

# OUTDOOR ALLIANCE

August 26, 2019

NEPA Services Group  
c/o Amy Barker  
USDA Forest Service  
125 South State Street, Suite 1705  
Salt Lake City, UT 84138

## **Re: National Environmental Policy Act Compliance Proposed Rule**

Dear Forest Service EADM team:

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes. The opportunity to engage in Forest Service decision-making is of utmost importance to our members.

We appreciate the opportunity to review and comment on the Forest Service's proposed revisions to its NEPA regulations. Informed and transparent decision-making is at the heart of the National Environmental Policy Act (NEPA), and we have a strong interest in ensuring that the public continues to play an important role in this process. While we recognize the imperative for more efficient decision-making at the Forest Service, we are concerned that these revisions have the potential to dramatically reduce opportunities for public engagement in Forest Service decision-making, a change that would ultimately be at cross-purposes with the agency's objectives of ensuring high-quality, durable decisions with broad community and stakeholder support.

As we describe in greater detail below, we are particularly concerned by several aspects of the proposed rule. In particular, we are strongly opposed to changes that would make scoping discretionary for the overwhelming majority of Forest Service NEPA determinations. As described and illustrated in greater detail below, scoping



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is an essential and invaluable step in the NEPA process, allowing the public to influence the contours of project design in ways that ultimately improve the efficiency of the NEPA process, for example by incorporating recreation objectives into projects like vegetation management. Early public input is an invaluable investment in the ultimate efficiency of Forest Service projects, reducing the conflict that can ultimately lead to litigation, as well as finding opportunities to improve on-the-ground efforts and meet multiple objectives through a single NEPA process.

Additionally, we are deeply concerned by a majority of the new categorical exclusions in the proposed rulemaking. CEs relating to the integration of roads into the Forest Service system—undercutting the integrity of the travel management process—and the expansion of the scope of CEs available for vegetation management, which have the potential to have a very significant impact on outdoor recreation opportunities and conservation values, are particularly problematic.

Moving forward, we strongly request that the Forest Service reconsider efforts to make the scoping process discretionary for CEs and Environmental Assessments; proceed without the most controversial and far-reaching new CEs; and consider tighter sideboards on others as addressed below.

## General Comments

Staff and members from the organizations comprised by Outdoor Alliance participated in the Environmental Analysis and Decision Making roundtables that the Forest Service and the National Forest Foundation hosted across the country in 2018. The National Forest Foundation's 2018 Report, *Environmental Analysis and Decision Making Regional Partner Roundtables: National Findings and Leverage Points*,<sup>1</sup> reviews what was learned at these meetings. The report identifies 9 cross-cutting themes that roundtable participants identified as stumbling blocks to efficient environmental analysis and decision-making, along with associated leverage points. These themes are: agency culture; resource conflict; personnel policies and staffing decisions; collaboration and partnerships; tribal, governmental and interagency consultation; capacity and resources; analysis documents and specialist reports; scale issues in environmental analysis and decision making; and research and science. While EADM Roundtable participants, ourselves included, agree that there

<sup>1</sup> <https://www.nationalforests.org/assets/pdfs/National-EADM-Report.pdf>



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are opportunities to increase EADM efficiency, the revisions proposed in this rulemaking are often incongruent with the problems identified, and in places go well beyond what is warranted. In so doing, these changes have the potential to create new inefficiencies and conflict in the NEPA process.

According to the project website, the proposed rule is designed to help the Forest Service make timelier decisions based on high quality, science-based analysis, thus improving the Agency's ability to do work on the ground.<sup>2</sup> The proposed revisions, however, are much broader than these stated goals, and exempt a broad range of forest management activities from environmental analysis or public review. The proposed revisions to the Forest Service's NEPA regulations would fundamentally undermine NEPA's bedrock principles of government transparency, accountability, public involvement, and science-based decision-making.

## Section 220.4—General Requirements

### *Scoping*

The Forest Service is proposing the amend §220.4 of the NEPA regulations to make scoping discretionary for Categorical Exclusions (CEs) and Environmental Assessments (EAs), with public notice of CEs appearing only in the Agency's Schedule of Proposed Actions (SOPA).<sup>3</sup> For the outdoor recreation community, this is the most concerning aspect of the proposed rule. While our experience strongly underscores the importance of the scoping process—and our belief that this aspect of the Forest Service's NEPA regulations should not be changed—it is essential that, at minimum, the agency create strong sideboards to ensure adequate advance public notice for all NEPA decisions.

We do not doubt that in many instances line officers will appropriately provide opportunities for public engagement. It is essential, however, that there are strong sideboards to ensure that, in every instance, there are opportunities for the public to engage in NEPA decisions. Although some districts publish proposed actions on a rolling basis, this is not always the case, and there is no guarantee that the SOPA would be published prior to a decision being finalized or even before the project in

<sup>2</sup> <https://www.fs.fed.us/emc/nepa/revisions/index.shtml>

<sup>3</sup> Proposed regulations at §220.4(d)(1)



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question is implemented. Under the proposed revisions, whether or not the public would be alerted to proposals being analyzed under EAs would be at the deciding officer's discretion, and it is essential that this notification be mandatory—and with adequate lead time—rather than discretionary.

Scoping is the most reliable way for the public to be informed that the Agency is considering an action and is an important opportunity for public input into Agency decision-making. This input is vital to ensuring Forest Service decisions are well informed, as required by NEPA. Scoping requires public notice in the newspaper of record as well as on the Forest Service website, and is an opportunity for public comment. If the Forest Service is analyzing a project using a Categorical Exclusion, scoping may be the *only* opportunity for the public to comment on the project.

The importance of scoping for the outdoor recreation community is illustrated by a recent CE project on the Custer Gallatin National Forest. In 2017, the Custer Gallatin proposed a vegetation management project in the Bridger Mountains. This “North Bridger Forest Health Project” fell under a Categorical Exclusion authorized under Section 603 of the Healthy Forest Restoration Act (described in FSH 1909.15 Ch. 30, Section 32.3—Categories Established by Statute, #3). Because the Forest Service conducted scoping, the public was able to review the proposed project at the outset and tell the Forest Service about concerns over how the project would impact outdoor recreation and wildlife. Because of this public involvement, the project was modified to protect wildlife and minimize impacts to hiking and mountain biking trails, backcountry skiing, and snowmobiling. With these modifications, local outdoor recreation organizations now fully support the project. Scoping and public comment allow the public to help the Forest Service improve project design. By working with the public to address concerns early in a planning process, the agency can avoid delays and do-overs down the road.

Scoping is also a critical public comment opportunity for Environmental Assessments. EAs are applied to larger, more complex projects such as those involving travel management or recreation infrastructure. Early public notice and involvement in these projects is essential to developing Proposed Actions and Alternatives that meet the purpose and need of the project in an efficient manner. Delaying opportunities for public involvement in EAs will simply mean that important issues are not brought to light until the draft EA has been developed and the Forest Service has already invested considerable resources into the project.



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Scoping and the associated public comment period helps to ensure that the Forest Service develops EAs armed with a complete set of relevant information and the best available science and that interested members of the public are involved from the beginning.

A case study from the Sawtooth National Forest demonstrates why scoping is a valuable component to the EA process. Recently the Forest Service wrote a winter travel plan for a portion of the Sawtooth National Forest using an EA. Because of the public comment period afforded during scoping, backcountry skiers and conservationists had the opportunity to share information with the Forest Service early in the process documenting important wildlife habitat—namely, wolverine dens and mountain goat winter range. Meanwhile, the snowmobile community weighed in with comments detailing areas they hoped to access. As a result, the Sawtooth was able to draft action alternatives that reflected a range of public interests. The final plan protects important wildlife areas while also designating ample terrain for snowmobile use. Because of the information provided during scoping, the winter travel plan for the northern portion of the Fairfield Ranger District balances conservation and motorized use and is a win-win for all interests.

By making scoping discretionary for CEs and EAs, the proposed revision at §220.4(d)(1) would make public engagement potentially inconsistent for approximately 98% of all Forest Service projects.<sup>4</sup> Public involvement is among the core, bedrock principles of NEPA. This proposed revision cuts away a basic tenant of the law and should not be included in the final revised regulations. At absolute minimum, there should be clarification that scoping is only discretionary where public notice and comment opportunities have been made available through the SOPA with 60-days advance notice before implementation.

## *Determination of NEPA Adequacy*

Elsewhere in §220.4, the Forest Service has proposed adding a new paragraph – §220.4(i), Determination of NEPA Adequacy. This new paragraph outlines the process for determining whether NEPA analysis performed for a previous proposed action can suffice for a new proposed action. While DNAs may be an appropriate

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<sup>4</sup> Between 2006 and 2016, only 678 of the Forest Service's 29,746 decisions (about 2.3%) were analyzed with an EIS.



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tool in certain defined contexts, this addition, at minimum, requires significantly more robust guidance to ensure that this tool is used appropriately, in instances where prior NEPA determinations are truly adequate. We are concerned that, without well-structured sideboards, using a DNA in place of NEPA analysis for a new project will overlook changed circumstances, current recreation trends and uses, or evolving ecological conditions.

Many Forest Plans are decades old and would not be suitable for use as “adequate NEPA” for any new proposal. Likewise, projects beyond a certain level of complexity—for example many projects related to extractive uses—are unlikely to be appropriate for a DNA. The Forest Service should set firm limits on both the age of existing NEPA analysis that can be relied upon for a DNA, as well as firm limits for the scope of determinations eligible for DNA treatment.

If the Forest Service moves forward with including §220.4(i) in the final regulations, there must be strict sideboards on its use, beyond what is proposed in §220.4(i)(i)-(iv). It should not be used for decisions authorizing extractive uses of Forest Service lands, such as logging, mining, or drilling, nor is it suitable for road building or travel management. As articulated below in relation to our concerns with some of the proposed Categorical Exclusions, the potential for DNAs to inappropriately cut out public involvement are exacerbated by the proposed change to make scoping discretionary. Projects using a DNA must go through scoping—or some other early notice and comment opportunity—in order to provide for public input on both the project and on whether a DNA is an appropriate analysis tool. Furthermore, if the responsible official chooses to use a DNA, it should be mandatory that a decision memo be issued following the Determination of NEPA Adequacy to explain the decision.

## *Condition-Based Management*

We are concerned by the new paragraph (k) in §220.4, regarding condition-based management. The proposed rule defines the term as “A system of management practices based on implementation of specific design elements from a broader proposed action, where the design elements vary according to a range of on-the-ground conditions in order to meet intended outcomes.” This raises several concerns for us.



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First, this appears, in effect, to push actual analysis of on-the-ground conditions out of the NEPA process and into a more ad hoc decision-making process in the future. We are concerned that this would undercut meaningful analysis during the NEPA phase as well as limit opportunities to carefully tailor project contours based on a sound understanding of conditions and robust public input.

Second, outdoor recreationists are often particularly interested in highly-specific locations and recreational resources. If those resources are swept up into a broader landscape where conditions-based management were to be applied, it would potentially deprive the public of an opportunity to speak up for those resources or, at minimum, create unnecessary complications in planning processes by leaving recreationists uncertain as to the future management direction of important areas. For example, if a vegetation management project had the potential to be implemented through conditions-based management on a landscape including a valuable backcountry ski zone, skiers would have a reduced or less transparent opportunity to speak up for the places where people ski and the environmental conditions of value in that place (such as big trees or un-roaded slopes).

Should the Forest Service move forward with conditions-based management, the agency must ensure that: 1) meaningful environmental analysis is not postponed or circumvented; 2) site-specific concerns around recreational and environmentally significant resources are incorporated into the conditions-based management alternative; and 3) that opportunities for public notice and comment occur before the implementation of specific projects based on determinations under the conditions-based management protocol.

## Section 220.5—Categorical Exclusions

We have several concerns about the new and modified Categorical Exclusions outlined in §220.5 of the proposed revisions. We do greatly appreciate, however, the proposed change in §220.5(b) to add Wild and Scenic Rivers to the list of Congressionally designated areas in §220.5(b)(1)(iii), and we support this revision.

We also appreciate the revision at §220.5(c) clarifying that the responsible official may choose to include additional public engagement activities involving key stakeholders and interested parties. It is unclear, however, how a “key” stakeholder



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is determined, and any additional public engagement opportunities should be open to all members of the public.

Our first concern is with §220.5(a), in which the Forest Service is proposing to allow the use of multiple CEs for a single proposed action. In our reading, this could allow the Forest Service to authorize larger, far more complex projects than what are covered by any single CE without any substantive NEPA analysis. CEs are intended to apply to small, narrowly defined projects that are not likely to have significant effects. By breaking down larger, more complex, projects into CE-compatible pieces, the Forest Service may fail to notice, or analyze, significant effects of proposed actions. As the question of whether or not a project will have a “significant effect” on the human environment is the trigger for whether an Environmental Impact Statement is required, using multiple CEs for a single project will likely result in the Forest Service inappropriately applying CEs and thus violating NEPA. At minimum, the Forest Service should develop tighter sideboards around the use of multiple CEs and clarify that this change is not intended to allow the expansion of the geographic scale of projects.

We are also concerned with §220.5(b), in which the Agency proposes to adjust and refine how to evaluate extraordinary circumstances. These adjustments and refinements undermine important sideboards on CE use. If an extraordinary circumstance is identified, a CE cannot be used for a project even if it would otherwise qualify. The proposed rule undermines this provision in several ways.

The proposed rule states that “extraordinary circumstances exist when there is a cause-and-effect relationship between the proposed action and listed resources conditions, and the responsible official determines that there is a likelihood of substantial adverse effects.”<sup>5</sup> The addition of the word *substantial* creates a much higher, and subjective, threshold for defining an extraordinary circumstance exist. This is also problematic because it puts the responsible official in the untenable position of making a determination without the benefit of analysis or public input. The proposed revisions provide no guidance on what constitutes a “substantial adverse effect,” leaving this determination to the discretion of the line officer. It is unfair to line officers to put them in a position of having to make a science-based decision in a factual vacuum; just as importantly, a factual vacuum with no public

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<sup>5</sup> §220.5(b)(2)



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daylight can easily be filled by political pressure, and this is exactly the sort of scenario NEPA was enacted to avoid.

In §220.5(b) the Forest Service also directs the responsible official to consider whether long-term beneficial effects outweigh short-term adverse effects when determining whether a proposed action will have a substantial adverse effect on a resource condition. While it is true that sometimes the short-term adverse effects of a project are outweighed by long-term beneficial effects, this is a determination that can only be made through structured analysis, not based on off-the-cuff judgment. This is especially true when considering effects to the listed resource conditions. Short-term adverse effects versus long-term benefits should not influence whether extraordinary circumstances exist.

Section 220.5(b) also removes the term “sensitive species” from the list of resource conditions considered to be extraordinary circumstances because the 2012 Planning Rule does not use that term. However, most forests still operate under forest plans where “sensitive species” are listed. The proposed NEPA regulations would only include federally listed species as a wildlife trigger in regards to extraordinary circumstances. Sensitive species were identified in forest plans as species to which overall ecosystem health can be linked, and this makes them markedly different from federally listed species and is one reason that sensitive species should be considered an extraordinary circumstance. At minimum, the Forest Service should consider how to ensure that Forests operating under older plans continue to effectively manage under those plans by performing appropriate analysis where sensitive species are present.

## New Categorical Exclusions

*CE changes we support (with qualifications)*

With some key modifications, we support consolidating the existing CEs at (e)(15) and (d)(10) into a new **CE at §220.5 (d)(11)**. This change would support the stated goals of this revision, to increase efficiency and reduce confusion, without undermining the basic tenets of NEPA. However, the revised regulations should require that the responsible official submit a decision memo following an action. This keeps the public involved and creates a paper trail of administrative action. Also, and importantly, proposed new CE (d)(11) is generalized to include all special



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uses, which we believe is too broad. This CE should be limited to recreational special uses such as outfitting and guiding, and the decision memo requirement should be included. Likewise, we have concerns about the scope of CE(d)12, and the final rule should clarify and provide sideboards to this end.

We support expanding the scope of the **CE at §220.5(e)(20)** to include lands occupied by National Forest System roads and trails with a few important qualifiers. The existing CE applies to activities that restore, rehabilitate, or stabilize lands occupied by unauthorized roads and trails to a more natural condition. There are many National Forest lands occupied by system roads and trails that are also in need of the types of restoration covered by this CE. However, we would not want to see this CE used to streamline road or trail closures simply because a National Forest unit doesn't have the funding to perform its maintenance or upkeep responsibilities. While a CE may be appropriate for decisions concerning road and trail restoration projects, a decision to close a system road or trail should be subject to a thorough public process.

We support the proposed new **CE §220.5(e)(21)**, which covers the construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site.

The proposed new **CE at §220.5(e)(22)** is similar to (e)(21), except that it applies to activities at recreation sites versus administrative sites. For this reason, it raises concerns for us. For example, constructing or reconstructing campsites could include the conversion of tent sites to RV sites. These campsite conversions not only have a much bigger development footprint, but many recreationists enjoy less developed camping experiences, and ensuring opportunities for public input is essential. Allowing the public to have a say in how campgrounds are managed—and for what uses they are managed for—is important, as camping is among the most popular activities on Forest Service lands. Our concerns with this type of categorical exclusion are, to a significant degree, influenced by our concern that the result of the proposed rule will be to make the scoping process discretionary. Retaining robust public input, even when a potential action is covered by a categorical exclusion, is essential.

It is also important to subject new campground construction to environmental analysis in some instances, as campgrounds can bring changes in use, and



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associated impacts, to an area. Campgrounds can also help to reduce impacts, especially in places with intensive dispersed camping use, but before authorizing new construction it is important to consider how to design the development in order to most effectively minimize environmental impacts and meet social needs. For this reason, the Forest Service must provide for notice and public comment. If the agency moves forward with this CE, it must clarify what types of projects it would apply to, narrow the scope of the CE, and add sideboards to govern its use. Without defining the types of recreation sites or the parameters governing construction, reconstruction, decommissioning, or disposal that this CE (and for that matter (e)(21)) covers, it is difficult to know how or where the CE might be applied.

## *CEs raising more substantial concerns*

We are concerned that the proposed rule would expand existing **CE §220.5(e)(3)** to applicable projects on up to 20 acres of Forest Service land versus the current 5-acre limit. Neither the proposed rule nor the supplementary information provide a rationale for why there is a need to expand this CE to cover projects up to four times larger than the current CE allows for. We are particularly concerned about §220.5(e)(3)(iv): approving of the use of land for a 40-foot utility corridor that crosses four miles of a national forest and (v) approving the expansion of an existing gravel pit or the removal of mineral materials from an existing community pit or common-use area. Approving the expansion of a gravel pit on up to 5 acres of land is quite different than doing so for up to 20 acres of land, and the same goes for utility corridors. Either scenario would entail a substantial level of disturbance and have an increased likelihood of adversely affecting recreation or ecological resources. Furthermore, the proposed language does not specify if the 20 acres needs to be continuous or if it could be broken up into patches. Twenty acres broken into smaller sections, such as 4 or 5-acre patch cuts, could further exacerbate impacts throughout the forest. Providing for public comment and review of these decisions, before the project is approved, helps the agency to avoid unnecessary pitfalls. Applying a CE for these types of projects at this markedly larger scale, is not appropriate.

We are concerned about the proposed new **CE at §220.5(e)(23)**, which would apply to converting an unauthorized trail or trail segment to an authorized NFS trail. There are likely to be times when adopting a small segment of non-system non-



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motorized trail into the NFS under a CE would be appropriate. However, CE(e)(23) as currently written is too broad. For example, motorized trails, including over-snow vehicle trails, must only be designated under the provisions of the Travel Management Rule. CE (e)(23) has the potential to undermine more than a decade of Forest Service policy to thoughtfully plan for and manage motorized trails using the Travel Management Rule. It is also essential that any CE include appropriate sideboards or guidance to avoid creating an incentive for the creation of unauthorized routes.

The Travel Management Rule was enacted in 2005 in response to the Agency's responsibility to better manage off-road motor vehicles (ORVs), and public input and participation is integral to the travel management process. In the proposed Rule the Forest Service does not provide any explanation of how proposed new CE(e)(23), as well as (24) and (25), would comply with the requirements of the Travel Management Rule. While the proposed rule mentions that use of (e)(23) would require "consistency with applicable travel management decisions," it does not explain how this would happen. Travel management decisions can and do address unauthorized routes, but the decision to add such routes to the NFS, or not, is made during the travel management EA or EIS. A decision to convert additional unauthorized routes to the NFS outside of a travel management plan would need to include an opportunity for public input as well as robust environmental analysis in order to comply with the Travel Management Rule.

Unauthorized trails are often created because they are the path of least resistance, or serve a specific recreational purpose—they are not necessarily created with the Travel Management Rule's minimization criteria, other user groups, wildlife, or sustainable trail building principles in mind. The Forest Service, however, has a responsibility to consider these factors, and more, when adding to trails to the NFS. At minimum the wording on page 19 of the proposed NEPA regulations should read "When considering conversion of an unauthorized trail to a NFS trail, the responsible official *must* ensure that the converted route would meet Trail Management Objectives."

The Forest Service should also consider modifying CE(e)(23) to add a linear foot and width restriction to eligible trails. For instance, fishing access, climbing access, and water access routes are frequently short distance routes connecting people to a specific activity. While fishing, climbing, and paddling user groups often successfully



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work with the Forest Service to perform erosion control and other maintenance on these non-system routes, there may be examples where including such routes in the NFS would be beneficial.

Without these substantial changes, we are opposed to the CE at §220.5(e)(23).

As written, we are opposed to the proposed new CE at **§220.5(e)(24)**, which would cover the construction or realignment of up to 5 miles of National Forest System (NFS) roads or reconstruction of up to 10 miles of NFS roads and associated parking areas, opening or closing an NFS road, and culvert or bridge rehabilitation or replacement along NFS roads. We would be supportive of this proposed new CE if it were limited to bridge rehabilitation or replacements along NFS roads.

Several of the examples provided to illustrate how CE(e)(24) could be applied are appropriate, and we would be less concerned if the CE were limited to just those activities outlined in CE(e)(24)(i), (iii), (iv), (v), and (vi). This proposed CE, however, is much more expansive. CE(e)(24)(ii)—construction an NFS road to improve access to a trailhead or parking area—and the wording at CE(e)(24) (“Examples include *but are not limited to*”) would allow for the construction of up to 5 miles of new road, reconstruction of up to 10 miles, or opening previously closed roads without public input or environmental analysis. Construction of up to 5 miles of new road, or reconstruction of up to 10 miles of road, are contrary to long-standing Agency policy that the Forest Service is no longer in the business of building permanent system roads and that projects may be implemented via construction of only temporary roads that must be decommissioned. Furthermore, since at least 2005 the Agency has been working to “right-size” its road system, completing Travel Analysis Reports to identify unnecessary roads, and decommissioning thousands of miles of unneeded logging roads in an effort to reduce maintenance costs, improve water quality, and protect other resources. This CE undercuts those efforts by allowing line officers to re-open roads and construct new roads without adequate public input or oversight.

We are also opposed to the proposed new **CE at §220.5(e)(25)**. This CE would cover converting an unauthorized or non-NFS road to a NFS road. This proposed CE poses the same problems as we have described for (e)(23) and (24), but at an even larger scale. As written, there are no sideboards on how to apply this CE, in contrast with (e)(23), which includes requirements for consistency with applicable land



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management plan direction, travel management decisions, trail-specific decisions, and other direction (although these constraints require greater explication). At absolute minimum, CE (e)(25) should adopt those sideboards, as well as additional constraints to ensure it does not become an incentive for unauthorized route construction. As with (24), this CE is contrary to decades of Forest Service travel management policy designed to make the National Forest road system more ecologically and fiscally sustainable and ensure that any road (or motorized trail) designations are in compliance with the Travel Management Rule and located to minimize impacts to resources, wildlife, and conflicts with other uses.

We are also strongly opposed to the proposed new **CE at §220.5(e)(26)**, which allows for broadly defined “ecosystem restoration and/or resilience activities” on up to 7,300 acres. This includes commercial logging on up to 4,200 acres—6.6 square miles—so long as a project includes at least one restoration element. The restoration piece can be minor in scale, such as replacing a culvert to restore fish passage, as compared to the related harvest activities.

This CE greatly expands upon existing CEs for timber and vegetation treatments, such as the 2014 Farm Bill CE, which limits project areas to 3,000 treated acres and restricts applicable projects to the Wildland Urban Interface.<sup>6</sup> That CE reflects the relatively recent view of Congress as to the appropriate scope and sideboards for categorical exclusions related to restoration projects. If the Forest Service determines that a new CE is necessary surrounding restoration or resilience activities, there should be clarification that those activities must be the primary project purpose, rather than allowing CEs for projects that simply contain a minimum of one restoration element, and the definition of activities that qualify as restoration and resilience should be significantly tightened.

Further, at present, nearly every timber sale we are aware of on Forest Service lands includes a restoration element, meaning that almost every timber sale of 4,200 acres or less on Forest Service lands could potentially be covered by the proposed CE as written. Additionally, recreation often needs to be integrated and considered in these projects, which requires recreationists to be both aware of

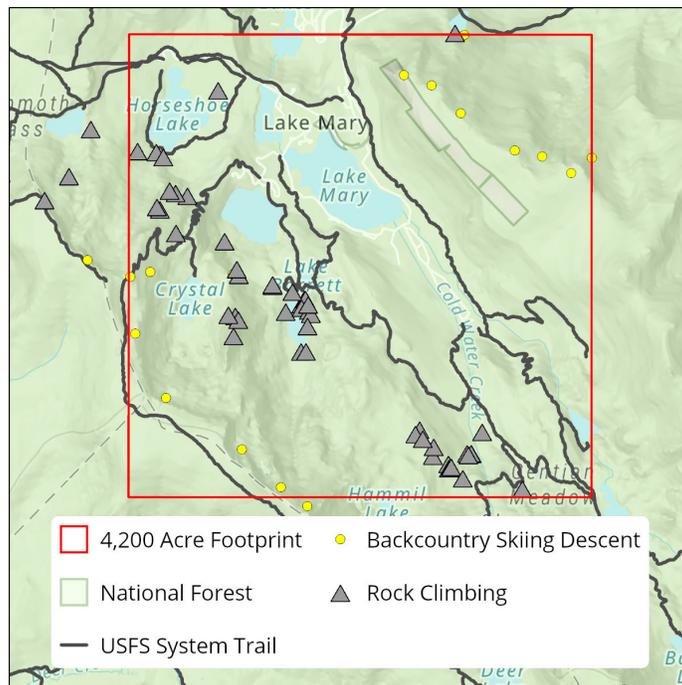
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<sup>6</sup> Healthy Forests Restoration Act, as amended by the 2014 Farm Bill, Title VI, Section 603, (16 U.S.C. § 6591b).



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proposed projects and involved in their development (again underscoring the importance of retaining scoping for these types of decisions). The inset map below illustrates the relatively common occurrence of the concentration of recreation resources that can occur within a 4200-acre parcel.



Finally, we are concerned about the proposed new **CE at §220.5(e)(27)**, which would allow the Forest Service to bypass environmental review of a project if the project is implemented jointly with another Federal agency and the other agency has a CE that covers the proposed action. This is concerning because other Agencies, the BLM in particular, have a much more extensive list of CEs than the Forest Service. Other agencies are driven by missions different than what drives the Forest Service, and a CE that may be appropriate for the BLM is not necessarily appropriate for use by the Forest Service. For example, the BLM NEPA regulations include CEs established by the Energy Policy Act of 2005 which do not require any analysis or documentation at all beyond a brief rationale explaining why the CE is being applied. Under proposed CE (e)(27), the Forest Service could rely on the BLM's Energy Policy Act of 2005 CEs to approve oil and gas wells or pipelines with zero public involvement or environmental analysis and very little documentation of the decision. In addition to the five Energy Policy Act CEs, there are more than 90

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additional CEs outlined in the BLM's NEPA handbook. As with many of the proposed new CEs, CE(e)(27) is simply too broad.

## **Section 220.6—Environmental assessment and decision notice**

The proposed revisions would eliminate the mandatory scoping requirement for Environmental Assessments, as described in §220.6(a) and §220.4(d). This is concerning because, as described at §220.6(a)(1)(i), EAs need not analyze any alternatives other than the proposed action unless the Agency identifies unresolved conflicts. Without scoping, the public cannot provide information to help the Agency determine whether additional alternatives are necessary. As previously explained in these comments, scoping is a critical public comment period and opportunity for the Forest Service to collect information to inform its decision-making. Although the public can weigh in on an EA at the draft stage, this is too late in the process to substantially influence the direction of a project.

## **Section 220.7—Environmental Impact Statement and Record of Decision**

The proposed rule revises the list of classes of actions normally requiring an EIS (§220.7(a)) to no longer include those that would substantially alter the undeveloped character of an Inventoried Roadless Area or a potential Wilderness area. Asserting that this change is permissible because the Roadless Area Conservation Rule provides adequate protections does not account for the extensive litigation history demonstrating that projects that would substantially alter the undeveloped character of IRAs are frequently proposed. Additionally, numerous ongoing threats to the integrity of the Roadless Rule make this change inappropriate.

Roadless and potential Wilderness areas are prized for their recreation, wildlife, and other conservation values, often representing the most ecologically intact places on a given national forest or ranger district. The current presumption in favor of the preparation of an EIS for projects proposed within these areas provides an important procedural accompaniment to the substantive protections provided by the Roadless Rule and helps to protect irreplaceable Wilderness values in potential Wilderness areas. It is of the utmost importance that the Forest Service carefully analyze any action which may substantially alter their undeveloped character.



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The Forest Service has proposed a substantial series of changes to its NEPA regulations that have the potential to drastically limit public input and encourage uninformed decision-making in a manner inconsistent with the intent of NEPA. If these proposed revisions are enacted as written, the vast majority of Forest Service projects are likely to occur with reduced opportunities for public engagement. It is our strong belief that early public involvement is the soundest investment land managers can make in the ultimate success of on-the-ground projects, improving project design and addressing concerns before they grow into conflicts. These conflicts, in turn, foster the potential for litigation and ultimately work at cross purposes with the Forest Service's objectives around efficient and effective decision-making.

Moving forward with efforts to improve environmental analysis and decision-making, we strongly encourage the Agency to focus on its continued efforts to improve agency culture with regard to NEPA compliance and focus efforts on reducing staff turnover, improving training, and working to improve efficiency within the parameters of existing regulations. These changes are achievable and will work to the benefit of all public lands stakeholders, while maintaining the essential values of environmental protection, public involvement, and science-based decision-making.

Thank you for your consideration of these comments.

Best regards,



Louis Geltman  
Policy Director  
Outdoor Alliance

cc: Adam Cramer, Executive Director, Outdoor Alliance  
Chris Winter, Executive Director, Access Fund



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Beth Spilman, Interim Executive Director, American Canoe Association

Mark Singleton, Executive Director, American Whitewater

Dave Wiens, Executive Director, International Mountain Bicycling Association

Todd Walton, Executive Director, Winter Wildlands Alliance

Tom Vogl, Chief Executive Officer, The Mountaineers

Phil Powers, Chief Executive Officer, American Alpine Club

Sarah Bradham, Acting Executive Director, the Mazamas

Keegan Young, Executive Director, Colorado Mountain Club

Chad Nelson, CEO, Surfrider Foundation

