

**APPENDIX A: A GUIDE TO THE RULE MAKING PROCESS AND  
36 CFR 4.30**

# A Guide to the Rulemaking Process

*Prepared by the Office of the Federal Register<sup>1</sup>*

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<sup>1</sup> The material presented in this guide is necessarily general in nature and should not be used to make legal decisions. We use the terms "rule" and "regulation" interchangeably in the text. The guide is adapted from several major sources: the Cornell e-Rulemaking Initiative (CeRI) "Regulation Room," hosted by the Cornell Legal Information Institute (LII) at <http://regulationroom.org/learn-about-rulemaking/>; the "Reg Map" created by ICF Consulting with the cooperation of the General Services Administration's Regulatory Information Service Center at <http://www.reginfo.gov/public/reginfo/Regmap/index.jsp>; the Office of the Federal Register's tutorial: "The Federal Register: What it is and How to Use It" at <http://www.archives.gov/federal-register/tutorial/online-html.html#top>; and the Department of Transportation's "The Informal Rulemaking Process," which has more detailed information and examples on the rulemaking process. In addition, you may wish to consult DOT's "Rulemaking Requirements" (prepared by Neil Eisner, April 2009), which provides hyperlinks for easy access to the statutes, executive orders, guidance documents, memoranda, etc. that contain the actual legal requirements or provide guidance on the rulemaking process.

## ***Before the Proposed Rule***

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### **What gives agencies the authority to issue regulations?**

Agencies get their authority to issue regulations from laws (statutes) enacted by Congress. In some cases, the President may delegate existing Presidential authority to an agency. Typically, when Congress passes a law to create an agency, it grants that agency general authority to regulate certain activities within our society. Congress may also pass a law that more specifically directs an agency to solve a particular problem or accomplish a certain goal.

An agency must not take action that goes beyond its statutory authority or violates the Constitution. Agencies must follow an open public process when they issue regulations, according to the Administrative Procedure Act (APA). This includes publishing a statement of rulemaking authority in the *Federal Register* for all proposed and final rules.

### **How does an agency decide to begin rulemaking?**

Congress may pass a law that directs an agency to take action on a certain subject and set a schedule for the agency to follow in issuing rules. More often, an agency surveys its area of legal responsibility, and then decides which issues or goals have priority for rulemaking.

These are a few of the many factors that an agency may consider:

- New technologies or new data on existing issues;
- Concerns arising from accidents or various problems affecting society;
- Recommendations from Congressional committees or federal advisory committees;
- Petitions from interest groups, corporations, and members of the public;
- Lawsuits filed by interest groups, corporations, States, and members of the public;
- Presidential directives;
- "Prompt letters" from the Office of Management and Budget (OMB);
- Requests from other agencies;
- Studies and recommendations of agency staff.

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### When can the public learn that an agency plans to start a rulemaking?

Agencies are required to publish a “Regulatory Plan” once a year in the fall and an “Agenda of Regulatory and Deregulatory Actions” in the spring and fall. The Regulatory Plan and the Regulatory Agenda are often referred to as the “Unified Agenda.” The Unified Agenda is how agencies announce future rulemaking activities update the public on pending and completed regulatory actions.

The Unified Agenda is posted on RegInfo.gov and Regulations.gov. Agencies also publish most of this material (their regulatory plans) in the *Federal Register*. The *Federal Register* version and a separate Unified Agenda collection are available on the Government Printing Office’s (GPO) Federal Digital system (FDsys.gov).

### How does an agency involve the public in developing a proposed rule?

An agency may take some preliminary steps before issuing a proposed rule. They gather information through unstructured processes and informal conversations with people and organizations interested in the issues. If an agency receives a “Petition for Rulemaking” from a member of the public, it may decide to announce the petition in the *Federal Register* and accept public comments on the issue.

An agency that is in the preliminary stages of rulemaking may publish an “Advance Notice of Proposed Rulemaking” in the *Federal Register* to get more information. The Advance Notice is a formal invitation to participate in shaping the proposed rule and starts the notice-and-comment process in motion.

Anyone interested (individuals and groups) may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against issuing a rule. Some agencies develop proposed rules through a negotiated rulemaking. In this process, an agency invites members of interested groups to meetings where they attempt to reach a consensus on the terms of the proposed rule. If the participants reach agreement, the agency may endorse their ideas and use them as the basis for the proposed rule.

### What is the role of the President in developing a proposed rule?

Before a proposed rule is published in the *Federal Register* for public comment, the President, as head of the Executive branch, may take the opportunity to review the rule. The President is assisted by the Office of Information & Regulatory Affairs (OIRA), which analyzes draft proposed rules when they are “significant” due to economic effects or because they raise important policy issues. For significant rules, the agency must estimate the costs and benefits of the rule and consider alternate solutions.



If the proposed rule requires the public to provide information to the government, the agency must estimate the paperwork burden on the public and obtain permission to proceed from OIRA. In addition, the agency may be required to analyze a proposed rule's impact on: small businesses; state, local and tribal governments; families; federalism. It may also need to analyze issues of just compensation and unfunded mandates.

## ***The Proposed Rule***

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### **What is the purpose of the proposed rule?**

The proposed rule, or Notice of Proposed Rulemaking (NPRM), is the official document that announces and explains the agency's plan to address a problem or accomplish a goal. All proposed rules must be published in the *Federal Register* to notify the public and to give them an opportunity to submit comments. The proposed rule and the public comments received on it form the basis of the final rule.

### **How is the proposed rule structured?**

Proposed rules have preambles which contain a summary, date and contact information, and supplementary information. A proposed rule begins with a "Summary" of the issues and actions under consideration; it also states why the rule is necessary. Under the "Dates" and "Addresses" captions, the agency invites everyone to comment on the proposed rule, sets a date for comments to be submitted, and specifies various methods for conveying comments. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and the official federal electronic comment portal: Regulations.gov.

In the "Supplementary Information" portion, the agency discusses the merits of the proposed solution, cites important data and other information used to develop the action, and details its choices and reasoning. The agency must also identify the legal authority for issuing the rule.

Following the preamble, the agency usually publishes the regulatory text of the proposal in full. The regulatory text sets out amendments to the standing body of law in the Code of Federal Regulations. If the amendments are not set out in full text, the agency must describe the proposed action in a narrative form.

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### What is the time period for the public to submit comments?

In general, agencies will specify a comment period ranging from 30 to 60 days in the “Dates” section of the *Federal Register* document, but the time period can vary. For complex rulemakings, agencies may provide for longer time periods, such as 180 days or more. Agencies may also use shorter comment periods when that can be justified.

Members of the public may request that the agency allow more time to submit comments, and agencies may consider late-filed comments, if their decision-making schedule permits it. Commentors should be aware that agencies generally are not legally required to consider late-filed comments. Agencies usually provide information in the proposed rule and/or their procedural rules indicating whether they will consider late-filed comments.

### Why do agencies re-open comments or issue multiple proposed rules?

An agency may extend or re-open a comment period when it is not satisfied that it has enough high quality comments or when the public comments make a good case for adding more time.

Similarly, an agency may find that people have raised new issues in their comments that were not discussed in the initial proposed rule. As new issues or additional complexity arises, the agency may publish a series of proposed rules in the *Federal Register*.

### Do agencies have additional options for gathering public comments?

During the comment period, an agency may also hold public hearings where people can make statements and submit data. Some agencies operate under laws that require rulemaking hearings. Others may hold public meetings to collect more information or to help affected groups get a better understanding of the proposed rule. Many agencies are beginning to use webcasts and interactive Internet sessions to broaden the audience attending public meetings.

After the comment period closes, an agency may establish a second period for reply comments (comments that respond to prior comments). A reply period is not required by law. The reply comment period enables people to respond to comments that agencies received at the end of comment period, creating more of a public dialog.

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### Why should you consider submitting electronic comments?

Most agencies now prefer to receive comments electronically so that your input on a proposed rule or other document is more easily available to the public. Having electronic data helps agencies organize the comments by subject or in other ways to help the public and the agency make more effective use of them.

You can submit electronic comments to the agency docket site by following the instructions in the *Federal Register*. Many of the proposed rules and other documents on this site display a special button for submitting comments directly to the official electronic docket. For information on using the federal eRulemaking portal to submit comments, go to the Regulations.gov "Help" pages on submitting a comment.

### ***Before the Final Rule***

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### How do public comments affect the final rule?

The notice-and-comment process enables anyone to submit a comment on any part of the proposed rule. This process is not like a ballot initiative or an up-or-down vote in a legislature. An agency is not permitted to base its final rule on the number of comments in support of the rule over those in opposition to it. At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.

To move forward with a final rule, the agency must conclude that its proposed solution will help accomplish the goals or solve the problems identified. It must also consider whether alternate solutions would be more effective or cost less.

If the rulemaking record contains persuasive new data or policy arguments, or poses difficult questions or criticisms, the agency may decide to terminate the rulemaking. Or, the agency may decide to continue the rulemaking but change aspects of the rule to reflect these new issues. If the changes are major, the agency may publish a supplemental proposed rule. If the changes are minor, or a logical outgrowth of the issues and solutions discussed in the proposed rules, the agency may proceed with a final rule.

### What is the role of the President in developing a final rule?

In the same way that the President and the Office of Information & Regulatory Affairs (OIRA) review draft proposed rules prior to publication, the President and OIRA analyze draft final rules when they are “significant” due to economic effects or because they raise important policy issues. The Presidential level review takes place before the final rule is published in the *Federal Register*. OIRA’s final analysis of estimated costs and benefits may take into consideration any comments and alternate solutions suggested in public comments.

Agencies may also use this review and analysis phase to consult with other agencies who share responsibility for issues covered by the rule. In some cases, interagency review is mandatory.

## The Final Rule

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### How is the final rule structured?

Final rules also have preambles, including the summary, effective date, and supplementary information. The final rule published in the *Federal Register* begins with a “Summary” of the societal problems and regulatory goals and explains why the rule is necessary.

Every final rule must have an “Effective Date.” However, any portions that are subject to later approval under the Paperwork Reduction Act or are subject to Congressional approval may be excepted from that effective date. The “Dates” caption in the *Federal Register* may also contain compliance or applicability dates.

The agency must state the “basis and purpose” of the rule in the “Supplementary Information” part of the preamble. This statement sets out the goals or problems the rule addresses, describes the facts and data the agency relies on, responds to major criticisms in the proposed rule comments, and explains why the agency did not choose other alternatives.

The agency must identify its legal authority for issuing the rule and publish the regulatory text in full. The regulatory text sets out amendments to the Code of Federal Regulations (CFR). Each amendment begins with instructions for changing the CFR.

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### When do final rules go into effect?

When an agency publishes a final rule, generally the rule is effective no less than thirty days after the date of publication in the *Federal Register*. If the agency wants to make the rule effective sooner, it must cite “good cause” (persuasive reasons) as to why this is in the public interest.

Significant rules (defined by Executive Order 12866) and major rules (defined by the Small Business Regulatory Enforcement Fairness Act) are required to have a 60 day delayed effective date.

### Can an agency issue a final rule without publishing a proposed rule?

Yes, the Administrative Procedure Act (APA) permits agencies to finalize some rules without first publishing a proposed rule in the *Federal Register*. This exception is limited to cases where the agency has “good cause” to find that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.” These situations may include emergencies where problems must be addressed immediately to avert threats to public health and safety, minor technical amendments and corrections where there is no substantive issue, and some instances where an agency has no discretion to propose a rule because Congress has already directed a specific regulatory outcome in a law. The agency must state its reasoning for finding good cause in the preamble of the final rule published in the *Federal Register*.

There are other exceptions to conventional notice-and-comment rulemaking. An agency may go straight to final rulemaking without a proposed rule when they issue internal agency procedures, rules that affect only federal employees, and rules that manage federal property and real estate. Even these types of rules can be subject to proposed rulemaking because of a special statutory requirement or because an internal agency rule also has a substantial effect on the public.

Agencies can also issue and enforce rules by using “actual notice,” which requires direct notification of all affected persons and entities. Because it is difficult to pinpoint every person and entity affected by a rulemaking, this option is used mostly for rules that have a very narrow effect on known or readily definable persons or corporations.

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### What are interim final rules & direct final rules?

**Interim Final Rule:** When an agency finds that it has good cause to issue a final rule without first publishing a proposed rule, it often characterizes the rule as an “interim final rule,” or “interim rule.” This type of rule becomes effective immediately upon publication. In most cases, the agency stipulates that it will alter the interim rule if warranted by public comments. If the agency decides not to make changes to the interim rule, it generally will publish a brief final rule in the *Federal Register* confirming that decision.

**Direct Final Rule:** When an agency decides that a proposed rule is unnecessary because it would only relate to routine or uncontroversial matters, it may publish a direct final rule in the *Federal Register*. In a direct final rule, the agency states that the rule will go into effect on a certain date, unless it gets substantive adverse comments during the comment period. An agency may finalize this process by publishing in the *Federal Register* a confirmation that it received no adverse comments. If adverse comments are submitted, the agency is required to withdraw the direct final rule before the effective date. The agency may re-start the process by publishing a conventional proposed rule or decide to end the rulemaking process entirely.

### After the Final Rule

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### How are final rules integrated into the Code of Federal Regulations?

Agencies must publish the changes to the Code of Federal Regulations (CFR) in the final rule, instructing how amendments add, revise, remove, or re-designate regulatory text. The CFR contains all of the generally applicable rules of the Federal government with current or future effect.

On the day a final rule is published in the *Federal Register*, Office of the Federal Register and GPO staff begin processing the material for codification into the CFR. Rules that are immediately effective are integrated into the “Electronic Code of Federal Regulations” (e-CFR) database ([ecfr.gpoaccess.gov](http://ecfr.gpoaccess.gov)). Rules with delayed effective dates are placed in amendment files and linked from the main e-CFR database. The e-CFR is an unofficial, but authoritative editorial compilation published by the Office of the *Federal Register* and GPO. Users can check the update status of the e-CFR by consulting the home page.

The official annual editions of the CFR are assembled from the material published in the e-CFR. Each of the 50 subject matter titles are republished each year on a staggered, quarterly basis, and appear in print and online (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>).



### How is the Congress involved in reviewing final rules?

Under the Small Business Regulatory Enforcement Fairness Act (also known as the Congressional Review Act), new final rules must be sent to Congress and the Government Accountability Office for review before they can take effect. "Major rules" (ones that are economically significant and require OIRA review) must be made effective at least 60 days after the date of publication in the *Federal Register*, allowing time for Congressional review. In emergency situations, a major rule can be made effective before 60 days.

If the House and Senate pass a resolution of disapproval and the President signs it (or if both houses override a presidential veto), the rule becomes void and cannot be republished by an agency in the same form without Congressional approval. Since 1996, when this process started, Congress has disapproved only one rule.

Congress may also exercise its oversight in other ways, by holding hearings and posing questions to agency heads, by enacting new legislation, or by imposing funding restrictions.

### Does the regulatory process continue after rules are published?

The regulatory process enters the compliance, interpretation, and review phase after a final rule is published. Individuals and industries affected by a rule, and the agency compliance officers and inspectors who must enforce a rule, may need guidance to better understand the regulatory requirements. Agencies may write compliance materials and technical assistance manuals to distribute to the public. These guidance materials may be posted on a website or published in the *Federal Register* as interpretive rules. See more about interpretive rules and policy statements below.

Based on its experience in enforcing a rule, an agency may decide to change a rule, remove it from the CFR entirely, or let it stand. A law or a Presidential directive may require a formal review process every few years. An agency may undertake a review based on a petition from the public. Its own experts may also begin a review process when conditions change and rules seem outdated. If an agency decides to amend or revoke a rule, it must use the notice-and-comment process to make the change.

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### What are interpretive rules and policy statements?

Interpretive rules, policy statements, and other guidance documents may be issued anytime after a final rule is published to help the public understand to how a regulation applies to them and affects their interests. An agency may explain how it interprets an existing regulation or statute, how a rule may apply in a given instance, and what things a person or corporation must do to comply.

There is a key distinction between an interpretive rule and a final “legislative” or “substantive” rule. The interpretive rule or policy statement must not set new legal standards or impose new requirements. Guidance documents do not contain amendments to the CFR and are not subject to the notice and comment process. But in some cases, agencies choose to request comments on interpretive rules and other guidance documents to improve the quality and clarity of the material. Interpretive rules and policy statements that have broad applicability are often published in the *Federal Register*, but some may only appear on agency websites.

### When do the courts get involved in rulemaking?

Individuals and corporate entities may go into the courts to make a claim that they have been, or will be, damaged or adversely affected in some manner by a regulation. The reviewing court can consider whether a rule: is unconstitutional; goes beyond the agency’s legal authority; was made without following the notice-and-comment process required by the Administrative Procedure Act or other law; or was arbitrary, capricious, or an abuse of discretion. An agency head can also be sued for failing to act in a timely manner in certain cases.

If a court sets aside (vacates) all or part of a rule, it usually sends the rule back to the agency to correct the deficiencies. The agency may have to reopen the comment period, publish a new statement of basis and purpose in the *Federal Register* to explain and justify its decisions, or re-start the rulemaking process from the beginning by issuing a new proposed rule.

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## National Park Service, Interior

## § 4.30

use of radiomicrowaves or other electrical devices are not required.

### § 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

### § 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol con-

centration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

[52 FR 10683, Apr. 2, 1987, as amended at 68 FR 46479, Aug. 6, 2003]

### § 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas

**§4.31**

and on routes designated for bicycle use; *provided, however*, the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

**§4.31 Hitchhiking.**

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

**PART 5—COMMERCIAL AND PRIVATE OPERATIONS**

Sec.

- 5.1 Advertisements.
- 5.2 Alcoholic beverages; sale of intoxicants.
- 5.3 Business operations.
- 5.4 Commercial passenger-carrying motor vehicles.
- 5.5 Commercial photography.
- 5.6 Commercial vehicles.

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5.7 Construction of buildings or other facilities.

5.8 Discrimination in employment practices.

5.9 Discrimination in furnishing public accommodations and transportation services.

5.10 Eating, drinking, or lodging establishments.

5.11–5.12 [Reserved]

5.13 Nuisances.

5.14 Prospecting, mining, and mineral leasing.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

SOURCE: 31 FR 16660, Dec. 29, 1966, unless otherwise noted.

**§5.1 Advertisements.**

Commercial notices or advertisements shall not be displayed, posted, or distributed on federally owned or controlled lands within a park area unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices and advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public.

**§5.2 Alcoholic beverages; sale of intoxicants.**

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations (See also §2.35 of this chapter.)

(b) No such liquor shall be sold on any privately owned lands under the legislative jurisdiction of the United States within Glacier, Lassen Volcanic, Mesa Verde, Denali, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone, or Yosemite National Parks, unless a permit for the sale thereof has first been secured from the appropriate Regional Director.

(1) In granting or refusing applications for permits as herein provided, the Regional Directors shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, the local laws governing the sale of liquor, and

## **APPENDIX B: SCOPING LETTERS**

PUBLIC SCOPING LETTER



United States Department of the Interior

NATIONAL PARK SERVICE  
Rocky Mountain National Park  
Estes Park, Colorado 80517

IN REPLY REFER TO:  
L14

AUG - 8 2012

Dear Reader:

Rocky Mountain National Park (RMNP) will be hosting a public meeting to gather input on whether to allow bicycle use on a two mile section of the East Shore Trail within the park. The public meeting will be held from 6:30 - 8:00 p.m. on Thursday, August 23, at the Grand Lake Fire Protection District meeting room located at 201 West Portal Road, Grand Lake, Colorado. Park staff will be at the meeting to explain the project and to accept public comments (public comments must be submitted in writing). RMNP also welcomes public input via the National Park Service Planning, Environment and Public Comment (PEPC) website:

<http://parkplanning.nps.gov/romo>

Visitors to this website can select the East Shore Trail Environmental Assessment and can submit written comments on line.

The East Shore Trail trailhead is located at the south end of the community of Grand Lake. The East Shore Trail extends 6.2 miles south to the south boundary of RMNP. The first  $\frac{3}{4}$  mile of trail is located on land administered by the USDA Forest Service where bicycles are permitted. Currently, bicycles are not permitted on trails within the national park. In the wilderness legislation for RMNP, Congress set aside the East Shore Trail Area to "maximize the opportunity for sustained use of the Trail without causing harm to affected resources or conflicts among users." The trail is not located within designated wilderness. Bicycles are not permitted within designated wilderness areas.

Only a two-mile section of the trail is being considered for bicycle use at this time. The section under consideration extends north from the Shadow Mountain Dam to the park boundary and is part of the Continental Divide National Scenic Trail. Parsons, a consulting firm located in Denver, has been retained to prepare an Environmental Assessment which will evaluate the consequences of permitting bicycle use on the trail. There will be other opportunities for the public to comment on this project in the future, including public review and comment on the Environmental Assessment when it has been completed. The ultimate decision on whether to allow bicycle use on the trail rests with the Director of the National Park Service Intermountain Region. That decision is not expected to be made until sometime next year.

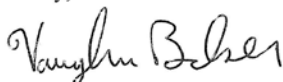


During the initial “public scoping” phase of the project, RMNP would like to receive public input on the following questions:

1. Do you favor bicycle use on the two-mile section of the East Shore Trail currently under consideration? Please explain why you do or do not favor bicycle use on this section of trail.
2. If you do not favor bicycle use on the trail, can you suggest other alternatives to connect the towns of Grand Lake and Granby with a bike trail?
3. If you do favor bicycle use on the trail, what are your recommendations to minimize conflicts among trail users (equestrians, hikers, bicyclists).
4. If you do favor bicycle use on the trail, how many times are you likely to use this trail during the riding season? What would your destination be if you rode this trail?
5. If you do favor bicycle use on the trail, to what standard should the trail be developed (e.g., how wide should it be and what surface should be used on the trail)?
6. If you do favor bicycle use on the trail, what should be done to dissuade bicyclists from entering the adjacent designated wilderness where bicycles are not permitted?
7. Please share any other comments you might have regarding the East Shore Trail.

If you have questions about this project, please contact Larry Gamble, Chief of Planning and Compliance for RMNP. He can be reached at (970) 586-1320 or [larry\\_gamble@nps.gov](mailto:larry_gamble@nps.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Vaughn L. Baker". The signature is fluid and cursive, with the first name being the most prominent.

Vaughn L. Baker  
Superintendent



United States Department of the Interior

NATIONAL PARK SERVICE  
Rocky Mountain National Park  
Estes Park, Colorado 80517

IN REPLY REFER TO:  
L14

**AUG 30 2012**

Dear Reader:

Rocky Mountain National Park (RMNP) is gathering input on whether to allow bicycle use on a two mile section of the East Shore Trail within the national park. We welcome your comments on this proposal. **Please submit your written comments by the end of September.** Additional information on this project can be found at the National Park Service Planning, Environment and Public Comment (PEPC) website:

<http://parkplanning.nps.gov/romo>

Visitors to this website can select the East Shore Trail Environmental Assessment and can submit written comments on line.

If you do not have internet access, you can send a letter to:

Superintendent  
Rocky Mountain National Park  
Estes Park, CO 80517

The East Shore Trail extends 6.2 miles from the East Shore Trailhead, located south of Grand Lake, to the south boundary of RMNP. The first  $\frac{3}{4}$  mile of trail is located on land administered by the USDA Forest Service where bicycles are permitted. Currently, bicycles are not permitted on trails within the national park. In the wilderness legislation for RMNP, Congress set aside the East Shore Trail Area to "maximize the opportunity for sustained use of the Trail without causing harm to affected resources or conflicts among users." The trail is not located within designated wilderness. Bicycles are not permitted within designated wilderness areas.

Only a two-mile section of the trail is being considered for bicycle use at this time. The section under consideration extends north from the Shadow Mountain Dam to the park boundary and the northern portion of this section is part of the Continental Divide National Scenic Trail. Parsons, a consulting firm located in Denver, has been retained to prepare an Environmental Assessment which will evaluate the consequences of permitting bicycle use on the trail. There will be other opportunities for the public to comment on this project in the future, including public review and comment on the Environmental Assessment when it has been completed. The ultimate decision on whether to allow bicycle use on the trail rests with the Director of the National Park Service Intermountain Region. That decision is not expected to be made until sometime next year.

(over)

During the initial “public scoping” phase of the project, RMNP would like to receive public input on the following questions:

1. Do you favor bicycle use on the two-mile section of the East Shore Trail currently under consideration? Please explain why you do or do not favor bicycle use on this section of trail.
2. If you do not favor bicycle use on the trail, can you suggest other alternatives to connect the towns of Grand Lake and Granby with a bike trail?
3. If you do favor bicycle use on the trail, what are your recommendations to minimize conflicts among trail users (equestrians, hikers, bicyclists).
4. If you do favor bicycle use on the trail, how many times are you likely to use this trail during the riding season? What would your destination be if you rode this trail?
5. If you do favor bicycle use on the trail, to what standard should the trail be developed (e.g., how wide should it be and what surface should be used on the trail)?
6. If you do favor bicycle use on the trail, what should be done to dissuade bicyclists from entering the adjacent designated wilderness where bicycles are not permitted?
7. Please share any other comments you might have regarding the East Shore Trail.

If you have questions about this project, please contact Larry Gamble, Chief of Planning and Compliance for RMNP. He can be reached at (970) 586-1320 or [larry\\_gamble@nps.gov](mailto:larry_gamble@nps.gov).

Sincerely,



Vaughn L. Baker  
Superintendent



TRIBAL CONSULTATION LETTER SENT TO AMERICAN INDIAN TRIBES

United States Department of the Interior

NATIONAL PARK SERVICE  
Rocky Mountain National Park  
Estes Park, Colorado 80517

IN REPLY REFER TO:  
A3815

APR 18 2013

Dear Reader:

Rocky Mountain National Park (RMNP) is considering whether to allow bicycle use on a two-mile section of the East Shore Trail (please refer to the map on the back of this letter). The East Shore Trailhead is located at the south end of the community of Grand Lake, Colorado. The East Shore Trail extends 6.2 miles south to the south boundary of RMNP. The first  $\frac{3}{4}$  mile of trail is located on land administered by the U.S. Forest Service where mountain bikes are permitted. Currently, mountain bikes are not permitted on trails within the national park. In the wilderness legislation for RMNP, Congress set aside the East Shore Trail Area to "maximize the opportunity for sustained use of the Trail without causing harm to affected resources or conflicts among users." The trail is not located within designated wilderness. Mountain bikes are not permitted within designated wilderness areas.

Only a two-mile section of the trail is being considered for mountain bike use at this time. The section under consideration extends north from the Shadow Mountain Dam to the park boundary. The northern one mile of this trail segment is part of the Continental Divide National Scenic Trail. Parsons, a consulting firm located in Denver, has been retained to prepare an Environmental Assessment which will evaluate the consequences of permitting bicycle use on the trail. There will be other opportunities for the public to comment on this project in the future, including public review and comment on the Environmental Assessment when it has been completed. The ultimate decision on whether to allow mountain bike use on the trail rests with the Director of the National Park Service Intermountain Region. That decision is not expected to be made until sometime later this year.

We welcome your comments on this proposal and a site visit can be arranged if you wish to do so. **Please submit your comments by May 15, 2013.** You can submit written comments via mail or email as follows:

Superintendent  
Rocky Mountain National Park  
Estes Park, CO 80517

Email: [romo\\_superintendent@nps.gov](mailto:romo_superintendent@nps.gov)

If you have questions about this project, please contact Larry Gamble, Chief of Planning and Compliance for RMNP. He can be reached at (970) 586-1320 or [larry\\_gamble@nps.gov](mailto:larry_gamble@nps.gov).

Sincerely,

Vaughn L. Baker  
Superintendent

## East Shore Trail





**Continental Divide Trail Coalition**

CDTC \* P.O. Box 552 Pine, CO 80470 \* [www.continentaldividetrail.org](http://www.continentaldividetrail.org) \* (720)-340-2382

September 15, 2012

Larry Gamble  
Chief of Planning and Compliance  
Rocky Mountain National Park  
Estes Park, CO 80517

RE: East Shore Trail Environmental Assessment

Dear Mr. Gamble,

I am writing on behalf of the Continental Divide Trail Coalition (CDTC) to provide comments on the East Shore Trail Environmental Assessment. Our comments are specific to the planning and management of the Continental Divide National Scenic Trail.

**Background**

**The Continental Divide National Scenic Trail (CDNST)** was designated by Congress in 1978 as a unit of the National Trails System. The 3,100 mile CDNST traverses the Continental Divide between Mexico and Canada. It travels through 25 National Forests, 21 Wilderness areas, 3 National Parks, 1 National Monument, 8 BLM resource areas and through the states of Montana, Idaho, Wyoming, Colorado and New Mexico. The vision for the CDNST is a primitive and challenging backcountry trail for the hiker and horseman on or near the Continental Divide to provide people with the opportunity to experience the unique and incredibly scenic qualities of the area. For many of the same reasons National Parks are established, National Scenic Trails are created to conserve the nationally significant scenic, historic, natural and cultural qualities of the area. In addition, National Scenic Trails are designed for recreation and the enjoyment of these very special places.

**The Continental Divide Trail Coalition (CDTC)** was established in June 2012 to provide a national voice and advocate for the CDNST and ensure all areas of Trail protection, promotion, and volunteer stewardship continue to be fully realized. Prompted by the continued threat of a lack of progress in the Trail's completion due to shrinking agency budgets and to ensure opportunities for public involvement existed, trail enthusiasts formed the Continental Divide Trail Coalition to work with the Federal Agencies tasked with administrative responsibility for the CDNST. The CDTC is comprised of natural resource professionals, CDNST volunteers and supporters, and most importantly Trail users. CDTC is committed to work on behalf of the Trail and the Trail's community. The goal of the CDTC is to work



as the national non-profit partner with the federal agencies in the management of the CDNST, to advise on policy, monitor policy impacts, advocate for congressional appropriations, and establish community based on-going volunteer stewardship of the Trail.

CDTC recognizes the desire for the addition of recreational resources in the Grand Lake area and would like to address how this proposed project may impact the planning and management of the Continental Divide National Scenic Trail in the area. Adopting CDNST direction on the East Shore Trail is within the scope EA due to potential direct and cumulative impacts of the proposed action.

**Trail Location in the Project Area:**

The CDNST is located in and around the proposed project area. The trail in the area will be impacted by both the construction of any new trail developments and changes to allowed uses on existing segments and connected Trails. In future mailings, CDTC requests NPS provide a project location map with the full zone of concern reflected in the project proposal, as well as include a deadline date when comments are needed. We feel the omission of both a project area map and a deadline date does not adequately provide the public with the appropriate data to provide informed comments on the proposal.

CDTC recommends that the project area be expanded to include areas outside of the two-mile of trail section being considered by this proposal. As directed by the comprehensive plan, unit plans should be developed for Trail segments so that entire areas between appropriate control points are evaluated. This ensures formalized public processes address and evaluate impacts resulting from land management activities and their impacts on the nature and purpose of the Trail within those units. The goal for this process should be to evaluate the use patterns across the CDNST and existing East Shore Trail in the area, including outside of NPS boundaries. This includes formal Forest Service involvement as cooperator in the evaluation of the EA for this project because they manage the Trail segments on either side of this area. By not expanding the project area, this process may not fully address use patterns and issues and their impacts, and may miss important management issues created by this proposal. We feel expanding the project area will ensure land managers objectively assess and disclose all issues and that the public will have a better ability to evaluate whether the proposal and connected future Trail projects would substantially interfere with the nature and purposes of the CDNST.

**Nature and Purpose of the CDNST:**

As stated in the CDNST Comprehensive Plan, "the nature and purposes of the Continental Divide National Scenic Trail are to provide for high quality, scenic, primitive hiking and horseback-riding, non-motorized recreational experiences and to conserve natural, historic, and cultural resources along the Continental Divide." The CDNST Study Report (page 14) states "one of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail and its corridor. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized".

Some general findings from the CDNST Study Report that assist in describing these terms include:

- a) "Designation and establishment of a 3,100 mile Continental Divide Trail...would provide the American people with recreational opportunities of national significance and that trail users would wind their way through some of the most spectacular scenery in the United States and have an opportunity to enjoy a greater diversity of physical and natural qualities than found on any other extended trail." (Study Report; page 4)
- b) The Study Report also "advocates that the most minimal development standards consistent with these circumstances be employed..the trail should be regarded as a simple facility for the hiker-horseman." (Study Report; page 8)
- c) The Study Report describes the trail experience as an "intimate one, where one can walk or ride horseback across vast fields of wildflowers and contemplate a story dating from the dawn of earth's history...along the way the tranquility of the alpine meadows, verdent forests and semi-desert landscape overwhelms anyone who passes that way. The Trail would provide the traveler his best encounter with the Continental Divide—its serenity and pure air—and would supply for every trail traveler some of the world's most sublime scenes." (Study Report; page 18)

The Study Report further identifies the significant qualities, characteristics and trail opportunities desired for the CDNST including:

- 1. Scenic Qualities: Spectacular Scenery of the quality and magnitude along the proposed CDT route is not available anywhere in the Continental United States. The trail traverses a variety of terrain, including high desert, forests, geologic formations, and mountain meadows. Flora abounds in the near views, while distant views of major valleys and mountain peaks are exceptional. (Study Report page 98)
- 2. Cultural Qualities: There are significant segments of the trail and adjacent trails that were used by early-day Indians, ancient cliff-dwelling tribes, Spanish explorers and mountain men in their travels within and through the Continental Divide area. Little visible evidence is left of these activities; however, through interpretative signing, trail users will be alerted to the cultural significance of the area. (Study Report page 101)
- 3. Historic Qualities: Many signs of historical activity are within the vicinity of the trail and throughout its entire length. Thus, any person visiting the area may have some advance knowledge of the historical significance of the area to make the visit more meaningful. (Study Report page 103)
- 4. Natural Qualities: The "visitor" of the proposed route of the CDNST would encounter a great variety of terrain, geology, climate, and plant and animal life. This would include the unique and unusual character of Glacier, Yellowstone and the Rocky Mountain National Parks and the back-country solitude of 16 (now 25) National Forest Wilderness and primitive Areas, as well as the living quality of the Red Desert of Wyoming. Certain plants, trees, and animals that may be observed along the Trail are unique to the area traversed. (Study Report page 104, as modified)

**CDTC recommends the following desired condition for the CDNST Corridor:**

CDTC defines the CDNST Experience as a continuous trail in nature from the Mexico-New Mexico Border to Montana-Canada Border for travel primarily by hikers and equestrians through the wild,

scenic, forested, desert and culturally significant lands of the Rocky Mountains. It is usually a simple path, purposeful in direction and concept, favoring the Continental Divide and located for minimum construction to protect the resource. The body of the Trail is the lands it traverses and its soul is in the living stewardship of the volunteers and workers of the Trail community.

CDNST desired conditions should include a “recreation experience not materially different in quality than that extended by a bona fide hiking and equestrian trail and one that is”:

1. quiet
2. in a wild and primitive setting
3. with a natural surface and narrow in width (18-36 inches wide)
4. harmonizes and compliments the surrounding landscapes
5. travel is at a slow pace

**CDNST Comprehensive Plan Direction:**

CDTC recommends the National Park Service implement the following policy direction as stated in the CDNST Comprehensive Plan to achieve the desired condition of the CDNST.

**Section 5. Recreation Resource Management**

b. Policy

1) Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.

(2) Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)) if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST.

**Section 9. Carrying Capacity**

a. Background

The 1977 Final Environmental Statement prepared by the BOR concluded that establishment of the CDNST was the environmentally preferred alternative. This is because the CDNST would have significant status providing for a high degree of protection.

b. Policy

Establish a carrying capacity for the CDNST that accommodates its nature and purposes. The Limits of Acceptable Change or a similar system may be used for this purpose.

c. Management Direction

(1) Capacity determination within a management area will consider the biophysical environmental needs and the social capacity factors needed to provide desired recreation experience opportunities.

- (2) National Park Service managers will utilize existing capacity estimates developed for General Park or Resource Management Plans.

#### **Section 10. Monitoring and Evaluation**

##### **a. Background**

Federal regulations pertaining to land and resource management planning for the Forest Service and Bureau of Land Management require that the National Forest and BLM unit plans include a monitoring and evaluation program. The program will provide a basis for a periodic determination and evaluation of effects of management practices. The purpose of this monitoring and evaluation is to initiate the need for management actions, and plan revisions or amendments.

##### **b. Policy**

Each agency will develop and implement a monitoring and evaluation plan for segments of the CDNST for which they have responsibility. These plans should be integrated into the overall monitoring and evaluation process and schedule set forth in the individual unit land and resource management plan. Implementation of the monitoring will begin immediately following locating a trail segment as a part of the CDNST system.

##### **c. Management Direction**

- (1) Monitoring and evaluation plans will include provisions for involvement of affected landowners in the determination of trail and user impacts on non-Federal land.
- (2) The reports from these plans will provide, as a minimum, the following information on an annual basis:
  - (a) A summary of opportunities, concerns, and issues;
  - (b) An estimate of the types and levels of use on the trail, including trends, as related to the established carrying capacity;
  - (c) An assessment of compliance with the policy and direction contained in the Comprehensive Plan;
  - (d) A description of any ROS class change to the CDNST rights-of-way corridor and the reasons for such a change; and
  - (e) A description of any recommended Comprehensive Plan amendment.

In addition, CDTC recommends the consideration of the following principals in evaluation of this or any project affecting the CDNST:

1. Any proposed project will serve to protect the significant experiences and features that exist along the CDNST.
2. Any proposed project will establish the best location for the CDNST through the most primitive, scenic, diverse and undeveloped landscapes on or near the trail that will provide a wide range of experiences and challenges for the hiker and equestrian.
3. Any proposed project may allow for existing trails to be considered for the final CDNST route so long as they meet the nature and purpose for a National Scenic Trail, and do not substantially interfere with the nature and purposes for which the CDNST was established.
4. Any proposed project will require on going monitoring and evaluation of the conditions on and around the CDNST.
5. Any proposed project will assure proper and sensitive standards pertaining to establishment, operation and maintenance of the trail. Further, it would provide common objectives and means to coordinate the efforts of many agencies and interests having responsibility for implementation.

#### **Protection of Recreational Experiences and Substantial Interference**

As a unit of the National Trails System, and congressionally designated resource, the project proposal should include a fully evaluated section on impacts to recreational experiences within, intersected by, or otherwise impacted by the proposed project. We realize that each section of the CDNST is unique with specific localized conditions; there should be consistent treatment of the Trail and its resources and the experience regardless of where the Trail is located.

*Substantial Interference defined:* A person is entitled to the right to enjoy his recreational without interference from others. In order for this interference to be considered a nuisance, it must be both substantial and unreasonable. The nuisance complained of by the user cannot be a petty complaint, but one that a reasonable person would find bothersome.

In making any decision regarding a new use being added to this trail segment, we wish to see a determination that any new use will not substantially interfere with the nature and purpose of the CDNST. In this particular area, CDTC feels the formal addition of any new uses would create substantial interference for the hiker and equestrian because to accommodate additional uses, it would change the character of the current setting. The current trail segment is open to pedestrian and equestrian traffic. The trail condition ranges from narrow sections that follow a steep bank, wider sections close to the trailhead, and 18-inch tread that follows the lake and is wet. There are sections that have limited line of sight and areas where there are few options to bypass existing users if met on the Trail. However, due to the speed at which current users travel, there is time to prepare and travel safely in the area. With minimal trail reconstruction, the problem areas could be addressed and therefore providing for sustainable trail conditions, without changing the setting of the existing route. However, with an additional recreational use, and promotion of that use as is implied by the project scope, not only would traffic increase on this trail segment, the types of traffic would, and the result would be the need to employ more trail reconstruction efforts to provide a sustainable route to provide a safe and high quality experience for users in the area. This would include actions to address line of sight to keep users safe, create areas for passing, and to change the lay of the Trail to manage the increase of speeds at which bicycles, in particular, travel. It is this change of setting and increased

use, which could eventually lead to displacement of CDTC users that CDTC feels, would create substantial interference.

**Questions included in scoping request are insufficient:**

The NPS has requested feedback on seven questions included in the scoping notice for this project. While we appreciate the use of directed questions in gathering information regarding this project, we feel these questions are limiting and skewed for responses by only requesting specific information from individuals who support a specific “proposed” use in the project zone. Because the included questions do not ask for feedback on the full breadth of recreational opportunities (existing and potential), the NPS has created a potential to skew results from the scoping that is received. Furthermore, CDTC feels this line of questioning is inappropriate. Specifically, questions should request information from all users, regardless of their feelings regarding specific uses on the CDNST or the East Shore Trail. Questions should be constructed so as to not bias responses, as well as ask questions regarding the full range of experiences that currently exist on this trail segment. By not doing so, the NPS will miss important feedback from current users and not be able to evaluate any impacts to the current conditions. CDTC feels that by not including additional questions, and gaining the voices of all users, regardless of their feelings regarding uses on the Trail segments, it is detrimental to the outcomes of this public process. CDTC requests the scoping response to be reopened to fully address all feedback that may be pertinent to this proposed project.

**Question Responses:**

1. Do you favor bicycle use on the two-mile section of the East Shore Trail currently under consideration? On this particular section, CDTC does not feel any new uses should be allowed if the management actions required accommodating those uses resulting substantial interference to the CDNST.
2. If you do not favor bicycle use on the trail can you suggest alternatives to connect the towns of Grand Lake and Granby with a bike Trail? CDTC feels there may be other alternatives for this use that do not impact the CDNST or Wilderness characters. CDTC suggests the development of a plan to address exactly what type of bicycle use is anticipated or desired (single-track use, bike path use, stroller, youths, family outings etc) prior to identifying where use “could” occur. This not only determines what trail criteria may be needed, but it may help identify suitable locations. For example, if expected/desired use were for commuting traffic between the two towns, this would include possible use by strollers, families touring the area, runners, hikers, as well as mountain bikes, or road bikes. To accommodate this type of use typically, a non- native surface or paved, wide and rolling trail is needed. That type of Trail may not even be possible in the area in question or be consistent with the values of the area because of the CDNST (as defined by the CDNST study report) and the segments proximity to Wilderness. CDTC feels all of these uses are important community resources, but would like to see better evaluation that they are best suited for this particular location.
3. If you do favor bicycle use on the trail, what are your recommendations to minimize conflicts among trail users? CDTC would suggest that additional resources be allocated to monitor, on sight educate, and manage all Trail users. Further, signage and potentially specific/alternating use days be implemented so that all users can adapt effectively to the new use patterns and co-exist and minimize safety hazards and potential conflicts all together.



4. If you do favor bicycle use on the trail, how many times are you likely to use this trail during the riding season? This question should be asked of ALL users, especially who currently use this trail section as a baseline prior to asking new users a hypothetical question of how often they would use a trail section. In addition, there is no official riding season defined by this question, (i.e. dates) therefore, any response to this question is not valid if people who respond are not using the same time frame to base their responses. This question also makes the assumption this trail segment would not be used in non –riding seasons, or address displacement of current users who will take the recreational activities elsewhere, or impacts to winter non-mechanized users.

5. If you do favor bicycle use on the trail, to what standard should the Trail be developed? Most users will not understand what trail standards are or define them based on the NPS definitions. Again this question is not appropriate for a user to respond and it does not encourage consistent responses. At the least a question such as this should provide explanation of what trail standards are and how these standards are used in trail design, construction, and management.

6. If you do favor bicycle use on the trail what should be done to dissuade bicycles from entering adjacent designated wilderness where bicycles are not permitted? See comments above.

7. Please share any other comments you might have? See comments below.

To evaluate the additional of any new uses should require extensive review of the following issues and we suggest the following questions be addressed:

1. What is the desired recreational experience for this proposed land management decision?
2. What is the carrying capacity of this trail segment? What factors will be used to establish these base line figures.
3. What is the strategy to address carrying capacity questions and the ability of this trail segment to support recreational uses (current and any potential future uses) in a way to provide a high quality and safe recreational experience?
4. Will a Limits of Acceptable Change (LAC) or NPS equivalent process be established to help NPS follow requirements and or management of the CDNST?
5. How will you address nature and purpose statement for the CDNST?
6. Can a decision be implemented without changing the nature and character of the current CDNST?
7. What is the strategy to address if allowing additional uses does substantially interfere with the CDNST in the future.
8. How will this possible impact be monitored, controlled and managed if a new use is established?
9. If new uses are allowed, what management actions will occur to prevent or address displacement of current users of CDNST/East Shore Trail?
10. What is the strategy to provide resources to fund a management and monitoring program?
11. How will the public be engaged in a monitoring and management program?
12. Are there other locations suitable for the CDNST to protect its nature and purpose and minimize impacts from possible decisions resulting from this process?

**Cumulative Impacts to the Continental Divide National Scenic Trail**

If full environmental-impact analysis occurs only at the project or activity level, then how does the agency propose to assess the cumulative impacts of multiple projects or activities over time and their impacts to the entire CDNST? While we applaud the agency's intentions to undertake such a collaborative process, we are concerned that without rigorous attention to the cumulative impacts of incremental decisions, the cumulative impacts of multiple projects and activities could be obscured and lead to unintended consequences that may or may not be consistent with a particular management direction for the CDNST. CDTC recommends that for linear resources, such as the CDNST that are affected by more than one project area like this over its entire 3,100 mile span, that special attention be given to a full exploration and understanding of the cumulative effects to these very special and unique resources.

Most importantly, we ask and encourage the review teams to engage with CDTC and our agency partners to identify these key areas and potential mitigation when the CDNST and its unique resources cannot be avoided.

Thank you for the opportunity to express our concerns regarding the proposed project. We request to remain on the mailing list and to be engaged in future public involvement processes regarding this process and any other proposal affecting the CDNST in Rocky Mountain National Park. I can be reached at [tmartinez@continentaldividetrail.org](mailto:tmartinez@continentaldividetrail.org) if needed to clarify our comments.

Sincerely,

*Teresa Ana Martinez /s/*

Teresa Ana Martinez,  
Co-founder and Director  
Continental Divide Trail Coalition

Cc: Greg Warren-United States Forest Service, Jim Wolf-Continental Divide Trail Society, Gary Werner- Partnership for the National Trails System, Mike Dawson- Pacific Crest Trail Association, Morgan Sommerville- Appalachian Trail Conservancy

**APPENDIX C: ENDANGERED SPECIES ACT  
ENDANGERED, THREATENED, AND CANDIDATE SPECIES LIST FOR  
ROCKY MOUNTAIN NATIONAL PARK**

Endangered Species Act (ESA)  
Endangered, Threatened, and Candidate Species List  
for  
Rocky Mountain National Park  
***CURRENT AS OF FEBRUARY 1, 2013***

The following table contains a list of species that are specific to Rocky Mountain National Park and are federally listed as endangered, threatened or candidates for listing by the U.S. Fish and Wildlife Service (USFWS) under the provisions of the Endangered Species Act (ESA).

The species that are included in the table must meet one of the following criteria:

1. The species is known to occur within the park.
2. The species does not occur within the park, but suitable habitat is available, the habitat is within the known elevation range for the species, and the species is known to exist in counties that the park occupies.
3. The species does not occur within the park, but actions within the park have the potential to affect the species.

In compliance with the ESA, all management actions within the park are evaluated to determine if they will have any effect on the species on this list.

Federally Listed and Candidate Species & Their Status in Colorado	Known to Occur in RMNP	Known to Occur in Boulder County	Known to Occur in Larimer County	Known to Occur in Grand County
<b>Birds</b>				
Least tern (interior population) <i>Sternula antillarum</i> Endangered	No ▲	▲	▲	No
Mexican spotted owl <i>Strix occidentalis lucida</i> Threatened	No	Yes Historical-ly	Yes Historical-ly	No
Piping plover <i>Charadrius melodus</i> Threatened	No ▲	▲	▲	No
Whooping crane <i>Grus Americana</i> Endangered	No ▲	▲	▲	No
Yellow-billed cuckoo <i>Coccyzus americanus</i> Candidate for Listing	Yes Historical-ly	No	No	Yes

Federally Listed and Candidate Species & Their Status in Colorado	Known to Occur in RMNP	Known to Occur in Boulder County	Known to Occur in Larimer County	Known to Occur in Grand County
<b>Fish</b>				
Bonytail <i>Gila elegans</i> (presumed-historical) Endangered	No *	No	No	*
Colorado pikeminnow <i>Ptychocheilus lucius</i> Endangered	No *	No	No	*
Greenback cutthroat trout <i>Oncorhynchus clarki stomias</i> Threatened	Yes @	Yes	Yes	No
Humpback chub <i>Gila cypha</i> Endangered	No *	No	No	*
Pallid sturgeon <i>Scaphirhynchus albus</i> Endangered	No ▲	▲	▲	No
Razorback sucker <i>Xyrauchen texanus</i> Endangered	No *	No	No	*
<b>Mammals</b>				
Canada lynx <i>Lynx canadensis</i> Threatened	Yes	Yes	Yes	Yes
Preble's meadow jumping mouse <i>Zapus hudsonius preblei</i> Threatened	No ▲	Yes	Yes ©	No
North American wolverine <i>Gulo Gulo luscus</i> Proposed Threatened	Yes	No	No	No
<b>Plants</b>				
Colorado butterfly plant <i>Gaura neomexicana</i> spp. <i>Coloradensis</i> Threatened	No ▲	Yes ▲	Yes ▲	No
Ute ladies'-tresses orchid <i>Spiranthes diluvialis</i> Threatened	No ▲	Yes ▲	Yes ▲	No

**Table Terminology**

*	Water depletions in the Upper Colorado River basin may affect these species and/or habitat in downstream reaches
▲	Water depletions in the South Platte River basin may affect these species and/or habitat in downstream reaches
©	There is designated critical habitat for the species within the county.
Candidate	Means there is sufficient information indicating that formal listing under the ESA maybe appropriate
Endangered	Means the species could become extinct
Threatened	Means the species could become endangered
@	Due to recent genetic studies that are evaluating the greenback cutthroat trout and the Colorado River cutthroat trout, section 7 consultations will need to occur <i>for the interim</i> on select western slope streams containing cutthroat populations that appear to be greenback cutthroat trout, as based on genetic information. The FWS will provide a list of western slope streams selected for consultation; this list will be recommended by the Greenback Cutthroat Trout Recovery Team. Consultation on greenback cutthroat trout streams on the western slope is intended to be a temporary measure that provides protection of potential greenback cutthroat trout genetic material until this issue has been resolved.