



Wyoming County Commissioners Association

P.O. Box 86 • 408 W 23rd Street • Cheyenne, WY • 82003
(307) 632-5409 • www.wyo-wcca.org

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: U.S. Forest Service National Environmental Policy Act (NEPA) Compliance Proposed Rule (Docket: FS-2019-0010)

Dear Ms. Barker,

On behalf of the Wyoming County Commissioners Association (“WCCA”), an organization representing the Boards of County Commissioners for all twenty-three of Wyoming’s counties, I am writing to express support for the U.S. Forest Service’s (the “Service”) proposed rulemaking amending its regulations implementing the National Environmental Policy Act (“NEPA”). As you move forward with this rulemaking, please consider the following comments as well as those submitted by other Wyoming counties, Wyoming Governor Gordon and the National Association of Counties.

Wyoming is home to eleven National Forests and Grasslands accounting for over nine million acres of the State’s land base. The National Forest and the resources it provides are critical to Wyoming communities economies, custom and culture. Wyoming residents and visitors hunt, hike, fish, bike, camp and recreate in their National Forests, adding to quality of life and economic health of the state. Wyoming counties also derive economic benefits from timber harvests and vegetation management projects on the Forests.

Wyoming counties see tremendous value in healthy and productive National Forests managed for multiple use and sustained yield. This is one reason why it is so disappointing to see the NEPA process delay and derail projects meant to achieve this purpose. The Service’s proposed changes will help to make the NEPA and permitting process more efficient and timely allowing the agency and its partners to improve the vitality of the National Forest, increase access, improve local economies and protect human safety and property.

I. Revisions to Scoping and Public Engagement Processes

WCCA supports the Service’s proposal to allow the agency’s local responsible officials to determine, within certain restrictions, the type and scope of public engagement for analyses other than environmental impact statements (“EIS”).¹ Where decisions are supported by categorical exclusions (“CEs”) or environmental analyses (“EAs”) rather than an EIS, the process for scoping and public notice need not be as rigorous or time-consuming. Such projects, by definition, have no or only potential

¹ Proposed new 36 C.F.R. § 220.4(d); 84 Fed. Reg. 27544, 27553.



significant impact and the level of public engagement should match the degree or size of a proposed project.

However, WCCA urges the Service to include language regarding engagement and coordination with counties and other government entities in the proposed rule. Public outreach and involvement is not the same process as coordination with government entities, including counties. The Service explains in the preamble of the proposed rule that it will rely on language in its agency guidance which “encourages early and ongoing engagement with the public and other external partners (such as other Federal agencies, Tribes, States, and local governments) that is not limited to a single NEPA process.”²

Rather than “encouraging” engagement with Federal, Tribal, state and local government in agency guidance, the Service should mandate it in its NEPA regulations. This requirement would be consistent with NEPA itself. Section 101 of the Act provides that it is the “continuing policy of the federal government, in **cooperation with the state and local governments**, and other concerned public and private organizations” to consider the impacts of federal actions to the environment.³ Moreover, NEPA requires that the “comments and views of the appropriate federal, state and local agencies, which are authorized to develop and enforce environmental standards” must be included in the decision-making process.⁴

The Service should include language in its NEPA regulations consistent with NEPA’s intent that cooperating with state, local and Tribal governments is integral to effective management of the National Forests.

II. Include a Provision Requiring a Consistency Review

In an effort to “better integrate environmental impact statements in to State or local planning processes,” NEPA and its implementing regulations require federal agencies to address “any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).”⁵ Where there are inconsistencies, an EIS should “describe the extent to which the agency would reconcile its proposed action with the plan or law.”⁶

As a way to implement this requirement, the Service should consider adding a provision to its NEPA regulations requiring the agency to provide the Governor of the state or states in which a project is proposed the opportunity to review an EIS for inconsistencies between State or local plans, policies or

² 84 Fed. Reg. 27544, 27546.

³ 42 U.S.C. § 4331.

⁴ 42 U.S.C. § 4332(2)(C).

⁵ 40 C.F.R. § 1506.2(d).

⁶ *Id.*



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programs. The Bureau of Land Management's regulations provide for such a review in what has become known as the Governor's Consistency Review.⁷ Building on this, the Service should:

- Provide 60 days for a governor to review any EIS the agency prepares;⁸
- Require the a responsible official to give the public an opportunity to comment on the governor's recommendations;
- Require the responsible official to notify the governor where recommendations are rejected;
- Give the governor an opportunity to appeal such rejections to a Forest Supervisor, Regional Forester or Forest Service Chief;
- Require the appealing officer to accept the governor's recommendations if "they provide for a reasonable balance between the national interest and the State's interest";⁹ and
- Require the appealing officer to provide in writing reasons for accepting or rejecting the governor's recommendations.

A consistency review should include the review of local plans and policies, such as county natural resource plans. In Wyoming, counties are in the process of developing or revising county natural resource plans that will lay out the priorities and objectives for resource use, the impacts various land use decisions will have on their communities' economies, and dependence on federal resources for recreation, business, custom and culture. By law, the Service must consider inconsistencies between proposed actions and these local plans and, for the sake of efficiency and cooperation, should include the state and local governments in the review.

III. Determination of NEPA Adequacy

WCCA applauds the Service's proposal to incorporate a determination of NEPA adequacy ("DNA") into its NEPA regulations. As the Service notes, the Bureau of Land Management has used the DNA process successfully over the years. When used appropriately, a DNA can reduce the number of analyses the Service would be required to prepare and increase efficiencies, allowing the agency to do more work on the ground.

⁷ 43 C.F.R. § 1610.3-2. While BLM relies on its authority under the Federal Land Policy Management Act (FLPMA) for its consistency reviews, there is no reason why the Service cannot rely on NEPA. *Id.* A similar requirement can be found in both FLPMA and NEPA, as well as the National Forest Management Act. 16 U.S.C. § 1604(a); 36 C.F.R. § 2019.4(b)(2).

⁸ The BLM requires a consistency review of only land management plans, relying on FLPMA's requirement. We recommend the Service consider a consistency review for any project requiring an EIS, consistent with language found in NEPA.

⁹ 43 C.F.R. § 1610.3-2(e).



IV. Categorical Exclusions

WCCA approves of the Service's proposal to modify existing categorical exclusions ("CEs") and include additional CEs in the NEPA regulations. These CEs will provide the agency with more flexibility. WCCA has the following specific comments on proposed CEs.

a. Developing, Improving and Rebuilding Recreation Sites and Access¹⁰

Safe and accessible recreation facilities on public lands, including campgrounds, ski areas, visitors centers and fishing sites on the National Forests, are critical to Wyoming's custom, culture and economy. Nearly a quarter of Wyoming residents participate in some form of outdoor recreation every year, including camping, fishing, hunting, off-roading, hiking, skiing, boating and viewing wildlife.¹¹ Moreover, tourism is one of Wyoming's major economic drivers, with many visitors traveling to enjoy public lands in the state.

Because of this, WCCA supports the Service's proposal for additional CEs for the construction, reconstruction, decommissioning, relocation or disposal of infrastructure and improvements at recreational sites.¹² The impacts of this kind of development at existing sites have limited environmental impact, making a full NEPA analysis unnecessary. Further, projects such as this will provide a significant benefit to the communities that live in and around National Forests.

WCCA also supports the Service's proposed CEs for converting unauthorized or non-NFS trails and roads to Service-managed routes¹³ and for the realignment or construction of Service roads of limited length, opening or closing a Service road and for replacing or rehabilitating culverts or bridges.¹⁴ These kinds of projects improve access to recreational opportunities for the public in a way that does not sacrifice human safety or harm the environment.

b. Ecosystem Restoration or Resilience Activities

WCCA urges the Service to move forward with its proposed CE regarding ecosystem restoration and resilience activities, including hazardous fuel reduction, prescribed burning, reforestation, commercial harvest and thinning, which will help to improve the health of National Forests in Wyoming (the "Restoration CE").¹⁵

Insect infestation, fire suppression, drought, and invasive species have created forests that are more susceptible than ever to fire. Wyoming now regularly sees fires that are more destructive and difficult

¹⁰ Proposed new 36 C.F.R. § 220.25(e)(22), (23), (24) and (25); 84 Fed. Reg. 27544, 27548.

¹¹ 2017 Outdoor Recreation Industry Report, Wyoming Business Council, at 2-3, available at http://wyomingbusiness.org/Uploads/DocumentLibrary/Misc/Outdoor%2010.31.17_4.pdf.

¹² Proposed new 36 C.F.R. § 220.25(e)(22); 84 Fed. Reg. at 27548.

¹³ Proposed new 36 C.F.R. § 220.25(e)(23) and (25); 84 Fed. Reg. at 27548.

¹⁴ Proposed new 36 C.F.R. § 220.25(e)(24); 84 Fed. Reg. at 27548.

¹⁵ Proposed new 36 C.F.R. § 220.25(e)(26); 84 Fed. Reg. at 27549.



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to control than ever. And, with the increase in residential development in or near forests, the threat of fire to human safety and property is unprecedented.

During the summer of 2019, Wyoming's Sublette County experienced this firsthand. The Roosevelt Fire started on September 15, 2018 on the Bridger-Teton National Forest and proceeded to burn over 60,000 acres and destroy 55 homes. The area where the fire burned had already been identified by the Sublette County Forest Collaborative as an area in need of vegetation treatment and restoration. The kind of work the Restoration CE identifies could prevent or reduce the risk of destruction such as this.

The Restoration CE would allow the Forest Service to more efficiently address those areas of Wyoming's National Forest that are degraded and pose a danger to public safety. Moreover, the types of activities identified under the Restoration CE lend themselves to partnership between counties, the Service and other interested groups using stewardship contracting and Good Neighbor Authority.¹⁶ As a result, WCCA urges the Service to include the Restoration CE in its final rule.

We appreciate the opportunity to provide comments on the Service's proposal to amend its NEPA regulations. If I can answer any questions or be of assistance, please do not hesitate to reach out.

Sincerely,

Dr. Troy Thompson
President
Wyoming County Commissioners Association

cc: The Honorable Mark Gordon, Governor of Wyoming
The Honorable Mike Enzi, United States Senator
The Honorable John Barrasso, United States Senator
The Honorable Liz Cheney, United States Congresswoman

¹⁶ Supplementing 36 CFR Part 220: Addition of New Categorical Exclusion for Certain Restoration Project Supporting Statement, USDA Forest Service Ecosystem Management Coordination at 10 (May 1, 2019).