and land managers should be able to embrace these differences.**

The Organizations are aware that several states have now undertaken separate state level rule making efforts around the Roadless Rule, similar to the efforts completed in Colorado and Idaho. Each of these state Roadless Rule efforts have resulted in State level roadless rules that allocate resources in a manner different from the National Roadless Rule. This question appears to be growing in scope as both Utah and Alaska are moving forward with state level Roadless Rule Proposals for those states as well.

Under the current version of the Proposal, all roadless areas are treated identically. The Organizations would submit that land managers should have additional flexibility around the use

---

<sup>5</sup> See, Omnibus Public Lands Management Act of 2009; Public Law 111-11 §1806 (f).

<sup>6</sup> As exemplified by the 1980 Colorado Wilderness Act; Public Law 96-560 §102(b).

<sup>7</sup> See, Natural Resources Management Act; Public Law 116-9; §1301 et seq.

<sup>8</sup> See, Central Idaho Wilderness Act of 1980; Public Law 96-312 §7 & §9(a).

of lower levels of NEPA in areas managed pursuant to a state level Roadless Rule if the management actions that are being taken are consistent with the expanded authority of the state level Roadless Rule. Without such authority the expanded flexibility provided by these state level Roadless Rules is lost as managers will be forced to re-analyze basic questions that were resolved in the development of these state level roadless rules.

## **5. Conclusion.**

The above Organizations welcome the opportunity to voice the general support for the revisions to the USFS NEPA procedures guidance (“The Proposal”) as we believe this Proposal would be a major step forward in management of many of these issues. The Organizations vigorously support the overall revision of the regulations in a single step, as this landscape level reform will reduce the need to make small determinations regarding the nature of the project. Too often these types of arbitrary distinctions, such as a trail bridge project a watershed restoration or trail construction, can cause significant issues in fixing the resource problem but also the long-term paper trail of any projects on the district. The impacts of flexibility of paper trail requirements can be VERY problematic when staff on districts change and have different views of projects. While overall the Proposal would be a major improvement, and hopefully reduce the analysis paralysis to often associated with basic operations, there are several issues that should be clarified or improved including:

1. The definition of “Potential Wilderness” must be provided and narrowly defined in order to ensure the effectiveness of the revisions as the Wilderness concept is one of the major hurdles that we continue to face in land management;
2. If Potential Wilderness is designated as a factor requiring additional NEPA analysis, other Congressional designations, such as special Management Areas, should be allowed to reduce NEPA requirements; and
3. The Authority to decommission routes with a categorical exclusion must be clearly restricted in order to ensure public input and to reduce the national trend of reducing access that has been present for decades.

The Organizations have partnered with the USFS and state level parks and recreation programs for decades in addressing trail related maintenance issues through the voluntary registration fees for OHVs and OSVs that have been adopted in the several states. These registration programs started around grooming of winter trails for OSV recreation in the 1970’s and remain the only source of funding for winter grooming of routes on USFS lands. Seeing the success of these programs the OHV community soon adopted similar voluntary registration programs in the 1980s.

These are some of the longest, largest and strongest partnerships in place with USFS land managers. As an example, the Colorado Parks and Wildlife motorized program provides between



\$4 and \$5 million in direct funding to USFS projects that results in almost 50 maintenance crews for summer and winter trails and extensive project specific funding. The California OHMVR program easily provides five times this amount of funding to the USFS offices in California. The State of Idaho program also provides the USFS more than \$1 for every resident of the state to support trail maintenance. Each of these State level partnerships is leveraged with countless volunteer hours and support, in a huge range of roles from volunteer labor on projects, to engineers volunteering time to design bridges and heavy equipment businesses working for the cost of fuel from the programs and many of the programs funded would simply cease to exist without this volunteer support. This volunteer support which multiplies the impact of this funding to have an impact on the ground of spending several times more money that comes from these programs.

While these programs have become major funding sources and long-term partners of the USFS, this relationship has resulted in a sensitivity to the less efficient portions of the NEPA process. Too often any projects undertaken are subjected to unusually high levels of NEPA analysis by overly cautious land managers, which we have come to refer to as “analysis paralysis”. While the Organizations understand the reason for this analysis paralysis, this paralysis is highly frustrating and inefficient, even when funding for these projects is available. These programs are often becoming the only funding that is available for recreational maintenance efforts on many districts and as a result these programs are being asked to do more and more work with a somewhat consistent funding stream. As a result the efficiency of efforts becoming a larger and larger priority every day in order to continue to provide basic access to all users. The Organizations believe that the Proposal would be a step towards achieving this efficiency and avoiding analysis paralysis.

If you have questions please feel free to contact either Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is [scott.jones46@yahoo.com](mailto:scott.jones46@yahoo.com).

Respectfully Submitted,

Scott Jones, Esq.  
Authorized Representative of CSA,  
IRC, COHVCO and TPA