August 26, 2019

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

Submitted via email to nepa-procedures-revision@fs.fed.us

Re: National Environmental Policy Act Compliance Proposed Rule

Dear Forest Service EADM team:

Winter Wildlands Alliance is a national non-profit, whose mission is to promote and protect winter wildlands and quality human-powered snowsports experiences on public lands. Our alliance includes 40 grassroots groups in 16 states and has a collective membership exceeding 50,000. We appreciate the opportunity to review and comment on the Forest Service’s proposed revisions to its NEPA regulations. Informed and transparent Agency 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 these processes. We are concerned that these revisions propose to dramatically reduce opportunities for public engagement in Forest Service decision making.

As we describe in greater detail below, we are particularly alarmed by several aspects of the proposed rule.

- First, the changes proposed by the Forest Service, in general, appear to go far beyond the issues raised through the Advanced Notice of Proposed Rulemaking process, as well as those raised by stakeholders. There is broad agreement that the Forest Service can improve upon the efficiency of its environmental analysis and decision-making (EADM) processes; however, the rulemaking appears largely unresponsive to the genuine issues—staffing turnover, funding shortages, agency culture and internal process—that define the Forest Service’s EADM challenges. Instead, the rulemaking proposes to dramatically scale back essential analysis and opportunities for public engagement in contravention to the sound public policy objectives that animate NEPA.

- Second, we are strongly opposed to changes that would remove scoping from the overwhelming majority of Forest Service NEPA determinations. As described and illustrated in greater detail below, scoping 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.
• Third, we are deeply concerned by a majority of the new categorical exclusions in the proposed rulemaking. We are particularly concerned by CEs relating to the integration of roads and motorized trails 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.

Moving forward, the Forest Service should abandon efforts to remove the scoping process from CEs and Environmental Assessments; proceed without the most controversial and far-reaching new CEs; and consider significantly tighter sideboards on others as addressed below.

General Comments

Winter Wildlands staff and leaders of several of our grassroots groups participated in the Environmental Analysis and Decision Making (EADM) roundtables that the Forest Service and the National Forest Foundation hosted across the country in 2018. While EADM Roundtable participants, ourselves included, agree that there are opportunities to increase EADM efficiency, the revisions proposed in this rulemaking go far beyond what is warranted. Indeed, many of the roadblocks to efficient EADM as identified during the roundtable meetings do not come from the NEPA process itself, but rather from Agency culture, staffing changes and turnover, and funding shortages. The Forest Service’s resources would be better spent addressing these issues rather than rewriting its NEPA regulations. However, if the Agency is determined to revise its NEPA regulations, it must do so in a manner that stays true to the intent and purpose of the National Environmental Policy Act.

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. 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

The Forest Service is proposing the amend §220.4 of the NEPA regulations to eliminate the requirement to conduct scoping for Categorical Exclusions (CEs) and Environmental Assessments (EAs). Public notice of CEs would appear only in the Agency’s Schedule of Proposed Actions (SOPA), with no guarantee that the SOPA would be published prior to a decision being finalized or even before the project in question is implemented. Under the proposed revisions, whether or not the public would be alerted to proposals being analyzed under EAs or offered the opportunity to comment at the early stages of project development would be at the deciding officer’s discretion.

1 https://www.fs.fed.us/emc/nepa/revisions/index.shtml
2 Proposed regulations at §220.4(d)(1)
We are strongly opposed to this change.

Scoping is the only 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 is vital to ensuring Forest Service decisions are well informed, as required by NEPA. Scoping requires public notice in the newspaper of record and is an opportunity for public comment. If the Forest Service is analyzing a project using a Categorical Exclusion, scoping is the only guaranteed opportunity for the public to comment on the project. Eliminating scoping means the public may not be informed of proposed Agency actions in a timely manner, and it eliminates the public’s opportunity to provide information to help shape and improve a project. Without a scoping period, the only opportunity the public has to influence a project analyzed with a CE is through litigation. This is not efficient, will be costly for the agency, and does not help to improve management of our National Forests.

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). Winter Wildlands Alliance was heavily involved in this project from the outset. Because the Forest Service conducted scoping, we, and other members of the public, were 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. Backcountry skiers, in particular, were concerned about project impacts to a treasured area. Through scoping comments the public shared information with the Forest Service that allowed them to modify it to protect wildlife and minimize impacts to hiking and mountain biking trails, backcountry skiing, and snowmobiling.

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. Scoping allows for early public notice and involvement in these projects. 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. 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.

Our recent experience on 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.

Public involvement is among the core, bedrock principles of NEPA. The proposed revision to eliminate mandatory scoping for CEs and EAs cuts away a basic tenant of the law. This revision must not be included in the final regulations.

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 on the surface a Determination of NEPA Adequacy (NDA) appears to be a tool that would help to achieve streamlining and efficiency, a closer examination of what this could allow for leaves us very concerned. Using a DNA in place of NEPA analysis for a new project could overlook changed circumstances, current recreation trends and uses, or evolving ecological conditions. Furthermore, we are concerned that DNAs could be used in cases where the previous NEPA analysis did not consider, much less analyze the impacts of the new proposal.

If the Agency wishes to employ DNAs, it must set strict sideboards on the use of this tool and only employ DNAs in a limited capacity. Complicated projects such as those related to timber or other forms of resource extraction are not suitable for use of DNAs, as ecological and social conditions change over time, and the impacts or implications of a new project are likely not addressed by existing NEPA decisions given that vegetation management or resource extraction projects do not occur on the same plot of land in quick succession. A DNA may, however, be a suitable tool for small-scale projects with a limited scope, such as allowing an existing backcountry ski guide to offer avalanche courses.

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. DNAs should not be allowed to utilize NEPA analyses that are more than 5 years old. Projects using a DNA must go through scoping in order to provide notice and an opportunity for the public to comment both on 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 they issue a decision memo following the Decision of NEPA Adequacy to explain the decision.

By and large, DNAs are not appropriate for Forest Service projects. Recreation use, trends, and users can and often do change rapidly. While prior analysis may be able to predict some conditions, recreational conditions may have changed in unpredictable ways that will be not apparent without scoping and a fresh look.

We are also concerned about new paragraph (k) in §220.4, concerning condition-based management. We are opposed to incorporating condition-based management into the Forest Service’s management toolbox, as it would allow the Agency to approve projects without first understanding what resources (recreation, ecological, etc.) would be affected on the ground. If condition-based management were
used in a NEPA decision, the public would not have the opportunity to speak up for specific places or resources that could be affected. For example, if a timber project were slated for a cherished backcountry ski zone and the Forest Service employed condition-based management, skiers would not have the opportunity to speak up for the places they ski or the environmental conditions that are valued in that place (such as old growth trees or un-roaded slopes). Furthermore, if condition-based management was paired with a CE, or even an EA, and the Agency eliminates the mandatory scoping requirement for these projects, the Forest Service would not gather information on affected resources or develop Alternatives, the public would not know about the project or be afforded the opportunity to comment on it, and the public’s only recourse would be to sue. This is another example of the Agency’s proposed revisions creating less efficiency in Forest Service decision-making.

Section 220.5—Categorical Exclusions

We have several concerns about the new and modified Categorical Exclusions outlined in §220.5 of the proposed revisions. By and large we encourage the Forest Service to abandon its proposed new CEs.

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. This would allow the Forest Service to authorize larger, far 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 will 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. This will, again, result in increased litigation and a decrease in efficient Forest Service decision-making.

We are also concerned with §220.5(b), in which the Agency proposes to adjust and refine how to evaluate extraordinary circumstances. These changes significantly undermine the extraordinary circumstances provision in the Agency’s NEPA regulations.

The addition of the word substantial in the context of adverse effects creates a much higher, and subjective, threshold for defining an extraordinary circumstance exist. This puts the responsibility for determining whether adverse effects are substantial in the hands of the responsible official without any analysis, public input, or oversight. The proposed revisions provide no guidance on what constitutes a “substantial adverse effect,” leaving this determination to the discretion of the line officer. It cannot be expected that anybody would be able to make a science-based decision in a factual vacuum. Just as importantly, a factual vacuum with no public daylight can easily be filled by political pressure. This is exactly the sort of scenario NEPA was rightly enacted to avoid. This change should not be included in the final regulations.
In §220.5(b) the Forest Service has also proposed to allow the responsible official to consider whether long-term beneficial effects outweigh short-term adverse effects when determining whether a proposed action will have a substantially adverse effect on a resource condition. While we agree 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 an Environmental Assessment or Environmental Impact Statement, not simply based on the off-the-cuff judgment of a Forest Service line officer. And, when an EA or EIS makes it clear that long-term beneficial effects outweigh short-term adverse effects, the responsible officer already has an ability to decide to move forward with a project. Short-term adverse effects versus long-term benefits should not influence whether extraordinary circumstances exist. This change should not be included in the final regulations.

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 regulations do not use this 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. Most wildlife species are not listed, and many should warrant more analysis than a CE. For example, ungulate winter range should be an extraordinary circumstance when considering the effects of travel management decisions regardless of whether the ungulates in question are listed species or not. 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. This change should not be included in the final regulations.

Despite our concerns with many of the changes that the Forest Service has proposed in §220.5(b), we appreciate that the Agency is proposing to add wild and scenic rivers to the list of Congressionally designated areas in §220.5(b)(1)(iii). 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 is determined, and any additional public engagement opportunities should be open to all members of the public. Furthermore, we are not sure this is a necessary addition. In our experience many Forest Service line officers already often chose to include additional public engagement opportunities and activities throughout the NEPA process.

New Categorical Exclusions

The Forest Service is proposing seven new CEs and proposing to expand two existing CEs. We have serious concerns about most of these changes and believe the majority of changes should be abandoned.

We are not opposed to consolidating the existing CEs at (e)(15) and (d)(10) into a new CE at §220.5 (d)(11). However, the revised regulations must also 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 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 are opposed to expanding existing CE §220.5(e)(3) to projects on up to 20 acres of Forest Service land versus the current 5-acre limit. Neither the proposed rule nor the supplementary information provided 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. 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 across 1 mile versus 4 miles of land. Either scenario would entail a substantial level of disturbance and have an increased likelihood of adversely affecting recreation or ecological resources. 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 tentatively supportive of expanding the scope of the CE at §220.5(e)(20) to include lands occupied by National Forest System roads and trails. 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 as a crutch when 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, and decision to close a system road or trail should be subject to public process.

We are supportive of 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. Decisions of this kind are more managerial than they are administrative actions directly affecting public lands.

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, infrastructure improvements adjacent to ski areas would expand the footprint of a developed ski area. These activities are generally at the detriment of backcountry skiing. Many ski areas hold special use permits for an area much larger than their current development footprint. Backcountry skiing often occurs in terrain directly adjacent to developed ski areas, often with skiers not know their treasured backcountry zones are within a ski area’s special use permit area. When ski areas decide to install a new left or otherwise expand the NEPA process is a critical opportunity for a public conversation about land use.

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 restrict its use. It should not be applicable to activities adjacent to an existing site, nor should it be applicable for large-scale activities. Without defining the types of recreation sites or the parameters governing construction, reconstruction, decommissioning, or
We are opposed to 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. It is critical that any substantial amount of new trail be properly vetted before construction or incorporation into the NFS, and we are concerned that allowing broad discretion to add non-system trails to the NFS under a CE creates an incentive for those who create unauthorized routes to continue to do so with an understanding that such activity provides a shortcut to trail designation.

There may be times when adopting a small segment of non-system non-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.

The Forest Service has specific obligations related to travel management that are outlined in the Travel Management Rule and associated Executive Orders. When designating areas or trails available for ORV use, agencies must locate them to: (1) minimize damage to soil, watershed, vegetation, or other resources of the public lands; (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and (3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands. 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 must include an opportunity for public input as well as robust environmental analysis in order to comply with the Travel Management Rule. Therefore, a CE for these activities is not appropriate.

We are also 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. 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

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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 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 not even sideboards on how to apply this CE, in contrast with (e)(23), which at least includes requirements for consistency with applicable land management plan direction, travel management decisions, trail-specific decisions, and other direction (although these constraints require greater explication). The CE at §220.5(e)(25) includes none of these caveats, but rather, provides wholesale authorization for converting nonsystem roads to NFS roads without public notice or input or environmental review. This proposed CE invites resource damage and use conflict with the possibility that unauthorized routes will be welcomed into the Forest Service system without review. 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.

The current NFS road system totals approximately 370,750 miles—nearly eight times the length of the U.S. Interstate Highway System. About 18% of this system is passable by passenger car, 55% are restricted to high clearance vehicles, and 27% are closed to public motorized travel. As of 2018 this system has a more than $3.1 billion maintenance backlog and unmaintained or poorly maintained roads are contributing to sediment pollution in rivers, streams, and water bodies across the country. This impairment affects fisheries, municipal water supplies, recreation, and more, and, the fiscal burden of the road system detracts from the Forest Service’s ability to maintain high quality recreation infrastructure, from trail maintenance to developed recreation. Furthermore, as existing roads fall into disrepair, public access to National Forests is impaired. These issues are well documented in both scientific and Agency literature. CEs (e)(24) and (25) will expand upon these ecological, fiscal, and social problems. The Forest Service already has numerous CEs at its disposal to address road and trail management. Existing CEs are already available for the Forest Service to use for road and trail maintenance (§220.5(d)(4)), repair and maintenance of recreation sites and facilities ((d)(5)), construction and reconstruction of trails ((e)(1)), and rehabilitation and decommissioning of unauthorized roads and trails ((e)(20)). The Forest Service should abandon efforts to move forward with CEs (e)(23)-(25).

We are also 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 and its allowance for the construction of up to 0.5 miles of permanent road per project is contrary to decades of Forest Service policy aimed at reducing the Forest Service road network.

This proposed CE opens the door to large-scale commercial logging on public forests under the guise of “ecosystem restoration and resilience”. It does not define what activities define restoration and resilience, and broadly allows for commercialization of public resources with little to no public oversight. This massive footprint could have major impacts to recreation uses, and in many forests it almost certainly will. Almost 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 would be covered by this CE.

The ecological impact of this CE, especially in concert with the other revisions the Agency has proposed, is also quite concerning. There are already CEs available for the Forest Service to meet ecosystem restoration goals and address wildfire concerns. The Forest Service should not move forward with this proposed new CE.

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 and are driven by missions different than what drives the Forest Service. CE(e)(27) is too broad and must be significantly narrowed and better explained if the Forest Service is to move forward with it.

**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). We have already explained in detail why we are opposed to this change earlier in these comments. But, to reiterate, this is concerning because EAs need not analyze any alternatives other than the proposed action unless the Agency identifies unresolved conflicts and the public cannot provide information to help the Agency determine whether additional alternatives are necessary without a scoping period. 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, especially if additional alternatives are needed to address their concerns.

**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.

It is also unclear what the Agency intends by “Potential Wilderness Areas.” The Federal Register notice describes “Congressionally designated areas,” and we are familiar with the relatively recent designation, by Congress, of “potential Wilderness areas,” a portion of which become Wilderness after a time period has passed and certain conditions are met, for example where an area is designated “potential Wilderness” pending the completion of a trail system, with Wilderness boundaries defined by the trails upon their completion. Among the other classes of commonly understood potential Wilderness, however, only Wilderness Study Areas are Congressionally designated. Recommended Wilderness Areas are also “potential Wilderness areas”, as are areas identified in Forest Service Wilderness inventories, but these areas are not Congressionally designated, and thus there is no establishing statute providing guidance on how these areas must be managed.

We disagree with the proposal to remove roadless areas and potential Wilderness areas from the list of actions normally requiring an EIS. These 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 requirement to prepare 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. Furthermore, the Forest Service provides only a limited justification for its proposed changes that does not fully explain the Agency’s actions. Potential Wilderness Areas and Roadless Areas must remain on the list of actions normally requiring an EIS.

Finally, we are concerned that the proposed rule would revise paragraph 227(e) - now (f), to eliminate the requirement for alternatives in an EIS to address one or more significant issues related to the proposed action. It is unclear what the point of an alternative would be that does not address any of the significant issues identified by the Agency or the public. While such an alternative may still meet the purpose and need of the project, its analysis would add little to the decision-making process.

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Taken together, the revisions that the Forest Service has proposed to its NEPA regulations take aim at the very heart of NEPA, undermining the law’s basic tenants of government transparency, accountability, public involvement, and science-based decision-making. If the Agency moves forward with these proposed revisions outdoor recreation interests and the broader public will be sidelined on decisions concerning public forests and grasslands across the nation. Furthermore, these proposed revisions will almost certainly lead to increased litigation and less effective management of national forests.

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6 See 84 Fed. Reg. at 27549, “The Agency proposes this change in part because....”
Throughout the proposed Rule and in the supporting materials the Forest Service relies on a small number of projects seemingly cherry-picked to demonstrate that these proposed changes are innocuous and perhaps even beneficial for recreation interests. However, a closer look at what the Forest Service is proposing reveals a much more concerning picture, one in which the public process and environmental regulations are thrown out the window in order to expedite timber harvest and other development on National Forest lands.

If the Forest Service wishes to actually address the causes of inefficiency in environmental decision-making, it should focus on increasing funding, staffing, and training and reducing staff turnover.

Thank you for your consideration of these comments.

Sincerely,

Hilary Eisen
Policy Director