

Date: April 1, 2016

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Contents

Tenmile – South Helena Project Comments and Recommendations	1
Tenmile – South Helena Project CDNST Corridor Map	5
Appendix A – Relationship between Protecting Visual Quality and Recreation Settings	6
Appendix B – CDNST Background Information	8
Nature and Purposes	8
Planning Considerations.....	11
Legislative History and Policy	17

Tenmile – South Helena Project Comments and Recommendations

Thank you for this opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the Tenmile - South Helena Project. I offer the following observations and recommendations.

I support restoration activities within the project area, including maintaining consistent water quantity-quality within Helena's municipal watershed, improving conditions for public and firefighter safety, and providing for the “nature and purposes” of Continental Divide National Scenic Trail (CDNST). Related to the CDNST, action alternatives need to be modified to recognize the CDNST corridor as a Congressionally Designated Area—FSH 1909.12 24.43 - National Scenic and Historic Trails and FSM 2353.44b - Continental Divide National Scenic Trail. The responsible official must assure that CDNST recreation settings are not degraded by road construction and reconstruction and by mechanical treatment activities that are associated with the project. Specific examples of a substantial interference with the nature and purposes of the CDNST would be, but not limited to, hauling or skidding of timber along the CDNST travel route.

The CDNST corridor is to provide for Recreation Opportunity Spectrum (ROS) Primitive or Semi-Primitive Non-Motorized experiences to the extent practicable. “Use the ROS system in delineating and integrating recreation opportunities in managing the CDNST. “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 2353.44b(8)). Also see FSH 1909.12 23.23a—Sustainable Recreation Resources.

In some areas, the CDNST setting may need to be restored to achieve desired ROS setting conditions.

The CDNST travelway is a concern level 1 travel route and scenic management objectives of high or very high must be met in the immediate foreground and foreground to the extent practicable. “Use the Scenery Management System...in developing CDNST unit plans and managing scenery along the CDNST. 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... The CDNST is a concern level 1 route..., with a scenic integrity objective of high or very high, depending on the trail segment...” (FSM 2353.44b(7)). Also see Planning Handbook (FSH) 1909.12 23.23f—Scenery. In some areas, the CDNST landscape may need to be restored to achieve desired visual conditions.

A CDNST Management Area should be described following 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. The criteria is based on ROS criteria that identify remoteness for a Semi-Primitive Non-Motorized setting as: The trail will have a natural setting that may have subtle modifications that would be noticed but not draw the attention of an observer traveling through the area. An area at least 1/2-mile from all roads, railroads or trails with motorized use; can include the existence of primitive roads and trails if closed to motorized use. The Forest Service Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route. **Appendix A** discusses the relationship between providing for visual quality and recreation settings.

An existing Forest Plan forest-wide standard states, “A specific Continental Divide National Scenic Trail (CDNST) route will not be identified prior to approval of the comprehensive plan being prepared by the Forest Service and the Secretary of Agriculture's Advisory Council. Once the comprehensive plan is approved, the management direction will be incorporated further in this plan. Based on the Comprehensive Plan, a more detailed analysis will be completed to show trail segments, objectives and specific route locations.” To address this Forest Plan requirement for this project, a site-specific amendment should be enacted to provide for CDNST management direction.

A forest-wide recreation standard further states, “The legislation authorizing the CDNST specifically intended that the trail would not adversely affect or preclude the application of normal management

ROS classes are summarized the CDNST Comprehensive Plan to assure that identical definitions are used across administrative units. This summary is not to be interpreted 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 substantially interfere with the nature and purposes of the CDNST. Primitive and Semi-Primitive Non-Motorized classes are generally consistent with the nature and purposes values of the CDNST.

practices on lands adjacent to or within the trail corridor (both public and private).” This statement does not accurately portray the National Trails System Act (NTSA) statute. Instead, the NSTA, Section 7(a)(2), states, “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 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.” This legislative guidance relates to the plans that existed in 1978 when the CDNST was designated by an Act of Congress. Nonetheless, a National Scenic Trail optimum location review may find that designing the CDNST rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Recreation Opportunity Spectrum (ROS) settings would insure continued maximum benefits of the land. 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)).

Furthermore, the standard states, “It is not the intent of the legislation that a separate "management plan" be developed for the CDNST, but to provide for the development and management of the trail as a management practice which is integrated into the overall prescription for the land through which the trail passes.” Contrary to this description, it is the intent of Congress for the CDNST to have a Comprehensive Plan (NTSA, Section 5(f)). Though, the Forest Service has opted to attempt to implement this NTSA requirement through staged decisionmaking as described below.

Comprehensive plan requirements (16 U.S.C. 1244(f)) for the CDNST are addressed through staged decision processes: (1) the 2009 Comprehensive Plan established desired conditions, policy, and procedures including describing the nature and purposes of the CDNST, (2) Forest Plans guide all natural resource management activities including establishing management areas and plan components, provide integrated resource management, and address programmatic planning requirements as described in the CDNST Comprehensive Plan (Chapter IV), and (3) 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).

The CDNST high potential route segment corridor is depicted on the Tenmile – South Helena Project CDNST Corridor Map that is found on page 5 of this document. The planning and management of the CDNST corridor needs to be addressed through the direction in the 2009 CDNST Comprehensive Plan, FSH 1909.12 24.43, FSM 2353.4, and E.O. 13195. National Scenic Trail considerations are summarized in **Appendix B** of this document.

Tennile – South Helena Project Principal CDNST Recommendations

Forest Service units are to administer National Scenic and National Historic Trail corridors to be compatible with the nature and purposes of the corresponding trail... 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 2353.42). 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)). As such, avoid constructing and reconstructing roads and using heavy-equipment within the CDNST corridor unless appropriately addressed in an amended or revised Forest Plan and as approved in a site-specific CDNST unit plan (FSM 2353.44b(2)).

Recommendations for Improving the Quality of Public Comments

In the future, please encrypt Adobe Acrobat planning documents so that text can be copied to other documents. Copying and pasting text into another document would facilitate public commenting.

In addition, I would encourage the Forest and Districts to post online geospatial data that is associated with descriptions and analyses found in NEPA documents. This could include geospatial data layers such as Management Areas, roads and trails, and the location and extent of the proposed action and alternatives.

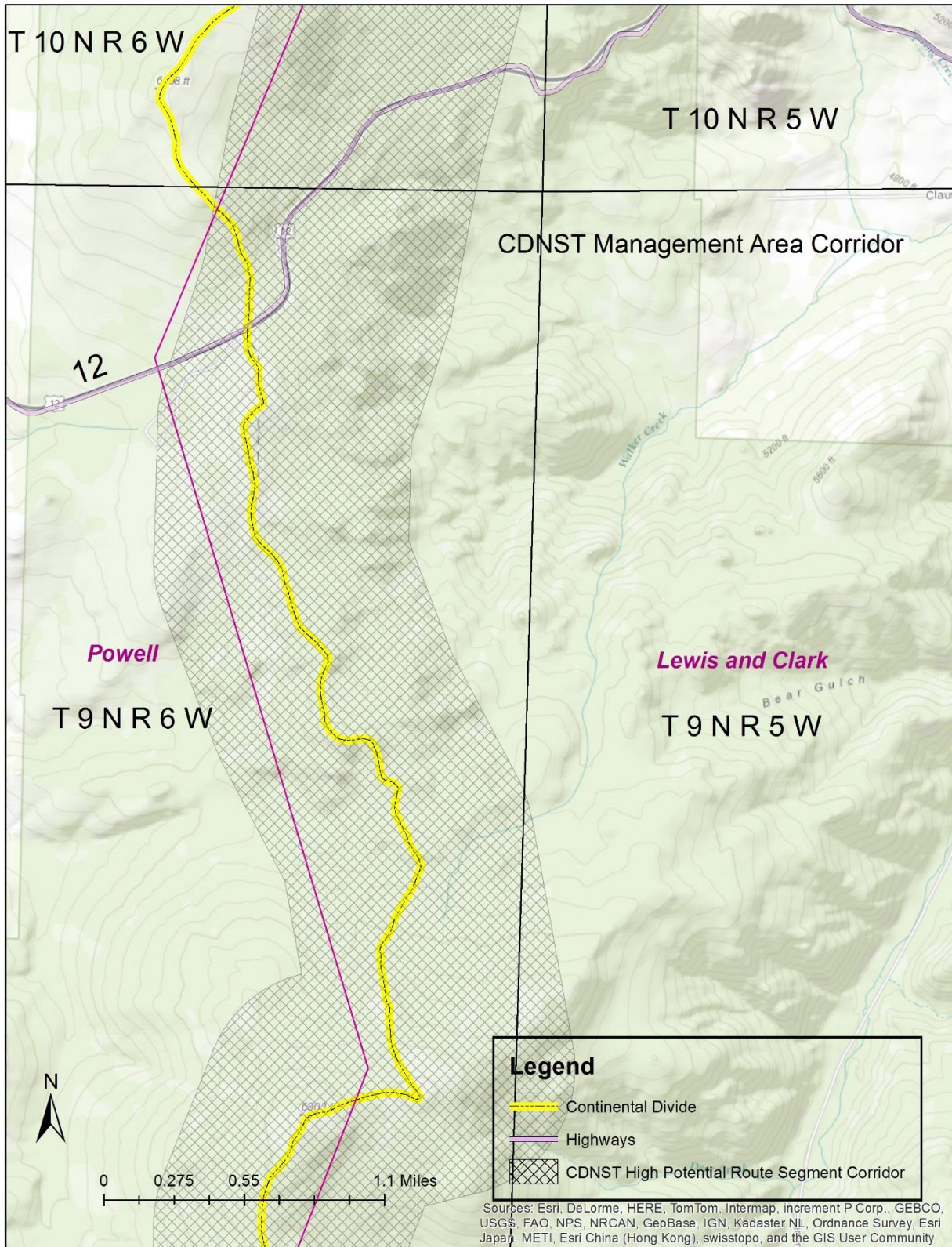
Thank you for accepting and considering these comments and recommendations.

Greg Warren

NSTrail.org

Tennile – South Helena Project CDNST Corridor Map

(CDNST Corridor GIS and Google Earth data was sent to the GIS coordinator on July 30, 2015)



Appendix A – Relationship between Protecting Visual Quality and Recreation Settings

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 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 watershed 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.”

Appendix B – CDNST Background Information

Nature and Purposes

The nature and purposes (NTSA, Sec.7(c)) of the CDNST must be described and used as a basis for determining what activities and resource uses are allowed along the CDNST corridor. The nature and purposes of the CDNST may differ somewhat from those of other national scenic trails. The definition is formulated by extrapolating from the Trails for America report, NTSA, associated Congressional Reports, and CDNST Study Report:

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...."

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 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) ... "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...."

NTSA Sec. 7. [16 U.S.C. 1246] (c). "Other uses along the trail, which will not substantially interfere¹ 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

¹ The BLM in MS-6280 defines, "*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)."

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 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.”

CDNST Leadership Council

The CDNST Leadership Council, in 2004, established a Vision and Guiding Principles for the development and protection of the CDNST. 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.

Public Involvement in the Formulation of 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).² 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.

“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

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.’

² This Federal Register Notice, in part, details direction for “nature and purposes,” “vis ual resource management,” “recreation resource management,” “motor vehicle use,” 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.”

Summary

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).

Planning Considerations

National Trails are administered as trail corridors. Managers should establish plan components³ that address (1) desired visitor experience opportunities and settings, and (2) the conservation of scenic, natural, historical, and cultural qualities of the corridor. In addition, 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

³ Plan components guide future project and activity decisionmaking.

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) prescriptions⁴ 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 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)).⁵ This in turn could trigger the need for a land and resource management plan amendment, and on National Forest System lands, the development of a CDNST Unit Plan. Land management plans are to protect potential CDNST rights-of-way⁶ and high potential route segments⁷ where the rights-of-way is yet to be selected and the travelway officially located (1246(a)(2) and 16 U.S.C. 1244(f)(3)). 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).

Locating the CDNST Corridor and Establishing Management Direction

The CDNST corridor is to be described through the delineation of a Management Area (MA) with plan components that provide for the nature and purposes values of this designated National Scenic Trail. 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 should be located in more primitive ROS classes; once located the management of the MA should provide for a Primitive or Semi-Primitive Non-Motorized experiences to extent practicable. In addition, the CDNST travelway is a concern level 1 travel route and scenic management objectives of high or very high must be met in the immediate foreground and foreground to the extent practicable. The boundary of the MA 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; can include

⁴ Management prescriptions are management practices and intensity selected and scheduled for application on a specific area to attain multiple-use and other goals and objectives.

⁵ A substantial interference include the cumulative effects of actions that that degrade the Scenic Integrity Level or modified the ROS Class resulting in more developed or modified CDNST settings of selected and high potential route segments. The cumulative effects period is the 37 years since the CDNST was established and designated by Congress in 1978.

⁶ The BLM in MS-6280 defines a, '*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."

⁷ 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 existence of primitive roads and trails if closed to motorized use. More than 3 miles would tend to classify the area as Primitive⁸ another desirable setting. The Forest Service Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route.⁹ 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.

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 and guidelines for the National Forest System (36 CFR 219.1), provide integrated resource management direction for special areas (36 CFR 219.2), 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). The following direction is found in the Comprehensive Plan and Forest Service Manual:

A comprehensive plan for a National Trail is not a LMP resource plan—36 CFR 219.15(e). Instead, 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 and protection of the nature and purposes of the CDNST.

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. Part c, page 16, as, “(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

⁸ FSM 2310.3 – [Planning] 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.

⁹ [Landscape Aesthetics, A Handbook for Scenery Management, Agricultural Handbook Number 701](#)

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. Primitive and Semi-Primitive Non-Motorized classes are consistent with the nature and purposes (values) of the CDNST. Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that substantially interfere with the nature and purposes of the CDNST.

Carrying Capacity

National Trails System Act (NTSA)¹⁰, 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 (CRMP) 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 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 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. 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. Furthermore, the NTSA goes beyond ROS descriptors requiring the protection of significant resources and qualities along the National Trail corridor.

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. Capacity-related decisions can also potentially lead to management actions that restrict the public’s access to federal lands.

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:

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

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

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

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 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)); this would include a decision that would allow bicycle use (FSM 2353.44b(10)) and motor vehicle use (FSM 2353.44b(11)).

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. Desired conditions are characterized in part by Primitive and Semi-Primitive Non-Motorized ROS settings. These settings are described by the following conditions:
<p>Primitive: This ROS class provides users with a primitive recreation experience. These segments are set in an essentially unmodified environment. Evidence of humans would be unnoticed by an observer traveling through the area. The travel route should be at least 3 miles from all roads, railroads, or trails with motorized use. Places for camping will be available and rudimentary facilities for overnight camping could be provided outside designated wilderness. Interactions between users will be minimal. The user will enjoy maximum opportunity for solitude and testing of outdoor skills. Feelings of regulation will be minimized to the greatest extent possible. Feelings of physical achievement and self-reliance will be an important part of the experience offered. Ecological processes such as fire, insects, and disease exist.</p>
<p>Semi-primitive Non-Motorized: The ROS class provides a natural setting that could have subtle modifications that would be noticed, but not draw the attention of an observer traveling through the area. The travel route will be at least one-half mile from all roads, railroads, or trails with motorized use. 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.</p>

CDNST LMP MA Objectives

Descriptions
Complete the CDNST Unit Plan (FSM 2353.44(b)(2)) within three years. [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 travelway as a concern level 1 travel route. Resource management actions are to meet a Scenic Integrity Level of Very High or High in the immediate foreground and foreground visual zones. Excepted are management activities that contribute to achieving the overall nature and purposes of the CDNST.
<i>Forest-wide Standard: Resource management actions are to meet a Scenic Integrity Level of Very High, High, or Moderate in the middleground as viewed from the existing and potential CDNST travel routes.</i>
Recreation Management
Resource management actions and allowed uses must be consistent with maintaining or achieving Primitive or Semi-Primitive Non-Motorized ROS class settings.
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 and FSM 2353.44b(8)).
The Management Area is not suitable for motorized and mechanized use, except where such use is in accordance with 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 shall not be authorized unless the activity, use, or event contributes to achieving the nature and purposes of the CDNST.
Minerals Management
Mineral leases are to include stipulations for no surface occupancy.
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 recreation opportunities, to provide vistas to view surrounding areas, and to conserve natural resources.
Vegetation may be managed to maintain or improve threatened, endangered, and sensitive species habitat.
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.6 and FSM 2353.44b(11).
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)).

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, FSM 2380, and E.O. 13195 are used to guide the development and management of this National Scenic Trail corridor.

Legislative History and Policy

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... 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.”

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 established 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.”

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.”

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 National Scenic Trail. 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.

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 established 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...¹³” The legislative requirement for the Secretary of Agriculture to take action and select

Multiple-use plans that were established in the benchmark year of 1978 when the CDNST was designated by an Act of Congress have been revised. Therefore, in a legal sense, the legislative requirement for the National Trails System segments to “...harmonize with and complement any established multiple-use plans...” is no longer binding. Nevertheless, 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 insure continued maximum benefits of the land. 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)).

¹³ The BLM in MS-6280 describes that, “For all National Trails, the National Trail Management Corridor alternatives should 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))

the CDNST rights-of-way on National Forest System lands should be addressed by establishing CDNST Management Area (MA) corridors¹⁴ in Land Management Plans (FSM 2353.44b); the requirement should be met on BLM public lands by establishing National Trail Management Corridors (NTMC) in Resource Management Plans.¹⁵ 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.¹⁶

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 interfere¹⁷ 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 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...” Other uses include recreational and resource uses that may be incompatible with the nature and purposes for which the CDNST was established and designated.

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

¹⁴ The term “corridor” describes an allocation established through the land use planning process, pursuant to Section 7(a)(2) of the National Trails System Act (“rights-of-way”) and E.O. 13195, 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 to provide for the nature and purposes of the CDNST.

¹⁵ The BLM in MS-6280 defines a, “*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 in the trailwide Comprehensive Plan and 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. See also National Trail Management Corridor.”

¹⁶ 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.

¹⁷ Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion and consists of more than a mere scintilla. A substantial interference is an interference that prevents or restricts an activity or use, and precludes interferences that would interfere only in a minor way.

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....

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....”

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)

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.”

The values of National Scenic Trails include: (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).

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 of the Comprehensive Plan 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.”

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.

FSM 2353.4(1)(b) – Administration (1979— now expired). [*Policy that was in effect at the time the CDNST was established and designated.*]

“Development and administration of a National Scenic Trail shall be to 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, cultural qualities of the areas through which a National Scenic Trail goes....”

¹⁸ See the [Appalachian Trail Resource Management Plan](#) for an example.

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

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

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

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.

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). 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....”

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 the comprehensive plans for National Trails, FSM 2353.4, FSH 1909.10 section 14, and FSH 1909.20 section 24.43 which provide policy and management direction for implementing the requirements of the National Trails System Act.

FSH 1909.12 - 14 – ASSESSING DESIGNATED AREAS. Designated areas are specific areas or features within the plan area that have been given a permanent designation to maintain its unique special character or purpose... Certain purposes and restrictions are usually established for designated areas, which greatly influence management needs and opportunities associated with them.

The Interdisciplinary Team should identify and evaluate available information about designated areas including:

1. Types, purposes, and locations of established designated areas within the plan area. The Responsible Official should use a map to identify these locations, unless the location of the designated area must remain confidential for resource protection.
2. Range of uses, management activities, or management restrictions associated with the established designated areas in the plan area.
3. Existing plans for the management of established designated areas within the plan area, such as comprehensive plans for national scenic or historic trails.

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.

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.

MOU between the Continental Divide Trail Coalition and Forest Service Regions

A “MEMORANDUM OF UNDERSTANDING BETWEEN THE CONTINENTAL DIVIDE TRAIL COALITION AND UNITED STATES DEPARTMENT OF AGRICULTURE 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....