

AGENDA ITEM 14B

DRAFT – FOR REVIEW AND POSSIBLE APPROVAL

July 19, 2019

Email: nepa-procedures-revision@fs.fed.us

NEPA Services Group
C/O Amy Barker
USDA Forest Service
125 South State Street, Suite 1705
Salt Lake City, Utah 84138

Via eRulemaking Portal: www.regulations.gov [FR Doc. 2019-12195]

RE: Nevada Association of Counties Comments to the USDA Forest Service’s Proposed Rule for National Environmental Policy Act Compliance.

NEPA Services Group,

As the state association for all 17 of Nevada’s counties, the Nevada Association of Counties (NACO) greatly appreciates the opportunity to provide comment on the Forest Service’s Proposed Rule for National Environmental Policy Act (NEPA) Compliance [FR Doc. 2019-12195]. The Forest Service manages public lands in 15 of Nevada’s 17 counties. As such, the proposed rule has the potential to impact the interaction between the Forest Service and local county governments for the majority of NACO’s members.

Nevada’s counties provide critical administrative and emergency functions for their respective communities. These counties also rely on socioeconomic drivers supported by public lands managed by the Forest Service. As such, NACO requests that any consideration of the proposed rules account for the need to continue delivery of these essential services and potential impacts to the socioeconomics of the affected counties.

NACO and the affected counties applaud and support the Forest Service’s goal of “...increasing efficiency of environmental analysis while meeting NEPA’s requirements.” Many of the affected counties have long-expressed concern and frustration with inefficiencies associated with NEPA whether that involved access to public lands, restoration of degraded environments, land use authorization, hazard fuel reduction, or installation/management and maintenance of critical county infrastructure. In general, the proposed rule appears to move towards a more efficient operational structure. However, NACO wants to ensure that these efficiencies do not impact or marginalize coordination and consultation between the Forest Service and counties, particularly on matters that concern county services and socioeconomics.

Below are NACO’s specific comments regarding the various sections of the proposed rule:

Section 220.3, Definitions: Generally, NACO supports the definitions presented in the proposed rule. Specific comments include:

- Given the magnitude and complexity of most public land management challenges (i.e. wildfire and invasive species), NACO supports the definition and implementation of Adaptive Management and would encourage the Forest Service to implement any Adaptive Management consistent with guidance provided by the Department of Interior through its 2009 publication *Adaptive Management: The US Department of Interior Technical Guide*. It should be noted that

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successful Adaptive Management processes include inputs and participation by key stakeholders throughout the process, and local government is one of the most critical stakeholders in most instances.

- Given the magnitude, complexity and variable outcomes of natural resource management (particularly management of invasive species in Nevada), NACO supports the definition and implementation of Condition-based Management so long as the management practices, design elements and on-the-ground conditions are developed with robust input from affected stakeholders including local government. This approach will ensure input from those with the most direct experience with the resources and management approaches being considered.

Section 220.4, General Requirements: Generally, NACO supports the general requirements as proposed with the following specific comments:

- Item d. discusses scoping and public notices and meeting minimum requirements set by applicable statutes and regulations and goes on to say that *...Additional public involvement is at the discretion of the local responsible official*. Given the importance of public land management to local government, and the need for close coordination with local government on nearly all public land management decisions, NACO would suggest explicitly directing that local government, specifically any affected County, be notified of all forms of proposed actions (CE, DNA, Emergency Responses, EAs and EISs). The appropriate point of contact and means of notification should be established between the responsible official and applicable county(ies) on an annual basis at a minimum.
- Item d., number 2 clearly indicates that scoping will be required for all Environmental Impact Statements, which NACO supports. However, NACO would also support explicit direction that the appropriate county(ies) be offered cooperating agency status for any EIS project.
- Item j., Adaptive Management, states that *The NEPA analysis must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment*. However, if Adaptive Management is being applied it is due to some level of uncertainty about the effect of both the proposed action/alternative and the adjustment. NACO suggests adding the term “anticipated” before “effect” in the above statement to reflect this uncertainty.
- Item k., Conditions-based Management, should require:
 - Identification of affected stakeholders, including the appropriate county(ies) and other parties that would be impacted by proposed conditions-based management adjustments;
 - Roles of affected stakeholders; and,
 - Notification of affected stakeholders if and when management changes occur.

Section 220.5, Categorical Exclusions: Generally, NACO supports the application of Categorical Exclusions (CEs) in order to streamline permitting of important management decisions and actions. However, there are several instances where local government must be consulted with prior to application of a CE. Any action that would affect a County provided service (administration function, emergency response, existing infrastructure, etc.) should require consultation with the County prior to issuance of a CE.

The one issue area that rises to the top of this list is the disposition of roads and trails. The affected County(ies) should be notified and consulted with prior to closure (permanent or seasonal), reclassification, or alteration of any road. The rationale for this is that the County may have a valid RS 2477 claim on a given road, the County may have specific interest in the road or areas access and the

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County may have specific planning and/or design criteria that should be considered. This is particularly applicable to Forest Districts that don't have Travel Management Plans, which includes many of the Districts in Nevada.

- Item b., number 2 discusses that the presence of one or more special resources does not preclude the use of a categorical exclusion. NACO would agree with this assessment, particularly when a proposed activity can avoid impacts or enhance one or more of the resource values listed. This clarification should be added. In addition, identification and consideration of any existing authorized use(s) should be completed prior to issuance of a CE.
- Item c. provides the responsible officer with great latitude in determining the involvement of key stakeholders and interested parties. Again, NACO requests specific language in this section that indicates any action that may impact county authorization(s), existing infrastructure, provision of services, or is inconsistent with any local Master Plan or Public Land Use Plan would require coordination with the pertinent county(ies).

Below are comments on specific proposed CE categories:

- Item d., number 1 describes prohibitions to provide short-term resource protection or to protect public health and safety. Given the Counties' role in providing public health and safety services, this action must require coordination and consultation with the appropriate county(ies).
- NACO supports Item e., number 11 specific to CEs for post-fire rehabilitation activities *...to repair or improve lands unlikely to recover to a management approved condition from wildlife damage or to repair or replace minor facilities damaged by fires*. However, NACO questions the 4,200-acre limitation for this CE as well as the prohibition on herbicides. Given the magnitude of recent wildfires in the west, NACO questions the need for any acreage limitation. Many stabilization activities must occur as soon as possible following fire, and an acreage limitation may restrict the amount of work that needs to be done in a timely manner. In addition, herbicide application and chemical fallow is a critical tool in combating the spread of invasive species in the Great Basin, particularly given that the CE is applicable for 3 years post-fire. This has been demonstrated by research conducted by the USDA's own Agricultural Research Service's Great Basin Rangelands Research Unit in Reno, Nevada.
- NACO supports Item e., numbers 12, 13 and 14 regarding harvest and salvage of both live and dead trees. Once again, given the magnitude of the issues being addressed by these CE categories, NACO questions the limited acreage allowed to be treated under CE.
- NACO supports Item e., numbers 18 and 19 regarding restoration of riparian areas and water bodies as well as removal or relocation of debris following disturbance events (i.e. flood) provided these activities are coordinated with local government and in compliance with State Water Law.
- Item e., numbers 20, 22, 23, 24 and 25 all deal with roads and trails. Once again, NACO would stress the absolute need to consult with the applicable county(ies) prior to any change to road ownership, alignment/design or disposition (open or closed to public and/or administrative use).
- NACO supports Item e., number 26 regarding ecosystem restoration and/or resilience activities in compliance with forest plans, including harvest as part of the activities. Again, NACO would support larger acreage limits given the magnitude of some of the restoration needs in Nevada. It is NACO's understanding that these limits were derived by looking at past projects; however, NACO believes any limits should be based on assessing future need rather than the size or previous projects. NACO also suggests allowing an acreage exemption and "additional activity"

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exemption for any project conducted under an existing stewardship agreement or contract to further encourage acceleration of treated acres.

Section 220.6, Environmental Assessment and Decision Notice: NACO generally supports the proposed Rule in regard to Environmental Assessments and would reiterate that it is imperative that the responsible official notify and involve the appropriate county(ies) when a project has the potential to impact county administration, services or socioeconomics. Early and sustained involvement will be critical to successful projects and more streamline NEPA, versus late notification that costs both the local government and project proponent time and money.

Section 220.7 Environmental Impact Statement and Record of Decision: NACO generally supports the proposed rule regarding EISs. In addition to the above comments on early and continued consultation and coordination, NACO would encourage the Forest Service to require extending Cooperating Agency invitations to affected Counties when a project requires full EIS analysis.

- Specific to Item f., Alternatives, NACO supports the concept of requiring all alternatives except the “no action alternative” to meet the purpose and need of a given project. However, for this approach to be effective, key stakeholders (such as the affected county(ies)) must be involved in the development of the purpose and need. Otherwise there is a real risk that a purpose and need is developed so narrowly that there is no latitude for mitigation measures to be applied in a manner that reduces environmental and socioeconomic impacts. This issue may result in more inefficiencies as stakeholders are left to choose from the proposed action or no action with no viable alternative that meets a strict purpose and need.

In summary, NACO appreciates this opportunity to provide comment on this proposed rule and believes the Forest Service is on the right track to improving efficiency within the NEPA process. NACO wants to ensure that efficiency does not come at the expense of appropriate coordination and consultation with local government, particularly given the services that counties provide and their reliance on public lands as a major component of overall custom, culture and economy.

If you have any questions regarding these comments, or require further information, please feel free to contact me anytime.

Respectfully,

Dagny Stapleton
Executive Director

DS/jld

cc: Bill Dunkelberger, Forest Supervisor, Humboldt-Toiyabe National Forest