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Chapter 11: Managing the NEPA Process--Bureau of Land Management

Originating Office: Bureau of Land Management

516 DM 11

11.1 Purpose. This chapter provides supplementary requirements for implementing provisions of 43 CFR Part 46 and 516 DM Chapters 1 through 4 within the Bureau of Land Management (BLM) in the Department of the Interior (DOI). The BLM's National Environmental Policy Act (NEPA) Handbook (H-1790-1) provides additional guidance.

11.2 NEPA Responsibilities.

A. The Director and Deputy Director(s) are responsible for NEPA compliance for BLM activities.

B. The Assistant Director, Resources and Planning, is responsible for national NEPA compliance leadership and coordination, program direction, policy, and protocols development, and implementation of the same at the line management level. The Division of Decision Support, Planning, and NEPA, within the Assistant Directorate, Resources and Planning, has the BLM lead for the NEPA compliance program direction and oversight.

C. The BLM Office Directors and other Assistant Directors are responsible for cooperating with the Assistant Director, Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

D. The BLM Center Directors are responsible for cooperating with the Assistant Director, Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

E. The State Directors are responsible to the Director/Deputy Director(s) for overall direction, integration, and implementation of the BLM NEPA compliance procedures in their states. This includes managing for the appropriate level of public notification and participation, and ensuring production of quality environmental review and decision documents. Deputy State Directors serve as focal points for NEPA compliance matters at the state level.

F. The District and Field Managers are responsible for NEPA compliance at the local level.

11.3 External Applicants' Guidance.

A. General.

(1) For all external proposals, applicants should make initial contact with the Responsible Official (District Manager, Field Manager, or State Director) responsible for the affected public lands as soon as possible after determining the BLM's involvement. This early contact is necessary to allow the BLM to consult early with appropriate state and local agencies and tribes and with interested private persons and organizations, and to commence its NEPA process at the earliest possible time.

(2) When a proposed action has the potential to affect public lands in more than one administrative unit, the applicant may initially contact any Responsible Official whose jurisdiction is involved. The BLM may then designate a lead office to coordinate between BLM jurisdictions.

(3) Potential applicants may secure from the Responsible Official a list of NEPA and other relevant regulations and requirements for environmental review related to each applicant's proposed action. The purpose of making these regulations and requirements known in advance is to assist the applicant in the development of an adequate and accurate description of the proposed action when the applicant submits their project application. The list provided to the applicant may not fully disclose all relevant regulations and requirements because additional requirements could be identified after review of the applicant's proposal document(s) and as a result of the "scoping" process.

(4) The applicant is encouraged to advise the BLM of their intentions early on in their planning process. Early communication is necessary so that the BLM can efficiently advise the applicant on the anticipated type of NEPA review required, information needed, and potential data gaps that may or may not need to be filled, so that the BLM can describe the relevant regulations and requirements likely to affect the proposed action(s), and to discuss scheduling expectations.

B. Regulations. The following list of potentially relevant regulations should be considered at a minimum. Many other regulations affect public lands--some of which are specific to the BLM, while others are applicable across a broad range of federal programs (e.g., Protection of Historic Properties--36 Code of Federal Regulations (CFR) Part 800).

- (1) Resource Management Planning--43 CFR 1610;
- (2) Withdrawals--43 CFR 2300;
- (3) Land Classification--43 CFR 2400;
- (4) Disposition: Occupancy and Use--43 CFR 2500;

- (5) Disposition: Grants--43 CFR 2600;
- (6) Disposition: Sales--43 CFR 2700;
- (7) Use: Rights-of-Way--43 CFR 2800;
- (8) Use: Leases and Permits--43 CFR 2900;
- (9) Oil and Gas Leasing--43 CFR 3100;
- (10) Geothermal Resources Leasing--43 CFR 3200;
- (11) Coal Management--43 CFR 3400;
- (12) Leasing of Solid Minerals Other than Coal/Oil Shale--43 CFR 3500;
- (13) Mineral Materials Disposal--43 CFR 3600;
- (14) Mining Claims Under the General Mining Laws--43 CFR 3800;
- (15) Grazing Administration--43 CFR 4100;
- (16) Wild Free-Roaming Horse and Burro Management--43 CFR 4700;
- (17) Forest Management--43 CFR 5000;
- (18) Wildlife Management--43 CFR 6000;
- (19) Recreation Management--43 CFR 8300; and
- (20) Wilderness Management--43 CFR 6300.

11.4 General Requirements. The Council on Environmental Quality (CEQ) regulations state that federal agencies shall reduce paperwork and delay (40 CFR 1500.4 and 1500.5) to the fullest extent possible. The information used in any NEPA analysis must be of high quality. Accurate scientific analysis, agency expert comments, and public scrutiny are essential to implementing the NEPA (40 CFR 1500.1(b)). Environmental documents should be concise and written in plain language (40 CFR 1502.8), so they can be understood and should concentrate on the issues that are truly significant to the action in question rather than amassing needless detail (40 CFR 1500.1(b)).

A. Reduce paperwork and delays: The Responsible Official will avoid unnecessary duplication of effort and promote cooperation with other federal agencies that have permitting, funding, approving, or other consulting or coordinating requirements associated with the proposed action. The Responsible Official shall, as appropriate, integrate NEPA requirements with other environmental review and consultation requirements (40 CFR 1500.4(k)); tier to

broader environmental review documents (40 CFR 1502.20); incorporate by reference relevant studies and analyses (40 CFR 1502.21); adopt other agency environmental analyses (40 CFR 1506.3); and supplement analyses with new information (40 CFR 1502.9).

B. Eliminate duplicate tribal, state, and local governmental procedures (40 CFR 1506.2): The Responsible Official will cooperate with other governmental entities to the fullest extent possible to reduce duplication between federal, state, local and tribal requirements in addition to, but not in conflict with, those in the NEPA. Cooperation may include the following: common databases; joint planning processes; joint science investigations; joint public meetings and hearings; and joint environmental assessment (EA) level and joint environmental impact statement (EIS) level analyses using joint lead or cooperating agency status.

C. Consult and coordinate: The Responsible Official will determine early in the process the appropriate type and level of consultation and coordination required with other federal agencies and with state, local and tribal governments. After the NEPA review is completed, coordination will often continue throughout project implementation, monitoring, and evaluation.

D. Involve the public: The public must be involved early and continuously, as appropriate, throughout the NEPA process. The Responsible Official shall ensure that:

(1) The type and level of public involvement shall be commensurate with the NEPA analysis needed to make the decision.

(2) When feasible, communities can be involved through consensus-based management activities. Consensus-based management includes direct community involvement in the BLM activities subject to NEPA analyses, from initial scoping to implementation and monitoring of the impacts of the decision. Consensus-based management seeks to achieve agreement from diverse interests on the goals, purposes, and needs of the BLM plans and activities and the methods needed to achieve those ends. The BLM retains exclusive decision-making responsibility and shall exercise that responsibility in a timely manner.

E. Implement Adaptive Management: The Responsible Official is encouraged to build “Adaptive Management” practice in to their proposed actions and NEPA compliance activities and train personnel in this important environmental concept. Adaptive Management in the DOI is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and the facilitation of management changes to ensure that outcomes are met, or reevaluated as necessary. Such reevaluation may require new or supplemental NEPA compliance. Adaptive Management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method for addressing these cases. The preferred alternative should include sufficient flexibility to allow for adjustments in implementation in response to monitoring results.

F. Train for public and community involvement: The BLM employee(s) that facilitate(s) public and community involvement in the NEPA process should have training in public involvement, alternative dispute resolution, negotiation, meeting facilitation, collaboration, and/or partnering.

G. Limitations on Actions during the NEPA process: The following guidance may aid in fulfilling the requirements of 40 CFR 1506.1. During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

11.5 Plan Conformance. Where a BLM land use plan (LUP) exists, a proposed action must be in conformance with the plan. This means that the proposed action must be specifically provided for in the plan, or if not specifically mentioned, the proposal must be clearly consistent with the terms, conditions, and decisions of the plan or plan as amended. If it is determined that the proposed action does not conform to the plan, the Responsible Official may:

- A. reject the proposal,
- B. modify the proposal to conform to the land use plan, or
- C. complete appropriate plan amendments and associated NEPA compliance requirements prior to proceeding with the proposed action.

11.6 Existing Documentation (Determination of NEPA Adequacy). The Responsible Official may consider using existing NEPA analysis for a proposed action when the record documents show that the following conditions are met.

- A. The proposed action is adequately covered by (i.e., is within the scope of and analyzed in) relevant existing analyses, data, and records; and
- B. There are no new circumstances, new information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis. If the Responsible Official determines that existing NEPA documents adequately analyzed the effects of the proposed action, this determination, usually prepared in a Determination of NEPA Adequacy (DNA) worksheet to provide the administrative record support, serves as an interim step in the BLM's internal decision-making process. The DNA is intended to evaluate the coverage of existing documents and the significance of new information, but does not itself provide NEPA analysis. If the Responsible Official concludes that the proposed action(s) warrant additional review, information from the DNA worksheet may be used to facilitate the preparation of the appropriate level of NEPA analysis. The BLM's NEPA Handbook and program specific regulations and guidance describe additional steps needed to make and document the agency's final determination regarding a proposed action.

11.7 Actions Requiring an Environmental Assessment (EA).

- A. An EA is a concise public document that serves to:
 - (1) Provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a Finding of No Significant Impact (FONSI);

- (2) Aid the BLM's compliance with NEPA when an EIS is not necessary; and
- (3) Facilitate preparation of an EIS when one is necessary.

B. Unlike an EIS that requires much more, an EA must include the following four items identified in 40 CFR 1508.9(b):

- (1) The need for the proposal.
- (2) Alternatives as described in Section 102(2)(E) of NEPA.
- (3) The environmental impacts of the proposed action and alternatives.
- (4) A listing of agencies and persons consulted.

C. An EA is usually the appropriate NEPA document for:

- (1) Land Use Plan Amendments;
- (2) Land use plan implementation decisions, including but not limited to analysis for implementation plans such as watershed plans or coordinated resource activity plans, resource use permits (except for those that are categorically excludable), and site-specific project plans, such as construction of a trail.

D. An EA should be completed when the Responsible Official is uncertain of the potential for significant impacts and needs further analysis to make the determination.

E. If, for any of these actions, it is anticipated or determined that an EA is not appropriate because of potential significant impacts, an EIS will be prepared.

11.8 Major Actions Requiring an EIS.

A. An EIS level analysis should be completed when an action meets either of the two following criteria.

- (1) If the impacts of a proposed action are expected to be significant; or
- (2) In circumstances where a proposed action is directly related to another action(s), and cumulatively the effects of the actions taken together would be significant, even if the effects of the actions taken separately would not be significant,

B. The following types of BLM actions will normally require the preparation of an EIS:

- (1) Approval of Resource Management Plans.

- (2) Proposals for Wild and Scenic Rivers and National Scenic and Historic Trails.
- (3) Approval of regional coal lease sales in a coal production region.
- (4) Decisions to issue a coal preference right lease.
- (5) Approval of applications to the BLM for major actions in the following categories:
 - (a) Sites for steam-electric powerplants, petroleum refineries, synfuel plants, and industrial facilities; and
 - (b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways, and railroads.
- (6) Approval of operations that would result in liberation of radioactive tracer materials or nuclear stimulation.
- (7) Approval of any mining operations where the area to be mined, including any area of disturbance, over the life of the mining plan, is 640 acres or larger in size.

C. If potentially significant impacts are not anticipated for these actions, an EA will be prepared.

11.9 Actions Eligible for a Categorical Exclusion (CX). In addition to the actions listed in the Department’s categorical exclusions in 43 CFR § 46.210, the following BLM actions are designated categorical exclusions unless one or more of the Department’s extraordinary circumstances, listed at 43 CFR § 46.215, applies. CEQ regulations implementing NEPA at 40 CFR 1508.4 require that categorical exclusions provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Therefore, Department regulations at 43 CFR 46.205(c) require that before any action described in the following list of CXs is used, the list of “extraordinary circumstances” at 43 CFR 46.215 must be reviewed for applicability. If a CX does not pass the “extraordinary circumstances” test, the proposed action analysis defaults to either an EA or an EIS. When no “extraordinary circumstances” apply, the following activities do not require the preparation of an EA or EIS. As proposed actions are designed and then reviewed against the CX list, proposed actions or activities must be, at a minimum, consistent with DOI and BLM regulations, manuals, handbooks, policies, and applicable land use plans regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.

A. Fish and Wildlife.

- (1) Modification of existing fences to provide improved wildlife ingress and egress.

(2) Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).

(3) Construction of perches, nesting platforms, islands, and similar structures for wildlife use.

(4) Temporary emergency feeding of wildlife during periods of extreme adverse weather conditions.

(5) Routine augmentations, such as fish stocking, providing no new species are introduced.

(6) Relocation of nuisance or depredating wildlife, providing the relocation does not introduce new species into the ecosystem.

(7) Installation of devices on existing facilities to protect animal life, such as raptor electrocution prevention devices.

B. Oil, Gas, and Geothermal Energy.

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands, where the subject lands are already in production.

(2) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(3) Approval of unitization agreements, communitization agreements, drainage agreements, underground storage agreements, development contracts, or geothermal unit or participating area agreements.

(4) Approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production.

(5) Approval of royalty determinations, such as royalty rate reductions.

(6) Approval of Notices of Intent to conduct geophysical exploration of oil, gas, or geothermal, pursuant to 43 CFR 3150 or 3250, when no temporary or new road construction is proposed.

C. Forestry.

(1) Land cultivation and silvicultural activities (excluding herbicide application) in forest tree nurseries, seed orchards, and progeny test sites.

(2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

(3) Seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of non-forest to forest land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellent, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.

(4) Pre-commercial thinning and brush control using small mechanical devices.

(5) Disposal of small amounts of miscellaneous vegetation products outside established harvest areas, such as Christmas trees, wildings, floral products (ferns, boughs, etc.), cones, seeds, and personal use firewood.

(6) Felling, bucking, and scaling sample trees to ensure accuracy of timber cruises. Such activities:

(a) Shall be limited to an average of one tree per acre or less,

(b) Shall be limited to gas-powered chainsaws or hand tools,

(c) Shall not involve any road or trail construction,

(d) Shall not include the use of ground based equipment or other manner of timber yarding, and

(e) Shall be limited to the Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and Lakeview District, Klamath Falls Resource Area in Oregon.

(7) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. Examples include, but are not limited to:

(i) Removing individual trees for sawlogs, specialty products, or fuelwood.

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(8) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this CX, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgment of an experienced forest professional or someone technically trained for the work, is likely to die within a few years. Examples include, but are not limited to:

(i) Harvesting a portion of a stand damaged by a wind or ice event.

(ii) Harvesting fire damaged trees.

(9) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. Examples include, but are not limited to:

(i) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations; and

(ii) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

(10) Salvaging dead and dying trees resulting from fire, insects, disease, drought, or other disturbances not to exceed 1,000 acres for disturbances of 3,000 acres or less. For disturbances greater than 3,000 acres, harvesting shall not exceed 1/3 of a disturbance area but not to exceed 3,000 acres total harvest.

(a) Covered actions:

(i) Cutting, yarding, and removal of dead or dying trees and live trees needed for landings, skid trails, and road clearing. Includes chipping/grinding and removal of residual slash.

(ii) Jackpot burning, pile burning, or underburning.

(iii) Seeding or planting necessary to accelerate native species re-establishment.

(b) Such actions:

(i) Shall not require more than 1 mile of permanent road construction to facilitate the covered actions. Permanent roads are routes intended to be part of the BLM's permanent transportation system.

(ii) If a permanent road is constructed to facilitate the covered actions, the segments shall conform to all applicable land use planning decisions for permanent road construction in the land use plan; and if travel management planning has been completed, the route specific designations related to the new segments shall be disclosed.

(iii) May include temporary roads, which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM's permanent transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, erosion control, potential sedimentation to streams, and impacts on land and resources.

(iv) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(v) Shall require inclusion of project design features providing for protections of the following resources and resource uses consistent with the decisions in the applicable land use plan in the documentation of the categorical exclusion. If no land use plan decisions apply, documentation of the categorical exclusion shall identify how the following resources and resource uses are to be appropriately addressed:

- (1) Level of snag and downed wood creation/retention;
- (2) Specifications for erosion control features such as water bars, dispersed slash;
- (3) Criteria for minimizing or remedying soil compaction;
- (4) Types and extents of logging system constraints (e.g., seasonal, location, extent, etc.);
- (5) Extent and purpose of seasonal operating constraints or restrictions;
- (6) Criteria to limit spread of weeds;
- (7) Size of riparian buffers and/or riparian zone operating restrictions;

or pile burning;

(8) Operating constraints and restrictions for underburning

(9) Revegetation standards for temporary roads; and

(10) Limitations on road densities.

(c) For this CX, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgement of an experienced forest professional or someone technically trained for the work, is likely to die within a few years. Examples include, but are not limited to:

(i) Harvesting a portion of a stand damaged by a wind or ice event.

(ii) Harvesting fire damaged trees.

D. Rangeland Management.

(1) Approval of transfers of grazing preference.

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed.

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions.

(4) Removal of wild horses or burros from private lands at the request of the landowner.

(5) Processing (transporting, sorting, providing veterinary care, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros.

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy.

(10) Vegetation management activities, such as seeding, planting, invasive plant removal, installation of erosion control devices (e.g., mats/straw/chips), and mechanical treatments, such as crushing, piling, thinning, pruning, cutting, chipping, mulching, mowing, and

prescribed fire when the activity is necessary for the management of vegetation on public lands. Such activities:

(a) Shall not exceed 4,500 acres per prescribed fire project and 1,000 acres for other vegetation management projects;

(b) Shall not be conducted in Wilderness areas or Wilderness Study Areas;

(c) Shall not include the use of herbicides, pesticides, biological treatments or the construction of new permanent roads or other new permanent infrastructure;

(d) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(e) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(11) Issuance of livestock grazing permits/leases where:

(a) The new grazing permit/lease is consistent with the use specified on the previous permit/lease, such that

(i) the same kind of livestock is grazed,

(ii) the active use previously authorized is not exceeded, and

(iii) grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease, and

(b) The grazing allotment(s) has been assessed and evaluated and the Responsible Official has documented in a determination that the allotment(s) is

(i) meeting land health standards, or

(ii) not meeting land health standards due to factors that do not include existing livestock grazing.

E. Realty.

- (1) Withdrawal extensions or modifications, which only establish a new time period and entail no changes in segregative effect or use.
- (2) Withdrawal revocations, terminations, extensions, or modifications; and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.
- (3) Withdrawal revocations, terminations, extensions, or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions (prior to implementation) are in conformance with and are covered by a Resource Management Plan/EIS (or plan amendment and EA or EIS).
- (4) Administrative conveyances from the Federal Aviation Administration (FAA) to the State of Alaska to accommodate airports on lands appropriated by the FAA prior to the enactment of the Alaska Statehood Act.
- (5) Actions taken in conveying mineral interest where there are no known mineral values in the land under Section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA).
- (6) Resolution of class one color-of-title cases.
- (7) Issuance of recordable disclaimers of interest under Section 315 of FLPMA.
- (8) Corrections of patents and other conveyance documents under Section 316 of FLPMA and other applicable statutes.
- (9) Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.
- (10) Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-way).
- (11) Conversion of existing right-of-way grants to Title V grants or existing leases to FLPMA Section 302(b) leases where no new facilities or other changes are needed.
- (12) Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.
- (13) Amendments to existing rights-of-way, such as the upgrading of existing facilities, which entail no additional disturbances outside the right-of-way boundary.

(14) Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(15) Transfers of land or interest in land to or from other bureaus or federal agencies where current management will continue and future changes in management will be subject to the NEPA process.

(16) Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

(17) Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.

(18) Temporary placement of a pipeline above ground.

(19) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

(20) One-time issuance of short-term (3 years or less) rights-of-way or land use authorizations which authorize trespass action where no new use or construction is allowed, and where the proposal includes rehabilitation to restore the land to its natural or original condition.

F. Solid Minerals.

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands where the subject lands are already in production.

(2) Approval of mineral lease readjustments, renewals, and transfers including assignments and subleases.

(3) Approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production.

(4) Approval of royalty determinations, such as royalty rate reductions and operations reporting procedures.

(5) Determination and designation of logical mining units.

(6) Findings of completeness furnished to the Office of Surface Mining Reclamation and Enforcement for Resource Recovery and Protection Plans.

(7) Approval of minor modifications to or minor variances from activities described in an approved exploration plan for leasable, salable, and locatable minerals (e.g., the

approved plan identifies no new surface disturbance outside the areas already identified to be disturbed).

(8) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan for leasable minerals (e.g., change in mining sequence or timing).

(9) Digging of exploratory trenches for mineral materials, except in riparian areas.

(10) Disposal of mineral materials, such as sand, stone, gravel, pumice, pumicite, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres, except in riparian areas.

G. Transportation.

(1) Incorporation of eligible roads and trails in any transportation plan when no new construction or upgrading is needed.

(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates, or cattleguards on/or adjacent to roads and trails identified in any land use or transportation plan, or eligible for incorporation in such plan.

(3) Temporary closure of roads and trails.

(4) Placement of recreational, special designation, or information signs, visitor registers, kiosks, and portable sanitation devices.

H. Recreation Management. Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; that impacts no more than 3 staging area acres; and/or for recreational travel along roads, trails, or in areas authorized in a land use plan. This CX cannot be used for commercial boating permits along Wild and Scenic Rivers. This CX cannot be used for the establishment or issuance of Special Recreation Permits for “Special Area” management (43 CFR 2932.5).

I. Emergency Stabilization. Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition as a result of the event. Such activities shall be limited to: repair and installation of essential erosion control structures; replacement or repair of existing culverts, roads, trails, fences, and minor facilities; construction of protection fences; planting, seeding, and mulching; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, campgrounds, and watercourses. These activities:

(1) Shall be completed within one year following the event;

(2) Shall not include the use of herbicides or pesticides;

(3) Shall not include the construction of new roads or other new permanent infrastructure;

(4) Shall not exceed 4,200 acres; and

(5) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(6) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract

J. Habitat Restoration.

(1) Covered actions on up to 10,000 acres (contiguous or non-contiguous) within sagebrush and sagebrush-steppe plant communities to manage pinyon pine and juniper trees for the benefit of mule deer or sage-grouse habitats. For the purpose of this CX, habitat for mule deer or sage-grouse is any area on BLM managed land that is currently or formerly occupied by mule deer or sage-grouse, or is reasonably likely to be occupied if pinyon pine or juniper trees are removed. Covered actions include: manual or mechanical cutting (including lop-and-scatter); mastication and mulching; yarding and piling of cut trees; pile burning; seeding or manual planting of seedlings of native species; and removal of cut trees for commercial products, such as sawlogs, specialty products, or fuelwood, or non-commercial uses. Such activities:

(a) Shall not include: cutting of old-growth trees; seeding or planting of non-native species; chaining; pesticide or herbicide application; broadcast burning; jackpot burning; construction of new temporary or permanent roads; or construction of other new permanent infrastructure.

(b) Shall require inclusion of project design features providing for protections of the following resources and resource uses consistent with the decisions in the applicable land use plan in the documentation of the categorical exclusion. If no land use plan decisions apply, documentation of the categorical exclusion shall identify how the following resources and resource uses are to be appropriately addressed:

(i) Specifications for management of mule deer habitat;

(ii) Specifications for management of sage-grouse habitat;

- (iii) Specifications for erosion control measures;
- (iv) Criteria for minimizing or remedying soil compaction;
- (v) Types and extents of logging system constraints (e.g., seasonal, location, extent);
- (vi) Extent and purpose of seasonal operating constraints or restrictions;
- (vii) Criteria to limit spread of weeds;
- (viii) Size of riparian buffers or riparian zone operating restrictions; and
- (ix) Operating constraints and restrictions for pile burning.

K. Other.

- (1) Maintaining land use plans in accordance with 43 CFR 1610.5-4.
- (2) Acquisition of existing water developments (e.g., wells and springs) on public land.
- (3) Conducting preliminary hazardous materials assessments and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and/or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.
- (4) Use of small sites for temporary field work camps where the sites will be restored to their natural or original condition within the same work season.
- (5) Reserved.
- (6) A single trip in a one month period for data collection or observation sites.
- (7) Construction of snow fences for safety purposes or to accumulate snow for small water facilities.
- (8) Installation of minor devices to protect human life (e.g., grates across mines).
- (9) Construction of small protective enclosures, including those to protect reservoirs and springs and those to protect small study areas.
- (10) Removal of structures and materials of no historical value, such as abandoned automobiles, fences, and buildings, including those built in trespass and reclamation of the site when little or no surface disturbance is involved.

(11) Actions where the BLM has concurrence or co-approval with another DOI agency and the action is categorically excluded for that DOI agency.

(12) Rendering formal classification of lands as to their mineral character, waterpower, and water storage values.

11.10 Categorical Exclusions Established or Directed by Statute

A. The Energy Policy Act of 2005 (Public Law 109-58) (42 USC 15942) established actions for categorical exclusion from NEPA analysis. Use of Energy Policy Act categorical exclusions does not require review for extraordinary circumstances. This is because these CXs are established by statute, and their application is governed by that statute. Section 390 of the Energy Policy Act of 2005 provides:

(a) NEPA Review.—Action by the Secretary of the Interior in managing the public lands, with respect to any of the activities described in subsection (b), shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969 would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

(b) Activities Described.—The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation of a building or facility.

B. Section 3023 “Grazing Permits and Leases” of Public Law 113-291, The Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015, amended Section 402 of FLPMA. The amended text is now included in FLPMA, as amended, as Section 402(h). Therefore, the BLM may use the grazing permit categorical exclusion (1) or the

trailing and crossing categorical exclusion (2). Application of either categorical exclusion requires extraordinary circumstances review. Section 402(h) of FLPMA provides:

(1) IN GENERAL.—The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(A) the issued permit or lease continues the current grazing management of the allotment; and

(B) the Secretary concerned—

(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and

(ii) based on the assessment and evaluation under clause (i), has determined that the allotment—

(I) with respect to public land administered by the Secretary of the Interior—

(aa) is meeting land health standards; or

(bb) is not meeting land health standards due to factors other than existing livestock grazing; or

(2) TRAILING AND CROSSING.—The trailing and crossing of livestock across public land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

C. The Agriculture Improvement Act of 2018 (P.L. 115-334) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Section 606. Section 606 directed development of a categorical exclusion for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer (HFRA, Section 606(b)(1)). This categorical exclusion may be used to carry out a “covered vegetation management activity” (defined at HFRA, Section 606(a)(1)(B)) whose purpose is for the management of greater sage-grouse and mule deer habitat on public lands that was designated under HFRA section 602(b), on December 20, 2018 (HFRA, Section 606(g)(2)). Application of this categorical exclusion requires extraordinary circumstances review. Section 606 of HFRA provides:

(a) Definitions.—In this section:

(1) COVERED VEGETATION MANAGEMENT ACTIVITY.—

(A) IN GENERAL.—The term ‘covered vegetation management activity’ means any activity described in subparagraph (B) that—

(i) (II) is carried out on public land administered by the Bureau of Land Management;

(ii) with respect to public land, meets the objectives of the order of the Secretary of the Interior numbered 3336 and dated January 5, 2015;

(iii) conforms to an applicable land use plan;

(iv) protects, restores, or improves greater sage-grouse or mule deer habitat in a sagebrush steppe ecosystem as described in—

(I) Circular 1416 of the United States Geological Survey entitled ‘Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-grouse Habitat—Part 1. Concepts for Understanding and Applying Restoration’ (2015); or

(II) the habitat guidelines for mule deer published by the Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies;

(v) will not permanently impair—

(I) the natural state of the treated area;

(II) outstanding opportunities for solitude;

(III) outstanding opportunities for primitive, unconfined recreation;

(IV) economic opportunities consistent with multiple-use management; or

(V) the identified values of a unit of the National Landscape Conservation System;

(vi) (I) restores native vegetation following a natural disturbance;

(II) prevents the expansion into greater sage-grouse or mule deer habitat of—

(aa) juniper, pinyon pine, or other associated conifers; or

(bb) nonnative or invasive vegetation;

(III) reduces the risk of loss of greater sage-grouse or mule deer habitat from wildfire or any other natural disturbance; or

(IV) provides emergency stabilization of soil resources after a natural disturbance; and

(vii) provides for the conduct of restoration treatments that—

(I) maximize the retention of old-growth and large trees, as appropriate for the forest type;

(II) consider the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity;

(III) are developed and implemented through a collaborative process that—

(aa) includes multiple interested persons representing diverse interests; and

(bb) (AA) is transparent and nonexclusive; or

(BB) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125); and

(IV) may include the implementation of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(B) DESCRIPTION OF ACTIVITIES.—An activity referred to in subparagraph (A) is—

(i) manual cutting and removal of juniper trees, pinyon pine trees, other associated conifers, or other nonnative or invasive vegetation;

(ii) mechanical mastication, cutting, or mowing, mechanical piling and burning, chaining, broadcast burning, or yarding;

(iii) removal of cheat grass, medusa head rye, or other nonnative, invasive vegetation;

(iv) collection and seeding or planting of native vegetation using a manual, mechanical, or aerial method;

(v) seeding of nonnative, noninvasive, ruderal vegetation only for the purpose of emergency stabilization;

(vi) targeted use of an herbicide, subject to the condition that the use shall be in accordance with applicable legal requirements, Federal agency procedures, and land use plans;

(vii) targeted livestock grazing to mitigate hazardous fuels and control noxious and invasive weeds;

(viii) temporary removal of wild horses or burros in the area in which the activity is being carried out to ensure treatment objectives are met;

(ix) in coordination with the affected permit holder, modification or adjustment of permissible usage under an annual plan of use of a grazing permit issued by the Secretary concerned to achieve restoration treatment objectives;

(x) installation of new, or modification of existing, fencing or water sources intended to control use or improve wildlife habitat; or

(xi) necessary maintenance of, repairs to, rehabilitation of, or reconstruction of an existing permanent road or construction of temporary roads to accomplish the activities described in this subparagraph.

(C) EXCLUSIONS.—The term ‘covered vegetation management activity’ does not include—

(i) any activity conducted in a wilderness area or wilderness study area;

(ii) any activity for the construction of a permanent road or permanent trail;

(iii) any activity conducted on Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

(iv) any activity conducted in an area in which activities under subparagraph (B) would be inconsistent with the applicable resource management plan; or

(2) SECRETARY CONCERNED.—The term ‘Secretary concerned’ means—

(B) the Secretary of the Interior, with respect to public land.

(3) TEMPORARY ROAD.—The term ‘temporary road’ means a road that is—

(A) authorized—

- (i) by a contract, permit, lease, other written authorization; or
 - (ii) pursuant to an emergency operation;
- (B) not intended to be part of the permanent transportation system of a Federal department or agency;
- (C) not necessary for long-term resource management;
- (D) designed in accordance with standards appropriate for the intended use of the road, taking into consideration—
- (i) safety;
 - (ii) the cost of transportation; and
 - (iii) impacts to land and resources; and
- (E) managed to minimize—
- (i) erosion; and
 - (ii) the introduction or spread of invasive species.

(b) Categorical Exclusion.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary concerned shall develop a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)) for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer.

(2) ADMINISTRATION.—In developing and administering the categorical exclusion under paragraph (1), the Secretary concerned shall—

- (A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
- (C) with respect to public land, apply the extraordinary circumstances procedures under section 46.215 of title 43, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and
- (D) consider—
 - (i) the relative efficacy of landscape-scale habitat projects;

(ii) the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and

(iii) the need for habitat restoration activities after wildfire or other natural disturbances.

(c) Implementation Of Covered Vegetative Management Activities Within The Range Of Greater Sage-Grouse And Mule Deer.—If the categorical exclusion developed under subsection (b) is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer.

(d) Long-Term Monitoring And Maintenance.—Before commencing any covered vegetation management activity that is covered by the categorical exclusion under subsection (b), the Secretary concerned shall develop a long-term monitoring and maintenance plan, covering at least the 20-year period beginning on the date of commencement, to ensure that management of the treated area does not degrade the habitat gains secured by the covered vegetation management activity.

(e) Disposal Of Vegetative Material.—Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may be—

(1) used for—

(A) fuel wood; or

(B) other products; or

(2) piled or burned, or both.

(f) Treatment For Temporary Roads.—

(1) IN GENERAL.—Notwithstanding subsection (a)(1)(B)(xi), any temporary road constructed in carrying out a covered vegetation management activity that is covered by the categorical exclusion under subsection (b)—

(A) shall be used by the Secretary concerned for the covered vegetation management activity for not more than 2 years; and

(B) shall be decommissioned by the Secretary concerned not later than 3 years after the earlier of the date on which—

(i) the temporary road is no longer needed; and

(ii) the project is completed.

(2) REQUIREMENT.—A treatment under paragraph (1) shall include reestablishing native vegetative cover—

(A) as soon as practicable; but

(B) not later than 10 years after the date of completion of the applicable covered vegetation management activity.

(g) Limitations.—

(1) PROJECT SIZE.—A covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may not exceed 4,500 acres.