

C O M M E N T

“ALONG” THE NATIONAL SCENIC TRAILS: A CASE STUDY OF STATUTORY INTERPRETATION

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Photo: Lake Aloha in Desolation Wilderness, California, as viewed from the Pacific Crest Trail.

The sun, low in the horizon with the late-day light, casts an amber hue on the surrounding granite peaks to the east of the Pacific Crest National Scenic Trail (PCT). A gentle westerly breeze brings with it the smell of the dry coniferous forest, reminding a trail hiker that it is indeed the heart of the summer season in the Mountain West. The sounds of the birds—mountain bluebirds, white-headed woodpeckers, dark-eyed juncos, and of course mountain chickadees—fill the air; the only other sound is that of the hiker’s boots on the trail tread.

The PCT provides people with a continuous and spectacularly scenic path along the crest of the Pacific Mountain ranges, from the Mexico/California border north 2,650 miles to the Canada/Washington border. Whether one is heading out for a day hike or attempting to hike the entire trail in one season, the PCT offers the opportunity

to access some of the West’s most rugged, remote, and wild landscapes, mostly free from modern development.

On this particular day, our hiker is out on a solo backpacking trip, enjoying a reprieve from the busyness of their daily life. The slow pace of hiking, as compared to driving a vehicle or even riding a bike, amplifies the scale and remoteness of the landscape; because it takes longer to cover the miles, they are able to more acutely feel the remoteness and the size and scale of the surrounding landscape.

The idea of the PCT was born in the 1920s from citizens who worked diligently to turn that dream into a reality. Although it took decades, eventually the 90th U.S. Congress and President Lyndon B. Johnson realized the importance of establishing a national trails system and passed the 1968 National Trails System Act. The Act designated the Pacific Crest and Appalachian Trails as our first national

scenic trails—long-distance trails spanning through some of the country’s most scenic and undeveloped lands. Over the past 56 years, the system has grown, and there are now 11 congressionally designated national scenic trails spanning thousands of miles across the country.

As the hiker walks down the trail, their tranquil experience is abruptly shattered as dirt bikes (motorcycles) come racing by on a road that runs parallel to and about 100 feet away from the PCT. The hiker had not even noticed the road before; however, now the road, the dirt bikes, the exhaust, the loud motors, and the dust dominate their experience. The smell of exhaust covers the scent of the forest, and engine noise drowns out the birdsong. Under such conditions, a hiker’s sense of walking in a remote mountain area—an experience that demands painstaking time and effort—is immediately shrunken, and the landscape no longer feels as large, distant, and apart from modern and fast-paced society.

The hiker stops for a moment to let the smell pass, and ponders: “Is this really the experience Congress intended when it designated the PCT as one of our nation’s first national scenic trails in 1968?”¹ While the use of motorized vehicles on public lands is certainly a valid and important form of recreation, is the experience just described compatible with Congress’ vision of what the PCT experience should be?

Section 7 of the Act addresses the “Administration and Development” of national trails. Specific to national scenic trails, §7(c) describes that “other uses” along these trails may occur so long as they will not “substantially interfere with the nature and purposes of the trail.” The section continues with a flat prohibition of use of motorized vehicles “along any national scenic trail.”² This is the one and only activity expressly prohibited by the 1968 National Trails System Act. But does this imprecise language merely ban motorized vehicles directly on a national scenic trail itself, or does it ban such vehicles within some sort of adjacent linear corridor that contains the trail? If the latter, then within what proximity to national scenic trails does the law prohibit motorized vehicles?

This Comment examines what the term “along” means in relation to prohibition of the use of motorized vehicles along any national scenic trail.³ This question is actively at issue; the U.S. Department of Agriculture’s (USDA’s) Forest Service, the lead administering agency for the PCT, is engaged in travel management planning efforts ranging from over-snow vehicle use to the designation of roads and motorized trails for wheeled vehicles near the PCT.⁴ Thus,

the Comment focuses on the statutes, regulations, and policies specifically pertaining to the PCT.

An analysis of these legal instruments shows that the term “along” cannot and should not be conflated to mean “on,” as has been presumed by the Forest Service and Bureau of Land Management (BLM) in a number of their past planning efforts and decisions. Rather, “along” must mean an area of land (1) wide enough, and (2) managed in a such a manner that, taken together, protects the “nature and purposes” for which a trail was designated as a national scenic trail.

In other words, the term “along” must provide a basis for protecting the fundamental resources and values that are essential to contributing to a trail’s nature and purposes; these attributes include the scenic, recreational, natural, and cultural resources of the areas through which a trail passes.⁵ Importantly, these fundamental elements also include the nonmotorized character and setting of the lands surrounding any national scenic trail.⁶ This legal and administrative interpretation of the term “along” is essential to ensure that national scenic trails provide the non-motorized experience that Congress intended through the trails’ designations.

This analysis of the National Trails System Act comes at a particularly important time. The recent *Loper Bright*⁷ decision by the U.S. Supreme Court overruled the long-standing *Chevron*⁸ standard of deference that judges had afforded to agencies when interpreting ambiguous statutory language, holding that “courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.”⁹ As a result, previous agency interpretations of the term “along” under the National Trails System Act carry less weight, and a critical examination of the meaning of this term within the context of the Act and based on the intent of Congress can assist courts in carrying out their duty to ensure proper interpretation of the statute.

The Comment identifies the histories, key authorities, and policies that inform the determination of how wide an area or corridor must be sufficiently managed to avoid “substantial interference” to the nature and purposes of a national scenic trail, thus appropriately implementing the statute’s flat prohibition of motorized vehicle use along the trails. Part I looks at the background of national scenic trails and lawmakers’ intent for the experiences these trails should provide. Part II analyzes the difference in meaning between the terms and concepts of “on” and “along,” and considers the width of adjacent management areas that lawmakers implied with the use of the latter term. Part III examines the management implications of these interpretations, and where agencies and nonprofit trail management partners may go from here. Part IV concludes.

1. National Trails System Act of 1968, Pub. L. No. 90-543, 82 Stat. 919.

2. 16 U.S.C. §1246 (emphasis added).

3. *Id.*

4. The federal land management agencies within the U.S. Department of the Interior and USDA are working on a variety of management questions and issues related to national scenic trail management. However, the question of “along” is acute and timely on the PCT, as the trail is affected by current over-snow vehicle use planning, which designates groomed routes and motorized riding “areas.” The question at issue in these planning efforts is whether these areas occur along the PCT.

5. 16 U.S.C. §1242.

6. *Id.* §1246.

7. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 54 ELR 20097 (2024).

8. *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 14 ELR 20507 (1984).

9. *Loper Bright*, 144 S. Ct. 2244.

I. Background

Prior to passage of the National Trails System Act, there were decades of efforts from citizens across the country to develop long-distance hiking trails as a means to provide access to undeveloped, scenic, and wild federal lands. These advocates realized the importance of spending time in nature as a way to restore one's spirit, to challenge one's self, and to find a respite from the ever-accelerating pace of life.

A. President Johnson's Message to Congress on Natural Beauty

As this public upwelling and demand for access to these undeveloped and wild public lands grew, the federal government began to take up the call to establish a system of national trails. On February 8, 1965, President Johnson gave his Special Message to the Congress on Conservation and Restoration of Natural Beauty:

For centuries Americans have drawn strength and inspiration from the beauty of our country. It would be a neglectful generation indeed, indifferent alike to the judgment of history and the command of principle, which failed to preserve and extend such a heritage for its descendants. . . .

TRAILS The forgotten outdoorsmen of today are those who like to walk, hike, ride horseback or bicycle. For them we must have trails as well as highways. *Nor should motor vehicles be permitted to tyrannize the more leisurely human traffic.* . . . I am requesting, therefore, that the Secretary of the Interior work with . . . state and local leaders and recommend to me a cooperative program to encourage a national system of trails¹⁰

B. Trails for America Report

President Johnson's speech to Congress kickstarted the administrative and legislative process for the creation of a national network of long-distance trails. Between this time and the passage of the National Trails System Act on October 2, 1968, the Bureau of Outdoor Recreation (BOR) drafted the "Trails for America" report, which served as a foundation for subsequent congressional debates through the development of the Act.¹¹

The Trails for America report provided a framework for legislators to consider what this system of national trails might be and the purposes for each trail. Importantly,

10. Lyndon B. Johnson, Special Message to the Congress on Conservation and Restoration of Natural Beauty (Feb. 8, 1965) (emphasis added), *reprinted at* American Presidency Project, <https://www.presidency.ucsb.edu/node/241332> (last visited Oct. 7, 2024) [hereinafter President Johnson's Special Message to Congress].

11. BOR, U.S. DEPARTMENT OF THE INTERIOR, TRAILS FOR AMERICA: REPORT ON THE NATIONWIDE TRAIL STUDY (1966), https://www.nps.gov/parkhistory/online_books/trails/trails.pdf [hereinafter TRAILS FOR AMERICA REPORT].

BOR recognized that the trails must be more than simply the narrow 18-inch to 30-inch trail tread itself. The report emphasized that the landscapes the trails pass through are what make the trail experiences special; without appropriate management of these adjacent landscapes, the trails would not necessarily provide extraordinary experiences. Accordingly, the report concluded: "The entire length of each national scenic trail, together with *sufficient land area on both sides to safeguard adequately and preserve its character*, should be protected in some form of public control."¹²

This passage clearly articulates that an area of sufficient width must be appropriately managed to provide for (what the National Trails System Act will frame as) the "nature and purposes" for which each trail was established by Congress. The report goes on to describe what a national scenic trail should be: "Long-distance trails can provide unparalleled opportunities for such adventure and such satisfaction . . . [and] the *opportunity to break away from the pace of automated urban living*"¹³

C. 1968 National Trails System Act

The National Trails System Act originally established two types of national trails—national scenic trails, which must be congressionally designated, and national recreation trails, which may be administratively designated. The third category of national trails, national historic trails, was added to the system when the Act was amended in 1978¹⁴; historic trails, like scenic trails, must be designated through an act of Congress. National scenic trails are designated to be long-distance (hundreds to thousands of miles), continuous trails.

Section 3(a)(2) defines "national scenic trails" as:

National scenic trails, established as provided in section 5 of this Act, which will be extended trails 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.*¹⁵

Building upon concepts from the Trails for America report, Congress passed legislation making it clear that conservation of the areas along each national scenic trail is essential to protecting the purposes for which each trail was designated. Section 7(c) provides the trails' cornerstone management mandate:

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

12. *Id.* at 26 (emphasis added).

13. *Id.* at 24 (emphasis added).

14. Pub. L. No. 95-625, 92 Stat. 3467.

15. 16 U.S.C. §1242 (emphasis added).

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 . . .*¹⁶

Congress did not prohibit the use of motorized vehicles solely on national scenic trails. It intentionally chose the word “along” to refer to an area larger than just the trail tread to protect the nonmotorized character and setting around each national scenic trail. In essence, Congress was protecting the trail experience that national scenic trails are intended to provide.

However, since the passage of the National Trails System Act, the Forest Service has often interpreted “along” to mean solely “on”; this interpretation, even if never made explicit, can be seen in numerous travel management decisions that have banned motorized vehicles on national scenic trails while allowing motorized vehicle use immediately adjacent in the lands surrounding national scenic trails.¹⁷ While the Forest Service has often narrowly interpreted “along” in past planning efforts and project-level decisions, the agency is making significant strides in policy and regulation developments that recognize the validity of the meaning of “along” as a corridor. This point will be further examined in Section II.B in relation to agency policies and unit-level plans.

Moving forward, it is essential that agencies do not interpret “along” to narrowly mean “on” in order to fulfill Congress’ vision for national scenic trails. While there will inevitably be situations in which it is impractical to completely prohibit the use of motorized vehicles in a corridor adjacent to national scenic trails—such as when trails are located near highways and necessary existing road systems—it is crucial that agencies strive to fulfill this congressional intent to limit the impacts of motorized vehicles on national scenic trail users. To demonstrate that Congress intended “along” to mean more than just “on,” the following part will consider President Johnson’s speech to Congress, legislative history, the plain meaning of the term “along,” tenets of statutory construction and language from the National Trails System Act, case law, and agency decisions, policies, and guidance documents.

16. *Id.* §1246 (emphasis added).

17. This point is addressed in more detail in Part III, which addresses management implications and recommended future actions; however, examples of motorized use being allowed along national scenic trails can be observed in various Forest Service travel management (Subpart B) planning and designation efforts. For example, numerous forests’ motor vehicle use maps illustrate the PCT as being closed to motorized use while numerous designated motorized roads occur immediately adjacent to the PCT. These cases, among numerous others, demonstrate that the Forest Service has historically interpreted “along” to solely yet incorrectly mean “on.” The agency has typically applied this interpretation implicitly rather than directly specifying that along only means “on.”

II. Meaning of “Along” the Trail

A. Can “on” and “Along” Mean the Same Thing?

As cited above, President Johnson directed the Secretary of the Interior and agency leads to develop a system of national trails, and emphasized that “motor vehicles [should not] be permitted to *tyrannize* the more leisurely human traffic.”¹⁸ “Tyrannize,” a strong word indeed, is defined by *Merriam-Webster* as “to exercise arbitrary oppressive power or severity.”¹⁹ This clear word choice by President Johnson illustrates the recognition that the impact of motorized vehicles on nonmotorized trail users, such as hikers, horseback riders, mountain bikers, and even skiers or snowshoers, dominates the experience of the nonmotorized user.

President Johnson’s direction to not allow the use of motorized vehicles to dominate and degrade the nonmotorized experiences that national scenic trails are intended to provide is arguably the first point in a series of passages that lead to Congress’ choice to prohibit motorized vehicles not just on but along national scenic trails. In light of the recent Supreme Court *Loper Bright* holding, a number of resources and authorities should be thoughtfully considered when determining the reading of the statutory language and use of the term “along.”²⁰ These resources and authorities, explored further in the following subsections, include the plain meaning of the term “along”; tenets of statutory construction; case law; legislative history; Forest Service direction; and the National Trails System Act.

1. Plain Meaning of the Term “Along”

The plain language Congress employed in the National Trails System Act, along with tenets of statutory construction and case law, shows that lawmakers wrote the statute to follow President Johnson’s direction to shield national scenic trail users from the tyranny of motorized interference with their experience. These sources are critical tools for courts to employ in post-*Loper Bright* statutory interpretation.

It is of course important to consider the plain meaning of the term “along.” A statute’s plain meaning was the determinative first step in statutory interpretation under *Chevron*, and will likely continue to be so in post-*Chevron* jurisprudence. Definitions of the term “along” include “in a line that follows the side of something long; ex: Houses had been built along both sides of the river,”²¹ from the

18. President Johnson’s Special Message to Congress, *supra* note 10 (emphasis added).

19. MERRIAM-WEBSTER DICTIONARY, *Tyrannize*, <https://www.merriam-webster.com/dictionary/tyrannize> (last visited Oct. 7, 2024).

20. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 54 ELR 20097 (2024).

21. OXFORD ENGLISH DICTIONARY, *Along*, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/along_1 (last visited Oct. 7, 2024).

Oxford English Dictionary, and “in the same direction as, or beside,”²² from the *Cambridge Dictionary*.

Juxtaposing those definitions with definitions of the term “on,” *Merriam-Webster’s* preposition definition of the word is “used as a function word to indicate position in contact with and supported by the top surface of; ex: the book is lying on the table.”²³ The *Oxford English Dictionary* provides: “in or into a position covering, touching or forming part of a surface.”²⁴ Lastly, the *Cambridge Dictionary* states: “used to show that something is in a position above something else and touching it, or that something is moving into such a position.”²⁵

All of these definitions illustrate that the terms “on” and “along” have different meanings. While being on something generally denotes physical or direct contact, along indicates being next to but not necessarily touching. Courts have found this to be the plain meaning of the term “along” in multiple cases.²⁶ In *Lyndex Corp. v. Heartech Precision, Inc.*, the U.S. District Court for the Northern District of Illinois stated:

The *American Heritage Dictionary of the English Language* says that “along” means “on a line or course parallel and close to; continuously beside: *rowed along the shore; the trees along the avenue.*” *American Heritage Dictionary of the English Language* 50 (4th ed. 2000). This definition and the illustrative examples it provides reflect that an object can be “along” another object even if the two do not come in contact. Rather, the two objects need only be “parallel” and “close to” each other.²⁷

In the context of national scenic trails, this would suggest that a motorized vehicle is not just prohibited from being on the trail tread itself, but that it is also prohibited from being in the area adjacent to or beside the trail, as “along” does not necessarily mean that objects must actually be in physical contact with one another. With the example of houses being along a river, the houses clearly are not on or in the river proper. Expanding that rationale to national scenic trails, motorized vehicles are not prohibited

just on, but also along the trails, which means the lands adjacent or next to the trails.

2. Tenets of Statutory Construction and National Trails System Act Language

It is prudent to interpret the term “along” within the context of the surrounding statutory language in the National Trails System Act. If language in a statute is unambiguous, it should be interpreted as so. As the Supreme Court opined:

In determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of “a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.” *Consumer Product Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 2056, 64 L. Ed. 2d 766 (1980).²⁸

Based on this Supreme Court rule and in conjunction with the dictionary definitions and with the *Lyndex Corp.* holding, we should assume that Congress meant “along” to be interpreted with its plain meaning. In this situation, along would not only include on but also the lands next to or adjacent to national scenic trails that prohibit the use of motorized vehicles.

The “presumption of consistent usage” canon, which courts will rely on, states: “Generally, identical words used in different parts of the same statute are . . . presumed to have the same meaning.’ Conversely, ‘a material variation in terms suggests a variation in meaning.’”²⁹ Take this canon in context with language from §7(i) of the Act (emphasis added): “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”³⁰ Here, Congress intentionally refers to conduct both on and along the trails as having separate and distinct meanings rather than treating “on” and “along” as synonymous. Clearly, these two terms, based on a reasonable reading of the statutory language, as well as when applying the canon of “presumption of consistent usage,” must mean that Congress did not intend the word “along” to simply and narrowly refer to activities only occurring on the trails.

Building upon this distinction between “on” and “along,” §5(a)(10), with the designating language for the Ice Age National Scenic Trail, states: “Notwithstanding the provisions of section 7(c), snowmobile use may be permitted on segments of the Ice Age National Scenic Trail

22. CAMBRIDGE DICTIONARY, *Along*, <https://dictionary.cambridge.org/us/dictionary/english/along> (last visited Oct. 7, 2024).

23. MERRIAM-WEBSTER DICTIONARY, *On*, <https://www.merriam-webster.com/dictionary/on> (last visited Oct. 7, 2024).

24. OXFORD ENGLISH DICTIONARY, *On*, https://www.oxfordlearnersdictionaries.com/us/definition/english/on_1?q=on (last visited Oct. 7, 2024).

25. CAMBRIDGE DICTIONARY, *On*, <https://dictionary.cambridge.org/us/dictionary/english/on> (last visited Oct. 7, 2024).

26. In *Thermal Dynamics Corp. v. TATRAS, Inc.*, No. 04-152-PB, at *15 (D.N.H. Dec. 9, 2004), the court held that “the evidence relied on by defendants is too weak to justify a reading of ‘along’ that is contrary to its customary meaning.” The court in *Smith & Nephew, Inc. v. ArthroCare Corp.*, No. 03-2214 MaA, at *10 (W.D. Tenn. Oct. 6, 2004), held, “Thus, the court will use the entire dictionary definition and define ‘along’ as ‘on a line or course parallel and close to; continuously beside; for example: rowed along the shore; the trees along the avenue.’” The court in *Patent Category Corp. v. Target Corp.*, 567 F. Supp. 2d 1171 (C.D. Cal. 2008), cited similar dictionary definitions in determining to use the plain meaning of the term “along.”

27. *Lyndex Corp. v. Heartech Precision, Inc.*, No. 03 C 3946, at *7-8 (N.D. Ill. Jan. 5, 2004).

28. *United States v. Turkette*, 452 U.S. 576, 580 (1981).

29. VALERIE C. BRANNON, CONGRESSIONAL RESEARCH SERVICE, R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, TRENDS 55 (2023) (citations omitted), <https://crsreports.congress.gov/product/pdf/R/R45153>.

30. 16 U.S.C. §1246.

where deemed appropriate by the Secretary and the managing authority responsible for the segment.”³¹

This section provides an exemption for motorized vehicle use on rather than along this one specific national scenic trail, and does not exempt motorized vehicle use along any other national scenic trail. This exemption occurs where portions of the Ice Age National Scenic Trail are located on a county snowmobile trail system and are groomed for that activity.³² With this exception, Congress certainly could have used the word “along” here, but instead choose to use the term “on” when allowing snowmobile use on the Ice Age Trail for this narrower purpose and type of motorized activity.

3. Case Law

In *United States v. 1.16 Acres of Land*, the U.S. District Court for the Southern District of Texas opined:

When referring to the Attorney General’s general acquisition power, Congress . . . used the phrase “along the . . . international land border.” Since the terms “along,” “adjacent to,” and “in the vicinity of” are all used in the same statute, the term “along” has a separate and distinct meaning from the other terms. . . . *Congress must have understood “along” to mean something akin to following the border, at some distance away from the border* Congress did not indicate a specific intent with respect to what distance from the border would still constitute following the border Therefore, . . . this Court finds that “along the border” meant following the border, *with at least enough distance from the border to complete the contemplated project.*³³

While this case centers on an interpretation of the term “along” from the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), there is similarity in the usage of the term “along” in the National Trails System Act. In the IIRIRA, Congress did not specify the exact land area or width of the area that “along the border” intended to provide. However, the court held that the Attorney General was afforded the latitude to interpret “along” to include a sufficient enough land area to carry out the intent and accomplish the direction from the IIRIRA.

A similar conclusion should be drawn with respect to national scenic trails, especially when considered in connection with the legislative history of the National Trails System Act. The Secretaries of the Interior and Agriculture, through delegation of authority to the federal agencies, have the latitude to interpret “along” to mean an area of land of sufficient width to ensure that the use of motorized

vehicles does not occur along a national scenic trail. This understanding of the statute leads to an appropriate—and distinctively different—meaning between the terms “on” and “along.”

4. Legislative History

Even looking beyond the plain meaning of the term “along,” the U.S. Senate and the U.S. House of Representatives committee reports and hearings support the concept of a separation of uses near national scenic trails—meaning motorized vehicles and their associated impacts should be spatially separated from national scenic trails to protect the character and setting of national scenic trails. The Senate Committee on Interior and Insular Affairs Report accompanying S. 827 states: “The use of motor vehicles by the general public along national scenic trails will be prohibited. This will not, however prevent motor vehicles from crossing the trails where necessary, or the use of motor vehicles along the trails for rescue, firefighting, or other emergency purposes.”³⁴

The language here shows that Congress realized that prohibiting all motorized vehicle use near national scenic trails would not be feasible. Due to the linear nature of these trails, they would inevitably cross highways and other existing road systems; therefore, “crossings” would be necessary and permitted. Congress also understood that exceptions would have to be made for emergency situations. These exceptions make plain that these permitted occurrences of motorized use along national scenic trails should be (quite literally) the exception to the rule against motorized use.

The House Committee on Interior and Insular Affairs Report accompanying H.R. 4865³⁵ contains the following language under the “Selection of Routes for National Scenic Trails” section (which did not appear in the final version of the Act with this exact language): “Such rights-of-ways shall be (1) of *sufficient width* and so located to provide the maximum retention of natural conditions, scenic and historic features, and primitive character of the trail area . . . and (2) located to avoid, insofar as practicable, *established highways [and] motor roads . . .*”³⁶

The language in the House committee report supports this separation-of-uses concept to ensure that national scenic trails provide a primarily nonmotorized trail experience. Specifically avoiding highways and motor roads, as much as practicable, speaks to the intention that national scenic trails should be protected from the impacts associated with the use of motorized vehicles.

Congressional hearings bear out this point further. When Secretary of the Interior Stewart Udall was asked by Sen. Leonard Jordan (R-Idaho) whether the intention was to also create motorcycle trails throughout the United States, Secretary Udall responded: “I think we ultimately

31. *Id.* §1244.

32. ICE AGE TRAIL ALLIANCE, LANGLADE COUNTY ICE AGE NATIONAL SCENIC TRAIL USER INFORMATION (2018), <https://www.iceagetrail.org/wp-content/uploads/LANGLADE-COUNTY-ICE-AGE-NATIONAL-SCENIC-TRAIL-USER-INFORMATION-6-10-18.pdf>.

33. *United States v. 1.16 Acres of Land*, 585 F. Supp. 2d 901, 908 (S.D. Tex. 2008) (emphasis added).

34. S. REP. NO. 1233, at 15 (1968).

35. H.R. REP. NO. 1631 (1968).

36. *Id.* at 19 (emphasis added).

are going to need special trails for these people, these motorized and mechanized people. *But I think we have got to keep them separate.*³⁷ Sen. Clifford Hansen (R-Wyo.), building upon Secretary Udall's position, expressed: "I am delighted to hear you say that. I happen to share your conviction. I think that *there is something about motorized vehicles that destroys something very fine that we are hoping so much to preserve.*"³⁸

When asked in an earlier House congressional hearing what he thought about the prohibition of motorized vehicles along national scenic trails, Secretary Udall responded: "I think probably what we are going to need to do, I notice the increasing popularity of these snowmobiles for example, in some parts of this country, is to develop special trails for them [the motorized users]."³⁹

These comments by Secretary Udall and Senator Hansen indicate that national scenic trails and the prohibition of motorized vehicles must be managed consistently and year-round to provide for the purposes for which each trail was designated. Secretary Udall calls for having separate trail systems for motorized and nonmotorized trail users. This suggests that the use of motorized vehicles needs to be separated from national scenic trails. A motorcycle or snowmobile that drives only a few feet away from a national scenic trail tread is arguably impacting the quiet national scenic trail setting, and as Senator Hansen puts it, "destroys something very fine that we are hoping so much to preserve." This is a key point that has not always been correctly interpreted or implemented along our national scenic trails over the past 56 years. Often, it has been the case that motorized vehicles are prohibited solely on a national scenic trail, while allowed to occur immediately adjacent to the trail tread.

The above legislative history shows that Congress contemplated the use of motorized vehicles across all seasons and the impact that this would have on the purposes for which a trail was designated. Further, Congress considered the concept of a separation of uses between motorized and nonmotorized recreationists and decided that separating these uses was going to be critical to protecting the primarily nonmotorized character and setting for national scenic trails.

5. Forest Service Direction—PCT Comprehensive Management Plan

The PCT Comprehensive Management Plan was developed by the Forest Service, which is the lead administering agency for the trail. Language and direction in the comprehensive plan show that the agency furthered this concept of separating motorized vehicles and their associ-

ated impacts from PCT nonmotorized users, in all seasons. First, the plan directs that motorized vehicle crossings of the PCT must be designated. In relation to winter use, it provides: "Snowmobiling on the trail is prohibited but crossing at designated locations is consistent with the purpose of the trail . . ."⁴⁰

The point of requiring motorized crossings to be designated is to limit the amount and frequency that PCT hikers, horseback riders, snowshoers, and skiers are subjected to the impacts of motorized use. Designated crossings must be allowed across the PCT for a few reasons. First, a crossing, ideally as perpendicular to the trail route as possible, exposes the PCT user to the associated motorized impacts for a relatively short duration of time. Unlike a road that runs parallel to the trail, the designated motorized crossing arguably does not constitute motorized use along the PCT.

Second, from a purely practical standpoint, it is unrealistic to have a 2,650-mile-long trail that is utterly devoid of motorized routes that cross the PCT. The trail is inevitably crossed by highways, interstates, secondary roads, and even agency-administered motorized roads and trails. Motorized crossings are a necessity, but by designating these crossings, the frequency and total amount can be managed to reduce the impacts of motorized vehicles on the PCT experience.

Next, the comprehensive plan calls for a separation of motorized uses along the PCT through appropriate planning and zoning:

Snowmobiling along the trail is prohibited by the National Trails System Act, P.L. 90-543, Section 7(c). Winter sports plans for areas through which the trail passes should consider this prohibition in determining areas appropriate for snowmobile use . . . *any motorized use of adjacent land should be zoned to mitigate the noise of conflict.*⁴¹

This agency language makes it plain that motorized use, regardless of season, is prohibited along the PCT. This direction affirms that "along" does not just narrowly prohibit the use of motorized vehicles only on the trail tread.

6. National Trails System Act

Within the context of national scenic trails, "on" means a use that physically occurs on the trail tread or line. In contrast, "along" has a notion of adjacency pertaining to the surrounding lands of a national scenic trail. As discussed above, this distinction between these two terms can be observed in §7(i) of the Act, as well as in §5(a)(10) addressing the Ice Age National Scenic Trail.⁴² The Act itself uses the term "along" to refer to the lands or uses that will occur

37. *Nationwide System of Trails: Hearings Before the Senate Committee on Interior and Insular Affairs on S. 827*, 90th Cong. 37 (1967) (emphasis added).

38. *Id.* at 75 (emphasis added).

39. *Nationwide Trails System: Hearing Before the House Subcommittee on National Parks and Recreation of the Committee on Interior and Insular Affairs*, 90th Cong. 42 (1967).

40. FOREST SERVICE, USDA, COMPREHENSIVE MANAGEMENT PLAN FOR THE PACIFIC CREST NATIONAL SCENIC TRAIL 17 (1982), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5311111.pdf [hereinafter PCT COMPREHENSIVE MANAGEMENT PLAN].

41. *Id.* at 21 (emphasis added).

42. 16 U.S.C. §1244.

adjacent to the trails. The following excerpts from the Act⁴³ articulate this point:

- “The Appalachian National Scenic Trail . . . extending generally along the Appalachian Mountains”⁴⁴
- “The Pacific Crest National Scenic Trail . . . extending . . . generally along the mountain ranges of the west coast States”⁴⁵
- “owners of land along the trail”⁴⁶
- “along the . . . coasts to the northern boundary of Hawaii Volcanoes National Park”⁴⁷

When read this way and taken together with the other sources and authorities, motorized vehicles are prohibited both on and in the adjacent lands along national scenic trails except for the occasional allowance of designated motorized crossing.

While “along” means more than just on the trail tread itself, the next logical question is, how wide is the area around a national scenic trail that must prohibit the use of motorized vehicles?

B. What Is the Width of the Adjacent Lands That Must Prohibit the Use of Motorized Vehicles?

Congress never intended to prohibit the use of motorized vehicles by the general public merely on national scenic trails. Rather, Congress intended to separate motorized vehicles and their associated impacts from that of national scenic trail users. However, the question then becomes: What is the width of land adjacent to trails within which the law bans motorized vehicles? What is the land area, right-of-way, or corridor of “sufficient width”⁴⁸ that is necessary to comply with the prohibition of motorized vehicles along national scenic trails? To address these questions, one must analyze language from the Act, agency interpretations of the statute, and administratively designated corridors along national scenic trails.

1. National Trails System Act

Starting with the Act as a foundation for subsequent agency interpretations, the statute provides for each national scenic trail to have a corresponding right-of-way (aka corridor) for trail purposes.⁴⁹ The Act does not define the exact area and width for each national scenic trail right-of-way; however, a right-of-way must be wide enough to provide for

a trail’s given purposes.⁵⁰ For a national scenic trail, this means a right-of-way that provides a setting that is primarily free from the use of motorized vehicles, except to allow for designated crossings or where it is impractical to prohibit motorized use, such as an existing highway. Agency interpretations of the Act’s meaning of “right-of-way” bear this point out, as is evidenced through the establishment of administratively designated management areas and corridors, as discussed below.

2. Agency Management Guidance and Direction

BLM’s Manual 6250 addresses the administration of national scenic and historic trails. In the manual, BLM interprets what the congressionally designated national scenic trail right-of-way should consider: “Criteria for location of the National Scenic Trail Right-of-Way for a National Scenic Trail designated by Congress include the *highest possible scenic value*; . . . *opportunities for high-quality primitive non-motorized recreation experiences* . . . ; and *avoidance of, so far as practicable, highways [and] motor roads*”⁵¹

The BLM manual expressly highlights that the congressionally designated national scenic trail rights-of-way must not only prohibit motorized vehicles on the trail tread, but a right-of-way must also provide a “primitive, non-motorized experience,” which indicates a spatial separation between motorized vehicles and national scenic trail users. For example, the presence of a motorized vehicle traveling not directly on the trail tread but only a short distance away and parallel to the trail would not provide a nonmotorized trail experience; having a motorized vehicle, whether it be a motorcycle, off-highway vehicle, or snowmobile, ride only feet away from a hiker, horseback rider, skier, or bicycle rider on a national scenic trail would disrupt the nonmotorized trail setting and experience.

Building upon the congressionally established national scenic trail right-of-way, BLM and the Forest Service have a responsibility to establish an administratively designated national scenic trail management area or corridor. These administrative management corridors (as will be addressed more specifically below) must be of a specific width extending from a trail’s centerline, be clearly illustrated on agency maps, and contain specific management standards and guidelines to ensure sufficient management of a national scenic trail’s nature and purposes.⁵²

43. National Trails System Act of 1968, Pub. L. No. 90-543, 82 Stat. 919.

44. *Id.* §5(a)(1).

45. *Id.* §5(a)(2).

46. *Id.* §5(a)(26)(E)(i).

47. *Id.* §5(c)(35).

48. H.R. REP. NO. 1631, at 19 (1968).

49. 16 U.S.C. §1246.

50. Section 7(c) of the Act addresses each trail’s “nature and purposes.” This is a cornerstone section of the Act, and each trail’s nature and purposes are the touchpoint for comparing the permissibility of “other uses” that may occur along national trails.

51. BLM, U.S. DEPARTMENT OF THE INTERIOR, MANUAL 6250—NATIONAL SCENIC AND HISTORIC TRAIL ADMINISTRATION (PUBLIC) 1-9 (2012) (emphasis added), https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual6250.pdf [hereinafter BLM MANUAL 6250].

52. BLM, U.S. DEPARTMENT OF THE INTERIOR, MANUAL 6280—MANAGEMENT OF NATIONAL SCENIC AND HISTORIC TRAILS AND TRAILS UNDER STUDY OR RECOMMENDED AS SUITABLE FOR CONGRESSIONAL DESIGNATION (PUBLIC) (2012), https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual6280.pdf.

While the width of the administrative trail management corridor may vary, it must be wide enough to provide for the primarily nonmotorized character, settings, and national scenic trail's nature and purposes.⁵³ A trail corridor may not be able to avoid every potential impact from motorized vehicles, but the corridor should strive to avoid or minimize these impacts on the national scenic trail experience.

The meaning of “substantial interference” in relation to a national scenic trail's right-of-way and management corridors must be considered in relation to the prohibition of motorized vehicles along national scenic trails. Section 7(c) of the Act states: “Other uses along the trail, which *will not substantially interfere with the nature and purposes* of the trail, may be permitted”⁵⁴

BLM defines “substantial interference” as follows: “[S]ubstantial interference. Determination that an activity or use affects (hinders or obstructs) the nature and purposes of a designated National Trail (see nature and purposes).”⁵⁵ BLM's connected definition of “nature and purposes” states:

[N]ature and purposes. The term used to describe the character, characteristics, and congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; the primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of National Trails.⁵⁶

Section 7(c) of the Act provides that “other uses” may be permitted along the trail as long as they do not “substantially interfere with the nature and purposes” of the trail; however, this “substantial interference” test does not directly apply to the prohibition of motorized vehicles along national scenic trails. The use of motorized vehicles is not one of the “other uses” because Congress explicitly called out and created a flat prohibition for the use of motorized vehicles along the national scenic trails. Nonetheless, there is a relationship between substantial interference and the prohibition of motorized vehicles. When evaluating the distance that motorized vehicles must be prohibited from a national scenic trail, the substantial interference of a trail's nature and purposes provides a means consistent with Congress' overall direction in the statute to determine this minimum distance.

53. BLM Manual 6280 clearly expresses that a national trail management corridor must effectively manage for a national trail's nature and purposes, resources, qualities, and associated settings. The manual states, “National Scenic Trails include the tread, or the trail path, and the trail setting which is included within the National Trail Management Corridor.” *Id.* at 1-4. In essence the trail tread, as well as the surrounding landscape, makes up the national scenic trail. Further, management of those lands must be to the effect that they provide for a trail's given nature and purposes as established by the Act.

54. 16 U.S.C. §1246 (emphasis added).

55. BLM MANUAL 6250, *supra* note 51, at G-7.

56. *Id.* at G-6.

3. Agency Direction in Unit-Level Land Management Plans

Building upon this overarching direction from the BLM manuals, agency interpretation at the unit plan level of what is necessary to provide an area of “sufficient width” for a national scenic trail right-of-way can be found in the following BLM and Forest Service unit-level plans.

BLM's Desert Renewable Energy Conservation Plan (DRECP) Land Use Plan Amendment establishes “the National Trail Management Corridors and management actions to safeguard the nature and purposes for the national trail designation.”⁵⁷ The DRECP established the first BLM PCT management corridor that is two-miles wide and contains specific management direction to protect the nature and purposes of the trail.

Three southern Sierra Nevada national forests in California have recently revised their land and resource management plans (aka forest plans) under the Forest Service's 2012 Planning Rule and directives.⁵⁸ The Planning Rule and directives, which underwent notice-and-comment rulemaking, defines “national scenic trails” as “designated areas.” The directives provide specific direction for protecting the nature and purposes of each trail. All three plans established “PCT Management Areas” that contain plan components such as “Standards, Guidelines, Desired Conditions, and Suitability Statements” to ensure that the nature and purposes of the PCT are protected.

The Inyo National Forest Plan defines the “PCT corridor” as follows:

The management area for the Pacific Crest National Scenic Trail corridor includes the lands in the visible foreground encompassing resources, qualities, values, associated settings, and primary uses. The visible foreground is the area that is seen from the trail's centerline . . . extending up to one-half mile on both sides of the trail, depending on topography.⁵⁹

The Forest Service determined this width for the PCT Management Area by tiering to its Scenery Management System. “The Scenery Management System provides an overall framework for the orderly inventory, analysis, and management of scenery.”⁶⁰ The width of the PCT Manage-

57. BLM, U.S. DEPARTMENT OF THE INTERIOR, DESERT RENEWABLE ENERGY CONSERVATION PLAN: LAND USE PLAN AMENDMENT TO THE CALIFORNIA DESERT CONSERVATION AREA PLAN, BISHOP RESOURCE MANAGEMENT PLAN, AND BAKERSFIELD RESOURCE MANAGEMENT PLAN 41 (2016), https://eplanning.blm.gov/public_projects/lup/66459/133474/163144/DRECP_BLM_LUPA.pdf.

58. National Forest System Land Management Planning, 77 Fed. Reg. 21162 (Apr. 9, 2012), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5362536.pdf [hereinafter 2012 Planning Rule].

59. FOREST SERVICE, USDA, LAND MANAGEMENT PLAN FOR THE INYO NATIONAL FOREST: FRESNO, INYO, MADERA, MONO, AND TULARE COUNTIES, CALIFORNIA; ESMERALDA AND MINERAL COUNTIES, NEVADA 93-94 (2018) (emphasis added), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd589652.pdf [hereinafter LAND MANAGEMENT PLAN FOR THE INYO NATIONAL FOREST].

60. USDA Forest Service, *Scenery Management System (SMS)*, <https://www.fs.usda.gov/detail/mantilasal/landmanagement/planning/?cid=fseprd547368> (last visited Oct. 7, 2024).

ment Area is based upon the “foreground” distance zone, which is the visible landscape up to one-half mile from an observation point. This is the distance where the common observer is aware of visual details in the surrounding landscape, and they are also most sensitive to changes and disturbances within this zone.⁶¹ As such, it is essential that the lands in this distance zone are managed sufficiently to provide for the nature and purposes of the trail; as per the PCT Foundation Document, the trail’s nature and purposes are to showcase lands that are primarily free from development and provide trail users with a respite from mechanized society⁶² (the PCT’s nature and purposes are detailed later).

Importantly, the language addressing motorized vehicle use in the Inyo⁶³ and Sequoia⁶⁴ National Forest Plans illustrates that motorized use and the designation of future motorized roads, in general, should not occur within the PCT Management Areas if it interferes with the PCT’s nature and purposes. Unfortunately, direction from the plans does not adequately address existing designated motorized use within the PCT Management Areas or the use of motorized vehicles along the trail.

4. Auditory Impacts of Motorized Use

The above unit-level national forest plans have based their national scenic trail management area on the foreground distance zone of one-half mile on each side of the trail. This distance zone, as described above, largely focuses on scenic integrity and potential visual impacts. However, this distance zone may also provide benefits to managing noise impacts from motorized vehicles on national scenic trail users. “Noise” is generally considered an auditory impact that is considered to be negative to the listener.⁶⁵ The more intense (and loud) a noise is, the greater the level of disturbance to the recreationist; this is especially true when a recreation user is expecting a more primitive experience.

To create a baseline for thinking about noise impacts, sounds in the range of 20 to 40 A-weighted decibels (dB(A)) are similar to the sounds of rustling leaves, or someone whispering at about five feet away. A level of 40 dB(A) is about the same as a quiet library room; 70 dB(A) would be similar to a vacuum cleaner running; and 90 dB(A) is equivalent to a motorcycle at a distance of 25 feet.⁶⁶ The fol-

lowing outdoor recreation vehicles produce the following approximate decibel levels at a distance of 50 feet:

- Snowmobile: 68-73 dB(A)⁶⁷
- Dirt bike: 96 dB(A)⁶⁸
- All-terrain vehicle (ATV): 97 dB(A)⁶⁹

These levels of sound are considered loud, and would disrupt and dominate the experience of virtually any nearby nonmotorized recreationist. However, ambient noises, vegetation, and landscape features can significantly reduce sound or noise propagation from its place of origin.

For example, the Forest Service has found that a sound of 90 dB(A), like that of one of the motorized vehicles listed above, can be reduced to below 50 dB(A) within 450 feet when there is a buffer of trees and shrubs.⁷⁰ Sound propagation maps produced by the Tahoe National Forest in their Over-Snow Vehicle Use Designation Final Environmental Impact Statement shows that sound propagation can be affected by air temperature, elevation, relative humidity, vegetation, and ground cover.⁷¹ So, depending on specific conditions, the administratively designated half-mile (on each side) management corridor may or may not be wide enough to adequately zone and mitigate noise impacts from motorized vehicles as directed by the PCT Comprehensive Management Plan.⁷²

The above information indicates that each situation will require site-specific analysis to determine when noise impacts can be sufficiently mitigated as to not significantly disrupt and substantially interfere with the nature and purposes of a given national scenic trail. Further, it will need to be determined whether these noise impacts are long-lasting from a motorized road that parallels a national scenic trail, or shorter in duration from a perpendicular motorized road crossing.

5. Bottom Line—The Meaning of “Along”

Harking back to the definition of “along,” and the example of houses along the river,⁷³ if the houses were located in a (relatively) parallel alignment to the river, and if the river could be experienced and perceived from the houses—seen, heard, smelled—then the homeowners would likely

61. FOREST SERVICE, USDA, AGRICULTURE HANDBOOK NUMBER 701, LANDSCAPE AESTHETICS: A HANDBOOK FOR SCENERY MANAGEMENT (1995), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd547374.pdf.

62. FOREST SERVICE, USDA, FOUNDATION DOCUMENT: PACIFIC CREST NATIONAL SCENIC TRAIL, CALIFORNIA, OREGON, WASHINGTON (2022), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1025060.pdf [hereinafter PCT FOUNDATION DOCUMENT].

63. LAND MANAGEMENT PLAN FOR THE INYO NATIONAL FOREST, *supra* note 59.

64. FOREST SERVICE, USDA, LAND MANAGEMENT PLAN FOR THE SEQUOIA NATIONAL FOREST (2023), <https://usfs-public.app.box.com/v/PinyonPublic/file/1224226109888>.

65. ROBIN T. HARRISON ET AL., FOREST SERVICE, PREDICTING IMPACT OF NOISE ON RECREATIONISTS (1980), <https://www.fs.usda.gov/t-d/pubs/pdfimage/80231202.pdf>.

66. Miranda M. Riva, *Decibel Chart: What You Need to Know*, NAT’L COUNCIL ON AGING (June 17, 2024), <https://www.ncoa.org/adviser/hearing-aids/decibel-levels/>.

67. American Council of Snowmobile Associations, *Sound and Environment Research*, <https://www.snowmobilers.org/sound-environment-issues-snowmobiling.aspx> (last visited Oct. 7, 2024).

68. *Off Road Bike Exhaust Noise Test—Feature Review—Dirt Rider Magazine*, DIRT RIDER (Feb. 24, 2009), https://www.dirt rider.com/features/141_0305_exhaust_noise_test/.

69. Oregon Parks and Recreation Department, *Ride ATVs—ATV Sound*, <https://www.oregon.gov/oprd/atv/pages/atv-sound.aspx> (last visited Oct. 7, 2024).

70. NATIONAL AGROFORESTRY CENTER, USDA, CONSERVATION BUFFERS: DESIGN GUIDELINES FOR BUFFERS, CORRIDORS, AND GREENWAYS 94 (2008) (6.4 Buffers for Noise Control), https://www.fs.usda.gov/nac/buffers/docs/conservation_buffers.pdf.

71. FOREST SERVICE, USDA, TAHOE NATIONAL FOREST OVER-SNOW VEHICLE USE DESIGNATION FINAL ENVIRONMENTAL IMPACT STATEMENT (2024), <https://usfs-public.app.box.com/v/PinyonPublic/file/1523577327949>.

72. PCT COMPREHENSIVE MANAGEMENT PLAN, *supra* note 40.

73. OXFORD ENGLISH DICTIONARY, *supra* note 21.

say that their houses were located along the river. If there were geographic or other physical features, such as thick forest, a ridge, or human development, such as buildings that blocked the river from being experienced and perceived, then the homeowners would not likely say that their homes were located along the river.

Carrying this definition example and rationale over to national scenic trails, it is clear that there must be a physical separation between the use of motorized vehicles within one-half mile of national scenic trails if the vehicles are not considered to occur along a trail. However, when determining how far apart the motorized vehicles must be separated, a site-specific analysis should be completed for each situation. Additionally, each trail's nature and purposes statement should be evaluated to inform this site-specific analysis. The PCT's nature and purposes statement will be used for this scenario:

The Pacific Crest National Scenic Trail is a continuous path along the spectacularly scenic crest of the Pacific mountain ranges between Mexico and Canada . . . and favors lands that appear wild and free from development. All people can find a sense of awe, personal challenge, and a respite from mechanized society on the PCT.⁷⁴

To test a hypothetical situation against this concept of “along” and the PCT's nature and purposes, imagine a motorized Forest Service road that is located only about 400 feet away from the PCT, and the road runs roughly parallel to the trail for several miles; however, the road is located behind a ridge that completely blocks the sights and sounds of the road altogether. PCT users would not hear or see motorized vehicles on the road, and likely would not even know the road was there.

In this situation, motorized vehicles on this road would not be considered to occur along the PCT because the impacts would be totally unperceived by people on the trail and therefore would have no negative impact on the trail user experience. Additionally, the road would not substantially interfere with the PCT's nature and purposes as documented in the PCT Foundation Document to provide opportunities to experience lands that appear wild and free from development and to provide trail users with a respite from mechanized society.

Conversely, imagine a Forest Service motorized road that is located approximately a quarter-mile away (or potentially more) from the PCT and is routed roughly parallel to the trail. In this situation though, the road is located on the same side of a ridge as the PCT. The road itself is visible from the trail, and every time a motorized vehicle travels by, the sights and sounds of the vehicle are seen and heard, potentially in the range of 60 to 70 dB(A), which is considered to be a fairly loud noise. Further, because the road parallels the trail, the duration of the impact is longer lasting than if it were a perpendicular motorized road crossing.

Although the road in this example is located further away than in the previous example, because it is located in the open with no visual or auditory screening, the road and vehicles would be perceived by trail users and negatively impact the trail experience. Therefore, the vehicles that use this road would be considered motorized vehicle use along the PCT. Additionally, as per BLM direction in Manual 6250, this example of motorized vehicle impacts would “hinder or obstruct” the PCT's nature and purposes, which are to provide trail users the opportunity to travel through lands that appear wild and free from development and provide a respite from mechanized society.

Reflecting back to the situation described in the introduction to this Comment, one can safely argue this example is the type of experience that constitutes motorized vehicle use along the PCT, as well as substantial interference with the trail's nature and purposes. In this example, the hiker had not even noticed the road before the motorcycles came racing by. It was the actual act of seeing, hearing, and smelling the exhaust of the motorcycles that created the experience of motorized vehicle use along the trail. If there had been some physical buffer, such as a ridge or rock outcropping in between the road and trail that blocked the sights, sounds, and smell of the motorcycles, then the hiker likely would not have perceived the use of motorized vehicles along the trail.

When taking all of the above resources, authorities, and management direction together, *the prohibition of motorized vehicles along national scenic trails should mean any motorized vehicle use that:*

- (1) is (or would be⁷⁵) obviously perceived by the trail user and negatively disrupts the intended trail experience, as informed by the trail's nature and purposes statement; and
- (2) is generally located in a parallel orientation to the national scenic trail, leading to an extended duration of exposure to the motorized vehicle impacts—sights, sounds, and smells.

By this definition, a designated motorized vehicle crossing, ideally at a perpendicular angle, would not constitute the use of motorized vehicles along a national scenic trail.

The determination of whether motorized vehicle use is considered to occur along a national scenic trail must be made through site-specific analysis. Tiering to the established Forest Service PCT Management Areas,⁷⁶ the foreground distance zone should be the starting place for this site-specific analysis. Consistent with the *1.16 Acres of Land* holding, the land management agencies have the author-

74. PCT FOUNDATION DOCUMENT, *supra* note 62, at 9 (emphasis added).

75. Determining whether motorized vehicle use is considered to be along a national scenic trail should not be solely dependent on the trail user experiencing the impacts of motorized use at one given moment in time. As a national scenic trail is intended to provide a specific recreation *opportunity* that is protected from the impacts of motorized vehicles, motorized uses (through roads, routes, areas, and trails) that would negatively impact the national scenic trail's intended opportunity should not be designated.

76. Based on the foreground distance zone of up to one-half mile from the trail tread.

ity, as delegated from the respective Secretaries, to interpret “along” to mean an area of land that is wide enough to physically separate the use of motorized vehicles from national scenic trails to meet this proposed interpretation of “along.”

III. Implications for Managing Motorized Uses “Along” National Trails

This interpretation of the term “along” and the prohibition of motorized vehicles represents a change from previous agency interpretations as viewed from management actions. As evidenced by past agency decisions and actions, agencies have often narrowly interpreted “along” to simply mean “on.” This is observed by actions such as the allowance of over-snow vehicles, designated motorized roads and trails, and areas being located along (as per this Comment’s proposed definition) national scenic trails. These motorized activities have been allowed to occur even though they have been located along national scenic trails. The interpretation of “along” proposed here will create a paradigm shift in which agency land managers and planners must consider motorized use within the wider national scenic trail corridor, not just prohibiting such uses on a national scenic trail tread.

As seen by recent BLM and Forest Service unit-level management plans, national scenic trail management is heading in a positive direction—managing the entire national scenic trail corridor in a manner that is consistent with a trail’s nature and purposes. This includes limiting the designation of *new* motorized roads, trails, and areas within a national scenic trail management corridor to ensure that new or additional motorized vehicle use does not occur along the national scenic trails. However, this positive management direction does not directly address the countless *existing*⁷⁷ agency-designated motor vehicle roads, trails, and areas that occur along national scenic trails.

In the mid-2000s, many national forests engaged in travel management planning. Along the PCT, numerous existing motorized roads that were (and still are) located along the PCT were reauthorized through the project analysis process and records of decision. Roads that were located along the PCT (located within a few hundred feet away, ran parallel to, and could be seen and heard from the trail) were reauthorized, despite substantially interfering with the trail’s nature and purposes.

The Forest Service’s 2012 Planning Rule and directives⁷⁸ have encouraged the three southern Sierra Nevada national forests to establish administratively designated PCT Management Areas, which will direct better management of motorized vehicles along the PCT in the future. However, these are just three of 25 national forests that the trail passes through. The other 22 national forests have yet to revise their forest plans to incorporate direction from the Planning Rule and directives, leaving these outdated plans

with insufficient management direction to uphold the prohibition of motorized vehicles along the PCT.

Inevitably, this means that future project-level decisions (which typically tier to the forest plans for management direction) may continue to allow and designate new motorized vehicle uses along the PCT. This is true of all national scenic trails that pass through national forests that have yet to revise their plans under the 2012 rule to create unit-level direction to prohibit motorized vehicle use along national scenic trails.

As a result of this previous agency interpretation to prohibit motorized use only on national scenic trails in many cases, there are countless motorized roads and trails that exist along national scenic trails. While stronger direction exists pertaining to the development of new motorized uses on roads, trails, and areas, it does not necessarily apply to existing motorized roads and trails. In reality, it will be challenging for agencies to close all motorized roads and trails that are located along national scenic trails. This is the case for a few reasons. First, in many instances there is a lack of political will, and the controversy around closing roads is high; second, agencies often lack the staff capacity to take on the environmental analysis and project planning to accomplish this work.

So, how do the agency land managers and the associated nonprofit trail partners⁷⁹ move management of the national scenic trails in the direction that fulfills Congress’ original direction to prohibit motorized vehicles along national scenic trails?

The interpretation of the term “along” proposed here has thoroughly explored the key sources, history, and authorities related to the National Trails System Act and the reasoning behind Congress’ choice of the term “along.” Federal land management agencies have yet to explicitly define “along” or consider how to consistently implement this congressional prohibition. Rather, many prior agency actions and decisions indicate that the agencies have interpreted “along” only to mean “on.” Despite the positive strides in management direction noted above, this lack of clear definition will invariably lead to continued inconsistent and insufficient management approaches.

The Supreme Court opined in *Loper Bright* that statutory ambiguities cannot be conflated to mean that they are implicit delegations to agencies; an agency’s “permissible” reading of ambiguous statutory language cannot be reconciled with the Administrative Procedure Act. The Court stated: “Instead of declaring a particular party’s reading ‘permissible’ in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.”⁸⁰ Arguably, all of the resources and authorities cited throughout this Comment contribute to a sufficient if not best reading of the term “along,” and

77. Previously designated in past planning processes.

78. 2012 Planning Rule, *supra* note 58.

79. National Trails System Act §11 authorizes and encourages the federal land management agencies to include private partners and volunteers in the maintenance, management, and planning of the national trails. This established what is commonly referred to as the “collaborative management system” of our national trails.

80. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 54 ELR 20097 (2024).

should hold sway over previous agency silence, ambiguity, and inconsistency.

Federal agencies should continue to be afforded some level of discretion, but not necessarily the extensive level of deference to interpret ambiguous terms as was afforded under *Chevron*. This is especially true in the unique situation with the administration and management of national scenic trails. The National Trails System Act directly calls out the important role of volunteers and private organizations in “planning, developing, maintaining, or managing” national scenic trails.⁸¹ Section 11 of the Act established the collaborative management system for national scenic trails.⁸²

In light of the *Loper Bright* holding, and in conjunction with the Act’s establishment of the collaborative management system of national scenic trails, the federal agencies should strongly consider incorporating this interpretation of the term “along.” As well, the agencies should evaluate the following management recommendations to comply with the congressional prohibition of the use of motorized vehicles along national scenic trails.

First, national forests that have not revised their forest plans under the 2012 Planning Rule and directives should do so.⁸³ In revising these plans, the Forest Service should develop improved and more sufficient direction pertaining to protecting the nature and purposes of any national scenic trail, which would also consider the National Trails System Act’s prohibition of motorized vehicles along national trails. The fact that so few national forests have revised their plans under the 2012 rule means that many national scenic trails do not have the unit-level direction that is necessary to provide for their nature and purposes; and project-level decisions may still allow new motorized uses to be designated along national scenic trails.

Second, the two primary multiple use management agencies, BLM and the Forest Service, should embark on travel management planning to perform site-specific analysis and evaluate every motorized road, trail, and area that is located within one-half mile of a national scenic trail. When a motorized road, trail, or area meets the proposed interpretation of “along,” then the respective agency should focus on closing or relocating these motorized vehicle roads, trails, and areas to comply with the Act’s prohibition.

Third, the Forest Service should update its Forest Service Manual (FSM) 2350, which addresses national scenic trail management.⁸⁴ Unlike BLM’s 6250 and 6280 Manuals, FSM 2350 has minimal direction pertaining to national scenic trails administration and management. Updates to this manual should consider:

- Incorporating this interpretation of “along” pertaining to the prohibition of motorized vehicles along national scenic trails
- Creating definitions of key terms such as “nature and purposes,” “substantial interference,” “other uses,” and “substantial relocations”

Fourth, the agencies, in partnership with their non-profit, private trail management partners, may initiate optimal location review (OLR) planning where motorized use is located along a national scenic trail. The purpose of the OLR planning process is to evaluate whether a national scenic trail is currently located in its most optimal location to fulfill its nature and purposes. In cases where there are motorized roads, trails, or areas that the agency is unable to close or move, the agency and partner organization may consider whether the national scenic trail might be relocated to a more optimal location to avoid the motorized vehicle impacts. OLRs may determine that there is a better trail location that avoids motorized vehicle use impacts and improves the intended trail experience. However, relocation of a national scenic trail should only occur if it improves the trail experience overall and not because it is an easier approach than closing motorized roads, trails, or areas.

As acknowledged above, all of these planning processes require a political will and staff capacity to execute. To build staff and organizational capacity with both the agencies and private trail partners, Congress should appropriate sufficient funding to the public land management agencies. In the current political climate, this is unfortunately an unlikely proposition.

The complex dynamic between the multiple use mandate and the dominant use mandate of national scenic trails is difficult to navigate. This is exacerbated by the nature of national scenic trails—long-distance, linear trail corridors that cross through innumerable jurisdictions and land management schemes. While all four of the strategies articulated above should occur, there will have to be flexibility and patience as agencies and the associated non-profit trail management partners move national scenic trail management in a direction that more holistically fulfills Congress’ vision. At present, this vision remains largely unfulfilled, but is slowly moving in the right direction due to diligent efforts from agency staff and private partners.

IV. Conclusion

President Johnson, BOR, and Congress had a vision for national scenic trails; one in which these trails would provide people with a means to sojourn into our nation’s most scenic lands and find a respite from the hustle and bustle of our fast-paced, mechanized, and motorized society. As the Trails for America report promotes:

The spirit of adventure springs ever anew in the hearts of Americans, young and old. In no way is it better satisfied than in the exploration of unfamiliar terrain or in the discovery of the beauties of nature.

81. 16 U.S.C. §1250.

82. See *supra* note 79.

83. 2012 Planning Rule, *supra* note 58.

84. FOREST SERVICE, USDA, FOREST SERVICE MANUAL FSM 2300—RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT ch. 2350 (2009), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5403594.pdf.

Long-distance trails can provide unparalleled opportunities for such adventure and such satisfaction. . . . Routed to open the scenic wonders of ridgelines, mountaintops, countryside, streams, and lakeshores . . . they offer varied and exciting experiences. Built to harmonize with the natural areas they cross, they afford the visitor closeup instruction in nature and her ways. Healthful exercise and the opportunity to break away from the pace of automated urban living add to the values of extended hiking and riding experiences.⁸⁵

It is with this vision in mind for national scenic trails that Congress drafted legislation to create our national trails system. From President Johnson's 1965 speech to Congress, to the subsequent legislative history, and in the final language in the 1968 National Trails System Act, Congress realized that to meet this vision for national scenic trails, the use of motorized vehicles could not occur

along the national scenic trails. Lawmakers understood that to provide opportunities for exploration into our most scenic and remote landscapes and to provide restoration of the human spirit from the pressures of everyday life, exposure to motorized vehicles must be limited.

It is for this reason that Congress used the word "along" when prohibiting the use of motorized vehicles along national scenic trails, and that, as Secretary Udall expressed, is meant to keep these uses "separate."⁸⁶ Moving forward, land managers and associated nonprofit trail partners should work collaboratively to ensure that future planning efforts and management actions incorporate this interpretation of the word "along." This is essential to fulfill Congress' intent to allow national scenic trail users the opportunity to explore the nation's most scenic and beloved lands primarily free from the sights and sounds of motorized vehicles.

85. TRAILS FOR AMERICA REPORT, *supra* note 11, at 24.

86. *Nationwide System of Trails: Hearings Before the Senate Committee on Interior and Insular Affairs on S. 827, supra* note 37.