

8	directed that all units of the national parks were to be treated consistently,
	with resource protection the primary goal,
9	while retaining the flexibility for individual park units
	to approve particular uses consistent with their specific enabling legislation.
10	adopted pursuant to notice and comment
	established a uniform rule
11	wherein all bicycle use of off-road areas would be prohibited
	unless local park superintendents designated particular trails to be open.
12	As noted, this had previously been the rule
	in all but the recreation units.
13	prosecutorial discretion, the 1987 regulation was not enforced
	and bicyclists in fact retained access to all trails in the GGNRA pending the development of a trail use plan.
14	1987 rule: use of a bicycle is prohibited
	except on park roads, in parking areas and on routes designated for bicycle use;

15	Routes may only be designated for bicycle use based on a written determination that such use is consistent
	with the protection of the park area's natural, scenic and aesthetic values,
16	safety considerations and management objectives and will not disturb wildlife or park resources.
17	The National Park Service Organic Act provides that the National Park Service shall:
18	promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified,
19	by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations,
20	which purpose is to conserve the scenery and the natural and historic objects and the wild life therein
21	and to provide for the enjoyment of the same in such manner and by such means
	as will leave them unimpaired for the enjoyment of future generations.
	16 U.S.C. section 1.
22	Secretary of the Interior shall make and publish such rules

	and regulations as he may deem necessary or proper
23	for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service.  16 U.S.C. section 3.
24	Chevron
25	Legislative regulations promulgated pursuant to such express authority will be upheld
	"unless they are arbitrary, capricious, or manifestly contrary to the statute."
26	Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).
27	arbitrary and not based upon a permissible interpretation of the Organic Act.
28	permissible interpretation of the Organic Act
	mandated and certainly permissible construction of the Organic Act and its amendments.
29	NPS interpreted Congress's amendments to the Organic Act to be clear in the message
	NPS was not to single out a particular class of units of the park system (i.e. recreational units) for less protective treatment,
30	instead NPS was to manage all units of the park system so as to effect the purpose of the Organic Act—

primarily resource protection. 31 Supreme Court has established a two-step process for reviewing an agency's construction of a statute it administers: 32 | First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. 34 | If, however, the court determines Congress has not directly addressed the precise question at issue, 35 | the court does not simply impose its own construction on the statute. as would be necessary in the absence of an administrative interpretation. 36 Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. 37 Chevron 38 At "step one," if a court "employing traditional tools of statutory construction ascertains that Congress had an

intention on the precise question at issue, that intention is the law and must be given effect." 39 At "step two," "The Court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, 40 or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." 41 Chevron Step One 42 Congress clearly intended by its 1970 and 1978 amendments to the Organic Act that NPS alter its practice of governing recreational park units under less restrictive standards 43 Im instead manage all areas of the park system uniformly with the fundamental goal of resource protection in mind. legislative history of the 1970 amendments 44 House Report, H.R. Rep. No. 91-1265, accompanying the bill amending the Organic Act, Pub. L. No. 91-383, 45 Im noted that because the Organic Act "contains no reference to more recent concepts like national recreation areas, national seashores, or national lakeshore,"... 46 "the usual rules of construction . . . could result in interpretations which would lead to the administration of the system so that it would be almost devoid of

uniformity."

47	However, the Organic Act (and some other statutes) "have desirable, useful, and necessary provisions
	and they should be applicable uniformly throughout the National Park System."
48	Thus, the bill's "Section 1 emphasizes the common purpose of all units of the national park system
49	and declares that its purpose is to include all such areas in the system and to clarify the authorities applicable to it."
	1970 U.S. Code Cong. & Adm. News, Vol.2, 91st Cong., 2d Sess., at 3785-87.
50	the statutory language and the legislative intent of the 1970 and 1978 amendments mandated that NPS discontinue the practice
51	of managing recreation areas under less protective rules than it was using in managing natural and historic areas.
52	NPS could only effect the intent of Congress by amending 4.30 such that all parks were to be treated uniformly
53	in the manner that natural and historical units had previously been managed
	and thus that all trails were to be "closed-unless-designated-open."
54	NPS in amending section 4.30 (in accordance with its more general policy of eliminating management categories
55	and deleting the less restrictive "recreation" unit rules)

56 The challenged regulation, therefore, is valid. 57 Chevron Step Two 58 **Even if the intent of Congress were not so clear on this** issue, the regulation would still be upheld as based on a permissible interpretation of the Organic Act. 59 As noted above, legislative regulations promulgated pursuant to an express grant of statutory rulemaking authority are valid 60 unless they are arbitrary, capricious, or manifestly contrary to the statute." Chevron, 467 U.S. at 844. 61 If an agency decision "`represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it 62 | unless it appears from the statute or its legislative history that the accommodation is not one that Congress would

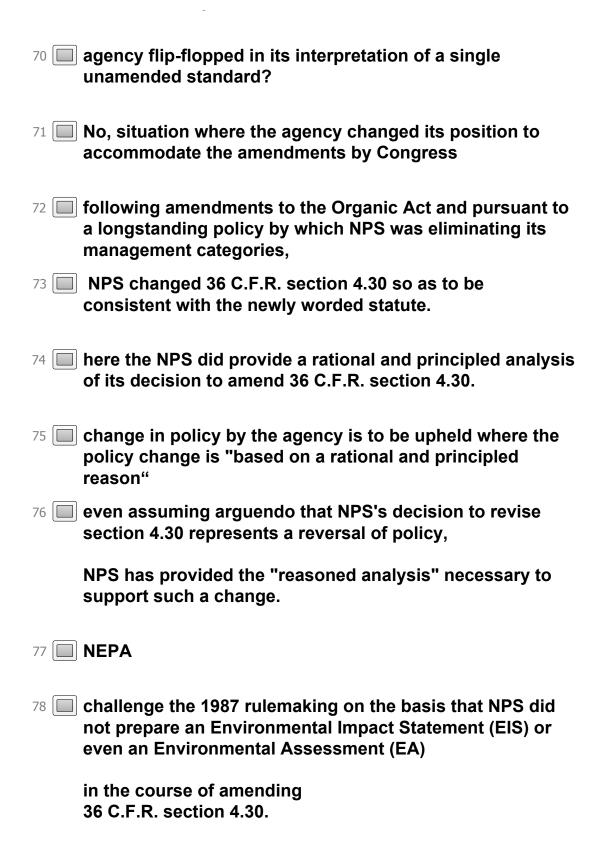
acted so as to "give effect to the unambiguously

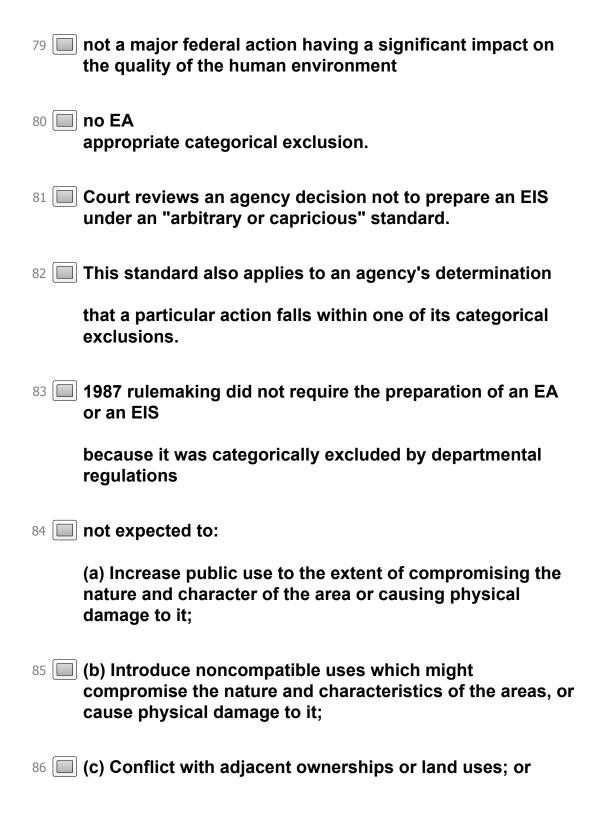
expressed intent of congress."

have sanctioned."

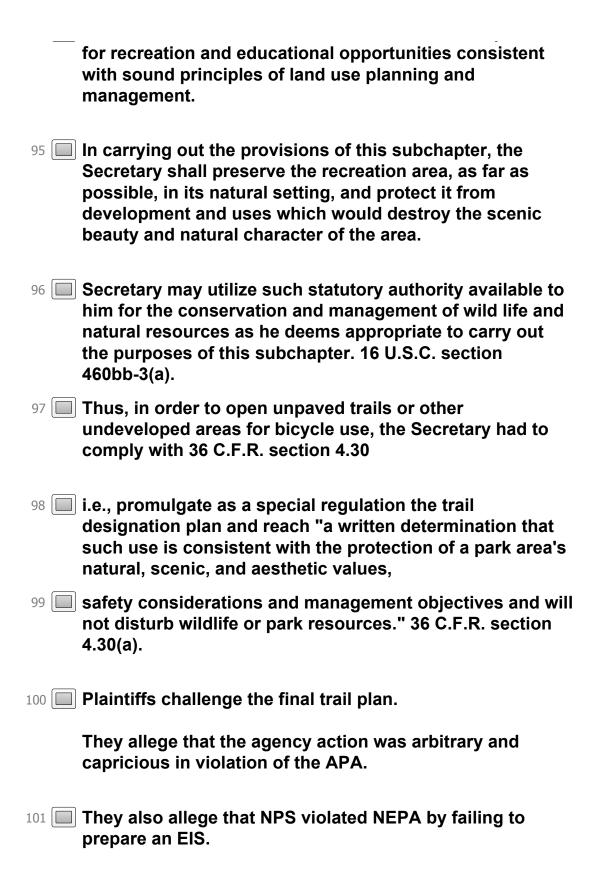
Chevron, 467 U.S. at 845

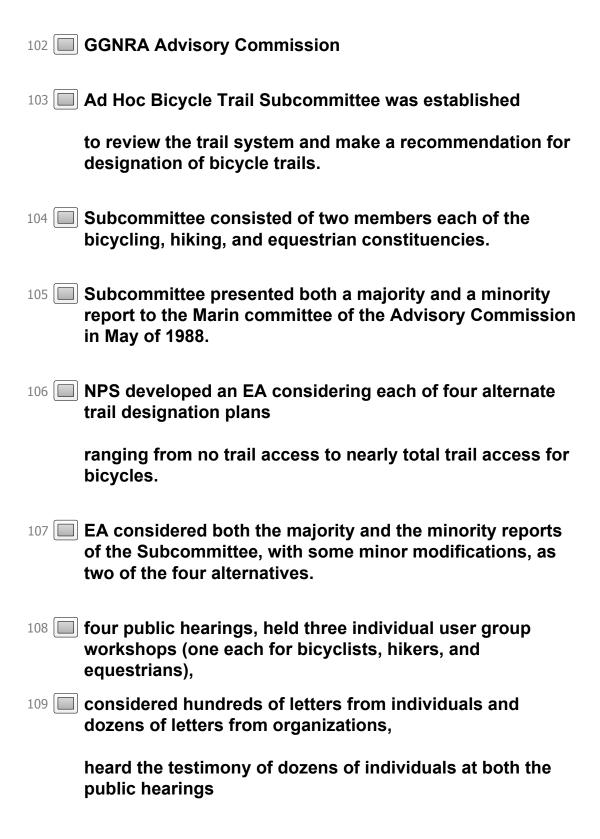
63	Courts have noted that the Organic Act is silent as to the specifics of park management
64	"under such circumstances, the Park Service has broad discretion
	in determining which avenues best achieve the Organic Act's mandate
65	Further, the Park Service is empowered with the authority to determine
	what uses of park resources are proper and what proportion of the park's resources are available for each use."
66	an interpretation that the Organic Act allows for this closed-unless-designated open approach for bicycle trail access
	cannot be termed "manifestly contrary to the statute."
67	The legislative history and the statutory amendments discussed above further reinforce this finding.
68	This regulation is thus based upon a permissible interpretation of the statute and is valid on this alternate ground as well.
69	An agency's view of what is in the public's interest may change, either with or without a change in circumstances,
	but an agency changing its course must supply a reasoned analysis.

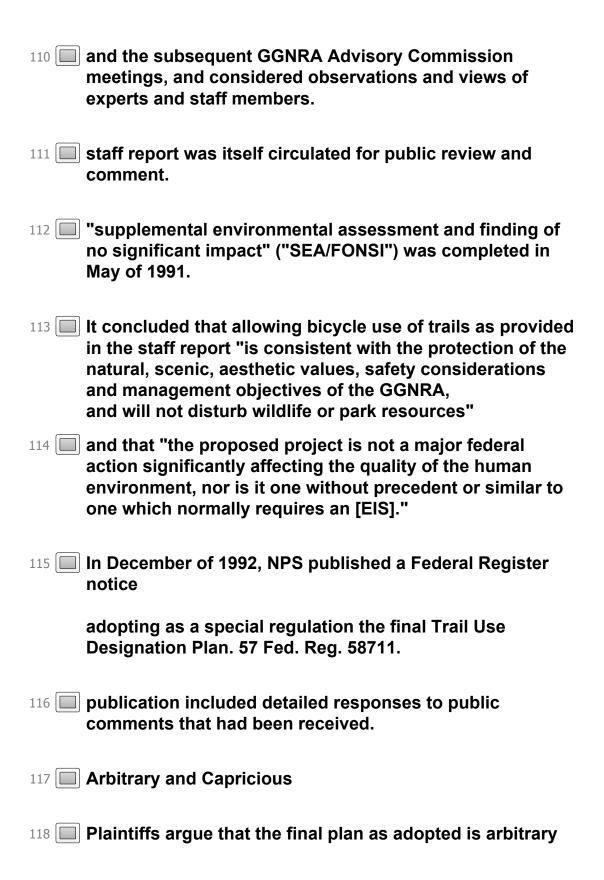




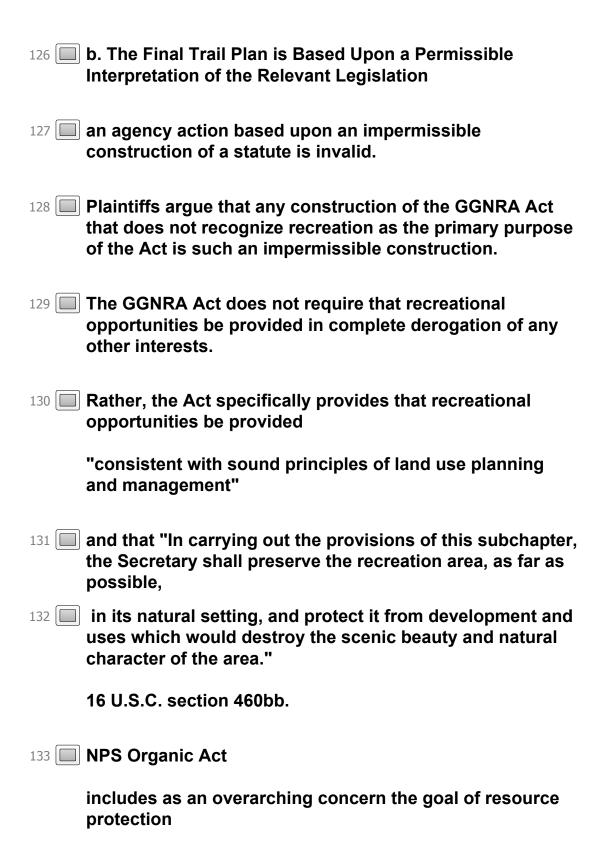
	(d) Cause a nuisance to adjacent owners or occupants. Arbitrary and Capricious
87	Court cannot find that NPS's determination that this rulemaking fell within a categorical exclusion was arbitrary or capricious.
88	To the extent that closing all off-road areas to bicycle use will force bicyclists onto paved roads more,
89	it would not be arbitrary (or unreasonable) for the NPS to have concluded that this increased use of the paved roads and developed areas would not "compromis[e] the nature and character of the area or caus[e] physical damage to it,"
90	NPS's determination that its amendment of section 4.30 fit within a categorical exclusion and did not significantly impact the environment
	was reasonable and was not arbitrary and capricious.
91	1992 GGNRA TRAIL PLAN
92	Plaintiffs also challenge the 1992 GGNRA trail plan promulgated by NPS.
93	GGNRA is established by statute at 16 U.S.C. section 460bb.
	In the management of the recreation area, the Secretary of the Interior (hereinafter referred to as the "Secretary")
94	shall utilize the resources in a manner which will provide

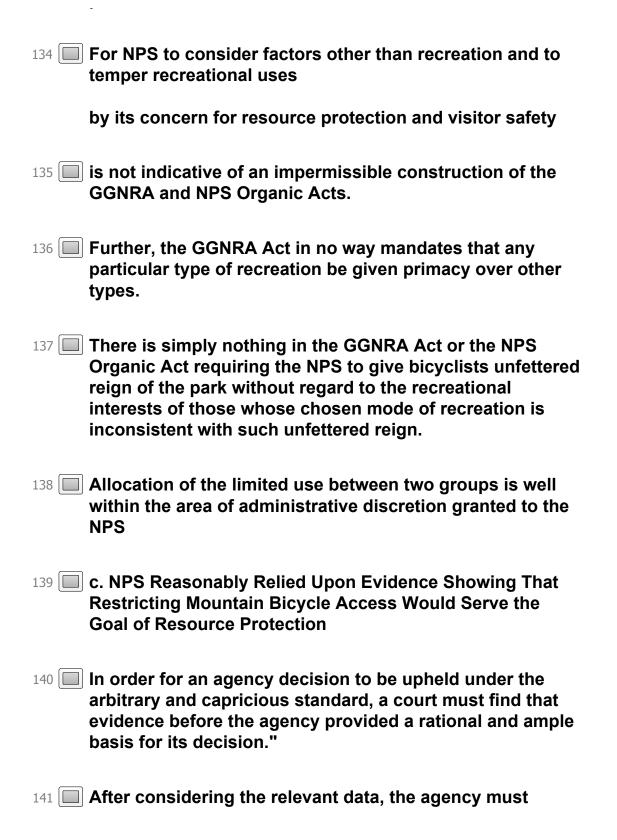


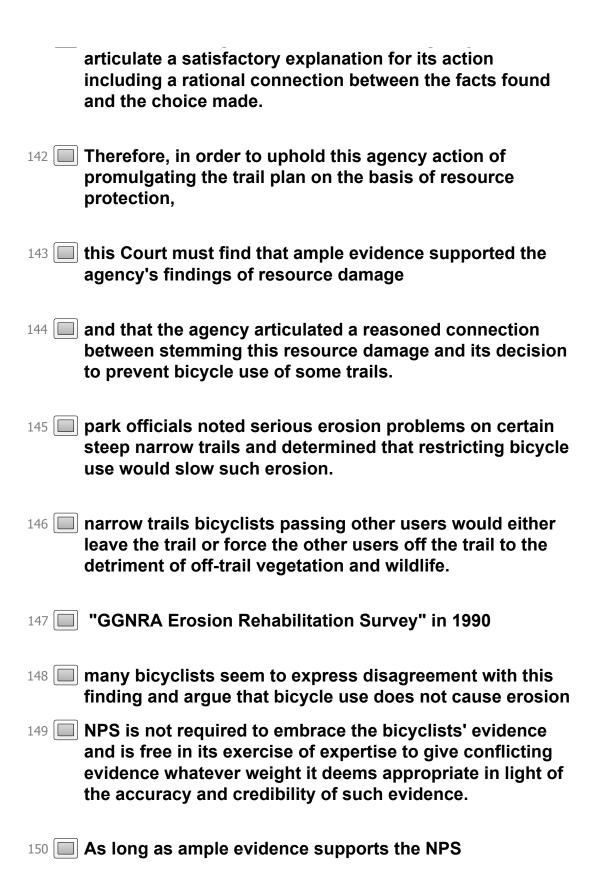


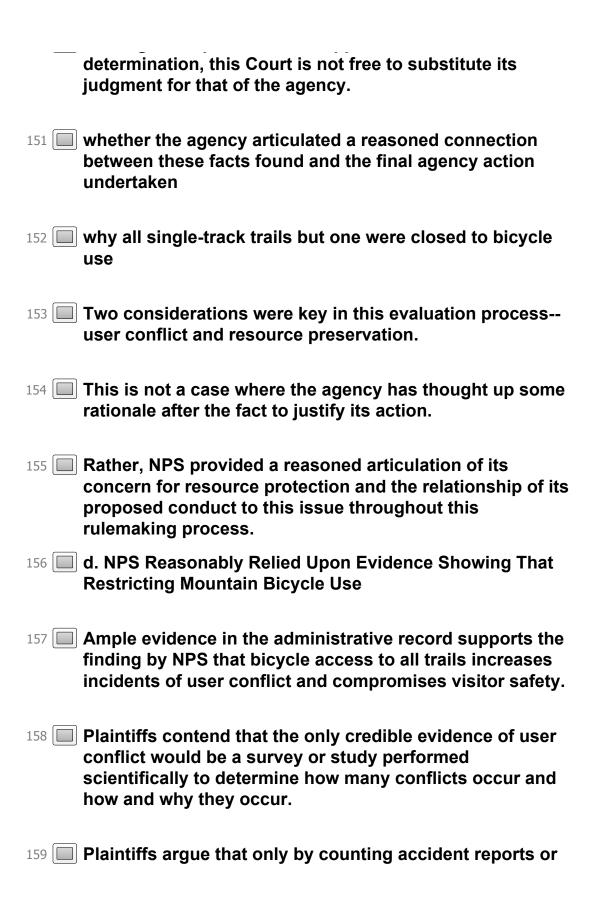


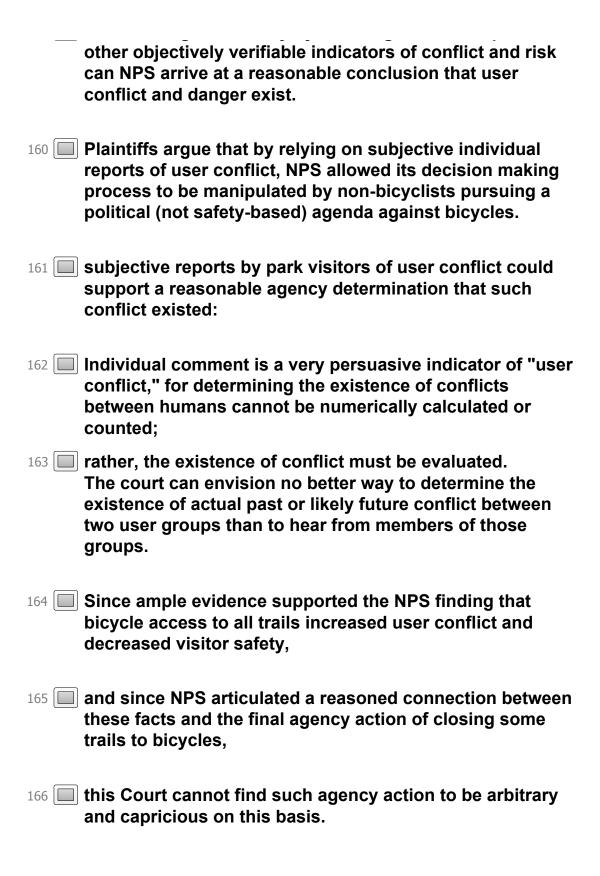
	and capricious
	because it is based on inadequate data,
119	that no rational connection is established between the data found and the results reached,
120	that the NPS failed to consider relevant criteria,
	and that the resulting plan is inconsistent with (and therefore an impermissible construction of) the GGNRA Act.
121	a. NPS Carefully Considered Recreation and All Other Relevant Criteria
122	An agency decision can be found arbitrary and capricious
	where the agency "entirely failed to consider an important aspect of the problem."
123	GGNRA Act clearly envisions that the park will be operated in a manner which will "provide for recreational and educational opportunities consistent with sound principles of land use planning and management." 16 U.S.C. section 460bb.
124	bicyclists' complaint is that their interests were not given priority.
125	this complaint is really just a disagreement with the outcome of the process.



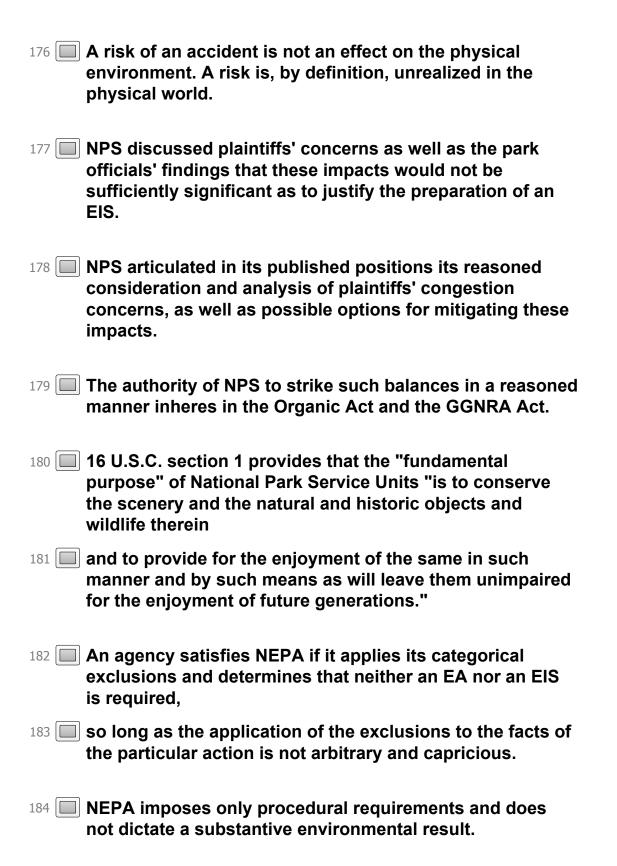








167 NEPA And The 1992 Trail Plan 168 EIS must be prepared whenever there is contemplated a major federal action having a significant impact on the human environment. 42 U.S.C. section 4332(2)(C). 169 Where an Environmental Assessment (EA) is performed, an agency decision not to complete an EIS is reviewed under the arbitrary and capricious standard. 170 Under this standard, a reviewing court "still must ensure that an agency has taken a 'hard look' at the environmental consequences of its proposed action, ... | carefully reviewing the record to ascertain whether the agency decision is founded on a reasoned evaluation of the relevant factors." plaintiffs allege that the closing of trails will force bicyclists to travel more on paved roads shared with motor vehicles. 173 Supreme Court has interpreted the human environment to mean the "physical environment--the world around us, so to speak." 174 Thus NEPA does not require that an agency take into account every conceivable impact of its actions, including impacts on citizens' subjective experiences. 175 Rather, it requires agencies to take into account environmental impacts on the physical "world around us." An increased risk of accident is not an impact to the physical environment.



185	The policy behind NEPA is to ensure that an agency has at its disposal all relevant information about environmental impacts of a project
	before the agency embarks on the project.
186	Further, courts defer to agency expertise on questions of methodology
187	unless the agency has completely failed to address some factor,
	consideration of which was essential to a truly informed decision whether or not to prepare an EIS.
188	