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**Subject: Forest Plan Revision – Inyo, Sierra, and Sequoia National Forests**

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**Date: September 24, 2014**

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## **Scoping Comments**

### **Forest Plan Revision**

#### **Inyo, Sierra, and Sequoia National Forests**

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The following comments are submitted in response to Federal Register Notice 79 FR 51536 – Plan Revisions for the Inyo, Sequoia and Sierra National Forests; California and Nevada; AGENCY: Forest Service, USDA. ACTION: Notice of intent to prepare an environmental impact statement.

## Planning Guidance – Recreation and Designated Areas

Please consider the following guidance for implementing the 2012 Planning Rule for recreation and designated areas.

### Sustainable Recreation Opportunities and Settings

Plan components need to provide for sustainable recreational settings, opportunities, and access. Sustainable recreation opportunities and settings are those that are economically, socially, and ecologically sustainable. To be sustainable, the established set of recreational settings and opportunities must be an integral part of other resource plan direction and include a compatible scenic character component.

The responsible official needs to use the Recreation Opportunity Spectrum (ROS) system to prescribe (establish) outdoor recreation opportunities in land management planning as described in FSM 2310. ROS classes are defined in terms of its combination of activity, setting, and experience opportunities along with associated indicators and thresholds. Sub-classes and seasonal variations of ROS classes may be defined. Socio-cultural meaningful places may be identified as designated areas. The desired conditions for the plan area need to describe the types of recreational settings, including the mix of desired ROS classes, specific kinds of recreation opportunities, and associated infrastructure. Plans need to have standards or guidelines to ensure consistency of projects or activities with desired ROS classes or other desired conditions for recreation. Plans should include desired conditions that describe the natural, built, social, and managerial environment for sustainable recreation.

The information identified in the assessment provides a starting point to determine the kinds of settings and opportunities to be provided in the plan area. The ability for sustainable recreation opportunities, and the distinctive role of the plan area as a provider of recreation, should inform and create an overall context for adjusting existing recreational settings and opportunities in a new, revised, or amended plan.

Plans should have objectives that describe the intended achievement of modifying the conditions of areas from their inventoried ROS classes toward desired ROS classes where applicable. Objectives may also be designed to alter the condition of recreation areas, dispersed sites, infrastructure, and services to achieve sustainable desired conditions for recreation in the plan area.

Plans should identify suitable uses in a recreational context that is associated with a prescribed ROS class and designated area purpose. Suitability should be described in terms of what types of recreation use and activities are suitable or not suitable within

each management area or geographic area should be based on the desired ROS setting and address recreation use conflicts.

Desired recreation settings and opportunities should inform the basis for applying certain plan components to management areas or geographic areas. Plans may identify a specific set of locations or small areas, such as dispersed recreational sites, for some specific plan components without creating management areas or geographic areas.

Plan content should describe the distinctive role and contribution of the plan area to recreational opportunities and the provision of social and economic sustainability in the broader landscape. Plans may describe management strategies to the development of collaborative capacity through volunteers or partnerships to accomplish recreation objectives for the plan area.

### *Recreation Setting Characteristics*

The three main components of recreation setting characteristics are physical, social, and operational (managerial). Each category of components includes related setting indicators.

#### *Physical Component Indicators*

The physical setting is defined by the absence or presence of human sights and sounds, and the amount of modification to the landscape caused by human activity.

- Remoteness
- Scale
- Naturalness of scenic integrity
- Evidence of Humans

#### *Social Component Indicators*

The social setting reflects the amount and type of contact between individuals or groups. It indicates the opportunities for solitude and conversely for social interaction.

- Probability of Solitude
- Self-Reliance
- Challenge
- Risk
- Social Interaction

#### *Operational Component (Managerial) Indicators*

The operational setting reflects the amount and type of restrictions place on people's activities by the agency which affects the recreation opportunities.

- On site visitor use management

- Built environment
- Infrastructure
- Travel Management
- Managerial Strategies

The ROS framework should be used in several aspects—recreation planning, environmental analysis, and forest planning:

- Inventory existing opportunities
- Analyze the effects of other resource activities
- Estimate the consequences of management activities and decisions on recreation settings and opportunities
- Link user desires with recreation opportunities
- Identify complementary roles of all recreation suppliers
- Develop standards and guidelines for planned settings and monitoring activities
- Integrate recreation settings and opportunities in Forest Plan development

## Wilderness

Plans that include designated wilderness areas need to have plan components that provide for wilderness management in accord with the requirements of the Wilderness Act of 1964 (16 U.S.C. 1131–1136, 78 Stat 890), as amended.

The responsible official needs to develop plan components for designated or recommended wilderness areas that protect and enhance the wilderness character of the areas, including components that protect ecological and social characteristics. FSM 2320 provides direction for wilderness planning and management. In developing plan components, the responsible official should coordinate with the responsible officials of the adjacent administrative units to ensure compatible management of any connected wilderness area in both plan areas.

The plan must clearly identify existing wilderness, wilderness study, and recommended wilderness areas within the plan area. To organize plan components applicable to these areas, the responsible official should provide for one or more management area or geographic areas.

The decision document of the plan needs to describe any recommendations for wilderness designations. If areas are recommended for wilderness, the responsible official needs to include plan components that protect ecological and social characteristics so that the wilderness character of the recommended area is not reduced before congressional action regarding the recommendation.

The plan needs to include desired conditions that describe the desired wilderness character for existing, recommended, and wilderness study areas from an ecological and

social perspective, recognizing the contribution of wilderness to ecological, social, and economic sustainability.

Standards or guidelines are appropriate for placing limits or conditions on projects or activities that may adversely affect the wilderness character of existing wilderness, wilderness study, or recommended wilderness areas. Certain uses may be identified as suitable or not suitable for these areas. Existing wilderness, recommended wilderness, or wilderness study areas are not suitable for timber production.

The plan needs to include maps showing location of all existing wilderness areas, recommended wilderness areas, and wilderness study areas. The contributions of wilderness may also be described as part of the plan area's distinctive role and contribution.

Designated wilderness areas may also have management plans for specific wilderness areas. These management plans need to be consistent with the land management plan or one of the two plans must be changed to achieve this consistency. The wilderness plans often have more detailed management direction than the plan components of a land management plan.

### Wild and Scenic Rivers

The plan revision process needs to include a review of the rivers in the plan area to determine if any are eligible for inclusion in the Wild and Scenic River system. The plan needs to clearly identify designated, suitable, and eligible river segments within the plan area. To organize plan components applicable to existing, suitable, or eligible wild and scenic rivers, the responsible official should provide one or more management or geographic areas for Wild and Scenic Rivers.

The responsible official needs to develop plan components for Wild and Scenic Rivers that protect or enhance the free flowing, water quality, and ORVs for the Wild and Scenic Rivers. FSM 2354 provides direction for Wild and Scenic Rivers planning and management. In developing plan components, the responsible official should coordinate with the responsible officials of the adjacent administrative units to ensure compatible management of any Wild and Scenic River that passes through connected land management plan areas.

Standards, guidelines, or suitability may place limits or conditions on projects or activities to ensure that adverse effects on the outstandingly remarkable values of an eligible or suitable Wild and Scenic River segment are avoided. Standards or guidelines may also protect the intended wild, scenic, or recreational character of a designated river segment to achieve the desired condition for that segment. Existing, suitable, or eligible wild river segments are not suitable for timber production.

Any potential contribution to the Timber Sale Program Quantity from established Wild and Scenic River boundaries need to be described in plan components, including adopting objectives and standards or guidelines that address when timber can be removed from a Wild and Scenic River established corridor

Other plan content includes a map of the designated, suitable, and eligible river segments within the plan area. Other plan content may highlight the distinctive role and contribution of Wild and Scenic River segments.

The decision document for the plan needs to describe the status and any recommendations for Wild and Scenic Rivers within the plan area.

Land management plans shall form one integrated plan for each unit (16 USC 1604(f)(1)). Wild and Scenic Rivers must also have Comprehensive River Management Plans (CRMPs). Land management plan components must be consistent with a Wild and Scenic River CRMP direction.

### Other Designated Areas

Each type of designated area has its own purposes and authorities. Some plan areas may have unique designations created by special legislation or administrative action.

Plans need to recognize and identify existing designated areas and any areas recommended for designation. The responsible official needs to address any additional planning requirements for designated areas as described in legislation, Executive Orders, FSM 2310, FSM 2353, and FSM 2370. In addition, plan components need to be consistent with 36 CFR 294.1 – Recreation Areas.

Plan components need to provide for appropriate management of designated areas for the specific purposes and values for which an area was designated or recommended for designation in the plan. Plan components need to be compatible with the applicable authorities associated with the designation. In developing plan components, the responsible official should consider how designated areas contribute to other desired conditions or objectives for ecological, economic, and social sustainability. To organize plan components applicable to designated areas, the responsible official should provide one or more management or geographic areas to clearly identify the plan components that apply to each designated area; provided, that National Scenic and Historic Trail corridors need to be addressed by identifying a management area that includes the extent of a selected rights-of-way area (16 USC 1246(a)(2)). Plans need to protect potential rights-of-way for designated National Scenic Trails where the rights-of-way are yet to be selected (16 U.S.C. 1246(a)(2)) to establish the National Scenic Management Trail corridor.

The responsible official needs to include plan components that specifically address the principle purposes for which the designated areas were established, such as:

- National Scenic and Historic Trails—nature and purposes, including recreational, scenic, natural, historical, and cultural resource values, and
- National Recreation Areas—outstanding outdoor recreation values.

Standards, guidelines, and suitability need to place limits or conditions on projects or activities that may adversely affect or substantially interfere with the purposes of congressionally designated areas. Congressionally designated areas are normally not suitable for timber production. Any potential contribution to the Timber Sale Program Quantity from designated areas needs to be described in plan components, including adopting objectives and standards or guidelines that address when timber can be removed from a designated area.

Land management plans shall form one integrated plan for each unit (16 USC 1604(f)(1)). For National Scenic and Historic Trails that pass through the planning unit, plan components need to include management and use direction for the rights-of-way that provides for the nature and purposes of the National Trail (16 U.S.C. 1246) and address the requirements of Executive Order 13195.

National Scenic and Historic Trails must have Comprehensive Plans (16 U.S.C. 1244(e) or (f)) that address the management of the selected rights-of-way (16 U.S.C. 1246(a)(2)). Land management plan components must be consistent with established Comprehensive Plans for National Trails. Recognize that the PCNST Comprehensive Plan should be revised to fully address the requirements of the National Trails System Act.

## PCNST Proposed Plan Components Concerns

I am very supportive of the inclusion of a mapped PCNST Management Area with plan components that provide for the nature and purposes of the PCNST. Many of the proposed PCNST plan components are desirable. However, some of the proposed components could allow uses and activities that substantially interfere with the nature and purposes of this National Scenic Trail. The principle concern is only protecting the PCNST from “new” uses and activities, including only addressing new recreation events, new roads, new communication sites, new wind towers, new utility lines, new buildings, and new vehicle crossings; however, some existing uses and activities may have degraded and be continuing to degrade PCNST nature and purposes values. The National Trails System Act does not allow for grandfathered uses and activities that may have or be substantially interfering with the nature and purposes values of the PCNST.

## PCNST Revised Plan Recommendations – Alternative to the Proposed Action

The revised LMP should identify a Management Area corridor of sufficient width to encompass resources, qualities, values and associated settings and the primary use or uses that are present or to be restored along the PCNST travel route. The Forest Plan needs to include a map that

displays the extent of the PCNST Management Area to assure that the nature and purposes of the PCNST are promoted and protected. The Management Area needs to describe nature and purposes desired conditions that are supported by appropriate standards and guidelines. The following are a few broad PCNST Management Area recommendations:

- The extent of the PCNST Management Area needs to be at least one-half mile on both sides of the PCNST travel route following topographic features where it is reasonable to do so, while additional management direction is prescribed for adjacent areas to assure that the PCNST Scenery Management standards are met. 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 the existence of primitive roads and trails if closed to motorized use. More than 3 miles would tend to classify the area as Primitive another desirable setting. The Forest Service Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route.
- Management of activities and uses within this Management Area need to focus on providing for the nature and purposes of the PCNST (FSM 2353.11 and FSM 2353.42). The nature and purposes of the PCNST are to provide for high-quality, scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the PCNST corridor. Other recreation and resource uses along the PCNST may be allowed only where there is a determination that the other use would not substantially interfere with the nature and purposes of the PCNST.
- Location and management factors must be considered, such as, the PCNST needs to be located in more primitive ROS classes where available and once located the management of the PCNST corridor (rights-of-way) must provide for a primitive or semi-primitive non-motorized (and no mechanized transport) experiences to extent practicable. Related, scenic management objectives of high or very high need to be met along the PCNST travel route where on federal lands to the extent practicable.
- Land management plans need to complete the rights-of-way (NTSA, Sec. 7), Comprehensive Plan (NTSA, Sec. 5), and E.O. 13195 requirements by addressing the following: (1) establish a rights-of-way (Management Area) that is of sufficient width and so located to provide the retention of natural conditions, scenic and historic features, and primitive character of the trail area, and (2) identify specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved..., and an identified carrying capacity [or visitor use management practices] of the trail and a plan for its implementation.
- Pacific Crest Trail Association, other partners, and volunteers are sought to assist and lead PCNST programs.



Specific and recommended PCNST Management Area Plan Components are identified in the following table.

**PCNST Management Area Recommended Plan Components**

<b>PCNST MA Desired Conditions</b>
The Management Area provides for the nature and purposes of the PCNST. The nature and purposes of the PCNST are to provide for high-quality, scenic, primitive hiking and horseback riding experiences and to conserve natural, historic, and cultural resources along the PCNST corridor. The PCNST corridor provides panoramic views of undisturbed landscapes in a tranquil scenic environment, and features historic high country landmarks where they occur. The corridor is of sufficient width to encompass national trail resources, qualities, values, associated settings and the primary use or uses. This includes vistas (key observation points), campsites, water sources and other important resource values. Primitive and Semi-Primitive Non-Motorized ROS class settings are found in the Management Area corridor.
<b>PCNST MA Standards or Guidelines<sup>1</sup></b>
<b>Scenery Management</b>
Manage the travelway as a concern level 1 travel route. Management activities 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 PCNST.
<i>Forest-wide Standard: Management activities are to meet a Scenic Integrity Level of Very High, High, or Moderate in the middleground as viewed from the existing and potential PCNST travel routes.</i>
<b>Recreation Management</b>
Manage for the ROS settings of Primitive class in wilderness, and Semi-Primitive Non-Motorized class in non-wilderness.
Manage the PCNST 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 PCNST.
The Management Area is not suitable for motorized and mechanized travel, such use may only be allowed where consistent with the NTSA Section 7(c) (16 U.S.C. 1246(c)). The use of bicycles and other mechanized transport and motorized use is prohibited on the PCNST tread and within the trail corridor, except such use may be allowed at identified crossings.

<sup>1</sup> See FSM 1110.8 for Degree of Compliance or Restriction “Helping Verbs” and “Mood of Verb” Definitions

<b>Special Uses Management</b>
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 PCNST.
<b>Minerals Management</b>
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.
<b>Timber Production</b>
The Management Area is not suitable for timber production. Timber harvest is not scheduled and does not contribute to the allowable sale quantity.
<b>Vegetation Management</b>
Vegetation may be managed to maintain or improve Threatened, Endangered, and Sensitive species habitat.
<b>Cultural and Historic Resources Management</b>
Protect cultural and historic resources.
<b>Lands Acquisition</b>
Provide for land acquisitions to protect the nature and purposes of the National Trail. Prohibit land disposals.
<b>Travel Routes</b>
Segments of the PCNST should fall into Trail Class 2 or 3 and have a Designed Use of Pack and Saddle Stock (FSH 2309.18).
Road construction and reconstruction is prohibited, except as allowed by NTSA Section 7(c) (16 U.S.C. 1246(c)).
<b>Other Uses Considerations</b>
Other uses that could conflict with the nature and purposes of the PCNST may be allowed only where there is a determination that the other use would not substantially interfere with the nature and purposes of the PCNST (16 U.S.C. 1246(c)).
<b>Implementation Strategies</b>
Partnerships and volunteers are sustained or sought to lead and assist in PCNST programs. Volunteer and cooperative agreements will be developed with those volunteers and private organizations (principally the Pacific Crest Trail Association) that are dedicated to planning, protecting, developing, maintaining, and managing the PCNST in accordance with Sections 2(c), 7(h)(1), and 11 of the NTSA.

## Background – Planning Considerations and the Pacific Crest National Scenic Trail

### Introduction – National Scenic Trails

As envisioned in ‘Trails for America,’ national scenic trails are to be very special: "A standard for excellence in the routing, construction, maintenance, and marking consistent with each trail's character and purpose should distinguish all national scenic trails. Each should stand out in its own right as a recreation resource of superlative quality and of physical challenge." According to the Act, national scenic trails "will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of nationally significant scenic, historic, natural, and cultural qualities of the area through which such trails may pass." National scenic trails are 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. The corridor will be normally located to avoid established uses that are incompatible with the protection of a trail in its natural condition and its use for outdoor recreation.

Corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails are protected to the degree necessary to ensure that the values for which each trail was established remain intact. National scenic and national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the corresponding trail, may be permitted in limited situations.

The Forest Service and other agencies recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's scenic and historic trails. In recognition of these contributions, it is a purpose of the Forest Service to encourage and assist volunteer citizen involvement in the planning, protection, development, maintenance, and management of the national scenic and historic trails.

### 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 Pacific Crest National Scenic Trail:

“In the Cascade Mountains of Washington and Oregon and the Sierra Nevada of California is found some of the earth's most sublime scenery. Beloved by the famous naturalist John Muir, they include a generous share of the continent's most verdant forests, tallest and oldest trees, highest mountains, and most breathtaking waterfalls. The unique golden trout and the almost extinct giant condor call them home. The great California grizzly once roamed their high slopes. The mountains still abound with deer, black bear, and other interesting varieties of game. For the recreationist they offer a lifetime of inspiration and adventure with a stimulating new experience over every rise and around every bend.

As early as 1920, the Forest Service began surveys of trails along sections of the Cascade and Sierra Nevada ranges. The idea of an esthetically pleasing route for foot and horseback travelers extending the full length of the crest from Canada to Mexico was conceived by Clinton C. Clark of Pasadena, California, and first proposed in 1932.

The Pacific Crest Trail traditionally has served horseback and foot travelers. This use pattern, accepted by most visitors to the trail, should be continued. Incompatible, competing uses can jeopardize important segments of the trail, especially in California where population pressures are greatest. . . In areas where private holdings are large and relocation of the trail to avoid them is not practical, incompatible activities such as logging or land development projects could threaten the trail's quality.

The Forest Service and National Park Service have adequate authority to prescribe public uses that will be permitted or restricted for most portions of the trail on the lands they administer. Incompatible uses can be eliminated or limited in several ways... On public lands, existing management practices on National Parks, National Forest Wilderness Areas, and State parks probably will suffice to protect trail quality. For lands managed primarily for other purposes, Federal and State agencies should modify their timber harvesting, livestock grazing, and special permit practices to protect trail quality. The Federal Government should prevent adverse mineral exploration and development by withdrawing public lands adjacent to the trail from mineral entry.

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 Pacific Crest National Scenic Trail was established and designated in 1968.

The NTSA establishment and designation of the PCNST provides for the Secretaries of the Agriculture and Interior to manage the PCNST under existing agencies authorities, but subject to the overriding direction of providing for the purposes of this National Scenic Trail. The establishment of the PCNST thus 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 PCNST corridor.

#### **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...

(2) The Pacific Crest National Scenic Trail, a trail of approximately two thousand three hundred fifty miles, extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST-PC-103-May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.”

NTSA sec. 5(e) (16 U.S.C. 1244(e)) – “...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 (along with high potential historic sites and high potential route segments in the case of national historic trails), details of any anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;
2. An acquisition or protection plan, by fiscal year for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and
3. 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 PCNST. Pursuant to Section 5(a), the PCNST was established and designated in 1968. 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 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....”

Multiple-use plans that were established when the PCNST was designated in 1968 by an Act of Congress have been revised. Therefore, in a legal sense, the legislative requirement to “...harmonize with and complement any established in multiple-use plans...” is no longer binding. Nevertheless, a National Scenic Trail optimum location assessment may find that designing the PCNST rights-of-way corridor<sup>2</sup> 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 PCNST 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 PCNST rights-of-way corridor and does not modify the nature and purposes values of the PCNST (16 U.S.C. 1246(c)). The legislative requirement for the Secretary of Agriculture to take action and select the PCNST rights-of-way on National Forest System lands can be addressed by establishing PCNST Management Area (MA) corridors in Land Management Plans; the requirement is being met on BLM public lands by establishing National Trail Management Corridors (NTMC) in Resource Management Plans.<sup>3</sup> The establishment of PCNST MAs and NTMCs could facilitate PCNST comprehensive planning (16 U.S.C. 1244(e)), selecting and publishing the PCNST rights-of-way in the Federal Register (16 U.S.C. 1246(a)(2)), and meet attached NEPA requirements.

NTSA Sec. 7(c) (16 U.S.C.1246(c)) – “National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere<sup>4</sup> 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

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<sup>2</sup> 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 PCNST.

<sup>3</sup> 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.”

<sup>4</sup> 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.

made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any National Scenic Trail shall be prohibited....” Other uses include recreational and resource uses that may be incompatible with the nature and purposes for which the PCNST 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 PCNST was established and created. It describes that, “the provisions of this subsection shall not supersede any other provisions of this Act or other Federal laws, or any State or local laws.”

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

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

### Departmental and Congressional Considerations

*Office of the Secretary, 1967:* The Departmental Recommendation discusses National Scenic Trails. “National scenic trails.—A relatively small number of lengthy trails which have natural, scenic, or historic qualities that give them recreation use potential of national significance. Such trails will be several hundred miles long, may have overnight shelters at appropriate intervals, and may interconnect with other major trails to permit the enjoyment of such activities as hiking or horseback riding.... The Secretary of the Interior is authorized to select a right-of-way for, and to provide appropriate marking of, the Appalachian and Potomac Heritage Trails, and the Secretary of Agriculture is authorized to do likewise for the Continental Divide and Pacific Crest Trails. The rights-of-way for the trails will be of sufficient width to protect natural, scenic, and historic features along the trails and to provide needed public use facilities. The rights-of-way will be located to avoid established uses that are incompatible with the protection of a trail in its natural condition and its use for outdoor recreation....”

*Senate Report No.1233, 1968:* “PACIFIC CREST TRAIL – The Pacific Crest Trail, 2,350 miles from the Canadian to the Mexican border, has been open since 1937 through some of the world's most magnificent scenery. Along this trail is a generous share of the continent's most verdant forests, tallest and oldest trees, highest mountains, clearest streams, and breathtaking waterfalls.



In describing the Cascade and Sierra Nevada mountains through which this trail passes, the authors of the report "Trails for America" say: "The unique golden trout and the almost extinct giant condor call them home. The great California grizzly once roamed their high slopes. The mountains still abound with deer, black bear, and other interesting varieties of game. For the recreationist they offer a lifetime of inspiration and adventure with a stimulating new experience around every bend.

...The Washington scenery is spectacular, particularly in the North Cascades Primitive Area, Glacier Peak Wilderness, Mount Rainier National Park, Goat Rocks Wilderness and Mount Adams Wilderness. Other mountain ranges march across the skyline. Snowy peaks, glaciers, alpine meadows with clear springs and brooks, small lakes and rushing rivers are abundant. As it does in Washington, the trail in Oregon follows the Cascades, after crossing the Columbia River at the Bridge of the Gods. Glacial moraines and icefields are visible at Mount Hood, where the trail passes the famous Timberline Lodge and ski area. Further on are lava flows and basalt columns, and such striking wilderness areas as the Three Sisters. The trail also crosses the uniquely beautiful Crater Lake National Park.

Fourteen national forests are crossed by the California portion of the trail. The trail also leads successively through the Marble Mountain Wilderness, Thousand Lakes Wilderness, Lassen Volcanic National Park, Donner Pass, Yosemite National Park, Minarets Wilderness, Devils Postpile National Monument, Kings Canyon National Park, Sequoia National Park, and the newly designated San Gabriel Wilderness Area....

Eighty percent of the Pacific Crest Trail is on Federal lands, representing 1,842 miles. State ownership accounts for 27 miles, and private ownership 444 miles."

*House Report No. 1631, 1968:*

**PURPOSE** - The ultimate aim of H.R. 4865, as amended, is to lay the foundation for expanding further the opportunities for the American people to use and enjoy the natural, scenic, historic, and outdoor recreational areas of the Nation. To accomplish this objective, it establishes a national trails system composed of...National scenic trails which will be located in more remote areas having natural, scenic, and historic values of national significance....

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

Proposed legislation describes the selection of Routes for National Scenic Trails – "The Secretary...shall select the rights-of-way.... Such rights-of-way shall be (1) of sufficient width and so located to provide the maximum retention of natural conditions, scenic and historic

features, and primitive character of the trail area, to provide campsites, shelters, and related public-use facilities, and to provide reasonable public access; and (2) located to avoid, insofar as practicable, established highways, motor roads, mining areas, power transmission lines, existing commercial and industrial developments, range fences and improvements, private operations, and any other activities that would be incompatible with the protection of the trail in its natural condition and its use for outdoor recreation....” Congress considered these qualitative requirements for selecting and designing the rights-of-way in HR 4865, but did not enact the specific direction in NTSA Section 7(a). Instead, the enacted legislation inserts in Section 7(a) more conceptual direction for selecting and designing the rights-of-way, including (1) “consideration of minimizing adverse effects” and (2) designing each segment “to harmonize with and complement any established multiple use plans...” (16 U.S.C. 1246(a)(2)). The enacted legislation made other modifications to HR 4865, including (1) changing the definition of a National Scenic Trail to broaden the statement of purpose (16 U.S.C. 1242(a)) and (2) added a requirement to make efforts to avoid activities incompatible with the purpose for which such trails were established (16 U.S.C. 1246(c)). House and Senate Reports are silent on the reasons for these changes.

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

*House Report No. 98-28, 1983:* Section 7(j) intent is described in this report, “While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles on portions of the National Trail System, the Committee wishes to emphasize that this provision gives authority to the secretaries to permit such uses where appropriate, but that it must also be exercised in keeping with those other provisions of the law that require the secretaries to protect the resources themselves and the users of the system. It is intended, for example, that motorized vehicles will not normally be allowed on national scenic or historical trails and will be allowed on recreational trails only at times and places where such use will not create significant on-trail or off-trail environmental damage and will not jeopardize the safety of hikers, equestrians, or other uses or conflict with the primary purposes for which the trail, or the portion of the trail, were created.” This report underscores the importance of understanding the primary purposes for which a National Trail was established.

## Executive Orders

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)

*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.... ”

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 normally 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(e)) components, NTSA rights-of-way (Section 7(a)), and E.O. 13195 requirements point to the need for land and resource 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).

### PCNST Route Selection

On January 30, 1973, after consultation with the States, Advisory Council, and participating agencies, the Forest Service published in the Federal Register what was described as the selected route of the PCNST in accordance with section 7(a) of the 1968 Act. The Federal Register Notice also stated that the Forest Service, in selecting the route for the trail, gave full consideration to minimizing the adverse effects of the trail on the affected landowners and their operations.

The selection of the PCNST route in 1973 only included the location of the trail tread alignment and did not describe the PCNST rights-of-way corridor. To fulfill the requirements of Section 7 of the National Trails System Act, Forest Plans needs to describe a PCNST Management Area corridor as a surrogate for and to meet the National Trails System Act requirement of describing

the rights-of-way corridor. The requirements of E.O. 13195 should also be addressed at the same time.

### National Trails Forest Service Policy

#### 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)).
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.

### Land Management Plan Direction for Other National Trails

The Appalachian National Scenic Trail (ANST) and Continental Divide National Scenic Trail (CDNST) are protected through Management Area allocations with appropriate management prescriptions or plan components. For reference, see the White Mountain National Forest Land Management Plan, ANST Management Area 8.3. Direction for Land Management Plans for the CDNST is found in FSM 2353.4 and addressed in the Federal Register on October 5, 2009 (Volume 74, Number 191).

The Bureau of Land Management has developed National Scenic and Historic Trail policy to

address the requirements of the National Trails System Act. Directive MS-6280 addresses the management of National Trails. The BLM describes the management of National Trail corridors and defines critical terms such as, “national trail management corridor,” “national trail rights-of-way,” and “nature and purposes.”<sup>5</sup>

### The Nature and Purposes of the PCNST

The nature and purposes of the PCNST must be described and used as a basis for determining what activities and resource uses are allowed along the PCNST rights-of-way corridor. The definition should be formulated by extrapolating from the Trails for America report, National Trails System Act, and associated Congressional Reports:

#### Trails for America -1966

For lands managed primarily for other purposes, Federal and State agencies should modify their timber harvesting, livestock grazing, and special permit practices to protect trail quality. The Federal Government should prevent adverse mineral exploration and development by withdrawing public lands adjacent to the trail from mineral entry.

Trails for America 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 - 1968

SEC. 3. [16USC1242] (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.”

SEC. 5. [16USC1244] (e) ....”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....”

SEC. 7. [16USC1246] (c) ... “Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted...[To] the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited....”

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<sup>5</sup> The BLM in MS-6280 defines, “Nature and Purposes. The term used to describe the character, characteristics, and congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; the primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of National Trails.”

Senate Report 90-1233

National Scenic Trails —“A relatively small number of lengthy trails which have natural, scenic, or historic qualities that give them recreation use potential of national significance. Such trails will be several hundred miles long,...and may interconnect with other major trails to permit the enjoyment of such activities as hiking or horseback riding....”

36 CFR 212.21 - Administration of the Forest Transportation System

This CFR describes uses on the PCNST travel route: "The Pacific Crest National Scenic Trail as defined by the National Trails Systems Act, 82 Stat. 919, shall be administered primarily as a footpath and horseback riding trail by the Forest Service in consultation with the Secretary of the Interior. The use of motorized vehicles may be authorized by the Federal Agency administering the segment of trail involved when use of such vehicles is necessary to meet emergencies or to enable landowners or land users to have reasonable access to their lands or timber rights."

*PCNST Nature and Purposes Summary:* In consideration of the language in the Trails for America, the National Trails System Act, and clarifying Congressional Reports, a summary nature and purposes descriptor for the PCNST would be: “The nature and purposes of the PCNST are to provide for high-quality, scenic, primitive hiking and horseback riding experiences and to conserve natural, historic, and cultural resources along the PCNST corridor.”

Thank you for accepting and considering these comments.

Greg Warren<sup>6</sup>

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<sup>6</sup> Signature provided upon request.