



February 2, 2018

NEPA Services Group
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RE: Public Land Solutions Comment to Forest Service, USDA Advance Notice of Proposed Rulemaking on National Environmental Policy Act Compliance

Public Land Solutions (PLS) welcomes the opportunity to submit these comments on the United States Forest Service's Advanced Notice of Proposed Rulemaking on National Environmental Policy Act Compliance, published January 3, 2018 at 83 FR 302.

Public Land Solutions

Public Land Solutions (PLS) is a non-profit organization dedicated to providing comprehensive recreation planning and stakeholder coordination to support effective and sustainable public land solutions. We have extensive experience working at the local, regional and national level during a range public land planning processes. Our advocacy efforts to protect and enhance recreation assets on public lands include organizing stakeholder workshops, providing detailed comments and proposed maps during agency comment periods, providing presentations to local and state government, testifying before Congress, and communicating with a wide range of interested stakeholders. One aspect of this proposed rulemaking that PLS is particularly interested in are improvements to the National Environmental Policy Act (NEPA) as it pertains to outfitter-guiding community on Forest Service lands.

We believe that minor adjustments to the United States Forest Service (USFS) permitting process could relieve unnecessary burdens on the outfitter community while at the same time maintaining the important principles of the NEPA. Public Land Solutions believes that environmental review is a vital part of the land management decision-making process, and we urge USFS to approach any changes to the NEPA regulations and the outfitter-guide permitting process cautiously to ensure National Forest System managed lands remain attractive recreation destinations for a wide range of users, including those that wish to hire a guide. A key element is preserving public opportunities to meaningfully participate in decisions about how USFS lands are managed.

The NEPA analysis requirements that the USFS currently applies to outfitter-guide permitting proposals are unnecessarily complex. Public Land Solutions believes an opportunity exists for the USFS to streamline its process for issuing outfitter-guide permits in such a way that will enhance the agency's efficiency and simplify mechanisms for the public to access their National Forests.

Forest Service Chief Guidance on the Modernization of the Recreational Special Uses System

In June 2016, then Forest Service Chief Tom Tidwell issued guidance on the modernization of the recreational special uses system. A review of the June 2016 Guidance suggests that at least some of the agency's NEPA problems are operational rather than legal in nature. The Guidance urges agency staff to be more flexible in the way they apply NEPA, and more expansive in the use of existing categorical exclusions. At one point the Guidance states "[b]e careful about over-applying NEPA. There are many situations in which the four criteria [for NEPA applicability] DO NOT apply and therefore further analysis under NEPA is not needed to proceed with issuing, reissuing or renewing a special use authorization." June 2016 NEPA Guidance at 2.

The June 2016 Guidance contains an entire section on NEPA in Frequently Asked Question format. The first FAQ is whether every outfitter-guide proposal requires a NEPA analysis. The guidance answers this question with a "no," and cites the threshold requirements for the application of NEPA in Forest Service regulations.¹ Consistent with the Chief's guidance, Public Land Solutions believes the agency should carefully explore a recalibration of its NEPA compliance procedures for outfitting and guiding activity and determine whether NEPA applies at all to some permitting proposals that are essentially administrative in nature. We believe it is possible to preserve the letter and spirit of NEPA while at the same time simplifying the process for issuing outfitter-guide permits. This will help get more people out on the land, and free up agency resources to conduct detailed environmental review and analysis when and where it is most important.

Existing Outfitter-Guide Categorical Exclusions In Need of Clarification

The Categorical Exclusions (CE) that the USFS has historically used for outfitter-guide permitting are narrow and allow the agency to authorize outfitting and guiding activities in relatively few circumstances.² Taken together, these CEs exclude educational and information programs and activities; one year permits for minor, intermittent use; amendments and replacements of permits without changes to facilities, scope or intensity of authorized activities, or extensions of the term; and issuance of a new permit for a new term to replace an existing or expired permit without changes to facilities or increases in the scope or intensity of authorized activities.

Key improvements to the NEPA process in this area are clarifications to the USFS's existing categorical exclusions so that they more directly address the situations that commonly arise in the outfitter-guide context. For example, we believe that the USFS should consider the following common situations and determine whether they may be remedied through a reconsideration of or modification to existing CEs.

1. A permit holder would like to change the activities offered under the permit without changing the general location of these activities or the number of authorized service days.
2. A permit holder would like to reduce the number of service days in one location and increase the number of service days in another location by the same amount.

3. A permit holder would like to increase the number of service days under a permit where there are no current carrying capacity limits or concerns.
4. An outfitter or guide would like a new one-year permit for 500 service days.

We believe this rulemaking should assess whether the above situations should be considered an administrative change that could be made under one of the existing CEs. Addressing these relatively minor administrative changes would be consistent with other USFS CEs that cause much more significant impacts on Forest System lands, such as activities allowing up to 4,500 acres hazardous fuels reduction activities (36 CFR 220.6(e)(10)), the harvesting of 70 acres of live trees and constructing up to ½ mile of temporary roads (36 CFR 220.6(e)(12), and the construction and reconstruction of trails (36 CFR 220.6(e)(1)).

Landscape Level NEPA Review for Outfitter-Guide Permitting

When NEPA does apply and a CE is not applicable, we believe that the USFS should conduct reviews on a broader scale. Environmental review is an essential function of the Forest Service and we urge the agency to continue environmental reviews at the right time and at the right scale to ensure landscapes remain attractive destinations for recreational use. The Advanced Notice of Proposed Rulemaking seeks comment on "[a]pproaches to landscape-scale analysis and decision making under NEPA that facilitate restoration of National Forest System lands." Public Land Solutions believes a form of landscape-scale analysis would also be useful in the outfitter-guide context.

We believe the agency should strive to make greater use of programmatic environmental reviews to approve outfitter-guide activity on a larger scale and over a larger geographic area. This would reduce the need to conduct detailed project-based case-by-case environmental reviews of each outfitting and guiding proposal as it is submitted. With a broadly applicable environmental review in place, the agency could use strategies such as tiering to approve specific outfitting and guiding requests. It may also make it easier to apply categorical exclusions to specific recreation permit proposals if a programmatic analysis has already been performed. This will significantly reduce administrative burden in the issuance of individual recreation permits, freeing strained agency resources and increasing opportunities for people to connect with the forest. Accordingly, Public Land Solutions urges the agency to consider elements in the NPRM that encourage, or require, the agency to utilize programmatic environmental analysis as a preferred method for environmental review of recreation activities.

Consider a New Categorical Exclusion for Outfitter-Guide Permitting

Current Forest Service CEs allow the agency to issue new permits for minor, incidental uses of up to one year, and to renew or replace a permit a longer-term permit if there are no significant changes. In addition to providing clarification on the situations described above, Public Land Solutions believes it would be beneficial for the agency to seek public comment on a new draft CE that would give the agency the flexibility to issue new permits of longer duration and allow existing permittees to receive service day increases and conduct new uses. This proposed CE should be limited to proposals for recreation activities that:

1. Take place at established recreational areas that are open to the general public;
2. Are the same or substantially similar to existing recreational uses currently taking place in that location;
3. Are consistent with the applicable forest plan and Wilderness management plan; and
4. Do not significantly increase the scope or intensity of overall visitor use and do not exceed carrying capacity limits (if those limits have been determined).

Authorizations issued under this CE should be time limited to three years. We recommend that the agency include a proposed CE along these lines in the NPRM.

Conclusion

Public Land Solutions appreciates the opportunity to comment on the Forest Service's Advanced Notice on NEPA compliance procedures. We look forward to the opportunity to review and comment on the Notice of Proposed Rulemaking.

Sincerely,



Jason Keith
Managing Director
Public Land Solutions

¹ As required by 42 U.S.C. 4321 *et seq.*, a Forest Service proposal is subject to the NEPA requirements when all of the following apply:

- (1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23);
- (2) The proposed action is subject to Forest Service control and responsibility (see 40 CFR 1508.18);
- (3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14); and
- (4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

² The Forest Service currently has three categorical exclusions that apply to outfitting and guiding.

Section 220.6(d)(8) of 36 CFR excludes: "Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to . . . (i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide."

Section 220.6(d)(10) excludes: "Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization."

Section 220.6(e)(15) excludes: "Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized

facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

There is also a Department of Agriculture CE for "educational and information programs and activities." 7 CFR 1b3(A)(4). This CE is available to the Forest Service but appears to be rarely used by the agency to authorize outfitting and guiding activity.