Continental Divide National Scenic Trail Planning Handbook

Prepared by Greg Warren

NSTrail.org

Along the Continental Divide Trail

Gallatin National Forest

January 3, 2017

Continental Divide National Scenic Trail – Planning Handbook

Chapter I. Introduction

A recurrent theme in protected area legislation has been the mandate to preserve areas for future generations and to keep the protected resource in a condition representative of the values or conditions for which it was designated. Important land conservation legislation that is relevant to land management planning includes the National Trails System Act of 1968 (PL 90-543), which states that "National scenic trails,…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… National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted… [T]o the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited… (Sections 3(a) and 7(c))."

Enacted on the same day as the National Trails System Act, the Wild and Scenic Rivers Act of 1968 (PL 90-542), states that designated rivers, "with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations (Section 1(b))."

Similarly, another piece of legislation, the Wilderness Act of 1964 (PL 88-577), requires managing agencies to administer wilderness areas "for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character…" (Section 2(a)).

> Primary Value – "The primary value of the Continental Divide Trail is its emphasis on conservation of the natural beauty of our environment, and on a wise use of our environment to give the greatest pleasure and health to our citizens. Under the proposed scheme, it is my understanding that…the environment of the Trail would be kept in its natural state as much as possible. Such an investment is prudent now, before the natural beauty can be eroded through overuse and expansion of communities into the area." Statement of Honorable Peter Dominick, U.S. Senator from the State of Colorado

This handbook addresses a National Scenic Trail (NST) offering guidance for understanding and preserving or enhancing the recreational, scenic, natural, and historical values of the Continental Divide National Scenic Trail (CDNST) through land use planning that provides for the nature and purposes of this NST. The information in this handbook supplements and clarifies agency planning processes.

Chapter II. Nature and Purposes of the CDNST

The National Trails System Act[1] (NTSA) guidance for "nature and purposes" is foundational for shaping the activities and uses to be preferred and allowed along the CDNST corridor. The adopted nature and purposes of the CDNST emboldens the Senate's vision for this NST: "Designed to accommodate riders and hikers, the Continental Divide Trail would pass through some of the most scenic areas in the country. The trail would span spectacular, wild mountain country, rich in the early history of the West. The route affords views of perpetual ice-fields and of awesome peaks. It passes hundreds of alpine lakes and streams teeming with native trout. The high mountains are home to many species of game, including the bighorn sheep, mule deer, and bear.... The designation of the Continental Divide Trail represents an attempt to make available by trail a stretch of country which has historical interest and charm and bisects the Western United States. The…committee believes that the trail should be regarded as calling attention to the grandeur and esthetic qualities of the Continental Divide, and that it will add significantly to the Nation's appreciation of its priceless natural heritage" *Senate Report No.1233, 1968.*

The establishment of the CDNST nature and purposes policy was formed by extrapolating from the Trails for America report, NTSA, associated Congressional Reports, CDNST Study Report, and with public involvement, as described in this section.

A. Trails for America

Trails for America (1966), a report prepared by the Bureau of Outdoor Recreation in response to President Johnson's Natural Beauty Message of February 8, 1965, describes that, "the entire length of each national scenic trail, together with sufficient land area on both sides to safeguard adequately and preserve its character, should be protected…." The Trails for America vision for the CDNST will be achieved by providing for the "nature and purposes" values of this designated National Trail.

B. National Trails System Act

NTSA Sec. 3. [16 U.S.C. 1242] (a) (2). "National scenic trails, established as provided in section 5 of this Act, which will be extended trails so located as to provide for maximum outdoor recreation potential[2] 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."

NTSA Sec. 5 [16 U.S.C. 1244] (f) … "Within two complete fiscal years of the date of enactment of legislation designating… the Continental Divide National Scenic Trail, the… Secretary [of Agriculture] shall...submit...a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items: (1) specific objectives and practices to

[1] 16 U.S.C. §1241-1251: Public Law 90-543 (October 2, 1968) and amendments.

[2] BLM MS-6280 defines, "*maximum compatible outdoor recreation potential*. A criterion for determining the location of a National Scenic Trail. The recreation potential is tempered by the capacity of the area to sustain such use."

be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved... and…an identified carrying capacity of the trail and a plan for its implementation."

NTSA Sec. 7. [16 U.S.C. 1246] (c). "Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted...[To] the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited...."

C. Congressional Reports

"The Act was intended to insure that long-distance, high-quality trails with substantial recreation and scenic potential were afforded Federal recognition and protection" (S.R. 95-636). "Title V establishes new units of the National Park and National Trail Systems which the committee believes to be essential additions to these national programs. Timely action to preserve portions of our heritage, both historical and natural, within the states and insular areas is needed to assure these resources are not lost through adverse actions by special interest groups" (H.R. 95-1165).

D. CDNST Study Report

The Study Report of 1976, prepared by the Bureau of Outdoor Recreation in response to the identification of the CDNST, under the NTSA, as as a potential addition to the national trails system, describes that, "The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses... One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized...

The trail experience on or near the Divide is an intimate one, for one can walk or ride horseback across vast fields of wildflowers and contemplate a story dating from the dawn of earth's history. This story began when a portion of the earth was thrust upward, creating the sharp precipitous peaks that were sculptured into rich land forms leaving sparkling lakes, crystal-clear streams, and myriads of cascading waterfalls. Along the way, the tranquility of the alpine meadows, verdant forests and semi-desert landscape overwhelms everyone who passes that way. The trail would provide the traveler his best encounter with the Continental Divide — its serenity and pure air — and would supply for every trail traveler some of the world's most sublime scenes...

The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high quality recreation experience while maintaining a constant respect for the natural environment... The Continental Divide Trail would be a

simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails."

E. CDNST Leadership Council

The CDNST Leadership Council established a Vision and Guiding Principles for the development and protection of the CDNST in 2004. The Vision for the CDNST is: "Complete the Trail to connect people and communities to the Continental Divide by providing scenic, high-quality, primitive hiking and horseback riding experiences, while preserving the significant natural, historic, and cultural resources along the Trail." The Council's membership consists of senior Forest Service, Bureau of Land Management, and National Park Service responsible officials.

F. MOU between the Continental Divide Trail Coalition and Forest Service Regions

A "Memorandum of Understanding between the Continental Divide Trail Coalition and USDA Forest Service Regions 1, 2, 3, and 4" was approved by the President of CDTC and associated Regional Foresters in May 2014. The purpose is described as:

I. Purpose: The purpose of this MOU is to document the cooperation between the parties to ensure the development, coordination and completion of the CDNST in accordance with the following provisions.

A. To complete and be stewards of the CDNST to connect people and communities to the Continental Divide by providing high-quality scenic, primitive hiking and horseback riding opportunities. In addition, to conserve natural, historic, and cultural resources along the CDNST corridor… [and]

D. To support the coordination, protection, planning, and management of the CDNST….

G. Public Involvement in the Formulation of Comprehensive Plan Policy

The formulation of the nature and purposes direction for the CDNST was developed through a public process (36 CFR 216) and approved by Associate Chief Hank Kashdan as documented in Federal Register: October 5, 2009 (74 FR 51116). The following is the response to nature and purposes comments –

"The amendments to the 1985 CDNST Comprehensive Plan and corresponding directives are to ensure that the nature and purposes of the CDNST track those in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement, which were prepared pursuant to the NTSA (16 U.S.C. 1244(b)). The 1976 CDNST Study Report states:

> The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses. * * * One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized. * * * The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high-quality recreation experience while maintaining a constant respect for the natural environment. * * * The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails.

Thus, the 1976 CDNST Study Report states that the primary purpose of the CDNST is to provide a high-quality recreation experience for hiking and horseback riding.

Consistent with the NTSA, the 1976 CDNST Study Report, and the 1977 CDNST Final Environmental Impact Statement, the amended CDNST Comprehensive Plan states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. The amended CDNST Comprehensive Plan and final directives implementing the amendments to the CDNST Comprehensive Plan on National Forest System lands provide that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.... The amendments to the CDNST Comprehensive Plan and directives ensure consistency with the nature and purposes of the CDNST in the context of right-of-way acquisition, land management planning, scenery management, recreation resource management, motor vehicle use, trail and facility standards, and carrying capacity.'

The 1983 amendment to the NTSA, which added 16 U.S.C. 1246(j), does not modify the nature and purposes of the CDNST. The added subsection simply lists uses and vehicles that may be permitted on National Trails generally.

The NTSA states that all National Scenic Trails must be so located to provide for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources (16 U.S.C. 1242(a)(2)). This requirement is reflected in the nature and purposes statement in the amended CDNST Comprehensive Plan, which states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. Where possible, the CDNST will be located in primitive or semi-primitive non-motorized settings, which will further contribute to providing for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources in the areas traversed by the CDNST....

The Forest Service has removed the words `non-motorized' and `recreational' from the nature and

purposes statement for the CDNST, as these words were redundant. `High-quality scenic, primitive hiking and horseback riding' are non-motorized recreation opportunities. The Agency has not removed the word `primitive' from the nature and purposes statement, as it is not redundant and is not ambiguous. It means `of or relating to an earliest or original stage or state....' Preferred recreation settings, including primitive or semi-primitive non-motorized categories, are delineated in the Forest Service's Recreation Opportunity Spectrum system (FSM 2311.1) and described in the CDNST Comprehensive Plan, Chapter IV(B)(5).

The amendments to the 1985 CDNST Comprehensive Plan apply throughout the document to the extent applicable, not just to the provisions that are specifically referenced in the amendments. The Forest Service agrees that this intent should be expressly stated. Therefore, the Agency has added the following statement to the amendments:

> To the extent there is any inconsistency between the foregoing revisions and any other provisions in the 1985 CDNST Comprehensive Plan, the foregoing revisions control."

H. Nature and Purposes Policy

In consideration of the language in the NTSA, Congressional Reports, CDNST Study Report and public comments, the nature and purposes policy for the CDNST is: "The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor" (CDNST Comprehensive Plan and FSM 2353.42).

Chapter III. Land Management Planning

A. Introduction

National Trails are administered as trail corridors. Managers should establish plan components that address (1) desired visitor experience opportunities and settings, and (2) the conservation of scenic, natural, historical, and cultural qualities of the corridor. Supporting standards and guidelines need to be established to achieve desired conditions and objectives, and monitoring methods are to be described.

The land management plan responsible official should work with adjacent landowners to establish and protect the Continental Divide National Scenic Trail (CDNST) corridor. However, recognize that Congress has set a limit on protecting a corridor where the CDNST

Primacy of Congressional Designations – As a general rule, if the NTSA conflicts with NFMA's or FLPMA's multiple use mandate, the NTSA designating guidance will apply. Land use planning decisions for each unit must be consistent with the purposes and objectives of the designating Act of Congress. Where multiple Congressional designations overlap, the agency must comply with all applicable statutes. In order to do so, the more protective management requirements will likely apply. The establishment of the comprehensive plan for the CDNST constitutes an overlay on the management regime otherwise applicable to public areas managed by land management agencies. The NTSA (and E.O. 13195) limits the management discretion the agencies would otherwise have by mandating the delineation of the CDNST corridor and protection of the nature and purposes of the CDNST.

crosses private land. The authority of the Federal Government to acquire fee title under the NTSA Section 5 is limited to an average of not more than 1/4 mile on either side of the trail.

In 2009, the amended CDNST Comprehensive Plan and FSM 2353.4 constituted new information (40 CFR 1502.9(c)). The responsible official must review the new information and determine its significance to environmental concerns and bearing on current Land Management Plan (LMP) direction (FSH 1909.15 - 18). In regards to environmental documents for enacted LMPs, determine if Management Area (MA) prescriptions and plan components along the CDNST travel route and corridor provide for the nature and purposes of the CDNST (FSM 2353.42 and FSM 2353.44b(1)). If not, the LMP should be amended or revised following the appropriate National Environmental Policy Act (NEPA) process to address the planning requirements of the NTSA (16 U.S.C. 1244(5)(f) and FSM 2353.44(b)(1)). The BLM has similar requirements for addressing new information (Land Use Planning Handbook, H-1601-1). Furthermore, project proposals may bring the CDNST into the scope of a NEPA process due to potential direct, indirect, and cumulative impacts of past actions and new proposals that may substantially interfere with the nature and purposes of the CDNST (40 CFR 1508.25(c)). This in turn could trigger the need for a land management plan amendment, and on National Forest System lands, the development of a CDNST unit plan. Land management plans are to protect CDNST Section 7(a)(2) potential rights-of-way[3] and high potential route segments[4] where the rights-of-way is yet to be selected and the travelway officially located (16 U.S.C. 1244(f)(3) and 1246(a)(2)). Until the CDNST rights-of-way is selected and the corridor is located, the Agencies must not undertake any major Federal action which (1) may adversely impact nature and purposes values of potential CDNST rights-of-way and corridor locations, (2) limit the choice of reasonable alternatives, and (3) prejudice ultimate rights-of-way and locations decisions (40 CFR 1506.1).

The 2009 CDNST Comprehensive Plan has been mistakenly characterized as being contemporary policy, which may suggest for an early era that the 1985 CDNST Comprehensive Plan was consistent with the NTSA. Factually, the 1985 CDNST Comprehensive Plan was fundamentally flawed being inconsistent with the NTSA from its inception. The 2009 Comprehensive Plan and corresponding FSM 2353 corrected the 1985 direction by establishing baseline policy and appropriate guidance for "nature and purposes," "visual resource management," "recreation resource management," "motor vehicle use," and "carrying capacity." In addition, the 2009 Comprehensive Plan and FSM policy recognizes the role of substantial interference assessments and determinations when addressing other uses along the CDNST corridor.

The FR Notice of final amendments to the Comprehensive Plan and final directives states, "The final amendments to the CDNST Comprehensive Plan and corresponding directives will provide guidance to agency officials implementing the National Trails System Act. The final amendments are consistent with the nature and purposes of the CDNST identified in the 1976 CDNST Study Report and

[3] A land use allocation pursuant to Section 7(a)(2) of the National Trails System Act ("rights-of-way") for a public land area of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.

[4] The term "high potential route segments" means those segments of the North Country and Continental Divide NSTs which would afford high quality recreation experience in a portion of the route having greater than average scenic values (16 U.S.C 1251(2)).

1977 CDNST Final Environmental Impact Statement adopted by the Forest Service in 1981 (40 FR 150). The final amendments and directives will be applied through land management planning and project decisions following requisite environmental analysis" (Federal Register, October 5, 2009 (74 FR 51116)).

The CDNST is administered by the Secretary of Agriculture. Delegation of those responsibilities to Forest Service officials is found in FSM 2353.04. The lead Forest Service official for coordinating matters concerning the study, planning, location, and operation of the CDNST is the Regional Forester for the Rocky Mountain Region (FSM 2353.04(5)(b)). The Secretary of Agriculture has not has not transferred the management of any specified trail segment of the CDNST to the Secretary of Interior pursuant to a joint memorandum of agreement. (NSTA Sec. 7(a)(1)(B)).

B. Publication of Rights-of-Way

The NTSA states in Section 7(a)(2), "Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register; Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation…." Other sections of the Act provide additional important guidance that is associated with the selection of the rights-of-way, planning, and management of the CDNST, including direction stating: (1) Locating the National Trail corridor, "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;" (2) "Avoiding, to the extent possible, activities along the National Scenic Trail that would be incompatible with the purposes of the CDNST for which it was established;" and (3) "National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail." The selection of the rights-of-way should occur soon after a NST is authorized and designated by Congress, or as in integral part of the timely preparation of the NST Comprehensive Plan. In addition, the selection of the rights-of-way must be consonant of the implications of guidance found in NTSA Section 7(b), 7(d), 7(e), and 7(f).

The CDNST corridor, also known as a National Trail Management Corridor (NTMC),[5] is to be described through the delineation of a MA or NTMC with plan components that provide for the nature and purposes values of this designated NST. To provide for the nature and purposes of the National Trail, several location and management factors should be considered; such as and where reasonable to do so, the MA or NTMC should be located in more primitive Recreation Opportunity Spectrum (ROS) classes; once located the management of the MA or NTMC should provide for a Primitive or Semi-Primitive Non-Motorized experiences. In addition, the CDNST travelway is a concern level 1 travel route and scenic management objectives of high or very high must be met. The boundary of the MA

[5] BLM MS-6280 - National Trail Management Corridor. Allocation established through the land use planning process, pursuant to Section 202 of Federal Land Policy and Management Act and Section 7(a)(2) of the National Trails System Act ("rights-of-way") for a public land area of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.

should follow topographic features to the extent possible, while being at least one-half mile wide on each side of the established and potential locations of the National Trail travel routes. This recommendation is based on ROS criteria that identify remoteness for a Semi-Primitive Non-Motorized setting as: An area at least 1/2-mile but not further than 3 miles from all roads, railroads or trails with motorized use. More than 3 miles would tend to classify the area as Primitive[6] another desirable setting. The Forest Service Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route.[7]

C. Development and Management

The development and management of National Scenic and Historic Trails (NSHT) must be based on many facets of the NTSA, a Comprehensive Plan, other applicable laws, Executive Orders, regulations, and policies. Although, the most important amendment to the NTSA for the CDNST occurred as part of the National Parks and Recreation Act of 1978, which authorized and designated this NST. Planning guidance for the National Trails System and the CDNST has been modified several times since the legislation was enacted in 1968. In 1976, the National Forest Management Act (NFMA) and Federal Land Policy and Management Act (FLPMA) were enacted requiring integrated plans; as such, new and revised NFMA and FLPMA directed land management plans, and the comprehensive planning for NSHTs, are not predisposed by the 1968 NTSA vague statement to, "…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."

Development and management guidance found in the NTSA is summarized below and related to other laws and the CDNST:

(1) The NTSA, as amended, is the principal legislation that influences the development and management of the CDNST. The NTSA Statement of Policy describes the purpose of the legislation in Section 2(a), "In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established… and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located."

(2) The NTSA, Section 3(a)(2) describes location criteria as, "National scenic trails, established as provided in section 5 of this Act, 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…,"

---

[6] FSM 2310.3 – Policy. 1. Use the ROS to establish planning criteria, generate objectives for recreation, evaluate public issues, integrate management concerns, project recreation needs and demands, and coordinate management objectives. 2. Use the ROS system to develop standards and guidelines for proposed recreation resource use and development. 3. Use the ROS system guidelines to describe recreation opportunities and coordinate with other recreation suppliers.... [Policy has been in effect from 1986 to present.] FSM 2311.1 – Reference: ROS User Guide.

[7] Landscape Aesthetics, A Handbook for Scenery Management, Agricultural Handbook Number 701

(3) The NTSA, Section 5(a)(5) states, "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." This provision is addressed in the Comprehensive Plan: "Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable land management plan and: … (5) Is designated in accordance with 36 CFR Part 212, Subpart B, on National Forest System lands or is allowed on public lands and: … (b) That segment of the CDNST was constructed as a road prior to November 10, 1978…" (Comprehensive Plan, Chapter IV(B)(6)). Forest Service policy describes, "Locate a CDNST segment on a road only where it is primitive and offers recreational opportunities comparable to those provided by a trail with a Designed Use of Pack and Saddle Stock…" (FSM2353.44 (b)(2)(8)). Regulations are yet to be prescribed to address the use of motorized vehicles on roads along the CDNST.

(4) The NTSA, Section 7(a)(2) is important for it directs the establishment of the CDNST designated area. "The appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register." This is an essential task that needs to be completed for the CDNST and many other National Trails. The term rights-of-way can be confusing, so the BLM has provided the following clarifying definition.

The NTSA Section 7(a) requirement to select a National Scenic Trail rights-of-way is similar to the Wild and Scenic River Act Section 3(b) requirement to establish a W&SR boundary. Establishing a NST rights-of-way (boundary) that includes identified NST-related values is essential as a basis from which to provide necessary protection. Where private lands are involved, the boundary marks the area within which the manager will focus work with local communities and landowners in developing effective strategies for protection of the NST corridor.

> *"National Trail Right(s)-of-Way*. Term used in Section 7(a)(2) of the National Trails System Act to describe the corridor selected by the National Trail administering agency,… which includes the area of land that is of sufficient width to encompass National Trail resources, qualities, values, and associated settings. The National Trail Right-of-Way, in the context of the National Trails System Act, differs from a Federal Land Policy and Management Act (FLPMA) Title V right-of-way, which is a grant issued pursuant to FLPMA authorities. It becomes a key consideration in establishing the National Trail Management Corridor in a Resource Management Plan" (MS-6280).

(5) The NTSA Section 7(a)(2) further expresses that, "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." The following examines this Section 7(a)(2) sentence, and reviews other planning requirements, to try to better understand the intent and legal requirements of the guidance:

(a) What is a "segment of the National Trails System?" To place this in context, it is important to recognize that the components of the "National Trails System," includes National Recreation Trails (NRTs), National Scenic Trails (NSTs), National Historic Trails (NHT), and Side or Connecting Trails. A simple definition of a segment is, "one of the parts into which something can be divided." The parts of the National Trails System would be each congressionally and administratively designated National Trail component as established per the requirements of the NTSA.

(b) What is intended by the 1968 guidance to, "be designed to harmonize with and complement any established multiple-use plans for that specific area?" Forest Service policy approved by Chief J. Max Peterson interpreted the direction to be as follows: "Development and administration of a National Scenic Trail or National Historic Trail will ensure retention of the outdoor recreation experience for which the trail was established. Each segment of a trail should be designed to harmonize with and complement any established land management plans for that specific area in order to ensure continued maximum benefits from the land. Decisions relating to trail design and management practices should reflect a philosophy of perpetuation the spectrum of recreation objectives envisioned for the trail users. Land management planning should describe the planned actions that may affect that trail and its associated environments. Through this process, resource management activities prescribed for land adjacent to the trail can be made compatible with the purpose for which the trail is established. The objective is to maintain or enhance such values as esthetics, natural features, historic and archeological resources, and other cultural qualities of the areas through which a National Scenic or National Historic Trail goes" (FSM 2353.4(1)(d) – Administration (FSM 1/80 Amend 85 – now expired).

Harmonizing and complementing benefits of an optimum location design of a NST corridor would include the recreation and conservation benefits resulting from: (1) locating the National Trail corridor "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..." (16 U.S.C. 1242(a)(2); (2) avoiding, to the extent possible, activities along the NHT that would be incompatible with the purposes of a NST for which it was established (16 U.S.C. 1246(c)); (3) contributing to achieving historic, outdoor recreation, watershed, and wildlife and fish multiple-use benefits (16 U.S.C. 528); and (4) in general, providing for the nature and purposes of this designated National Trail.

Specific to the National Forest System, the NFMA of 1976 established that Land Management Plans were to provide for one integrated plan. The 1982 NFMA planning regulations directed that, "…requirements for additional planning for special areas shall be met through plans required under this subpart" (36 CFR 219.2(a) [1982]). By no later than 1982 with the establishment of regulations, NFMA controlled processes for

integrated forest planning superseded the 1968 NTSA guidance to, "harmonize with and complement any established multiple-use plans guidance."

(c) What is intended by the guidance, "to insure continued maximum benefits from the land?" This statement reinforces the phrase, "shall be designed to harmonize with and complement any established multiple-use plans." Though, this guidance is vague since "maximum benefits of the land" is not found in the definition of multiple-use as described in the Multiple Use Sustained-Yield Act (MUSYA) of 1960.[8] As stated above, benefits of establishing a National Trail corridor would include the recreation and conservation benefits resulting from: (1) locating the National Trail corridor "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..." (16 U.S.C. 1242(a)(2); (2) avoiding, to the extent possible, activities along the NST that would be incompatible with the purposes of the CDNST for which it was established (16 U.S.C. 1246(c)); (3) contributing to achieving outdoor recreation, watershed, and wildlife and fish multiple-use benefits (16 U.S.C. 528); and (4) in general, providing for the nature and purposes of the designated National Trail.

In 1968 when the NTSA was enacted, the Forest Service was preparing National Forest Unit Plans. In 1978, when the CDNST was designated, regulations were being developed to provide for integrated multiple-use plans as a result of the NFMA (Forest Service) and the Federal Land Policy and Management Act of 1976 (BLM).

The NFMA requires that a Forest Plan address the comprehensive planning and other requirements of the NTSA in order to form one integrated Plan (16 U.S.C. 1604(c) and (f) and 36 CFR 219.2 [1982]). As such, the NTSA guidance that a National Trails System segment be, "designed to harmonize with and complement any established multiple-use plans for that specific area," is not applicable to a new or revised land management plan approved after the passage of NFMA and FLPMA.

Specific to NSTs, an optimum location assessment may find that designing the rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Non-Motorized Recreation ROS settings, and then managing the selected corridor to maintain those ROS settings characteristics, would assure continued benefits of the land that best meet the needs of the American people.

(6) NTSA, Section 7(b) states, "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-

[8] Multiple Use is defined as, "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people ...."

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: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress." This direction on relocations part (I) and (ii) could be useful guidance for selecting the initial rights-of-way. The extent of the initial selected rights-of-way should provide for the possibility of future relocations of the CDNST travel route.

(7) NTSA, Section 7(c) states, "National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited…." This section was also adopted in 1968 and has clear implications to the development and management of NSHTs. It is implicit that the nature and purposes of each designated NSHT be established to not only understand acceptable uses along a National Trail, but also for guiding the selection of the rights-of-way and the establishment of a NSHT management corridor.

In 1978, the NTSA Section 7(c) was amended adding that, "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 administration of the trail." This guidance is not addressed in the CDNST Comprehensive Plan, since nature and purposes substantial interference determinations was already part of the 1968 NTSA direction. However, if the other use was allowed in 1978 by explicit administrative regulations the allowance of such use may be affected by this part.

(8) In 1978, the NTSA was amended adding Section 5(e) and 5(f) to require the development of a Comprehensive Plan directing that, "a comprehensive plan for the management, and use of the trail, including but not limited to, the following items: (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved…and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation; (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act; (3) a protection plan for any high potential historic sites or high potential route segments; and (4) general and site-specific development plans, including anticipated costs." The CDNST Comprehensive Plan is discussed further in the next section.

(9) The 1983 amendment to the NTSA, which added Section 7(j), does not modify the nature and purposes of the CDNST and the guidance in Section 7(c). The added subsection simply lists uses and vehicles that may be permitted on National Trails generally.

(10) In 1983, the NTSA was amended adding Section 7(k) to address the management and development issues associated with private land along a NSHT stating, "For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code of 1954, including, but not limited to, right-of-way, open space, scenic, or conservation easements…." This direction is specific to private land, but identifies the importance "of preserving or enhancing the recreational, scenic, natural, or historical values" along a National Trail.

(11) In 2001, Executive Order 13195 – Trails for America – addressed development and management of NSHTs by directing in Section 1(b), "Protecting the trail corridors associated with national scenic trails...to the degrees necessary to ensure that the values for which each trail was established remain intact...." This E.O. supplements the NTSA by clearly identifying the need to protect NSHT corridors.

(12) In 2009, Omnibus Public Land Management Act (P.L. 111-11, 16 U.S.C. 7202) established National Landscape Conservation System areas on public lands. Section 2002 of this Act describes, in part, "In order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System. (b) COMPONENTS.—The system shall include each of the following areas administered by the Bureau of Land Management: (1) Each area that is designated as— …(D) a national scenic trail or national historic trail designated as a component of the National Trails System;... Furthermore, the legislation states, The Secretary shall manage the system—(1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and (2) in a manner that protects the values for which the components of the system were designated." The Omnibus Public Land Management Act of 2009 resulted in the comprehensive BLM manual series 6250 and 6280 that address the planning, development, and management of NSHTs for the purpose of protecting NSHT values.

The Federal Land Policy and Management Act of 1976, as amended (P.L. 94-579), section 102, states, "regulations and plans for the protection of public land areas of critical environmental concern be promptly developed." In addition, Section 103 describes, "(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required…to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." "In the development and revision of land use plans, the Secretary shall– (3) give priority to the designation and protection of areas of critical environmental concern; …and (9) to the extent consistent with the

laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located…" (FLPMA Section 202) "The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." (FLPMA Section 302)

National Landscape Conservation System landscapes are clearly areas where "special management attention is required" as specified in the FLPMA definition of an Area of Critical of Environmental Concern (ACEC), and in fact, the Bureau of Land Management has already addressed the need for such special attention, as in MS-6250 and MS-6280 with regard to NSHTs. The recognition of NLCS components as ACECs as defined in FLMPA provides a mechanism for the identification of these areas and the protection of their values through the development and implementation of Resource Management Plans.

(13) In 2009, the Chief of the Forest Service amended the Continental Divide National Scenic Trail Comprehensive Plan and issued conforming directives (FSM 2353.01d(5) and FSM 2353.4), which addressed development and management of the CDNST (Federal Register: October 5, 2009 (74 FR 51116)). The 2009 Comprehensive Plan and corresponding FSM 2353 establishes baseline policy and appropriate guidance for "nature and purposes," "visual resource management," "recreation resource management," "motor vehicle use," and "carrying capacity." In addition, the 2009 Comprehensive Plan and FSM policy recognizes the role of substantial interference assessments and determinations when addressing other uses along the CDNST corridor. The final amendments and directives are to be applied through land management planning and project decisions following requisite environmental analysis (74 FR 51124).

(14) In 2012, Forest Service planning directives describe that: "When developing plan components for national scenic and historic trails: The Interdisciplinary Team shall identify Congressionally designated national scenic and historic trails and plan components must provide for the management of rights-of-ways (16 U.S.C 1246(a)(2)) consistent with applicable laws, regulations, and Executive Orders. Plan components must provide for the nature and purposes of existing national scenic and historic trails and for the potential rights-of-way of those trails designated for study." Furthermore, "… The team…, "should use other information to delineate a national scenic and historic trails corridor that protects the resource values for which the trail was designated… The plan must include plan components including standards or guidelines for a designated areas… that describe the national scenic and historic trail and the recreational, scenic, historic, and other resource values for which the trail was designated….

In the "Response to Comments on the Proposed Land Management Planning Directives," January 2015, the Agency mentions National Scenic and Historic Trails in a section titled, Forest

Planning – General Comments – Plan Components, pages 24-25. "Respondents asked that the Agency clarify the following about plan components: clarify enforceability of each plan component; clarify ability of plan components to constrain or prohibit public activities; require documenting assumptions for plan components; provide guidance on evaluating and adopting lower tier components such as trail class, managed uses, designed use, and design parameters and identify prohibited uses for national scenic trails." The response states, "The Agency modified the proposed planning directives by adding a new section at FSH 1909.12, chapter 20, section 24 on designated areas and a specific new section (sec. 24.43) on national scenic and historic trails. FSH 1909.12, chapter 20, section 24.43 emphasizes that plans are to identify and map national scenic and historic trails within the plan area. Plan components must provide for management of the trail consistent with legal authorities and the nature and purposes of existing national scenic and historic trails, and must be consistent with the objectives and practices for the management of the national scenic and historic trails as identified in the most recent comprehensive plan. Comprehensive trail plans are expected to provide for trail management compatible with the plan components of the land management plan."

This response is unclear, since two distinct planning processes are discussed in one passage. A Comprehensive Plan is defined by the NTSA, while a National Forest System (NFS) trail plan is a resource plan, such as establishing Travel Management Objectives (FSM 2353.12). However, it appears that the Agency is committed to (1) providing for the protection of the nature and purposes of National Scenic and Historic Trails and being consistent with each National Scenic or Historic Trail Comprehensive Plan, and (2) NFS trail plans are directed to be consistent with plan components. Comprehensive Plans developed in response to the requirements of the National Trails System Act and Wild and Scenic Rivers Act are not resource plans as defined by the NFMA (16 U.S.C. 1604(i) and 36 CFR 219.15(e)).

CDNST policy and direction is found in the 2009 Comprehensive Plan, FSM 2353.4, FSH 1909.12 section 14, and FSH 1909.12 section 24.43, which in total provides the necessary National Trail policy and management direction for implementing the requirements of the NTSA. FSM 2350 is referenced in FSH 1909.12 section 24.43, which is necessary since the Forest Service Planning Handbook in itself does not contain substantive specialized guidance and instruction for addressing the NTSA in an integrated land management planning process. FSM 1110.3, FSM 1110.8, and FSM 1112.02 have more information about the formulation of directives.

(15) In 2016, The Bureau of Land Management (BLM) amended its regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The associated Federal Register Notice discusses in Section 1610.1-2 Plan components and states that, "A designation highlights these areas to clearly communicate the BLM's intention to prioritize these resource values or resource uses when developing management direction or making future management decisions in the area… Designations include both "planning designations," which are identified through the BLM land use planning process, and "non-discretionary designations," which are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities… Non-discretionary designations are not established or amended through the BLM land use planning process. These non-discretionary designations will, however, be identified in a resource

management plan, and management direction for the designation, including plan components, will be developed, consistent with applicable direction provided in the proclamation, legislation, or order that established the non-discretionary designation…."

"§ 1610.1-2 Plan components… (b) Resource management plans also shall include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield unless otherwise specified by law:

(1) *Designations*. A designation identifies areas of public land where management is directed toward one or more priority resource values or resource uses.

(i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (§ 1610.8-2).

(ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities."

Response to National Trail related comments are found in the document titled, "Response to Public Comments on BLM's Resource Management Planning Rule" and are repeated below:

"Comment: A few comments requested that congressionally designated National Scenic and Historic Trails be identified as non-discretionary designations in the planning rule and that the final rule include language specifying that the identification of trail corridors must be based upon the designating legislation and comprehensive management plan. Comments also suggested the final rule prescribe planning processes regarding National Scenic Trails and other National Conservation Lands in general.

Response: National Scenic and Historic Trails are designated by Congress, and therefore will be considered non-discretionary designations under the final rule. National Scenic and Historic Trail "corridors," however, are designated through resource management planning and are therefore planning designations. The BLM final rule does not add language regarding requirements for establishing trail management corridors, nor does it specifically call out National Scenic and Historic Trails as an example of a non-discretionary designation. These examples and requirements are more appropriately addressed through guidance (see MS-6250 National Scenic and Historic Trail Administration and MS-6280 Management of National Scenic and Historic Trails and Trails Under Study or Recommended as Suitable for Congressional Designation). Planning processes regarding National Scenic and Historic Trails or other National Conservation Lands must comply with the requirements of this part." (Page 123)

"Comment: One comment suggested that the BLM use and refer to National Conservation Lands policies as a model for landscape-scale planning in the rule and Land Use Planning Handbook. The National Conservation Lands 15-year strategy's goals include an emphasis on an ecosystem-based approach; the adoption of a cross-jurisdictional, community based approach to landscape-level planning and management; working with Congress, governments, and the public to identify and protect lands critical to landscape sustainability; and the adoption of a community-based approach to recreation and visitor services delivery. A few comments requested that the revised Land Use Planning Handbook clearly adopt or specifically invoke land use planning direction found or referenced in National Landscape Conservation System directives MS-6100, MS-6250, and MS-6280. The comments noted that this language is important to integrated resource management

planning from a conservation standpoint and is important to planning and management of national trails as ACECs.

Response: The final rule and Land Use Planning Handbook revision builds upon lessons learned from BLM projects, programs, planning efforts, and initiatives including the National Landscape Conservation System's 15-year strategy. Further, many of the goals presented in the 15-year strategy are shared by Planning 2.0, such as landscape-scale planning and increased public involvement. The BLM expects that the Land Use Planning Handbook revision will incorporate program-specific guidance, such as for National Scenic and Historic Trails and the National Landscape Conservation System. While it is not appropriate to include all BLM program directives in this rulemaking, the BLM recognizes the importance of integrated resource management planning and will continue to use the agency manuals referenced above where applicable."

These responses reinforce the expectation that the policy direction found in BLM directives MS-6250 and MS-6280 will be recognized when revising Resource Management Plans. The forthcoming BLM Land Use Planning Handbook should strengthen the land use planning integration guidance for National Trails.

D. CDNST Comprehensive Planning

The Bureau of Outdoor Recreation, pursuant to 16 U.S.C. 1244(b), prepared a Study Report for the CDNST that was completed in 1976. The Chief of the Forest Service adopted the 1976 CDNST Study Report and 1977 CDNST Final Environmental Statement on August 5, 1981 (46 FR 39867). Consistent with the Study Report, the Chief amended the 1985 CDNST Comprehensive Plan and issued conforming FSM 2353.4 policy in 2009.

Comprehensive plan requirements (16 U.S.C. 1244(f)) for the CDNST are addressed through staged or stepped-down decision processes: (1) the 2009 Comprehensive Plan established broad policy and procedures including identifying the nature and purposes, (2) land management plans guide all natural resource management activities and establish management standards (aka thresholds) and guidelines for the National Forest System, provide integrated resource management direction for designated areas, and address programmatic planning requirements as described in the Comprehensive Plan (Chapter IV), and (3) mid-level and site-specific plans complete the comprehensive planning process through field-level actions to protect the corridor and then maintain or construct the travel route (FSM 2353.44b part 2). Staged and stepped down decision processes could appear to support the notion that the comprehensive plans are simply resource plans that must be consistent with and inferior to the land management plan direction. Instead, this is an administrative approach to incrementally step through the comprehensive planning process that is required by the NTSA. **Exhibit 1** depicts an integrated planning strategy for the CDNST. This strategy does not diminish the *discrete agency action* that is required by the NTSA Section 5(f) to prepare one Comprehensive Plan for the CDNST.

"The [2009] final amendments to the CDNST Comprehensive Plan and corresponding directives… provide guidance to agency officials implementing the National Trails System Act. The final amendments are consistent with the nature and purposes of the CDNST identified in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement adopted by the Forest

Service in 1981 (40 FR 150). The final amendments and directives will be applied through land management planning and project decisions following requisite environmental analysis" (74 FR 51124).

Exhibit 1. National Trails System Act – CDNST Comprehensive Planning Staged Decisionmaking

2009 Comprehensive Plan Stage 1	Land Management Plan Stage 2	CDNST Field-Level Plan Stage 3

The comprehensive plan establishes national direction (FSM 2353.01d(5)) that implements foundational provisions of the National Trails System Act, which includes establishing:
• The Nature and Purposes of the CDNST
• Location Guidance for selecting the Rights-of-Way Corridor[9]
• Provides Resource Management Guidance for:
  ○ Visual Resource
  ○ Recreation Resource
  ○ Motorized Use
  ○ Special Use Permits
  ○ Trail and Facilities
  ○ Carrying Capacity
  ○ Monitoring and Evaluation
  • Supported by the 1976 CDNST Study Report, 1977 CDNST Final Environmental Statement and E.O. 13195 – Trails for America, and was established through a 36 CFR 216 / 5 U.S.C. 553 public involvement process.
	Land management planning implements the Comprehensive Plan guidance and provides for integrated programmatic direction that is consistent with the NTSA, NFMA, FLPMA or National Parks and Recreation Act, E.O. 13195, and agency specific regulations (e.g., 36 CFR 219) and policies (e.g., FSM 2353.4 and BLM MS-6280):
	• Identifies and preserves significant natural, historical, and cultural resources.
	• Establishes the extent of the CDNST Management Area (FS) or National Trail Management Corridor (BLM).
	• Provides for protecting or achieving the nature and purposes through establishing supporting plan components:
	  ○ Desired Conditions
	  ○ Objectives
	  ○ Standards (Thresholds)
	  ○ Guidelines
	  ○ Monitoring
	• Developed following programmatic Environmental Impact Statement processes that emphasize ROS and Visual Quality planning principles, and addresses *management actions* and *other uses* that may be allowed (16 USC 1246(c)).
		Field-level site-specific planning that is consistent with the Comprehensive Plan, and agency regulations and policies:
		• Identifies and preserves significant natural, historical, and cultural resources (site-specific).
		• Identifies and displays the segments of the CDNST that traverse the unit.
		• Establishes the Trail Class, Managed Uses, Designed Use, and Design Parameters for the segments of the CDNST that traverse the unit and identifies uses that are prohibited.
		• Provides for development, signing, construction, and maintenance.
		• Establishes carrying capacity (LAC) for segments.
		• Establishes monitoring programs to evaluate site-specific conditions.
		• Developed following site-specific Environmental Impact Statement or Environmental Assessment processes that emphasize ROS and Visual Quality planning principles, and addresses *implementation actions* and *other uses* that may be allowed (16 USC 1246(c)). Prescribe regulations governing the use, protection, management, development, and administration (16 USC 1246(i)).

CDNST comprehensive planning Stages 2 and 3 may be combined if requisite programmatic and site-specific NEPA requirements are satisfied.		

Visual Resource Management is addressed in the CDNST Comprehensive Plan in Chapter IV(B)(4), page 13. Management direction in Part c as, "(1) On National Forest System lands, the visual resource inventory will follow the procedures outlined in Forest Service Manual 2380, and appropriate handbook guidelines. The CDNST is a concern level 1 travel route, and the scenic integrity objective is to be high or very high depending on the CDNST segment. The inventory will be performed as if the

[9] The selection of the rights-of-way (Section 7(a)(2)) should occur soon after a National Scenic Trail is authorized and designated by Congress; however, this did not occur for the CDNST.

trail exists even in sections where it is proposed for construction or reconstruction. (2) On public lands administered by the Bureau of Land Management, the visual resource inventory will follow the procedures outlined in BLM Manual Section 8400. The inventory shall be conducted on the basis that the CDNST is a high sensitivity level travel route and will be performed as if the trail exists even in sections where it is proposed for construction or reconstruction."

Because vegetation is ephemeral and may disappear due to factors such as insects, disease and fire, visual analysis should not consider current vegetation in establishing distance zones or the trail corridor. Another consideration is that the, "middleground is usually the predominant distance zone at which national forest landscapes are seen, except for regions of flat lands or tall, dense vegetation. At this distance, people can distinguish individual tree-forms, large boulders, flower fields, small openings in the forest, and small rock outcrops. Tree-forms typically stand out vividly in silhouetted situations. Form, texture, and color remain dominant, and pattern is important. Texture is often made up of repetitive tree-forms. In steeper topography, a middleground landscape perspective is similar to an aerial one. Because the viewer is able to see human activities from this perspective in context with the overall landscape, a middleground landscape having steep topography is often the most critical of all distance zones for scenery management" (Landscape Aesthetics Handbook, page 4-12).

Recreation Resource Management is addressed in the CDNST Comprehensive Plan in Chapter IV(B)(5), page 14. Policy is described in Part b as, "(1) Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST." Primitive means, "of or relating to an earliest or original stage or state." (74 FR 51116)

Management direction is described in the Comprehensive Plan, Chapter IV(B)(5)(c), page 16. "(1) Use the ROS system in delineating and integrating recreation opportunities in managing the CDNST. Where possible, locate the CDNST in Primitive or Semi-Primitive Non-Motorized ROS classes; provided that the CDNST may have to traverse intermittently through more developed ROS classes to provide for continuous travel between the Canada and Mexico borders." All ROS classes are summarized in this section of the Comprehensive Plan to assure that identical definitions are used across administrative units; this summary is not to be construed as indicating a desirability or compatibility of managing the CDNST corridor to provide for Semi-Primitive Motorized, Roaded Natural, and Rural ROS class conditions. Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that would substantially interfere with the nature and purposes of the CDNST if the allocation desired conditions are realized. Primitive and Semi-Primitive Non-Motorized ROS classes generally provide for desired experiences where the allowed non-motorized activities reflect the purposes for which the National Trail was established.

In some landscapes resource developments and use have degraded National Trail values and in these areas it may be prudent for to adopt a nondegradation strategy for the National Trail corridor. The nondegradation concept calls for maintenance of present resource conditions if they equal or exceed minimum conditions and restoration where conditions are below-minimum levels.

The 2009 CDNST Comprehensive Plan direction is consistent with the guidance in the NTSA, NFMA, FLPMA, and NEPA and should be followed. Furthermore, policy found FSM 2353.4 (Forest Service) and MS-6280 (BLM) should guide the development and management of the CDNST. The establishment of CDNST MAs and NTMCs, with appropriate plan components, could facilitate comprehensive planning, selecting and publishing the rights-of-way in the Federal Register, and meet attached NEPA requirements.[10]

E. Scenery Management System and Recreation Opportunity Spectrum Relationship

Forest Service planning requirements for scenery, aesthetic values, and viewsheds…is address in FSH 1909.12 23.23f, while sustainable recreation resources and opportunities is addressed in FSH 1909.12 23.23a.

The relationship between the Scenery Management System and the Recreation Opportunity Spectrum systems are discussed in the Landscape Aesthetics Handbook. Landscape Aesthetics - A Handbook for Scenery Management (Agricultural Handbook Number 701); Appendix F - 1 - Recreation Opportunity Spectrum:

"Recreation planners, landscape architects, and other Forest Service resource managers are interested in providing high quality recreation settings, experiences, and benefits for their constituents. This is accomplished, in part, by linking the Scenery Management System and the Recreation Opportunity Spectrum (ROS) System. In addition, providing a single constituent inventory and analysis for both systems is helpful in coordinating management practices.

Esthetic value is an important consideration in the management of recreation settings. This is especially so in National Forest settings where most people expect a natural appearing landscape with limited evidence of "unnatural" disturbance of landscape features…

Although the ROS User's Guide mentions the need for establishing a value for different landscapes and recreation opportunities within a single ROS class in the attractiveness overlay, there is currently no systematic approach to do so. For instance, in most ROS inventories, all lands that are classified semi-primitive non-motorized are valued equally. Some semi-primitive non-motorized lands are more valuable than others because of existing scenic integrity or scenic attractiveness. The Scenery Management System provides indicators of importance for these in all ROS settings. Attractiveness for outdoor recreation also varies by the variety and type of activities, experience, and benefits possible in each setting…

In the past, there have been apparent conflicts between The Visual Management System sensitivity levels and ROS primitive or semi-primitive classes. One apparent conflict has been where an

[10] Under the National Environmental Policy Act (NEPA), when a federal agency does not make an "overt act," no NEPA requirement to prepare an Environmental Impact Statement (EIS) attaches. However, if some agency action was mandated under a separate statute in relation to that activity but the action was not taken, NEPA does attach and the Administrative Procedure Act applies (40 CFR 1508.18 and 5 U.S.C. 706). The NTSA presents an independent planning requirement to prepare and implement a comprehensive plan, select the rights-of-way, and in general provide for the nature and purposes of the CDNST.

undeveloped area, having little existing recreation use and seldom seen from sensitive travel routes, was inventoried using The Visual Management System. The inventory led to a "sensitivity level 3" classification, and thus apparently contradicted ROS inventory classes of primitive or semi-primitive non-motorized or semi-primitive motorized. Using criteria in The Visual Management System, in a variety class B landscape with a sensitivity level 3, the initial visual quality objective is "modification" or "maximum modification," depending on surrounding land classification. However, because of factors such as few social encounters, lack of managerial regimentation and control, and feelings of remoteness, the same area having little existing recreation use may establish an ROS primitive, semi-primitive nonmotorized, or semi-primitive motorized inventory classification. There have been concerns over the premise of The Visual Management System that the visual impact of management activities become more important as the number of viewers increases; yet The ROS System emphasizes solitude, infrequent social encounters, and naturalness at the primitive end of the spectrum, with frequent social encounters and more evident management activities at the urban end. Value or importance are dependent on more than the number of viewers or users, and the key is that both the Scenery Management System and ROS are first used as inventory tools. Land management objectives are established during, not before, development of alternatives. Where there does appear to be a conflict in setting objectives for alternative forest plans, the most restrictive criteria should apply. An example might be an undeveloped land area in a viewshed managed for both middleground partial retention and semi-primitive non-motorized opportunities. Semi-primitive non-motorized criteria are usually the more restrictive.

The Scenery Management System and ROS serve related, but different, purposes that affect management of landscape settings. In some cases, ROS provides stronger protection for landscape settings than does the Scenery Management System. This is similar to landscape setting protection provided by management of other resources, such as cultural resource management, wildlife management, and old-growth management. In all these examples, there may be management directions for other resources that actually provide higher scenic integrity standards than those reached by the Scenery Management System. Different resource values and systems (the Scenery Management System, the ROS System, cultural resource management, wildlife management, and old growth management) are developed for differing needs, but they are all systems that work harmoniously if properly utilized. In all these examples, there are management decisions made for other resources that result in protection and enhancement of landscape settings."

F. Carrying Capacity

National Trails System Act[1], sections 5(e) and 5(f), direct that a Comprehensive Plan for a national trail, "identify carrying capacity of the trail and a plan for its implementation." This is similar to Section 3(d)(1) of the Wild and Scenic Rivers Act (WSRA)[11] that directs federal river-administering agencies to "address…user capacities" in a Comprehensive River Management Plan prepared for each component of the National Wild and Scenic Rivers System. The NTSA and WSRA do not define "carrying capacity" or "user capacities," but recent litigation has focused primarily on the recreational

[11] 16 U.S.C. §1271-1278; Public Law 90-542 (October 2, 1968) and amendments.

use.[12] The scope of "carrying capacity" and "user capacity" broadly includes visitor use, other public use, and administrative use, but with particular emphasis on the recreational aspect.

Carrying capacities are an integral part of the management approaches identified in a Comprehensive Plan to protect and enhance NST nature and purposes. The nature and purposes of a NST are also known as NST values. The values of NSTs include: (1) visitor experience opportunities and settings, and (2) the conservation and protection of scenic, natural, historical, and cultural qualities of the corridor. Furthermore, the NTSA goes beyond ROS descriptors requiring the protection of significant resources and qualities along the National Trail corridor.

Visitor use management practices need to be sensitive to situations where there is an asymmetric nature of a conflict, especially where there is a one-way relationship where the primary use is sensitive to a secondary use. In those situations, monitoring and adaptive management actions should ensure that the secondary use doesn't substantially interfere with maintaining the primary purposes and values.

Addressing visitor capacities requires managers to assess impacts from both established uses and potential new uses. It can be a challenging task because of the complex relationship between human uses and national trail values. The capacity to absorb use without substantial impacts to resources and visitor experiences is dependent on myriad interrelated factors that should be addressed through NEPA planning processes.

G. Substantial Interference

Black's law dictionary defines substantial evidence as the amount of evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more that a mere scintilla. BLM directive MS-6280 define substantial interference in relation to nature and purposes:

- *Substantial Interference*. Determination that an activity or use affects (hinders or obstructs) the nature and purposes of a designated National Trail.
- *Nature and Purposes*. The term used to describe the character, characteristics, and congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; the primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of National Trails.

Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that would substantially interfere with the nature and purposes of the CDNST if the allocation desired conditions are realized. Where the allowed non-motorized activities reflect the purposes for which the National Trail was established, the establishment of Primitive and Semi-

[12] *See Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9th Cir. 2008); *American Whitewater v. Tidwell*, (D.S.C. 2012).

Primitive Non-Motorized ROS classes and high and very high scenic integrity allocations would normally protect the nature and purposes (values) of the CDNST.

How are inconsistencies addressed in providing for desired settings along the National Scenic Trail? An inconsistency is defined as a situation in which the condition of an indicator exceeds the range defined as acceptable by the management guidelines. For example, the condition of the indicators for the National Trail corridor may all be consistent with its management as a semi-primitive non-motorized area with the exception of the presence of a trailhead and access road. In such a case, what are the implications of the inconsistency? Does the inconsistency benefit or interfere with the nature and purposes of the National Trail? What should be done about the inconsistency? Three general kinds of actions are possible. First, perhaps nothing can or should be done. It may be concluded that the inconsistency will have little or no effect on the area's general character. Or, the agency may lack jurisdiction over the source of the inconsistency. A second response is to direct management action at the inconsistency to bring it back in line with the guidelines established for the desired ROS class. The main point to be understood with regard to inconsistencies is that they may be managed. The presence of one does not necessarily automatically lead to a change in ROS class. By analyzing its cause, implications, and possible solutions, an inconsistency can be handled in a logical and systematic fashion.

Land management plans should establish desired conditions and standards and guidelines that preserve and promote the nature and purposes of the CDNST. Specific interference thresholds should be established during the development of a land management plan. Further, the determination of carrying capacity is integral to protecting CDNST values.

H. Forest Service Planning Considerations

Forest Service – The following describes common considerations and elements of what could be expected for (or lead to) locations and Plan components that would be applied to a Management Area to achieve the nature and purposes of the CDNST:

Forest Service land management plans shall form one integrated plan for each unit (16 U.S.C. 1604(f)(1)). The plan must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows: ... (b)... (1) The plan must include plan components, including standards or guidelines, to provide for: (i) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character..., and (vi) appropriate management of other designated areas or recommended designated areas in the plan area...(36 CFR 219.10(b)(i)&(vi)). The CDNST is a congressionally designated area (36 CFR 219.19).

On National Forest System lands, a Management Area (MA) is to be established for existing CDNST rights-of-way corridors (FSM 2353.44b(1)). For CDNST sections that pass through the planning unit, plan components must include management and use direction (16 U.S.C. 1244(f)) for the rights-of-way that provide for the nature and purposes of this National Trail (16 U.S.C. 1246). In addition to having appropriate direction in LMPs, some actions are only allowed or are dependent on the approval of a CDNST unit plan (FSM 2353.44(b)(2)) as either an independent site-specific plan or as an

integrated part of a Forest Plan with the requisite NEPA analysis; this would include a decision that allows bicycle use (FSM 2353.44b(10)) and motor vehicle use (FSM 2353.44b(11)).

Forest Service directives FSM 2310 and FSM 2380 describe recreation and scenery planning policy.

- FSM 2310.3 - Policy…
    1. Use the Recreation Opportunity Spectrum (ROS) to establish planning criteria, generate objectives for recreation, evaluate public issues, integrate management concerns, project recreation needs and demands, and coordinate management objectives.
    2. Use the ROS system to develop standards and guidelines for proposed recreation resource use and development.

Forest Service directives FSM 2350 and a Federal Register Notice provides important planning direction.

- FSM 2350 [WORD] - CDNST Policy excerpts [WORD] - Approved by Acting Associate Deputy Chief Richard W. Sowa
- Federal Register - Notice of Final Amendments to Comprehensive Plan and Final Directives [TEXT] - Approved by Associate Chief Hank Kashdan, Vol. 74, No. 191, Monday, October 5, 2009

Forest Plan Components

Recommendations for CDNST plan components as applied to a MA are described in the following table.

CDNST LMP MA Desired Conditions

Descriptions
Consistent with the CDNST Comprehensive Plan, the MA provides high-quality scenic, primitive hiking and horseback riding opportunities and conserves natural, historic, and cultural resources (CDNST Comprehensive Plan, Chapter IV(A)). The CDNST corridor provides panoramic views of undisturbed landscapes in a tranquil scenic environment. The corridor is of sufficient width to encompass national trail resources, qualities, values, associated settings and the primary use or uses. This includes vistas, campsites, water sources, and other important resource values. Desired conditions are principally characterized by Primitive and Semi-Primitive Non-Motorized ROS settings. These settings provide for the following conditions:
Primitive ROS settings encompass large, wild, remote, and predominately unmodified landscapes. These settings often coincide with designated Wilderness. They provide quiet solitude away from roads and others groups, are generally free of human development, and facilitate self-reliance and discovery. Signing, and other infrastructure is minimal and constructed of rustic, native materials. Feelings of physical achievement and self-reliance is an important part of the experience offered. Ecological processes such as fire, insects, and disease exist.
Semi-Primitive Non-Motorized ROS settings provide opportunities for exploration, challenge,

and self-reliance. Rustic structures such as signs and foot bridges are occasionally present to direct use and protect the setting's natural and cultural resources. These rustic constructed features are built from native materials or those that mimic native materials. Restored or revegetated closed roads may be present but do not dominate the landscape or detract from the SPNM experience of visitors. These settings are free of motorized travel. Opportunities for solitude and exercising outdoor skills will be present, but the areas are not as remote as in the primitive class. Ecological processes such as fire, insects, and disease exist.

CDNST LMP MA Objectives

Descriptions
Complete the CDNST unit plan (FSM 2353.44(b)(2)) within three years.[13] [Example of stepped-down and staged planning and decision-making.]
Complete the CDNST travel route through the MA within five years. [Example of proposed and possible actions.]

CDNST LMP MA Standards or Guidelines

Descriptions - See FSM 1110.8 for Degree of Compliance or Restriction "Helping Verbs" and "Mood of Verb" Definitions
Scenery Management
Manage the CDNST travelway as a concern level 1 travel route. Resource management actions must meet a Scenic Integrity Level of Very High or High (CDNST Comprehensive Plan, Chapter IV(B)(4)).
Recreation Management
Resource manage actions and allowed uses must be compatible with maintaining or achieving Primitive or Semi-Primitive Non-Motorized ROS class settings, except motor vehicle use is allowed if such use is in accordance with the CDNST Comprehensive Plan, Chapter IV(B)(6) and FSM 2353.44b(11).
Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST (CDNST Comprehensive Plan, Chapter IV(B)(5), FSM 2353.42 and FSM 2353.44b(8)).
Motorized and mechanized use may only be allowed where such use is in accordance with CDNST Comprehensive Plan, Chapter IV(B)(5)&(6) and FSM 2353.44b(10) and (11).
If the interval between natural water sources is excessive, consider developing and protecting water sources for hikers and pack and saddle stock use (FSM 2353.44b(9)).
Special Uses Management
Activities, uses, and events that would require a permit must not be authorized unless the activity, use, or event contributes to achieving the nature and purposes of the CDNST (CDNST Comprehensive Plan, Chapter IV(B)(7)).
Minerals Management
Mineral leases are to include stipulations for no surface occupancy.

[13] This stage of stepped-down planning step could be addressed in a Forest Plan if supported by the Forest Plan EIS.

Permits for the removal of mineral materials are not to be issued.
Mineral withdrawals should be enacted in areas with a history of locatable mineral findings.
Timber Management
Lands are not suitable for timber production. Timber harvest is not scheduled and does not contribute to the allowable sale quantity.
Vegetation Management
Vegetation may be managed to enhance CDNST values, such as to provide vistas to view surrounding landscapes and to conserve natural resources.
Vegetation may be managed to maintain or improve threatened, endangered, and sensitive species habitat.
Rangelands where affected by livestock use must be maintained in a Proper Functioning Condition.
Cultural and Historic Resources Management
Protect cultural and historic resources. Interpret National Historic Trails and sites.
Lands Acquisition
Provide for land acquisitions to protect the nature and purposes of the National Trail. Prohibit land disposals.
Travel Routes
Segments of the CDNST should fall into Trail Class 2 or 3 and have a Designed Use of Pack and Saddle Stock, except where a substantial safety or resource concern exists, the travel route may have a Designed Use of Hiker/Pedestrian (FSH 2309.18).
Road construction and reconstruction is prohibited; excepted are motor vehicle use circumstances described in CDNST Comprehensive Plan Chapter IV(B)(6) and FSM 2353.44b(11).
The CDNST travel route may not be used for a livestock driveway.
Fire Suppression
Fire suppression activities should apply the Minimum Impact Suppression Tactics Implementation Guidelines.
Motor Vehicle Use
The use of motorized vehicles by the general public is prohibited; excepted is motor vehicle use that is in accordance with the 2009 CDNST Comprehensive Plan provisions as detailed in Chapter IV(B)(6). [14]
Other Uses Considerations
Other uses that could conflict with the nature and purposes of the CDNST may be allowed only where there is a determination that the other use would not substantially interfere with the nature and purposes of the CDNST (16 USC 1246(c)).

[14] In 1978, the NTSA Section 7(c) was amended adding that, "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 administration of the trail." This guidance is not addressed in the CDNST Comprehensive Plan, since nature and purposes substantial interference determinations was already part of the 1968 NTSA direction. However, where the other use was allowed in 1978 by explicit administrative regulations the allowance of such use may be affected by this part.

National Scenic Trail corridors might overlap with Wilderness and Wild and Scenic River designations. Where this occurs, the most restrictive measures control.

CDNST LMP MA Implementation Guidance

Partnerships and volunteers are sustained or sought to lead and assist in CDNST programs. Volunteer and cooperative agreements will be developed with those volunteers and private organizations that are dedicated to planning, developing, maintaining, and managing the CDNST in accordance with Sections 2(c), 7(h)(1), and 11 of the NTSA.

The direction in the NTSA, 2009 CDNST Comprehensive Plan, FSM 2310, FSM 2353.4, and FSM 2380 are used to guide the development and management of the Trail.

I. Bureau of Land Management Planning Considerations

Bureau of Land Management, Resource Management Plan, National Trail Management Corridor – Locating the CDNST Corridor

CDNST corridor objectives should be addressed through the delineation of a National Trail Management Corridor (NTMC) with Resource Management Plan (RMP) components (prescriptions) that provide for the nature and purposes of the CDNST. To provide for the nature and purposes of the CDNST, several location and management factors should be considered, such as the CDNST corridor should be located in more primitive ROS classes and once located the management of the CDNST corridor should provide for a Primitive or Semi-Primitive Non-Motorized experiences to extent practicable (ROS classes are described in the CDNST Comprehensive Plan, Chapter IV(B)(5)). In addition, visual resource management objective class I or II must be met along the CDNST travel route where on federal lands. The NTMC may also be established as an Area of Critical of Environmental Concern.

The boundary of the NTMC should follow topographic features to the extent possible, while being at least one-half mile wide on each side of the established and potential locations of the CDNST travel routes where there is management discretion. This is based on Recreation Opportunity Spectrum (ROS) criteria that identify remoteness for a Semi-Primitive Non-Motorized setting as: "An area designated at least 1/2-mile but not further than 3 miles from all roads, railroads or trails with motorized use; can include the existence of primitive roads if closed to motorized use." The FS Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route.

Bureau of Land Management – The following describes common considerations and elements of what could be expected for (or lead to) National Trail Management Corridor and prescriptions to achieve the nature and purposes of the CDNST:

Bureau of Land Management, RMP NTMC Theme and Setting

The CDNST NTMC Area of Critical of Environmental Concern provides for a ROS setting that is consistent with the requirements of a NST. The CDNST is managed to provide for recreation

opportunities in a natural appearing landscape. The landscape generally has a predominantly natural appearance where the valued landscape character is or appears intact.

Bureau of Land Management, RMP NTMC Desired Conditions

The NTMC provides high-quality scenic, primitive hiking and horseback riding opportunities and conserves natural, historic, and cultural resources.

A variety of compatible non-motorized recreation opportunities are provided. Concentrations of users are low and opportunities for solitude and exercising outdoor skills will be present. Improvements such as trailheads, trails, signs, and bridges that enhance the recreation opportunities could be present.

The NTMC is characterized by a predominantly natural appearing environment. Vegetation alterations could be present to enhance viewing opportunities and to maintain vegetative diversity. Ecological processes such as fire, insects, and disease exist.

The extent of the CDNST NTMC should be at least one-half mile on both sides of the CDNST travel route, while additional management direction is prescribed for adjacent areas to assure that the CDNST NTMC VRM objectives are met.

NTMC Plan Components

Recommendations for CDNST plan components are described in the following table.

CDNST NTMC PRIMARY PURPOSE
1. The CDNST NTMC purpose is to address the requirements of the National Trails System Act as implemented through the 2009 CDNST Comprehensive Plan. 2. The primary purpose is to administer the CDNST consistent with the nature and purposes for which this National Scenic Trail was established. The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.
CDNST NTMC OBJECTIVES
1. Provide opportunities to experience available examples of the diversity of topographic, geologic, fish, wildlife, vegetation, and scenic phenomenon along the Continental Divide. 2. Maintain and enhance recreation opportunities for residents and visitors to the area to accommodate hiking, horseback riding, camping, wildlife viewing, and other compatible uses in prescribed settings so visitors are able to realize experiences and benefits. 3. Provide Primitive or Back Country classification recreation setting opportunities. 4. Meet the VRM objective class I or II objective in the foreground area (0 - 3 miles) and the VRM objective class I, II, or III in the middle ground area (3 - 5 miles). 5. Promote and demonstrate natural resources Best Management Practices. 6. Sustain or develop partnerships and cooperative management programs with adjacent landowners and volunteers.

CDNST NTMC RECREATION SETTING CHARACTERISTIC DESCRIPTIONS
1. The NTMC is managed to protect the CDNST corridor and user experiences as defined for Primitive and Backcountry areas, while recognizing that the travel route intermittently passes across developed roads, recreation sites, and more developed areas. 2. The NTMC is managed to provide opportunities for trail users to experience and view the diverse topographic, geographic, vegetation, fish, wildlife, and scenic phenomena that characterize the Continental Divide and to conserve natural, historic, and cultural resources. In addition, scenery is managed in adjacent areas to achieve CDNST NTMC VRM objectives.
CDNST NTMC MANAGEMENT ACTIONS AND RESOURCE USE DETERMINATIONS[15]
1. Resource uses must contribute to meeting Primitive or Back Country recreation setting objectives. 2. Resource uses must meet the VRM Class objectives. The degree of contrast in the foreground and middleground for management actions and developments must be none or weak. The degree of contrast in the background for management actions and developments should be none, weak, or moderate. 3. If the interval between natural water sources is excessive, consider developing and protecting water sources for hikers and pack and saddle stock use. 4. The use of motorized vehicles by the general public is prohibited; excepted is motor vehicle use that is in accordance with the 2009 CDNST Comprehensive Plan provisions as detailed in Chapter IV(B)(6). 5. The NTMC may be open to oil and gas leasing with a NSO stipulation. Any existing oil and gas leases must be intensively managed and monitored. 6. Best Management Practices must be applied to all resource management projects and activities. 7. The NTMC must be closed to mineral material disposal. 8. Mineral withdrawals should be enacted for areas with a history of locatable mineral findings. In addition, a withdrawal should be obtained where relocation of the CDNST would not be practical if a mineral development occurred. 9. Land exchanges and rights-of-way acquisitions should be pursued with cooperative landowners to improve the continuity of the CDNST corridor and benefit the nature and purposes of the CDNST. 10. Other resource uses along the CDNST are only allowed where there is a determination that the other use would not substantially interfere with the nature and purposes of the CDNST (16 USC 1246(c)).[14] The U.S. Forest Service (administrating agency) should concur with substantial interference determinations for major Federal actions.

[15] Resource use determinations. A resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. Resource use determinations shall be consistent with or support the management priorities identified through designations. 43 U.S.C. 1610.1-2 (b)(2)

11. National Scenic Trail corridors might overlap with Wilderness and Wild and Scenic River designations. Where this occurs, the most restrictive measures control.

CDNST NTMC IMPLEMENTATION ACTIONS

1. Trail Class, Managed Uses, Designed Use, and Design Parameters must be established and identify any Prohibited Uses of the CDNST travel route.
2. The CDNST travel route must be developed, constructed, signed, and maintained.
3. Carrying capacity for the NTMC must be established. The Limits of Acceptable Change or a similar system may be used for this purpose.
4. Preservation of any significant natural, historical, and cultural resources must occur within the NTMC.
5. Native vegetation must be restored and noxious weeds and invasive species controlled.
6. The CDNST must be relocated from roads to trails.
7. Motor vehicle travel routes should be identified and travel management decisions must be made.
8. Needed mineral withdrawals must be implemented.
9. Visitor information should be provided, especially where the CDNST coincides with National Historic Trails.
10. Monitoring programs must be implemented to evaluate the site-specific conditions of the CDNST.
11. Fire suppression activities should apply the Minimum Impact Suppression Tactics Implementation Guidelines.
12. Partnerships and volunteers should be sought to lead and assist in CDNST programs. Volunteer and cooperative agreements will be developed with those volunteers and private organizations that are dedicated to planning, developing, maintaining, and managing the CDNST in accordance with NTSA Sections 2(c), 7(h)(1), and 11.
13. The direction in the NTSA, 2009 CDNST Comprehensive Plan, and MS-6280 must be used to guide the development and management of the Trail.

J. National Park Service Planning Considerations

Prior to undertaking an action that may substantially interfere with the nature and purposes of the CDNST, the National Park Service Director must revise or amend the unit General Management Plan to recognize the CDNST as a congressionally designated area. The GMP must be in compliance with the National Park System Development Program regulations (16 U.S.C. § 1a-7) and the NTSA as implemented through direction in the CDNST Comprehensive Plan. Foundation Documents for NPS units should also address the significance of CDNST, as applicable. Once programmatic direction is established in the General Management Plan, CDNST site-specific protection and development plans should be established that provide for the values of this National Scenic Trail.

General Management Plan — "This is a broad umbrella document that sets the long-term goals for the park based on the foundation statement. The general management plan (1) clearly defines the desired natural and cultural resource conditions to be achieved and maintained over time; (2) clearly defines the necessary conditions for visitors to understand, enjoy, and appreciate the park's significant

resources, and (3) identifies the kinds and levels of management activities, visitor use, and development that are appropriate for maintaining the desired conditions; and (4) identifies indicators and standards for maintaining the desired conditions. For wild and scenic rivers and national trails, the analogous documents are a comprehensive river management plan and comprehensive management plan, respectively. Each of these plans has requirements very similar to a general management plan, so units usually refer to these plans as GMPs. Additional requirements for river and trail studies are covered in the Wild and Scenic Rivers Act and the National Trails System Act." (NPS, Park System Planning, 2.2)

K. Rights-of-Way Recommendations

The Chief of the Forest Service has reserved the authority to select the final NTSA section 7 rights-of-way. Revised or amended Forest Plans, BLM Resource Management Plans, and NPS General Management Plans should result in CDNST rights-of-way recommendations (CDNST Comprehensive Plan, Chapter III(F)). Revised or amended land management plans should identify the adopted CDNST management direction as binding, while also recognizing that the CDNST rights-of-way recommendation will receive further review and possible modification by the Chief of the Forest Service after consultation with the BLM and NPS, if appropriate. Any change to the land management plan should be implemented through plan amendment processes.

L. Establishing the CDNST Travel Route (1989 – 1998)

After the adoption of the 1985 CDNST Comprehensive Plan there were several assessments to find routes for CDNST travel ways. These assessments included the following and other efforts to establish CDNST route:

- Decision Notice and FONSI for Continental Divide National Scenic Trail Montana – Idaho Section, April 1989
- Continental Divide National Scenic Trail Decision Notice and FONSI, Central New Mexico Section, Cibola Planning Segment, December 1992
- Record of Decision, Continental Divide National Scenic Trail, Wyoming and Colorado Segment, Final Environmental Impact Statement, Rocky Mountain Region (R-2) US Forest Service, August 1993.
- Decision Notice and FONSI, Final Route Selection, Continental Divide National Scenic Trail from South Pass to Yellowstone National Park, February 1998.

These assessments did not consider optimum locations of the CDNST rights-of-way, nor did the decisions establish management direction to provide for the CDNST nature and purposes. Unfortunately, these assessments were predominantly based on guidance found in the flawed 1985 Comprehensive Plan, which was replaced in 2009 with direction that is consistent with the NTSA, CDNST Study Report, and related Final Environmental Statement. In addition, the 2009 Comprehensive Plan recognized that the CDNST was designated by an Act of Congress on November 10, 1978 (16 U.S.C 1244(a)). As a result of the 1985 erroneous guidance, many of the assessment decisions have proven not to be beneficial to the CDNST. Additionally, the routing decisions were not

transmitted to the Chief for approval (2009 CDNST Comprehensive Plan, Chapter III(F) – Process for Locating CDNST segments).

A National Scenic Trail optimum location assessment may find that designing the CDNST rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Recreation Opportunity Spectrum (ROS) settings would assure continued benefits of the land that best meet the needs of the American people. This would include the recreation and conservation benefits resulting from: (1) locating the National Trail corridor "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..." (16 U.S.C. 1242(a)(2); (2) avoiding, to the extent possible, activities along the NST that would be incompatible with the purposes of the CDNST for which it was established (16 U.S.C. 1246(c)); and (3) contributing to achieving outdoor recreation, watershed, and wildlife and fish multiple-use benefits (16 U.S.C. 528).

Revised and amended plans need to identify a location for the CDNST corridor that is based on an analysis of an optimum location of the rights-of-way. In addition, plan components need to establish direction that provides for the nature and purposes of this National Scenic Trail, including identifying standards that protect scenic integrity and more primitive ROS settings. CDNST travel routes are to be located within the rights-of-way and identified CDNST management corridor.

Chapter IV. Legislative History and Policy

A. Trails for America

Trails for America, a 1966 report prepared by the Bureau of Outdoor Recreation in response to President Johnson's Natural Beauty Message of February 8, 1965, describes a vision for the Continental Divide Trail: "A Continental Divide Trail would provide a continuous route along the Continental Divide and Rocky Mountains from the Canadian border almost to the Mexican border... The concept was originated by a group of horsemen known as the Rocky Mountain Trails, Inc.... Designed to accommodate riders and hikers, a Continental Divide Trail would pass through some of the most scenic areas in the country in its 3,082-mile route. The 763 miles in Montana, 147 miles in Idaho, 506 miles in Wyoming, 614 miles in Colorado, and 1,052 miles in New Mexico span spectacular, wild, mountain country, rich in the early history of the West. The route affords views of perpetual icefields and of awesome peaks, many over 14,000 feet. It passes hundreds of alpine lakes and streams teeming with trout. The high mountains are home to many species of game, including the bighorn sheep, mule deer, and bear...

Administration of national scenic trails is complicated by the linear nature of the trails and the complex pattern of land ownership along them. Most existing or potential national scenic trails extend through or into several States. Typically they cross some lands that are administered by Federal, State, and local public agencies, and other lands that are privately owned. In the West, the trails cross lands administered largely by Federal agencies—the Forest Service, National Park Service, [and] Bureau of Land Management... In view of these considerations, administration of national scenic trails should be governed by the following principles...

4. The entire length of each national scenic trail, together with sufficient land area on both sides to safeguard adequately and preserve its character, should be protected in some form of public control..., and

9. The responsible Secretary, after agreement with the other Federal agencies involved and consultation with appropriate States, local governments, private organizations, and advisory councils, should:

a. locate and designate the route and width of right-of-way of each trail assigned him. The right-of-way should be wide enough to protect adequately the natural and scenic character of the lands through which the trail passes and the historic features along and near along the trail, and to provide campsites, shelters, and related public-use facilities as necessary. It should avoid, insofar as practicable, established highways, motor roads, mining areas, power transmission lines, private recreational developments, public recreational developments not related to the trail, existing commercial and industrial developments, range fences and improvements, private operations, and any other activities that would be incompatible with the protection of the trail in its natural condition and its use for outdoor recreation. Formal designation should be accomplished by publishing notice of the route and right-of-way in the Federal Register, together with appropriate maps and descriptions. Minor changes in route and right-of-way should be handled in the same manner.

b. define the kinds of recreation use that are appropriate on the trail and in keeping with its objectives, and define the kinds of non-recreation uses, if any, that may be permitted within the right-of-way; issue the necessary regulations; and provide enforcement.

c. establish construction and maintenance standards including standards for related facilities that will adequately protect trail values and provide for optimum public use."

B. National Trails System Act

The National Trails System Act (NTSA), P.L. 90-543, was passed by Congress on October 2, 1968. It established policies and procedures for a nationwide system of trails including National Scenic Trails. The Appalachian Trail and the Pacific Crest Trail were designated as the nation's first National Scenic Trails. "The Act was intended to insure that long-distance, high-quality trails with substantial recreation and scenic potential were afforded Federal recognition and protection" (S.R. 95-636).

The National Parks and Recreation Act of November 10, 1978 authorized and designated the Continental Divide National Scenic Trail (CDNST) (Pub. L. No. 95-625, 92 Stat. 3467), which amended the NTSA of 1968 (16 U.S.C. 1241-1251). The "Background" for H.R. 12536 states that, "Title V establishes new units of the National Park and National Trail Systems which the committee believes to be essential additions to these national programs. Timely action to preserve portions of our heritage,

both historical and natural, within the states and insular areas is needed to assure these resources are not lost through adverse actions by special interest groups" (H.R. 95-1165).

Statement of Policy – Sec. 2 (16 U.S.C. 1241(a))

"In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established...within scenic areas and along historic travel routes of the Nation which are often more remotely located."

National Trails System – Sec. 3 (16 U.S.C. 1242(a)(2)) –

"National scenic trails, established as provided in section 5 of this Act, which will be extended trails **so located** (*emphasis added*) 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. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation."

Overlay of Management Regime – The NTSA establishment and designation of the CDNST provides for the Secretaries of the Agriculture and Interior to manage the CDNST under existing agencies authorities, but subject to the overriding direction of providing for the nature and purposes of this NST. The establishment of the CDNST thus constitutes an overlay on the management regime otherwise applicable to public areas managed by land management agencies. The NTSA (and E.O. 13195 - Trails for America in the 21st Century) limits the management discretion the agencies would otherwise have by mandating the delineation and protection of the CDNST corridor.

National Scenic and Historic Trails –

NTSA Sec. 5(a) (16 U.S.C. 1244(5)(a)) – National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established [and designated] the following National Scenic and National Historic Trails...

> "(5) The Continental Divide National Scenic Trail, a trail of approximately thirty-one hundred miles, extending from the Montana-Canada border to the New Mexico-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 March 1977... The Continental Divide National Scenic Trail 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. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal

Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than 1/4 mile on either side of the trail."

NTSA sec. 5(f) (16 U.S.C. 1244(f)) – "…The responsible Secretary shall...submit...a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

1. Specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved,... an identified carrying capacity of the trail and a plan for its implementation;
2. The process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
3. A protection plan for any…high potential route segments; and
4. General and site-specific development plans, including anticipated costs."

Administration and Development – Sec. 7 (16 U.S.C. 1246) –

The Secretary of Agriculture is charged with the overall administration of the CDNST. Pursuant to Section 5(a), the CDNST was authorized and designated on November 10, 1978. Section 7(a)(2) states that the, "...Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register; Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System [i.e., National Recreation Trails, National Scenic Trails, National Historic Trails, and Connecting and Side Trails] shall be designed to harmonize with and complement any established multiple-use plans for the specific area in order to insure continued maximum benefits from the land....[16]" The legislative

A National Scenic Trail optimum location assessment may find that designing the CDNST rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Recreation Opportunity Spectrum (ROS) settings would assure continued benefits of the land that best meet the needs of the American people. This would include the recreation and conservation benefits resulting from: (1) locating the National Trail corridor "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..." (16 U.S.C. 1242(a)(2); (2) avoiding, to the extent possible, activities along the NST that would be incompatible with the purposes of the CDNST for which it was established (16 U.S.C. 1246(c)); and (3) contributing to achieving outdoor recreation, watershed, and wildlife and fish multiple-use benefits (16 U.S.C. 528). The rights-of-way requirement of 16 U.S.C. 1246(a)(2) is directed at selecting the 5-state CDNST rights-of-way corridor and does not diminish or modify the nature and purposes values of the CDNST (16 U.S.C. 1246(c)).

[16] The BLM in MS-6280 describes that, "For all National Trails, the National Trail Management Corridor alternatives should

requirement for the Secretary of Agriculture to take action and select the CDNST rights-of-way should be addressed by establishing CDNST Management Area (MA) corridors in Land Management Plans (FSM 2353.44b); the requirement should be met on BLM public lands by establishing NTMC in Resource Management Plans. The establishment of CDNST MAs and NTMCs could facilitate CDNST comprehensive planning (16 U.S.C. 1244(f)), selecting and publishing the CDNST rights-of-way in the Federal Register (16 U.S.C. 1246(a)(2)), and meet attached NEPA requirements.

NTSA Sec. 7(c) (16 U.S.C.1246(c)) – "National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any National Scenic Trail shall be prohibited... [Other uses include recreational and resource uses that may be incompatible with the nature and purposes for which the CDNST was established and designated.] 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 administration of the trail."

NTSA Sec. 7(j) (16 U.S.C. 1246(j)). This section does not modify the nature and purposes for which the CDNST was established and created. It describes that, "the provisions of this subsection shall not supersede any other provisions of this Act or other Federal laws, or any State or local laws."

NTSA Sec. 7(k) (16 U.S.C. 1246(k)). "For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code of 1954, including, but not limited to, right-of-way, open space, scenic, or conservation easements…."

NTSA Sec. 7(i) (16 U.S.C. 1246(i). The appropriate Secretary…may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary….

C. Departmental and Congressional Considerations

Office of the Secretary, 1967: The Departmental Recommendation discusses National Scenic Trails. "National scenic trails.—A relatively small number of lengthy trails which have natural, scenic,

consider…(d) opportunities to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land, while minimizing conflict" (Chapter 4.2(D)).

or historic qualities that give them recreation use potential of national significance. Such trails will be several hundred miles long, may have overnight shelters at appropriate intervals, and may interconnect with other major trails to permit the enjoyment of such activities as hiking or horseback riding.... The Secretary of the Interior is authorized to select a right-of-way for, and to provide appropriate marking of, the Appalachian and Potomac Heritage Trails, and the Secretary of Agriculture is authorized to do likewise for the Continental Divide and Pacific Crest Trails. The rights-of-way for the trails will be of sufficient width to protect natural, scenic, and historic features along the trails and to provide needed public use facilities. The rights-of-way will be located to avoid established uses that are incompatible with the protection of a trail in its natural condition and its use for outdoor recreation....”

*Senate Report No.1233, 1968: “*CONTINENTAL DIVIDE TRAIL – Designed to accommodate riders and hikers, the Continental Divide Trail would pass through some of the most scenic areas in the country. The trail would span spectacular, wild mountain country, rich in the early history of the West. The route affords views of perpetual ice-fields and of awesome peaks. It passes hundreds of alpine lakes and streams teeming with native trout. The high mountains are home to many species of game, including the bighorn sheep, mule deer, and bear.... The designation of the Continental Divide Trail represents an attempt to make available by trail a stretch of country which has historical interest and charm and bisects the Western United States. The committee does recognize that no such contiguous trail has ever, in fact, existed. However, the committee believes that the trail should be regarded as calling attention to the grandeur and esthetic qualities of the Continental Divide, and that it will add significantly to the Nation's appreciation of its priceless natural heritage.”

House Report No. 1631, 1968: “PURPOSE - The ultimate aim of H.R. 4865, as amended, is to lay the foundation for expanding further the opportunities for the American people to use and enjoy the natural, scenic, historic, and outdoor recreational areas of the Nation. To accomplish this objective, it establishes a national trails system composed of…National scenic trails which will be located in more remote areas having natural, scenic, and historic values of national significance….

BACKGROUND AND NEED - The proposed national trails system is the product of a general study conducted by the Bureau of Outdoor Recreation at the direction of the President. That study, entitled "Trails for America," formed the basis for the recommended legislation. It recognizes the value of providing simple trails to meet a multitude of outdoor recreation uses and recommended the immediate authorization of the Appalachian Trail as the initial national scenic trail. It also suggested that the Pacific Crest Trail, the Potomac Heritage Trail, and the Continental Divide Trail should be studied promptly for early consideration for inclusion in the system.”

H.R. 4865 proposed legislation describes the selection of Routes for National Scenic Trails – “The Secretary…shall select the rights-of-way.... Such rights-of-way shall be (1) of sufficient width and so located to provide the maximum retention of natural conditions, scenic and historic features, and primitive character of the trail area, to provide campsites, shelters, and related public-use facilities, and to provide reasonable public access; and (2) located to avoid, insofar as practicable, established highways, motor roads, mining areas, power transmission lines, existing commercial and industrial

developments, range fences and improvements, private operations, and any other activities that would be incompatible with the protection of the trail in its natural condition and its use for outdoor recreation...."

Congress considered these qualitative requirements for selecting and designing the rights-of-way in HR 4865, but did not enact the specific direction in NTSA Section 7(a). Instead, the enacted legislation inserts in Section 7(a) more conceptual direction for selecting and designing the rights-of-way, including (1) "consideration of minimizing adverse effects" and (2) designing each national trails system segment "to harmonize with and complement any established multiple use plans[17]..." (16 U.S.C. 1246(a)(2)). The enacted legislation made other modifications to HR 4865, including (1) changing the definition of a National Scenic Trail to broaden the statement of purpose (16 U.S.C. 1242(a)) and (2) added a requirement to make efforts to avoid activities incompatible with the purpose for which such trails were established (16 U.S.C. 1246(c)). House and Senate Reports are silent on the reasons for these changes.

House Report 95-734, 1978: In 1968, Congress enacted the National Trails System Act, and designated the Appalachian Trail as one of the two initial national scenic trails within the system. The act was intended to insure that long-distance, high-quality trails with substantial recreation and scenic potential were afforded Federal recognition and protection… At the time of enactment of the National Trails System Act in 1968, Congress recognized the unique recreational opportunities afforded by extended trails of this type. It was also recognized that changing land uses and increasing pressures for development were a growing threat to maintaining a continuous trail route. The act therefore provided for a Federal responsibility to protect the trail, including the authority to acquire a permanent right-of-way.

S*enate Report No.95-636, 1978:* "The Act was intended to insure that long-distance, high-quality trails with substantial recreation and scenic potential were afforded Federal recognition and protection.... The fourth amendment modifies section 7(g) of the 1968 act to modify the restriction on the use of eminent domain to provide that the secretary may acquire in fee title and lesser interest no more than an average of 125 acres per mile. Experience with the trail has demonstrated that additional authority is needed to insure the acquisition of a corridor wide enough to protect trail values." This amendment to the NTSA was specific to the Appalachian NST, but demonstrates awareness of the need for a National Trail corridor even when eminent domain may be used to secure the necessary land.

House Report No.95-1165, 1978: "Title V establishes new units of the National Park and National Trail Systems which the committee believes to be essential additions to these national programs. Timely action to preserve portions of our heritage, both historical and natural, within the states and insular areas is needed to assure these resources are not lost through adverse actions by special interest groups."

House Report No. 98-28, 1983: Section 7(j) intent is described in this report, "While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles

[17] NTSA Section 7(a)(2) is reviewed in the, "Development and Management" section of this paper.

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. It is intended, for example, that motorized vehicles will not normally be allowed on national scenic or historical trails and will be allowed on recreational trails only at times and places where such use will not create significant on-trail or off-trail environmental damage and will not jeopardize the safety of hikers, equestrians, or other uses or conflict with the primary purposes for which the trail, or the portion of the trail, were created." This report underscores the importance of understanding the primary purposes for which a National Trail was established.

D. Executive Orders

Executive Order 13195 – Trails for America in the 21st Century: "By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968...and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows: Section 1... Federal agencies will, to the extent permitted by law and where practicable ... protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by: ... (b) Protecting the trail corridors associated with national scenic trails...to the degrees necessary to ensure that the values for which each trail was established remain intact...."

National Scenic Trail Values – (1) visitor experience opportunities and settings, and (2) the conservation/protection of scenic, natural, historical, and cultural qualities of the corridor. Primitive and Semi-Primitive Non-Motorized ROS settings provide for desired experiences, but only if the allowed non-motorized activities reflect the purposes for which the National Trail was established. Furthermore, the NTSA goes beyond ROS descriptors requiring the protection of significant resources and qualities along the National Trail corridor. The ROS planning framework, NTSA Comprehensive Plan (Section (5(f)) components, NTSA rights-of-way (Section 7(a)), and E.O. 13195 requirements point to the need for land management plans to map the extent of the corridor and apply to the described corridor appropriate plan components (desired conditions, objectives, standards, guidelines, and suitability of lands) to protect National Trail values (nature and purposes).

Executive Order 11644 and 11989 – Use of off-road [motorized] vehicles on the public lands: "...By virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows: Section 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road [motorized] vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands...." (Related: 36 CFR 212.55 and 43 CFR 8351.1)

E. Study Report, Comprehensive Plan, and Policy for the CDNST

The Bureau of Outdoor Recreation, pursuant to 16 U.S.C. 1244(b), prepared a Study Report for the CDNST that was completed in 1976. The Chief of the Forest Service adopted the 1976 CDNST Study Report and 1977 CDNST Final Environmental Statement on August 5, 1981 (46 FR 39867). In 2009 the Chief amended the 1985 CDNST Comprehensive Plan and issued conforming FSM 2353.4 policy—see http://www.fs.fed.us/cdt.

Comprehensive plan requirements (16 U.S.C. 1244(f)) for the CDNST are addressed through staged or stepped-down decision processes: (1) the 2009 Comprehensive Plan established broad policy and procedures, (2) land management plans are to provide integrated resource management direction and address programmatic planning requirements as described in the Comprehensive Plan, including providing for the protection of CDNST nature and purposes, and (3) mid-level and site-specific plans (e.g., Forest-level CDNST unit plans (FSM 2353.44b(2)) complete the comprehensive planning process through field-level actions to construct or maintain the travel route and protect the corridor. The following direction is found in the Comprehensive Plan and Forest Service Manual:

Comprehensive Plan – Approved by Thomas L. Tidwell, Chief

Purpose of the Comprehensive Plan: "Preparation of the Comprehensive Plan for the CDNST is required by the National Trails System Act, P.L. 90-543 enacted on October 2, 1968 as amended. The National Environmental Policy Act (NEPA) and the implementing regulations for each of the Federal agencies with responsibilities for the CDNST require assessment of the environmental impacts of locating the CDNST. In addition, each of the Federal agencies is required by various Acts of Congress to prepare and implement land and resource management plans for the Federal lands over which they have jurisdiction... Because of the number of Federal and state land management agency jurisdictions and various political subdivisions traversed by the CDNST the Secretary of Agriculture intends that the Comprehensive Plan provide for a fully coordinated approach by each of the responsible Federal and State agencies for the location, development, and management of the CDNST. It is the goal of this Comprehensive Plan to provide a uniform CDNST program that reflects the purposes of the National Scenic Trail system, and allows for the use and protection of the natural and cultural resources found along the rights-of-way and located route on lands of all jurisdictions... The primary role of the Comprehensive Plan is to serve as an authority for broad based policy and direction for the development and management of the CDNST."

Land and Resource Management Plans: "Both the Forest Service and the Bureau of Land Management are required to develop land and resource management plans that are designed to integrate all resource management activities that may occur within a land use unit into a coordinated system that reflects the interaction of management activities in achieving long-range objectives and goals for public land management. This is will be accomplished through the development of a series of synergetic management prescriptions developed for specific management areas. The same type of integration of

CDNST management direction will be used in National Park Resource Management Plans...[18] Land and resource management plans are to provide for the development and management of the CDNST as an integrated part of the overall land and resource management direction for the land area through which the trail passes. The management direction given in Chapter IV is to be used in the development of specific land and resource management prescriptions."

Nature and Purposes: "The primary policy is to administer the CDNST consistent with the nature and purposes for which this National Scenic Trail was established. The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor." Primitive means, "of or relating to an earliest or original stage or state." (74 FR 51116)

Forest Service, FSM Policy – Approved by Acting Associate Deputy Chief Richard W. Sowa

FSM 2353.11 – Relationship between National Recreation, National Scenic, and National Historic Trails and NFS Trails

> Manage National Recreation, National Scenic, and National Historic Trails as NFS trails. Administer each National Recreation, National Scenic, and National Historic Trail corridor to meet the intended nature and purposes of the corresponding trail (FSM 2353.31).

FSM 2353.31 – Policy

> 1. The National Trails System (16 U.S.C. 1242(a)) includes: ... b. National Scenic Trails. These extended trails are located so as to provide for maximum outdoor recreation potential and for conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which these trails pass (16 U.S.C. 1242(a)(2)...
>
> 2. Ensure that management of each trail in the National Trails System addresses the nature and purposes of the trail and is consistent with the applicable land management plan (16 U.S.C. 1246(a)(2)).[19]
>
> 3. TMOs for a National Recreation, National Scenic, or National Historic Trail should reflect the nature and purposes for which the trail was established.

FSM 2353.4 – Administration of National Scenic and National Historic Trails

FSM 2353.41 – Objectives

> Develop and administer National Scenic and National Historic Trails to ensure protection of the purposes for which the trails were established and to maximize benefits from the land.

FSM 2353.42 – Policy

[18] See the Appalachian Trail Resource Management Plan for an example.
[19] A land management plan amendment may be necessary in order to provide for the nature and purposes of the CDNST. See the discussions under Administration and Development and Land Management Plan Considerations.

Administer National Scenic and National Historic Trail corridors to be compatible with the nature and purposes of the corresponding trail. CDNST: The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.

FSM 2353.44b, "Continental Divide National Scenic Trail –

1. The land management plan for an administrative unit through which the CDNST passes must provide for the nature and purposes of the CDNST (FSM 2353.42) and, in accordance with the programmatic requirements of the NTSA, as amended (16 U.S.C. 1244(f)), and the CDNST Comprehensive Plan, as amended, must:

a. Except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293), establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features;
b. Prescribe desired conditions, objectives, standards, and guidelines for the CDNST; and
c. Establish a monitoring program to evaluate the condition of the CDNST in the management area.

2. A CDNST unit plan must be developed for each administrative unit through which the CDNST passes. Each CDNST unit plan must provide for the nature and purposes of the CDNST (FSM 2353.42), and, in accordance with the site-specific requirements in the NTSA, as amended (16 U.S.C. 1244(f)), and the CDNST Comprehensive Plan, as amended, must:

a. Identify and display the segments of the CDNST that traverse that unit.
b. Except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293) and except where delineated in the applicable land management plan, establish a management area for the segments of the CDNST that traverse that unit that is broad enough to protect natural, scenic, historic, and cultural features;
c. Establish the Trail Class, Managed Uses, Designed Use, and Design Parameters for the segments of the CDNST that traverse that unit and identify uses that are prohibited on the segments of the CDNST that traverse that unit (FSH 2309.18).
d. Provide for development, construction, signing, and maintenance of the segments of the CDNST that traverse that unit.
e. Identify and preserve significant natural, historical, and cultural resources along the sections of the CDNST corridor that traverse that unit.
f. Consistent with the provisions of the applicable land management plan and the nature and purposes of the CDNST (FSM 2353.42), establish carrying capacity for the segments of the CDNST that traverse that unit (FSM 2353.44b, para. 1). The Limits of Acceptable Change or a similar system may be used for this purpose.
g. Establish monitoring programs to evaluate the site-specific conditions of the CDNST."

FSM 2353.44b parts 7 and 8 contribute to defining key landscape characteristics of the CDNST Management Area corridor:

7. "...The one-half mile foreground viewed from either side of the CDNST travel route must be a primary consideration in delineating the boundary of a CDNST management area (para. 2b). [FSM 2380] The CDNST is a concern level 1 route..., with a scenic integrity objective of high or very high, depending on the trail segment...

8. Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST (FSM 2353.42). Use the Recreation Opportunity Spectrum (ROS) and the ROS Users Guide in delineating and integrating recreation opportunities in CDNST unit plans and managing the CDNST (FSM 2311.1).[20] Where possible, locate the CDNST in primitive and semi-primitive non-motorized ROS classes, provided that the CDNST may have to traverse intermittently through more developed ROS classes...."

FSH 1909.12 – 24.2 – Plan Components for Designated Areas…

1. When developing plan components:

b. The Responsible Official shall include plan components that will provide for appropriate management of designated areas based on the applicable authorities and the specific purposes for which each area was designated or recommended for designation. Uses and management activities are allowed in designated areas to the extent that these uses are in harmony with the purpose for which the area was designated. For recommended designated areas, the uses and activities allowed should be compatible with the basis of the recommendation.

FSH 1909.12 – 24.3 - Designated Area Plans

Planning for designated areas may be met through the land management plan, unless the authorities for the designation require a separate plan. Specific plans for designated areas must be consistent with the plan components (36 CFR 219.15(e)).[21] The designated area authorities may require specific plans (such as wild and scenic river plans or national scenic and historic trail plans) for a designated area with additional requirements than those of the Planning Rule. Any parts of a

Designated Area – The CDNST designated area extent may be defined by the selected CDNST Section 7 rights-of-way. The CDNST Management Area (FS) and National Trail Management Corridor (BLM) resides within this selected rights-of-way. The MA or NTMC extent and associated plan components must provide for the nature and purposes of this NST.

[20] "An Assessment of Frameworks Useful for Public Land Recreation Planning by Stephen F. McCool, Roger N. Clark, and George H. Stankey (PNW-GTR-705) compares recreation planning frameworks. ROS is discussed on pages 43-66. ROS is the preferred recreation planning framework for addressing Forest Service Planning Rule requirements: 36 CFR 219.6(b)(9), 219.8(b)(2), 219.10(a)(1) & (b)(1), and 219.19 definitions for Recreation Opportunity and Setting. In addition, using ROS could lead to meeting the NEPA requirement for Methodology and Scientific Accuracy (40 CFR 1502.24).

[21] Comprehensive Plans developed in response to the requirements of the National Trails System Act and Wild and Scenic Rivers Act are not resource plans as defined by the NFMA (16 U.S.C. 1604(i) and 36 CFR 219.15(e)).

designated area plan that meet the requirements for land management plan components must be included in the land management plan. The entire area plan does not need to be included in the land management plan. The land management plans must also be compatible with these designated area plans or either the land management plan or the designated area plan must be amended to achieve this compatibility.

FSH 1909.12 - 24.43 – National Scenic and Historic Trails

1. When developing plan components for national scenic and historic trails:

   a. The Interdisciplinary Team should review the assessment for relevant information about existing national scenic and historic trails in the plan area, including established rights-of-way pursuant to 16 U.S.C 1246(a)(2) and direction contained in comprehensive plans (CPs) pursuant to 16 U.S.C. 1244(e) or 1244(f). For existing or study national scenic and historic trails that do not have such information published, assessments identify and evaluate other information pertinent to the location and management of national scenic and historic trails.

   b. The Interdisciplinary Team shall identify Congressionally designated national scenic and historic trails and plan components must provide for the management of rights-of-ways (16 U.S.C 1246(a)(2)) consistent with applicable laws, regulations, and Executive Orders. Plan components must provide for the nature and purposes of existing national scenic and historic trails and for the potential rights-of-way of those trails designated for study (16 U.S.C. 1244(b)).

   c. The Interdisciplinary Team shall use the national scenic and historic trails rights-of-way maps required by 16 U.S.C. 1246(a)(2) to map the location of the trails. Where national trail rights-of-way have not yet been selected, the Interdisciplinary Team shall reference the establishing legislation (16 U.S.C. 1244(a)) as the primary source for identifying and mapping the national scenic and historic trails right-of-way. If the right-of-way has not been selected, either through legislation or publication in the Federal Register, the Interdisciplinary Team should use other information to delineate a national scenic and historic trails corridor that protects the resource values for which the trail was designated or is being proposed for designation (16 U.S.C 1244(b)).

   d. The Responsible Official shall consult with neighboring Responsible Officials when developing plan components for national scenic and historic trails that cross unit boundaries and shall strive to maintain or establish compatible management approaches while recognizing diverse resource conditions and needs in the different plan areas.

   e. Plan components must be compatible with the objectives and practices identified in the comprehensive plan for the management of the national scenic and historic trail. The objectives and practices include the identification of resources to be preserved and the trail's carrying capacity.

   f. The Responsible Official shall include plan components that provide for the nature and purposes of national scenic and historic trails in the plan area. In doing so, the Responsible Official should take into consideration other aspects of the plan related to the trail such as

access, cultural and historic resources, recreational settings, scenic character, and valid existing rights.

2. The plan must include plan components including standards or guidelines for a designated area as described in section 24.2 of this Handbook. To meet this requirement the plan:

a. Should include desired conditions that describe the national scenic and historic trail and the recreational, scenic, historic, and other resource values for which the trail was designated.

b. May include objectives for national scenic and historic trails where existing conditions (settings, opportunities, scenic character, cultural and other resources values) are different from desired conditions. These objectives can identify intended activities to improve national scenic and historic trail conditions, mitigate or enhance associated resource values, create or improve connections with communities and visitors, or other desired and measureable outcomes that will improve the national scenic and historic trail experience.

c. May include standards or guidelines to place limits or conditions on projects or activities to protect the trail and associated resource values.

d. May include suitability plan components to limit or prevent incompatible uses and activities.

e. Must identify and map National scenic and historic trails per #1c above.

f. May, to apply plan components unique to the National and Scenic Historic Trail: provide one or more management or geographic areas for a national scenic and historic trail; reference the identified national scenic and historic trail right-of-way, place a corridor around the trail, or use other means to clearly identify where the plan components apply in reference to the trail.

FSM 2350 has more information about national scenic and historic trails.[22]

In addition, see 23.23a – Sustainable Recreation Resources and Opportunities to Connect People with Nature; and 23.23f – Scenery, Aesthetic Values, Viewsheds, and Geologic Features.

EM-7700-30 - Guidelines for Engineering Analysis of Motorized Mixed Use on Roads

Normally, the CDNST route is not to be located on a road unless permanently closed to motor vehicle use. However, in a situation where the CDNST route is located on an open National Forest System road, an analysis should be completed which documents that mixed use on the road allows for the safe travel of pedestrians and equestrians. Modify the mixed use analysis that is described in EM-7700-30 to assess both motorized and nonmotorized use along the route.

[22] FSM 1920.3 - 6, states, "Provide all Service-wide direction necessary for planning assessments, plan development, plan revision, plan amendment, and plan monitoring is contained or referenced in this chapter, and supplements, or handbooks thereto." National Scenic Trail policy and direction is found in comprehensive plans for National Trails, FSM 2353.4 (referenced in the Planning Handbook as FSM 2350), FSH 1909.12 section 14, and FSH 1909.12 section 24.43, which in total provides the necessary policy and management direction for implementing the requirements of the NTSA. Fortuitously, FSM 2350 is clearly referenced in FSH 1909.12 section 24.43 for the Forest Service Planning Handbook in itself does not contain substantive specialized guidance and instruction for addressing the NTSA in an integrated land management plan. FSM 1110.3, FSM 1110.8, and FSM 1112.02 has more information about the formulation of directives.

Bureau of Land Management, BLM MS-6280, Chapter 4, Congressionally Designated Trails - Land Use Planning

This chapter outlines BLM land use planning requirements for congressionally designated National Trails and the National Trail Management Corridor. Through the land use planning process, where a designated trail is within the planning area, the BLM establishes National Trail Management Corridor, and will set forth allocation decisions, management actions, and necessary restrictions for resources and resource uses within that National Trail Management Corridor in order to effectively manage the nature and purposes of National Trail and the resources, qualities, values, and associated settings and the primary use or uses (MS-6280, Chapter 4).

"MS-6280 - 4.1 General Requirements

A. *Addressing Designated National Trails through Land Use Planning*

1. As soon as practical after activation, the BLM must address designated National Trails through the land use planning process.

2. Designated National Trails may be addressed through a land use plan amendment, or a Statewide Trail Management Plan or a programmatic multi-state effort which amends applicable Resource Management Plans.

3. Regardless of the type of land use planning process undertaken, the BLM shall establish a National Trail Management Corridor(s) and identify management goals, objectives, and actions for each designated National Trail.

4. National Trails shall be clearly identified as a specific resource or discipline, in its own unique section throughout the various chapters of the Resource Management Plan - not contained within and across multiple disciplines.

5. Resource Management Plan decisions should be compatible across BLM jurisdictions, as applicable, to provide for trailwide management consistency....

E. *Trail Management Guidance by Resource Program*. To the greatest extent possible, the BLM will consider the following guidance when making resource-specific decisions, subject to valid existing rights, within the National Trail Management Corridor allocation:

1. *Scenic and Visual Resources...,*
2. *Cultural and Historic Resources...,*
3. *Recreation and Visitor Services...,* and
4. *Travel and Transportation Management....*

4.2 Requirements for Designated National Trails in Land Use Planning

B. Development of Designated National Trail Goals and Objectives. Goals and objectives for the National Trail shall be identified based on the NTSA, enabling legislation, legislative history (in consultation with the Office of the Solicitor), the nature and purposes of the trail, supporting information from the National Trail Feasibility Study, trailwide Comprehensive Plan, and National Trail inventory. The nature and purposes; resources, qualities, values, and associated settings; and the primary use or uses will be clearly described. At a minimum, the following goals and objectives should be considered for National Trails:

1. For all National Trails

i. Safeguard the nature and purposes; and conserve, protect, and restore the National Trail resources, qualities, values, and associated settings and the primary use or uses.
ii. Provide premier trail visitor experiences for public benefit.
iii. Maximize opportunities for shared National Trail stewardship.
iv. Reduce the potential for uses that substantially interfere with the nature and purposes of the National Trail (see Chapter 1, 1.6 Statement of Programmatic Policy).
v. Avoidance of activities that are incompatible with the purposes for which the National Trail was established (see Chapter 1, 1.6 Statement of Programmatic Policy).

2. For National Scenic Trails

i. Provide for maximum compatible outdoor recreation potential.
ii. Maintain the continuous nature of the National Scenic Trails.
iii. Maintain the special environments and landforms that support trail visitor."\

National Park Service

Prior to undertaking an action that may substantially interfere with the nature and purposes of the CDNST, the National Park Service Director must revise or amend the unit General Management Plan to recognize the CDNST as a congressionally designated area. The GMP must be in compliance with the National Park System Development Program regulations (16 U.S.C. § 1a-7) and the National Trails System Act as implemented through direction in the CDNST Comprehensive Plan. Foundation Documents for NPS units should also address the significance of CDNST, as applicable. Once programmatic direction is established in the General Management Plan, CDNST site-specific protection and development plans should be established that provide for the values of this National Scenic Trail.

"The NPS will prepare appropriate planning documents to protect the resources and attributes and to provide for public use and appreciation of the national scenic and historic trails authorized by Congress and assigned to it for administration. Each trail's comprehensive management plan (CMP) will include, at a minimum, those provisions stipulated in 16 USC 1244(e) or (f) that outline trail comprehensive plan requirements. Each CMP will also identify the minimum level of regulation necessary to protect the resources and attributes that warranted the trail's designation by Congress. CMPs may also include such other provisions as may be needed to satisfy the intent of chapter 2, "Park System Planning," of Management Policies 2006 and the unique circumstances of the trail. Each trail will then operate according to the CMP." (Director's Order #45, 3.11 – Planning)

Chapter V. Comprehensive Planning Relationship to NEPA

This sections reviews several aspects of the CEQ regulations for implementing NEPA[23] for addressing National Scenic Trails in land management planning.

A. Relationship of NEPA to Comprehensive Planning

Most federal agency actions, unless specifically exempted, are subject to the procedural requirements of NEPA. These requirements are articulated in NEPA CEQ regulations, and in each agency's supplemental implementing policies.[24] Supplemental agency policies often include specific procedural direction or guidance on preparation of appropriate NEPA documents (i.e., Environmental Impact Statements (EIS), Environmental Assessments (EA), and Categorical Exclusions (CE)). Because agency guidance varies widely, this section will generally not address agency specific regulation, policy, or procedure.

NEPA is designed to promote consideration of potential effects on the human environment[25] that would result from proposed Federal agency actions, and to provide the public and decision makers with useful information regarding reasonable alternatives[26] and mitigation measures to improve the environmental outcomes of Federal agency actions. NEPA ensures that the environmental effects of proposed actions are taken into account before decisions are made and informs the public of significant environmental effects of proposed Federal agency actions, promoting transparency and accountability concerning Federal actions that may significantly affect the quality of the human environment. NEPA reviews should identify measures to avoid, minimize, or mitigate adverse effects of Federal agency actions. Better analysis and decisions are the ultimate goal of the NEPA process.[27]

NEPA document(s) that support a Comprehensive Plan will analyze the effects of a range of alternatives, often covering multiple topics, including but not limited to the selection of the rights-of-way, visual quality, ROS, and carrying capacities. A Comprehensive Plan and supporting NEPA decision documents will typically establish goals, desired conditions, allowable uses, standards (thresholds), guidelines, and the conditions under which uses are allowed for a discreet geographic area or linear landscape. NEPA decision documents should provide addition information and support the thought process used to implement, revise, or amend a Comprehensive Plan.

The CEQ regulations require that NEPA decision-making processes provide for thoughtful,

---

[23] 40 CFR 1500-1508.

[24] 36 CFR Part 220 does not lessen the applicability of the CEQ 40 CFR 1500 regulations on National Forest System lands (see 36 CFR 220.1(b)).

[25] 40 CFR 1508.14 - 'Human environment' shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.

[26] 40 CFR 1508.25(b) - Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

[27] 40 CFR 1500.1(c) - Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

rigorous evaluation of reasonable options within the scope of the proposed decisions. The decision process involves interested and affected individuals, groups, and governments. The "early and often" interactions that the NEPA suggests in establishing the scope of the proposed actions considered in a Comprehensive Plan are especially important when identifying significant natural, historical, and cultural resources to be preserved; selecting the rights-of-way; and establishing scenic integrity levels, ROS class settings, and capacities for the management corridor.

Comprehensive Plan requirements (16 U.S.C. 1244 (e) and (f)) have sometimes been addressed through staged or stepped-down decision processes: (1) a Comprehensive Plan establishes broad policy and procedures, (2) land management plans provide integrated resource management direction and address programmatic planning requirements as described in the Comprehensive Plan, and (3) mid-level and site-specific plans complete the comprehensive planning process through field-level actions to construct the travel route and protect the corridor. Staged decisionmaking and tiering is discussed in the Comprehensive Plan, Chapter III(C). The Comprehensive Plan requirements are met once all staged phases are complete. As required by laws and regulations, addressing NTSA planning requirements are to be an integrated part of developing NFMA and FLPMA directed land management plans.

When a federal agency does not make an "overt act," no NEPA requirement to prepare an Environmental Impact Statement (EIS) attaches. However, if some agency action was mandated under a separate statute in relation to that activity but the action was not taken, NEPA does attach and the Administrative Procedure Act applies (40 CFR 1508.18 and 5 U.S.C. 706). The NTSA presents an independent planning requirement to prepare and implement a comprehensive plan including identifying carrying capacity, select the rights-of-way, and in general establish management direction that provides for the nature and purposes values of the NST.

Land management plans are to protect CDNST Section 7(a)(2) potential rights-of-way and high potential route segments where the rights-of-way is yet to be selected and the travelway officially located (16 U.S.C. 1244(f)(3) and 1246(a)(2)). Until the CDNST rights-of-way is selected and the corridor is located, the Agencies must not undertake any major Federal action which (1) may adversely impact nature and purposes values of potential CDNST rights-of-way and corridor locations, (2) limit the choice of reasonable alternatives, and (3) prejudice ultimate rights-of-way and locations decisions (40 CFR 1506.1).

B. Establishment of the Purpose and Need for Action

A land management plan NEPA document must provide the framework for the purpose and need for action and for the decisions to be made of identifying the management corridor and establishing scenic integrity levels, ROS class settings, and carrying capacities. A land management plan should establish desired conditions, including the nature and purposes of a National Trail as well as key resource indicators and thresholds that prevent degradation. The outcome of addressing these considerations will facilitate describing the "affected environment" part of the NEPA process.

The "need for action" (or change) is based upon a comparison of the baseline conditions and desired conditions. This comparison establishes both the "scope" of and the "need" for action.

The "scope" of and the "need" for the proposed actions establish the basis for determining the reasonable range of alternatives. The purpose and need description represents the "problem to be solved." Defining the scope appropriately (and refining as necessary through the early steps of the NEPA process) improves the overall efficacy of the NEPA document. How broadly or narrowly the scope is described affects the range of reasonable alternatives that can meet the need, which in turn affects how well the range of alternatives and the selected alternative respond to this need.

Identifying conditions that are within federal control and those that require action by entities not within the decision-making agency's control is helpful in the early stages of NEPA. A federal agency cannot necessarily eliminate options or alternatives outside of its jurisdiction from consideration in the NEPA process if the options present reasonable alternatives to meet the need.[28] However, an agency may only take actions that are within the agency's legal authority.[29] Clarifying who is responsible for achieving desired conditions will help to establish early in the process the key authorities or participation by others needed to achieve the overall desired conditions.

C. Identify Proposed Actions and a Reasonable Range of Alternatives

The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart of the NEPA analysis. Elements of a reasonable proposed action and alternatives for the CDNST corridor are presented in Chapter III. The lead agency or agencies must, "objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." Reasonable alternatives are those that substantially meet the agency's purpose and need. If the agency is considering an application for a permit or other federal approval, the agency must still consider all reasonable alternatives. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Agencies are obligated to evaluate all reasonable alternatives or a range of reasonable alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

Components of a proposed action in land management planning may include the selection of the rights-of-way and/or identification of the management corridor, and will likely include the establishment of scenic integrity levels, ROS class, and carrying capacities for the National Scenic Trail. The conditions under which a variety of uses are allowed may be labeled as thresholds, standards and guidelines, or other terminology. In regards to addressing scenic integrity, recreation opportunities, and carrying capacities, this step requires that these use conditions be expressed in terms of thresholds that will prevent degradation of NST values.

[28] *See* CEQ 40 Questions
[29] 40 CFR 1508.15

Distinguish early in the process the importance of certain allowable uses or the conditions of those uses in protecting NST values (avoiding, reducing, or eliminating degradation), and/or enhancing values. Besides providing a clear logic track for the decisions made regarding scenic integrity, recreation opportunities, and carrying capacities, this will also help to identify elements that may need monitoring.

Managed and allowable uses and conditions of use may be either common to all alternatives or may vary by alternative. Managed and allowable uses or conditions of use that would be the same for all alternatives should be identified early in the NEPA process, along with a clear rationale for why those uses or conditions of use would be common to all alternatives. For example, conditions of use could protect Threatened and Endangered Species. Commonalities may also include existing uses or conditions not shown to have an adverse effect on NST values (or that otherwise already meet the purpose and need for action).[30]

CEQ regulations also provide guidance regarding the agency's scope of actions. Aspects of an action that are inter-related (e.g., the kinds and amounts of use and the facilities that support that use) should be considered during this process.[31] If the purpose and need for action suggest a change from the existing condition, or if there are unresolved conflicts regarding alternative uses of resources, then a "hard look" at a reasonable range of alternatives will be needed.[32]

NEPA documents should explain the timeframe within which future actions would be taken. Be clear about whether NEPA decisions are being made to authorize certain actions when the Comprehensive Plan is completed without further decision process needed, or whether decisions about actions contemplated within the life of the Comprehensive Plan would be authorized at a later time. The latter approach is typically used in broad "programmatic" NEPA documents and subsequent site-specific documents that may be tiered to the larger document.[33]

Consider the following when determining whether visual quality, recreation setting, or carrying capacity actions identified in the Comprehensive Plan are also NEPA decisions (1) made upon Comprehensive Plan completion or (2) authorized later in time:

- Whether the action is part of an "adaptive management" decision. The term "adaptive management" is sometimes used by agencies to describe a range of different actions that managers may take resulting from one NEPA decision to respond to changing conditions during implementation or uncertain outcomes of implementing the decision. To authorize future adaptive action, the NEPA document describes when, where and how an action would take place, and when, where, and how the decision might be adapted or changed to accommodate changes in conditions or actual outcomes of the original action.

[30] 40 CFR 1502.14(a)
[31] 40 CFR 1508.23; 1508.25
[32] 40 CFR 1508.25
[33] 40 CFR 1500.4(i); 1502.20

- Whether the action is ripe for decision. Actions are considered "ripe for decision" when the agency has identified a proposal it is prepared to make a decision on and the effects can be meaningfully analyzed.[34] However, NEPA processes allow for emergency actions where substantially degradation is probable or occurring.
- If all or parts of the future "adaptive" actions identified in a Comprehensive Plan are not ripe for a NEPA decision, the NEPA document should discuss why they are not ripe for a decision at this time. Additionally, the NEPA document should describe the why adaptive action is needed, and the expected process used to make a final decision on those future actions.

"Adaptive Management"

Adaptive management is an "if this… then that" approach. If "this" condition exists (in this example for two consecutive years), then "that" action would be taken (in this case a suite of actions, with an ultimate limit on group sizes and campsite closures). To automatically authorize one or more of the actions proposed to reduce the effects of human use, the environmental impacts of those actions must be addressed in the authorizing NEPA document. The Forest Service describes, "The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS [or EA] must disclose not only the effects of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect."

D. Analyze the Effects of the Proposed Action and Alternatives

Forest Service "…recreation planning and management tools that shape the recreation program include the Recreation opportunity spectrum (ROS) [and] Scenery management system… These tools are used to define existing conditions, describe desired conditions, and monitor change. These tools, along with overarching guidance at the national, Department, and Agency levels, serve as the context by which individual national forests and grasslands engage with their communities. In doing so, the unit's recreation-related and amenity-based assets are considered and integrated with a vision for the future that is sustainable and that the unit is uniquely poised to provide. As the current planning rule procedures related to recreation are quite general, these tools contribute to consistency in recreation planning across NFS units. The recreation opportunity spectrum has been an effective land management planning tool since 1982. The recreation opportunity spectrum is a framework for identifying, classifying, planning, and managing a range of recreation settings. The setting, activity, and opportunity for obtaining experience are arranged along a spectrum of classes from primitive to urban. In each setting, a range of activities is accommodated. For example, primitive settings accommodate primarily non-motorized uses, such as backpacking and hiking; whereas roaded settings (such as roaded natural)

[34] 40 CFR 1508.22

or rural settings accommodate motorized uses, such as driving for scenery or access for hunting. Through this framework, planners compare the relative tradeoffs of how different patterns of settings across the landscape would accommodate (or not accommodate) recreational preferences, opportunities, and impacts (programmatic indirect environmental effects) with other multiple uses. The scenery management system provides a vocabulary for managing scenery and a systematic approach for determining the relative value and importance of scenery in an NFS unit. The system is used in the context of ecosystem management to inventory and analyze scenery, to assist in establishment of overall resource goals and objectives, to monitor the scenic resource, and to ensure high-quality scenery for future generations" (Forest Service Planning Rule, PEIS, page 209).

The identification and selection of the rights-of-way may lead to varying degrees of effects, but most often a National Scenic Trail management corridor would be the primary area for addressing the effects analysis. Effects on scenic integrity, ROS class conditions, and carrying capacities will generally be based on analysis of the effects of the allowable uses and conditions of use on NST values that are included in the proposed action and each alternative in the NEPA document. This outcome is also a specific decision aspect of the proposed action or alternatives. Utilizing ROS and Scenery Management/Visual Resource Management systems will help ensure that NEPA assessments are systematic and accurately describe the affected environment and expected outcomes from each alternative. The level of precision or certainty of the effects can be guided by the CEQ regulations regarding the use of "methodology and scientific accuracy"[35] and the information needed to support a reasoned choice among alternatives.[36] Clearly document how the final decision is based on the best available science or other relevant information needed to understand the reasonably foreseeable adverse effects of a choice between alternatives, the gaps in that information, and the rationale for why a reasoned choice between alternatives can be made at this time. In addition, substantial interference analyses and determinations need to be rigorous.

Wilderness evaluations and NEPA assessments should describe the positive CDNST benefits if roadless areas along the CDNST corridor are recommended for wilderness designation. Protecting wilderness values would include establishing a plan component that identifies recommend wilderness as not being suitable for motor vehicle use and mechanized transport. Management of recommended wilderness to protect wilderness characteristics supports the conservation purposes of this NST and is fully compatible with providing for the CDNST nature and purposes.

Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that would substantially interfere with the nature and purposes of a NST if the allocation desired conditions are realized. Where the allowed non-motorized activities reflect the purposes for which the National Trail was established, the establishment of Primitive and Semi-Primitive Non-Motorized ROS classes and high and very high scenic integrity allocations would normally protect the nature and purposes (values) of a NST.

[35] 40 CFR 1502.24
[36] 40 CFR 1502.22.

E. New Information, Monitoring, and Modifying Decisions

The CEQ regulations tie monitoring and enforcement of mitigation measures to implementation of the decision. The CEQ regulations state that "[a] monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation."[37] Further, "agencies may provide monitoring to assure their decisions are carried out and should do so in important cases. Mitigation and other conditions established…shall be implemented by the lead agency."[38]

Through a discussion of when to prepare a supplemental EIS, the CEQ regulations also provide guidance about the conditions under which an existing NEPA decision might be changed.[39] This approach suggests that a supplemented NEPA document may be needed when there are significant new conditions or information relevant to environmental concerns. While the CEQ regulations indicate the kinds of situations that may suggest a change to a NEPA document, individual agency implementing regulations or policy for the NEPA or other applicable laws and regulation may also provide guidance about when decisions may be changed.

Specific to the CDNST, the amended 2009 Comprehensive Plan and FSM 2353.4 constituted new information (40 CFR 1502.9(c)). The responsible official must review the new information and determine its significance to environmental concerns and bearing on current Forest Plan direction (FSH 1909.15 - 18). In regards to environmental documents for enacted Forest Plans, determine if Management Area (MA) prescriptions and plan components along the CDNST travel route and corridor provide for the nature and purposes of the CDNST (FSM 2353.42 and FSM 2353.44b(1)). If not, the plan should be amended or revised following the appropriate NEPA process to address the planning requirements of the NTSA (16 U.S.C. 1244(5)(f) and FSM 2353.44(b)(1)). The BLM has similar requirements for addressing new information (Land Use Planning Handbook, H-1601-1). Furthermore, project proposals may bring the CDNST into the scope of a NEPA process due to potential direct, indirect, and cumulative impacts of past actions and new proposals that may substantially interfere with the nature and purposes of the CDNST (40 CFR 1508.25(c)). This in turn could trigger the need for a land management plan amendment, and on National Forest System lands, the development of a CDNST unit plan.

Chapter VI. Completing the Continental Divide National Scenic Trail

As we look towards celebrating in the year 2018 the 50th anniversary of the National Trails System Act, and the 40th anniversary of the designation of the Continental Divide National Scenic Trail, the National Trails community will be rejoicing in the progress that has been made through public and private partnerships to preserve or enhance the recreational, scenic, natural, or historical values of the National Trails System. The development and protection of the CDNST will be reached if there is resolute support for the CDNST nature and purposes: "The nature and purposes of the CDNST are to

[37] 40 CFR 1505.2
[38] 40 CFR 1505.3
[39] 40 CFR 1502.9

provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor" (2009).

Chapter VII. Disclosure

This paper provides a description and summary of the relevant National Trails System Act requirements that offer foundational rationale for understanding and providing for the nature and purposes of the Continental Divide National Scenic Trail. Nonetheless, this paper should not be seen as legal advice to address National Trails System Act and other land use planning requirements.