



February 1, 2018

NEPA Services Group
c/o Amy Barker
Geospatial Technologies and Applications Center
USDA Forest Service
2222 West 2300 South
Salt Lake City, UT 84119

Dear Ms. Barker:

The National Association of State Foresters (NASF) is pleased to respond to **Federal Register Document 2017-28298** (Filed 01/02/2018) requesting comments on ways to revise USDA Forest Service National Environmental Policy Act (NEPA) procedures.

The Forest Service and state foresters have worked in close partnership to sustain the nation's forest resources since the agency's inception. We applaud efforts at the Forest Service to revise NEPA procedures and are ready to assist in assuring its review yields planning improvements, and ultimately, healthier federal forests. NASF also appreciates, as stated in the background section of the Federal Register notice, that the Forest Service will be challenged to generate more active management of the nation's forests – whether on federal, state, or private lands – without a resolution to the wildfire suppression funding challenge.

In February 2016, amid a growing concern from our members about the condition of federally owned forests, NASF adopted the attached policy position paper, **Preferred Reforms to Federal Forest Land Policy**. This paper acknowledges that the cost and time requirements of administrative processes are a hindrance to achieving improvements to federal forest health at a scope and scale that appropriately reflects the seriousness of the problem. In it, NASF recommended that the Forest Service reform its NEPA implementation processes to lower costs of agency administration, planning, regulatory compliance, and litigation by:

1. *Considering alternative planning models which incorporate categorical exclusions (CEs).* While in some places landscape scale planning makes the most sense, this is not the case everywhere. Years can be spent tied up in litigation, which is often unavoidable due to project size and complexity. As an alternative, consider planning models which work with communities to develop desired conditions for the local federal forests and then analyze the proposed project in smaller areas utilizing CEs which cannot be administratively appealed or objected.
2. *Considering revising the Forest Service NEPA regulations (36 CFR Chapter 11, Part 220) to substantially broaden authority for the use of CEs where a given action is intended to implement a Land Management Plan (LMP).* Even though many of these actions would be characterized as “significant,” their impact is highly beneficial. Requiring further assessment is inconsistent with CEQ direction to promulgate rules that are reasonable and efficiently implemented. Examples that could be specifically designated for categorical exclusion might include projects that:
 - Enhance fish passage
 - Control erosion
 - Enhance water quality and quantity
 - Provide catastrophic wildfire risk reduction
 - Develop under-represented elements or processes of landscape level ecosystems

Executive Director
Jay Farrell

2017-18 Executive Committee

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NASF also recommends the Forest Service do the following to modify, reduce, or eliminate processes and analysis requirements, as appropriate, and consider a series of other changes to increase efficiencies and enhance implementation of its programs:

1. *Administratively implement Endangered Species Act Section 7 in order to increase efficiency and implement the following* (which may require updating agreements with the U.S. Fish and Wildlife Service):
 - I. **Provide authority** for journey-level agency biologists to make determinations of effect where surveys show listed species are not present and where the subsequent determination is one of “may affect, not likely to affect.” Currently, projects can be delayed by months awaiting a U.S. Fish and Wildlife Service concurrence.
 - II. In areas mapped for high-risk for wildfire or insect and disease attack, **require only one year of surveying**. We have heard of cases where, while waiting a second year in order to do additional surveys, wildfire devastated the forest and rendered the project moot.
2. *Establish a reasonable State Historic Preservation Office (SHPO) consultation response time goal and direct forests to work with their SHPOs to incorporate these goals into local MOUs.* Currently it can take months for a project approval by a state historic preservation officer. State foresters have heard of scenarios where in waiting for SHPO concurrence of a Forest Service archaeologist’s report for a salvage sale, the delay in response allowed the wood to degrade to such an extent that mills were no longer interested in bidding on the sales.
3. *Complete a sensing of industry concerns and interests early in the planning process for projects which involve selling timber.* The agency unfortunately spends significant resources on timber sale projects which are not sold. As is often the case in interactions with the environmental community, line officers need to gather industry input early in the planning process to gauge project viability. The agency could also conduct after action reviews on all no-bid projects to inform future planning.
4. *Consider reestablishing internal accountability targets* where line officers are responsible for annual acreage or volume accomplishments while meeting all applicable environmental laws.
5. *Re-establish entry cycle planning across a national forest.* In the past, district rangers had plans for logically timed analyses across their districts, examining each area of the district for silvicultural, wildlife, and other needs every twenty years or so depending upon location. Returning to a systematic process would be an important step in more actively managing the nation’s federal forests.
6. *Consider changes in funding rules to allow for support funding* (e.g. wildlife, watershed, and archaeology) to pay for a share of their analysis costs if there are benefits or knowledge to be gained as a result of the support work. Currently, under primary purpose funding principles, Forest Management funding pays for all “support” costs, even if those costs provide benefits to the support function. For example, a forest management project typically has wildlife support costs. Often the project has wildlife benefits or surveys provide key information for wildlife biologists on populations within the project area. Changing the funding rules could allow for additional support for forest management and fuels projects.

In addition, the Council on Environmental Quality’s (CEQ) NEPA regulations (*40 CFR 1500*) contains considerable direction for each agency to create a reasonable and efficient NEPA process. We would quote the following sections specifically:

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- **40 CFR 1500.1 Purpose.** (c) Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.
- **40 CFR 1500.2 Policy.** (b) Implement procedures to make the NEPA process more useful to decision-makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives.
- **40 CFR 1500.4 Reducing paperwork.** (g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§1501.7).
- **40 CFR 1500.5 Reducing delay.** (h) Eliminating duplication with state and local procedures by providing for joint preparation (§1506.2), and with other federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3).

Finally, we strongly encourage that assessments and strategies laid out in each state forestry agency’s Forest Action Plan (FAP) be incorporated into national forest and grassland management plans, paying particular attention to landscape-level areas of emphasis. Nesting the recommendations and analyses of an EIS/LMP under those already included within a FAP is consistent with the above CEQ direction and can only strengthen the rationale for projects and actions being proposed.

Thank you for this opportunity to comment. We are very encouraged to see this effort moving forward and, again, stand ready to assist however we can to make this a productive endeavor and our federal forests healthier.

Sincerely,
George Geissler

NASF President
State Forester of Oklahoma

Enclosure: Fed Land Policy Paper

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**National Association of State Foresters
Preferred Reforms to Federal Forest Land Policy
Approved February 9, 2016**

* Federal lands reforms recommended in this document focus on Forest Service and Bureau of Land Management lands.

Introduction

Of the approximately 750 million acres of forest land in the United States, 20 percent are managed by the USDA Forest Service (USFS). Another six percent are managed by the Department of the Interior (DOI) Bureau of Land Management (BLM). The amount of federally owned forest in each state varies from very high percentages in the Pacific Northwest and Intermountain Regions to relatively lower amounts in the East.

Federal forest land holdings can have significant impacts on surrounding ownerships and on a state in general. Wildfire spread and insect and disease infestations do not recognize ownership boundaries. Where forests have lost vigor and resilience, often due to a lack of management, a catastrophic event on federal lands can quickly become a damaging event on other properties. In addition, over one-half of the nation's water supply originates in federal forest headwaters and that supply can be negatively impacted by catastrophic events occurring on federal forest lands.

Where federal forest lands dominate the landscape, they have a significant effect on forest markets and forest products industry infrastructure. In geographies where federal forest lands account for the majority of the forested acres, and given that federal timber supplies have sharply declined from historic levels, forest markets and industry infrastructure have diminished to the point where private landowners have difficulty marketing their timber and thus managing their forests. Federal lands can have tremendous socio-economic benefits for adjacent communities and broader geographical regions.

Our federal forest lands are under serious threat. Entire landscapes continue to experience deteriorating health problems and uncharacteristic landscape change as a result of insect and disease epidemics, invasive species, catastrophic wildfire and more. Intentional management actions are necessary to improve the resilience of federal forest lands. In regions with a mixture of ownerships, the varying objectives of different owners lead to provision of a well-rounded suite of forest-related benefits. A prerequisite for success is landscape level coordination that include the full participation of federal partners, as well as federal managers that are capable of and empowered to implement the on-the-ground actions identified within collaborative planning efforts.

As administrators of the forestry agencies of all 50 states, the US territories and the District of Columbia, the members of the National Association of State Foresters (NASF) are responsible for the health, well-being and socio-economic benefits of non-federal forest resources within their jurisdictions. State

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forestry agencies and federal agencies already work together in many places, engaging in productive dialogue, cooperation, and partnerships; nevertheless, a variety of opportunities to enhance these efforts exist. What occurs on federal lands can impact the ability of NASF members to carry out their responsibilities in an efficient and successful manner.

In light of these potential impacts, NASF has adopted a statement of general principles regarding reforms to federal land management policy. The statement reads:

- Significant changes in federal policy for forest land management under the authority of the USFS and BLM are needed to ensure the provision of a range of benefits from federal forests.
- Federal forest lands provide critical goods and services, such as forest products and jobs, clean air and water, recreational opportunities, wildlife habitat and numerous other forest-based amenities.
- Only by accelerating the scope, scale and pace of on-the-ground management, consistent with approved management plans, will we be able to restore our federal forests to a more sustainable, resilient condition.
- Without a viable forest products sector, ongoing forest management activities to maintain long-term sustainability of social, economic and ecological benefits across forestlands of all ownerships will not be possible.

This policy statement serves to build on these principles – providing background on the issue, outlining concerns more specifically and providing a checklist of potential reforms.

Legislative Background

An estimated 80 different laws regulate the management of federal lands. A subset of those principal laws include:

- Forest Service Organic Administration Act of 1897
- Twenty-Five Percent Fund Act of 1908
- The Weeks Law, Act of 1911
- Sustained Yield Forest Management Act of 1944
- Administrative Procedures Act of 1946
- Multiple Use and Sustained Yield Act of 1960
- Wilderness Act of 1964
 - Roadless Area Conservation Rule – 2001
- Multiple Use and Land Classification Act of 1964
- National Forest Roads and Trails Act of 1964
- National Environmental Policy Act of 1969
- Clean Water Act Amendments of 1972
- Federal Advisory Committee Act of 1972
- Endangered Species Act of 1973
- Eastern Wilderness Act of 1975
- Federal Land Policy and Management Act of 1976
- National Forest Management Act of 1976
 - USFS Planning Rule – 2012

- The National Historic Preservation Act Amendments of 1980
- Secure Rural Schools and Community Self-Determination Act of 2000
- Healthy Forests Restoration Act of 2003
- Agricultural Act of 2014

The laws and regulations governing the management of federal forest lands reflect society's evolving values, needs, and demands. The complex interactions and multiple effects created by federal legislation and rule-making, subsequent interpretation by courts and risk-averse agency analyses has caused federal forest lands to fall short in the delivery of a balanced and sustainable set of benefits.

NASF Concerns with Federal Forest Land Policy

NASF believes federal lands should deliver a robust array of environmental (biodiversity, clean water, wildlife habitat, etc.), social (stable communities, recreation, aesthetic values, etc.) and economic (forest products, jobs, payments to counties, etc.) benefits. Currently they do not do so sufficiently. We describe our concerns more specifically below.

Environmental –

- Current and past approaches to wildfire suppression and a largely hands-off approach to forest management have led to widespread insect and disease infestations and fuels build-up that drastically alter or eliminate landscape-scale swaths of forest ecosystems
- Stresses caused by long-term drought and other climate factors are, in some instances, amplifying these conditions
- Landscape-scale forest health decline and fuels build-up have led to substantial increases in the severity and magnitude of catastrophic wildfire; in some cases:
 - Altering soil structure,
 - Emitting increased levels of carbon and other air pollutants,
 - Damaging habitat, including endangered species critical habitat, and
 - Impacting water quality and quantity through erosion and sedimentation; this is especially problematic when it leads to the acceleration of water supply reservoirs sedimentation
 - Damaging private structures and causing human fatalities
- A lack of budget support for vegetation management and restoration programs, as well as a lack of alignment in views about appropriate management and response approaches among stake holders hampers utilization of damaged trees and reforestation efforts after catastrophic fire
- A significant back-log of roads and trails maintenance projects creates threats to water quality and public safety, hampers management, and reduces recreational opportunities
- A lack of active management creates a significant imbalance in forest age classes which is manifested in:
 - A lack of early successional habitat for species dependent on that forest type, and later,
 - A risk of wholesale alterations in forest ecosystems as large blocks of forest reach their natural lifespan in more highly condensed timeframes, creating large blocks of dead and dying trees.

Socio-Economic –

- Increasingly high wildfire suppression costs continue to erode federal agency non-fire program budgets and divert resources away from other national and state priorities, such as:
 - Implementing vegetation management (pre-commercial thinning, timber sales, restoration projects, fuels mitigation) to reduce the risk of future catastrophic wildfire;
 - Funding Cooperative Forestry Programs that assist non-federal landowners, address state priorities enumerated in State Forest Action Plans, and implement actions that address forest health and wildfire risks across boundaries;
 - Maintaining roads, trails and facilities; and
 - Conducting research.
- Diverting fiscal resources from programs that complete the critical preventive forest management work leads to substantially higher direct and indirect costs associated with wildfire (suppression, ecosystem service costs, post fire impacts, etc.)
- Reductions in federal forest timber harvesting has weakened or eliminated local and regional forest products markets, which has in turn made it more difficult for private forest landowners to manage their properties
- Rural counties dominated by federal forest lands are suffering severe financial hardships because these lands fail to provide sufficient in-lieu-of-property tax revenues and adequate raw materials to support taxpaying industries and employees
- Federal land management agencies operate at a net loss financially, as federal forest land management recoups only a small portion of the costs through revenue generating activities. In contrast, many state forest management operations (e.g. Oregon, Idaho, and others) cover their costs and generate a positive flow of income back to beneficiaries.
- A lack of federal forest management is a missed opportunity for creating a range of jobs through contracting and direct employment
- The many restrictions, limitations and uncertainties related to federal forest management tend to lead to an inability to realize the full potential of partnerships and their resources – including funding and manpower – to complete active management on federal lands. Often this results from projects developed over a number of years by collaborators acting in good faith, only to see their efforts immediately halted by litigation from outside interests.
- Communities in landscapes dominated by federal forest lands have experienced economic declines with multiple negative repercussions, such as:
 - Financial stress, increased poverty levels and dependence on social welfare, and
 - An inability to support local institutions and infrastructure (e.g. hospitals, schools, libraries, road maintenance, and water-treatment systems)
- A lack of budget support has resulted in recreational facilities on federal lands being closed or poorly maintained, and cultural and historic resources left unprotected
- Inability and/or perceived inability to provide the multitude of benefits federal lands could optimally offer has diminished local community support for the federal agencies entrusted with management

Institutional –

- The Endangered Species Act (ESA), the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) are used by narrow interests to marginalize the delivery of a broad and balanced set of environmental, social and economic benefits

- As currently implemented, compliance with federal regulations requires substantial time and financial investment before any on-the-ground management can occur, greatly reducing the ability to manage federal forest lands at a scale necessary to catch up with the needs to improve forest health
- Litigation, or the threat of litigation, has created a risk-averse agency culture and tends to bias managers towards low-risk projects that may not necessarily be the highest priority for achieving the goal of creating resilient, sustainable forests
- The current Forest Service National Forest System Land Management Planning Rule (planning rule) does not direct the delivery of a balanced set of environmental, social and economic benefits and instead treats economic and social benefits as by-products and less of a priority than environmental benefits
- There is an urgent need for increased investment and action on federal lands to meet the agencies' forest management, policy, and multiple-use missions

NASF Desired Policy Reforms

Reforms that would deliver a more balanced set of social, environmental and economic benefits –

- Provide specific internal agency direction on planning rule implementation to emphasize a balanced delivery of social, environmental and economic benefits
- Provide specific internal agency direction on planning rule implementation to place greater emphasis on the need for National Forest Plans to address priorities identified in State Forest Action Plans
- Update the policy statements of key federal forest laws to establish:
 - that their purpose is to deliver and continuously improve upon the delivery of a balanced set of social, environmental and economic benefits;
 - that any subsequent language in any of these laws cannot be construed to suggest that any one set of benefits is more unilaterally important than the others;
 - that balance is considered achieved when the mix of social, environmental and economic benefits has been optimized at a landscape-scale:
 - Where the process of optimization recognizes
 - that each of the desired goods and services to be provided has a practical upper and lower limit,
 - that delivered goods and services have interdependent relationships that can be generally described (providing more of one may lower or increase the ability to provide another)
 - that the ultimate goal is to provide the maximum amount of all goods and services desired given these limits and relationships; and
 - that much of the information that can be applied to estimate a balanced set of optimized benefits is more subjective than quantifiable and therefor subject to value-based decisions
 - that when found to be delivering a balanced set of social, environmental and economic benefits, federal forest management plans and the actions that flow from them are considered in compliance with other relevant federal laws (ESA, NEPA, CWA)

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- Pass new legislation that permanently funds a “payment in lieu of taxes” (PILT) program for local governments based on the property tax rates imposed on surrounding private forest land
- Embed community scale economic development more deeply in the objectives of National Forest plans.
- Monitor the application of the Good Neighbor Authority (GNA) as states and the USFS enter into GNA agreements and implement projects. Direct the USFS to complete periodic review of the application of the tool to identify areas for improvement.

Reforms that would lower costs of agency administration, planning, regulatory compliance and litigation –

- Implement NEPA in ways that are more productive; i.e., 1) utilizing landscape scale planning, or 2) developing desired condition documents with smaller scale projects meeting CE (categorical exclusion) requirements tiered to those documents, or 3) implement other strategies which produce more on-the-ground results.
- Ensure that the option to only use two project alternatives – “Action” and “No Action” in an Environmental Assessment (EA) is used effectively to create greater efficiency and better decision-making
- Amend ESA to allow the USFS and BLM to make Section 7 determinations
- Eliminate the concept of planning cycles and establish a process whereby plans and their implementation are continuously evaluated and revised
- Encourage interagency collaboration early and throughout project planning cycles
- Ensure that the implementation of Federal Advisory Committee Act (FACA) rules allow broad-based, active and collaborative participation by stakeholders and state agencies in the development of national forest plans
- Ensure that the process for administratively challenging USFS projects (currently the “objections” process) supports:
 - Clear standards for who can be at the table as the USFS considers altering challenged decisions, and that this can include:
 - Parties who challenge a decision
 - Parties who defend a decision, and
 - Collaborative groups if they submitted recommendations on the project adopted formally by the collaborative group
 - Limits on the scope of what can be challenged
 - Restrictions to the timeframe under which challenges can be presented and decisions made
- Ensure that the legal process for challenging agency decisions supports:
 - Limits to the scope of what can be heard in court,
 - Requiring that those who bring forward legal challenges are more financially responsible for the costs of litigation; and
 - Creating alternatives to judicial review that are less time consuming, costly and precedent setting
- Incentivize collaboratives and establish specified processes and formal mechanisms for project planning and judicial review for projects developed through a local collaborative.

This would include making them substantially more difficult to litigate given the good-faith effort on the part of diverse interests that goes into these projects

Reforms that would enable vegetation management to be carried out at a scope, scale and pace sufficient to create more sustainable and resilient landscape conditions –

- Install a funding mechanism and ensure adequate financial support for fire suppression activities, including through the use of emergency funds, such that other budget items will not have to be accessed to pay for shortages in suppression dollars
- Authorize greater involvement in federal forest management activities by state and local governments
- Fully utilize existing federal authorities to enter into long-term agreements in order to strengthen forest industries and assure sufficient supply to amortize new investment
- Encourage federal agencies to consult with the State Forester and document the results of State Forester consultation to coordinate an all-lands approach during all phases of forest management, fuels reduction, and land transfer plan development and implementation; this should include how federal forest management plans consider and respond to State Forest Action Plans
- Streamline all administrative processes in cases that would allow timely salvage of fire damaged trees and quick reforestation
 - Establish this function as a vegetation management priority
- Retain all earned revenue from forest management within the USFS and/or as payment to counties
- Simplify, clarify and realign current land-use allocations at a broad level to more appropriately meet project activities and priorities in defined areas.
- Expand the appropriate use of large-scale (15,000 acres +) Categorical Exclusions for:
 - Actions and activities agreed upon by local collaboratives,
 - Reducing wildfire risk,
 - Responding to insect and disease outbreaks; and
 - Addressing a shortage of early successional wildlife habitat and ensuring the creation and maintenance of a diverse range of habitat.