

## APPENDIX C – LEGAL CONTEXT, POLICY AND DIRECTION

This document contains discussions of the legislative and study history of the overall CDSNT, as well as excerpts from the Act of Congress establishing it, as well as the most recent applicable Forest Service Policy.

### LEGISLATIVE/STUDY HISTORY

On October 2, 1968, Congress enacted the National Trails System Act (P.L. 90-543), which established a nationwide trail system and designated the Appalachian Trail and Pacific Crest Trail. Based on this act, a study of the CDT was initiated. The Study Report was completed in 1976, addressing development plans and costs, operation and maintenance needs, expected visitation, land ownership and use, and economic impacts of the trail. The legislative Final Environmental Impact Statement (FEIS) for the proposed Continental Divide Trail, to accompany the Study Report, was completed in 1977. The CDT Study Report identifies that:

The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses.... To provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered.... The basic goal of the trail is to provide the hiker and rider an entry 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.

The Study Report also states that “national scenic trails are intended to be established primarily for hiking and horseback riding, and that motorized vehicular use is specifically prohibited by the National Trails System Act.” However, the Study Report did recommend the inclusion of approximately 424 miles of existing primitive road rights-of-way in the proposed alignment of the CDT. On November 10, 1978, based on the FEIS, Congress amended the National Trails System Act to establish and designate the CDT.

In addition to describing (in Section 5(a)(5)) the potential of locating segments on primitive roads in accordance with prescribed regulations, Section 7(c) allows for other motorized use along the trail by exception:

...Provided that the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights. Provided further, that private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary... Other uses along the historic trails and the Continental

Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail.

To be consistent with the National Trails System Act, motorized vehicles may only be authorized on trail segments of the CDT where: (1) necessary to meet emergencies, (2) to enable adjacent landowners or land users to have reasonable access to their lands or where there are existing valid rights, or (3) when the following two conditions are met:

- An affirmative determination has been made that the motorized use will not substantially interfere with the nature and purposes of the CDT, including the purpose of providing for high-quality, primitive hiking and horseback riding experiences.
- The motorized use was allowed by administrative regulations prior to November 10, 1978.

The CDT Study Report FEIS of 1977 was adopted by the Chief of the Forest Service on August 5, 1981 (Federal Register Vol. 40, No. 150). The analysis and information contained in the CDT Study Report FEIS was to be used in the development of the Comprehensive Plan and future environmental documents.

House Report No. 98-28 of 1983 discusses a new subsection, 7(j), that was added to the National Trails System Act specifying various types of potential uses that may be allowed on specific components of the National Trails System:

While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles on portions of the National Trail System, the Committee emphasized that this provision gives authority to the secretaries to permit such uses where appropriate, but that it must also be exercised in keeping with those other provisions of the law that require the secretaries to protect the resources themselves and the users of the system. It is intended, for example, that motorized vehicles will not normally be allowed on national scenic or historical trails and will be allowed on recreational trails only at times and places where such use will not create significant on-trail or off-trail environmental damage and will not jeopardize the safety of hikers, equestrians, or other uses or conflict with the primary purposes for which the trail, or the portion of the trail, were created.

On August 20, 1993, the Rocky Mountain Regional Forester signed a Record of Decision approving construction of the segment of the CDT that would pass through Wyoming and Colorado. On July 3, 1997, correspondence from the Deputy Chief of the Forest Service to Regional Foresters stated that "...as the CDT is further developed, it is expected that the trail will eventually be relocated off of roads for its entire length." The memo further states that: "It is the intent of the Forest Service that the CDT will be for non-motorized recreation. As new trail segments of the CDT are constructed to link existing non-motorized trail segments together, and to reroute the CDT off of primitive roads or other routes where motorized travel is allowed,

motorized use should not be allowed nor considered. Allowing motorized use on these newly constructed trail segments would substantially interfere with the nature and purpose of the CDT.”

## **16 U.S.C. § 1246 : US Code - Section 1246: Administration and development of national trails system**

(a) Consultation of Secretary with other agencies; transfer of management responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and

assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: Provided, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: Provided further, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate

Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Use and acquisition of lands within exterior boundaries of areas included within right-of-way

Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner

upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: Provided, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: Provided further, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: Provided, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic

or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: Provided, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 303 of title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of

federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with the Volunteers in the Parks Act of 1969 [16 U.S.C. 18g et seq.] and the Volunteers in the Forests Act of 1972 [16 U.S.C. 558a et seq.]) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage -

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments,



and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than \$500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

**(j) Types of trail use allowed**

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.

**(k) Donations or other conveyances of qualified real property interests**

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of title 26, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

**FSM 2300 – RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT  
CHAPTER 2350 – TRAIL, RIVER, AND SIMILAR RECREATION OPPORTUNITIES**

### **2353.3 - Administration of National Recreation, National Scenic, and National Historic Trails**

#### **2353.31 - Policy**

1. The National Trails System (16 U.S.C. 1242(a)) includes:

.....

- b. National Scenic Trails. These extended trails are located so as 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 these trails pass (16 U.S.C. 1242(a)(2)).

.....

- d. Connecting and Side Trails. These trails are components of National Recreation, National Scenic, and National Historic Trails (16 U.S.C. 1245). Connecting and side trails provide access to and alternate routes for National Recreation, National Scenic, and National Historic Trails.

2. Ensure that management of each trail in the National Trails System addresses the nature and purposes of the trail and is consistent with the applicable land management plan (16 U.S.C. 1246(a)(2)).
3. TMOs for a National Recreation, National Scenic, or National Historic Trail should reflect the nature and purposes for which the trail was established.

#### **2353.32 - Administration of Connecting and Side Trails**

Establish connecting and side trails where appropriate (16 U.S.C. 1245). Connecting and side trails complement National Recreation, National Scenic, and National Historic Trails by providing additional public access or additional recreational opportunities. Manage connecting and side trails in accordance with the direction for the trails they complement.

### **2353.4 - Administration of National Scenic and National Historic Trails**

#### **2353.41 - Objectives**

Develop and administer National Scenic and National Historic Trails to ensure protection of the purposes for which the trails were established and to maximize benefits from the land.

## 2353.42 - Policy

Administer National Scenic and National Historic Trail corridors to be compatible with the nature and purposes of the corresponding trail.

**CDNST.** 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.

## 2353.43 - Development of the National Scenic and National Historic Trail System

National Scenic Trails, National Historic Study Trails, and National Historic Trails are established by act of Congress (16 U.S.C. 1244(a)-(c)).

### 2353.44b - Continental Divide National Scenic Trail (CDNST)

1. The land management plan for an administrative unit through which the CDNST passes must provide for the nature and purposes of the CDNST (FSM 2353.42) and, in accordance with the programmatic requirements of the National Trails System Act, as amended (16 U.S.C. 1244(f)), and the CDNST Comprehensive Plan, as amended, must:
  - a. Except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293), establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features (FSH 1909.12);
  - b. Prescribe desired conditions, objectives, standards, and guidelines for the CDNST; and
  - c. Establish a monitoring program to evaluate the condition of the CDNST in the management area.
2. A CDNST unit plan must be developed for each administrative unit through which the CDNST passes. Each CDNST unit plan must provide for the nature and purposes of the CDNST (FSM 2353.42), and, in accordance with the site-specific requirements in the National Trails System Act, as amended (16 U.S.C. 1244(f)), and the CDNST Comprehensive Plan, as amended, must:
  - a. Identify and display the segments of the CDNST that traverse that unit.
  - b. 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);

- c. Establish 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 on the segments of the CDNST that traverse that unit (FSH 2309.18).
  - d. Provide for development, construction, signing, and maintenance of the segments of the CDNST that traverse that unit.
  - e. Identify and preserve significant natural, historical, and cultural resources along the sections of the CDNST corridor that traverse that unit.
  - f. Consistent with the provisions of the applicable land management plan and the nature and purposes of the CDNST (FSM 2353.42), establish carrying capacity for the segments of the CDNST that traverse that unit (FSM 2353.44b, para. 1). The Limits of Acceptable Change or a similar system may be used for this purpose.
  - g. Establish monitoring programs to evaluate the site-specific conditions of the CDNST.
3. Monitor implementation of a CDNST unit plan by establishing a program to evaluate and report on the overall condition of the segment of the CDNST that traverses that unit. To the extent practicable, utilize information collected through land management planning and site-specific monitoring programs.
  4. The CDNST may be located in a wilderness area (16 U.S.C. 1131-1136). Recreational use on the CDNST in a wilderness area is governed by regulations at 36 CFR Part 293. Where the CDNST is located in a congressionally designated wilderness study area or an area recommended for designation as a wilderness area in the land management plan, manage the CDNST so as to leave the area unimpaired for inclusion in the National Wilderness Preservation System.
  5. Where the CDNST crosses private property, it should be located within the scope of a permanent easement (FSM 5460.3). Address CDNST access needs in assessing adjustments to land ownership in an administrative unit. Do not acquire land or an interest in land outside the boundary of a federally administered area for the CDNST without the owner's consent (16 U.S.C. 1244(a)(5)). Do not acquire fee title of more than an average of one quarter mile on either side of the CDNST.
  6. Cooperative agreements may be executed with other federal agencies and state, local, and tribal governments for CDNST purposes (16 U.S.C. 1246(h)).
  7. Use the Scenery Management System (FSM 2382.1; *Landscape Aesthetics: A Handbook for Scenery Management*, Agricultural Handbook 701, 1995, <http://www.fs.fed.us/cdt>) in developing CDNST unit plans and managing scenery along the CDNST. 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 (para. 2b). The CDNST is a concern level 1 route (*Landscape*

*Aesthetics*, page 4-8), with a scenic integrity objective of high or very high, depending on the trail segment (*Landscape Aesthetics*, page 2-4).

8. Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST (FSM 2353.42). Use the Recreation Opportunity Spectrum (ROS) and the ROS Users Guide in delineating and integrating recreation opportunities in CDNST unit plans and managing the CDNST (FSM 2311.1). Where possible, locate the CDNST in primitive and semi-primitive non-motorized ROS classes, provided that the CDNST may have to traverse intermittently through more developed ROS classes to provide for continuous travel between the Montana-Canada and New-Mexico-Mexico borders. Locate a CDNST segment 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 designated routes because of the inability to locate the trail elsewhere (FSM 2353.44b, para. 11).

9. Generally, segments of the CDNST should fall into Trail Class 2 or 3 and have a Designed Use of Pack and Saddle Stock (FSH 2309.18). However, a CDNST segment may fall into Trail Class 1, 2, or 3 and have a Designed Use of Hiker/Pedestrian where a substantial safety or resource concern exists or the direction for the management area provides only for hiker/pedestrian use. Where a CDNST segment has a Designed Use of Hiker/Pedestrian, consider establishing side trails to accommodate pack and saddle stock needs (16 U.S.C. 1245). If the interval between natural water sources is excessive, consider developing and protecting water sources for hikers and pack and saddle stock use.

10. Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)), using the appropriate trail design standards, if the use is consistent with the applicable CDNST unit plan and will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42).

11. Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable CDNST unit plan and:

- a. Is necessary to meet emergencies;
- b. Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;
- c. Is for the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Forest Service regulations;
- d. Is on a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42);
- e. Is designated in accordance with 36 CFR Part 212, Subpart B, and:

(1) The designated vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42) or

(2) The designated segment was constructed as a road prior to November 10, 1978; or

f. In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C, and the use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42).

### **2353.45 - Cooperative Management of National Scenic and National Historic Trails**

Provide for development and maintenance of National Scenic and National Historic Trails where they traverse federal land, and cooperate with and encourage states to operate, develop, and maintain National Scenic and National Historic Trail segments located outside the boundaries of federal lands. When in the public interest, enter into cooperative agreements with states and local governments, landowners, private organizations, and individuals to operate, develop, or maintain any portion of National Scenic and National Historic Trails either on or off federal lands. The agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of these trails (16 U.S.C. 1246(h)(1) and 1250).