

## **Objection to the Shoshone Land Management Plan Draft Decision**

[submitted March 22, 2014 by the Continental Divide Trail Society (James R. Wolf, Director)]

The Continental Divide Trail Society<sup>1</sup>, in accordance with 36 CFR § 219.50 et seq., hereby submits an objection to the 2014 Revision to the Shoshone National Forest Land Management Plan. This submission relates primarily to issues involving the location of the Continental Divide National Scenic Trail.

The first basis for this objection relates to the Forest's change of the Plan, which now delineates a corridor for the Continental Divide National Scenic Trail (CDNST). The Plan that had been circulated for review contains goals, standards, and guidelines for CDNST Management Area 3.6A<sup>2</sup>, but neither specifies any particular location nor depicts any such location on maps distributed for review. It describes the management area to include an unspecified corridor within 0.5 mile of centerline of the Trail location. The change occurs on page 161, where the words "See Map O" have been added. Map O – another addition – depicts a one-mile corridor and identifies it as MA 3.6A.

The issue regarding the Forest's delineation of one particular corridor for the CDNST arose after the opportunities for formal comment. If this action had been included in the draft plan, with just this one route shown as MA 3.6A on maps in the DEIS, we would have disapproved, as we do today.

Forest Service directives related to the CDNST contemplate that the location of the Trail will be established in the planning process one of two ways – as part of the plan revision process (FSM 2353.44b 1.) or in the course of development of a CDNST unit plan (FSM 2353.44b 2.). Reasonable alternatives would need to be considered in either case.

However, it is improper to delineate the route in the land management plan without having carried out an environmental review of alternative locations. This is especially the case because, in that event, the selected route would not require further consideration in the unit plan. ("A CDNST unit plan must ... except where delineated in the applicable land management plan, establish a management area for the segments of the CDNST that traverse that unit ..." FSM 2353.44b 2.b.)

This may give rise to a "Catch-22" situation: we (and other interested persons) have not been offered the chance to participate in the routing of the Trail in accordance with NEPA; and when a unit plan is prepared, we may be denied the opportunity to raise this concern inasmuch as the route had already been delineated in the land management plan. That would not be faithful to the intent of the directive, nor would it "provide for high-quality scenic, primitive hiking and horseback riding opportunities," in accordance with the 2009 Comprehensive Plan .

Route selection may still be carried out in the management plan with evaluation in a supplemental environmental impact statement. Otherwise, this task should be included in a unit plan.<sup>3</sup>

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<sup>1</sup> The mission of the Continental Divide Trail Society, established in 1978, is to help in the planning, development, and maintenance of the CDNST as a silent trail and to assist users plan and enjoy their experiences along the route. We have approximately 250 members, from all parts of the United States and several countries overseas. Members of our Society hike the CDNST, including portions within the Shoshone National Forest, every year.

<sup>2</sup> Draft land management plan, p. 173.

<sup>3</sup> The relocation of particular segments of the CDNST is often reviewed as a project apart from the preparation of either the land management plan or a unit plan. See 2009 Comprehensive Plan, III.F and IV.B.1,2. For example, the Bridger-Teton National Forest route in the Leeds Creek area south of Sheridan Pass is currently under review as a site-specific project. The delineation there in a project plan – not unit plan – review would avoid the Catch-22 concern. In the current situation, however, which involves direction for all segments of the CDNST within the Shoshone National Forest in conjunction with the revision of the land management plan, development of a supplemental EIS or unit plan pursuant to FSM 2353.44b would be the proper course.

A further reason that the selection of the existing route (as shown on Map O) should be set aside for failure to consider alternatives is that the factors relied upon in the 1998 environmental assessment are no longer sufficient in view of changed circumstances (including grizzly bear recovery and the adoption of new policies as set out in the 2009 Comprehensive Plan for the CDNST and the adoption of FSM 2353.44b).<sup>4</sup>

The second basis of our objection is the ambiguity that results from having multiple management areas covering the same portions of the Forest. This conflict is evident from a comparison of maps in the FEIS. Map O is labeled as depicting the CDNST (MA 3.6A). The corridor shown on Map O as the CDNST does not appear on Map 79 (Alternative G, pages 6 and 8). Instead, the lands within that corridor are assigned to several prescriptions, including MA 5.1 (managed forest and rangeland). The goals and direction for MA 3.6A and MA 5.1 (as well as 3.3, 3.5, and 4.2) are quite different, for example with respect to suitability for timber production.

There is no assurance that MA 3.6A is meant to be the governing prescription where this overlap occurs. After all, under Alternative G, no acres have been allocated for management as MA 3.6A (FEIS, Appendix B, Table 2); no scenic integrity objectives have been identified for MA 3.6A (*Id.*, Table 20); and no ROS objectives have been assigned (*Id.*, Table 22). Even if MA 3.6A prescriptions are intended to govern, the absence of this information on the Alternative G maps may lead administrators to overlook it when making management decisions. To eliminate the ambiguity, the relevant maps for Alternative G must be withdrawn and replaced by maps that mark lands within the CDNST corridor as MA 3.6A.<sup>5</sup> (The FEIS should also be corrected, both in text and tables, so as to incorporate the missing information.)

The third basis of our objection is that the plan does not assure that the Forest will conduct a timely review of alternative locations, including alternatives that would lead to further progress toward the goal of removing the CDNST from roads.

The issue of CDNST location has long been in the forefront of the concerns we have provided to the Forest. Our scoping comments recommended that a particular location should be included in the Plan, but it was our expectation that this would be based upon an examination of alternatives so that an approved location “can be shown in the draft environmental impact statement.” We indicated our desire “to work with you to identify and evaluate alternate routes in the area.”<sup>6</sup>

We continue to believe that a route selection, based upon a careful consideration of reasonable alternatives with public participation in accordance with the provisions of NEPA, might have provided a sound basis for delineation of the CDNST route in the management plan. The draft plan and DEIS, as noted above, did not identify any specific location for the CDNST management area. It did, however, show the route of several alternatives on Map 41. In the DEIS, two of these alternatives were described as “proposed re-routes that have had cultural resource and botanical surveys completed.” The

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<sup>4</sup> The inadequacy of the 1998 environmental assessment as a basis for current site selection is reviewed below in our discussion of the preliminary need to change the existing plan

<sup>5</sup> If the Forest Service does not select Alternative G for implementation, the maps for the selected alternative should also be redrawn to depict Management Area 3.6A. (As stated in connection with the third basis of our objection, we believe all the maps shown on Map 41 should be managed as the CDNST until a selection has been made by way of a supplemental environmental impact statement or unit plan.)

<sup>6</sup> Letter dated November 17, 2010, appended in Attachment A. We provided more specific suggestions, including locations and scenic and historic values, in IMPROVEMENTS IN THE LOCATION OF THE TRAIL, in our comment letter on the proposed draft plan, dated January 30, 2012, also appended in Attachment A.

relocation processes were described as “ongoing [and] considered as a reasonably foreseeable future action” (DEIS, p. 506).

Our response<sup>7</sup> again called for the identification of specific trail segments. We indicated our desire for these determinations to be made as part of the land management plan itself, but otherwise “they should be made as soon as possible by the consideration and adoption of a unit plan.” We proposed that all of the locations drawn on Map 41 should be included within Management Area 3.6A; upon selection of a particular route in accordance with NEPA, the non-selected alternatives would revert to the prescription for their surrounding areas. This would serve to protect the national scenic trail corridor to the degree necessary to ensure that the values for which the Trail was established remain intact.<sup>8</sup>

Had the Plan been revised to include all the Map 41 corridors in Management Area 3.6A, we would have less reason to object. The Forest would then proceed to select a specific route with appropriate environmental review, either by way of a supplemental environmental impact statement directed to the route selection issue or by way of the consideration and adoption of a unit plan, which also would require environmental review.

We recognized that the Forest was probably not inclined to proceed with this kind of review before finalizing its land management plan, so we noted our “anticipation” that the location of the Trail would remain unidentified. (We did not expect that the Forest would choose the unsatisfactory and largely roaded current route as the sole corridor for the CDNST.) In the absence of a NEPA review of prospective CDNST locations, we were concerned that management in accordance with any of the alternatives (A-F in the DEIS) would not in fact serve the nature and purposes of the Trail.

Although we acquiesced in the deferral of route selection, we did so in recognition of the provisions of FSM 2353.44b, cited above. This would afford an opportunity to examine alternative routings and delineate a route, as part of a unit plan, that would serve the nature and purposes of the Trail.

We were concerned, however, that other priorities might result in continued delay in achieving the goal to remove the CDNST route from roads and to enhance the scenic setting. Accordingly, we called for the record of decision to include a directive to initiate the preparation of a unit plan without delay. Back in 1998, the Forest observed that “additional field reconnaissance is needed to find the best place for new trail segments. Construction of new trail segments will depend on availability of funds, and it may be quite a few years before these are completed.”<sup>9</sup> The map accompanying the decision, consistent with this reservation, bears the legend “Final route to be determined.” But when?

We acknowledge the Forest’s intention at some point to address this concern. For example at page 50 of the FEIS it advises that “changes to the CDNST are considered site-specific projects and will be addressed in project planning.” (FEIS, p.50) Also, the Forest notes that two proposed re-routes have had cultural resource and botanical surveys completed; in developing a unit plan, alternatives (such as these) “will be analyzed by the scenery management system and recreation opportunity spectrum proposed by each alternative as they relate to the CDNST.” (FEIS, pp. 494-495). Other environmental factors will of course also need to be considered, including policies for grizzly bear recovery that have changed over the past several years.

CDNST relocation planning processes are said to be ongoing, so that “they were considered a reasonably foreseeable future action.” FEIS, p.520). After 16 years of inaction, that is woefully inadequate. We object to the lack of a firm commitment to commence an evaluation of alternative locations for the

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<sup>7</sup> Letter dated November 21, 2012, appended in Attachment A.

<sup>8</sup> Comment letter, Nov. 21, 2012, p. 4 (citing Executive Order 13195, January 18, 2011).

<sup>9</sup> Record of Decision, Final Route Selection, CDNST, signed by Rebecca Aus, Forest Supervisor, Feb. 27, 1998, p.8.

CDNST as soon as the revised land management plan goes into effect. Unless the Forest addresses this concern with an SEIS, the most orderly way to proceed would be to begin scoping for a unit plan (as expressed as a “next step” in our November 2012 comments). Further, as we stated in those comments, “the Forest Service should take appropriate measures to ensure that any projects approved before the CDNST unit plan is adopted will be consistent with the nature and purposes of the Trail, including the routes appearing on Map 41 as well as the existing route.” A timetable should be included as well.

In developing a proposed plan revision, the responsible official must review relevant information to identify a preliminary need to change the existing plan and to inform the development of plan components and other plan content.<sup>10</sup> Clearly, the value of considering alternative routes has been recognized. Unfortunately, however, in the absence of direction to schedule this task for prompt attention, it does not adequately “inform the development of plan components.”

Important information giving rise to at least a preliminary need to change the existing plan with respect to CDNST location include:

- Changed policies and circumstances with respect to grizzly bear recovery and management. In 1998, when the current route was selected, the Forest was concerned that “routes on the west side of the divide would cross 'Situation I' grizzly bear habitat, where habitat maintenance and bear-human conflict minimization receive the highest priority.” (EA, p.9; ROD p.7) These days, there is a Primary Conservation Area for grizzly bear recovery, but it includes substantial areas both east and west of the Continental Divide, with no differentiation between them.<sup>11</sup>
- The completion of cultural resource and botanical surveys for two proposed re-routes.
- The passage of 16 years since the interim route was selected, with a recognition at that time of a “need” for additional field reconnaissance and the map legend “Final route not determined.”
- Adoption of the new CDNST Comprehensive Plan (2009), along with issuance of FSM 2355.44b, with their emphasis upon locating the Trail off of roads.

In summary, the Shoshone National Forest should proceed without delay to delineate the route of the Continental Divide National Scenic Trail in a manner that provides an evaluation of alternative locations in accordance with applicable direction (including the National Trails System Act, the National Environmental Policy Act, the 2009 Comprehensive Plan for the CDNST, and FSM 2353.44b 2). The corridor depicted on Map O may need to continue in use on a temporary basis; however, the settings of the Map 41 alternatives should be managed to preserve scenic qualities and ROS classifications satisfying the desired conditions of MA 3.6A. Other alternatives may also merit consideration in light of comments submitted in response to a scoping request.

As stated in the Comprehensive Plan, the Forest should locate a CDNST segment, where possible, in primitive or semi-primitive non-motorized ROS classes – on a road only where it is primitive and offers recreational opportunities comparable to those provided by a trail with a Designed Use of Pack and Saddle Stock; provided that the CDNST may have to be located on or across motorized routes because of the inability to locate the trail elsewhere. Chapter IV.B.1.b. The roaded route selected in the

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<sup>10</sup> 36 CFR 219.7(c)(2)(i).

<sup>11</sup> “Upon implementation of this Conservation Strategy, management using a recovery zone line and grizzly bear Management Situations ... will no longer be necessary.” Fish and Wildlife Service, Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area, p.14. (See 72 Fed.Reg. 11376, March 13, 2007 for link.) An Associated Press notice on February 27, 2014 reports that “a government-sponsored research team has concluded there are no signs of decline among Yellowstone’s grizzly bears as officials consider lifting the animals’ federal protections ... Members of the Interagency Grizzly Bear Study team say in a new study that data collected on the threatened bruins over the past several decades contradict claims that the animals could be in serious trouble.”

management plan is far from primitive, and surely the Forest is able to locate the trail elsewhere in a non-motorized ROS class.

The discussion below provides additional detail as to how this might be accomplished.

#### Compliance with 36 CFR 219.54(c)

1. The objector is James R. Wolf, Director, Continental Divide Trail Society, 3704 N. Charles St. (#601), Baltimore MD 21218. Telephone is 410/235-9610. E-mail address is jim@cdtsociety.org.
2. Signature will be provided upon request.
3. Multiple names are not listed.
4. The name of the documents being objected to is: Land Management Plan (Plan), Final Environmental Impact Statement (FEIS) and draft Record of Decision (dROD) for the Shoshone National Forest plan revision. The responsible official is Daniel J. Jiron, Regional Forester, Rocky Mountain Region.
5. The parts of the plan revision to which the objection applies<sup>12</sup> are:
  - Change from proposed plan that seeks to define the existing roaded CDNST route, and only that route, as Management Area 3.6A.
  - Conflict between text identifying the existing CDNST route as MA 3.6A and maps for Alternative G that do not depict MA 3.6A.
  - Absence of clear direction to initiate the preparation of a unit plan (or supplemental environmental impact statement) that will consider alternative locations for the CDNST in accordance with the National Trails System Act and NEPA.
  - Failure to address the objector's comments in the comment analysis.
6. Explanation of the objection and suggestions for improvement.

Concise statement. CDTs objects, first, to the plan's failure to evaluate alternative locations for the CDNST, particularly in the light of new or revised policies that have been published since the existing route was selected in 1998. Second, CDTs objects to the omission of any direction to prepare a supplemental environmental impact statement or unit plan, either of which would include *inter alia* such an evaluation, and delineate a route, in a timely fashion.

How the plan is inconsistent with law, regulation or policy. The plan is inconsistent with the National Trails System Act (16 U.S.C. §§ 1241 et seq.) and policies established thereunder.

This legislation provides the framework for designating and managing national scenic trails, to be "so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass." 16 U.S.C. §1242 (a)(2). In achieving these objectives, the responsible Secretary [Secretary of Agriculture in this case] is directed to prepare a comprehensive plan for the management and use of the trail. 16 U.S.C. §1244 (f). A comprehensive plan has been duly adopted. 74 Fed.Reg. 51116, Oct. 5, 2009. (Additional direction is provided in FSM 2353.44b.)

The comprehensive plan describes the nature and purposes of the CDNST as follows:

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<sup>12</sup> See Additional Notes, below, regarding our assumptions with respect to management policies for MA 3.6A.

The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.

To provide context for this statement, it refers to various documents, including the 1976 Study Report that views the Trail as “a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails” and a policy memorandum expressing “the intent of the Forest Service that the CDNST will be for non-motorized recreation.”

The process for locating CDNST segments includes the preparation of a location report that is to include not only the location of the travel route, but (among other things) the management direction for the CDNST corridor “as described in the applicable land and resource management plans and CDNST related site-specific plans.” Chapter III.F.2.b. (A location report is especially needed in this instance inasmuch as the Chief of the Forest Service has never formally located the segments described in the 1998 EA, and the Forest Supervisor is not authorized to do so. Chapter III.F.1.b.)

As noted above, whether the location is selected in the management plan or in a site-specific plan, it should be situated in primitive or semi-primitive non-motorized classes, located on a road only where it is primitive and offers recreational opportunities comparable to those provided by a trail with a Designed Use of Pack and Saddle Stock.

The CDNST may be relocated after initial route selection to preserve the purposes for which the CDNST was established. Chapter IV.B.a.(3). In general, this means that the Trail should be located and managed for pedestrian and horse traffic. The plan nevertheless goes on to justify the continued use of existing roads “in order to build as little new trails as possible and avoid sensitive wildlife habitat.”<sup>13</sup> But how does reducing new trail construction promote the nature and purposes of the CDNST? Clearly, building new trails to get off roads is exactly what should be done. The “sensitive wildlife habitat” issue refers to the “Situation I” grizzly bear recovery area that has been eliminated from the current Fish and Wildlife Service strategy and is therefore no longer relevant.

The roaded route currently followed by CDNST users does not “provide for high-quality scenic, primitive hiking and horseback riding opportunities” and indefinite delay in relocation does not promote the nature and purposes of the Trail. While the use of motorized vehicles may be permitted in some cases when this will not substantially interfere with the nature and purposes of the trail, this is subject to the general rule that “to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which [the Trail was] established.” 16 U.S.C. § 1246(c). For at least 16 years (and especially since publication of the 2009 Comprehensive Plan), the Forest has been aware that its *de facto* route is incompatible with these purposes. It has not made efforts “to the extent practicable” during that time, and it is not doing so now. In this respect, the land management plan is inconsistent with the National Trails System Act and the policies for its implementation.

The plan regards relocation processes merely as “reasonably foreseeable future actions;” consistent with the objectives of the Trails Act, they should be scheduled, instead, for completion as expeditiously as can be accomplished. While those processes are underway, the Forest should “maintain the existing recreation opportunities”<sup>14</sup> and scenic values associated with the alternatives shown on Map 41 (as a minimum) so as not to impair their suitability for relocation of the Trail.

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<sup>13</sup> Land management plan, p. 161

<sup>14</sup> Comprehensive Plan, IV.B.5 a.(4).

The plan is inconsistent with the National Forest Management Act<sup>15</sup> in that:

- The responsible official has not identified a preliminary need to change the existing plan, with respect to the location of the CDNST, in the light of relevant information.<sup>16</sup>
- With respect to potential corridors for the CDNST, including those identified on Map 41, the plan does not insure consideration of aspects of renewable resource management so as to provide for outdoor recreation. Each of those corridors should be classified as MA 3.6A pending delineation pursuant to a supplemental EIS or unit plan. 16 U.S.C. § 1600(3).
- Scenic values of the CDNST should be protected by limiting activities in other management areas that could diminish the recreation experience along the Trail. The maps for Alternative G, along with the tables in Appendix B, need to be revised to include MA 3.6A. 16 U.S.C. § 1604 (g)(3)(A).
- Unless the maps for Alternative G are replaced, lands shown as being in MA 5.1 as well as MA 3.6A might be used for timber production even though that would not be compatible with the achievement of desired conditions for the CDNST. Even if this conflict were eliminated, timber production outside the CDNST corridor may still not be compatible with the achievement of such desired conditions because of degradation of scenic quality as observed by Trail users.
- For these reasons, the plan fails to “provide for ... appropriate management of ... designated areas” [such as a national scenic trail]. 36 CFR § 219.10(b)(vi).

The plan is inconsistent with the National Environmental Policy Act insofar as it fails to provide for consideration of alternative locations for the CDNST in the plan or otherwise in a timely fashion. It is also inconsistent with NEPA because of a failure to respond to timely substantive comments submitted by our Society.<sup>17</sup>

The plan is inconsistent with Executive Order 13195, Trails for America in the 21<sup>st</sup> Century (January 18, 2011), which directs Federal agencies to protect the trail corridors [including those shown on Map 41] associated with national scenic trails to the degrees necessary to ensure that the values for which each trail was established remain intact.

The plan is inconsistent with the Administrative Procedure Act (5 U.S.C. § 706 (2)(A)) because reliance upon the inappropriate and outdated factors it cites for locating the Trail (build as little new trails as possible and avoid sensitive wildlife habitat) is arbitrary and capricious. Moreover, even if there had been no change in grizzly bear recovery policy, the selection of the existing route would still be arbitrary and capricious because at least the routes depicted on Map 41, which have been surveyed and not excluded from consideration, are entirely on or *east* of the Continental Divide and not within 'Situation I' grizzly bear habitat.

How the proposed plan decision may be improved. The best course would be to initiate the development of a supplemental environmental impact statement that would be devoted to the evaluation of alternative routes and the establishment of a management area consisting of a corridor of at least one mile in width along its length. While such a review of alternative routes is in progress, corridors being considered should be managed so as to conserve their scenic and other qualities. This process would include location report determinations as specified in the Comprehensive Plan. (Chapter

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<sup>15</sup> 16 U.S.C. § 1600 (note), amending the Forest and Rangeland Renewable Resources Planning Act of 1974.

<sup>16</sup> 36 CFR § 219.7(c)(2)(i). Also, see discussion above, following footnote 9 – in particular, the bulleted items dealing with the need to change the existing plan.

<sup>17</sup> 42 U.S.C. §§ 4321 et seq. and regulations of the Council on Environmental Quality, 40 CFR Parts 1500-1508 [§ 1502.14 (a) (reasonable alternatives), § 1503.4 (response to comments)]. See Attachment B. Council on Environmental Quality, Forty Questions [46 Fed. Reg. 18026 (March 23, 1981, as amended), No. 29.]

III.F.2.b.(2)) A unit plan would still be needed, but its mandatory findings are essentially identical to those for the location report. (Compare Comprehensive Plan Chapter III.F.2.b(2) with FSM 2353.44b.2.)

The other option is to proceed with adoption of the published plan, with modifications to assure that timely action will be taken to prepare a unit plan that would include selection of a route that respects and implements the nature and purposes of the CDNST. Compliance with NEPA would presumably necessitate the preparation of an environmental impact statement in support of the unit plan.<sup>18</sup>

One essential aspect of this improvement is to incorporate an objective<sup>19</sup> in the description of Management 3.6A that would specify a desired rate of progress toward the desired condition of removing the Trail from roads. We propose the following:

Within three years after this plan revision goes into effect, delineate a route for the Trail.

Within five years after this plan revision goes into effect, complete the construction of the Trail along the delineated route.<sup>20</sup>

In addition, whether the route selection is to be carried out under a supplemental EIS or unit plan, the decision notice should explain the purpose of the objective and the reasons for inserting it.

Also, as discussed above, the maps for Alternative G must be revised to include MA 3.6A, which we believe should depict at least all the routes shown on Map 41.<sup>21</sup> The FEIS should be revised to include MA 3.6A in the tables in Appendix B.

#### 7. Link between prior substantive formal comments and the objection.

In part, this objection concerns an issue – the delineation of a particular corridor for the CDNST without analysis of alternative locations – that arose after the opportunities for formal comment.

More broadly, however, the issue raised in our formal comments (as discussed at length above) can be summarized as follows:

- The nature and purposes of the Continental Divide National Scenic Trail should be observed in selecting its location.<sup>22</sup>
- The existing route, largely on roads, does not meet the desired criteria for selecting the Trail's location.<sup>23</sup>
- The plan should be improved, in a timely fashion, so as to delineate the route in the light of the nature and purposes of the Trail and the procedures set out in NEPA for environmental review.<sup>24</sup>

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<sup>18</sup> See Additional Notes, below, which posits that the published plan might need to be, and would be, modified as necessary to assure that MA 3.6A will be managed in a manner consistent with CDNST policies (Comprehensive Plan, FSM 2353.44b).

<sup>19</sup> "An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets." 36 C.F.R. § 219.7(e)(1).

<sup>20</sup> The Society's comments on the Proposed Draft Plan, January 30, 2012, suggested inclusion of an objective to: "Complete the CDNST travel route through the Management Area by [year, perhaps 2017]."

<sup>21</sup> Other routing proposals, such as an alignment south from Togwotee Pass to Sheridan Pass via Pink Creek and Moccasin Basin, might also be included. Comment letter, Nov 21, 2012, footnote 4 [footnote 30 in Attachment A).

<sup>22</sup> "There is no assurance that management under the approved MAs will in fact serve the nature and purposes of the CDNST." Comment letter, Nov. 21, 2012.

<sup>23</sup> "... the goal is clear and it is relocate the Trail off motorized roads." *Ibid.*

- The decision should include direction to initiate such a review promptly.<sup>25</sup>

This letter of objection includes certain observations that were not included in our formal comments, particularly as to (1) the revision of grizzly bear recovery policy and its relationship to the selection of the current route in 1998 and (2) the potential legal consequence (“Catch-22”) of delineating a route in the land management plan upon consideration of a route in the unit plan. Both of these became matters of concern when the 1998 route was identified as the selected location of MA 3.6A; this arose after the opportunities for formal comment.

#### Additional Notes

Our letters of January 30, 2012 and November 21, 2012 discussed the Forest’s approach (goals, standards, and guidelines, etc.) pertaining to management of the CDNST. We have not addressed these issues in this letter in detail except as they pertain to the location for the Trail.

We were particularly concerned about the impact of development outside MA 3.6A (beyond the foreground) upon the scenic quality enjoyed by users of the Trail and the kind of experience associated with travel in a primitive or semi-primitive nonmotorized setting. The revised forest plan recognizes that “alternatives will be analyzed by the scenery management system and recreation opportunity spectrum proposed by each alternative as they relate to the CDNST.”<sup>26</sup> If, as we have proposed in this letter, alternatives for CDT location are assessed in a timely fashion in a supplemental EIS or in the development of a unit plan, we expect to have an opportunity to raise these issues as they relate to the selected route. We have therefore decided to omit them from review in the objection process.

Similarly, our comments addressed several topics (such as bicycle use and competitive events) that should be reviewed and modified in order to follow the direction of the Comprehensive Plan and FSM more closely. We believe that we can raise these issues as the Forest prepares a unit plan, and so do not include them in this objection.

We assume that if in the course of preparation of a unit plan (or scenery/ROS review), it is determined that the application of the Comprehensive Plan or FSM 2353.44b would be inconsistent with the approved forest management plan, then the management plan itself would be amended to reconcile the documents. If our assumption is unfounded, then the Forest should proceed now to direct the preparation of a supplemental environmental statement that would ensure that the applicable policies with respect to Continental Divide National Scenic Trail management will be followed. The preparation of a SEIS for this purpose would expressly anticipate that the plan now being considered might be amended as needed .

Our focus here has been directed to the removal of the CDNST from its current roaded setting, which in no way can be described as providing “high-quality scenic, primitive hiking and pack and saddle livestock opportunities.” In our judgment, that is the most critical issue, and it needs to be attended to with all deliberate speed.

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<sup>24</sup> “... the Forest Service needs to include in its record of decision a directive to initiate without delay the preparation of a unit plan that will define the location of the CDNST corridor and provide the necessary prescriptions for its management.” “The unit planning process will provide the opportunity to formalize a particular route as the location of the Trail. Some alternative locations are depicted on Map 41; we understand that these routes reflect recent field investigations ... that would provide the necessary information for an environmental assessment in support of the MA 3.6A corridor.” Comment letter, Nov. 21, 2012. NEPA review is also addressed specifically in the scoping comments: “matters related to location ... should be resolved at an early date ... so that an approved location (and management area) can be shown in the draft environmental statement.”

<sup>25</sup> *Ibid.*

<sup>26</sup> Plan, p. 495.

## Conclusion

Although we have serious reservations about the land management plan revision in its current form, we imagine that our goals may in fact be quite similar in substance to the actual intentions of the Shoshone National Forest. On that basis, we would welcome the opportunity to explore with you (with observation by the public) measures that might contribute to the nature and purposes of the Trail while satisfying your concerns as well as ours. Do not hesitate to contact us at any time by phone, e-mail, or otherwise.

Sincerely yours,

/s/ James R. Wolf

James R. Wolf, Director  
Continental Divide Trail Society

## ATTACHMENT A - Comments Submitted by Continental Divide Trail Society

### 1. Scoping Comments

e-mailed on Nov. 17, 2010 to Shoshone\_forestplan@fs.fed.us

The Continental Divide Trail Society appreciates your invitation to submit comments on the proposed revision of the Shoshone National Forest Land and Resource Management Plan (75 Fed.Reg. 58458, Sept. 24, 2010).

Our primary focus relates to the Continental Divide National Scenic Trail. The matters of interest to us fall under Revision Topic 1 (Recreation uses and opportunities) and Revision Topic 2 (Special areas and designations).

The revised plan should recognize the Continental Divide National Scenic Trail as a special area – or, as a management area requiring particularized attention -- because of its designation by the National Trails System Act and because of the special management objectives and prescriptions set out in the law.

Specific guidance is provided in the Comprehensive Plan for the Continental Divide National Scenic Trail, 74 Fed.Reg. 51116, Oct. 5, 2009, and in FSM Chapter 2350.

Unlike other trails administered by the Forest, the agency is to “administer the CDNST consistent with the nature and purposes for which this National Scenic Trail was established. The CDNST was established by an Act of Congress on November 10, 1976 (16 USC 1244(a)). The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.” 74 Fed.Reg. 51124, emphasis added)

Implementation of the Comprehensive Plan, including this statement of nature and purposes, is addressed in FSM 2353.44b. Among the procedures to be followed is the direction that a “CDNST unit plan must be developed for each administrative unit through which the CDNST passes.” In view of the Trail’s special status, the unit plan should be developed and incorporated in the revised forest management plan. The unit plan must, among other things:

Identify and display the segments of the CDNST that traverse that unit.

Except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293) and except where delineated in the applicable land management plan, establish a management area for the segments of the CDNST that traverse that unit that is broad enough to protect natural, scenic, historic, and cultural features (FSH 1909.12) [emphasis added].

Although certain site-specific determinations (including mountain bike use) might be deferred to “subsequent project specific decision making,” the forest management plan should clearly reflect not only the nature and purposes of the CDNST, but also the specific guidelines related to motor vehicle use articulated in the Comprehensive Plan (74 Fed.Reg. 51125 (Motor Vehicle Use) and the Forest Service Manual).

A management area specifically for the CDNST should be defined in the plan, with provisions designed to reflect the nature and purposes of the Trail. (The width of this area may vary depending upon site-specific conditions. Remote activities - such as energy developments miles from the treadway - may have scenic and other impacts upon the Trail that need careful examination and review, but such distant locations would not be included in the geographic bounds of the CDNST management area as we perceive it.)

As stated in the Comprehensive Plan, the CDNST is to be managed “to provide high-quality scenic, primitive hiking and pack and saddle opportunities.” All uses in the CDNST unit should conform to that objective. Motorized and mechanized activities must not be allowed to deny such opportunities to hikers or horseback riders -- on grounds either of aesthetics (solitude, quiet, nature study, etc.) or safety (encounters with speedy or noisy vehicles). Impacts of such activities upon the biota and soil need to be assessed in relation to the nature and purposes of the Trail, and avoided or mitigated as appropriate.

If at all possible, matters related to location of the Trail on the ground should be resolved at an early date, in consultation with the Bridger-Teton National Forest, so that an approved location (and management area) can be shown in the draft environmental impact statement. The segment between Brooks Lake and Sheridan Pass requires priority attention. We would be pleased to work with you to identify and evaluate alternate routes in this area. (Based upon our field observations and studies to date, we would support an alignment over spectacular country to Sublette Pass to Togwotee Pass, then south via Pink Creek and Moccasin Basin, continuing along the general location of the Continental Divide to Sheridan Pass.)

Our members enjoy their travels along the CDNST in the Shoshone National Forest. We hope to work with you and them to enhance their experience under the revised forest management plan.

We would welcome the opportunity to review our concerns with you.

We can be reached at 410/235-9610 or by email at [mail@cdtsociety.org](mailto:mail@cdtsociety.org).

Continental Divide Trail Society, 3704 N, Charles St. (#601), Baltimore MD 21218

James R. Wolf, Director

## 2. Comments on proposed draft plan

Submitted on January 30, 2012. [See Document#00705 Wolf, Continental Divide Trail Society 01/30/2012 for original formatting.]

Forest Plan Revision  
Attn: Carrie Christman  
808 Meadow Lane Avenue  
Cody, WY 82414

Re: Proposed Draft Plan –Shoshone National Forest

Dear Ms. Christman:

The Continental Divide Trail Society has been devoted, since its establishment in 1978, to locating and developing the Continental Divide National Scenic Trail (CDNST) so as to provide the “maximum outdoor recreation potential” envisaged by the National Trails System Act (“the Act,” 16 U.S.C. 1241 et

seq., as amended). With an active membership from all parts of the country, we strive for a “silent trail” that will provide a natural and beautiful experience for backpackers and horsemen. Many members of our Society backpack along the CDNST in the Shoshone National Forest every year. It is in our interest, and theirs, that the Trail should offer the experience contemplated by the Act.

We have reviewed the Proposed Forest Plan for the Shoshone National Forest, focusing specifically on those provisions relating to the CDNST. Our comments fall in two categories (1) policies relating to implementation of the 2009 Comprehensive Plan for the CDNST and (2) improvements in the location of the Trail.

## IMPLEMENTATION OF THE 2009 COMPREHENSIVE PLAN

### Background

The legislation, when first enacted in 1968, identified a proposed Continental Divide Trail as one of 14 potential national scenic trails to be studied to determine the feasibility and desirability of designating them as addition to the national trails system. A study of the proposed CDT was thereupon undertaken by the Bureau of Outdoor Recreation, which in 1976 issued a positive recommendation. According to the BOR Study Report, the Trail would offer spectacular scenery and a greater diversity of physical and natural qualities than found on any other extended trail, on lands where the environment remains relatively unaltered; scenic trail designation would assure proper and sensitive standards, with sufficient controls to assure that the values of the trail are not jeopardized.

Upon designation of the CDNST in 1978, the Secretary of Agriculture, in consultation with the Secretary of the Interior, prepared and in 1985 issued a Comprehensive Plan for management of the Trail. An amendment to the Plan, published in the Federal Register on October 5, 2009, 74 FR 51116, set forth revised direction to guide the development and management of the CDNST. Contemporaneously, and consistent with that notice, the 2009 CDNST Comprehensive Plan replaced the 1985 CDNST Comprehensive Plan. (“Comprehensive Plan Amendment,” p.1).

Based upon the history and text of the Act, the 2009 Comprehensive Plan states that “the nature and purposes of the CDNST are to provide for high quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.” (p.8) Implementation of the Comprehensive Plan, including this statement of nature and purposes, is addressed in FSM 2353.44b. Among other things, this directive requires that the land management plan must “establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features.” The LMP must also prescribe desired conditions, objectives, standards and guidelines for the CDNST and establish a monitoring program.

Although certain site-specific determinations (including mountain bike use) might be deferred to “subsequent project specific decision making,” the forest management plan should clearly reflect not only the nature and purposes of the CDNST, but also the applicable guidelines related to motor vehicle use.

### Discussion

The starting point is the direction to establish a management area for the CDNST. Page 108 lists, in Management Category 3, “3.7A Continental Divide National Scenic Trail.” We assume that this was intended to be Management Area “3.6,” which is described at pp. 156-160.

Unfortunately, the maps in the draft Forest plan do not include a display of MA 3.6. This should be remedied, with the inclusion of the alternatives that we describe later in this letter. The MA should be depicted as having sufficient breadth to protect the features listed in FSM 2353.44b. (A corridor extending a half-mile on either side of the centerline may be adequate, but needs to be reviewed to determine whether those features will in fact be protected.)

The Theme of Management Area 3.6 is satisfactory.

Consistent with our view of improved locations, we would revise the Setting section as follows: The Trail was established by Congress through the National Parks and Recreation Act of 1978, which amended the National Trails System Act of 1968.

The Trail generally follows the corridor described in the Bureau of Outdoor Recreation's 1976 Study Report and the 1977 Final Environmental Statement [citations]. A 50-mile corridor was identified on either side of the continental divide in which to locate the final route. On the Shoshone, a specific route was defined in a 1998 Decision Notice and Finding of No Significant Impact [citation]. However, this notice mentioned areas in which additional field reconnaissance would be needed to locate the trail. The Trail, as finally located, will be managed for pedestrian and horse traffic. This management area includes the corridor within 0.5 mile on either side of the centerline of the Trail location. The landscape has a predominantly natural appearance that may have subtle modifications that would be noticed, but draw the attention of someone traveling through the area.

The "Desired conditions" section is satisfactory.

The Goal for Management Area 3.6 (Table 135) needs to be revised as follows to express more completely the "nature and purposes" clause of the Comprehensive Plan: Provide for high quality scenic, primitive hiking and horseback riding opportunities and conserve natural, historic, and cultural resources along the CDNST corridor.

The Objective for Management Area 3.6 (Table 136) should include the following additional item: Complete the CDNST travel route through the Management Area by [year, perhaps 2017]

We understand that generic standards and guidelines for CDNST management areas are under study. They should be reviewed and incorporated as appropriate. Elements of special importance include visual quality management, motorized and mechanical vehicle use, and special uses. Regarding special uses, the standards should be phrased to disallow them unless they "will not substantially interfere with the nature and purposes of the CDNST." In particular, competitive races can readily overwhelm the experience of solitude and quiet contemplation; once authorized, such events would be extremely difficult to regulate or disallow.

Chapter 1 (Forest direction) has very little to say about the CDNST. As a minimum, the "Other referenced guidance" in the Roads and Trails section (p.101) should be revised to include a reference to "Continental Divide National Scenic Trail Comprehensive Plan (USDA, 2009)." In Chapter 2 (Management area direction), the Forest products table (p.114) should be revised to indicate that MA 3.6 is among the lands generally not suitable for timber production because of management area direction. Table 95 (General suitability for wheeled vehicular recreation and motorized travel route construction) on page 119 does not reflect applicable limitations. For both "Wheeled motorized on designated routes" and "Over-snow motorized," add the clause "(where consistent with the CDNST Comprehensive Plan)." Designated roads may be utilized if constructed prior to November 10, 1978. Otherwise, there must be a determination that the motorized use will not substantially interfere with the nature and purposes of the CDNST and the vehicle class and width were allowed on that segment prior to November 10, 1978. (Comprehensive Plan, p. 19). A related concern involves Table 139 (p.159) regarding ROS standards for MA 3.6. In a semi-primitive motorized, the standards should be "No new roads may be located in the corridor" because any such road would conflict with the cited provisions of the Comprehensive Plan.

We disagree with the management approach (p.160), in the event of conflicts, "generally ... to move the Trail route to a location that is non-motorized." That would be an acceptable course if the new location offers equivalent or superior scenic, historic, natural, or cultural values. Where a change in Trail location would depreciate the qualities of the CDNST, the better course would be either to relocate the motorized route or reclassify the route as nonmotorized.

## IMPROVEMENTS IN THE LOCATION OF THE TRAIL

Most of the CDNST corridor was clearly defined in the 1998 decision. The decision notice noted, however, that in certain areas, “additional field reconnaissance is needed to find the best place for new trail segments.” Among the areas so identified are “near Togwotee Pass” and Leeds Creek. The accompanying map provided, for these sections, “Final route to be determined.”

### Near Togwotee Pass

Before examining specific options for relocation of the Trail, a review of the 1998 decision criteria would be helpful. The notice took account of comments received that had suggested locating the trail on the west side of the Continental Divide.<sup>1</sup>

“The reason that this route was not selected,” it continued, “is that all potential routes on the west side of the divide would cross „Situation 1“ grizzly bear habitat, where habitat maintenance and bear-human conflict receive the highest priority.... If the trail is located on the east side as proposed, there would be no concern about this project jeopardizing the recovery of the grizzly bear.” More recently, the U.S. Fish and Wildlife Service delisted the Greater Yellowstone Area grizzly population as a threatened species. The Service adopted a new strategy under which special management would be continued in a Primary Conservation Area, but that would eliminate any reference to Management Situations 1 and 2. The delisting was challenged in court and the current legal status is uncertain.<sup>2</sup>

Given the changed circumstances, the merits of a route to the west of the Continental Divide might be justified.

<sup>1</sup> We believe that our Society submitted such a recommendation, but have to date been unable to locate a copy.

<sup>2</sup> See Greater Yellowstone Coalition v. Servheen, \_\_\_ F.3d \_\_\_ (9th Cir. 2011).

Since 1998, the Forest Service has been carrying out field reconnaissance along the lines described in the decision notice. We advised Society members of this in our newsletters in 1999 (“the Forest Service will check alternatives between Sheridan Pass and Union Pass”) and 2004 (the Bridger-Teton NF “continues to explore opportunities to improve the Trail” in the section between Togwotee Pass and Union Pass). We were pleased also to learn that these reconnaissance efforts were extended and carried out more systematically a few years ago and resulted in the identification of several high potential routes meriting review and selection.

In my judgment, these potential routes represent a suitable range of alternatives that should be described in the draft EIS. The westernmost option is especially attractive because of its incorporation of the spectacular scenery –lush meadows and the towering Breccia Cliffs –between Brooks Lake and Togwotee Pass. I consider this to be the most exceptional setting between the Teton and Bridger Wildernesses. This western alternative (along with others) also provides side trail access to the summit of Lava Mountain, visited by the trapper Osborne Russell on July 12, 1835 (“on the top of this elevation is a flat place of about a quarter of a mile in circumference. On the West and North of us [was] one vast pile of huge mountains covered by snow but none appeared as high as the one on which we stood.”)<sup>3</sup>

This westernmost high potential route is at all times on the Continental Divide or on the Shoshone NF side (except, briefly, on the western slopes of Lava Mountain) and would therefore conform to the earlier grizzly bear management guidelines. If these guidelines no longer operate as restrictions, we would recommend consideration of the additional alternative described in our response to the Forest’s scoping notice. Southbound, it would leave the Divide at the head of Pine Creek, descend to Moccasin Basin, and return to the Divide by way of Moccasin Creek. (However, if motorized travel along this suggested route would give rise to significant user conflicts, the high potential location east of Pilot Knob would be preferable.)

Leeds Creek

The 1998 decision notice, as mentioned above, declared that north of Fish Lake Mountain, "additional reconnaissance is required to determine whether to drop into the head of Dead Horse Creek or to follow Leeds Creek to the divide. The final route will go where construction and long-term maintenance will be easiest, and where we can best meet the objectives of the trail."

The two specified alternatives are each on the west side of the Continental Divide, in the BridgerTeton National Forest. We will assume, for purposes of discussion, that the Shoshone NF has jurisdiction to select a final route once the needed reconnaissance has been completed. (If not, then the route selection here should be deferred for action by the Bridger-Teton.)

We have not inspected the Dead Horse Creek option, but we know that Leeds Creek is a delightful stretch. The (southbound) description that we've published begins as follows:  
The descent of the Leeds Creek valley is cross-country –always on the right bank.  
Most of the route is in grassland brightened by lupine, umbrella plant, and green gentian, though there are several short wooded stretches (with some game trails that may ease your passage).<sup>4</sup>

From our observations along with examination of the topographic maps, our judgment is that the Leeds Creek route would better meet the criteria stated in the decision notice.  
We note that the decision notice contemplates that the Trail will be on existing motorized trail, along the crest of the Divide, between the Salt Creek basin and Fish Lake Mountain. This is clearly a superior location from a scenic standpoint. We are not now suggesting a relocation of this stretch. Under the Act and the Comprehensive Plan, however, such motorized use must be limited to the vehicle class and width allowed there prior to November 10, 1978. If future patterns of use create conditions that substantially interfere with the nature and purposes of the CDNST, additional decisions will need to be made.

[3

Journal of a Trapper(Bison Book, Lincoln 1965), 22. Identified as Lava Mountain in James R. Wolf, "General Sheridan"s Pass: 1807-1883," Annals of Wyoming v.31 no.4, p.36 (Autumn 1999).

4

James R. Wolf, Guide to the Continental Divide Trail, Vol.3 Wyoming (2010 Supplement), p.15. ]

We would welcome the opportunity to review our comments and recommendations with you in the course of development of the Forest Management Plan. Our familiarity with the setting might be particularly helpful in a review of the CDNST"s location. The time is ripe, based on the reconnaissance carried out since 1998, to include alternatives in the draft environmental impact statement, for decision as part of the adopted land management plan. We look forward to working with you. You can reach me at the address and phone above, or by e-mail at [mail@cdtsociety.org](mailto:mail@cdtsociety.org).

Sincerely,

James R. Wolf

### 3. Comments on draft Land Management Plan and DEIS

e-mailed on Nov. 21, 2012 to [Shoshone\\_forestplan@fs.fed.us](mailto:Shoshone_forestplan@fs.fed.us)

CONTINENTAL DIVIDE TRAIL SOCIETY  
3704 N. Charles St. (#601)  
Baltimore MD 21218  
410/235-9610

November 21, 2012

Shoshone National Forest  
Forest Plan Revision  
Attn: Joe Alexander, Forest Supervisor  
808 Meadow Lane Avenue  
Cody, WY 82414

Re: Draft Land Management Plan/Draft Environmental Impact Statement

Dear Mr. Alexander:

Thank you for inviting the Continental Divide Trail Society<sup>27</sup> to comment upon the subject draft plan and EIS. Our comments relate solely to management direction for the Continental Divide National Scenic Trail (CDNST or Trail).

The framework for our comments comes from Forest Service Manual 2353.44b, referenced at DEIS p. 480, which relates specifically to the CDNST.

This directive contemplates two stages of planning: (1) a land management plan that will establish a management area for the CDNST, prescribes desired conditions, objectives, standards, and guidelines, and establishes a monitoring program, and (2) a unit plan that identifies and displays the segments of the CDNST that traverse the Forest and establishes the trail class, managed uses, designed use, and design parameters, provides for development, construction, signing, and maintenance, identifies and preserves significant resources, and establishes carrying capacity and monitoring programs to evaluate site-specific conditions.

We understand that the current proposal deals with the first of these planning stages, to be followed by a unit plan (which is a site-specific project to be addressed in subsequent project planning, as indicated at page 47 of the DEIS).

Our Society is extremely interested in issues related to the location, managed uses, etc. of the CDNST that will be addressed in the unit plan; some of our concerns have been outlined in the scoping comments we submitted in November 2010 and comments on the proposed draft plan submitted on January 30, 2012. We believe the locations depicted on Map 41 will be useful in developing alternatives in a unit plan. Our detailed recommendations on these site-specific issues will be deferred until that stage of planning.

#### Land Management Plan

The first requirement of FSM 2353.44b is to establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features. The DLMP establishes Management Area 3.6A, which includes a corridor within 0.5 mile of centerline of the Trail location ("Setting",

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<sup>27</sup> The mission of the Continental Divide Trail Society, established in 1978, is to help in the planning, development, and maintenance of the CDNST as a silent trail and to assist users plan and enjoy their experiences along the route. We have approximately 250 members, from all parts of the United States and several countries overseas. Many of our members hike the CDNST, including the portion in the Shoshone National Forest, every year.

p.172<sup>28</sup>). This is consistent with FSM 2353.44b7, which provides that the one-half mile foreground viewed from either side of the CDNST travel route must be a primary consideration in delineating the boundary of a CDNST management area. It is important to recognize that in accordance with the Scenery Management System, as applied to the Trail as a concern level 1 route, some activities outside this corridor may need to be excluded or modified; this would require detailed review in project planning.

FSM 2353.44b next calls for the land management plan to prescribe desired conditions, objectives, standards, and guidelines for the CDNST.

The DRMP's "desired conditions" are, for the most part, satisfactory. However, the reference to "compatible" non-motorized recreation opportunities fails to convey the important qualification, set out in 16 U.S.C. 1246(c), that the use "will not substantially interfere with the nature and purposes of the CDNST." This is applicable, in particular, to bicycle use (FSM 2353.44b.10); segments of the CDNST that might be open to mechanized travel would be evaluated in the site-specific planning process. While "access to the Trail" presumably might be by bicycle, bike travel "along the Trail" would require additional review.<sup>29</sup>

Objectives for the CDNST appear as Goals for Management Area 3.6A (p. 173). The entire "nature and purposes" clause of the Comprehensive Plan should appear here. As revised, it should read: "Provide high-quality scenic, primitive hiking, and horseback riding opportunities and conserve natural, historic, and cultural resources along the Trail corridor." This would acknowledge that historic and cultural resources represent important values that should be considered in unit planning. (For more information, see James R. Wolf, "General Sheridan's Pass," *Annals of Wyoming*, v.71, No.4, Autumn 1999, pp. 29-40.)

Proposed Goal 2. for Management Area 3.6A is to "relocate the Trail off motorized routes as time and resources allow." We would delete the last five words. As detailed in the Comprehensive Plan (II.A.), citing a memorandum from the Chief of the Forest Service to Regional Foresters, "it is expected that the trail will eventually be relocated off of roads for its entire length.... It is the intent of the Forest Service that the CDNST will for non-motorized recreation." The extent to which this can be accomplished at a particular time will need to be examined in site-specific planning, but the goal is clear and it is to relocate the Trail off motorized route.

Under the DRMP's "standards," competitive events, nonmotorized outfitter and guide activities, and over-snow and winter activities would be allowed if they do not interfere with the nature and purposes of the Trail. As a general rule, we think these activities would in fact interfere. We would prefer to have these standards revised to say: "Allow [activities] only if they do not interfere with the nature and purposes of the Trail."

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<sup>28</sup> The "Setting" overlooks segments located on trails (e.g. Cub Creek Pass to Brooks Lake), not on roads; so, currently "the Trail follows a mixture of non-motorized *trails* and motorized primitive roadways." Also, motorized use is to be allowed only (1) on a road constructed by [November 10,] 1978, or (2) otherwise, if the vehicle class and width were allowed on a segment in 1978 and the use will not substantially interfere with the nature and purposes of the CDNST. (See FSM 2353.44b 11.) Suggested rewording: "Motorized use is allowed on roads constructed before 1978. Motorized use, where allowed in 1978, may also be allowed on other segments, to the extent provided in the Comprehensive Plan, if the use will not substantially interfere with the nature and purposes of the Trail." (The "vehicle class and width" language might be quoted here instead of the more general reference in the Comprehensive Plan.)

<sup>29</sup> Suggested revision: "Non-motorized recreation opportunities may be provided if they will not substantially interfere with the nature and purposes of the Trail."

The standard for snowmobile use should conform to FSM 2353.44b 11f. If that is done, the restriction regarding colocation of the Trail with snowmobile trails can be deleted.

We disagree with Standard 6, which calls for the CDNST to be moved off existing motorized routes, if the motorized use becomes incompatible with management of the Trail, particularly where the route is not a road subject to Section 5(a)(5) of the National Trails System Act (16 U.S.C. 1244). We have in mind a situation addressed in Section 7(c) of the Act where the motorized vehicle use substantially interferes with the nature and purposes of the Trail. Moving the CDNST would be acceptable if the new location offers equivalent or superior scenic, historic, natural, or cultural values. However, where a change in Trail location would degrade the qualities of the CDNST, the better course could be either to relocate the motorized route or reclassify the route as nonmotorized. We suggest: "If motorized use that has been allowed becomes incompatible with management of the Trail, the conflict will be resolved after consideration of alternatives in a site-specific planning process."

Also with respect to roads, the provision in Table 26 (ROS standards for MA 3.6A) that would allow *new* primitive roads in a semi-primitive motorized portion of management area 3.6A must be removed, as it conflicts with the direction of Section 7(c) of the NTSA prohibiting the use of motorized vehicles on post-1978 roads by the general public. After deleting the words "better than a primitive standard," the provision would be that "No new roads may be located in the corridor."

The first of the guidelines for Management Area 3.6A contemplates cutting or removal of trees under a variety of circumstances, all of which may be justifiable. We would like you to indicate that authorization would only be given "after environmental review."

Guideline 2 needs to be revised so as to eliminate any ambiguity with respect to which management area is intended. Presumably, there can be no question that the management area in which the Trail occurs is MA 3.6A. Delete the word "management" in this guideline.

All provisions for roads and trails (Table 26) should be reviewed for consistency with FR 2353.44b 11 and the Comprehensive Plan (IV.B.5.c.): motor vehicle use by the general public should be prohibited "on the CDNST" in every ROS category unless one of the enumerated exceptions applies.

Motor vehicle use is also discussed under the "Management approach" heading on p. 176. As noted above, we would not prejudge that the Trail will "generally" be moved in the event of conflicts. We are also concerned about the "special circumstance" that would justify the authorization of such use on a relocated section. It should be made clear that any such special circumstance must be one falling within the scope of Section 5(a)(5) or 7(c) of the National Trails System Act.

The land management plan must also "establish a monitoring program to evaluate the condition of the CDNST in the management area." FSM 2353.44b 1.c. The final LMP should address this requirement.

#### CDNST Unit Plan

FSM 2253.44b2 gives direction to the detailed unit planning for the CDNST. We will focus on two key elements: (1) identification and display of the segments of the CDNST that traverse the unit, and (2) establishing the Trail Class, Managed Uses, Designed Use, and Design Parameters for the segments of the CDNST that traverse that unit and identify uses that are prohibited.

The unit planning process will provide the opportunity to formalize a particular route as the location of the Trail. Some alternative locations are depicted on Map 41; we understand that these routes reflect recent field investigations (including completed cultural resource and botanical surveys according to

DEIS p. 479) that would provide the necessary information for an environmental assessment in support of the MA 3.6A corridor.<sup>30</sup> The planning process should be carried out in consultation with the Bridger-Teton National Forest inasmuch as some segments (e.g., at Leeds Creek) may best be located west of the Continental Divide.

But identifying and displaying the area of MA 3.6A and its constituent segments, is only part of the unit plan. The second part, which remains to be done, is detailed planning (including trail class, managed uses, designed use, and design parameters) for these segments. Beside prescriptions for managing segments within MA 3.6A, the unit plan would also provide the basis for managing scenery along the CDNST. FSM 2353.44b7. Scenery management considerations may necessitate adjustments to management areas outside MA 3.6A in order to achieve the national scenic trail objectives.

### The DEIS

Any consideration of the CDNST should begin with the recognition that this is a Congressionally-designated area, subject to special requirements as a national scenic trail. This should be reflected throughout the DEIS, including for example the purpose and need discussion for Special Areas and Designations (p.8) and the analysis of the affected environment and environmental consequences for Special Areas (p.508). Some of this is treated in Chapter 3 under the Recreation heading, but this does not highlight the uniqueness of the CDNST. Just as Designated Wilderness and Wild and Scenic rivers are examined as Special Areas, the same should be the case for National Scenic and Historic Trails. A further reason for singling out the CDNST is Executive Order 13195 (Jan. 18, 2001), which directs Federal agencies to protect national scenic trail corridors to the degree necessary to ensure that the values for which the Trail was established remain intact.

We turn to Map 41, which illustrates a variety of locations between Brooks Lake and Shoshone Pass that may be found suitable, after site-specific analysis, for location of the CDNST (and MA 3.6A).

None of these locations – or for that matter, any other segments of the CDNST – are identified as MA 3.6A on any of the alternative maps included in the DEIS.

Because of the absence of an identified MA 3.6A we regard all of the alternatives to be unacceptable. The trail corridor should be managed under the goals and standards set out in the MA 3.6A prescription and not under any other. We understand that effective management will also require identification of trail segments, with their respective definition of trail class, managed uses, etc. But if these determinations are not made as part of the land management plan itself, they should be made as soon as possible by the consideration and adoption of a unit plan for the CDNST.

In our view, MA 3.6A should be shown on the alternative maps and should include all of the locations drawn on Map 41. Once an assessment of these locations has been completed and a particular route has been selected, the remaining portions of the management area can be removed and those portions managed thereafter in accordance with the prescription for the adjoining area.

For the sake of argument, we will offer some selective comments on Alternate B (the preliminary proposed action) as if the Map 41 locations were superimposed thereon. *In all cases, the standards and guidelines for MA 3.6A (including mountain biking and snowmobile or other motorized use) should be observed, whether or not they are included in this list.*

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<sup>30</sup> Other routing proposals might also be considered. For example, as suggested in our 2010 and 2012 comments, an alignment south from Togwotee Pass to Sheridan Pass via Pink Creek and Moccasin Basin, and continuing south along the general location of the Continental Divide, might prove to be desirable.

### The "existing route"<sup>31</sup>

North of Brooks Lake. (MA 3.3B). Motorized winter use must conform to paragraph IV.B.6b.(6) of the Comprehensive Plan.

Brooks Lake through U.S. 26/287 corridor (MA 3.3B and MA 4.2). Motorized vehicle use must conform to paragraph IV.B.6b. of the Comprehensive Plan.

Pelham Lake to Trout Lake (MA 5.1). For reasons of scenery management, timber harvesting and associated road construction should ordinarily not be allowed within the CDNST management area. (See FSM 2353.44b 7.) Livestock grazing, however, might be permitted. The Trail should be relocated off motorized routes (in accordance with Goal 2. for the CDNST).

Access to Sheridan Pass (MA 3.5). We assume that motorized vehicle use conforms to the Comprehensive Plan here, but this should be verified.

Sheridan Pass to Leeds Creek (MA 3.3B). Motorized winter use must conform to paragraph IV.B.6b. of the Comprehensive Plan.

Leeds Creek drainage (in Bridger-Teton National Forest). Coordinate with BTNF.

West of Lake of the Woods (MA 5.1 and 3.3A). See comments above related to MA 5.1. The CDNST in the Salt Creek basin would be restricted to nonmotorized use.

Little Pine Creek (MA 5.1 and 3.3A). See comments above.

### Map 41 Relocation – Western Option

Brooks Lake to U.S. 26/287 Corridor (MA 3.3B). The outstanding scenery and unroaded setting call for management that will preserve the qualities of quiet and a high degree of solitude here. Although some pack use is to be expected in summer, neither motorized nor mechanical (bicycle) use should be authorized at any time.

U.S. 26/287 corridor (MA 4.2). Motorized vehicle use must conform to paragraph IV.B.6b. of the Comprehensive Plan.

U.S. 26/287 corridor to Pelham Lake (MA 5.1). With the construction of new trail along the Continental Divide, a substantial portion of this section needs to be nonmotorized. (Any existing motorized use might continue only if allowable under paragraph IV.B.6b of the Comprehensive Plan.)

[An alternate route west of the Divide, down Pink Creek and past Moccasin Basin, as described in our comments of January 30, 2012, would also merit consideration, in consultation with the Bridger-Teton National Forest.]

Pelham Lake to Sheridan Pass (MA 3.3B). Motorized winter use must conform to paragraph IV.B.6b.(6) of the Comprehensive Plan.

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<sup>31</sup> The "existing route" is not described in the DLMP/DEIS. Nor do we have any documentation of a final selection of any particular route. For present purposes, the "existing route" is taken to be Alternative A of the 1998 environmental assessment. However, the map depicting this location states that "Final route to be determined."

## Next Steps

Ideally, the DLMP would be revised, first, to expressly establish the management area and, second, to identify the segments of the area geographically and provide prescriptions for trail class, managed uses, etc. with respect to each of these segments.

We anticipate, however, that the Forest Service may only address the first of these tasks – by including a textual description of MA 3.6A but failing to delineate its location on the maps in the LMP.

This would leave a very unsatisfactory situation, since there will be no assurance that management under the approved MAs (as shown on maps of the selected alternative) will in fact serve the nature and purposes of the CDNST.

Under these circumstances, the Forest Service needs to include in its record of decision a directive to initiate without delay the preparation of a unit plan that will define the location of the CDNST corridor and provide the necessary prescriptions for its management. The record of decision should also make it clear that such prescriptions, when adopted, will operate as an amendment that will substitute the MA 3.6A corridor for the corresponding areas appearing in the LMP. Further, the Forest Service should take appropriate measures to ensure that any projects approved before the CDNST unit plan is adopted will be consistent with the nature and purposes of the Trail, including the routes appearing on Map 41 as well as the existing route.

## Overview

The National Trails System Act provides the context for planning the CDNST – “to provide for maximum outdoor recreation potential and for conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.” In establishing the Trail, Congress had before it the 1976 Study Report of the Bureau of Outdoor Recreation, which provided, in part:

One of the primary purposes for establishing the CDNST would be to provide hiking and horseback access to those lands where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized.... The basic goal of the trail is to provide the hiker and rider an entrée to the diverse country along the Continental Divide in a manner which will assure a high quality recreation experience while maintaining a constant respect for the natural environment.

Our comments today are intended to assist the Forest Service to manage the CDNST true to this vision. We would welcome the opportunity to discuss our suggestions and invite you to contact us at any time by phone or e-mail. We wish to stress, however, the need to prepare a unit plan without delay in order to assure that the nature and purposes of the Trail will be respected in the Shoshone National Forest’s stewardship of this important resource.

### CONTINENTAL DIVIDE TRAIL SOCIETY

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## ATTACHMENT B

### Shoshone Forest Land Management Plan- Analysis of Responses to Public Concerns in FEIS, Appendix A

- Public Concern #105 (p. 736): "... (6) On page 496 of the DEIS, effects need to be disclosed for other potential CDNST MA corridors."

Response: "Analysis of the potential re-routes of the CDNST is a site-specific analysis that is not appropriate for this revised forest plan analysis. If these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor."

Analysis: the analysis of potential re-routes is decidedly appropriate as part of the forest plan revision. FSM 2353.44b specifically refers to (though does not require) the delineation of the CDNST corridor in the plan revision. The response provides no assurance that the Forest will take timely steps to initiate a unit plan, nor does it disclose effects on other re-route corridors or include measures to preserve their desirable qualities.

- Public Concern #267 (p. 738): "The Forest Service should make a change on Page 47 of the DEIS that erroneously identifies that prescribing a non-motorized Continental Divide National Scenic Trail (CDNST) corridor as being outside the scope of the 2009 CDNST Comprehensive Plan Chapter III and Forest Service Manual 2353.42 and 2353.44b for establishing a Management Area for the CDNST."

Response: "As noted on EIS pages 47 through 48, existing motorized segments will require site-specific analysis before any changes are made. Changes to the CDNST are considered site-specific projects and will be addressed in project planning. ..."

Analysis: prescribing a non-motorized CDNST corridor is definitely within the proper scope of a management plan. FSM 2353.44b 1.c. The Forest response is inadequate in (1) failing to provide for prompt consideration of alternative locations and (2) failing, in the interim, to include alternative routes shown on Map 31 as part of Management Area 3.6A so as to assure that their scenic and other qualities would be preserved during the unit planning process.

- Public Concern #127 (p. 744): "The Forest Service should make the following changes to the DEIS: (1) A supplemental DEIS should be created to analyze all the potential corridor routes on Map 41 and disclose the effects of revised MA 3.6A direction on other resources. (2) On page 495, potential effects to Scenic Integrity and identified Recreation Opportunity Spectrum class effects for all of the CDNST MA corridors should be provided. (3) A Supplemental Draft Plan and supplemental DEIS should be issued to identify cumulative effects based on MA 3.6A directions that is consistent with the National Trails System Act.

Response: See response to PC #105 item (6).

Analysis: our analysis of that response to PC #105 (p.736) is set out above. We concur with the commenter that a supplemental DEIS should be created. This could be prepared specifically for the purpose of delineating a route or it could be prepared so as to encompass the development and issuance of a unit plan for the CDNST.

- Public Concern by Continental Divide Trail Society : "the Forest Service needs to include in its record of decision a directive to initiate without delay the preparation of a unit plan that will define the location of the CDNST corridor and provide the necessary prescriptions for its management."

Response: no response located.

We object both to the omission of a response and to the failure to provide for the timely initiation of a unit plan (or SEIS) that would select a location for the CDNST in accordance with the requirements of NEPA.

- Public Concern by Continental Divide Trail Society: "... the Forest Service should take appropriate measures to ensure that any projects approved before the CDNST unit plan is adopted will be consistent with the nature and purposes of the Trail, including the routes appearing on Map 41 as well as the existing route."

Response: no response located.

Analysis: our letter proposed, for this purpose, that "MA 3.6A should be shown on the alternative maps and should include all of the locations drawn on Map 41." The absence of such interim protection for these routes

accentuates the need for the prompt preparation of a unit plan. The depiction of the route identified in the 1998 EA (but no others) makes things worse for the reasons discussed as the first basis for our objection.