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Organization:

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Comments: Submitted by Email and Regular Mail

January 17, 2020

Shelly Grail

Recreation Manager

Aspen-Sopris Ranger District

620 Main Street

Carbondale, CO 81623

Re: U.S. Forest Service NEPA Review of the Redstone to McClure Pass Trail Segment of the Carbondale Crested Butte Trail proposed by Pitkin County

Dear Ms. Grail:

I am writing as a concerned citizen of Pitkin County and resident of the Crystal River Valley with respect to the environmental review that the Forest Service is about to initiate or has initiated, pursuant to its obligations under NEPA and associated regulations, of the Redstone to McClure Pass Trail Segment of Pitkin County's planned Carbondale to Crested Butte Trail. The residents of the Valley look to the Forest Service, as the Federal agency tasked with the responsibilities under NEPA, its implementing regulations at 40 CFR §§ 1500 et seq, and the Forest Service's own implementing regulations at 36 CFR §§ 220 et seq, to conduct a full environmental review of the project that the County has proposed. A key question that the Forest Service will need to decide at the outset is the extent of the proposed action that must be considered during its scoping process in order to determine whether the proposed action, along with connected and cumulative actions, have the potential to have significant impacts requiring the preparation of a DEIS. (See 36 CFR §§220.4(e) and 220.7(b)(3); 40 CFR §§ 1508.25 and 1508.27.)

In forwarding its Trail proposal to the Forest Service by letter dated May 24, 2019 (see attached), Pitkin County indicated that it was initiating the approval process for building a "segment" (the Redstone to McClure Pass segment) of a larger proposed trail (the Carbondale to Crested Butte Trail) on National Forest Service land managed by the White River National Forest. The Project Proposal description enclosed with the County's letter to Karen Schroyer made it clear that the project being proposed to the Forest Service is "a component of the long-envisioned Carbondale to Crested Butte Trail," an 83 mile regional trail that will traverse multiple river drainages, including the Crystal River. The County's May 2019 application also informed the Forest Service that in December 2018, the Pitkin County Commissioners approved the complete Carbondale to Crested Butte Trail plan. Finally, the County's application to the Forest Service clearly states that the Redstone to McClure Pass Trail is "a key part of the Regional Carbondale to Crested Butte" trail.

As the Forest Service is certainly aware, scoping is required for all Forest Service proposed actions (36 CFR §220.4(e)), and scoping must be carried out in accordance with the requirements of NEPA regulations (40 CFR §1501.7). The goal of scoping and the preparation of an Environmental Assessment is to provide evidence and analysis to determine if the potential environmental impacts of a proposed action require the preparation of an EIS or a Finding of No Significant Impact (FONSI). See 36 CFR §220.7, referencing 40 CFR §1508.9. If the Forest Service determines, based on its scoping, that the proposed action may have a significant environmental effect, preparation of an EIS is required. 36 CFR 220.6(c).

The Forest Service is directed by its own NEPA regulations to consider the impacts of the proposed action in terms of context and intensity, as described in 40 CFR §1508.27. Of particular importance with respect to the

Forest Service's evaluation of the potential impacts of the action proposed by the County is the requirement that Responsible Officials evaluate:

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

See 40 CFR §1508.27(b)(6 and 7).

NEPA regulations direct Federal agencies to evaluate the direct, indirect and cumulative impacts of a proposed project in determining its likely environmental effects. See 40 CFR § 1508.7 and 1508.8. Cumulative impacts are defined in §1508.7 as the incremental impact of an action "when added to reasonably foreseeable future actions regardless of what agency (Federal or on-Federal) or person undertakes such other actions." See also the Forest Service regulatory definition of Reasonably foreseeable future actions: "Those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals." 36 CFR §220.3.

Clearly, the construction of the balance of the not only Pitkin County proposed, but also Pitkin County approved, Carbondale to Crested Butte Trail is a reasonably foreseeable future action - a non-Federal activity for which there are identified proposals and existing decisions. As a result, in evaluating the potential impacts of the segmented trail proposal before the Forest Service now, NEPA directs that the incremental impacts of the proposed action, which may be individually minor, must be considered with the added impacts of reasonably foreseeable future actions, which collectively have the potential to be significant. See 36 CFR §§220.3 and 220.7; 40 CFR §1508.7. As the NEPA regulations clearly state:

Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

40 CFR §1508.27(7), cited to in 36 CFR §220.7(3)(iii).

Federal Court decisions have clearly reiterated this key NEPA principle. Under NEPA, agencies "must analyze not only the direct impacts of the proposed action, but also the indirect and cumulative impacts of 'past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.'" *Wyoming v. U.S. Dept. of Agriculture*, 661 F.3d 1209, 1251 (10th Cir. 2011) (citing *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999) (quoting 40 C.F.R. § 1508.7)). Where "several actions have a cumulative ... environmental effect, this consequence must be considered in an EIS." *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1378 (9th Cir. 1998) (citing *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)); see also 40 C.F.R. § 1508.25(a) (stating that the "scope" of an EIS includes consideration of "connected actions"). The purpose of this requirement is to prevent agencies from dividing one project into multiple individual actions "each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir.1985).

Indeed, the Supreme Court has held that, under NEPA, an agency not only has a duty to consider cumulative impacts, but also a separate duty to consider those impacts in a single NEPA process:

proposals for ... related actions that will have cumulative or synergistic environmental impact upon a region concurrently pending before an agency must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate the different courses of action.

Kleppe v. Sierra Club, 427 U.S. 390, 410, 96 S.Ct. 2718, 2730, 49 L.Ed.2d 576 (1976).

Consequently, in light of the Forest Service regulations and other applicable Federal regulations which guide the implementation of NEPA's requirements, I respectfully urge the Forest Service to consider the potential impacts associated not only with the small Redstone to McClure segment project, but also with the larger Carbondale to Crested Butte Trail project, with which the County has clearly stated the segment project is connected and which the County is committed to completing. NEPA directs that the Forest Service consider the likely direct, indirect and cumulative impacts of the entire project in determining whether impacts of the proposed action now before it, in combination with the indirect and cumulative impacts of future actions related to the implementation of the County's approved Carbondale to Crested Butte trail plan (regardless of what Federal or non-Federal agency undertakes such actions), require the preparation of a DEIS.

I am particularly concerned about the potential for significant cumulative impacts to the Crystal River and its associated riparian areas resulting from the trail and related bridge construction along much of its length up the Crystal River Valley. As the 9th Circuit Court of Appeals has ruled, when several actions have a cumulative environmental effect, "this consequence must be considered in an EIS." *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1378 (9th Cir. 1998). Issuance of a FONSI for the small trail segment project which the County has asked the Forest Service to approve will allow the whole Trail project, which the County has committed to move forward with, to be divided up into multiple actions, "each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985). Clearly, that would violate the bedrock principles and goals of NEPA, to which the Forest Service has committed - to use all practicable means to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment. See 40 CFR §1500.2(f).

I respectfully request that the Forest Service evaluate the potential environmental effects of connected and reasonably foreseeable future actions related to the County's planned construction of the entire Carbondale to Crested Butte Trail in the process of assessing the environmental impacts of the proposed action, the Redstone to McClure trail segment, and I urge you to conclude that, when all related direct, indirect and cumulative impacts are considered, the issuance of a FONSI is not justified and the preparation of a DEIS is required.

Thank you for your careful consideration of these comments.

Sincerely,

Katherine Hudson, Resident of the Crystal River Valley

Cc:

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