

Shoshone National Forest
Attn: Rob Robertson
333 E. Main St.
Lander, WY 82520

July 18, 2016

RE: Shoshone National Forest Travel Management; Shoshone National Forest, Wyoming

Submittal: travel-comments-rockymountain-shoshone@fs.fed.us

Dear Mr. Robertson,

Please accept the following comments regarding the Notice of Intent to prepare an Environmental Impact Statement for Shoshone National Forest Travel Management. These comments are specific to the planning and management of the Continental Divide National Scenic Trail (CDNST).

The Federal Register states that, "The overall objective of the proposed action is to provide a manageable system of designated public motor vehicle access routes and areas within the Shoshone National Forest, consistent with the Forest Plan, Executive Orders 11644 and 11989, and the travel management regulations at 36 CFR 212 subparts B and C. The decisions associated with the designations of roads, trails, and areas open to the public will be published in maps for both summer and winter travel. There were needs identified through the Forest Planning effort to examine the existing system and identify current routes with resource concerns or enforcement issues which could be removed or changed in the system" (81 FR 33655). In addition, substantive concerns were expressed in the recent forest planning process regarding the management of the CDNST.

The proposed action directly affects the CDNST, which brings CDNST considerations into the scope of the Environmental Impact Statement. This is 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). As such, management discretion is limited by the requirements of the National Trails System Act (NTSA), Executive Order 13195, the CDNST Comprehensive Plan, FSM 2353.42 and FSM 2353.44b. In addition, previous designations of travel routes for motor vehicle use need to be reconsidered as allowed by 36 CFR 212.54, since some of those designations were not in compliance with the NTSA Section 7(c) allowance of motor vehicle use and 36 CFR 212.55(b) minimizing conflict requirements.

Motor vehicle use along the CDNST travel route and within the CDNST Management Area must be managed to provide for the protection of the nature and purposes of this National Scenic Trail. The proposed action needs to be modified to be consistent with the NTSA. However, if the responsible official wants to consider the proposed action as presented, than an alternative must be developed and analyzed that clearly provides for the nature and purposes of the CDNST. The modifications needed are addressed in the following section.

Proposed Action Modification / Alternative to the Proposed Action

The proposed action should be modified or an alternative to the proposed action developed and analyzed in detail, which addresses motor vehicle use on and along the CDNST, so that such use is managed to be consistent with the NTSA and Executive Orders. The following CDNST guidance should result in revised travel management actions that are in compliance with the National Forest Management Act, the NTSA Sections 5 and 7, Executive Orders 11644, 11989 and 13195, and 36 CFR 212.55:

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

(1) Is necessary to meet emergencies; ...

(4) Is on a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST;

(5) Is designated in accordance with 36 CFR Part 212, Subpart B, on National Forest System lands and:

(a) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST or

(b) That segment of the CDNST was constructed as a road prior to November 10, 1978; or

(6) In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C,... and the use will not substantially interfere with the nature and purposes of the CDNST.

Reference: NTSA Section 7, Comprehensive Plan Chapter IV(B)(6), and FSM 2353.44b(11)

II. Motor vehicle use by the general public that is within the CDNST Management Area, but not located on the CDNST travel route, may only be allowed if the use does not substantially interfere with the nature and purposes of the CDNST.

Reference: NTSA Section 7(c) and E.O. 13195

III. Existing or proposed motor vehicle use designation of any segment of the CDNST triggers the need to address comprehensive planning requirements of the NTSA. 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 National Trails System Act, 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...
- 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.
- 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, establish carrying capacity for the segments of the CDNST that traverse that unit. 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.

Reference: FSM 2353.44b(2)

NEPA Process Considerations

The following are NEPA process considerations that are important to the travel management EIS analyses:

- The DEIS affected environment section needs to describe the CDNST corridor conditions, including identifying the location by depicting the CDNST Management Area and travel route on alternative maps. (40 CFR 1502.15)
- The Environmental Consequences section needs to describe, in part, (1) any substantial interference to the CDNST nature and purposes and (2) how each action alternative, “ensures that the use of off-road vehicles on public lands is 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...” (40 CFR 1502.16) and meets the requirements of the Criteria for designation of roads, trails, and areas (36 CFR 212.55).
- Where CDNST route segments are currently designated for motor vehicle use, or are to be designated for motor vehicle use through 36 CFR 212 processes, the DEIS needs to identify (1) the name of the NEPA document related to the motor vehicle use designation, (2) the date that the route was added to the forest transportation atlas, and (3) the date that the segment was constructed. This is necessary since some routes that are currently open to motor vehicle use are not in conformance with restrictions found the NTSA, CDNST Comprehensive Plan, and related directives. (Comprehensive Plan, Chapter IV(B)(6)).

- NEPA “substantial interference” and “minimize conflicts” analyses and determinations need to be rigorous (40 CFR 1502.24). One of many possible references that could aid in the travel management analyses is, “Studies in Outdoor Recreation, Search and Research for Satisfaction,” by Robert E. Manning. The responsible official should appoint a National Scenic Trail specialist to the interdisciplinary planning team (40 CFR 1502.17).
- Geospatial data that supports the assessments should be openly available to the public. The text in the DEIS should be searchable and with permissions that allow for copying to facilitate reviewing and commenting on the draft document.

Maps in **Appendix A** of this document display the CDNST travel route location along with motor vehicle use routes. Maps in **Appendix B** in this document display sections of the 1990 Shoshone National Forest Map showing travel route information that existed 12 years after the CDNST was authorized and designated by the, "National Parks and Recreation Act of 1978 " (Public Law 95-625). General CDNST planning information is found in **Appendix C**.

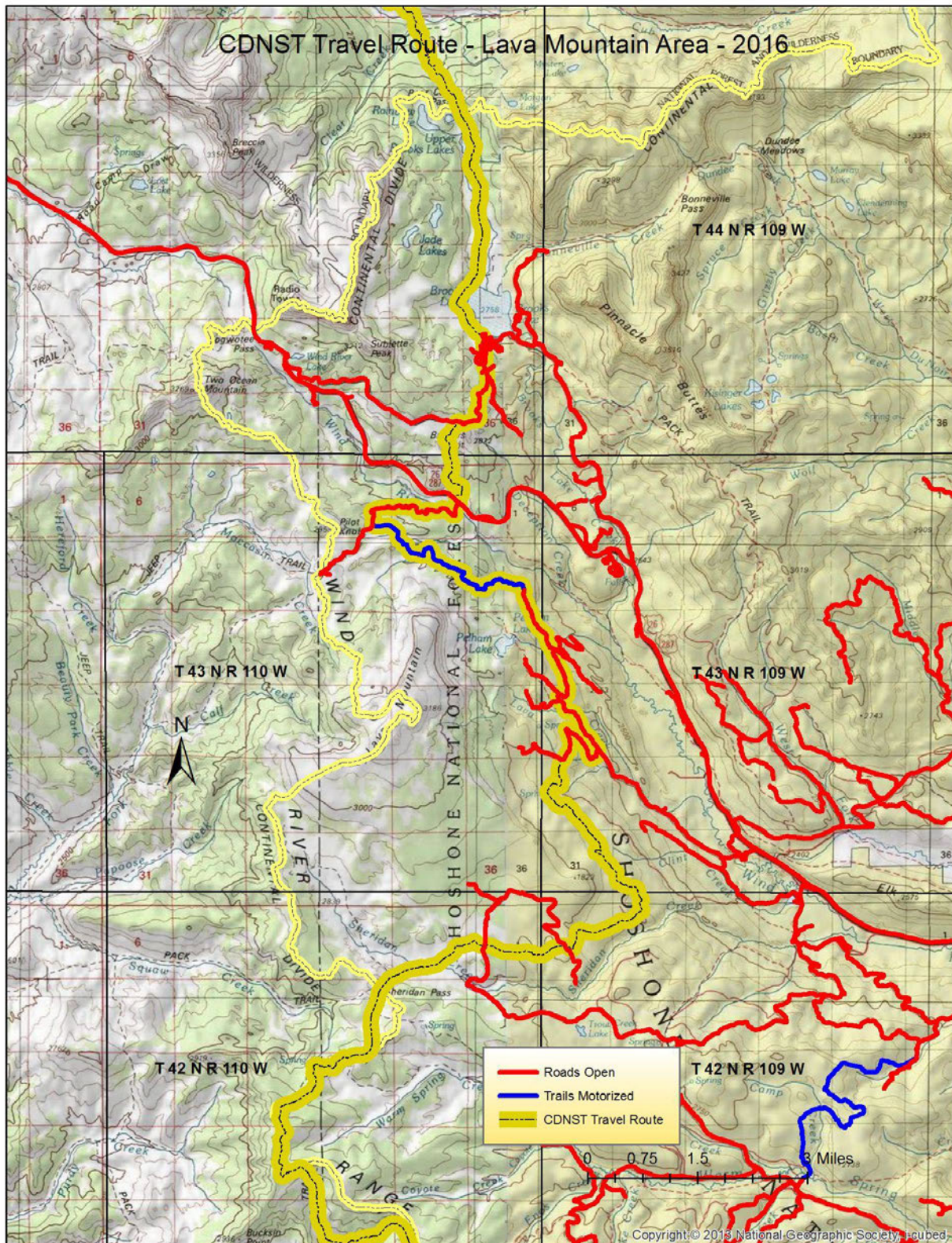
Thank you for accepting and considering these comments. If you have any questions, please contact me at nstrail@comcast.net.

Greg Warren

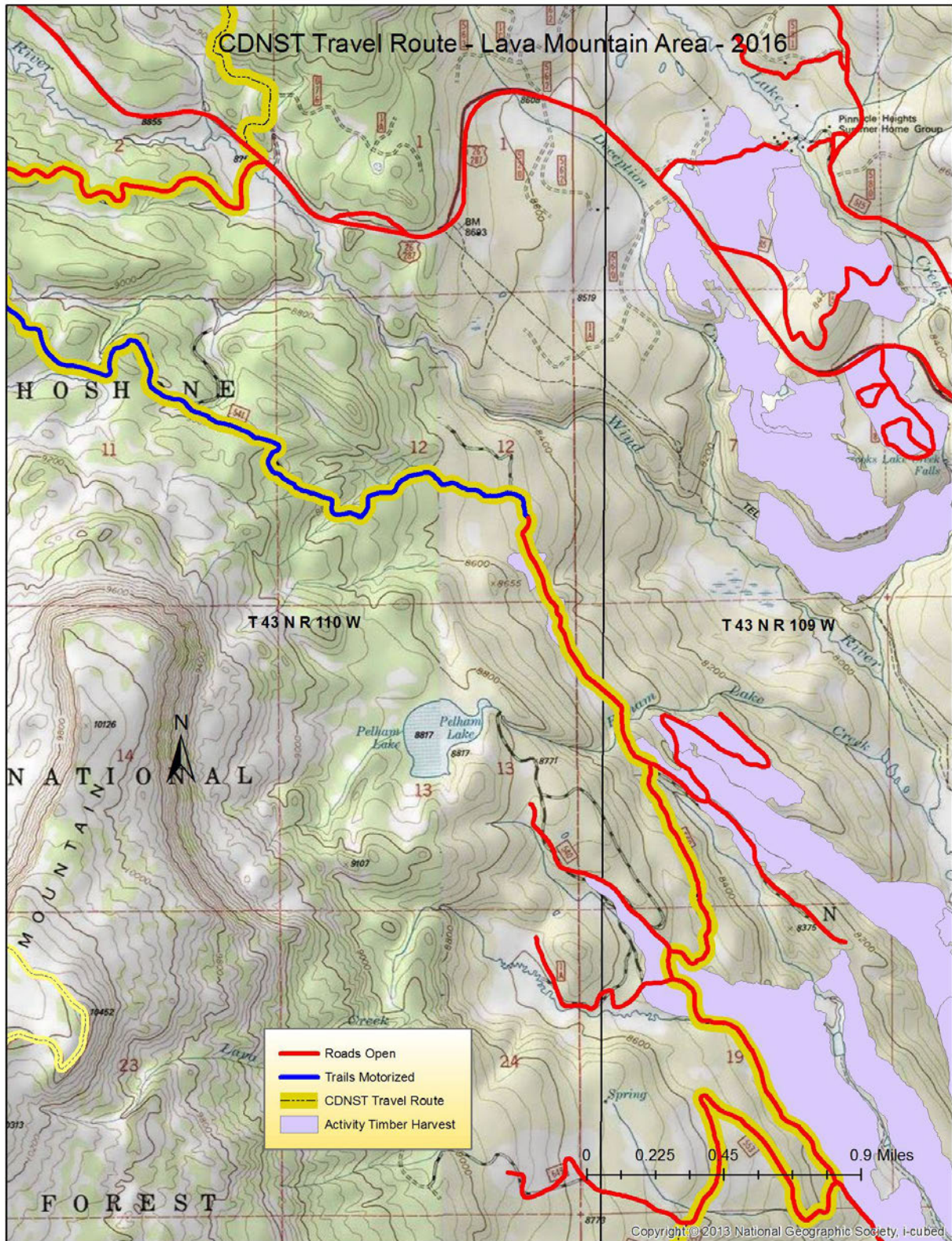
NSTrail.org

cc: Rick Metzger, District Ranger
Brenda Yankoviak, CDNST Program Manager

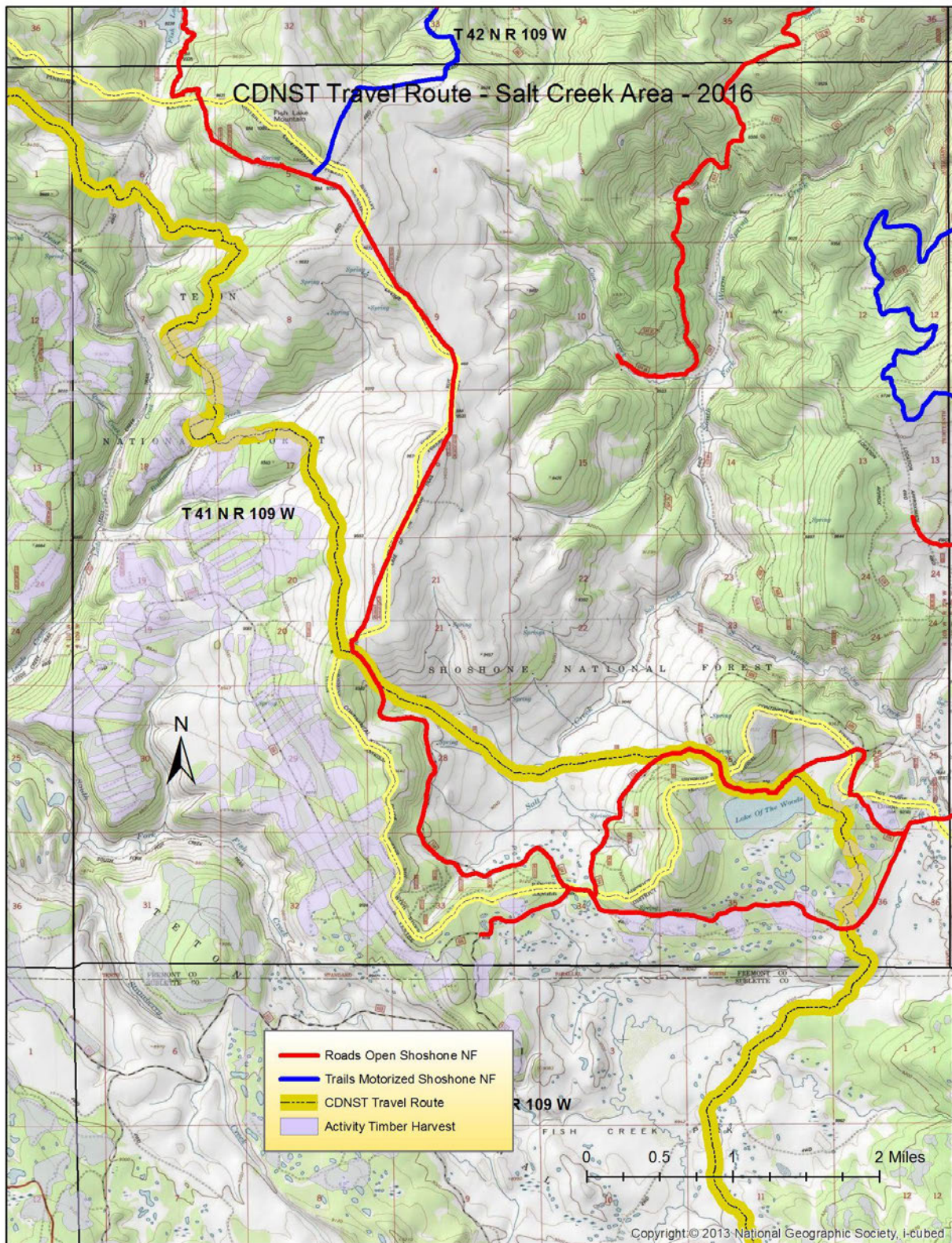
Appendix A – CDNST travel route through the Shoshone National Forest



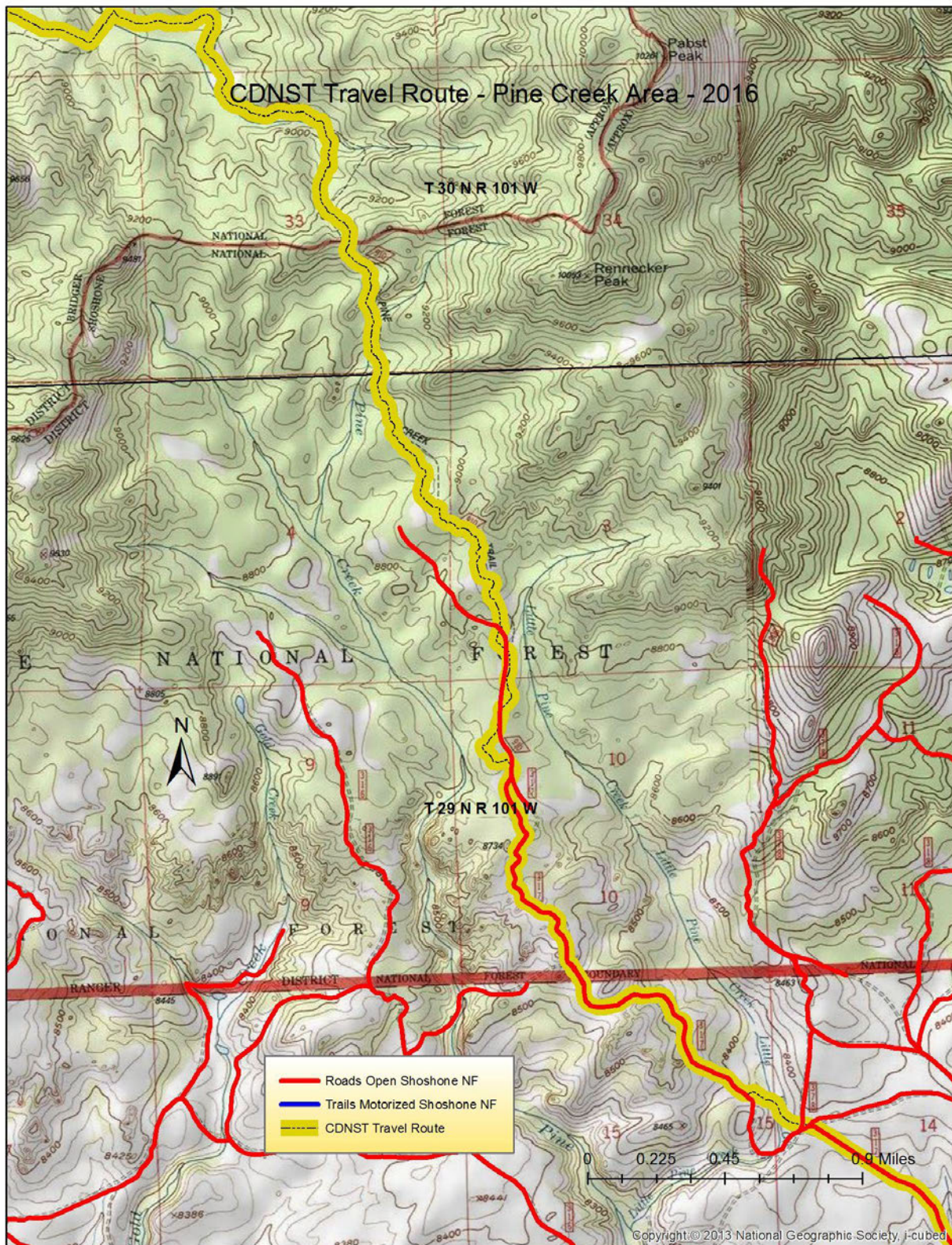
1. CDNST travel route Lava Mountain Area



2. CDNST travel route Pelham Lake enlargement within Lava Mountain area (map 1)

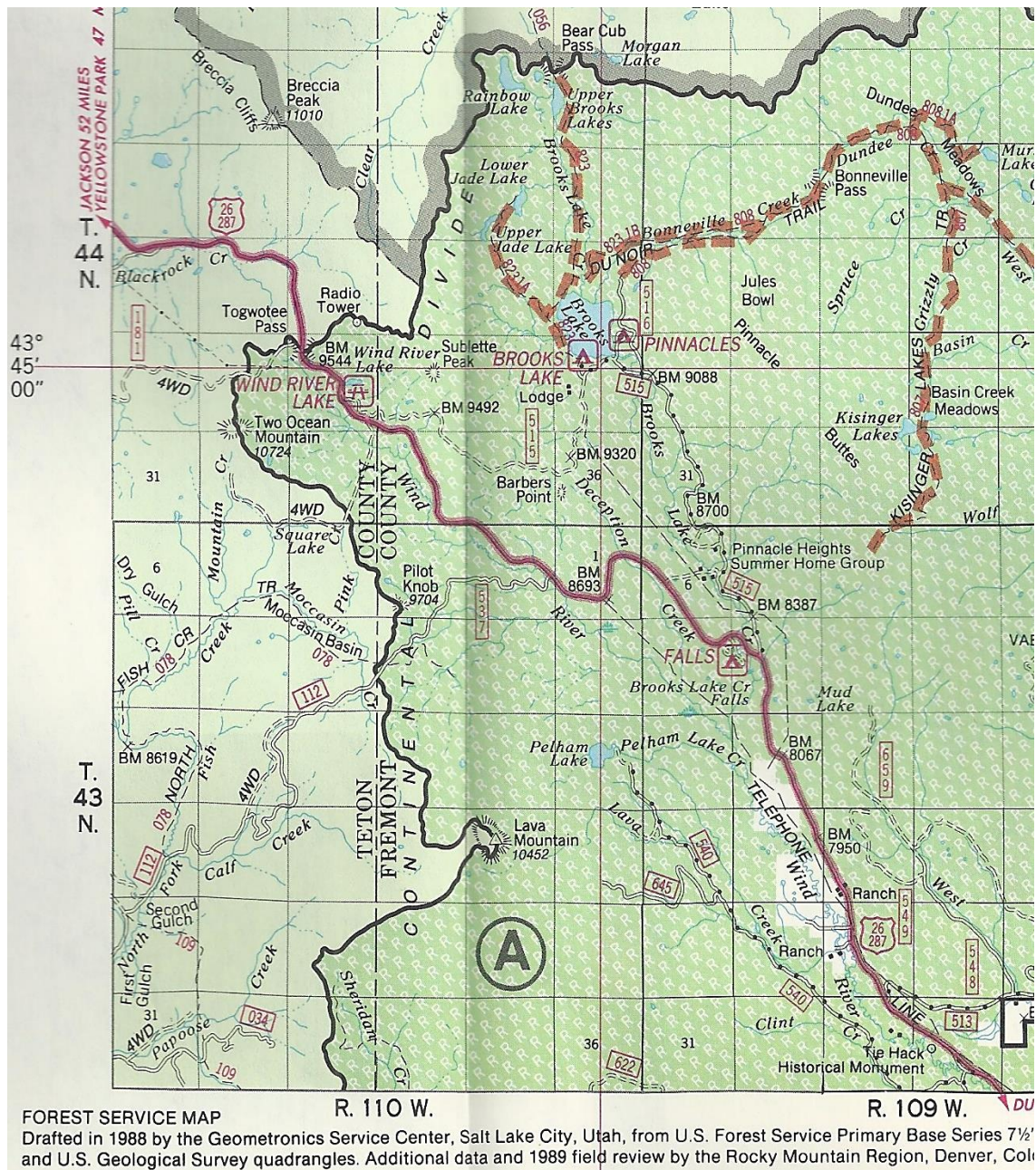


3. CDNST travel route Salt Creek area

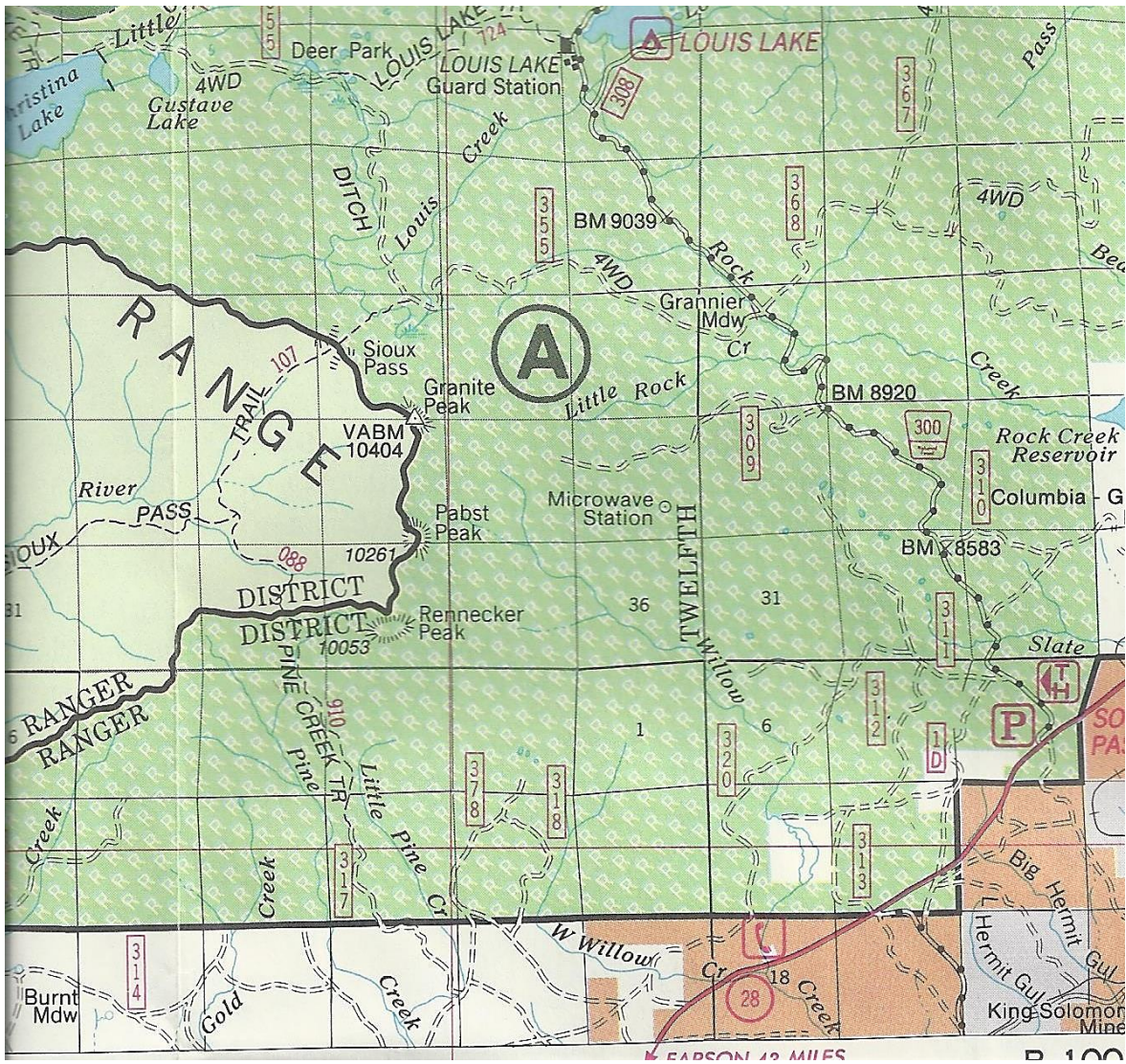


4. CDNST travel route Pine Creek area

Appendix B – Sections of the 1990 Forest Map



1. Lava Mountain Area – 1990 Map



2. Pine Creek area – 1990 Map

Appendix C – CDNST Planning Considerations

This appendix offers guidance for understanding and preserving or enhancing the recreational, scenic, natural, and historical values of the Continental Divide National Scenic Trail (CDNST) through planning that provides for the nature and purposes of this National Scenic Trail. The following are excerpts from a document titled, "[CDNST Planning Handbook](#)."

I. Nature & Purposes and Vision

The nature and purposes of the CDNST emboldens the Senate's vision for this National Scenic Trail and is the foundation for shaping the activities and uses to be preferred along the CDNST corridor. "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, National Trails System Act¹ (NTSA), associated Congressional Reports, CDNST Study Report, and with public involvement, as described in this section.

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 Continental Divide National Scenic Trail (CDNST) will be achieved by providing for the "nature and purposes" values of this designated National Trail.

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

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

potential² 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 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....”

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).

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...

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.”

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."

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."

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).

II. Land Management and Project Planning

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.

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)). 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-way³ and high potential route segments⁴ 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 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).

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)).

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 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 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)).

Development and Management

The development and management of National Scenic and Historic Trails (NSHTs) 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 National Scenic Trail. 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 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.”

In some landscapes, resource developments and use have degraded National Trail values. At this stage, it would be prudent 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.

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, (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 special 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 resource plans that must be consistent with 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.

“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).

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 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.”

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.”

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 Recreation Opportunity Spectrum (ROS) classes generally provide for desired experiences where the allowed non-motorized activities reflect the purposes for which the National Trail was established.

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-6180 (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.⁵

Scenery Management System and Recreation Opportunity Spectrum Relationship

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

⁵ 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.

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 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 are developed for differing needs, but they are all systems that work harmoniously if properly utilized...."

Carrying Capacity

National Trails System Act, sections 5(e) and 5(f), direct that a comprehensive plan (CP) 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)⁶ that directs federal river-administering agencies to "address...user capacities" in a comprehensive river management plan (CRMP) prepared for

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

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 use. 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 CP to protect and enhance National Scenic Trail (NST) nature and purposes. The nature and purposes of a NST are also known as NST values. The values of National Scenic Trails (NST) 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.

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 than a mere scintilla. BLM directive MS-6280 defines 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 (see nature and purposes).
- *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-Primitive Non-Motorized ROS classes and high and very high scenic integrity allocations would normally protect the nature and purposes (values) of the CDNST.