CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Appellants Sierra Access Coalition and California Off-Road Vehicle Association hereby state that they have no parent corporations, and no publicly held corporation owns 10 percent or more of the stock of either of them.

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STATEMENT OF SUBJECT MATTER JURISDICTION

Appellants Amy Granat, Corky Lazzarino, the California Off-Road Vehicle Association (CORVA), the Sierra Access Coalition (SAC), Butte County, and Plumas County (collectively, the Forest Users) brought suit in the district court pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) to challenge the actions of the United States Forest Service (Forest Service or Service), all of which arose under the laws of the United States, including the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4370h, and related federal regulations; the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*.; and the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B).

The district court entered judgment on March 2, 2017. ER 022 (Judgment). The Forest Users filed a timely Notice of Appeal on April 5, 2017. ER 022a (ECF Doc. No. 46). The statutory basis for this Court's appellate jurisdiction is 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. The National Environmental Policy Act requires federal agencies to consider a reasonable range of alternatives to any proposed action that may have a significant effect on the environment. An

Environmental Impact Statement (EIS) must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a).

The question presented is whether the Forest Service failed to consider a reasonable range of alternatives in its Record of Decision and Final Environmental Impact Statement as required by NEPA when it summarily excluded 63 percent of all inventoried miles from any consideration, as part of the agency's consideration of alternatives proposing additions to the Transportation Management Plan in the Plumas National Forest.

2. When determining which routes to designate for motorized travel on the Plumas National Forest, the Forest Service was required to "coordinate with appropriate . . . county, and other local governmental entities," 36 C.F.R. § 212.53, as well as to "cooperate with local agencies" in, among other things, "[j]oint planning processes," 40 C.F.R. § 1506.2(b)(1). Moreover, the agency was required to, among other things, expressly describe (i) the extent to which its proposal "would [be] reconcile[d]" with local planning processes, *id.* § 1502.6(d), as well as (ii) "[p]ossible conflicts" with such processes and local land-use plans, *id.* § 1502.16(c).

The question presented is whether the Forest Service satisfied the foregoing legal obligations merely by considering Appellants Plumas and Butte Counties' local-plan-based comments and objections, without further explanation or attempt at coordination or reconciliation.

STATUTORY & REGULATORY PROVISIONS

National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq*.

Travel Management Rule (excerpts).

Regulations related to Environmental Impact Statements: 40 C.F.R. § 1502.1, 40 C.F.R. § 1502.2, 40 C.F.R. § 1502.14, 40 C.F.R. § 1502.16.

40 C.F.R. § 1506.2.

Council on Environmental Quality, NEPA FAQ, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (excerpt).

Copies of these authorities are included in the Addendum provided with this Brief.

INTRODUCTION AND STATEMENT OF THE CASE

Plumas National Forest (the Forest) has long provided the public with diverse opportunities for motorized recreation and access—allowing forest-wide, cross-country travel by means of an interconnected system of routes. This system includes individual roads and trails, many of which link to public roads within the California Counties of Butte and Plumas, where over 1,000,000 acres of the Forest are located.

Historically, "motor vehicle use was unrestricted throughout most of the" Plumas National Forest. ER 236 (Record of Decision). And even in "restricted" areas, certain motorized vehicle access was permitted. *See*, *e.g.*, ER 348 (motorized vehicle access to wild and scenic rivers); ER 349 (wheeled vehicles permitted on designated routes of recreation areas). Indeed, according to the Forest Service itself, motor vehicles "represent an integral part of [the] recreational experience" in National Forests and are "a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management." 70 Fed. Reg. at 68,264.

Unfortunately, and in violation of federal law, the Forest Service severely restricted the use of motorized vehicles in Plumas National

Forest. The Service's action now prevents the Appellants Forest Users from even accessing the vast majority of the Forest.

The Forest Users

Amy Granat is an individual with an autoimmune disease known as *pemphigus vulgaris*, which required her to undergo chemotherapy from January of 2001 until June of 2006, causing infections in her legs and limiting her ability to walk. Her ability to access back-country areas in Plumas National Forest has been a key part of her medical rehabilitation. She has been visiting Plumas National Forest for many years since 2001. Camping, fishing, and viewing wildlife in Plumas National Forest have been important priorities for her and have been her principal ways of spending quality time with her children. ER 108-09, ¶ 15 (Declaration of Amy Granat). Because of her walking disability, Amy is unable to access those areas on crutches, by wheelchair, by cane, or by using braces on her legs, even with the help of her long-time service dog, Tucker. As a result, she is now foreclosed from accessing many parts of the Forest that in the past were accessible to her only by motor vehicle.

Similarly, Corky Lazzarino, members of CORVA and SAC, and residents of Butte and Plumas Counties are now prohibited from

accessing parts of the Forest they had used for hiking, camping, exploring, fishing, riding off-road vehicles, hunting, cutting and retrieving firewood, and photography—in some cases from using the Forest for mere sustenance. Representatives from both CORVA and SAC submitted detailed comments and objections to the Draft Environmental Impacts Statements, and otherwise participated in the process that generated the Record of Decision and the Final Environmental Impact Statement (collectively, Decision Documents). And each organization prosecuted an administrative appeal of the Record of Decision and Final Environmental Impact Statement. ER 095-98, ¶¶ 3, 5-15 (Declaration of Corky Lazzarino); ER 103, 106-08, ¶¶ 2, 7-11 (Declaration of Amy Granat).

Further, residents of Butte and Plumas Counties remain dependent on revenue associated with recreational use of the Forest, which had traditionally attracted significant tourism. The Counties themselves will lose tax and fee revenues due to the prohibitions on Forest use. The motorized-vehicle restrictions further harm the Counties, whose roads and trails connect with (now inaccessible) Forest roads and trails, which the Counties had used for, *inter alia*, fire-fighting and other safety

purposes. ER 087, 089-91, ¶¶ 5-6, 11-20 (Declaration of Robert Perreault, Jr.); ER 113-14, ¶¶ 7-9 (Declaration of John Crump).

All of these traditionally enjoyed motorized vehicle uses are now illegal. But had the Service followed the law, these harms could have been avoided.

The Forest Service's Notice of Intent and Its Legal Obligations

Before the 2005 Travel Management Rule was adopted, Plumas National Forest contained approximately 4,137 miles of National Forest System (NFS) roads and approximately 130 miles of motorized trails. ER 025, No. 3 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

In January 2008, the Forest Service issued a notice of intent to prepare an environmental impact statement (Notice of Intent) for the Plumas National Forest to analyze impacts associated with the addition to the National Forest Transportation System of certain existing, unclassified, but nevertheless lawful routes and trails in Plumas National Forest. ER 054.

National Environmental Policy Act

The Service's actions triggered the National Environmental Policy Act, which is the "basic national charter for protection of the

environment," and which requires federal agencies to comply with its precepts "to the fullest extent possible." *Churchill County v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001), *as amended by* 282 F.3d 1055 (9th Cir. 2002); *City of Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975). NEPA requires that proposals for prospective major federal actions be evaluated in light of their future effect upon the human environment before the action can be approved. *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir. 2002).

In addition, NEPA requires that federal agencies use "all practical means" to ensure the attainment of the "widest range of beneficial uses of the environment" without undue risk and "to create and maintain conditions under which *man and nature can exist in productive harmony*." 42 U.S.C. § 4331 (emphasis added). Major federal actions that require a change in the *status quo* require full NEPA review, which includes an Environmental Impact Statement. *Upper Snake River Chapter of Trout Unlimited v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990).

> An Environmental Impact Statement must describe:
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332(C).

NEPA requires the agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E).

The Forest Service failed to meet this requirement. Before the Service's actions here—its issuance of the Decision Documents—Plumas National Forest had approximately 3,236 "unclassified" roads and trails, representing approximately 1,107 miles. Although "unclassified," these roads and trails were designated as part of the National Forest Transportation System, and as such, they could lawfully be used for motorized travel. Through its Decision Documents, the Forest Service closed approximately 79 percent of these trails to motorized traffic. *Cf.* ER 288 (ROD Comparison of Alternatives).

The alternatives considered by the Forest Service did not represent the full range of alternatives when considering what fraction of the inventoried miles to add to the Transportation Management Plan. The Forest Service categorically excluded approximately 700 of the available inventoried miles from its alternatives analysis and crafted all proposed alternatives from iterations of the remaining 410 inventoried miles, prejudicing the available choices to a small set of similar alternatives. *See* ER 288 (ROD Comparison of Alternatives). Because this analysis did not satisfy the purpose and need for the Environmental Impact Statement, the alternatives analysis was inadequate under NEPA.

The Travel Management Rule

The Service's actions also violated its own Travel Management Rule, which was issued in November 2005. 70 Fed. Reg. 68,264-291 (Nov. 9, 2005), *codified at* 36 C.F.R. § 212.50, *et seq*. According to this Rule (36 C.F.R. § 212.50), the Forest Service "*shall* coordinate with appropriate . . . local governmental entities . . . when designating" National Forest System roads, trails, and areas on National Forest System lands. Here, the Service—by its own admission—merely met with the Counties, sought their input, and considered information they

provided. The Service's pro forma "consideration," however, does not constitute the *coordination* required by the Travel Management Rule.

The Forest Service Severely Restricts Motorized-Vehicle Access to Plumas National Forest

Below, the Service emphasized the notice it provided to the public, the number of public meetings it held, and its purported consideration of all comments and objections. *See*, *e.g.*, ER 069-72, Nos. 16-19, 22-25 (Fed. Defs.' Stmt. of Undisp. Facts). The Service also noted that—after the Decision Documents were published—it met with Plumas County representatives "on at least two occasions" and with Butte County officials in January 2011. ER 081, No. 58 (Fed. Defs.' Stmt. of Undisp. Facts); ER 046, No. 58 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

The Counties objected that mere meetings and requests for information did not satisfy the Travel Management Rule's requirement of "coordination" with local governments. *See* ER 217-19 (Plumas County Appeal); ER 223-24 (Butte County Appeal).

But in the Service's view, the agency "recognized . . . a need for limited additions to the NFTS [National Forest Transportation System] to provide motor vehicle access to dispersed recreation opportunities and to provide a diversity of motorized recreation opportunities[,]" while

"underst[anding] that these purposes had to be balanced with the overall purpose of regulating unmanaged motor vehicle travel and the related detrimental effects." ER 072, No. 27 (Fed. Defs.' Stmt. of Undisp. Facts).

The Service published the draft environmental impact statement in December 2008. ER 290 (Notice of Draft Environmental Impact Statement Availability, 73 Fed. Reg. 79,473). This publication triggered a comment period, and Amy Granat, Corky Lazzarino, their respective organizations, and the Counties all submitted comments. ER 074, No. 33 (Defs.' Stmt. of Undisp. Facts); *see* ER 036, No. 33 (Resp. to Defs.' Stmt. of Undisp. Facts) (undisputed); ER 037-39, No. 37 (Resp. to Defs.' Stmt. of Undisp. Facts) (undisputed).

In August 2010, the Plumas National Forest issued its Final Environmental Impact Statement. ER 003 (Memorandum and Order) (hereinafter, Order). This statement included responses to comments received in response to the draft Environmental Impact Statement. *Id.*; ER 076, No. 38 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 38 (Resp. to Defs.' Stmt. of Undisp. Facts). But it did not include "discussions of . . . [p]ossible conflicts between the proposed action and the objectives of

Federal, regional, State, and local . . . land use plans, policies[,] and controls[,]" as required by 40 C.F.R. § 1502.16(c).

The Final Environmental Impact Statement includes a description and comparison of four alternatives and a "no action" alternative. ER 62-89 (FEIS); ER 076, No. 39 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 39 (Resp. to Defs.' Stmt. of Undisp. Facts). The Service considered 11 other alternatives but did not include them in its detailed study. ER 283-87 (FEIS); ER 076-77, No. 40 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 40 (Resp. to Defs.' Stmt. of Undisp. Facts). In particular, of the 3,236 Plumas National Forest routes that the Service inventoried, the vast majority of these routes—3,036—were "eliminated from detailed consideration." ER 058, No. 21 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

The Forest Service first inventoried 1,107 miles of unclassified, but historically used and lawful miles, constituting 3,236 individual routes. *See* ER 292-303 (Beckwourth spreadsheet); ER 304-19 (Mount Hough spreadsheet); *and* ER 320-25 (Feather River spreadsheet) (collectively, The First and Second Cut Spreadsheets). The Forest Service gave each inventoried route a designation of High, Medium, or Low in two

categories: "Benefits and Access," on the one hand, and "Concerns and Risks," on the other. *Id.* These two categories were divided into sub-criteria, such as "Travel" under "Benefits and Access," and "Water" under "Concerns and Risks." The Forest Service then designated each route as either Yes ("Y") or No ("N"). *Id.* A "Y" designation indicated that the route would receive further evaluation by the Service for inclusion in the Plumas Forest Transportation Plan. *Id.* An "N" designation indicated that no further evaluation would be conducted, and the route would not be considered for inclusion. *Id.* Of the routes given a "Y" designation, approximately 200 routes, covering 410 miles, were given an on-site "field review." *See id.*; ER 055-56, Nos. 13, 15 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

The Forest Supervisor for the Plumas National Forest signed the Record of Decision on August 30, 2010. ER 251. The Record of Decision selected "Alternative 5" as described in the Final Environmental Impact Statement, with two modifications. ER 237-39 (ROD); ER 078-79, No. 46 (Defs.' Stmt. of Undisp. Facts); *see* ER 042, No. 46 (Resp. to Defs.' Stmt. of Undisp. Facts).

As a result, while the number of miles of the motorized trail network in the Forest was increased, *access* to the Forest was decreased. Defs.' Stmt. of Undisp. Facts No. 47; *see* ER 042, No. 47 (Resp. to Defs.' Stmt. of Undisp. Facts). Indeed, as the Service acknowledged, by "eliminating cross-country travel from designated routes," the Service *reduced* "the availability of acreage for motorized vehicle use as well as motorized vehicle access to dispersed recreational activities." ER 080, No. 51 (Defs.' Stmt. of Undisp. Facts) (citing PLU-B-000017); ER 043-44, No. 51 (Resp. to Defs.' Stmt. of Undisp. Facts).[1]

The Forest Users Sue to Enforce the Travel Management Rule

The Forest Users commenced this action in March 2015, to challenge the Forest Service's insufficient processes employed here. Compl. (ECF Doc. No. 1). They asserted twelve claims for relief, alleging that the Service failed to coordinate with the Counties, as required by the

[1] For example, as Appellants SAC and CORVA explained in their appeal to the Decision Documents, as a result of the Service's decision, "able bodied people may travel by foot, horse or bicycle in non-designated areas, [but] the disabled, handicapped and elderly will have no way to access points of interest with the Forest[,] including [dispersed] camping, game retrieval, or wood-cutting. Many people who have previously benefited from access to their National Forest will be restricted from enjoying the activities and locations that they have used and visited in the past." ER 179.

Travel Management Rule; the Service failed to consider an adequate range of alternatives when it designated motorized routes; the Service illegally applied the Travel Management Rule; the Service failed to conduct an adequate analysis under NEPA and consistent with local laws, and provided a deficient socioeconomic-impacts analysis; the Service failed to identify, evaluate, and disclose the environmental impacts of motorized travel on historically lawfully used routes in the Forest; the Service failed to provide the public with the scientific basis for its Decision Documents; the Service failed to sufficiently analyze its decision's impact on the human environment; the Service inadequately responded to comments; the Service failed to prepare a supplement to its draft environmental impact statement; the Service failed to consider adequately the cumulative impacts of its designation; and the Service violated the Freedom of Information Act. ER 124-70 (Complaint for Declaratory and Injunctive Relief).

The parties submitted motions for summary judgment. (ECF Doc. Nos. 31, 37, 38, 41). In a memorandum decision and order, the district court granted in full the Forest Service's motion for summary judgment. With respect to the issues raised in this appeal, the court ruled that the

Forest Service (1) considered a reasonable range of alternatives and (2) properly coordinated with local governments. ER 010-11, 013-15 (Order) (ECF Doc. No. 44). First, the court held that the purpose of considering a reasonable range of alternatives—to foster informed decisionmaking and informed public participation—was met here when the Service considered four "action" alternatives, eleven other, less-detailed alternatives, and a "no-action" alternative. *Id.* at 011. Even though the Service reviewed only 400 of the approximately 1,100 miles of Forest roads, the district court held that the Service adequately responded to public input by surveying an additional 35 miles and by considering an extra 155 miles of routes; and therefore, that the range of alternatives fostered informed decisionmaking and informed public participation. *Id.*

Second, the district court held that the Service satisfied its obligation to "coordinate" its actions and "cooperate" with local governments. *Id.* at 013-15. Without defining the term, the district court concluded that the Service's "formal meetings" with Plumas County officials, and its offer to meet with two Butte County supervisors, was sufficient coordination. *Id.* at 014. The court also rejected the Forest

Users' argument that the Forest Service ignored the Counties' land-use plans and thereby failed to "cooperate." *Id.* at 015. The Forest Users filed their timely Notice of Appeal on April 5, 2017. ER 022a.

STANDARD OF REVIEW

Challenges to final agency action decided on summary judgment are reviewed by this Court de novo under the Administrative Procedure Act's (APA) arbitrary and capricious standard. *E.g.*, *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1065 (9th Cir. 2004). *See* 5 U.S.C. § 706(2)(A). *See also Pac. Coast Fed'n of Fishermen's Ass'n v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1090 (9th Cir. 2005). Review is based on the administrative record. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973). An agency decision is arbitrary and capricious under the APA where the agency "relied on factors" that Congress "did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc) (quotations omitted).

An agency-prepared Environmental Impact Statement violates NEPA (1) where the "information in the . . . EIS [is] so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives," *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (quotation marks and citation omitted); (2) where the agency "entirely fail[s] to consider an important aspect of the problem," *id.* (quotation marks and citation omitted); or (3) where the Environmental Impact Statement fails to "provide a useful analysis of the cumulative impacts of past, present, and future projects," *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011) (quotation marks and citation omitted).

SUMMARY OF THE ARGUMENT

The Forest Service closed hundreds of miles of lawful, user-created routes that had provided varied recreational opportunities for decades within Plumas National Forest. Prohibiting all motorized use of these trails has effectively closed off portions of Plumas National Forest to all visitors except the most able-bodied. Motorized travel over these user-created trials has long provided a means for Forest visitors with disabilities or other mobility challenges to reach distributed recreational

opportunities, while others trails provided motorized recreational opportunities.

The district court rejected the twelve claims for relief brought by the Forest Users. After considering the district court's decision, the Forest Users appeal solely on the following grounds.

First, the Forest Service violated its duty under NEPA to consider a reasonable range of alternatives, in violation of 42 U.S.C. § 4332(E) and 40 C.F.R. § 1502.1, because the Forest Service summarily excluded approximately 700 of the 1,110 inventoried miles from all consideration. The Forest Service presented only four alternatives in the Record of Decision and Final Environmental Impact Statement, with one alternative adding 361 miles to the Transportation Management Plan, and the other three alternatives representing various reconfigurations of portions of that same 361 miles. This was an unreasonably narrow array of alternatives that failed to foster informed decisionmaking.

Second, the Forest Service violated its duty to coordinate and cooperate with the appropriate local entities when choosing which of the inventoried trails within Plumas National Forest should be designated as National Forest System roads or trails, in violation of 36 C.F.R.

§ 212.53 and 40 C.F.R. § 1506.2. The Forest Service relied solely on evidence that it had "communicated" with the Counties of Plumas and Butte as to the addition of trails to the Transportation Management Plan, and had "considered" the information provided by the Counties. But there was no evidence that the Service attempted to coordinate the addition of trails with the "land use plans, policies and controls" for the area concerned with Plumas National Forest. 40 C.F.R. § 1502.16(c).

ARGUMENT

I. THE FOREST SERVICE'S RECORD OF DECISION AND FINAL ENVIRONMENTAL IMPACT STATEMENT DID NOT CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The Forest Service violated NEPA by failing to adequately consider a reasonable range of alternatives to the agency's proposed action. NEPA requires that all agencies study, develop, and describe appropriate alternatives when they propose action that creates conflicts concerning alternative uses of natural resources. 42 U.S.C. § 4332(E). However, the alternatives analysis contained within the Record of Decision and Final Environmental Impact Statement was insufficient under NEPA for the following two reasons. First, the alternatives considered by the Forest Service did not represent the full range of alternatives when considering

what fraction of the inventoried miles to add to the Transportation Management Plan. Second, the Forest Service categorically excluded approximately 700 of the available inventoried miles from its alternatives analysis and crafted all proposed alternatives from iterations of the remaining 410 inventoried miles, prejudicing the available choices to a small set of similar alternatives. Because this analysis did not satisfy the purpose and need for the Environmental Impact Statement, the alternatives analysis was inadequate under NEPA.

A. The Forest Service Provided an Insufficient Range of Options to Qualify as a Reasonable Range of Alternatives

The purpose of an Environmental Impact Statement is to provide both decisionmakers and the public with a "full and fair discussion" of significant environmental impacts and inform them of reasonable alternatives. 40 C.F.R. § 1502.1. "The 'touchstone' for courts reviewing challenges to an EIS under NEPA 'is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation.'" *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 872 (9th Cir. 2004) (quoting *Cal. v. Block*, 690 F.2d 753, 769

(9th Cir. 1982)). To accomplish these goals, the EIS must "rigorously explore and objectively evaluate *all* reasonable alternatives." 40 C.F.R. § 1502.14(a) (emphasis added). Although the agency shall identify its preferred alternative, all reasonable alternatives should be presented in comparative form, providing a clear basis for choice among options. 40 C.F.R. § 1502.14. Further, agencies are prohibited from committing resources "prejudicing selection of alternatives" before they have made a final decision. 40 C.F.R. § 1502.2(f). Agencies must also discuss the reasons that any alternatives were "eliminated from detailed study." 40 C.F.R. § 1502.14(a). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998)).

The Forest Service inventoried 1,107 miles of unclassified but historically used and lawful miles, constituting 3,236 individual routes. *See* ER 292-325 (The First and Second Cut Spreadsheets). The Forest Service then gave each inventoried route a designation of High, Medium, or Low for two general criteria developed by the Service: "Benefits and

Access," on the one hand, and "Concerns and Risks," on the other. *Id.* Each of those criteria was divided into sub-criteria, such as "Travel" under "Benefits and Access," and "Water" under "Concerns and Risks." The Forest Service next designated each route as either Yes ("Y") or No ("N"). *Id.* A "Y" designation indicated that the route would be further evaluated by the Service for inclusion in the Plumas Forest Transportation Plan, while an "N" designation indicated that no further evaluation would be conducted, and the route would not be considered for inclusion. *Id.* Only 200 routes, out of 3,236 inventoried routes, received a "Y" designation. *Id.* The remaining 3,036 routes—including 1,528 routes specifically requested for inclusion by the Forest Users—received no on-site analysis, and were not included in the detailed alternatives analysis. ER 056, No. 15, ER 058, No. 21 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

In this way, the Forest Service summarily rejected 697 of the 1,107 miles contained in the First and Second Cut Spreadsheets. The Forest Service only conducted on-site environmental impacts review of the remaining 410 miles. All alternatives presented for consideration by the Forest Service and the public came from varying reconfigurations of the

approximately 37 percent of inventoried miles for which on-site reviews had been conducted.

Only four alternatives for the addition of miles to the Transportation Management Plan were considered in detail (Alternatives 2-5). These alternatives ranged from adding zero miles to the Plan to adding 361 miles. Alternative 2, which proposed adding 361 miles, or 33 percent of the 1,107 inventoried miles, to the Transportation Management Plan, contained the largest number of miles meaningfully considered by the Service. The remaining alternatives, with one or two minor exceptions, only presented reconfigured formulations and subsets of those same 361 miles. A fifth alternative, Alternative 1, represented taking "no action" at all, which only served as a baseline comparison for the other alternatives. *See* ER 262 (FEIS list of alternatives). While this alternative purports to allow continued use of the trails, it was not legally feasible under the Travel Management Rule, which prohibits motorized vehicle use on unclassified routes. This "no action" alternative would also add zero miles to the Transportation Management Plan, and is therefore not equivalent to the potential feasible alternatives that should have

been examined. These unexamined feasible alternatives represent the potential addition of between 34 and 100 percent of the inventoried miles.

The Forest Service's alternatives analysis does not comport with the relevant NEPA guidelines. The Council for Environmental Quality (CEQ) is the federal agency responsible for overseeing NEPA implementation by the federal government. Guidance documents issued by CEQ are entitled to substantial deference in connection with NEPA's interpretation. *Cal. v. Block*, 690 F.2d at 769. The CEQ FAQ section 1(b) notes that while there may be "an infinite number of alternatives" within a proposed action, only a reasonable number of alternatives must be analyzed and compared in a prepared EIS. 46 Fed. Reg. at 18,026. However, those alternatives must "cover the full spectrum of alternatives." *Id.* The example given within the FAQ of an "appropriate series of alternatives" is "dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the forest to wilderness." *Id.*

The full range of alternatives presented and considered for Plumas National Forest proposed adding 0, 13, 21, and 33 percent of the inventoried miles to the Transportation Management Plan. But the Forest Service gave no permissible reason as to why potential

alternatives considering the addition of larger percentages of the inventoried miles would not have been feasible. Indeed, the effects of a designation of more miles would not have been harder to ascertain than those of smaller designations, nor would an implementation of a larger number of miles have been any more remote or speculative. *Cf. Life of the Land v. Brinegar*, 485 F.2d 460, 472 (9th Cir. 1973) ("[T]here is no need for an [environmental impact statement] to consider an alternative whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative."). This is not to suggest that the Service necessarily should have considered more than five alternatives, but merely that those considered alternatives should have covered the "full spectrum" of alternatives between 0 and 100 percent. *See* CEQ FAQ 1(b).

Restating the alternatives considered in the Record of Decision and Final Environmental Impact Statement in the terms of the CEQ guidelines makes clear the failure of the Forest Service to consider a reasonable range of alternatives. The four considered alternatives can be viewed as "dedicating" 67, 79, 87, and 100 "percent of the [unclassified] Forest to wilderness." *See* CEQ FAQ 1(b) *and* ER 262 (FEIS list of

alternatives). This is a far cry from the "appropriate series of alternatives" suggested in the CEQ guidelines, covering "0, 10, 30, 50, 70, 90, or 100 percent." CEQ FAQ 1(b). In order to "cover[] the full spectrum of alternatives," the Service needed to "analyze[] and compare[]" at least *some* of the reasonable alternatives that exist through the range covering dedication of 0 to 66 percent of the unclassified forest to restricted access.

To be sure, the Forest Service could have eventually determined that alternatives adding between 34 and 100 percent of the unclassified trails would produce an undesirable amount of environmental harm, regardless of any potential recreational benefit. An agency could similarly determine that a dedication of only 0 to 33 percent of a forest to wilderness would not meet its environmental protection goals. But that would not relieve the agency of its NEPA obligations to examine those feasible alternatives within that range that were necessary to foster "informed decision-making" by the public and agency. *See Westlands Water Dist.*, 376 F.3d at 868. Failing to examine any such option within that range of feasible potential alternatives renders the Record of Decision and Final Environmental Impact Statement inadequate. *Id.*

In sum, the Forest Service provided a limited set of alternatives that represented only a third of the actual range of possible options. Since the proposed agency action prompting the Environmental Impact Statement was to determine whether and to what extent existing unclassified trails should be added to the Transportation Management Plan, the Record of Decision and Final Environmental Impact Statement did not satisfy the requirements of NEPA, and the decision of the district court should be reversed.

B. The Range of Options Considered Was Inadequate Because 700 Miles Were Summarily Excluded from Inclusion in Any Alternative

By summarily rejecting 63 percent of the available miles (comprising nearly 94 percent of the available inventoried routes) from any consideration, the Forest Service could not present a "reasonable range of alternatives" as required by NEPA. The four alternatives[2] considered in detail ranged from adding 0 percent to adding 33 percent of the available inventoried miles to the Travel Management Plan.

[2] As noted above, the fifth alternative, Alternative 1, would not have added any miles to the Travel Management Plan, but also would not have prohibited any use of motorized vehicles on the unclassified roads and trails, constituting "no action" by the agency. For that reason, Alternative 1 was not legally feasible under the Travel Management Rule.

However, all four alternatives were composed of varying formulations of essentially *the same 361 miles*:

- Alternative 2 would have added 361 miles, or 33 percent of the total inventoried miles.
- Alternative 5 would have added 234 of those same miles, or 21 percent of the total miles.
- Alternative 4 would have added 140 of the same miles, or 13 percent of the total.
- Alternative 3 would not have added any miles to the plan, thus prohibiting all recreational use in the Forest without special authorization.

ER 262.

Even assuming arguendo that the Forest Service could have established that any dedication of more than 361 miles would have been infeasible (however, as noted in Part I.A., no such argument was made in the district court),[3] the range of alternatives considered is still insufficient. Approximately 700 miles were categorically excluded from any consideration by the First and Second Cut Spreadsheets, and did not receive any on-site analysis by the Forest Service. Many of these routes

[3] Similarly, the unpublished decision in *Friends of Tahoe Forest Access v. U.S. Dep't of Agric.*, 641 F. App'x 741, 744 (9th Cir. 2016), did not address whether a summary exclusion of miles without any examination—using information and criteria that did not adequately assess environmental or recreational concerns—would violate NEPA.

were excluded for *non-environmental* reasons. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Hence, their designation in place of designated routes within the Forest Service's preferred 410-mile subset might well have maintained the comparable recreational opportunities *while decreasing* any related environmental effects. For that reason, designation of many of these routes in the disfavored subset would have been consistent with the project's purpose of regulating motor vehicle travel, and providing additional motor vehicle access for recreational and other access needs. *Cf.* ER 237 (ROD). Indeed, many of the unclassified trails have been used for both accessing dispersed recreation activities and for motorized recreation opportunities for years. *See*, *e.g.*, ER 326-47 (examples of "Green Sheets," or Route Designation Feedback Forms, detailing historic uses on trails).

Again, as noted in the preceding paragraph, alternatives crafted from these unexamined miles might also have avoided environmental impacts that were contained within the agency's four principal alternatives. Because the Forest Service limited its on-site review and crafted all four considered alternatives from the same subset of 410 miles,

the agency did not consider the possibility, for example, that comparable recreational opportunities might exist on trails in areas that were already environmentally degraded. Incorporating such trails may have allowed the Forest Service to provide as good—or even better—recreational opportunities while reducing environmental impacts as compared to the designation of routes within the agency's favored 410-mile subset. Failing to investigate, propose, and consider any such options using differing subsets of all 1,107 available miles renders the Record of Decision and Final Environmental Impact Statement inadequate. *Westlands Water Dist.*, 376 F.3d at 868.

That point is borne out by the following hypothetical. Imagine that a government agency has been tasked with siting a building project within a 1,000-acre forest. Further assume that that agency has determined that the maximum potential allowable area for the building project was 300 acres. If the agency first pre-selected 300 acres from within a 1,000-acre forest and crafted alternatives out of various slices of that 300-acre parcel, it would end up with a "range of alternatives" that might represent building sites of 100, 150, 200, 250, and 300 acres. While this would appear to provide a full range of potential choices for a

maximum 300-acre building site, the Service would have excluded 700 acres of alternative and perhaps well-suited building sites from review, effectively "prejudicing [the] selection of alternatives" before making a final decision. 40 C.F.R. § 1502.2(f). Indeed, a 300-acre building site in the northwest corner of a 1,000-acre forest could conceivably have far fewer environmental impacts than a 100-acre building site in the southeast corner, or vice versa. A proper range of alternatives would instead include a range of building footprints, located in multiple feasible locations within the 1,000-acre forest.[4] Only by examining varied options can an agency provide decisionmakers and the public with enough information to foster "informed decision-making." *Westlands Water Dist.*, 376 F.3d at 868.

[4] As previously noted, many of the routes that the Forest Service summarily dismissed from further NEPA analysis—including the alternatives analysis—were removed from consideration not because of any legal or environmental concern, but simply because of the agency's conclusion that the routes may not have offered the best recreational opportunities. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Moreover, many trails had been specifically requested for inclusion by interested parties because of their recreational value. *See, e.g.*, ER 292-294 (routes 6831, 7207, 7225, 7442, 7959, 7960, 7961, 7962, 7104, 7106, 8187, 6813, 6814, 1646, 5202, 5203).

Because the Forest Service selected only 410 miles for on-site environmental review, and then only considered alternatives crafted from that small subset of miles, the Environmental Impact Statement did not provide a reasonable range of alternatives. The district court decision to the contrary should be reversed.

C. The Considered Alternatives Were Insufficient to Meet the Purpose and Need of the Proposed Action Because the Majority of the Unclassified, Inventoried Miles Were Summarily Excluded From Consideration

The range of alternatives presented and considered by the Forest Service was also insufficient to meet the purpose and need of a proposed action. The Record of Decision explicitly identified that the purpose and need of the proposed action was to make additions to the existing Transportation Management Plan. ER 237. Further, the purpose of these additions was to "[p]rovide motor vehicle access to dispersed recreational opportunities" and "[p]rovide a diversity of motorized recreation opportunities." *Id.* Because the Forest Service excluded 63 percent of the unclassified miles from on-site review using information that did not adequately consider environmental impacts or recreational opportunities, the alternatives could not foster consideration of how the

project could best meet those goals while preserving environmental resources.[5]

In rejecting the Forest Users' argument, the district court cited to *Central Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1088 (E.D. Cal. 2013) (hereinafter *CSERC*), noting that a reasonable range of alternatives is "determined in light of the purpose and need of the project." ER 010 (Order).

A closer examination of that case is instructive. In *CSERC*, the plaintiffs alleged that the Forest Service had failed to consider a reasonable range of alternatives by not including options that would have closed additional existing National Forest Transportation System roadways to all motorized travel. *Id.* at 1089. The court noted that the Service was not required to consider alternatives that would not aid the Service in making a "reasoned choice." *Id.* at 1090 (citing to *Block*, 690 F.2d at 767). Because the purpose and need of the project was "focused on managing motorized travel on unauthorized trails and making

[5] Certainly, the Forest Service was not required to conduct on-site examination of every mile. But the First and Second Cut Spreadsheets excluded many trails for non-environmental reasons, despite their historical ability to provide recreational opportunities. *See*, *e.g.*, ER 326-47 (examples of Green Sheets detailing varied historic uses on trails).

modifications to the existing National Forest Transportation System system to *facilitate* motorized use, the court determined that considering such additional options might have been acceptable, but were not necessary for the Service to make a "reasoned choice." *Id.*

Here, the vast majority of inventoried routes were summarily excluded using criteria contained in the First and Second Cut Spreadsheets. *See* ER 292-325 (The First and Second Cut Spreadsheets). These miles received no on-site survey, and many were excluded for reasons other than environmental attributes or ability to either provide motor vehicle access to recreational activities or provide motorized recreation opportunities. *See* ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). The First and Second Cut Spreadsheets did not remove routes that would not—or could not—facilitate the purpose or need of the proposed action. Indeed, the plan as finally adopted has closed off unclassified trails that had been used both for accessing dispersed recreation activities and for motorized recreation opportunities for years—in some cases, decades. *See*, *e.g.*, ER 326-47 (examples of Green Sheets detailing varied historic uses of trails). Importantly, these spreadsheets did not contain information such

as the locations within Plumas National Forest where people have historically engaged in camping, hiking, hunting, fishing, watching wildlife, collecting rocks, cutting firewood, among other lawful activities. *Id.*

Nor did the Forest Service consider how it might have avoided environmental impacts by substituting trails from the approximately 700 unexamined miles as opposed to those from the 410-mile subset. As noted above, many of these miles were summarily excluded for *non-environmental* reasons. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Under the Travel Management Rule, the Forest Service was required to consider the potential effects on damage to soil, watershed, vegetation, and other forest resources, and the harassment of wildlife and significant disruption of wildlife habitats, among other criteria. *See* 36 C.F.R. § 212.55(b). Many of the unexamined trails might have provided significant recreational opportunities with minimal environmental impacts, making them more appropriate for addition to the Transportation Management Plan than those miles actually included in the Service's proposed alternatives. The existence of these "viable but

unexamined alternative[s]" renders the Environmental Impact Statement "inadequate." *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo Band of Mission Indians*, 161 F.3d at 575).

In sum, by eliminating 67 percent of the inventoried miles from any alternatives review, the Forest Service failed to "rigorously explore and objectively evaluate all reasonable alternatives," and therefore ignored potentially "viable but unexamined alternatives." 40 C.F.R. § 1502.14(a); *Westlands Water Dist.*, 376 F.3d at 868. Accordingly, the Service did not identify and analyze a reasonable range of alternatives in the Record of Decision and Final Environmental Impact Statement prepared for Plumas National Forest's Transportation Management Plan. This Court should reverse the decision of the district court.

II. THE FOREST SERVICE, BY MERELY MEETING WITH THE COUNTIES AND CONSIDERING THEIR INPUT, FAILED TO SATISFY ITS OBLIGATIONS TO "COORDINATE" AND "COOPERATE" WITH LOCAL GOVERNMENTS

The Forest Service was expressly required to ("shall") "coordinate with appropriate . . . local governmental entities . . . when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands." 36 C.F.R. § 212.53. As the Forest Service itself recognizes, "coordination with State, local, and tribal

governments is *critical* to the success of this final rule." Travel Management Rule, 70 Fed. Reg. at 68,280 (emphasis added).

Local governments have concerns and represent interests distinct from (but not necessarily adverse to) the Service's concerns and interests. And in this case, more than 1,000,000 acres of Plumas National Forest are located within Plumas and Butte Counties. Order at 3, ER 003.[6] Both Plumas and Butte Counties had acute concerns and interests in the effects of the then-proposed plans—such as the Counties' shared use of forest roads for safety and emergency vehicles, as well as the motor-vehicle restrictions' effects on recreation, tourism, access for food and fuel, and commerce. Further, and not least, the Counties represent the interests of their individual citizens, who have relied for years on motorized transportation to enjoy what is, after all, a *public* forest.

Here, the district court held that merely "meeting" with County officials and "consider[ing]" the Counties' input satisfied the Travel Management Rule's requirement that the Service "coordinate" with the Counties. ER 013-15 (Order). The district court, however, failed to

[6] Approximately 975,000 acres of the forest are located in Plumas County, and approximately 100,000 acres are in Butte County. ER 003.

consider what was actually required for the Service to "coordinate" with local governments. The district court did not even attempt to define the terms or determine what they require. Instead, it summarily concluded that the Service met its obligations under the Travel Management Rule and NEPA.

But the lack of express definitions does not relieve a court of its obligation to determine the meaning of "coordinate." Indeed, the facts in this case demonstrate that the Court should take this opportunity to examine the definition of "coordinate" along with its context in the scheme of the requirements set forth in the Travel Management Rule. The serious injuries suffered by the Counties and their citizens here demonstrate the importance of doing more than merely meeting with County officials (in public forms) and (ostensibly) considering their input.

A. The Term "Coordinate" Does Not Mean Merely "Meet With" or "Consider"

Accepting the Forest Service's view, the district court ruled that the Service sufficiently "coordinated" with the Counties by holding "four formal meetings and six informal meetings" with Plumas County officials and "offer[ing] to set up private, individual meetings" with two Butte

County supervisors. ER 014 (Order). The Service also "corresponded" with County officials. *Id.*

Below, the Forest Service established merely that it *considered* County input. That is, the Service sought and considered input from county officials; advised that it was open to considering additional specific trails in the future; considered County comments and objections; communicated with the Counties; reviewed planning and land use policies; held public meetings and opportunities for the Counties to participate in the decision-making process; provided notification of the planning process; and solicited and received the Counties' comments and concerns. *See*, *e.g.*, ER 029-30, No. 17 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

The law and related regulations, however, require more than mere meetings and "consideration." The Travel Management Rule provides that "[t]he responsible official *shall coordinate* with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart." 36 C.F.R. § 212.53 (emphasis added).

Thus, the regulation's plain text requires not mere meetings and consideration, but actual coordination. *Cf. United States v. Bucher*, 375 F.3d 929, 932 (9th Cir. 2004) ("As with legislation, we presume the drafters [of regulations] said what they meant and meant what they said.") (citing *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). And the decision by the Service to require coordination—rather than consideration—in the Travel Management Rule must not be "treated lightly." *Guidiville Band of Pomo Indians v. NGV Gaming, Ltd.*, 531 F.3d 767, 775 (9th Cir. 2008) (citing *SEC v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003) (explaining that "Congress's explicit decision to use one word over another in drafting a statute is material," and adding that "[i]t is a decision that is imbued with legal significance and should not be presumed to be random or devoid of meaning")); *Biehl v. CIR*, 351 F.3d 982, 987 (9th Cir. 2003) (Courts "will not stretch the statutory language to cover a situation not contemplated by Congress").[7]

[7] As a general matter, the "tenets of statutory construction apply with equal force to the interpretation of regulations." *Boeing Co. v. United States*, 258 F.3d 958, 967 (9th Cir. 2001) (citing *Black & Decker Corp. v. Comm'r*, 986 F.2d 60, 65 (4th Cir. 1993), *aff'd*, 537 U.S. 437 (2003)).

The closest the Forest Service came to coordination here was its bare *consideration* of information provided by the Counties. ER 013-15 (Order). It is appropriate, therefore, to determine what these terms mean. *See United States v. Hagberg*, 207 F.3d 569, 574 (9th Cir. 2000) ("To interpret a regulation, we look first to its plain language.") (citing *Reno v. NTSB*, 45 F.3d 1375, 1379 (9th Cir. 1995)). And because the language is unambiguous, the ordinary meaning of to "coordinate" controls. *See Reno*, 45 F.3d at 1379 (when regulation is unambiguous, its plain meaning controls unless this reading would lead to absurd results).

Several dictionaries agree that to "coordinate" requires not just consideration, but more importantly, harmony or making different things work together in a single plan:

- "to bring into a common action, movement, or condition[;] [to] harmonize;"[8]
- to "[b]ring the different elements of (a complex activity or organization) into a harmonious or efficient relationship."[9]

[8] https://www.merriam-webster.com/dictionary/coordinate.

[9] https://en.oxforddictionaries.com/definition/coordinate. This dictionary defines "coordination" as the "organization of the different elements of a complex body or activity so as to enable them to work together effectively." https://en.oxforddictionaries.com/definition/coordination.

- "to make various, separate things work together."[10]

- "to organize the different parts of a job or plan so that the people involved work together effectively" and "to organize things into a system."[11]

On the other hand, "to consider" means merely "to think about a particular subject or thing or about doing something or about whether to do something;"[12] or to "[t]hink carefully about (something), typically before making a decision."[13]

Had the Travel Management Rule merely intended the Service to *consider* input from local governments—rather than *coordinate with* local governments—it would have said so. *See*, *e.g.*, 36 C.F.R.

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[10] http://dictionary.cambridge.org/us/dictionary/english/coordinate. Similarly, "coordination" is defined as "the activity of organizing separate things so that they work together." http://dictionary.cambridge.org/us/dictionary/english/coordination.

[11] http://www.macmillandictionary.com/us/dictionary/american/coordinate_1. "Coordination" here is defined as "the process of organizing people or things in order to make them work together effectively." http://www.macmillandictionary.com/us/dictionary/american/coordination.

[12] http://dictionary.cambridge.org/us/dictionary/english/consider.

[13] https://en.oxforddictionaries.com/definition/consider. Similar definitions can be found in the Macmillan dictionary ("to think about something carefully before making a decision or developing an opinion") (http://www.macmillandictionary.com/us/dictionary/american/consider); and Merriam-Webster ("to think about carefully") (https://www.merriam-webster.com/dictionary/consider).

§ 212.55(a) ("In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall *consider* effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.") (emphasis added); 36 C.F.R. § 212.55(b) ("In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall *consider* [certain] effects . . . .") (emphasis added).

To provide just one example, Plumas County's appeal of the Record of Decision noted that, in response to comments, the Forest Service stated that county roads would be used to connect routes as user maps would be developed in the future. ER 232 (Plumas County Appeal). As the County pointed out in response, this approach "ignore[d] the requirement for legitimate coordination, since routes designated under the Public

Motorized Travel Management decision may overlook important roads that should be included in the system for the specific purposes of connecting to or enhancing the use of county roads." *Id.* The County identified, among other things, its General Plan and explained the interests of the County that the Service must consider if it were to truly coordinate its activities. *Id.* Instead, the Service simply went ahead with *its* plans, without any attempt to *coordinate* with the Counties.

Further, the significance of the coordination requirement is reflected by the Service's emphasis on how cooperative planning and coordination with affected agencies is essential to the motor vehicle route designation process under the Travel Management rule. 70 Fed. Reg. at 68,269. Such coordination is essential "to ensure that [the Service] take local needs into account." *Id.* at 68,272. Coordinating with local government entities "offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities." *Id.* at 68,271. Moreover, designations of routes are "best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses, and

environmental impacts involved, in coordination with Federal, State, and local governmental entities." *Id.* at 68,268.

Coordination means working together with others to achieve a unified goal, not merely working together with someone else. In *Cal. Native Plant Society v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 641 (2009), the California court of appeal upheld the trial court's conclusion that the City of Rancho Cordova failed to "coordinate" with the U.S. Fish and Wildlife Service[14] regarding mitigation measures for special-status species when approving the City's residential and commercial project. The court accepted the City's dictionary definition of coordination to mean "to negotiate with others in order to work together effectively," but according to the court, "even under this definition the concept of 'coordination' means more than trying to work together with someone else." *Id.* "To 'coordinate' is 'to bring into a common action, movement, or condition'; it is synonymous with 'harmonize.'" *Id.* (citing *Merriam-Webster's Collegiate Dict.*, *supra*, at 275, col. 1).

[14] Although this case does not involve the Travel Management Rule's coordination requirement, it does involve a coordination requirement in which coordination was not defined.

Furthermore, "the dictionary the City cite[d] for the definition of the word 'coordinate' define[d] the word 'coordination' as 'cooperative effort resulting in an effective relationship.'" *Id.* (citing *New Oxford Dict.*, *supra*, at 378, col. 3). The court thus rejected that City's argument that "coordination" was synonymous with "consultation," explaining that "by definition 'coordination' implies some measure of cooperation that is not achieved merely by asking for and considering input or trying to work together." *Id.*

The court went on to say that the word "coordination" "implies a measure of cooperation [that] is apparent not only from the dictionary definition of the word, but also from the context in which the word is used in the plan." *Id.* Additionally, while "coordination" did not require the City to subordinate itself to the Service and others "by implementing their comments and taking their direction," the court concluded that the "coordination" requirement could not reasonably be "satisfied by the mere solicitation and rejection of input from agencies with which the City [wa]s required to coordinate" with. *Id.* at 642.

* * *

By allowing the Service to meet its coordination obligations by merely meeting with the Counties and considering their input, the district court failed to apply the plain meaning of the Travel Management Rule. In effect, the district court read the coordination requirement out of the Rule.[15] *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1184 (9th Cir. 2013) (text should be interpreted so as not to render it superfluous).

Therefore, this Court should reverse.

B. The Service Did Not Cooperate With the Counties When It Failed to Include Discussion of Conflicts Between Its Proposed Action and the Counties' Plans

Separately, the Service failed its obligation to expressly discuss conflicts between the Counties' plans and the Service's proposed course of action.

NEPA expressly states that it is "the continuing policy of the Federal Government, in *cooperation with* . . . local governments"

> to use *all* practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the *general* welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and

[15] Because the meaning of coordination is plain, a contrary agency interpretation would be entitled to no deference. *See Edwards v. First American Corp.*, 798 F.3d 1172, 1180 n.4 (9th Cir. 2015).

> other requirements of present and future generations of Americans.

42 U.S.C. § 4331(a) (emphasis added).

Accordingly, NEPA regulations provide that "[a]gencies shall *cooperate* with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements . . . ." 40 C.F.R. § 1506.2(c) (emphasis added). And "[w]here an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d).

Finally, a Final Environmental Impact Statement "*shall* include discussions" of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(c) (emphasis added).

Here, the Final Environmental Impact Statement did not include any discussion of Plumas County or Butte County plans and policies in relation to motorized vehicle use on County roads, and the relation of these plans and policies to the Forest Service's proposed restrictions on motorized vehicle use. ER 174-78 (SAC & CORVA Appeal); ER 217-19

(Plumas County Appeal); ER 222-26 (Butte County Appeal). The Forest Service failed to assess possible conflicts between the goals, policies, and standards of the Butte County General Plan and the Plumas County General Plan, especially the Counties' goals of an integrated forest transportation network. *Id. Cf. Openlands v. U.S. Dep't of Transp.*, 124 F. Supp. 3d 796, 808-09 (N.D. Ill. 2015) (NEPA requires an agency to explain how it will reconcile its proposed transportation project with local transportation plans that are based on different planning assumptions).

The district court therefore erred when it concluded that the Forest Users did not identify any inconsistency between the Service's proposals and the Counties' plans and policies. ER 015 (Order). The Travel Management Plan closed off several hundred miles of roads that had been used and that the Counties planned to continue to use for safety and emergency vehicles, which closures will negatively affect recreation, tourism, access for food and fuel, and commerce.

Put another way, the question is not whether the Counties "might have preferred" certain road designations. ER 015 (Order). Rather, it is whether the Service failed to meet its obligations under NEPA to expressly "include discussions" of "[p]ossible conflicts between the

proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(c). Because the Service failed to include these discussions, the Service failed to follow NEPA's requirements. The district court's conclusion to the contrary is legal error.

CONCLUSION

For the reasons stated, the Forest Users respectfully request that the Court reverse the district court's judgment.

DATED: July 14, 2017.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Plaintiffs-Appellants are aware of no related cases within the meaning of Circuit Rule 28-2.6.

CERTIFICATE OF COMPLIANCE

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OLIVER J. DUNFORD

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I hereby certify that on July 14, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

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ADDENDUM TABLE OF CONTENTS

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4331

§ 4331. Congressional declaration of national environmental policy

Currentness

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

CREDIT(S)

(Pub.L. 91-190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

Notes of Decisions (42)

42 U.S.C.A. § 4331, 42 USCA § 4331
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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4332

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

Currentness

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

CREDIT(S)

(Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub.L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

Notes of Decisions (4633)

Footnotes

1 So in original. The period probably should be a semicolon.

42 U.S.C.A. § 4332, 42 USCA § 4332
Current through P.L. 115-40.

End of Document


KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment§ 4332a. Repealed. Pub.L. 114-94, Div. A, Title I, § 1304(j)(2), Dec. 4, 2015, 129 Stat. 1386

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4332a

§ 4332a. Repealed. Pub.L. 114-94, Div. A, Title I, § 1304(j)(2), Dec. 4, 2015, 129 Stat. 1386

Currentness

42 U.S.C.A. § 4332a, 42 USCA § 4332a
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4333

§ 4333. Conformity of administrative procedures to national environmental policy

Currentness

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

CREDIT(S)

(Pub.L. 91-190, Title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

Notes of Decisions (1)

42 U.S.C.A. § 4333, 42 USCA § 4333
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4334

§ 4334. Other statutory obligations of agencies

Currentness

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

CREDIT(S)

(Pub.L. 91-190, Title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

Notes of Decisions (2)

42 U.S.C.A. § 4334, 42 USCA § 4334
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter I. Policies and Goals (Refs & Annos)

42 U.S.C.A. § 4335

§ 4335. Efforts supplemental to existing authorizations

Currentness

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

CREDIT(S)

(Pub.L. 91-190, Title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

Notes of Decisions (1)

42 U.S.C.A. § 4335, 42 USCA § 4335
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4342

§ 4342. Establishment; membership; Chairman; appointments

Currentness

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

CREDIT(S)

(Pub.L. 91-190, Title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

42 U.S.C.A. § 4342, 42 USCA § 4342
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4343

§ 4343. Employment of personnel, experts and consultants

Currentness

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

CREDIT(S)

(Pub.L. 91-190, Title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub.L. 94-52, § 2, July 3, 1975, 89 Stat. 258.)

42 U.S.C.A. § 4343, 42 USCA § 4343
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4344

§ 4344. Duties and functions

Currentness

It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

CREDIT(S)

(Pub.L. 91-190, Title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

Notes of Decisions (16)

42 U.S.C.A. § 4344, 42 USCA § 4344
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4345

§ 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives

Currentness

In exercising its powers, functions, and duties under this chapter, the Council shall--

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

CREDIT(S)

(Pub.L. 91-190, Title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

42 U.S.C.A. § 4345, 42 USCA § 4345
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4346

§ 4346. Tenure and compensation of members

Currentness

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or[1] the Executive Schedule Pay Rates (5 U.S.C. 5315).

CREDIT(S)

(Pub.L. 91-190, Title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

Footnotes

1 So in original. Probably should be "of".

42 U.S.C.A. § 4346, 42 USCA § 4346
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4346a

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments

Currentness

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

CREDIT(S)

(Pub.L. 91-190, Title II, § 207, as added Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

42 U.S.C.A. § 4346a, 42 USCA § 4346a
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4346b

§ 4346b. Expenditures in support of international activities

Currentness

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

CREDIT(S)

(Pub.L. 91-190, Title II, § 208, as added Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

42 U.S.C.A. § 4346b, 42 USCA § 4346b
Current through P.L. 115-40.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 55. National Environmental Policy (Refs & Annos)
Subchapter II. Council on Environmental Quality (Refs & Annos)

42 U.S.C.A. § 4347

§ 4347. Authorization of appropriations

Currentness

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

CREDIT(S)

(Pub.L. 91-190, Title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856; renumbered § 209, Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

42 U.S.C.A. § 4347, 42 USCA § 4347
Current through P.L. 115-40.

End of Document

final rule. This documentation is available in the rulemaking record.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

This final rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

4. Text of the Final Rule

List of Subjects

36 CFR Part 212

Highways and roads, National Forests, Public lands—rights-of-way, and Transportation.

36 CFR Part 251

Administrative practice and procedure, Electric power, National Forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 261

Law enforcement, National Forests.

36 CFR Part 295

National Forests, Traffic regulations.

■ Therefore, for the reasons set out in the preamble, amend part 212, subpart B of part 251, and subpart A of part 261, and remove part 295 of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

■ 1. Amend part 212 by revising the part heading to read as set forth above.

■ 1a. Remove the authority citation for part 212.

■ 2. Designate §§ 212.1 through 212.21 as subpart A to read as set forth below:

Subpart A—Administration of the Forest Transportation System

■ 2a. Add an authority citation for new subpart A to read as set forth below:

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

■ 3. Amend § 212.1 as follows:

■ a. In alphabetical order, add the following definitions: administrative unit; area; designated road, trail, or area; forest road or trail; forest transportation system; motor vehicle; motor vehicle use map; National Forest System road; National Forest System trail; off-highway vehicle; over-snow vehicle; road construction or reconstruction; temporary road or trail; trail; travel management atlas; and unauthorized road or trail; and

■ b. Revise the definitions for forest transportation atlas, forest transportation facility, and road; and

■ c. Remove the definitions for classified road, new road construction, road reconstruction, temporary road, and unclassified road.

§ 212.1 Definitions.

Administrative unit. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

Area. A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

* * * * *

Designated road, trail, or area. A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to § 212.51 on a motor vehicle use map.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

Forest transportation atlas. A display of the system of roads, trails, and airfields of an administrative unit.

Forest transportation facility. A forest road or trail or an airfield that is

displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

Forest transportation system. The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands.

* * * * *

Motor vehicle. Any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

Motor vehicle use map. A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

National Forest System trail. A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

Off-highway vehicle. Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

Over-snow vehicle. A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

* * * * *

Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

* * * * *

Road construction or reconstruction. Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

* * * * *

Temporary road or trail. A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

Trail. A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

Travel management atlas. An atlas that consists of a forest transportation atlas and a motor vehicle use map or maps.

Unauthorized road or trail. A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

■ 4. Amend § 212.2 by redesignating paragraphs (b) as (d), revising paragraph (a), and adding new paragraphs (b) and (c) to read as follows:

§ 212.2 Forest transportation program.

(a) *Travel management atlas.* For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directives system.

(c) *Program of work for the forest transportation system.* A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

* * * * *

■ 5. Amend § 212.5 as follows:

■ a. Revise paragraphs (a)(1) and (a)(2)(ii);

■ b. Revise the heading for paragraph (c) introductory text to read as set forth below:

■ c. Revise the heading for paragraph (d) introductory text to read as set forth below:

§ 212.5 Road system management.

(a) *Traffic rules.* * * *

(1) *General.* Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) *Specific.* * * *

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

* * * * *

(c) *Cost recovery on National Forest System roads.* * * *

(d) *Maintenance and reconstruction of National Forest System roads by users.*

* * * * *

■ 6. Amend § 212.7 by revising the paragraph heading and text of paragraph (a) to read as follows:

§ 212.7 Access procurement by the United States.

(a) *Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.* Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.

* * * * *

■ 7. Amend § 212.10 by revising paragraph (d) to read as follows:

§ 212.10 Maximum economy National Forest System roads.

* * * * *

(d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard—consistent with applicable environmental laws and regulations—that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

* * * * *

§ 212.20 [Removed and reserved]

■ 8. Remove and reserve § 212.20.

■ 9. Add a new subpart B to read as follows:

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

Sec.

Authority: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

§ 212.50 Purpose, scope, and definitions.

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

(c) For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

§ 212.51 Designation of roads, trails, and areas.

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

(1) Aircraft;

(2) Watercraft;

(3) Over-snow vehicles (see § 212.81);

(4) Limited administrative use by the Forest Service;

(5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(6) Authorized use of any combat or combat support vehicle for national defense purposes;

(7) Law enforcement response to violations of law, including pursuit; and

(8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

§ 212.52 Public involvement.

(a) General. The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) *Absence of public involvement in temporary, emergency closures.* (1) General. Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

§ 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

§ 212.54 Revision of designations.

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in § 212.52, the requirements for coordination with governmental entities in § 212.53, and the criteria in § 212.55, and shall be reflected on a motor vehicle use map pursuant to § 212.56.

§ 212.55 Criteria for designation of roads, trails, and areas.

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

(1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and

(4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

(1) Speed, volume, composition, and distribution of traffic on roads; and

(2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

(1) Valid existing rights; and

(2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

§ 212.56 Identification of designated roads, trails, and areas.

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

§ 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible.

■ 10. Add a new subpart C to read as follows:

Subpart C—Use by Over-Snow Vehicles

Sec.

Authority: 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

§ 212.80 Purpose, scope, and definitions.

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands. For definitions of terms used in this subpart, refer to § 212.1 in subpart A of this part.

§ 212.81 Use by over-snow vehicles.

(a) *General.* Use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

(1) Limited administrative use by the Forest Service;

(2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(3) Authorized use of any combat or combat support vehicle for national defense purposes;

(4) Law enforcement response to violations of law, including pursuit; and

(5) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles, the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

PART 251—LAND USES

Subpart B—Special Uses

■ 11. Revise the authority citation for part 251, subpart B, to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 12. Amend § 251.51 by revising the definitions for ''forest road or trail'' and ''National Forest System road'' to read as follows:

§ 251.51 Definitions.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

* * * * *

PART 261—PROHIBITIONS

■ 13. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460*l*–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

■ 14. Amend § 261.2 to revise the definitions for ''motor vehicle,'' ''forest road or trail,'' ''National Forest System road,'' and ''National Forest System trail,'' and add definitions in alphabetical order for ''administrative unit'' and ''area,'' to read as follows:

Subpart A—General Prohibitions

* * * * *

§ 261.2 Definitions.

* * * * *

Administrative unit. A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

* * * * *

Area. A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

* * * * *

Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

Motor vehicle means any vehicle which is self-propelled, other than:

(1) A vehicle operated on rails; and

(2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

* * * * *

National Forest System road. A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

National Forest System trail. A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

* * * * *

§§ 261.13 through 261.21 [Redesignated as §§ 261.15 through 261.23]

■ 15. Redesignate §§ 261.13 through 261.21 as §§ 261.15 through 261.23.

■ 15a. Add new § 261.13 and § 261.14 to read as follows:

§ 261.13 Motor vehicle use.

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

(a) Aircraft;

(b) Watercraft;

(c) Over-snow vehicles;

(d) Limited administrative use by the Forest Service;

(e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(f) Authorized use of any combat or combat support vehicle for national defense purposes;

(g) Law enforcement response to violations of law, including pursuit;

(h) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and

(i) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

§ 261.14 Use by over-snow vehicles.

It is prohibited to possess or operate an over-snow vehicle on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

(a) Limited administrative use by the Forest Service;

(b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(c) Authorized use of any combat or combat support vehicle for national defense purposes;

(d) Law enforcement response to violations of law, including pursuit;

(e) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations; and

(f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

■ 16. Amend § 261.55 by revising the introductory text to read as follows:

§ 261.55 National Forest System trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail:

* * * * *

PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS [REMOVED]

■ 17. Remove the entire part 295.

Dated: October 19, 2005.

Mark Rey,

Undersecretary of Agriculture for Natural Resources and Environment.

[FR Doc. 05–22024 Filed 11–8–05; 8:45 am]

BILLING CODE 3410–11–P

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Part 1502. Environmental Impact Statement (Refs & Annos)

40 C.F.R. § 1502.1

§ 1502.1 Purpose.

Currentness

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (48)

Current through June 29, 2017; 82 FR 29697.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Part 1502. Environmental Impact Statement (Refs & Annos)

40 C.F.R. § 1502.2

§ 1502.2 Implementation.

Currentness

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (1494)

Current through June 29, 2017; 82 FR 29697.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Part 1502. Environmental Impact Statement (Refs & Annos)

40 C.F.R. § 1502.14

§ 1502.14 Alternatives including the proposed action.

Currentness

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (1393)

Current through June 29, 2017; 82 FR 29697.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Part 1502. Environmental Impact Statement (Refs & Annos)

40 C.F.R. § 1502.16

§ 1502.16 Environmental consequences.

Currentness

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

Credits

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (1263)

Current through June 29, 2017; 82 FR 29697.

End of Document

40 C.F.R. § 1506.2

§ 1506.2 Elimination of duplication with State and local procedures.

Currentness

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).

Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (4)

Current through June 29, 2017; 82 FR 29697.

46 Fed. Reg. 18026 (March 23, 1981)
As amended

COUNCIL ON ENVIRONMENTAL QUALITY

Executive Office of the President

Memorandum to Agencies:

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations

SUMMARY: The Council on Environmental Quality, as part of its oversight of implementation of the National Environmental Policy Act, held meetings in the ten Federal regions with Federal, State, and local officials to discuss administration of the implementing regulations. The forty most asked questions were compiled in a memorandum to agencies for the information of relevant officials. In order efficiently to respond to public inquiries this memorandum is reprinted in this issue of the Federal Register.

Ref: 40 CFR Parts 1500 - 1508 (1987).

FOR FURTHER INFORMATION CONTACT:

General Counsel,
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(202)-395-5754.

March 16, 1981

MEMORANDUM FOR FEDERAL NEPA LIAISONS, FEDERAL, STATE, AND LOCAL OFFICIALS AND OTHER PERSONS INVOLVED IN THE NEPA PROCESS

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.