



September 24, 2019

Plan Revision Team
Carson National Forest
208 Cruz Alta Rd.
Taos, NM 87571

RE: Carson National Forest Plan Revision

Dear Sirs:

Please accept this document as the comment to the Carson National Forest Plan Revision Project on behalf of the Trails Preservation Alliance ("TPA"). The TPA is a volunteer organization created to be a viable partner to public lands managers, working with the USFS and the Bureau of Land Management (BLM) to preserve the sport of trail riding and multi-use recreation. The TPA acts as an advocate for the sport and takes the necessary action to insure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multi-use recreational opportunities. TPA have participated throughout the development of the Carson NF plan revision including supplying extensive comments in the assessment development process, active participation in public meetings and extensive comments regarding the initial draft plan that proposed the closures and corridors around the CDNST.

Areas of the CDSNT outside existing Wilderness provide significant recreational opportunities directly and connectivity of opportunities for the recreational community for areas beyond the mile-wide corridor now proposed. As a result, we would like to see detailed analysis of expected costs and burdens to be shouldered as a result of these changes and areas outside the mile-wide corridor that access would be lost to as a result of the new regulations. Unfortunately, the impacts of restricting access to hike and horse access only and closure of 1 mile corridors are not even recognized in the RMP or associated analysis in any manner. We are simply unable to identify any analysis of miles of trails closed or access lost on areas adjacent to the trail. TPA recently conducted a trail training in partnership with the Salida Ranger District and one of the breakout discussions at this event was the management of the Monarch Crest Trail on the Salida Ranger District. This discussion is highly relevant as we discussed the huge success of the new trail signage around the multiple use nature of the Monarch Crest Trail that was developed with

the Central Colorado Mountain Trail Riders for the Monarch Crest Trail, which is exemplified as follows:



The lack of factual basis for any assertion that the Monarch Crest/CDT must be managed only to provide hiking and horseback opportunities is immediately clear when compared to this signage which was consistently identified as hugely effective and many land managers sought to have expanded on to their districts as the signage specifically identifies the CDT trail on the bottom of the sign. It should be noted that the San Isabel NF is clearly identified at the bottom of these signs and a significant portion of the monarch pass area is managed in the planning effort for the

Carson NF. Any assertion that one Ranger District could interpret the NTSA such completely opposing legal manners is simply without basis. Even the basic assertion of such authority would directly undermine the partnerships that have been developed between users and land managers and again points to the folly of any assertion that the CDT is to be managed for only hiking and horseback usage as the CDT and Monarch Crest Trail are one in the same for long distances in Colorado.

1. The National Trails System Act mandates the Continental Divide Trail segments and corridor be governed by multiple use principals.

TPA first comment addressed the numerous standards in the Carson NF RMP which result in mile wide exclusionary corridors being developed around the Continental Divide Trail (“CDNST”) and the mandatory exclusion of motorized vehicles from all segments of the CDNST on the naked assertion that the CDNST is only designated for hiking and horseback usage by Congress in the Proposal. These are entirely new standards for CDNST management on the Carson NF, as the current version of the RMP for the Carson provides no specific management direction for the CDNST or any areas adjacent to the trail. These provisions directly conflict with the mandate of the National Trail System Act (“NTSA”) for management of scenic trails and the CDNST on a segment by segment basis. The fact that Congress inserted numerous specific provisions of the NTSA to address the extensive management issues that were identified in the analysis and designation of routes for the CDNST and that these amendments took an NTSA program that addressed only 3 trails in 1983 to now expanding to include more than 30 trails across the nation once initial challenges were reduced and removed with the amendments.

Prior to addressing the specific provisions of the CDNST in the CNF, TPA submit that a review of the standard of review for statutory applications to various situations is warranted. In 1850, the US Supreme Court stated the following foundational concept of statutory interpretation as follows:

“In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”¹

The US Supreme Court recently reaffirmed this basic tenant of statutory construction as follows:

“Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”²

TPA urge the USFS to look at the entirety of the NTSA, recognize the application of the multiple use mandates on a segment by segment basis as required by the NTSA rather than apply blanket management standard that have been previously avoided by Congress. Managers are required to develop management provisions that reflect the variety of the NTSA segment specific standards rather than seeking to apply one small portion of one provision of the NTSA in a manner that would render the rest of the NTSA irrelevant. This interpretation is a direct violation of the NTSA and basic canons of statutory interpretation that have been applied consistently for hundreds of years by US Courts. Additionally, only Congress has the authority and scope of review to balance management standards for the management of any NTSA route with desires of states and municipalities to designate similar trails in areas outside of USFS management.

A complete review of the history of the CDNST and the specific statutory provisions addressing both the CDNST and the usage of public lands in areas adjacent to the CDNST is necessary in order to establish the long history of Congressional action around the CDNST. Congress has provided extensive analysis and discussion of why the CDNST is managed in the manner it is and why management changes were undertaken as a result of the conflict around management of other Congressionally designated trails. In addition to the conflicts around existing NTSA routes, costs around routes existing NTSA routes were skyrocketing when the CDNST was designated and

¹ See, *United States v. Boisdoré’s Heirs*, 49 U.S. (8 How.) 113, 122 (1850).

² See, *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 528 (1990). For a more complete review of this issue please see, Congressional Research Services: *Statutory Interpretation: General Principles and Recent Trends*; September 24, 2014

these costs were a significant barrier to the designation of additional routes beyond the CDNST. It also cannot be overlooked that these amendments have resulted in an NTSA program that started with only 3 routes designated in the first 15 years to more than 30 routes being designated in the subsequent years.

A review of the intent of Congress and competing interests at the time of passage of the National Trails System Act (“NTSA”) and subsequent amendments is relevant and is discussed in great length in bill memos associated with the Legislation and Congressional reports created the initial designation of the CDNST. These concerns can be summarized by the fact that the CDNST may be a National Scenic Trail but Congress has clearly stated it is different than other scenic trails. Additionally, after designation of the CDNST in 1978, the NTSA was completely rewritten to allow for more usages allowed on NTSA routes due to significant conflicts and expanding costs. Not only did this amendment reduce costs but also allowed NTSA routes to be designated in numerous other areas of the country.

Corridors excluding usages violates the NTSA directly, minimizes values and will lead to unprecedented conflicts between users that simply does not exist at this time on the CNF. Many of the conflicts, such as significant costs and extensive conflicts from restrictive trail management and existing multiple uses have been extensive concerns that caused Congress to significantly revise the NTSA on multiple occasions. As Congress has specifically stated a desire to avoid conflicts of usages and minimize costs with any NTSA route, these are significant concerns for CNF planners, who seek to return to previous management standards that Congress has already identified as unacceptable for NTSA routes.

Given the CDNST is a Congressionally designated route, Congressional requirements for its management and the intent of Congress in their efforts is critically important to the scope of allowed and prohibited on particular segments of trail. Since 1968, NTSA specifically identifies that **all** segments of the National Trails System shall be managed as follows:

“Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple

use plans for that specific area in order to insure continued maximum benefits from the land."³

Congress clearly had the opportunity to manage NTSA routes under a single management standard, such as "horse or hike only" and specifically chose not to require such management but rather specifically provides that management must be harmonized with existing multiple use goals and objectives for the areas. As discussed in later portions of this comment, Congress has provided great deal of documentation regarding why the NTSA has been framed in the manner it is currently in. The NTSA also specifically identifies that all national scenic trails shall be managed as follows:

"(2) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass."⁴

As the CDNST is a National Scenic Trail, Congress has specified that all national scenic trails be managed to provide for the maximum outdoor recreational potential. This Congressional intent for this amendment was clarified in 1983 with the addition of NTSA subsection j which specifically permits multiple uses of all NTSA routes as follows:

"(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails

³ See, 16 USC 1246(a)(2) emphasis added.

⁴ See, 16 USC 1242 (a)(2).

may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.”⁵

When subsection j was added to §7 of the NTSA in 1983 generally allowing a wide range of uses on all routes identified under any designation, Congress clearly stated the desire to permit multiple use of trails outside Congressionally designated Wilderness areas. This is clearly stated in the bill memo which provides as follows:

“A new subsection 7(j) is added to specify various types of potential uses which may be allowed on specific components of the National Trails System. The uses listed are not intended to be all inclusive, but to illustrate the wide range of recreation pursuits which may be served by various trails. While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles on portions of the National Trail System, the Committee wishes to emphasize that this provision gives authority to the secretaries to permit such uses where appropriate, but that it must also be exercised in keeping with those other provisions of the law that require the secretaries to protect the resources themselves and the users of the system.”⁶

The imposition of mandatory corridors not only directly conflicts with the letter of the NTSA, the intent of Congress but also conflicts with one of the basic rules of statutory interpretation as any large scale exclusion of usages conflicts with Congressional requirements that usages of the CDNST be addressed on a segment by segment basis rather than forest or regional restrictions of usages.

When the evolution of the NTSA is reviewed in more detail, the reasoning for the various amendments provides a great deal of information and understanding around the current version of the NTSA, and the direct material conflict the current provisions of the Carson RMP provide to

⁵ See, 16 USC 1246 (j).

⁶ See, H.R. REP. 98-28, 1983 U.S.C.C.A.N. 112 at pg. 6.

the explicit intent of Congress. The NTSA concept originated in the Executive Branch of the Federal Government with an order from President Johnson in 1966 which provides as follows:

“In April 1966 Secretary Udall requested the Bureau of Outdoor Recreation to take the lead in a nationwide trails study. This assignment was made in response to President Johnson's Natural Beauty Message of February 8, 1966, in which he called for development and protection of a balanced system of trails—in the Nation's metropolitan areas as well as in the countryside—in cooperation with State and local governments and private interests.

He called for such a trail system to help protect and enhance the total quality of the outdoor environment as well as to provide much needed opportunities for healthful outdoor recreation”⁷

In response to this Presidential Order, the 1966 “*Trails for America*” report was created and addressed the compelling need at the time to develop a motorized recreational trail network, providing as follows:

“There is a pressing need for places in which to ride bicycles safely. Recreational riding, bike hikes, youth hostel activities, bicycle clubs, and the like are becoming increasingly popular for all ages. The need is especially acute in urban areas. Similar growth is being experienced in horseback and trail scooter (trail bike) demand. The Breeders Gazette reports horse registrations are on the increase and the demand for quarter horses is growing. More than 5 million Americans were reported to be riding trail scooters or motorcycles in 1966.”⁸

The 1966 Trails for America Report continues to address motorized usage on National Trails as follows:

⁷ See, US Dept of Interior; Bureau of Recreation; *Trails for America; Report on the Nationwide Trail Study*; 1966 at pg. 3. (hereinafter referred to as the “Trails for America report”)

⁸ See, *Trails for America Report* at pg. 21.

“Trail scooters designed for trail travel pose the greatest problem of incompatibility. Beginning about five years ago with the introduction of small, light, relatively inexpensive machines, the popularity of trail scooters has grown rapidly. A survey of trail scooter owners in 1962 revealed that the typical owner utilized the vehicle chiefly for Fishing and hunting or recreational riding. Trail scooters are prohibited on trails in National Parks and National Wildlife Refuges, as they are in wilderness and primitive areas of the National Forests. Forest Service regulations also prohibit motor vehicle use of National Forest trails where it may cause damage, harm other values, or constitute a safety hazard. Trail scooters are not permitted on the portions of the Appalachian Trail within National Forests. However, much trail mileage in National Forests is open to trail scooters. Reasonable restrictions on the weight, speed, and horsepower of trail scooters, and effective devices to reduce their noise and fire danger are advisable. Where special wild- land, wilderness, or wildlife values are involved, as in the National Parks, National Forests, National Wildlife Refuges, wilderness areas, and on the Appalachian Trail, the present exclusion of motor vehicles, including trail scooters, should remain.”⁹

The 1966 Trails for America Report makes the following management recommendations:

“Recommended Program. Federal land-managing agencies need to undertake farsighted recreation trail development if they are to meet adequately the growing public demand. Hiking, bicycling, horseback riding, and trail scooter riding have increased substantially on many trails and are certain to accelerate in rate of growth in coming years. Abundant opportunities to build proper trails or rebuild old ones for recreation exist on most Federal lands.”¹⁰

While many may be surprised to see the concern about a lack of motorized opportunity on Federal Lands in this report, this was clearly a significant concern for both agency and legislative

⁹ See, Trails for America Report at pg. 29.

¹⁰ See, Trails for America Report at pg. 134.

representatives when the Trails for America Report was prepared and explains why protecting a diversity of usages was a concern even when the NTSA was explored and adopted by Congress. At no point was the concept of a trail network for only horse and hiking usage even explored but rather what became the multiple use concept was always the goal of the process.

Congressional actions in response to President Johnson's Order began in 1968 with the passage of the National Trails System Act, which designated the Appalachian Trail and Pacific Crest Trail and ordered a review of a trail running generally from Canada to Mexico along the Continental Divide of the United States.¹¹ Extensive background information regarding multiple uses of corridors and trails designated under the NTSA was originally addressed in House Report 1631 ("HRep 1631") and Senate Report 847 issued in conjunction with the passage of the NTSA in 1968. HRep 1631 provides a clear statement of the intent of Congress regarding multiple usages with passage of NTSA, and options that Congress declined to implement in the Legislation when it was passed. HRep 1631 provides as follows:

"The aim of recreation trails is to satisfy a variety of recreation interests primarily at locations readily accessible to the population centers of the Nation."¹²

HRep 1631 clearly and unequivocally states Congress declined to apply mandatory management corridors of any width in the Legislation. HRep 1631 states:

"Finally, where a narrow corridor can provide the necessary continuity without seriously jeopardizing the overall character of the trail, the Secretary should give the economics of the situation due consideration, along with the aesthetic values, in order to reduce the acquisition costs involved."¹³

¹¹ See, Public Law 90-543 §5(c)(1)

¹² See, HRep 1631 at pg. 3873. A complete copy of HRep 1631 has been enclosed as Exhibit "a"

¹³ See, HRep 1631 at pg. 3861.

Congress also clearly identified that exclusionary corridors would significantly impair the ability of the agencies to implement the goals and objectives of the NTSA as follows:

“By prohibiting the Secretary from denying them the right to use motorized vehicles across lands which they agree to allow to be used for trail purposes, it is hoped that many privately owned, primitive roadways can be converted to trail use for the benefit of the general public.”¹⁴

HRep 1631 clearly addresses the intent of Congress, and the internal Congressional discussions regarding implementation of the NTSA provisions for the benefit of all recreational activities as follows:

“However, they both attempted to deal with the problems arising from other needs along the trails. Rather than limiting such use of the scenic trails to "reasonable crossings", as provided by the Senate language, the conference committee adopted the House amendment which authorizes the appropriate Secretaries to promulgate reasonable regulations to govern the use of motorized vehicles on or across the national scenic trails under specified conditions.”¹⁵

The Senate Report S847 prepared relative to the Senate version of the 1968 NTSA provides the clear Congressional desire to address multiple uses as follows:

“The Bureau of Outdoor Recreation points out that there is a pressing need for places in which to ride bicycles safely. Recreational riding, bike hikes, youth hostel activities, bicycle clubs, and the like are becoming increasingly popular for all ages. The need is especially acute in urban areas. Similar growth is being experienced in horseback and trail bike demand. Horse registrations are in the increase. More than 5 million Americans were reported to be riding trail scooters or motor-

¹⁴ See, HRep 1631 at pg. 3859.

¹⁵ See, HRep 1631 at pg. 3873.

cycles in 1966.”¹⁶

The 1968 Congressional mandate for the CDNST route identification was completed with a report to Congress from the Department of Interior Bureau of Outdoor Recreation in 1977 and associated environmental impact statement. This analysis specifically addressed many of the challenges and possible impacts to other legal usages that were faced in simply laying out a route connecting the Mexico and Canada borders generally along the Continental Divide and recommended revisions of the NTSA. The report specifically states as follows:

“planners and this report recommend the inclusion of approximately 424 miles of existing primitive road rights-of-way in the proposed alignment of the Continental Divide Trail. Most are so primitive in nature that they would offer a recreational experience little different in quality from that where motorized vehicles are excluded. In some national forest areas, and in particular in Montana, these "roads" are no more than the two tracks created by the wheels of a rancher's vehicle used occasionally to take salt, etc., to his stock summering in the forest.

Such occasional vehicular use of the trail is provided for in the Act.

This report recommends a Continental Divide Trail routing that coincidentally uses primitive road rights-of-way such as along the east rim of the Great Divide Basin in Wyoming. The use of some 218 miles of lightly used road rights-of-way in the Basin was deemed to be justified because (1) the east rim was considered the best of two alternative routes, (2) the subject road rights-of-way are existing, (3) their use would be economical, (4) motorized use of these roads is very light and would have minimal adverse effect on hikers or horseback riders, and (5) the anticipated hiker-horseback use for this segment of trail is relatively small. This precedent is already well established on the Appalachian National Scenic Trail.

¹⁶ See, Senate Report with S847 at pg. 2.

Therefore, Congress may wish to specifically recognize such coincidental use in any legislation establishing the trail. This, of course, should be subject to the following: the trail managing agency must find that such use would not impair the values for which the trail was established; that such use would not pose damage to natural and environmental values; that such use would not constitute a safety hazard to hikers or horseback riders; that such use would be compatible with other management objectives for the areas; and finally, the Advisory Council to the trail should deem it appropriate.”¹⁷

In addition to laying out the basic route for the CDNST, the 1977 report discussed in great detail many of the challenges encountered in the management of the Appalachian and Pacific Crest Trails since their designation 10 years earlier. These concerns include the fact that costs associated with these trails had significantly exceeded expectations and the large amounts of conflict that had resulted from restrictive management of these routes and areas adjacent to these routes and the negative impacts to local economies from reduced usages adjacent to the routes. Possible impacts to multiple usages was discussed at a greater detail in the DEIS issued with the inventory of the CDNST in 1977 as part of the Congressionally mandated inventory and review of possible routes for the CDNST:

“In the 253-mile stretch of desert-like terrain lying between the Shoshone and Medicine Bow National Forests, a total 218 miles would be crossed on primitive roads. This is considered the most feasible and economic means to effect a continuous route in an area which promises to be a very lightly used segment of the overall trail.”¹⁸

Roads adjacent to the CDNST were also identified as a major access resource for the CDNST which the report clearly states as follows:

¹⁷ See, Department of Interior; Bureau of Outdoor Recreation; *Continental Divide Trail Study Report* 1977 at pg. 17.

¹⁸ See, See, Department of Interior; *Continental Divide Trail Report Final Environmental Impact Statement* 1977 at pg. 3. Hereinafter referred to as the “CDNST FEIS”.

“In addition to major roads the States, counties, and Federal land-managing agencies along the trail maintain an extensive system of lesser access and service roads crossing or closely paralleling the Divide. Together, these road systems, with the exception of wilderness and similar areas, provide frequent and easy access to the trail for the recreationist.”¹⁹

Not only were possible impacts to multiple uses on and around the trail a major topic of discussion in the creation of the 1977 Report and DEIS, this was a major concern for many of the groups that commented on the plan. Numerous comments from the public specifically addressed possible impacts to existing multiple use from the designations of the CDNST, as exemplified by comments from the Bureau of Land Management which were responded to as follows:

“Section 7(c) of the National Trails System Act (P.L. 90-543) directs that the use of motorized vehicles by the general public along national scenic trails will be prohibited. However, the proposed Continental Divide Trail legislation will amend this to allow motorized vehicles on roads designated as segments of the trail in accordance with regulations prescribed by the appropriate Secretary.”²⁰

The State of Wyoming provided comments regarding possible impacts to multiple use from designation of the CDNST, which were responded to as follows by the Bureau of Outdoor Recreation:

“Response to the State of Wyoming

1. **The proposed trail is not reserved exclusively for horseback riders and hikers. However, use of motor vehicles on primitive road segments will be controlled by regulations prescribed by the appropriate Secretary.** See responses 9 and 10 to the Bureau of Land Management.
2. The National Trails System Act directs that the development and management of trail segments harmonize with and complement established multiple uses to

¹⁹ See, CDNST FEIS at pg.10.

²⁰ See, CDNST FEIS at pg. 72.

insure continued maximum benefits from the land. However, there are administrative options which could forbid certain uses. See responses to numbers 1 and 3 to the Bureau of Indian Affairs.

3. The implementation of priorities has been established, as noted in the tables, map, and text. See pages 10 through 12.
4. The proposed trail is an attempt to balance recreation and other resources by harmonizing with and complementing established multiple-use plans to insure continued maximum benefits from the land."²¹

In response to the report and extensive concerns around possible impacts to multiple usages identified in the initial Bureau of Outdoor Recreation Report and associated EIS and the desire to designate the CDNST, Congress added the CDNST to the NTSA list in 1978²² with the following restrictions:

"(4) The Continental Divide National Scenic Trail, a trail of approximately thirty-one hundred miles, extending from the Montana-Canada border to the New Mexico border, following the approximate route depicted on the map, identified as 'Proposed Continental Divide National Scenic Trail' in the Department of the Interior Continental Divide Trail Study Report dated August 1976. The Continental Divide National Scenic Trails shall be administered by the Secretary of Agriculture in consultation with the Secretary of the Interior. **Notwithstanding the provisions of section 7(c), the use of motorized vehicles on roads which will be designated segments of the Continental Divide National Scenic Trail shall be permitted in accordance with regulations prescribed by the appropriate Secretary.**"²³

The second NTSA provision addressing multiple usage of segments of the CDNST provides as follows:

²¹ See, CDNST FEIS at pg. 97.

²² See, Public Law 95-625 @§553. A copy of this document is attached as Exhibit "B".

²³ See, 16 USC 1244 (a)(5).

“Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail.”²⁴

TPA also do not contest that motorized usage of the CDNST is prohibited on other segments of the CDNST where specific Congressional action, such as Wilderness or Refuge designations, has precluded usage. NTSA provides guidance around the specific provisions for these segments as follows:

“The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary.”²⁵

In the bill memo provided with the National Parks and Recreation Act of 1978 that designated the CDNST, Legislators went into great detail in addressing the challenges that had been encountered with the development and protection of the Appalachian Trail since its designation in 1968:

“Unfortunately, these measures alone have not been enough to protect the trail. Over 600 miles of the trail remain in private lands and changes in ownership and increasing pressures for development pose threats to the continuity of the trail in numerous instances. Almost 200 additional miles of trail are now located along

²⁴ See, 16 USC 1246(c).

²⁵ See, 16 USC 1244.

roads, providing no real hiking experience, but only a link between disconnected segments of the trail. Some of these miles of road designation are the result of the trail having been forced off an area of land due to a change in ownership.”²⁶

Clearly these discussions were an indication that the initial NTSA vision might not have been implementable and trouble was on the horizon for the NTSA concept more generally. This bill memo also starts to outline concerns about the restrictive nature of the Appalachian Trail goals in particular and explores new management direction for the Appalachian Trail and adjacent areas, as eminent domain of the trail footprint and adjacent areas was proving expensive and controversial. This new direction for the management of NTSA routes expanded partnerships and reduced federal involvement in acquisition of private lands. The memo provides this significant change in management direction as follows:

“In the testimony supporting the enactment of HR 8803, Assistant Secretary of Interior Robert Herbst commented on the partnership that is required for the Appalachian Trail. The committee fully agrees with this approach. Federal and continuing State acquisition efforts can insure the protection of the trail corridor itself, particularly with the ongoing assistance of private donations and cooperative agreements by other interested parties. This role of the volunteer in the Appalachian Trail must be continued and enhanced. For 50 years, the dedicated efforts of a great many individuals have made the trail viable. The committee intends the future administration of the trail will continue to emphasize this partnership”²⁷

Given the challenges that were being faced in the creation of the Appalachian Trail, Congress undertook to significantly expand the scope of agency authority around creation of the Appalachian Trail. The additional funding provided was almost \$90 million from the Land and

²⁶ See, House Report 95-734 95th Congress at pg. 3. A copy of this report is attached as Exhibit “C” of this comment.

²⁷ See, House Report 95-734 95 Congress at pg. 3.

Water Conservation Fund over the next three years.²⁸ In 1978 this was a significant amount of funding and as discussed in Congressional documentation subsequently, this level of funding was becoming concerning to Congress.

The specific inclusion of multiple uses on the CDNST by Congress when the CDNST was in response to the concerns voiced in the 1977 CDNST report and EIS and management problems that were being encountered in the management of the two trails designated prior to 1977. Unfortunately, the 1978 revisions to the NTSA did not resolve conflict around and complications from designation of routes and the NTSA was again significantly revised by Congress in 1983. While the 1983 amendments did designate numerous new NTSA routes throughout the country, which represented the largest single expansion of the program by Congress, the concept of restrictive trail corridors was also removed. The reasoning for this removal was outlined in the bill memo for the 1983 revision as follows:

“The 94th Congress conducted oversight hearings on the act, and also enacted legislation designating additional routes for study under the act.... Concerns were also expressed that numerous trail routes being studied did not lend themselves to the national scenic trail designation but had significant historical values....The hearings and related discussions during these recent sessions of congress brought forth several points from the trails community and agency professionals also responsible for the implementation of National Trails System Act in the Departments of Agriculture and the Interior. There was a consensus that the diverse needs of various types of trail users could not be met by federal agencies alone. Volunteer efforts by interested trail users themselves, working in concert with various levels of government, have been highly effective in expanding trail recreation opportunities at low cost. **Finally, with a decade of experience under the 1968 act to draw upon, there was a sense that a number of adjustments to**

²⁸ See, House Report 95-734 95 Congress at pg. 7.

the act could be made to enhance the ability to advance trail recreation programs in a variety of ways:"²⁹

The need to address basic concerns over the spiraling costs of the 1968 vision for the NTSA was also addressed in great detail in Congressional proceedings around the 1983 amendments as follows:

“Following additional hearings in 1981, the House committee recommended a revised text which eliminated most of the items which could require future federal expenditures. The house-amended text was also more cautious in designating any additional components of the National Trails System, deleting several proposed national historic trails in order to permit additional review by the Department of the Interior. Additional recommendations reflected continuing efforts to encourage the expansion of trail recreation opportunities across the Nation at low cost. H.R. 861 placed a greater reliance on citizen participation than ever before to accomplish the purpose of the National Trails System Act of 1968.”³⁰

The 1983 Amendments also provided a significant change in the scope of all National Scenic Trails, which is outlined as follows in the bill memo:

“Section 203 amends section 3 of the act to clarify the term 'national scenic trails,' as defined in the act, so that it will apply to trails which can be developed in a wide variety of land forms. This underscores the opportunity to consider the designation of such trails throughout the many different physiographic regions of the Nation.”³¹

²⁹ See, H.R. REP. 98-28, 1983 U.S.C.C.A.N. 112 at pg. 1. A copy of this report is attached as Exhibit “D”. Hereinafter referred to as “1983 House Report”.

³⁰ See, 1983 House Report at pg. 2.

³¹ See, 1983 House Report at pg 2.

The 1983 NTSA revision included the addition of subsection j of §1246, further clarifying the diverse nature of trails usage now permitted on segments of all NTSA routes. As previously noted, subsection j provides as follows:

“(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.”³²

When subsection j was added to §7 of the NTSA in 1983 generally allowing a wide range of uses on all routes identified under any designation, Congress clearly stated the desire to permit multiple use of trails outside Congressionally designated Wilderness areas. This is clearly stated in the bill memo which provides as follows:

“A new subsection 7(j) is added to specify various types of potential uses which may be allowed on specific components of the National Trails System. The uses listed are not intended to be all inclusive, but to illustrate the wide range of recreation pursuits which may be served by various trails. While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles on portions of the National Trail System, the Committee wishes to emphasize that this provision gives authority to the secretaries to permit such uses where appropriate, but that it must also be exercised in keeping with

³² See, 16 USC 1246 (j).

those other provisions of the law that require the secretaries to protect the resources themselves and the users of the system.”³³

In addition to the significant expansion of usages permitted on and around an NTSA route, the 1983 amendments also significantly restricted the acquisition of new lands for the designation of new routes as Congress had consistently identified concerns over the usage of eminent domain and condemnation powers for the acquisition of trail routes. The conflict that was resulting from these costs and conflicts permeates all documentation in this timeframe. This is discussed as follows:

“No lands outside of these existing areas may be directly acquired by the federal government for the trail. The secretary may designate other areas as segments of the trail only upon application from an appropriate state or local agency, and only if such segments meet the criteria in the act and are to be administered without direct expense to the federal government.”³⁴

The relationship of these significant Congressional changes to controversial provisions of the NTSA in 1983 to the explosion of the number of designated routes for the NTSA cannot be overlooked. In 1983 Congress designated three new additional routes to the NTSA which are the Potomac Heritage scenic trail, the Natchez Trace Scenic Trail and Florida Scenic trail. These designations doubled the number of routes designated since 1968. In addition to doubling the number of routes designated since 1968, Congress authorized the study of 6 more trails for possible designation in the future. This single piece of legislation quadrupled the number of routes designated in addition to significantly altering the direction of the NTSA. These are concerns that the USFS is simply not suited to make due to the large amounts of concerns and impacts that are outside the USFS scope of management, but are Congressional concerns that are entirely applicable to USFS management decisions.

³³ See, H.R. REP. 98-28, 1983 U.S.C.C.A.N. 112 at pg. 6. Hereinafter referred to as the “1983 report”

³⁴ See, 1983 House Report at pg. 3.

The imposition of mandatory corridors and restricting usage of the CDNST on the CNF to only “hiking and horseback usage” not only directly conflicts with the letter of the NTSA, the intent of Congress but also conflicts with one of the basic rules of statutory interpretation as any large scale exclusion of usages conflicts with Congressional requirements that usages of the CDNST be addressed on a segment by segment basis rather than forest or regional restrictions of usages. The mile wide corridor that is being designated is exactly the type of concern around the designation of adjacent areas which congress clearly found was restricting expansion of the NTSA program due to conflicts with future designations.

The fact that Congress has specifically looked at a management tool and specifically declined its application, any implementation of such a tool in management is problematic. This type of direct material conflict is not mitigated with the passage of time especially when the clearly stated intent of Congress was to satisfy a variety of recreational interests with the passage of the NTSA. TPA vigorously assert that only those interests protected by the corridor would be satisfied with a corridor, and this must be avoided.

The Carson NF makes the following assumption in planning:

Recreation opportunity spectrum classes may vary considerably depending on the alignment of the trail and its proximity to roads. However, trails are primarily non-motorized and most often classified as Semi-Primitive Non-Motorized or Primitive.

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Again, TPA vigorously oppose the complete lack of analysis around this type of a corridor as clearly these impacts have not been reviewed in any manner in the EIS and represent a direct violation of the NTSA, as more completely outlined below. TPA also submit these type of arbitrary management standards in an RMP are exactly the type of standards that make any future site-specific planning more expensive and difficult as planners are simply unable to address the management concern that resulted in these management standards.

³⁵ See, USDA Forest Service; Carson NF draft RMP EIS at pg. 393.

Again, the conflict of the Carson RMP provisions restricting all CDNST usage to “hiking and horseback” usage directly conflicts with these provisions of the NTSA requiring segment be segment management. At no point in the Carson RMP is there any analysis provided of areas that might or might not have been open to multiple use access at any time in the past or impacts that might occur as a result of this decision for access to other areas of the CNF. Additionally, no analysis is provided to support how the management direction of the CDNST has been moved from maximum outdoor recreational potential to being managed only for horseback and hiking usage.

2. NEPA range of Alternatives for CDNST management on the CNF is inadequate.

Providing an accurate and reasonable range of alternatives to the public as part of the NEPA process is a critical component of the NEPA process. The rational decision-making process of NEPA is compromised when agencies consider only a limited range of alternatives to their proposed projects.³⁶ When reviewing ranges of alternatives provided in a NEPA analysis, the courts have consistently held:

"The alternative section is 'the heart of the environmental impact statement,' 40 C.F.R. 1502.14; hence, '[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.'" ³⁷

When determining if an EIS has provided a satisfactory range of alternatives, courts have held the proper standard of comparison is to compare the purpose and intent of the EIS to the range of Alternatives provided. The courts have consistently held:

"[E]nsure that federal agencies have sufficiently detailed information to decide whether to proceed with an action in light of potential environmental consequences, and [to] provide the public with information on the environmental impact of a proposed action and encourage public participation in the development of that information." ³⁸

³⁶ See, James Allen; *Does not provide a range of alternatives to satisfy NEPA.....NEPA Alternatives Analysis: The Evolving Exclusion of Remote and Speculative Alternatives*; 2005 25 J. Land Resources & Envtl. L. 287.

³⁷ *Citizens for a Better Henderson v. Hodel*, 768 F. 2d 1051, 1057 (9th Cir. 1985).

³⁸ *Kunzman*, 817 F. 2d at 492; see also *Citizens for a Better Henderson*, 768 F. 2d at 1056.

With regard to the CNF RMP, and the proposed management of the CDNST, Congress has specifically provided the authority to the Secretary to relocate the footprint of the CDNST to other locations to protect multiple uses. The NTSA specifically states this as follows:

“(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, **the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that:**

(i) such a relocation is necessary to preserve the purposes for which the trail was established, or

(ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles.”³⁹

At no point in the RMP development process is there any discussion or analysis provided around the possible relocation of the CNDST on the CNF to protect multiple uses despite specific Congressional designations of such authority. There can be no legal argument that a sufficient range of alternatives has been provided to the public around the CDNST management as this provision of statutory authority has not been explored in any manner.

3. Carson RMP conflicts with CDNST plan.

The Carson RMP provides for a single use standard that excludes all motorized usage both on the trail and in areas adjacent to the trail. This directly conflicts with the CDNST Comprehensive plan that motorized usage must be managed in accordance with adjacent land management standards. The CDNST plan then provides 15 pages of detailed discussion on how motorized access relates to visual resource management standards, recreational opportunity spectrum goals and objectives and even rise to the levels of providing clear guidance on how many crossings of the CDNST may occur for motorized usages in the several categories of ROS management.⁴⁰

³⁹ See, 16 USC 1246(b).

⁴⁰ See, CDT Plan 2009 pgs. 16-26.

The CDNST comprehensive Management clearly identifies the relationship of the CDNST to existing motorized usage, which is as follows:

“In 1997, memorandum from the Deputy Chief of the Forest Service to Regional Foresters clarifies the Forest Service’s intent with respect to motor vehicle use on newly constructed CDNST trail segments. In addition, this memorandum identifies the importance of understanding the nature and purposes of the CDNST in establishing direction governing its development and management:

As the CDNST is further developed, it is expected that the trail will eventually be relocated off of roads for its entire length. The memorandum further states: It is the intent of the Forest Service that the CDNST will be for non-motorized recreation. . . . Allowing motorized use on these newly constructed trail segments would substantially interfere with the nature and purpose of the CDNST.”⁴¹

In addition to the specific provisions of the NTSA addressing the CDNST, the CDNST management plan further addresses multiple usage including the high levels of multiple use on the CDNST in 2009. The CDNST plans specifically states:

“(2) At the time the Study Report was completed (1976), it was estimated that approximately 424 miles (14 percent) of existing primitive roads would be included in the proposed CDNST alignment.”⁴²

While the CDNST plan does recognize levels of roads utilization, the CDNST plan does not specifically address the miles of multiple use trail that are aligned along the CDNST the 1977 Continental Divide report specifically reports as follows:

“The lands below timberline, again exclusive of national forest wilderness and primitive areas or national park lands, are mostly forested and include about 1,400

⁴¹ See, USDA Forest Service; *The 2009 Continental Divide National Scenic Trail Comprehensive Plan*; September 2009 at pg. 3. Hereinafter referred to as the 2009 CDT Plan.

⁴² See, 2009 CDT Plan at pg. 19.

miles of trail route. Approximately 1,100 miles of this forested trail route is within national forests and managed under the multiple-use sustained yield concept.”⁴³

Motorized Trail usages of the CNF and CDNST corridor are critically important to motorized usage as significant portions of the CDNST are available to the motorized community for the benefit of all users. Rather than providing specific analysis of this usage the CDNST plan provides that trails adopted through the travel management process are an allowed usage of the CDNST, providing as follows:

"Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable land management plan and:

- (1) Is necessary to meet emergencies;
- (2) Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;
- (3) Is for the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Federal regulations;
- (4) Is on a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST;
- (5) Is designated in accordance with 36 CFR Part 212, Subpart B, on National Forest System lands or is allowed on public lands and:**
 - (a) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST or**
 - (b) That segment of the CDNST was constructed as a road prior to November 10, 1978; or**
 - (6) In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C, on National Forest System lands or is allowed on public lands**

⁴³ See, CDNST FEIS at pg. 37.

and the use will not substantially interfere with the nature and purposes of the CDNST."⁴⁴

The CDNST plan further adopts multiple use principals by clearly adopting management standards for motorized categories of the recreational opportunity spectrum and as a result the concept of an exclusively non-motorized corridor would directly conflict with the CDNST plan. While the NTSA fails to specifically address multiple use trails along the CTD, the Management Plan does specifically provide that multiple use routes adopted under relevant travel management decisions shall be allowed and consistent with applicable planning. At no point in the CDNST plan is the concept of an exclusionary corridor even mentioned.

TPA must clearly and vigorously state that any proposed exclusionary corridor/crossing point around the CDT on the GMUG for the benefit of one user group over others, in name or function, would be a direct violation of the NTSA provisions mandating management of the trail area be in harmony with adjacent multiple uses of federal lands. The conflict with the CDT plan and basic assumptions in the Proposal is further evidenced by the fact the CDT plan specially identifies how ROS management should relate to CDT management providing as follows:

(6) The following chart identifies the relationship of ROS classes and scenic integrity/visual resource management objectives.

ROS Class	Scenic Integrity (Forest Service)/ Visual Resource Management (BLM) Objectives		
	<u>Very High/Class I</u>	<u>High/Class II</u>	<u>Moderate/Class III</u>
Primitive	Norm	Inconsistent	Unacceptable
Semi-Primitive Non-Motorized	Fully Compatible	Norm	Inconsistent
Semi-Primitive Motorized	Fully Compatible	Fully Compatible	Norm
Roaded Natural- Appearing	Fully Compatible	Norm	Norm
Rural	Fully Compatible	Fully Compatible	Norm
Urban	Fully Compatible	Fully Compatible	Fully Compatible

⁴⁴ See, USFS: *The Continental Divide Scenic Trail Comprehensive Plan*; 2009 at pg. 19.

TPA is simply unable to understand why the chart above would not be cut and pasted in the Proposal for management of the CDT. In addition to the above ROS chart, the CDT plan provides great detail regarding the relationship of various uses to each other and the expertly level of interaction between uses across the ROS spectrum. Again, TPA is unable to understand why CDT management would be addressed in any other way than simply stating the CDT will be managed in accordance with the CDT plan.

TPA submit that while specific portions of the NTSA are less than clear when read in isolation or in an attempt to apply Wilderness or National Park type restrictions outside these areas, the NTSA is very clear in conveying the position that the CTD is truly a multiple use trail and that the CTD should not serve as a barrier to multiple usage of adjacent areas. TPA submit that creation of a landscape level buffer around the CDNST, where multiple usage was prohibited or restricted would be a violation of both the NTSA and the CDNST management plan. This should be avoided as there are significant challenges on the Carson that are on a sounder legal basis and of significantly more important level to most forest users.

4a. NTSA specifically requires management maximizing of economic benefits of the trail and adjacent areas.

The CNF RMP restriction of usage of the CDNST to hike and horse usage also gives rise to a wide range of issues when looked at from a cost-benefit perspective. In addition to general NEPA requirements of economic analysis, a cost/benefit analysis is also specifically mandated by §1244 of the NTSA. This analysis simply has not been provided in any manner. An accurate cost benefit analysis is more critical given the extensive concerns previously raised by Congress regarding costs with restricting management of NTSA routes. Congress has also expressed significant reservations around possible negative impacts to multiple uses from restrictive NTSA

⁴⁵ See, The 2009 Continental Divide National Scenic Trail Plan; pg. 15

management in addition to the economic analysis being a critical component of the EIS process. This made even more complex by the fact that the CDNST runs through a wide range of lands on the CNF, including public and private lands. As previously discussed, Congress specifically chose a larger and more diverse NTSA system with the 1983 amendments, and since these amendments the NTSA system has expanded from 3 routes to more than 30 routes throughout the country. A possible corridor around the trail as a management objective in the forest plan would be a difficult proposition when reviewed from a cost benefit analysis and against the maximization of multiple use benefits requirements of the NTSA. This proposition is made even more critical and difficult given the previous Congressional determinations that costs were unacceptable around implementation of these management goals.

The NTSA guidance is clear on issues involving equity and usage of NTSA routes and the need to balance multiple usage based on these factors based on economic returns associated with the management of the route. The NTSA explicitly provides as follows:

“(9) the relative uses of the lands involved, including: the number of anticipated visitor-days for the entire length of, as well as for segments of, such trail; the number of months which such trail, or segments thereof, will be open for recreation purposes; **the economic and social benefits which might accrue from alternate land uses**; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintenance, supervision, and regulation of such trail;”⁴⁶

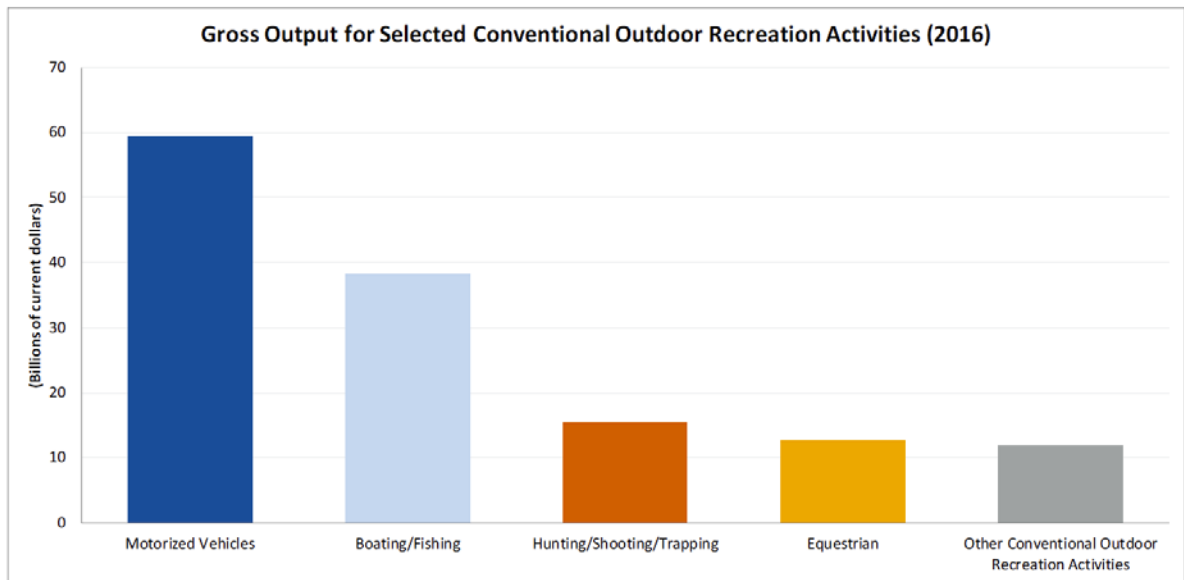
What is deeply concerning is there is only a single alternative provided for CDNST management in the CNFRMP. While the CNF has significant challenges facing **all** usage of the forest by the public, such as poor forest health, the CDNST is a resource that is simply not used at a large enough scale by those seeking to exclude multiple uses to warrant directing extensive resources to revision of management efforts. A review of the Continental Divide Trail Coalition website reveals that ***approximately 2 dozen people traverse the entire CDNST on an annual basis.***⁴⁷ Unfortunately, this information is not broken down to more specific levels, such as usage of the

⁴⁶ See, 16 USC §1244(b)(9)

⁴⁷ See, <http://continentaldividetrail.org/cdtc-official-list-of-cdt-thru-hikers/>

CDNST at state or forest levels. TPA can vigorously assert excluding multiple uses across a corridor for the benefit of as few as two dozen people is not maximizing economic and social benefits of these lands. Such as position simply lacks any factual basis.

Recent data from the Dept of Commerce specifically addressed the overwhelming economic that motorized usage is in the recreation arena. The draft analysis of outdoor recreations economic impact in 2016 from the Department of Commerce provided the following details: ⁴⁸

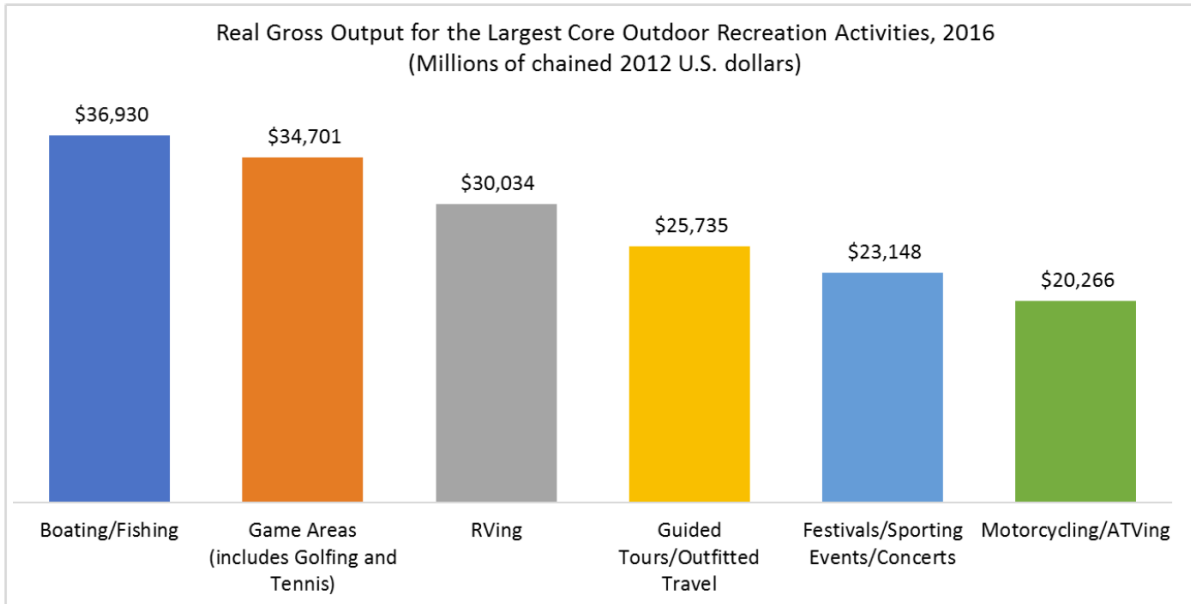


- Motorized Vehicles was the largest activity within conventional outdoor recreation in 2016, accounting for \$59.4 billion of gross output. Recreational vehicles accounted for more than half of this value at \$30.0 billion.

The final report from the Department of Commerce regarding the comparative spending profiles of the recreational community provides the following information: ⁴⁹

⁴⁸ A complete version of the Department of Commerce draft research is available here: <https://bea.gov/newsreleases/industry/orsa/2018/pdf/orsa0218.pdf>

⁴⁹A complete version of the Department of Commerce final research is available here: <https://www.bea.gov/news/2018/outdoor-recreation-satellite-account-updated-statistics-2012-2016>



- Boating/Fishing was the largest core outdoor recreation activity in 2016, accounting for \$36.9 billion of real gross output.
- Motorcycling/ATVing activities accounted for \$20.3 billion of real gross output in 2016, representing one of the fastest-growing activities at 8.0 percent growth from the previous year.

As land managers are specifically required to compare the economic benefits of alternative uses of the trail and any possible corridor under both multiple use principals of planning and as more specifically directed by the NTSA, accurate economic analysis information is critically important to the decision-making process. Given the fact that significant portions of the CDNST are primarily used for recreational purposes, the comparative spending profiles of recreational usage is highly important information. It has been TPA experience that often-comparative data across user groups is very difficult to obtain. The USFS provided such data as part of Round 2 of the National Visitor Use Monitoring process and those conclusions are as follows:

Table 3. Visitor spending for high, average, and low spending areas by activity, \$ per party per trip (\$2007)

Activity	Non-Local Day Trips			Non-Local Overnight Trips ^a			Local Day Trips			Local Overnight Trips ^a		
	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg	High
Downhill skiing	\$126	\$130	\$181	\$468	\$798	\$893	\$68	\$64	\$69	\$359	\$386	\$489
Cross-country skiing	\$87	\$97	\$135	\$315	\$537	\$951	\$26	\$27	\$31	\$242	\$259	\$329
Snowmobile	\$116	\$129	\$180	\$377	\$642	\$1,139	\$72	\$74	\$74	\$289	\$311	\$394
Hunting	\$79	\$88	\$122	\$253	\$368	\$652	\$41	\$51	\$51	\$230	\$248	\$314
Fishing	\$52	\$55	\$77	\$214	\$331	\$548	\$36	\$38	\$38	\$154	\$161	\$205
Nature-related	\$56	\$65	\$90	\$269	\$473	\$826	\$36	\$37	\$42	\$182	\$195	\$247
OHV-use	\$98	\$109	\$151	\$219	\$277	\$491	\$63	\$58	\$58	\$125	\$134	\$170
Driving	\$42	\$54	\$75	\$338	\$576	\$1,021	\$28	\$32	\$30	\$259	\$278	\$353
Developed camping	n/a	n/a	n/a	\$183	\$206	\$300	n/a	n/a	n/a	\$178	\$171	\$217
Prim. camping/bpack	n/a	n/a	n/a	\$108	\$134	\$196	n/a	n/a	n/a	\$121	\$120	\$153
Hiking/biking	\$53	\$50	\$64	\$228	\$473	\$765	\$20	\$21	\$18	\$126	\$150	\$190
Other	\$60	\$72	\$100	\$216	\$330	\$569	\$36	\$40	\$32	\$170	\$187	\$237
Total	\$58	\$65	\$90	\$214	\$366	\$648	\$34	\$34	\$29	\$165	\$177	\$224
Ratio to average	0.90		1.39	0.59		1.77	0.98		0.84	0.93		1.27

Shaded cells were filled using rules 1, 2, 3, or 4 as described in the text. Other figures are estimated directly from the NVUM sample.

^a Includes visitors on overnight trips staying on or off the forest.

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While the above agency summary data has become somewhat old, TPA simply don't see any change in the comparative spending profiles of these users' groups. TPA is aware of detailed research addressing certain portions of this analysis above. A copy of the most recent study of the Economic Contribution of the use of Off-Highway Vehicles in Colorado is attached to these comments as exhibit "e". This analysis identifies a strong increase in the per person spending profiles of all user groups in the OHV/OSV community based on increased unit prices and new types of OHVs, such as side by side vehicles, being present in the marketplace.

The differences in comparative spending between the user groups allowed in a CDNST corridor and those excluded from the corridor are stark and again simply do not favor designation of a landscape level corridor or landscape level restrictions on usages. When comparing the spending profiles of usages allowed in a proposed corridor such as hiking, primitive camping and cross-country skiing to the usages that are excluded from the corridor, such as OHV use and snowmobile the disparity of spending profiles is stark. The users excluded from a corridor spend anywhere from 1.5x to more than 2x the amount of the user groups that would be allowed in the corridor.

⁵⁰ See, USDA Forest Service; White and Stynes; *Updated Spending Profiles for National Forest Recreation Visitors by Activity*; September 2010 at pg. 6.

As a result of the stark differences in spending profiles of the users, visitation of those allowed in any corridor would have to essentially double throughout the year in order to offset lost economic benefits from the users that would be excluded. This position and expectation are factually unsupportable as visitation to certain portions of the CDNST by permitted users is limited to as few as dozens of visitors per year, while visitation levels from users possibly excluded is significantly higher than the visitation levels that are allowed within a corridor. As a result, not only would corridor visitation have to double to offset lost users simply to break even on a per visitor days spending level but also the levels of visitation would have to massively expand as the levels of permitted corridor use is exceptionally low.

TPA do not contest that there are areas or attractions where the CDNST sees very high levels of visitation but TPA is aware the areas of higher visitation are areas and issues that can be resolved at the site specific level in an effective manner and should not be relied on for the basis of a forest wide corridor. Any attempt to resolve these issues would be exceptionally expensive from a management perspective and would result in user conflict. TPA must question if these areas and CDNST issues more generally could not be more effectively managed through site specific planning subsequent to the RMP finalization. TPA submit that there are numerous diverse challenges facing the CDNST, many of which are highly site specific, which should be dealt with at the local level rather than trying to craft a landscape level fix to these issues. There are simply insufficient levels of utilization of the CDNST at the landscape level to warrant inclusion of such issues in the RMP.

4b. Mandatory cost benefit analysis of CDNST management have not been provided despite Congressional concerns about costs and conflicts being specifically expressed previously regarding management now proposed.

In addition to specific Congressional mandates requiring maximization of balance economic interests in management of NTSA areas and segments and generalized requirements of economic analysis of NEPA, both President Trump (EO 13771 in 2017) and President Obama (EO 13563 in 2011) have issued Executive Orders requiring all federal agencies to undertake a cost benefit

analysis of management decisions. The US Supreme Court recently specifically addressed the need for cost benefit analysis as an issue and stated as follows:

“And it is particularly so in an age of limited resources available to deal with grave environmental problems, where too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.”⁵¹

Given this clear statement of concern over the wasteful expenditure of resources for certain activities or management decisions, TPA is very concerned regarding what could easily be the wasteful expenditure of resources for the benefit of what is a very small portion of the recreational community. Similar concerns have been previously noted by Congress around the amendments to the NTSA over its lifespan.

No factually based argument can be made that closures of large areas of the CNF to historical travel protected by Congress will not result in significant massive additional costs to land manager. These are costs that cannot be justified given the huge challenges managers are facing such as poor forest health and large increases in wildfire severity and frequency. Simply educating the public regarding the new closure would be exceptionally costly as new signage and other educational materials would have to be developed and then signage would have to be maintained. This would have to include signage that probably makes little sense on the ground as natural landmarks are not relied on for boundaries, and these signs would have to be placed in areas where they could be found and also maintained to ensure signage is not buried in snow. TPA submit that proper balancing of enforcement costs with the benefit to small user group is exactly the type balance that the Supreme Court and both President Obama and President Trump has expected the agencies to undertake as part of any planning process. TPA submit that a non-motorized corridor around the CDNST fails from a cost benefit perspective even if Congressional action and relevant plans allowed such as management decision.

⁵¹ See, *Entergy Corp v. Riverkeeper Inc et al*; 556 US ; 475 F3d 83; (2009) Opinion of Breyer J, at pg. 4.

5. The range of alternatives in NEPA analysis of management alternatives made around NTSA routes is woefully inadequate.

As previously noted in this Comment, the CDNST covers miles of terrain in the CNF and all of these miles and adjacent mile wide corridor are to be managed for hiking and horseback usage only. No variation on these standards is provided in any alternative of the proposal despite specific NEPA regulations requiring detailed statement of high-quality information of all realistic management alternatives for an issue.

A brief review of NEPA requirements provided in regulation, various implementation guides and relevant court rulings is warranted to allow for comparison of analysis provided in the RMP and the proper standard. It is well established that NEPA regulations require an EIS to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment..... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.... "⁵²

The regulations included the development of the Council of Environmental Quality, which expands upon the detailed statement theory for planning purposes.

"You must describe the proposed action and alternatives considered, if any (40 CFR 1508.9(b)) (see sections 6.5, Proposed Action and 6.6, Alternative

⁵² See, 40 CFR 1500.1

Development). Illustrations and maps can be used to help describe the proposed action and alternatives.”⁵³

These regulations clearly state the need for the quality information being provided as part of this relationship as follows:

“The CEQ regulations require NEPA documents to be “concise, clear, and to the point” (40 CFR 1500.2(b), 1502.4). Analyses must “focus on significant environmental issues and alternatives” and be useful to the decision-maker and the public (40 CFR 1500.1). Discussions of impacts are to be proportionate to their significance (40 CFR 1502.2(b)).”⁵⁴

TPA believe this full and fair discussion of many issues has not been provided in the RMP, despite the size of the RMP and associated documents. As more specifically addressed in previous sections of the comments, the range of alternatives for multiple use access to the CDNST and mile wide corridor is simply non-existent. Basic questions such as how were corridor widths determined and how does the corridor width mandated relate to topographic features on the ground to more fully understand possible negative impacts and management implications moving forward.

TPA believe the association of impacts from changes proposed to the management issue that is the basis is a critical component in developing public comments and involvement as frequently members of the public do not have sufficient time, resources or understanding to make these connections. These concerns are summarized in the NEPA regulations which clearly provide the reason for the need for high quality information to be provided in the NEPA process. NEPA regulations provide as follows:

"(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are

⁵³ BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 78.

⁵⁴ BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 4.

taken. ***The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.*** ⁵⁵

The NEPA regulations clearly state the general standards for analysis of issues in an EIS as follows:

"Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions."⁵⁶

TPA believe a brief summary of the standards that are applied by Courts reviewing agency NEPA analysis is relevant to this discussion as the courts have consistently directly applied the NEP regulations to EIS review. Relevant court rulings have concluded:

"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision-making process. ⁵⁷

As previously addressed in this Comments, public involvement simply has not been stimulated and a hard look has not been performed. The high levels of frustration expressed from the public in response to the release of the RMP speaks volumes to the quality of information provided and the ability of the public to comment on the information.

⁵⁵ 43 CFR 1500.1(b)

⁵⁶ 40 CFR 1502.1

⁵⁷ Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 f3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276

6. Conclusions.

The CNF must amend basic planning assumptions to align planning decisions with the Congressional analysis that has been provided relative to the management of the CDNST.

The Organizations would welcome a discussion of these opportunities and any other challenges that might be facing the CNF moving forward at your convenience. Please feel free to contact Don Riggle at 725 Palomar Lane, Colorado Springs, 80906, Cell (719) 338- 4106 or Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com.

Respectfully Submitted,



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