

Devon Cotsamire  
Salida Ranger District  
5575 Cleora Road  
Salida, CO 81201  
dcotsamire@fs.fed.us

September 17, 2017

RE: Opportunity to Comment - Recreation Events Up to 5 year

The following are comments regarding the proposal to approve recreational use activities that would lead to the issuance of various recreation event permits for a period of five years.

### **Background**

The project website describes that, “The USDA Forest Service, San Isabel National Forest, Salida Ranger District, is initiating scoping and asking for public comments on several recreation event special use proposals that have historically occurred in and around the Salida, Colorado area. The Forest Service is considering issuing special use permits for up to five-year terms for events that have been issued for less than one-year in the past. The holder’s current use and occupancy will not include new routes or an increase in participants. All permit holders are in good standing with the Salida Ranger District.” The notice further describes that, “These events are being included in the proposed action because they are: Permitted by the Salida Ranger District, in full compliance with the terms and conditions of the existing/expired special use permit, and proposed with no changes to scope, scale, or intensity compared to that which has been previously authorized... Maps and additional information including routes are available for review at the Salida Ranger District... This comment period coincides with public scoping and will be the only comment opportunity offered on these projects (see 36 CFR 215.5 and 215.6). The purpose of this comment period is to provide an opportunity for the public to provide early and meaningful participation on a proposed action prior to a decision being made by the Responsible Official... If it is found that there are no extraordinary circumstances related to the project that may result in significant individual or cumulative environmental effects, it is expected that this project would be authorized by the use of a Categorical Exclusion. The potential future decision for this project would not be subject to appeal in accordance with the Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5 (2014). Section 431 of the Act directs that the 1993 and 2012 legislation establishing the 36 CFR 215 (post-decisional appeals) and 36 CFR 218 (pre-decisional objections) processes ‘shall not apply to any project or activity implementing a land and resource management plan...that is categorically excluded...under the National Environmental Policy Act (NEPA).’”

## **Visitor Use Management Considerations**

Salida, Leadville, and Gunnison Ranger Districts offer exceptional recreational opportunities for individuals, organized groups, and outfitter and guides. It is important that visitor use management and permitting decisions be based on visitor use planning principles to ensure that quality recreational opportunities can be enjoyed by those that are seeking experiences that are consistent with landscape desired conditions. Where capacity issues are a consideration, it is important that the allocation of use between various publics be awarded through a public process to help ensure that one entity does not dominate the use. Long-term commitments to permitted use of the area should be deferred until appropriate visitor use plans are in place. Please refer to the Interagency Visitor Use Management Council website for more information on visitor use management: <https://visitorusemanagement.nps.gov/>.

## **NFMA Considerations**

Project proposals must be consistent with the Forest Plan; however, it is also critical that a Forest Plan is maintained to address changed conditions and new information. The NFMA envisions that Forest Plans be revised every 10 to 15 years. The Pike and San Isabel NF Plan was approved in 1984 and amendments have not kept pace with change conditions. Similarly, the GMUG Plan was approved in 1983 and again amendments have not maintained the Plan. Regarding the requirements of the National Trails System Act, as implemented through the Continental Divide National Scenic Trail (CDNST) Comprehensive Plan, FSM 2353.4 and FSH 1909.12 24.43, amendments have not kept the Plan current. The existing Forest Plan direction is inconsistent with the requirements of the National Trail System Act and does not provide for one integrated plan.

## **NEPA Considerations**

Forest Service NEPA procedures described in 36 CFR 220 dictate NEPA processes for this project, which includes in part ensuring that the SOPA is updated and cumulative effects are analyzed. These regulations further describe that, “If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.”

The quarterly SOPA report is an important tool and required for notifying the public of proposed actions. Unfortunately, this project was not listed on the official SOPA website and needs to be posted in the next release of the notice with the comment period extended.

Guidance in 36 CFR 220 describes that, “The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.” The events listed in the notice include mountain bike races titled the Vapor Trail 125 and Crest Crank. The scoping notice did not mention that these races would occur on sections of the CDNST, a congressionally designated area.

The notice describes that, “The purpose of this comment period is to provide an opportunity for the public to provide early and meaningful participation on a proposed action prior to a decision being made by the Responsible Official...” However, if the responsible official wants meaningful participation notices should be more forthright about describing relationships between proposed actions and the CDNST congressionally designated area. NEPA is designed to promote consideration of potential effects on the human environment that would result from proposed Federal agency actions, and to provide the public and decision makers with useful information regarding reasonable alternatives and mitigation measures to improve the environmental outcomes of Federal agency actions. NEPA ensures that the environmental effects of proposed actions are taken into account before decisions are made and informs the public of environmental effects of proposed Federal agency actions, promoting transparency and accountability concerning Federal actions that may significantly affect the quality of the human environment. NEPA reviews should identify measures to avoid, minimize, or mitigate adverse effects of Federal agency actions. Better analysis and decisions are the ultimate goal of the NEPA process.

- Project Not Listed: Official Public SOPA Notice - <https://www.fs.fed.us/sopa/components/reports/sopa-110212-2017-07.html#38>
- Project Listed: Unofficial Notice - <http://data.ecosystem-management.org/nepaweb/current-sopa.php?forest=110212#8>

### **National Trails System Act Considerations**

Direction for the visitor use planning and management of the CDNST is found in the CDNST Comprehensive Plan, FSM 2353.42, FSM 2353.44b, and FSH 1909.12 24.43. The planning and management of the CDNST must provide for the nature and purposes of the CDNST. The formulation of the nature and purposes direction for the CDNST was developed through a public process (36 CFR 216) and approved by Associate Chief Hank Kashdan as documented in Federal Register: October 5, 2009 (74 FR 51116). The following is the response to nature and purposes comments –

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

The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses. \* \* \* One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized. \* \* \* The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high-quality recreation experience while maintaining a constant respect for the natural environment. \* \* \* The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails... Thus, the 1976 CDNST Study Report states that the primary purpose of the CDNST is to provide a high-quality recreation experience for hiking and horseback riding... Consistent with the NTSA, the 1976 CDNST Study Report, and the 1977 CDNST Final Environmental Impact Statement, the amended CDNST Comprehensive Plan states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. The amended CDNST Comprehensive Plan and final directives implementing the amendments to the CDNST Comprehensive Plan on National Forest System lands provide that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.... The amendments to the CDNST Comprehensive Plan and directives ensure consistency with the nature and purposes of the CDNST in the context of right-of-way acquisition, land management planning, scenery management, recreation resource management, motor vehicle use, trail and facility standards, and carrying capacity.’

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

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

CDNST will be located in primitive or semi-primitive non-motorized settings, which will further contribute to providing for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources in the areas traversed by the CDNST....

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

Specific to this project proposal, bicycle use on the CDNST should be addressed in an EA or EIS that looks at the proposed action and similar actions along the CDNST in Salida, Leadville, and Gunnison Ranger Districts. Carrying capacity for the CDNST should be established. The cumulative impacts of the proposed permitted actions do demonstrate a cause-effect relationship between a proposed action and the potential effect on the CDNST resource conditions (nature and purposes) and the degree of the potential direct, indirect, and cumulative effect of a proposed and other actions on these resource conditions demonstrates that extraordinary circumstances exist.

### **CDNST Planning Handbook**

I have attached the most recent version of a CDNST Planning Handbook that is a relevant reference to the planning and NEPA analysis for this project.

### **Recommendation**

There are extraordinary circumstances related to the project that may result in significant individual or cumulative environmental effects. CDNST values would be substantially affected by the proposed actions and the cumulative environmental effects of other actions. As such, I recommend that an EA or EIS be prepared for the proposed actions. The decision authority for actions related to the CDNST are the responsibility of the Forest Supervisors on the PSCII and GMUG (FSM 2353.04i).

Thank you for considering these comments.

Greg Warren  
[NSTrail.org](http://NSTrail.org)

Attachment – CDNST Planning Handbook