

# RVCC

Rural Voices for  
Conservation  
COALITION

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Mr. Tony Tooke, Chief  
United States Forest Service  
Department of Agriculture  
1400 Independence Ave SW, Washington, DC. 20250

*Submitted via email to:* [nepa-procedures-revision@fs.fed.us](mailto:nepa-procedures-revision@fs.fed.us)

*Submitted via public participation portal to:* <https://cara.ecosystem-management.org/Public-CommentInput?project=ORMS-1797>

RE: Advanced Notice of Proposed Rulemaking, Request for Comment, National Environmental Policy Act Compliance (83 Fed.Reg. 302, January 3, 2018)

Dear Chief Tooke,

February 2, 2018

On behalf of the Leadership Team of the Rural Voices for Conservation Coalition (RVCC), we are pleased to provide the Forest Service with the following comments on the agency's advanced notice of proposed rulemaking (ANPR) regarding National Environmental Policy Act (NEPA) compliance. We appreciate this opportunity to comment on the proposal.

RVCC promotes healthy landscapes and vibrant rural communities throughout the American West. Our participants come from all western states and include diverse representatives from regional and national organizations; community-based natural resource advocates; conservationists; business owners; contractors; elected county officials; and landowners, among others. We believe that the health of rural communities and landscapes are interdependent – policy solutions need not sacrifice one to advance the other. Our work centers on promoting ecosystem productivity, social equity and economic prosperity.

Many of our participants work closely with the Forest Service on stewardship and restoration projects across the West, bringing extensive experience in NEPA project planning and decision making. In general, we are not sure that Rulemaking is warranted, and strongly encourage the agency to be explicit about why additional authorities or legislative amendments are needed and how they may contribute to accelerating restoration outcomes. In our experience, there are many opportunities for improved efficiency in both planning and implementation, most of which are not directly related to NEPA. As part of this Rulemaking process, we urge the Forest Service to clearly identify desired outcomes, explain how changes to NEPA-related regulations will lead to these outcomes, and broaden considerations beyond those possible changes. We agree with the Forest Service that staffing and budgeting pose challenges to accomplishing needed restoration work. We also suspect that avenues other than changing NEPA-related regulation offer better opportunities for improved efficiency.

With that being said, we agree that the current planning process can be made more efficient and satisfying to stakeholders and the agency and provide the following comments with an interest in helping the Forest Service deliver its mission.

### **Context and Existing Conditions**

When considering the current environmental analysis and decision-making processes, it is essential to clarify conditions, practices, and processes that impact the time to decision, but that are not related to NEPA itself. These factors include a decreasing budget, staff turnover, limited investment in training, risk aversion and consultation. More specifically:

#### *Budget*

The ANPR notes that “an increasing percentage of the Agency’s resources are spent each year to provide the necessary resources for wildfire suppression, resulting in fewer resources available for other management activities such as restoration,” and that “there has also been a corresponding shift in staff, with a 39 percent reduction in all non-fire personnel since 1995.” 83 Fed.Reg. 302. The Forest Service has fewer employees generally, and most of the Forest Service’s already-reduced budget now goes to pay for fire suppression: both factors necessarily reduce the agency’s ability to focus on and complete mission-critical work. Staff are also more likely than ever to rely on time spent on fire assignments to reduce the drain on program budgets, leading to lost planning time in the summer.

#### *Staffing and Training*

The agency itself recognizes<sup>1</sup> that most delays in project implementation result from inadequate congressional appropriations, insufficient training of agency personnel tasked with NEPA compliance, insufficient staff qualified to undertake NEPA compliance, and the failure to leverage existing internal learning around NEPA.

As acknowledged by the Forest Service, agency personnel who deal with NEPA compliance are given inadequate tools for their job: the agency has lacked systematic NEPA training since the 1990s. What training does exist is inconsistent, as many agency personnel resort to querying colleagues about NEPA compliance and often receive erroneous advice as a result. This inconsistency in training and learning leads the Forest Service to struggle with consistent and accurate application of the law. For example, an innovative planning effort on one Forest may not be well received or even accepted on another Forest or at the Regional level.

#### *Turnover*

The Forest Service’s practice of encouraging employees to seek temporary or “detail” positions in other areas of the agency to be promoted results in vacant personnel positions or positions staffed with “acting” employees that may not be an appropriate fit for the vacated position, which in turn often stalls NEPA analysis on critical project-level work, sometimes for months or years. Promotion within the

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<sup>1</sup> United States Forest Service, Environmental Analysis and Decision Making: The Current Picture (Phoenix, AZ. Sept. 2017) (hereinafter Phoenix EADM Presentation).

agency usually requires transfer to a new location, which results in a loss of hard-earned local knowledge and relationships and leads to slower, less-efficient planning. Inadequate agency budgets and hiring freezes also mean that many skilled positions are vacant for months or even years.

### *Consultation*

Consultation with expert federal agencies pursuant to other laws can also extend the time to implementation for Forest Service decisions. Other federal laws such as the Endangered Species Act and National Historic Preservation Act require the Forest Service to “consult” with expert agencies such as the United States Fish and Wildlife Service, NOAA-Fisheries/National Marine Fisheries Service, and State and federal Historic Preservation Offices prior to implementing decisions. Because these agencies are also underfunded and understaffed, the consultation process can often take longer than the prescribed timeline, which further delays project implementation. Again, issues with inadequate consulting agency funding and staffing are not NEPA problems and will not be addressed by changes to the Forest Service’s NEPA regulations.

### *Risk Aversion*

While we are familiar with agency attempts to “bulletproof” NEPA analysis in order to avoid litigation – which contributes to the length of NEPA documents as well as lengthy analysis timelines – this is less an issue with NEPA (which requires disclosure and analysis of environmental consequences of agency action) and more an issue with adequate training, supervision and management of agency NEPA personnel and a culture of fear and misinformation surrounding litigation. Longer NEPA documents that are the product of attempted litigation bulletproofing are more likely, not less, to result in inadequate NEPA analysis because more words often result in conflicting analysis, inaccurate conclusions, and opaque reasoning. Instead, skilled NEPA practitioners can quickly and easily address analysis requirements that are both legally adequate and concise, and there is no reason that Forest Service NEPA staff cannot similarly conduct such analysis given the appropriate training, staffing, and funding resources.

## **Recommendations**

We appreciate that the agency is aware of and beginning to address the challenges listed above, as identified in the ANPR and in the proceedings from the September 2017 EADM meeting in Phoenix. To continue achieving much-needed outcomes on the ground in a time of flat or declining budgets, RVCC believes that additional efficiencies need to be gained. However, changes to the CFR and handbook and manual may not be the first or best place to seek these efficiencies; such changes may only serve to damage existing stakeholder agreement, result in litigation, or create tools that remain underutilized, like many existing categorical exclusions. Rather, we recommend the following changes to the practice and process of conducting environmental analysis and decision making.

### *Utilize Existing Authorities*

While we agree there is a pressing need to increase the pace, scale, and quality of federal forest restoration, the Forest Service already has extensive tools and authorities necessary to address and respond to any number of the current land management challenges. The agency has at least 30 categorical exclusions, many of which can be used to address restoration, including those provided in

the Healthy Forest Restoration Act and the 2014 Farm Bill Insect and Disease provisions<sup>2</sup>. Despite the range of tools already available, our observation is that they are used sparingly.

Prior to creating new authorities, we recommend that the Forest Service analyze its current use of these authorities, determine how often each tool is used, and why each tool is not used more often. Findings, guidance, and best practices should then be widely disseminated and given clear encouragement from leadership in the form of a letter from the Chief. If such an analysis results in recommended changes or additions to existing authorities, the agency should clearly articulate the rationale for those changes.

### *Improve training and staff support*

We believe that improved training, coupled with clearer measures for accountability, management and supervision, as well as monitoring and reporting of successes, will lead to improved environmental planning and decision making. Such training can and should be provided internally; and, we also encourage the Forest Service to work with the many partner organizations at its disposal, many of which have extensive knowledge of the legal process and can offer innovative new ways of looking at old problems. Furthermore, external partners also act as liaisons to help keep agency personnel abreast of local social and economic conditions to better inform the planning process.

By tracking and disseminating information on new and successful approaches to planning, average time to completion, and lessons learned from evolving case law, we expect that the Forest Service will gain efficiencies in the planning process. Monitoring and sharing concrete metrics of success, such as reduced planning time, can help speed the adoption of new approaches at the local level.

Exploring new staffing structures may be another avenue to gain efficiencies, such as on those Forests that employ a dedicated writer/editor in the planning process. Similarly, creating new positions, such as a Project Manager with dedicated time to shepherd the project through both the planning and implementation phase, or a position that serves to span traditional agency boundaries and share innovations, might provide greater continuity and tracking of accomplishments and efficiencies.

### *Contracting and partnering*

The Forest Service should consider using external companies, organizations, or agencies to conduct environmental analyses (often referred to as “3rd party NEPA”). For example, the recent A to Z project on the Colville National Forest leveraged external funding to support additional planning.<sup>3</sup> The Siuslaw National Forest has also partnered with local stakeholders to hire and train members of the community

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<sup>2</sup> See the Colville National Forest Second Stick Project: a 250-acre CE focused on fire salvage and post-fire restoration in the footprint of the Stickpin Fire of 2015. The project was developed in 10 days in partnership with the local forest collaborative and is leading to development of forest-wide agreements among environmentalists, timber industry, and land management agencies on how to advance post-fire management following future fire events.

<sup>3</sup> The A to Z project was an innovative partnership between Vaagen Brothers Lumber, a local timber company, and the Forest Service. Cramer Fish Sciences, a 3rd-party NEPA contractor, conducted the analysis and led public engagement in partnership with the local forest collaborative. The new public engagement process led to strong local ownership and buy-in of the project. An outside interest filed suit against the project, but a preliminary injunction was denied, and the collaborative was granted intervenor status in the case. The project has led to nearly 40% of the planning area being treated through mechanical harvest and prescribed burning. This is a tremendous accomplishment and considerably higher than forest management and restoration projects planned by Forest Service staff, which typically treat 10-15% of a planning area on the Colville National Forest.

to conduct data collection, leading to positive outcomes.<sup>4</sup> Likewise, the Good Neighbor Authority offers the opportunity for the Forest Service to utilize state agency staff in the planning process, or to redirect program income from projects back into the environmental planning process in a way that is not possible with existing trust funds or stewardship retained receipts.

Partnerships and engagement with outside regulatory agencies may also help improve and hasten the planning process. As identified above, other laws require consultation with outside agencies - consultation that often comes late in the process. Developing better working relationships with these other agencies and including them earlier in the informal, collaborative process, as well as the formal planning process, may help avoid consultation bottlenecks. Other structural changes to help this process include co-locating with federal regulatory agencies, thus lowering barriers to communication.

### *Landscape scale and programmatic analysis*

We encourage the Forest Service to conduct planning on large, landscape scales whenever possible to benefit from economies of scale. Where social license and current science support broad restoration efforts, large-scale Environmental Impact Statements provide a means to streamline planning by analyzing for an entire landscape and quickly evaluating specific projects as needed. This also allows for analysis of cumulative impacts at a scale that is ecologically appropriate. The Four Forest Restoration Initiative in Arizona is a good example of this approach and should be considered in other landscapes.

Programmatic analysis should be considered for many of the same reasons as landscape scale analysis: a single planning effort can be utilized multiple times and in many locations, allowing for faster project-specific analysis. The Malheur National Forest aquatics programmatic is a good example of this approach to planning, allowing each site-specific project to “tier” under the programmatic planning effort with a fraction of the overall analysis.

Although we recognize that it can be a challenge to create the staff capacity for such efforts, we believe that this approach represents an up-front investment that will result in long term benefits. Targeted programs, such as the Collaborative Forest Landscape Restoration Program (CFLRP) and the Joint Chiefs Landscape Restoration Partnership are good examples of programs designed to accomplish landscape scale planning. Regions may also have the flexibility to direct targeted resources to strategic, one-time planning efforts and should be encouraged to do so.

### *Collaboration and Public Engagement*

Collaboration with stakeholders is increasingly the way in which the Forest Service successfully engages in planning. We recognize that collaboration can take substantial investments of time and energy (and sometimes funding) before it “bears fruit” and consequently results in an increase in the pace, scale, and quality of restoration. Yet committing to this initial investment more often than not improves and expedites project planning and implementation over time. Once collaborative agreement has been reached on a few projects, working within the established “zones of agreement” can speed future planning efforts, as has already been demonstrated on Forests with long-standing collaborative efforts.

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<sup>4</sup> The Siuslaw Institute, a local not-for-profit working with Whole Watershed Restoration Initiative funding, trained and hired local people to work with agency specialists to gather data needed for the NEPA process. This process worked well and reduced both planning time and costs. Through this community-inclusive process, many questions in the mind of the public were answered informally and there were no negative comments as the process went to decision-making. This Project was selected by the White House Council on Environmental Quality (CEQ) as one of five national Pilots for NEPA Innovation

We encourage continued commitment to collaboration through dedicated programs, staff training, and monitoring of successes. Programs designed to help foster commitment to long-term collaboration, such as CFLRP and the Regional Conservation Partnership Program (RCPP), are paving the way for long term improvements in planning and public engagement and should be continued. Additional training in collaboration is important for planners and line officers on all Forests, however, and should be provided by the agency or knowledgeable external partners. Furthermore, collaboration should be incentivized and recognized in performance reviews and bonuses. Finally, given the high up-front costs of collaboration, it is important to monitor the long-term impacts to show the efficiencies that can be gained by taking a collaborative approach, such as improved decision making and better environmental, social, and economic outcomes.

### *Pilot a Shared Stewardship Initiative*

Over the past 5 years there has been an increase in programs and authorities that can bring together partners and land managers across ownership boundaries, provide both conservation and community benefits, and allow for multi-party, multi-year investments, providing both conservation and community benefits. Examples of existing authorities and programs include the Joint Chiefs Landscape Restoration Program, Good Neighbor Authority (GNA), RCPP, Tribal Forest Protection Act (TFPA), Wyden Authority and Stewardship among others. As the number of supporting policies, programs and authorities that enable shared stewardship has grown, agency staff and partners often struggle to navigate this increasing complexity, leading to confusion about what's possible, what's not, ultimately impacting the full range of opportunities.

To overcome this complexity, maximize the use of existing authorities, and demonstrate the power of shared stewardship, we recommend the Forest Service establish shared stewardship pilot landscapes through a multi-year competitive process (a la Joint Chiefs). Proposals could address how staff plan to use GNA, HFRA, Wyden, categorical exclusions, TFPA, forest plans and stewardship authorities as a part of integrated planning for their program of work. Proposals and successful projects should identify how the mechanisms can be leveraged or work together, where there are conflicts in getting those mechanisms to work together, and efficiencies in using mechanisms in advancing integrated restoration outcomes. Selected landscapes could receive either additional funding, capacity, or other incentives to flexibly and creatively leverage existing programs, tools and authorities. A monitoring process to identify and incorporate lessons learned would be essential.

### **Conclusion**

We applaud the Forest Service's effort to create regional "cadres" to continue to engage with outside partners during this process and encourage the agency to treat these efforts as truly collaborative, not mere listening sessions. The Forest Service need not feel alone in trying to resolve these admittedly complex problems; many external partners have extensive experience and involvement with environmental analysis and decision making and possess a wealth of expertise and creative ideas that can help the Forest Service function more effectively and navigate the process with less conflict. By working with partners, we believe the Forest Service is more likely to develop durable, positive outcomes and avoid unnecessary pitfalls. We urge the Forest Service to establish robust engagement with the public throughout this process.

We would like to thank the Forest Service for the opportunity to provide comments on its advanced notice of proposed rulemaking. While we believe that the agency's environmental analysis and decision-making process could be more efficient, and offer some strategies to improve these processes, we strongly encourage the agency to address many of the business model practices that will not require new rules and the processes for comment, approval, and decision-making which can create further delays in getting important work done.

Please don't hesitate to reach out to us if we can be of further assistance in this process.

Sincerely,



Karen Hardigg  
Director, RVCC

*On Behalf of the RVCC Leadership Team*

Heart of the Rockies, MT  
Ecosystem Workforce Program, OR  
Forest Stewards Guild, NM  
Mt Adams Resource Stewards, WA  
Salmon Valley Stewardship, ID

Siuslaw Institute, OR  
Sustainable Northwest, OR  
Sustainable SE Partnership, AK  
Wallowa Resources, OR  
Watershed Research & Training Center, CA