



[4310-W7-P]

## **DEPARTMENT OF THE INTERIOR**

### **Office of the Secretary**

#### **National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for Bureau of Indian Affairs (516 DM 10)**

**AGENCY:** Department of the Interior.

**ACTION:** Notice.

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**SUMMARY:** This notice announces a proposed addition to the categorical exclusions included in the Departmental Manual 516 DM 10. The proposed categorical exclusion pertains to the leasing and funding for single-family homesites on Indian land, including associated improvements and easements, which encompass five acres or less of contiguous land.

**DATES:** Comments are due by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments to Marvin Keller, NEPA Coordinator – Indian Affairs, 2051 Mercator Drive, Reston, VA 20191, email: [Marv.Keller@bia.gov](mailto:Marv.Keller@bia.gov).

**FOR FURTHER INFORMATION CONTACT:** Marvin Keller, NEPA Coordinator – Indian Affairs, (703) 390-6470.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental consequences of their decisions before deciding whether and how to proceed. The Council on Environmental Quality encourages Federal agencies to use categorical exclusions to protect the environment more efficiently by; (a) reducing the resources spent

analyzing proposals which generally do not have potentially significant environmental impacts, and (b) focusing resources on proposals that may have significant environmental impacts. The appropriate use of categorical exclusions allow the NEPA review to be concluded without preparing either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) (40 CFR 1500.4(p) and 40 CFR 1508.4).

The need for adequate housing is critical on most Indian reservations. Several hundred actions associated with new home construction are processed each year and this is expected to continue at the same level. The Bureau of Indian Affairs (BIA) has typically conducted NEPA reviews of actions associated with single-family homes by preparing EAs; the addition of a categorical exclusion to cover these actions will allow for a more efficient NEPA review

### **Proposed Categorical Exclusion**

The Department of the Interior proposes to add a categorical exclusion to the Departmental Manual at 516 DM 10.5 for approval of leases or funds for single-family homesites, including associated improvements and easements on Indian land. This category includes Federal actions that may include BIA lease approval or funding for a single-family homesite, which would include a residence with one to four dwelling units, as well as other improvements such as a garage, barn or corral. In addition to building construction, associated easements may also need BIA approval on adjacent lands for an access road and utilities, such as gas, electric and fiber optics. The categorical exclusion would be limited to single-family homesites where the total area to be disturbed by construction of homes, associated structures, and related easements must be five acres or less; do not adversely affect any tribal cultural resources or historic properties; and are in compliance with applicable federal and tribal laws. As a final review, each proposed approval of a lease or funding for a single-family homesite must also be reviewed for extraordinary circumstances that would preclude use of this

categorical exclusion. The Department's list of extraordinary circumstances under which a normally excluded action would require further analysis and documentation in an EA or EIS is found at 43 CFR 46.215.

### **Analysis**

The intent of this categorical exclusion is to improve the efficiency of a routine environmental review process for approval of new home construction on Indian land. The BIA environmental staff: (1) reviewed other agencies' NEPA procedures to determine if similar categorical exclusions were in effect; (2) reviewed EAs of homesites previously prepared by BIA to verify that no significant impacts had been identified; and (3) conducted a post-construction reviews of individual homesites to determine if any unanticipated impacts had occurred as a result of house construction.

The BIA reviewed other agencies' NEPA procedures and identified comparable categorical exclusions currently used by the Department of the Army, Indian Health Service, and Rural Development Program. These categorical exclusions are comparable because they are for structures that provide housing or office space; they have a size limitation on the area to be disturbed; they are not restricted to an environmental setting or geographic region of the country; and they are subject to review for extraordinary circumstances.

On Indian reservations across the country, the BIA and tribal environmental staff routinely conduct NEPA analysis of single-family homesites by preparing EAs. These EAs, which have been prepared over the years in a variety of environmental and geographic areas, consistently result in Findings of No Significant Impact (FONSI).

To verify these findings the BIA environmental professionals reviewed 159 EAs completed between 2009 and 2011 that covered 643 individual homesites. These EAs ranged in scope from a single homesite to a programmatic EA covering over 100 scattered homesites. The review

confirmed that FONSI's were reached in all cases. The BIA environmental professionals also conducted post-construction reviews on 117 homesites where construction had already occurred. No unanticipated environmental effects were identified in any of these areas, and the conclusions of the original EAs and FONSI's were confirmed. The most typical site specific mitigation measures that limited site selections involved modifying or moving the location of the homesite lease in order avoid cultural resources or historic properties. The analysis conducted by BIA environmental staff concluded that a sufficient administrative record exists to demonstrate the construction of scattered homesites would normally not have a significant impact on the human environment, with the following limitations: the area of disturbance of the home site and any associated facilities must have a five acre limitation; and each homesite must be reviewed for extraordinary circumstances, which not only includes a review for historic properties and other relevant federal and tribal laws, but also the effect to other resources such as wetlands, and endangered species. The review for extraordinary circumstances, which BIA normally conducts for all categorical exclusions, insures that measures would continue to be taken to identify and reduce any significant impacts.

### **Public Comments**

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by the date listed in the DATES section of this notice at the location listed in the ADDRESSES section. Comments received after that date will be considered only to the extent practicable. Comments, including names and addresses of respondents, will be part of the public record and available for public review at the BIA address shown in the ADDRESSES section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware

that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Text of Proposed Addition to 516 DM 10**

10.5 Categorical Exclusions

M. Other.

(7) Approval of leases, easements or funds for single-family homesites and associated improvements, including but not limited to homes, outbuildings, access roads, and utility lines, which encompass five (5) acres or less of contiguous land, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws.

Dated: April 20, 2012

Willie R. Taylor  
Director, Office of Environmental Policy and Compliance

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