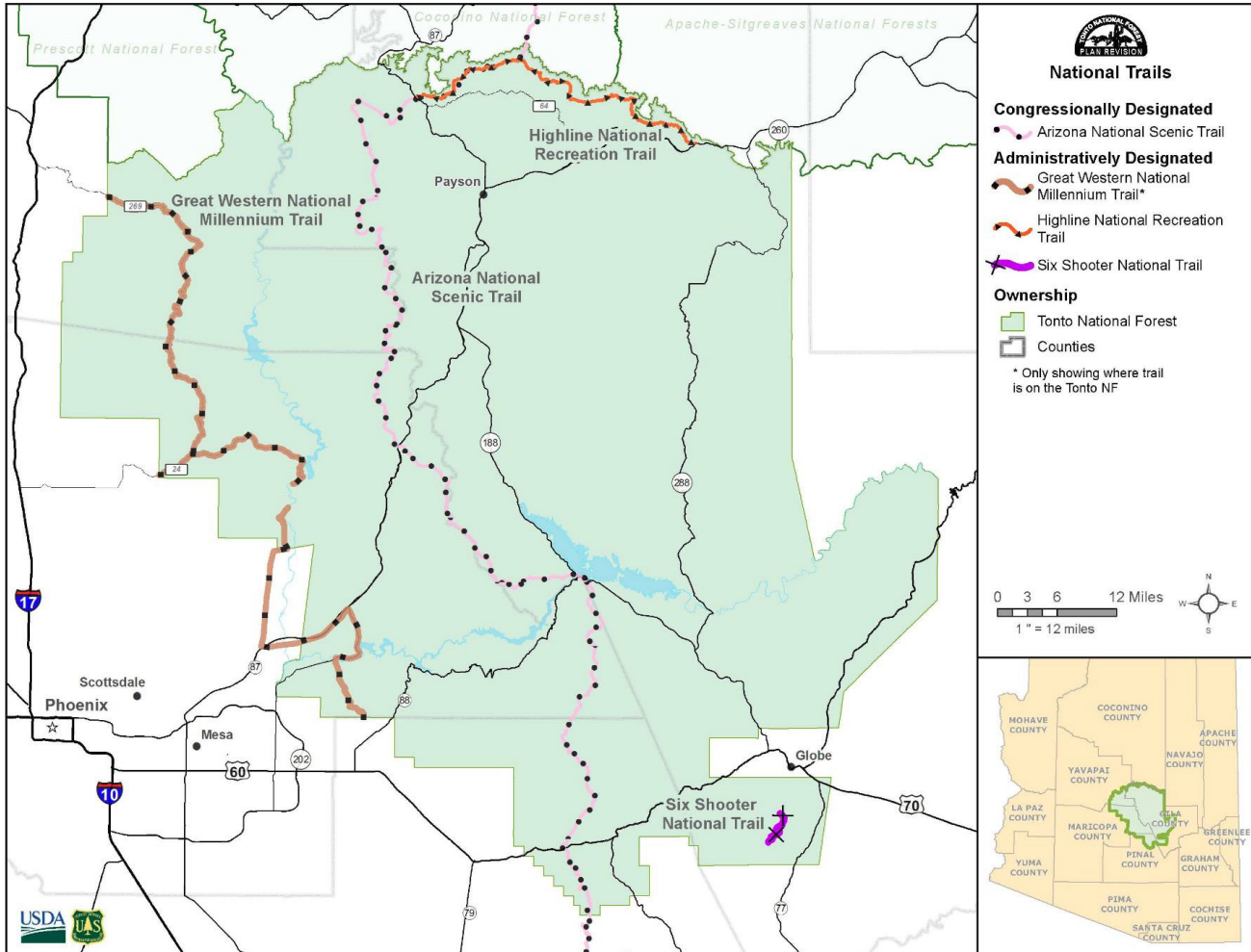


# Arizona National Scenic Trail Planning Considerations

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This handbook offers general guidance for understanding and preserving or enhancing the recreational, scenic, natural, and historical values of a National Scenic Trail (NST) through land use planning that provides for National Trail “nature and purposes.” The information in this handbook supplements and clarifies agency Federal lands planning processes.

## **I. Nature & Purposes**

The National Trails System Act<sup>1</sup> (NTSA) guidance for nature and purposes is foundational for shaping the activities and uses to be preferred and allowed along a NST corridor. The establishment of the following NST nature and purposes statement was formed by extrapolating from the Trails for America report, Congressional Reports, and the NTSA.

### **A. Trails for America**

Trails for America (1966), a report prepared by the Bureau of Outdoor Recreation in response to President Johnson’s Natural Beauty Message of February 8, 1965, describes that, “the entire length of each national scenic trail, together with sufficient land area on both sides to safeguard adequately and preserve its character, should be protected...” The Trails for America vision for a NST will be achieved by providing for the nature and purposes values of the designated National Trail.

### **B. National Trails System Act**

NSTA, 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.”

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] (e)/(f) ... “Within two complete fiscal years of the date of enactment of legislation designating... the 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... and... an identified carrying capacity of the trail and a plan for its implementation.”

NTSA Sec. 7. [16 U.S.C. 1246] (c). “Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted...[To] the extent practicable, efforts

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

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....”

### **C. 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....”

*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.”

H.R. 4865 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 national trails

system segment “to harmonize with and complement any established multiple use plans<sup>2</sup>...” (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.

*House Report 95-734, 1978:* In 1968, Congress enacted the National Trails System Act, and designated the Appalachian Trail as one of the two initial national scenic trails within the system. The act was intended to insure that long-distance, high-quality trails with substantial recreation and scenic potential were afforded Federal recognition and protection... At the time of enactment of the National Trails System Act in 1968, Congress recognized the unique recreational opportunities afforded by extended trails of this type. It was also recognized that changing land uses and increasing pressures for development were a growing threat to maintaining a continuous trail route. The act therefore provided for a Federal responsibility to protect the trail, including the authority to acquire a permanent right-of-way.

*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.95-1165, 1978:* “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.”

*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

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<sup>2</sup> NTSA Section 7(a)(2) is reviewed in the, “Development and Management” section of this paper.

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.

*Senate Report No. 110-290, 2008:* The Arizona Trail is a proposed 807 mile non-motorized trail that traverses Arizona from Mexico to Utah. The trail is intended to be a primitive, long distance trail that highlights the State's topographic, biologic, historic, and cultural diversity. The primary uses are expected to be hiking, equestrian use, and mountain bicycling.

#### **D. 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)

National Scenic Trail Values – (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(e)/(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).

#### **E. Nature and Purposes Statement**

In consideration of the language in Trails for America, Legislative History, the NTSA, and Executive Orders, the nature and purposes statement for a NST is: "The nature and purposes of the

Arizona NST are to provide for high-quality scenic, non-motorized recreation opportunities and to conserve natural, historic, and cultural resources along the corridor and provides a long distance trail that highlights the state's topographic, biologic, historic and cultural diversity.”

## II. Land Management Planning

### A. Introduction

National Trails are administered as trail corridors. Managers should establish plan components that address (1) desired visitor experience opportunities and settings, and (2) the conservation of scenic, natural, historical, and cultural qualities of the corridor. Supporting standards and guidelines need to be established to achieve desired conditions and objectives, and monitoring methods are to be described.

### B. Publication of Rights-of-Way

The NTSA states in Section 7(a)(2), “Pursuant to section 5(a), the appropriate 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...” Other

sections of the Act provide additional important guidance that is associated with the selection of the rights-of-way, planning, and management of a NST, including direction stating: (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;” (2) “Avoiding, to the extent possible, activities along the National Scenic Trail that would be incompatible with the purposes of a NST for which it was established;” and (3) “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 with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail.” The selection of the rights-of-way should occur soon after a NST is authorized and designated by Congress, or as in integral part of the timely preparation of the NST Comprehensive Plan.

Primacy of Congressional Designations – As a general rule, if the NTSA conflicts with NFMA’s or FLPMA’s multiple use mandate, the NTSA designating guidance will apply. Land use planning decisions for each unit must be consistent with the purposes and objectives of the designating Act of Congress. Where multiple Congressional designations overlap, the agency must comply with all applicable statutes. In order to do so, the more protective management requirements will likely apply. The establishment of the comprehensive plan for a NST 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 of a NST corridor and protection of the nature and purposes of a NST.

The NST corridor, also known as a National Trail Management Corridor (NTMC), is to be described through the delineation of a Management Area (MA), NTMC, or equivalent corridor

identifier, with plan components that provide for the nature and purposes values of the designated NST. 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 or NTMC should be located in more primitive Recreation Opportunity Spectrum (ROS) classes; once located the management of the MA or NTMC should provide for Primitive or Semi-Primitive Non-Motorized experiences. In addition, a NST travelway is a concern level 1 travel route and scenic management objectives of high or very high must be met. 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. More than 3 miles would tend to classify the area as Primitive<sup>3</sup> another desirable setting. The Forest Service Scenery Management System identifies that the middleground begins at 1/2-mile of the travel route.<sup>4</sup>

### **C. Development and Management**

The development and management of National Scenic and Historic Trails (NSHTs) must be based on many facets of the NTSA, a Comprehensive Plan, other applicable laws, Executive Orders, regulations, and policies. Planning guidance for the National Trails System and a NST has been modified several times since the legislation was enacted in 1968. In 1976, the National Forest Management Act (NFMA) and Federal Land Policy and Management Act (FLPMA) were enacted requiring integrated plans; as such, new and revised NFMA and FLPMA directed land management plans, and the comprehensive planning for NSHTs, are not predisposed by the 1968 NTSA statement to, "...be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land."

Development and management guidance found in the NTSA is summarized below and related to other laws and a National Scenic Trail:

(1) The NTSA, as amended, is the principal legislation that influences the development and management of a NST. The NTSA Statement of Policy describes the purpose of the legislation in Section 2(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... and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located."

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<sup>3</sup> FSM 2310.3 – 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.

<sup>4</sup> [Landscape Aesthetics, A Handbook for Scenery Management, Agricultural Handbook Number 701](#)



(2) The NTSA, Section 3(a)(2) describes location criteria as, “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...”

(3) The NTSA, Section 7(a)(2) is important for it directs the establishment of a NST designated area. “The appropriate 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.” This is an essential task that needs to be completed for a NST and many other National Trails. The term rights-of-way can be confusing, so the BLM has provided the following clarifying definition.

*“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,... 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” (MS-6280).

(4) The NTSA Section 7(a)(2) further expresses that, “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 that specific area in order to insure continued maximum benefits from the land.” The following examines this Section 7(a)(2) sentence, and reviews other planning requirements, to try to better understand the intent and legal requirements of the guidance:

(a) What is a “segment of the National Trails System?” To place this in context, it is important to recognize that the components of the “National Trails System,” includes National Recreation Trails (NRTs), National Scenic Trails (NSTs), National Historic Trails (NHT), and Side or Connecting Trails. A simple definition of a segment is, “one of the parts into which something can be divided.” The parts of the National Trails System would be each congressionally and administratively designated National Trail component as established per the requirements of the NTSA.

(b) What is intended by the 1968 guidance to, “be designed to harmonize with and complement any established multiple-use plans for that specific area?” Forest Service policy approved by Chief J. Max Peterson interpreted the direction to be as follows: “Development and administration of a National Scenic Trail or National Historic Trail will 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, natural features, historic and archeological resources, and other cultural qualities of the areas through which a National Scenic or National Historic Trail goes” (FSM 2353.4(1)(d) – Administration (FSM 1/80 Amend 85 – now expired).

Specific to the National Forest System, the NFMA of 1976 established that Land Management Plans were to provide for one integrated plan. The 1982 NFMA planning regulations directed that, “...requirements for additional planning for special areas shall be met through plans required under this subpart” (36 CFR 219.2(a) [1982]). By no later than 1982 with the establishment of regulations, NFMA controlled processes for integrated forest planning superseded the 1968 NTSA guidance to, “harmonize with and complement any established multiple-use plans guidance.”

(c) What is intended by the guidance, “to insure continued maximum benefits from the land?” This statement reinforces the phrase, “shall be designed to harmonize with and complement any established multiple-use plans.” Though, this guidance is vague since “maximum benefits of the land” is not found in the definition of multiple-use as described in the Multiple Use Sustained-Yield Act (MUSYA) of 1960.<sup>5</sup> Benefits of establishing a National Trail corridor 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 a NST for which it was established (16 U.S.C. 1246(c)); (3) contributing to achieving outdoor recreation, watershed, and wildlife and fish multiple-use benefits (16 U.S.C. 528); and (4) in general, providing for the nature and purposes of the designated National Trail.

In 1968 when the NTSA was enacted, the Forest Service was preparing National Forest Unit Plans. In 1978, when a NST was designated, regulations were being developed to provide for integrated multiple-use plans as a result of the NFMA (Forest Service) and the Federal Land Policy and Management Act of 1976 (BLM).

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<sup>5</sup> Multiple Use is defined as, "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people ...."

The NFMA requires that a Forest Plan address the comprehensive planning and other requirements of the NTSA in order to form one integrated Plan (16 U.S.C. 1604(c) and (f) and 36 CFR 219.2 [1982]). As such, the NTSA guidance that a National Trails System segment be, “designed to harmonize with and complement any established multiple-use plans for that specific area,” is not applicable to a new or revised land management plan approved after the passage of NFMA and FLPMA.

Specific to NSTs, an optimum location assessment may find that designing the rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Non-Motorized Recreation ROS settings, and then managing the selected corridor to maintain those ROS settings characteristics, would assure continued benefits of the land that best meet the needs of the American people.

(5) NTSA, Section 7(b) states, “After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (I) Such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.” This direction on relocations part (I) and (ii) could also be useful guidance for selecting the initial rights-of-way. The extent of the initial selected rights-of-way should provide for the possibility of future relocations of a NST travel route.

(6) NTSA, Section 7(c) states, “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 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....” This section was also adopted in 1968 and has clear implications to the development and management of NSHTs. It is implicit that the nature and purposes of each designated NSHT be established to not only understand acceptable uses along a National Trail, but also for guiding the selection of the rights-of-way and the establishment of a NSHT management corridor.

(7) In 1978, the NTSA was amended adding Section 5(e) and 5(f) to require the development of a Comprehensive Plan directing that, “a comprehensive plan for the management, and use of the trail, including but not limited to, the following items: (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved...and for national scenic or national historic trails 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 historic sites or high potential route segments; and (4) general and site-specific development plans, including anticipated costs.” The NST Comprehensive Plan is discussed further in the next section.

(8) The 1983 amendment to the NTSA, which added Section 7(j), does not modify the nature and purposes of a NST. The added subsection simply lists uses and vehicles that may be permitted on National Trails generally.

(9) In 1983, the NTSA was amended adding Section 7(k) to address the management and development issues associated with private land along a NSHT stating, “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....” This direction is specific to private land, but identifies the importance “of preserving or enhancing the recreational, scenic, natural, or historical values” along a National Trail.

(10) In 2001, Executive Order 13195 – Trails for America – addressed development and management of NSHTs by directing in Section 1(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....” This E.O. supplements the NTSA by clearly identifying the need to protect NSHT corridors.

(11) In 2009, Omnibus Public Land Management Act (P.L. 111-11, 16 U.S.C. 7202) established National Landscape Conservation System areas on public lands. Section 2002 of this Act describes, in part, “In order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System. (b) COMPONENTS.—The system shall include each of the following areas administered by the Bureau of Land Management: (1) Each area that is designated as— ... (D) a national scenic trail or national historic trail designated as a component of the National Trails System;... Furthermore, the legislation states, The Secretary shall manage the system—(1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and (2) in a manner that protects the values for which the components of the system were designated.” The Omnibus Public Land Management Act of 2009 resulted in the comprehensive BLM manual series 6250 and 6280 that address the planning, development, and management of NSHTs for the purpose of protecting NSHT values.

The Federal Land Policy and Management Act of 1976, as amended (P.L. 94-579), section 102, states, “regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.” In addition, Section 103 describes, “(a) The term “areas of critical environmental

concern” means areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” “In the development and revision of land use plans, the Secretary shall– (3) give priority to the designation and protection of areas of critical environmental concern; ...and (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located...” (FLPMA Section 202) “The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” (FLPMA Section 302)

National Landscape Conservation System landscapes are clearly areas where “special management attention is required” as specified in the FLPMA definition of an Area of Critical of Environmental Concern (ACEC), and in fact, the Bureau of Land Management has already addressed the need for such special attention, as in MS-6250 and MS-6280 with regard to NSHTs. The recognition of NLCS components as ACECs as defined in FLMPA provides a mechanism for the identification of these areas and the protection of their values through the development and implementation of Resource Management Plans.

(12) In 2012, Forest Service planning directives describe that: “When developing plan components for national scenic and historic trails: 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.” Furthermore, “... The 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... The plan must include plan components including standards or guidelines for a designated areas... that describe the national scenic and historic trail and the recreational, scenic, historic, and other resource values for which the trail was designated....

In the “Response to Comments on the Proposed Land Management Planning Directives,” January 2015, the Agency mentions National Scenic and Historic Trails in a section titled, Forest Planning – General Comments – Plan Components, pages 24-25. “Respondents asked that the Agency clarify the following about plan components: clarify enforceability of each plan component; clarify ability of plan components to constrain or prohibit public activities; require documenting assumptions for plan components; provide guidance on evaluating and adopting lower tier components such as trail class, managed uses, designed use, and design parameters and identify prohibited uses for national scenic trails.” The response states, “The Agency modified the proposed planning directives by adding a

new section at FSH 1909.12, chapter 20, section 24 on designated areas and a specific new section (sec. 24.43) on national scenic and historic trails. FSH 1909.12, chapter 20, section 24.43 emphasizes that plans are to identify and map national scenic and historic trails within the plan area. Plan components must provide for management of the trail consistent with legal authorities and the nature and purposes of existing national scenic and historic trails, and must be consistent with the objectives and practices for the management of the national scenic and historic trails as identified in the most recent comprehensive plan. Comprehensive trail plans are expected to provide for trail management compatible with the plan components of the land management plan.”

This response is unclear, since two distinct planning processes are discussed in one passage. A Comprehensive Plan is defined by the NTSA, while a National Forest System (NFS) trail plan is a resource plan, such as a travel management plan that is developed in accordance with the requirements of 36 CFR 212. However, it appears that the Agency is committed to (1) providing for the protection of the nature and purposes of National Scenic and Historic Trails and being consistent with each National Scenic or Historic Trail Comprehensive Plan, and (2) NFS trail plans are directed to be consistent with plan components. Comprehensive Plans developed in response to the requirements of the National Trails System Act and Wild and Scenic Rivers Act are not resource plans as defined by the NFMA (16 U.S.C. 1604(i) and 36 CFR 219.15(e)).

NST policy and direction is found in the Comprehensive Plan, FSM 2353, FSH 1909.12 section 14, and FSH 1909.12 section 24.43, which in total provides the necessary National Trail policy and management direction for implementing the requirements of the NTSA. FSM 2350 is referenced in FSH 1909.12 section 24.43, which is necessary since the Forest Service Planning Handbook in itself does not contain substantive specialized guidance and instruction for addressing the NTSA in an integrated land management planning process. FSM 1110.3, FSM 1110.8, and FSM 1112.02 have more information about the formulation of directives.

#### **D. NST Comprehensive Planning**

Comprehensive plan requirements for a NST have often been addressed through staged or stepped-down decision processes: (1) a Comprehensive Plan (Stage 1) establishes broad policy and procedures including identifying the nature and purposes, (2) land management plans (Stage 2) guide all natural resource management activities and establish management standards (aka thresholds), provide integrated resource management direction for special areas, and address programmatic planning requirements, and (3) mid-level and site-specific plans (Stage 3) complete the comprehensive planning process through field-level actions to protect the corridor and then maintain or construct the travel route. Staged and stepped down decision processes could appear to support the notion that the comprehensive plans are resource plans that are subordinate to the land management plan direction. Instead, this is an administrative approach to incrementally step through the comprehensive planning process that is required by the NTSA.

2009 Comprehensive Plan Stage 1	Land Management Plan Stage 2	NST Field-Level Plan Stage 3
<p>The comprehensive plan establishes national direction that implements foundational provisions of the National Trails System Act, which includes establishing:</p> <ul style="list-style-type: none"> <li>• The Nature and Purposes of a NST</li> <li>• The Rights-of-Way Corridor</li> <li>• Provides Resource Management Guidance for: <ul style="list-style-type: none"> <li>○ Visual Resource (SMS/VMS)</li> <li>○ Recreation Resource (ROS)</li> <li>○ Motorized Use</li> <li>○ Mechanized Use</li> <li>○ Special Use Permits</li> <li>○ Trail and Facilities</li> <li>○ Carrying Capacity/LAC</li> <li>○ Monitoring and Evaluation</li> </ul> </li> <li>• Developed following programmatic Environmental Impact Statement processes that emphasize ROS and Visual Quality planning principles, and addresses <i>other uses</i> that may be allowed (16 USC 1246(c)).</li> </ul>	<p>Land management planning implements the Comprehensive Plan guidance and provides for integrated programmatic direction that is consistent with the NTSA, NFMA, FLPMA or National Parks and Recreation Act, E.O. 13195, and agency specific regulations (e.g., 36 CFR 219) and policies (e.g., FSM 2353 and BLM MS-6250/6280):</p> <ul style="list-style-type: none"> <li>• Identifies and preserves significant natural, historical, and cultural resources.</li> <li>• Establishes the extent of a NST Management Area (FS) or National Trail Management Corridor (BLM).</li> <li>• Provides for protecting or achieving the nature and purposes through establishing supporting plan components: <ul style="list-style-type: none"> <li>○ Desired Conditions</li> <li>○ Objectives</li> <li>○ Standards (Thresholds)</li> <li>○ Guidelines</li> <li>○ Monitoring</li> </ul> </li> <li>• Developed following programmatic Environmental Impact Statement processes that emphasize ROS and Visual Quality planning principles, and addresses <i>other uses</i> that may be allowed (16 USC 1246(c)).</li> </ul>	<p>Field-level site-specific planning that is consistent with the Comprehensive Plan, and agency regulations and policies:</p> <ul style="list-style-type: none"> <li>• Identifies and preserves significant natural, historical, and cultural resources (site-specific).</li> <li>• Identifies and displays the segments of a NST that traverse the unit.</li> <li>• Establishes the Trail Class, Managed Uses, Designed Use, and Design Parameters for the segments of a NST that traverse the unit and identifies uses that are prohibited.</li> <li>• Provides for development, signing, construction, and maintenance.</li> <li>• Establishes carrying capacity (LAC) for segments.</li> <li>• Establishes monitoring programs to evaluate site-specific conditions.</li> <li>• Developed following site-specific Environmental Impact Statement or Environmental Assessment processes that emphasize ROS and Visual Quality planning principles, and addresses <i>other uses</i> that may be allowed (16 USC 1246(c)).</li> </ul>
<p>NST comprehensive planning stages may be combined if requisite programmatic and site-specific NEPA requirements are satisfied.</p>		

The establishment of NST MAs and NTMCs, with appropriate plan components, could facilitate comprehensive planning, selecting and publishing the rights-of-way in the Federal Register, and meet attached NEPA requirements.<sup>6</sup>

### E. Scenery Management System and Recreation Opportunity Spectrum Relationship

<sup>6</sup> 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 a NST.

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 viewshed managed for both middleground partial retention and semi-primitive non-motorized opportunities. Semi-primitive non-motorized criteria are usually the more restrictive.

The Scenery Management System and ROS serve related, but different, purposes that affect management of landscape settings. In some cases, ROS provides stronger protection for landscape settings than does the Scenery Management System. This is similar to landscape setting protection provided by management of other resources, such as cultural resource management, wildlife management, and old-growth management. In all these examples, there may be management directions for other resources that actually provide higher scenic integrity standards than those reached by the Scenery Management System. Different resource values and systems (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.”

## **F. Carrying Capacity**

National Trails System Act<sup>1</sup>, 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)<sup>7</sup> that directs federal river-administering agencies to “address...user capacities” in a Comprehensive River Management Plan 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.<sup>8</sup> 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 Comprehensive Plan to protect and enhance NST nature and purposes. The nature and purposes of a NST are also known as NST values. The values of NSTs include: (1) visitor experience opportunities and settings, and (2) the conservation and protection of scenic, natural, historical, and cultural qualities of the corridor. Furthermore, the NTSA goes beyond ROS descriptors requiring the protection of significant resources and qualities along the National Trail corridor.

Visitor use management practices need to be sensitive to situations where there is an asymmetric nature of a conflict, especially where there is a one-way relationship where the primary use is sensitive to a secondary use. In those situations, monitoring and adaptive management actions should ensure that the secondary use doesn’t substantially interfere with maintaining the primary purposes and values.

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

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<sup>7</sup> 16 U.S.C. §1271-1278; Public Law 90-542 (October 2, 1968) and amendments.

<sup>8</sup> See *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9<sup>th</sup> Cir. 2008); *American Whitewater v. Tidwell*, (D.S.C. 2012).

uses and national trail values. The capacity to absorb use without substantial impacts to resources and visitor experiences is dependent on myriad interrelated factors that should be addressed through NEPA planning processes.

### **G. Substantial Interference**

Black's law dictionary defines substantial evidence as the amount of evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla. BLM directive MS-6280 defines substantial interference in relation to nature and purposes:

- *Substantial Interference.* Determination that an activity or use affects (hinders or obstructs) the nature and purposes of a designated National Trail (see nature and purposes).
- *Nature and Purposes.* The term used to describe the character, characteristics, and congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; the primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of National Trails.

Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that would substantially interfere with the nature and purposes of a NST if the allocation desired conditions are realized. Where the allowed non-motorized activities reflect the purposes for which the National Trail was established, the establishment of Primitive and Semi-Primitive Non-Motorized ROS classes and high and very high scenic integrity allocations would normally protect the nature and purposes (values) of a NST.

How are ROS inconsistencies addressed in providing for desired settings along a National Scenic Trail? A ROS inconsistency is defined as a situation in which the condition of an indicator exceeds the range defined as acceptable by the management guidelines. For example, the condition of the indicators for the National Trail corridor may all be consistent with its management as a semi-primitive non-motorized area with the exception of the presence of a trailhead and access road. In such a case, what are the implications of the inconsistency? Does the inconsistency benefit or interfere with the nature and purposes of the National Trail? What should be done about the inconsistency? Three general kinds of actions are possible. First, perhaps nothing can or should be done. It may be concluded that the inconsistency will have little or no effect on the area's general character. Or, the agency may lack jurisdiction over the source of the inconsistency. A second response is to direct management action at the inconsistency to bring it back in line with the guidelines established for the desired ROS class. The main point to be understood with regard to inconsistencies is that they can be managed. The presence of one does not necessarily automatically lead to a change in ROS class. By analyzing its cause, implications, and possible solutions, an inconsistency can be handled in a logical and systematic fashion.

Land management plans should establish desired conditions and standards and guidelines that preserve and promote the nature and purposes of a NST. Specific interference thresholds should be

established during the development of a land management plan. Further, the determination of carrying capacity is integral to protecting NST values.

Mining activities and uses have substantially interfered with the nature and purposes of the Arizona National Scenic Trail as described in the assessment: “These mines have diminished the quality of scenic character on the Tonto although mitigation measures required by the Forest Service have reduced the impact of them on the scenic character. Should both proposals submitted for exploration and development by Resolution Copper Company be approved, scenery would be greatly compromised within the proposed project area of the general plan of operations, and within the proposed land exchange area in the vicinity of Oak Flat. Most alternatives for tailings locations for the Resolution project severely affect the nature and purposes of the Arizona National Scenic Trail by degrading the nationally significant scenic resources for which the trail was designated.”

## **H. Forest Service Planning Considerations**

*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 a NST:*

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 NST is a congressionally designated area (36 CFR 219.19).

On National Forest System lands, a MA is to be established for existing NST rights-of-way corridors. For NST 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).

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.

### **Forest Plan Components**

Recommendations for NST plan components are described in the following table.

## NST LMP MA Desired Conditions

Descriptions
<p>Consistent with a NST Comprehensive Plan, the MA provides high-quality scenic, non-motorized recreation opportunities and conserves natural, historic, and cultural resources and provides a long distance trail that highlights the state's topographic, biologic, historic and cultural diversity. The NST corridor provides panoramic views of undisturbed landscapes in a tranquil scenic environment. The corridor is of sufficient width to encompass national trail resources, qualities, values, associated settings and the primary use or uses. This includes vistas, campsites, water sources, and other important resource values. Desired conditions are principally characterized by Primitive and Semi-Primitive Non-Motorized ROS settings. These settings provide for the following conditions:</p>
<p>Primitive ROS settings encompass large, wild, remote, and predominately unmodified landscapes. These settings often coincide with designated Wilderness. They provide quiet solitude away from roads and others groups, are generally free of human development, and facilitate self-reliance and discovery. Signing, and other infrastructure is minimal and constructed of rustic, native materials. Feelings of physical achievement and self-reliance is an important part of the experience offered. Ecological processes such as fire, insects, and disease exist.</p>
<p>Semi-Primitive Non-Motorized ROS settings provide opportunities for exploration, challenge, and self-reliance. Rustic structures such as signs and foot bridges are occasionally present to direct use and protect the setting's natural and cultural resources. These rustic constructed features are built from native materials or those that mimic native materials. Restored or revegetated closed roads may be present but do not dominate the landscape or detract from the SPMN experience of visitors. These settings are free of motorized travel. 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>

## NST LMP MA Objectives

Descriptions
<p>Complete a NST travel route through the MA within five years. [Example of proposed and possible actions.]</p>

## NST LMP MA Standards or Guidelines

<p>Descriptions - See FSM 1110.8 for Degree of Compliance or Restriction “Helping Verbs” and “Mood of Verb” Definitions</p>
<p><b>Scenery Management</b></p>
<p>Manage a NST travelway as a concern level 1 travel route. Resource management actions must meet a Scenic Integrity Level of Very High or High.</p>
<p><b>Recreation Management</b></p>
<p>Resource manage actions and allowed uses must be compatible with maintaining or achieving Primitive or Semi-Primitive Non-Motorized ROS class settings.</p>
<p>Manage the NST to provide high-quality scenic, non-motorized recreation opportunities.</p>

If the interval between natural water sources is excessive, consider developing and protecting water sources for hikers and pack and saddle stock use.
<b>Special Uses Management</b>
Activities, uses, and events that would require a permit must not be authorized unless the activity, use, or event contributes to achieving the nature and purposes of a NST.
<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 Management</b>
Lands are 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 enhance NST values, such as to provide vistas to view surrounding landscapes and to conserve natural resources.
Vegetation may be managed to maintain or improve threatened, endangered, and sensitive species habitat.
Rangelands and riparian areas where affected by livestock use must be maintained in a Proper Functioning Condition.
<b>Cultural and Historic Resources Management</b>
Protect cultural and historic resources. Interpret National Historic Trails and sites.
<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 a NST 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).
The NST travel route may not be used for a livestock driveway.
<b>Fire Suppression</b>
Fire suppression activities should apply the Minimum Impact Suppression Tactics Implementation Guidelines.
<b>Motor Vehicle Use</b>
Motor vehicle use by the general public is prohibited unless that use: <ul style="list-style-type: none"> <li>a. Is necessary to meet emergencies;</li> <li>b. Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;</li> <li>c. Is for the purpose of allowing private landowners who have agreed to include their lands in the NST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Forest Service regulations; or</li> <li>d. Is on a motor vehicle route that crosses the NST, as long as that use will not substantially interfere with the nature and purposes of the NST.</li> </ul>

### **Other Uses Considerations**

Where congressionally designated areas overlap, apply the management direction that best protects the values for which each designated area was established.

Other uses that could conflict with the nature and purposes of a NST may be allowed only where there is a determination that the other use would not substantially interfere with the nature and purposes of a NST (16 USC 1246(c)). Examples of substantially interference include the Arizona Trail Race and the Resolution Copper Company Operating Plan as proposed.

### **NST LMP MA Implementation Guidance**

Partnerships and volunteers are sustained or sought to lead and assist in NST programs. Volunteer and cooperative agreements will be developed with those volunteers and private organizations that are dedicated to planning, developing, maintaining, and managing a NST, including the Arizona Trail Association, in accordance with Sections 2(c), 7(h)(1), and 11 of the NTSA.

The direction in the NTSA, FSM 2310, FSM 2353.4, and FSM 2380 are used to guide the development and management of the Trail.

## **III. Legislative History and Policy**

### **A. 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 limited number of national scenic trails should be established to provide opportunities of extended foot, horseback, and bicycle trips for Americans in all parts of the Nation. National scenic trails should have natural, scenic, or historic qualities that give them recreation potential of national significance. Such trails typically should be several hundred miles in length, have overnight shelters at appropriate intervals, and be interconnected with other major trails that provide opportunity for extended hiking or riding experiences. They would be the major axes of networks of trails branching out to nearby points of special attraction serving areas of population throughout the country..."

The spirit of adventure springs ever anew in the hearts of Americans, young and old. In no way is it better satisfied than in the exploration of unfamiliar terrain or in the discovery of the beauties of nature. Long-distance trails can provide unparalleled opportunities for such adventure and such satisfaction. Designed primarily for walking or riding, they are within the economic reach of all citizens. Routed to open the scenic wonders of ridgelines, mountaintops, countryside, streams, and lakeshores, and to provide access to scenes of historic significance, they offer varied and exciting experiences. Built to harmonize with the natural areas they cross, they afford the visitor close-up instruction in nature and her ways. Healthful exercise and the opportunity to break away from the pace of automated urban living add to the values of extended hiking and riding experiences. Major long-distance trails can lead the traveler through regions of outstanding scenic, historic, and recreation interest, while serving areas of principal population concentration. They can serve as backbones for systems of trails branching out to nearby points of special attraction. Such trails should be called "national scenic trails." Defined as

extended trails which have natural, scenic, or historic qualities that give them recreation-use potential of national significance, such trails might typically be several hundred miles long, have overnight shelters at appropriate intervals, and be interconnected with other major trails to permit the enjoyment of extended hiking or riding experiences.”

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.”

## B. 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).

**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(e)/(f) (16 U.S.C. 1244(e)/(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."

Overlay of Management Regime – The NTSA establishment and designation of a NST provides for the Secretaries of the Agriculture and Interior to manage a NST under existing agencies authorities, but subject to the overriding direction of providing for the nature and purposes of this NST. The establishment of a NST 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 a NST corridor.



**Administration and Development – Sec. 7 (16 U.S.C. 1246) –**

The Secretary of Agriculture is charged with the overall administration of a NST. 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...”<sup>9</sup> The legislative requirement for the Secretary of Agriculture to take action and select a NST rights-of-way should be addressed by establishing NST Management Area (MA) corridors in Land Management Plans; the requirement should be met on BLM public lands by establishing National Trail Management Corridors (NTMC) in Resource Management Plans. The establishment of NST MAs and NTMCs could facilitate NST comprehensive planning (16 U.S.C. 1244(f)), selecting and publishing a NST rights-of-way in the Federal Register (16 U.S.C. 1246(a)(2)), and meet attached NEPA requirements.

A National Scenic Trail optimum location assessment may find that designing a NST rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Recreation Opportunity Spectrum (ROS) settings would assure continued benefits of the land that best meet the needs of the American people. 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 a NST 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 NST rights-of-way corridor and does not diminish or modify the nature and purposes values of a NST (16 U.S.C. 1246(c)).

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 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

<sup>9</sup> 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)).

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 a NST 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 a NST 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....

#### **D. 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

National Scenic Trail Values – (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(e)/(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).

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)

## **E. Policy for a National Scenic Trail**

### **Forest Service, FSM Policy** – 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)).<sup>10</sup>
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.

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<sup>10</sup> A land management plan amendment may be necessary in order to provide for the nature and purposes of a NST. See the discussions under Administration and Development and Land Management Plan Considerations.

## FSH 1909.12 – 24.2 – Plan Components for Designated Areas...

### 1. When developing plan components:

b. The Responsible Official shall include plan components that will provide for appropriate management of designated areas based on the applicable authorities and the specific purposes for which each area was designated or recommended for designation. Uses and management activities are allowed in designated areas to the extent that these uses are in harmony with the purpose for which the area was designated. For recommended designated areas, the uses and activities allowed should be compatible with the basis of the recommendation.

## FSH 1909.12 – 24.3 - Designated Area Plans

Planning for designated areas may be met through the land management plan, unless the authorities for the designation require a separate plan. Specific plans for designated areas must be consistent with the plan components (36 CFR 219.15(e)).<sup>11</sup> The designated area authorities may require specific plans (such as wild and scenic river plans or national scenic and historic trail

Designated Area – The NST designated area extent is defined by the selected NST Section 7 rights-of-way. The NST Management Area (FS) and National Trail Management Corridor (BLM) resides within this selected rights-of-way. The MA or NTMC extent and associated plan components must provide for the nature and purposes of this NST.

plans) for a designated area with additional requirements than those of the Planning Rule. Any parts of a designated area plan that meet the requirements for land management plan components must be included in the land management plan. The entire area plan does not need to be included in the land management plan. The land management plans must also be compatible with these designated area plans or either the land management plan or the designated area plan must be amended to achieve this compatibility.

## 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.

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<sup>11</sup> Comprehensive Plans developed in response to the requirements of the National Trails System Act and Wild and Scenic Rivers Act are not resource plans as defined by the NFMA (16 U.S.C. 1604(i) and 36 CFR 219.15(e)).

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.

#### **IV. Comprehensive Planning Relationship to NEPA**

This sections reviews several aspects of the CEQ regulations for implementing NEPA<sup>12</sup> for addressing National Scenic Trails in land management planning.

##### **A. Relationship of NEPA to Comprehensive Planning**

Most federal agency actions, unless specifically exempted, are subject to the procedural requirements of NEPA. These requirements are articulated in NEPA CEQ regulations, and in each agency’s supplemental implementing policies.<sup>13</sup> Supplemental agency policies often include specific procedural direction or guidance on preparation of appropriate NEPA documents (i.e., Environmental Impact Statements (EIS), Environmental Assessments (EA), and Categorical Exclusions (CE)). Because agency guidance varies widely, this section will generally not address agency specific regulation, policy, or procedure.

Forest Service “...recreation planning and management tools that shape the recreation program include the Recreation opportunity spectrum (ROS) [and] Scenery management system... These tools are used to define existing conditions, describe desired conditions, and monitor change. These tools, along with overarching guidance at the national, Department, and Agency levels, serve as the context by

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<sup>12</sup> 40 CFR 1500-1508.

<sup>13</sup> 36 CFR Part 220 does not lessen the applicability of the CEQ 40 CFR 1500 regulations on National Forest System lands (see 36 CFR 220.1(b)).

which individual national forests and grasslands engage with their communities. In doing so, the unit's recreation-related and amenity-based assets are considered and integrated with a vision for the future that is sustainable and that the unit is uniquely poised to provide. As the current planning rule procedures related to recreation are quite general, these tools contribute to consistency in recreation planning across NFS units. The recreation opportunity spectrum has been an effective land management planning tool since 1982. The recreation opportunity spectrum is a framework for identifying, classifying, planning, and managing a range of recreation settings. The setting, activity, and opportunity for obtaining experience are arranged along a spectrum of classes from primitive to urban. In each setting, a range of activities is accommodated. For example, primitive settings accommodate primarily non-motorized uses, such as backpacking and hiking; whereas roaded settings (such as roaded natural) or rural settings accommodate motorized uses, such as driving for scenery or access for hunting. Through this framework, planners compare the relative tradeoffs of how different patterns of settings across the landscape would accommodate (or not accommodate) recreational preferences, opportunities, and impacts (programmatic indirect environmental effects) with other multiple uses. The scenery management system provides a vocabulary for managing scenery and a systematic approach for determining the relative value and importance of scenery in an NFS unit. The system is used in the context of ecosystem management to inventory and analyze scenery, to assist in establishment of overall resource goals and objectives, to monitor the scenic resource, and to ensure high-quality scenery for future generations" (Forest Service Planning Rule, PEIS, page 209).

NEPA document(s) that support a Comprehensive Plan will analyze the effects of a range of alternatives, often covering multiple topics, including but not limited to the selection of the rights-of-way, visual quality, ROS, and carrying capacities. A Comprehensive Plan and supporting NEPA decision documents will typically establish goals, desired conditions, allowable uses, standards (thresholds), guidelines, and the conditions under which uses are allowed for a discreet geographic area or linear landscape. NEPA decision documents should provide additional information and support the thought process used to implement, revise, or amend a Comprehensive Plan.

The CEQ regulations require that NEPA decision-making processes provide for thoughtful, rigorous evaluation of reasonable options within the scope of the proposed decisions. The decision process involves interested and affected individuals, groups, and governments. The "early and often" interactions that the NEPA suggests in establishing the scope of the proposed actions considered in a Comprehensive Plan are especially important when identifying significant natural, historical, and cultural resources to be preserved; selecting the rights-of-way; and establishing scenic integrity levels, ROS class settings, and capacities for the management corridor.

Comprehensive Plan requirements (16 U.S.C. 1244 (e) and (f)) have sometimes been addressed through staged or stepped-down decision processes: (1) a Comprehensive Plan establishes broad policy and procedures, (2) land management plans provide integrated resource management direction and address programmatic planning requirements as described in the Comprehensive Plan, and (3) mid-level and site-specific plans complete the comprehensive planning process through field-level actions to construct the travel route and protect the corridor. The Comprehensive Plan requirements are met once

all staged phases are complete. As required by laws and regulations, addressing NTSA planning requirements are to be an integrated part of developing NFMA and FLPMA directed land management plans.

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 including identifying carrying capacity, select the rights-of-way, and in general establish management direction that provides for the nature and purposes values of the NST.

## **B. Establishment of the Purpose and Need for Action**

A NEPA document must provide the framework for the purpose and need for action and for the decisions to be made of identifying the management corridor and establishing scenic integrity levels, ROS class settings, and carrying capacities. A Comprehensive Plan should establish desired conditions, including the nature and purposes of a National Trail as well as key resource indicators and thresholds that prevent degradation. The outcome of addressing these considerations will facilitate describing the “affected environment” part of the NEPA process.

The “need for action” (or change) is based upon a comparison of the baseline conditions and desired conditions. This comparison establishes both the “scope” of and the “need” for action.

The “scope” of and the “need” for the proposed actions establish the basis for determining the reasonable range of alternatives. The purpose and need description represents the “problem to be solved.” Defining the scope appropriately (and refining as necessary through the early steps of the NEPA process) improves the overall efficacy of the NEPA document. How broadly or narrowly the scope is described affects the range of reasonable alternatives that can meet the need, which in turn affects how well the range of alternatives and the selected alternative respond to this need.

Identifying conditions that are within federal control and those that require action by entities not within the decision-making agency’s control is helpful in the early stages of NEPA. A federal agency cannot necessarily eliminate options or alternatives outside of its jurisdiction from consideration in the NEPA process if the options present reasonable alternatives to meet the need.<sup>14</sup> However, an agency may only take actions that are within the agency’s legal authority.<sup>15</sup> Clarifying who is responsible for achieving desired conditions will help to establish early in the process the key authorities or participation by others needed to achieve the overall desired conditions.

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<sup>14</sup> See CEQ 40 Questions

<sup>15</sup> 40 CFR 1508.15



### C. Identify Proposed Actions and a Reasonable Range of Alternatives

Components of a proposed action in land management planning may include the selection of the rights-of-way and/or identification of the management corridor, and will likely include the establishment of scenic integrity levels, ROS class, and carrying capacities for the National Scenic Trail. The conditions under which a variety of uses are allowed may be labeled as thresholds, standards and guidelines, or other terminology. In regards to addressing scenic integrity, recreation opportunities, and carrying capacities, this step requires that these use conditions be expressed in terms of thresholds that will prevent degradation of NST values.

Distinguish early in the process the importance of certain allowable uses or the conditions of those uses in protecting NST values (avoiding, reducing, or eliminating degradation), and/or enhancing values. Besides providing a clear logic track for the decisions made regarding scenic integrity, recreation opportunities, and carrying capacities, this will also help to identify elements that may need monitoring.

Managed and allowable uses and conditions of use may be either common to all alternatives or may vary by alternative. Managed and allowable uses or conditions of use that would be the same for all alternatives should be identified early in the NEPA process, along with a clear rationale for why those uses or conditions of use would be common to all alternatives. For example, conditions of use could protect Threatened and Endangered Species. Commonalities may also include existing uses or conditions not shown to have an adverse effect on NST values (or that otherwise already meet the purpose and need for action).<sup>16</sup>

CEQ regulations also provide guidance regarding the agency's scope of actions. Aspects of an action that are inter-related (e.g., the kinds and amounts of use and the facilities that support that use) should be considered during this process.<sup>17</sup> If the purpose and need for action suggest a change from the existing condition, or if there are unresolved conflicts regarding alternative uses of resources, then a "hard look" at a reasonable range of alternatives will be needed.<sup>18</sup>

NEPA documents should explain the timeframe within which future actions would be taken. Be clear about whether NEPA decisions are being made to authorize certain actions when the Comprehensive Plan is completed without further decision process needed, or whether decisions about actions contemplated within the life of the Comprehensive Plan would be authorized at a later time. The latter approach is typically used in broad "programmatic" NEPA documents and subsequent site-specific documents that may be tiered to the larger document.<sup>19</sup> Consider the following when determining whether visual quality, recreation setting, or carrying capacity actions identified in the Comprehensive Plan are also NEPA decisions (1) made upon Comprehensive Plan completion or (2) authorized later in time:

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<sup>16</sup> 40 CFR 1502.14(a)

<sup>17</sup> 40 CFR 1508.23; 1508.25

<sup>18</sup> 40 CFR 1508.25

<sup>19</sup> 40 CFR 1500.4(i); 1502.20

- Whether the action is part of an “adaptive management” decision. The term “adaptive management” is sometimes used by agencies to describe a range of different actions that managers may take resulting from one NEPA decision to respond to changing conditions during implementation or uncertain outcomes of implementing the decision. To authorize future adaptive action, the NEPA document describes when, where and how an action would take place, and when, where, and how the decision might be adapted or changed to accommodate changes in conditions or actual outcomes of the original action.
- Whether the action is ripe for decision. Actions are considered “ripe for decision” when the agency has identified a proposal it is prepared to make a decision on and the effects can be meaningfully analyzed.<sup>20</sup> However, NEPA processes allow for emergency actions where substantial degradation is probable or occurring.
- If all or parts of the future “adaptive” actions identified in a Comprehensive Plan are not ripe for a NEPA decision, the NEPA document should discuss why they are not ripe for a decision at this time. Additionally, the NEPA document should describe the why adaptive action is needed, and the expected process used to make a final decision on those future actions.

#### “Adaptive Management”

Adaptive management is an “if this... then that” approach. If “this” condition exists (in this example for two consecutive years), then “that” action would be taken (in this case a suite of actions, with an ultimate limit on group sizes and campsite closures). To automatically authorize one or more of the actions proposed to reduce the effects of human use, the environmental impacts of those actions must be addressed in the authorizing NEPA document. The Forest Service describes, “The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS [or EA] must disclose not only the effects of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.”

### **D. Analyze the Effects of the Proposed Action and Alternatives**

The identification and selection of the rights-of-way may lead to varying degrees of effects, but most often a National Scenic Trail management corridor would be the primary area for addressing the effects analysis. Effects on scenic integrity, ROS class conditions, and carrying capacities will generally be based on analysis of the effects of the allowable uses and conditions of use on NST values that are included in the proposed action and each alternative in the NEPA document. This outcome is also a

<sup>20</sup> 40 CFR 1508.22

specific decision aspect of the proposed action or alternatives. The level of precision or certainty of the effects can be guided by the CEQ regulations regarding the use of “methodology and scientific accuracy”<sup>21</sup> and the information needed to support a reasoned choice among alternatives.<sup>22</sup> Clearly document how the final decision is based on the best available science or other relevant information needed to understand the reasonably foreseeable adverse effects of a choice between alternatives, the gaps in that information, and the rationale for why a reasoned choice between alternatives can be made at this time. In addition, substantial interference analyses and determinations need to be rigorous.

Management direction for Semi-Primitive Motorized, Roded Natural, Rural, and Urban ROS classes allow uses that would substantially interfere with the nature and purposes of a NST if the allocation desired conditions are realized. Where the allowed non-motorized activities reflect the purposes for which the National Trail was established, the establishment of Primitive and Semi-Primitive Non-Motorized ROS classes and high and very high scenic integrity allocations would normally protect the nature and purposes (values) of a NST.

### **E. New Information, Monitoring, and Modifying Decisions**

The CEQ regulations tie monitoring and enforcement of mitigation measures to implementation of the decision. The CEQ regulations state that “[a] monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.”<sup>23</sup> Further, “agencies may provide monitoring to assure their decisions are carried out and should do so in important cases. Mitigation and other conditions established... shall be implemented by the lead agency.”<sup>24</sup>

Through a discussion of when to prepare a supplemental EIS, the CEQ regulations also provide guidance about the conditions under which an existing NEPA decision might be changed.<sup>25</sup> This approach suggests that a supplemented NEPA document may be needed when there are significant new conditions or information relevant to environmental concerns. While the CEQ regulations indicate the kinds of situations that may suggest a change to a NEPA document, individual agency implementing regulations or policy for the NEPA or other applicable laws and regulation may also provide guidance about when decisions may be changed.

## **Disclosure**

This paper provides a description and summary of the relevant National Trails System Act requirements that offer foundational rationale for understanding and providing for the nature and purposes of National Scenic Trails. This paper should not be seen as legal advice to address National Trails System Act and other land use planning requirements.

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<sup>21</sup> 40 CFR 1502.24

<sup>22</sup> 40 CFR 1502.22.

<sup>23</sup> 40 CFR 1505.2

<sup>24</sup> 40 CFR 1505.3

<sup>25</sup> 40 CFR 1502.9