

Arapaho and Roosevelt National Forest Recreational Sport Shooting Project #46910

September 11, 2015

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To Whom It May Concern:

Our organizations are signatories to the recently renewed Federal Lands Hunting, Fishing and Shooting Sports Roundtable (Roundtable) Memorandum of Understanding (MOU). Forty-three national organizations, including ours, and four Federal agencies, including the USFS, signed the document. In the Statement of Mutual Interests and Benefits, the MOU recognizes that:

The Parties have common interests, including providing public access to federal lands and enhancing opportunities on federal lands to fish, hunt, and engage in shooting sports activities in a safe and environmentally sound manner for the purposes of promoting marksmanship, public safety, hunter education, competition, lawful hunting, and public demonstrations.

On Friday, July 31st, our organizations participated in a meeting with the Northern Front Range Recreational Sport Shooting Management Partnership on behalf of the Roundtable. Based on the information gathered at this meeting, knowledge of the planning area and a thorough review of the planning documents released by the Forest Service to this point, we write today to provide scoping comments on the Arapaho and Roosevelt National Forest Recreational Sport Shooting Project #46910. A summary of our concerns is provided below.

I. The Proposed Map Potentially Represents the Prejudicial Selection of an Alternative

By issuing a map during scoping and prior to the completion of an EIS or EA, we are skeptical that the Forest Service will be able to take the requisite “hard look” at other alternatives for addressing recreational shooting issues on the Arapaho and Roosevelt National Forests. 40 C.F.R. § 1502.2 (f) clearly prohibits predetermination and states that agencies shall not commit resources prejudicing selection of alternatives before making a final decision. Should the Forest Service issue a Final EIS or FONSI / EA that reflects the dispersed shooting closures reflected on the map issued during scoping (or something very similar), it will suggest that the Forest Service had developed a preferred alternative prior to conducting a thorough analysis and that the actions taken were *fait accompli*, perhaps even prior to commencement of the NEPA process.

Courts have consistently held that federal agencies are in violation of the Council on Environmental Quality’s procedural regulations and NEPA’s guiding policies when these agencies prematurely and irretrievably commit resources to an alternative prior to the completion of an environmental impact analysis. With respect to the scoping map provided to the public, the Forest Service has gone out of its way to give the appearance of committing resources – in this

case cultural and recreation resources in the form of dispersed shooting opportunity – to at least one alternative without having gathered the required public feedback or considering factors that could impact the organic development of alternatives in good faith. Again, should the Forest Service choose to develop an alternative that matches or closely resembles the dispersed shooting closures outlined in the scoping map, it would be difficult to convince us that this action is not pre-decisional and therefore arbitrary and capricious.

II. **Arbitrary Spatial Closures**

As noted in the document entitled “Rec Shooting Proposal Aug 2015” available on the Arapaho and Roosevelt National Forest Recreational Sport Shooting Project webpage, the proposed direction for managing recreational sport shooting (RSS) on the forests includes four categories:

- 1) Forest Plan goals and objectives for recreational sport shooting;
- 2) Lands proposed as suitable for dispersed RSS;
- 3) Lands proposed as not suitable for dispersed RSS for safety reasons; and
- 4) Sites proposed as designated shooting areas.

The Forest Plan Direction attachment specifies that the Forest Service has prepared a scoping map proposing which lands on the forests are suitable for dispersed RSS, not suitable for dispersed RSS, and proposed as designated shooting areas. The document goes on to explain that the map identifies suitable lands for RSS and defines them as “areas that were further than ½ mile from residential subdivisions or concentrated high use recreation areas.”

However, there is no explanation as to how or why the proposed spatial closure of ½ mile was identified as the appropriate distance to achieve the objective of identifying “lands proposed as not suitable for dispersed RSS for safety reasons.” The Forest Service has provided no analysis to justify the restriction of RSS ½ mile from residential subdivisions or concentrated recreation areas. Consequently, the proposed spatial closure appears to be arbitrary without further explanation.

If the spatial closure was proposed to address the sound impacts associated with RSS, this appears to be inconsistent with the proposed direction established by the Forest Service itself. The proposed direction clearly states that lands proposed as not suitable for dispersed RSS are proposed to address safety reasons and safety reasons alone. Furthermore, the apparently arbitrary, across-the-board ½ mile closure identified in the Forest Plan Direction attachment also deviates from 36 C.F.R. §261.10 (d) which states that discharging a firearm is prohibited under the following circumstances:

- In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area;
- Across or on a National Forest System road or body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge;
- Into or within any cave;

Again, the scoping documents provided by the Forest Service provide no reasonable explanation as to why the proposed direction deviates from existing regulations governing the discharge of firearms on National Forest land. When proposing to deviate from existing regulations that apply throughout the National Forest System, it should be the responsibility of the Forest Service to describe the factors – preferably by using objective, data-driven analysis – that justify this deviation and adequately explain why a particular situation necessitates an alternate approach. In this case, the Arapaho-Roosevelt’s decision to include a ½ mile closure without any explanation as to why there is a need to deviate from existing federal regulations once again suggests that the Forest Service has chosen to move forward with recreational shooting management in an pre-decisional manner.

As proposed and without further explanation, the spatial closure suggests that in this case, the Forest Service believes recreational shooting that takes place within ½ mile of residential subdivisions or high recreation use areas is categorically unsafe on the Arapaho and Roosevelt National Forests, but not in general throughout the rest of the system. By way of experience, we know that there are many factors (topography, presence of backstops, etc.) that determine whether a site or general area is appropriate and safe for firearm use.

The decision to incorporate what we consider to be arbitrary spatial closures into the Forest Plan Direction is also disconcerting because it is contrary to the procedures outlined in at least two separate memorandums sent to Regional Foresters, Station Directors and Area Directors by Forest Service Chief Thomas Tidwell over the last two years. In memorandums dated August 20, 2014 and April 15, 2015 (enclosed), Chief Tidwell states that the “Forest Service is committed to working with our partners and citizens to facilitate cooperation and consistent communication in providing for, and managing, recreational shooting, hunting, and fishing activities on NFS lands.” It is our view that developing arbitrary spatial closures that apply only in one forest planning area fail to meet the consistency and management thresholds established by the Forest Chief’s guidance.

Suggested Remedy: Develop alternatives that use existing regulations found at 36 C.F.R. §261.10 (d) to define boundaries of spatial closures to dispersed recreational shooting. In cases where existing regulations may be insufficient to maintain public safety or protect existing infrastructure, these alternatives should address site-specific issues associated with public land resource and use conflicts, public land – private land ownership patterns and safety on an individual basis. In doing so, the Forest Service should tailor actions proposed in the alternatives to address the unique characteristics of each setting. Considering that the shooting sports are long standing and appropriate uses of National Forest System lands, some alternatives should at a minimum give consideration to the feasibility of limiting other forest uses to accommodate dispersed or concentrated recreational shooting in areas where RSS may be incompatible with those other forest uses.

III. **The Forest Service Should Undertake a Thorough Cumulative Effects Analysis**

As noted in Chapter 10 of the Forest Service NEPA Handbook (FSH 1909.15), cumulative effects of actions that trigger NEPA must be considered and analyzed without regard to land ownership boundaries and consideration must be given to the incremental effects of the action when added

to the past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals, that may have a measurable and meaningful impact on particular resources. 36 C.F.R. § 220.4 (f) also requires federal agencies to incorporate past actions into a required analysis of cumulative effects of an action that triggers the NEPA process.

With this in mind, we strongly encourage the Forest Service to conduct a thorough analysis of the cumulative impacts that implementing each alternative proposed as part of the Arapaho and Roosevelt National Forest Recreational Sport Shooting Project will have on recreational opportunity and resource use both within the planning area and outside it. Specifically, we encourage the Forest Service to examine the impacts that the implementation of existing shooting access restrictions in areas such as the Pike and San Isabel National Forests has had on the volume of recreational shooting in the Arapaho and Roosevelt National Forests and elsewhere. As part of this analysis, we also encourage the Forest Service to conduct an analysis of the recreational shooting opportunity that will be available elsewhere as a component of alternatives that have the potential to displace recreational shooters on the Arapaho and Roosevelt National Forests. These analyses should include:

- Evaluations of where displaced shooters may go if RSS closures are implemented;
- The capacity of other locations to accommodate increased recreational usage and associated environmental impacts;
- Potential resource use conflicts outside of the planning area that may occur as the result of displacing recreational shooters;
- Consideration of the costs associated with law enforcement in the areas where displaced recreational shooters are likely to relocate after closures are implemented;
- The long-term impacts associated with concentrating increasing recreational shooting into increasingly smaller geographic areas;
- The cumulative impacts that restricting shooting opportunity will have on conservation funding through the ability to recruit and retain hunters and collect federal excise taxes on firearms and ammunition authorized through the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669).

IV. **The Proposed Direction for Managing Recreational Sport Shooting Misrepresents Accessible Opportunity**

The Forest Plan Direction states that approximately 1.1 million acres (or 80% of the Arapaho and Roosevelt National Forests) are proposed as suitable for recreational sport shooting using criteria that states forest lands within ½ mile of residential subdivisions or concentrated recreation use areas are deemed not suitable for RSS. This statement by the Forest Service grossly misrepresents the reasonable opportunity that would be available to target shooters if the Forest Plan Direction is implemented using the spatial metrics suggested in the document.

For example, in Boulder County, one of the more populated counties containing portions of the Roosevelt National Forest that are in close proximity to Front Range population centers, the restrictions outlined in the Forest Plan Direction would leave less than 24% of the National Forest

in the county open to recreational sport shooting. In addition, the portions of the National Forest that would remain open are located in the Indian Peaks Wilderness Area. By definition, designated wilderness areas such as Indian Peaks, James Peak and Mount Evans are more difficult or impossible to access for many public land users who depend on mechanized travel to enjoy their preferred recreation activities. The designated wilderness areas in the planning area have restricted parking and feature seasonal access closures during the winter months. Based on the scoping map and Forest Plan Direction, there is Forest land that is below 10,000 ft. elevation or located outside of a designated wilderness area that would be open to dispersed recreational shooting in Boulder or Gilpin Counties. In Clear Creek County, only 12% of the Arapaho National Forest land is accessible by these standards and proposed as open to dispersed shooting.

For all intents and purposes, the Forest Plan Direction makes recreational sport shooting in many of the areas proposed as suitable for RSS virtually inaccessible for several months of the year and limits access for many shooters throughout the year. The Forest Plan Direction does not recognize the shooting sports, in the words of Forest Service Chiefs Tidwell or Bosworth, as “long standing and appropriate uses of National Forest System lands” nor does the Forest Plan Direction represent an effort to work with the Forest Service’s partners to “facilitate safe and responsible use.” In fact, we can think of no other example where the Forest Service has limited a long standing or appropriate use of public land to designated wilderness areas that are located at more than 10,000’ in elevation over a large geographic area.

The Forest Plan Direction references the possibility of designating shooting areas in Allenspark on the northern edge of Boulder County and at the Devil’s Nose site in Clear Creek County. We support the prospect of providing additional dedicated shooting opportunity as part of the forest plan amendment process. At this point, it is difficult to determine how the establishment of these designated shooting areas would maintain or enhance opportunity to shoot on the National Forests. We are skeptical that one or two relatively small geographic areas would serve as a suitable replacement for the volume of recreational shooting opportunity that would be lost if the Forest Plan Direction is implemented. It should also be noted that the Allenspark site is still approximately 45 minutes away from the most populated city in Boulder County by car.

In summary, the arbitrary and blanket spatial closures noted in the Forest Plan Direction do not represent *management* of recreational sport shooting, but appear to be an attempt to relocate the activity to geographic locations that are either:

- Outside the planning area; or
- Inside the planning area and more difficult or impossible for new and existing forest users to participate in the activity.

The consequence of these management actions would be to greatly reduce the volume of shooting that occurs in the planning area. If the goal of the Forest Plan Direction is to reduce the volume of recreational shooting in the Arapaho and Roosevelt National Forests by de-facto relocation of shooters to other jurisdictions or areas that are difficult or impossible to access, it should be specifically noted in all documents related to the forest plan amendment process moving forward.

V. **Conduct Site-Specific Evaluations for Popular Shooting Locations Slated for Closure**

Several geographic locations popular with sport shooters, such as the one located near the Squaw Mountain Lookout off of FR 192 in Clear Creek County, are proposed as unsuitable for RSS based on the scoping map released in concert with the Forest Plan Direction. Other sites, like Devil's Nose on Forest Service Land are being considered as designated sites suitable for concentrated RSS. With this in mind, we encourage the Forest Service to use the resources at its disposal to conduct formal site assessments of existing shooting areas being proposed for closure and those areas being proposed as suitable for RSS to objectively identify the best management decisions weighing in all factors related to site suitability. We believe that Colorado Parks and Wildlife and the NRA Range Technical Team would be good candidates to conduct site assessments using widely accepted and proven methodologies and issue a report of their findings to inform the Forest Service's planning process.

As members of the Federal Lands Hunting, Fishing and Shooting Sports Roundtable, we would be willing to help facilitate the completion of these site assessments as part of our commitment to work with the Forest Service and other agencies to provide public access to federal lands and enhance opportunities on federal lands to engage in shooting sports activities in a safe and environmentally sound manner for the purposes of promoting marksmanship, public safety, hunter education, competition, lawful hunting, and public demonstrations.

In summary, many of our concerns about the Arapaho and Roosevelt forest plan amendment process outlined in a July 28, 2014 letter from 21 members of the Roundtable to Forest Service Chief Tidwell have not been addressed based on the scoping documents that have been released to this point. The proposal, as outlined in the scoping map, appears to be quite similar to the proposal that was, according to news articles published by the Associated Press in the summer of 2014, floated by the Forest Service prior to commencement of the NEPA process.

We look forward to working with the Forest Service throughout the remainder of the planning process to address these issues and identify realistic, workable solutions that recognize the value in providing public access to the National Forest System while promoting safe and responsible behaviors.

Sincerely,

Susan Recce
Director of Conservation, Wildlife and Natural Resources
National Rifle Association

Andy Treharne
Western States Director
Congressional Sportsmen's Foundation

Enclosures: 2

cc: Tom Tidwell, Chief, U.S. Forest Service

Bob Broscheid, Director, Colorado Division of Parks and Wildlife

Steve Yamashita, Northeast Regional Manager, Colorado Division of Parks and Wildlife

Tom Donnelly, Commissioner, Larimer County

Deb Gardner, Commissioner, Boulder County

Tom Hayden, Commissioner, Clear Creek County

Gail Watson, Commissioner, Gilpin County



File Code: 2300, 2600, 2700, 5300

Date: APR 15 2015

Route To:

Subject: Reply Due and Congressional Reporting for Closures to Hunting, Fishing and Shooting Sports

To: Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Directors, Special Agents in Charge

REPLY DUE MAY 11, 2015

Congress included the following language in the explanatory statement for the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2015, Div. F of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235):

Public Access. – The Department of the Interior and the Forest Service are directed to notify the House and Senate Committees on Appropriations in advance of any proposed project specifically intending to close an area to recreational shooting, hunting, or fishing on a non-emergency basis of more than 30 days.

To respond to this direction, we are requesting information from each Forest about orders issued under 36 CFR Part 261, Subpart B, that specifically prohibit recreational shooting, hunting, or fishing. This includes but is not limited to an order issued under: section 261.53(e) that restricts access to an area for public health and safety reasons related to recreational shooting, hunting, or fishing; section 261.57(c) that prohibits the possession of a firearm in a designated wilderness area; section 261.58(m) that prohibits discharging a firearm; or section 261.58(v) that prohibits hunting or fishing.

We are not, however, requesting information about orders that would prohibit entry into an area by members of the public for other purposes. This would include protecting public safety in the event of a fire. Nor are we requesting information about closures prohibiting recreational shooting, hunting, or fishing that are issued by a State or local government.

Reporting:

To assist the Washington Office in responding to the Committee's request for advance notice of closures that specifically prohibit recreational shooting, hunting, or fishing, each Forest staff shall provide to Jamie Schwartz, the National Shooting Sports Liaison, jschwartz01@fs.fed.us, (202) 205-1589, the following information:

1. Consideration of whether to close an area. - As requested by the enclosed letter dated August 20, 2014, Forest staff shall continue to report in writing instances when they are considering whether to close an area on National Forest System (NFS) lands specifically to recreational shooting, hunting, or fishing.
2. Advance notice of a decision to close an area. - When the appropriate level of environmental analysis under the National Environmental Protection Act and appropriate public involvement have been completed and a decision has been made to close an area on NFS lands to recreational shootings, hunting, or fishing by issuance of an order under 36 CFR Part 261, Subpart B, Forest staff shall provide advance written notice of the closure at least 45 days before the closure order is issued. This



notice should include the proposed closure order, a detailed map of the closure area, the number of acres that will be affected, and any documentation of the need for the closure that was submitted for Law Enforcement and Investigation (LEI) and Office of General Counsel (OGC) review as part of the normal clearance process for orders. Additionally, Forest staff shall submit a briefing paper that explains the concerns addressed by the closure and the public involvement process that was used to determine that the closure was necessary.

3. Exception for emergency closures or closures in effect for 30 days or less. - No advance notice is required for an order that closes an area of NFS lands to recreational shooting, hunting, or fishing: (1) on an emergency basis or (2) for 30 days or less. However, at the time the closure order is issued, Forest staff shall provide written notice of the order. This notice shall include the closure order, a detailed map of the closure area, the number of acres that will be affected, and any documentation of the need for the closure that was submitted for LEI and OGC review as part of the normal clearance process for orders.

Additionally, to address other concerns that have been raised about the number of acres of NFS lands currently closed to recreational shooting, hunting, and fishing, we request a copy of all closure orders issued under 36 CFR Part 261, Subpart B. This specifically prohibits recreational shooting, hunting, or fishing that are currently in effect. For each closure order include a detailed map of the closure area, the number of acres that will be affected, and any documentation of the need for the closure that was submitted for LEI and OGC review as part of the normal clearance process for orders. Provide any available electronic tabular or spatial records, such as Microsoft Excel spreadsheets or GIS Feature Class.

The Forest Service is committed to working with our partners and citizens to facilitate cooperation and consistent communication in providing for, and managing, recreational shooting, hunting, and fishing activities on NFS lands. Washington Office staff directors will continue to work with regional directors to ensure use of consistent and appropriate procedures in this regard. Where quick action for public safety is warranted, administrative units should consider any health and safety concerns along with the interests of local user groups to facilitate the best outcome possible. Administrative units should balance the goals of providing access for hunting, fishing, and recreational shooting, caring for the land, and addressing public health and safety.



THOMAS L. TIDWELL
Chief

Enclosure



File Code: 2300

Date: AUG 20 2014

Route To:

Subject: Hunting, Fishing, and Shooting Sports on NFS Lands

To: Regional Foresters, Station Directors, Area Director

In a letter to you in 2010, I reiterated the message from former Chief Dale Bosworth, June 28, 2006, who stated: "Shooting sports are long standing and appropriate uses of National Forest System (NFS) lands. Shooting sports bring together the hunting, target shooting and general recreational shooting interests that have enjoyed these activities for many years. With the ever increasing population, use, and urban interface development affecting NFS lands we must, now more than ever, work with our partners to facilitate safe and responsible use."

Many of our partners, and recently Congress, have expressed an interest regarding information relating to the agency's efforts to provide hunting and recreational shooting opportunities to the public. The requested information would help the Forest Service and our partners assess the strengths and potential weaknesses in the Forest Service's provisions and in facilitation of hunting and shooting opportunities across our NFS lands. To facilitate acquiring and consolidating the Forest level data regarding hunting and recreational shooting opportunities, I request that the Forest staff contact Jamie Schwartz, the National Shooting Sports Liaison, at (202) 205-1589, or jschwartz01@fs.fed.us, in instances where a closure is being considered and before closing areas or ranges to hunting and shooting sports activities. I want to emphasize the necessity of timely notification to engage with local interests, our visitors, partners, and other interested parties to facilitate the most favorable outcome possible when addressing hunting and shooting sports issues.

The Forest Service manages shooting sports like other uses to protect public safety, property and the natural resources. I urge you to continue a collaborative approach to facilitate safe and responsible use for this recreation activity. In this regard, the Washington Office (WO) has several key resources still available to assist you in your efforts to improve shooting sports management:

- 1) The Forest Service has a National Shooting Sports Liaison, Mr. Jamie Schwartz, in the WO under the Director of Recreation, Heritage and Volunteer Resources.
- 2) The Forest Service is signatory to the national interagency Federal Lands Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU) providing for shared technical expertise regarding shooting area design and management, lead management, and a general framework for future cooperation.



- 3) The Respected Access is Open Access Campaign, www.respectedaccess.org, developed in partnership with the Shooting Sports Roundtable and Tread Lightly! is a national ethics and educational program in partnership and cooperation with the other Federal and non-governmental organization signatories of the MOU.

The Forest Service is committed to working with our partners and the public to facilitate cooperation, partnership and consistent messaging in providing for and managing shooting sports activities at the national and local levels. WO staff directors should continue to work with regional directors to ensure consistent and appropriate procedures. Where the local unit has the need for quick action, please remember to consider health and safety concerns, appropriate public involvement, and our partners. The goals of providing for recreational shooting, caring for the land, and public health and safety must be considered in a balanced manner.


FOR THOMAS L. TIDWELL
Chief