



DEPARTMENT OF THE INTERIOR

Office of the Secretary

[LLWO210000.L1610000]

National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Through this notice, the Department of the Interior (Department) announces a new categorical exclusion (CX) under the National Environmental Policy Act (NEPA) implementing procedures for the Bureau of Land Management (BLM) at Chapter 11 of Part 516 of the Departmental Manual.

DATES: The categorical exclusion takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The new CX can be found at the web address <http://www.doi.gov/elips/> at Series 31, Part 516, Chapter 11. The BLM has revised the *Verification Report on the results of a Bureau of Land Management analysis of NEPA records and field verification for Pinyon-Juniper removal* (Verification Report) in response to comments received; the public can review the revised Verification Report online at: <https://go.usa.gov/xvPft>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief, Decision Support, Planning, and NEPA, at 303-239-3635, or hbernier@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

NEPA requires Federal agencies to consider the potential environmental impacts of their proposed actions before deciding whether and how to proceed. The Council on Environmental Quality (CEQ) encourages Federal agencies to use CXs to protect the environment more efficiently by reducing the resources spent analyzing proposals that normally do not have significant environmental impacts, thereby allowing those resources to be focused on proposals that may have significant environmental impacts. *See* 40 CFR 1501.4, 1507.3(e)(2)(ii), and 1508.1(d). The appropriate use of CXs allows NEPA compliance, in the absence of extraordinary circumstances that merit further consideration, to be concluded without preparing either an environmental assessment (EA) or an environmental impact statement (EIS). *See* 40 CFR 1501.4 and 40 CFR 1508.1(d).

The Department's revised NEPA procedures were published in the *Federal Register* on October 15, 2008 (73 FR 61292) and are codified at 43 CFR part 46. These procedures address policy as well as procedure in order to assure compliance with NEPA. Additional Department-wide NEPA policy may be found in part 516 of the Departmental Manual (516 DM), in chapters 1 through 4. The procedures for the Department's bureaus' NEPA procedures are published as chapters 7 through 15 of 516 DM. Chapter 11 of 516 DM (516 DM 11) covers the BLM's NEPA procedures. The BLM's NEPA procedures were last updated as announced in the *Federal Register* on May 1, 2020 (85 FR 25472). The current 516 DM 11 can be found at: <https://elips.doi.gov/ELIPS/DocView.aspx?id=1721>.

The BLM has been managing sagebrush ecosystems for greater sage-grouse, mule deer, and other species for over a decade, implementing pinyon pine and juniper tree (PJ) removal treatments to restore habitat mosaics within the landscape and address the various habitat needs of mule deer and sage-grouse. PJ encroachment poses a serious

threat to the health of millions of acres of land under BLM management. Following years of experience removing these trees without significant effects, the BLM has determined that establishing a CX for the actions described more particularly herein is necessary for expediting maintenance of sagebrush habitats essential to mule deer and sage-grouse.

Description of the Change

The BLM developed this CX in response to the September 15, 2017, Secretary's Order 3356, *Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes and Territories*, which directed the BLM to develop a CX for "proposed projects that utilize common practices solely intended to enhance or restore habitat for species such as sage-grouse and/or mule deer" (section 4(d)(5)). The BLM has developed this CX to be responsive to the direction from this Secretary's Order consistent with the goals of facilitating the enhancement and restoration of habitat for sage-grouse and/or mule deer. More specifically, the BLM developed this CX for the management of encroaching pinyon pine and juniper trees for the benefit of mule deer and sage-grouse habitats.

The BLM's proposed CX and associated Verification Report were available for public review and comment for 30 days, beginning with the publication of a *Federal Register* notice on Friday, March 13, 2020, and ending on Monday, April 13, 2020 (85 FR 14700). The proposed CX provided for covered actions (and included examples of such activities) on up to 10,000 acres within sagebrush and sagebrush-steppe plant communities to manage pinyon pine and juniper trees for the benefit of mule deer or sage-grouse habitats. Paragraph (a) of the proposed CX included a list of activities that the CX did not cover, and paragraph (b) required documentation of land use plan decisions providing for protections of certain resources and resource uses.

In response to the comments received, the BLM has revised the proposed text of the CX to clarify that the 10,000 acres may be contiguous or non-contiguous and added a

definition of habitat for mule deer and sage-grouse. The BLM also revised paragraph (b) to clarify the requirement to include project design features consistent with land use plans (LUPs) or document how listed resource and resource uses will be appropriately addressed where no land use plan decisions apply.

The BLM has additionally revised the Verification Report in response to the comments received to address clarifications, incorporate new literature, and support discussion of changes to the CX text. The BLM also has reviewed and revised, as appropriate, the Verification Report for consistency with the updated CEQ regulations at 40 CFR 1500-1508 (2020). 85 FR 43304 (July 16, 2020).

Comments on the Proposed CX

The BLM received a total of 3,903 comment submissions. The BLM received comments primarily through the BLM's online NEPA portal and comment platform, ePlanning, and by mail. Commenters invested considerable time and effort to submit comments on this proposal. Comments were submitted by State and local governments, environmental organizations, and private citizens. The BLM received comments both in support of the proposal and against the proposal, with both supportive and non-supportive comments also requesting revisions to the proposal.

The BLM has summarized and provided responses to all substantive comments received in this *Federal Register* notice for public review. The substantive comments address six broad topics: the scope of the CX; the purpose of the CX; incorporation of site-specific considerations in the terms of the CX; clarifications on the BLM's use of the CX; adequacy of the analysis and review done to develop the proposed CX; and the appropriateness of the procedures the BLM used to establish the CX. The BLM has considered all comments received and has provided responses to the substantive comments identified below.

SCOPE OF THE CX

Comment: The BLM received comments that requested clarification on what qualifies as sage-grouse or mule deer habitat, given that the Verification Report does not identify what criteria will be used to identify this habitat. The BLM received comments that suggested that the CX be limited to verifiable habitat polygons for sage-grouse and mule deer.

Response: The September 15, 2017, Secretary's Order 3356, *Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes and Territories*, directed the BLM to develop a proposed CX for "proposed projects that utilize common practices solely intended to enhance or restore habitat for species such as sage-grouse and/or mule deer." Consequently, this CX applies specifically to the management of PJ to enhance and restore mule deer and sage-grouse habitats, not for other species' habitats that might also include PJ. For the purpose of this CX, habitat for sage-grouse and/or mule deer is any area on BLM-managed land that is currently or formerly occupied by sage-grouse and/or mule deer, or is reasonably likely to be occupied if PJ is removed, as determined by BLM wildlife professionals.

Comment: The BLM received comments that requested the BLM clarify the 10,000-acre treatment area described in the Verification Report, specifically (1) whether the authorization is for 10,000 acres over a larger area or some acres of treatment within a 10,000-acre area, and (2) the expectation that treatments be a mosaic of treated and untreated patches, and the rationale for this pattern. The comments provided several scientific references noting that large expanses of conifer-free habitat are most beneficial for sage-grouse and requested that the BLM consider these references in determining the appropriate scope of the CX.

Response: The Verification Report states that "while this CX would authorize 10,000 acres of treatment, the BLM expects the treatments to be scattered across the

landscape rather than in a large contiguous block.” The BLM has added language to section 1.A.c (*The size of each project*) of the Verification Report to clarify that “[e]valuation areas in the EAs were larger than the ultimate proposed treatment areas” and “[t]herefore, while this CX would authorize 10,000 acres of treatment, the BLM expects the treatments (up to 10,000 combined acres per project) to be scattered across the landscape rather than in a large contiguous block; however, this is not a requirement of the CX, as there may be circumstances where treatment of 10,000 contiguous acres would be beneficial for sage-grouse.” The BLM considered the references provided and determined that no changes were needed to the Verification Report or the CX language.

Comment: The BLM received comments that requested the CX be modified to include seeding of non-natives, the application of herbicides, and chaining (a method of vegetation removal that involves two tractors pulling heavy chains in a “U” or “J” shaped pattern to pull over and uproot trees), given that many projects completed in the area relied on these methods and were evaluated in EAs that reached Findings of No Significant Impact (FONSIs), and therefore could support establishment of this CX as including these methods. The BLM received comments that provided several scientific references noting the benefits of these actions and requested that the BLM modify the scope of the CX.

Response: The BLM considered suggestions to allow for the use of seeding of non-native species, the use of herbicides, and chaining, and determined that these actions would not be added to the CX, for the same reasons they were not included in the proposed CX, as described in the Verification Report. The Methods section of the Verification Report (under 1.B.b) states “actions that were proposed for the CX as a preliminary matter were eliminated if they were not supported by NEPA analysis. This means that if the type of treatment and activities were not analyzed as elements of the projects listed in Table 1, they were removed as a covered action in the CX.” The use of

non-native plant seeds or sources and chaining were not analyzed as elements of the projects evaluated in the EAs reviewed. In addition, as noted in the same section of the Verification Report, “[a]ctivities such as the construction of temporary roads and the application of herbicides or pesticides that were rarely proposed in the EAs and, therefore, had no comprehensive record of effects across projects, were also removed from the CX.” Therefore, these activities are not included within the scope of this CX.

Comment: The BLM received comments that requested that, in addition to PJ, the proposed CX should also include Douglas fir and limber pine in its treatment of conifer encroachment if the CX aims to improve mule deer and sage-grouse habitat on a broad scale.

Response: Establishing a CX requires that the BLM evaluate the environmental impacts of the types of action proposed for the CX to determine if there is evidence that such action normally does not result in significant impacts across all landscapes where it would be appropriate to apply. The Verification Report documents the findings from BLM EAs and research that support the removal of PJ as a category of action that normally does not result in significant effects. At the time of developing this CX, the BLM was only able to find one EA in one ecoregion that evaluated the removal of Douglas fir in conjunction with PJ to support mule deer and sage-grouse habitats. The BLM determined that the one EA representing one ecoregion did not provide sufficient information at this time regarding the impacts of removal of Douglas fir or limber pine for the benefit of mule deer and sage-grouse habitat across multiple landscapes that justify including activities removing these species in the CX. Therefore, the BLM did not include removal of these species in this CX.

Comment: The BLM received comments that requested language be added to the CX stating that it may not be used within certain specially designated lands, as values protected under these designations would be compromised by projects implemented on

the basis of the CX. The comments pointed to the National Landscape Conservation System and other specially designated areas, including National Scenic and Historic Trail (NSHT) rights-of-way. The comment further stated that, without excluding NSHTs, projects would be in direct contradiction with the policies for the management of the NSHTs.

Response: The BLM has determined it is not necessary to explicitly exclude special designations in the text of the CX. PJ vegetation may require management in areas both within and outside of specially designated areas; therefore, the BLM intends the CX to extend to these areas generally, and to non-specially designated public lands. Management of specially designated areas, like all public lands, is governed by LUPs. The LUP applicable to a specially designated area will help define the applicability of the CX by delineating what kinds of protective measures, such as visual resource management buffers, are in place and what desired resource conditions constrain the projects in that area, which ensure compliance with BLM policy and management direction. Should the BLM rely on this CX for NEPA compliance, this reliance must include documentation regarding these protective measures, to ensure both LUP conformance and suitability for reliance on the CX. Reliance on the CX would also be subject to review of the DOI's list of extraordinary circumstances. If such extraordinary circumstances were present, the BLM would consider whether there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects such that it may still apply the CX, or determine that preparation of an EA or EIS is appropriate.

Comment: The BLM received comments that recommended the BLM incorporate changes to the language pertaining to old-growth woodlands in the CX to require specific detection and evaluation methods, provide stronger protections, and provide an exemption for the removal of predator perches.

Response: As stated in the Verification Report, old growth trees would be protected (not removed) during projects supported by the CX, and so there are no stronger protections to provide. It would not be appropriate for the BLM to require specific detection and evaluation methods for identifying old-growth trees; instead, the BLM would continue to utilize the best professional scientific methods available and appropriate to the site-specific location at the time of project implementation. The BLM is not aware of information that supports an exemption to allow removal of predator perches and has not revised the CX to identify any such exemption.

Comment: The BLM received comments that requested additions or modifications to the CX parameters in order to prevent two CX-supported projects from being applied contiguously, in order to prevent large swaths of land being treated in multiple projects.

Response: The BLM has determined it unnecessary to define in the CX a prohibition of the use of this CX for NEPA compliance in any geographical or temporal scope in relation to additional uses of the CX. The use of any CX is subject to review of the DOI extraordinary circumstances in order to determine if any extraordinary circumstances are present that would result in significant effects and, therefore, preclude use of the CX to comply with NEPA. An established CX category of actions do not have significant impacts when projects are designed to the specifications of the category and review of the proposed action determines that there are no extraordinary circumstances present that may result in the project having significant effects. If the proposed action, conducted adjacent to other similar projects, would trigger any of the extraordinary circumstances, the BLM would not be able to rely on the CX for NEPA compliance absent circumstances that lessen the impacts or other conditions sufficient to avoid significant effects. Where extraordinary circumstances are present, and there are no circumstances that lessen impacts or other conditions sufficient to avoid significant

effects, the BLM would proceed with the appropriate level of NEPA review other than a CX, in accordance with 40 CFR 1501.3 and 43 CFR 46.205. For example, the effects of contiguous PJ treatments may fall under the extraordinary circumstance that considers whether the project may “have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks” (43 CFR 46.215(d)).

Comment: The BLM received comments that requested additions or modifications to the CX parameters to specifically require limitations related to pinyon jay colonies, soil erosion, and biological soil crusts.

Response: The BLM considered each of the suggestions regarding additions or modifications to the CX parameters and determined that no changes were needed. Proposed actions, regardless of their level of NEPA review (CX, EA, EIS) must conform to the approved LUP. In implementing actions in conformance with LUPs, the BLM identifies project design features to define the parameters of the project, including any protective measures needed to ensure LUP conformance or to reduce adverse effects based on the site-specific circumstances. If the proposed action is the subject of an EA or EIS, the EA or EIS evaluates the project including those parameters. If the proposed action designed to meet the requirements of the LUP, including incorporating any resource protective measures, also meets the parameters of the CX, and no extraordinary circumstances preclude application of the CX, the BLM can rely on a CX. Because LUPs are, themselves, region-specific, different LUPs have different objectives, and impose different resource management constraints on actions that can be taken in the area they cover.

CX PURPOSE

Comment: The BLM received comments that requested the BLM expand the list of species that could be benefited by projects under the CX and highlight the other ecological benefits associated with PJ management in the Verification Report, such as

watershed hydrologic function, expansion of herbaceous forage production, benefits to sagebrush-obligate songbirds, and increased plant diversity. The comments included several scientific references noting these other ecological benefits and requested that the BLM consider these references in determining the appropriate scope of the activities included under the CX.

Response: The BLM considered each of the requests and determined that no changes were needed to the Verification Report or the CX language. While authorizing projects covered by this CX may have incidental benefits to other species and resources, the purpose of this CX is to streamline implementation of projects to benefit mule deer and sage-grouse habitats, as directed in Secretary's Order 3356.

Comment: The BLM received comments requesting that the BLM specify that the CX applies only to specific PJ tree species described by the relevant land use plan.

Response: The BLM is not relying on LUPs to define the tree species included in the scope of this CX. The text of the CX states that it is only available for use of the removal of PJ species. In the CX as finalized, the BLM has addressed the relationship between proposed actions and LUPs in paragraph 1(b) of this CX to ensure project design features are identified as appropriate and in conformance with the applicable LUP. As stated in the Introduction of the Verification Report, regardless of the level of NEPA review, the BLM's actions are guided by LUPs on BLM administered public lands. The LUPs identify where and under what conditions management activities can occur consistent with plan decisions. Therefore, regardless of the terms of any particular CX, the proposed action would also be constrained by any limits written into the applicable LUP. For example, if a BLM LUP prohibits the removal of certain species of PJ, any proposed action would preclude such removal and reliance on this CX would not be appropriate. The BLM has revised paragraph (b) of the CX to clarify the requirement to

document how the scope of the project addresses any needed protections when no LUP decisions apply.

Comment: The BLM received comments that stated the BLM already has an established CX that meets the stated purpose of this proposed CX (DM Part 516, Chapter 11.9, Section D (10)) and under this existing CX, projects other than prescribed burning are limited to 1,000 acres in size and are not permitted in wilderness areas or wilderness study areas. The BLM received comments that stated that the BLM has not acknowledged this existing CX or explained why this existing CX is not adequate.

Response: The comments are correct that there is a CX listed at DM Part 516, Chapter 11.9, Section D (10) that addresses certain vegetation management activities. However, under guidance issued in 2009, in BLM Instruction Memorandum No. 2009-199, use of that CX by the BLM has been discontinued permanently, as agreed to in a settlement of *Western Watersheds Project v. Lane*, No. 07-cv-394-BLW by the United States in U.S. District Court for the District of Idaho in July of 2009.

SITE-SPECIFIC CONSIDERATIONS

Comment: The BLM received comments that the BLM should only allow Phase III removal treatments on a case-by-case, site-specific basis, given that state and transition models demonstrate more risk than reward with Phase III removal. These comments further recommended the BLM exercise caution prior to allowing these treatment types, keeping in mind that, in order to benefit sage-grouse and potentially avoid creating “biological sinks,” all trees within the treatment perimeter would need to be removed.

Response: “Phase III” referenced by the comment is the most advanced stage of PJ woodland encroachment into formerly sagebrush-dominated habitat. As defined in the Glossary of the Verification Report, Phase III woodlands are characterized by trees comprising over two-thirds of cover in biomass, with the tree canopy dominating

ecological processes. The EAs relied upon in establishing this CX, described in Appendices A and B in the Verification Report, included PJ removal in all three phases of PJ encroachment (Phases I, II, and III). Projects authorized in reliance on this CX for NEPA compliance must demonstrate a benefit to sage-grouse or mule deer habitat. If, based on site-specific conditions, the BLM finds that a Phase III removal meets all the necessary requirements for the use of this CX (meets the scope of the proposed CX, was designed specifically for the purposes of benefiting sage-grouse or mule deer and habitat, focuses solely on removed PJ, is in conformance with relevant LUPs, and no extraordinary circumstances preclude application of the CX), then use of this CX for NEPA compliance to authorize the removal would be appropriate.

Comment: The BLM received comments stating that the BLM's statutory obligation to comply with any governing LUP is not sufficient to ensure there will be no impacts. Comments stated that site-specific analysis must be applied to PJ removal projects, and that the BLM must ensure that proper constraints are explicit in the CX language itself, rather than relying on LUP conformance requirements to constrain the use of this CX.

Response: Although any actions taken by the BLM must conform to the applicable LUP, the BLM has not relied on requirements for actions to conform with LUPs in establishing this CX. The BLM has developed a specific scope of actions and required components for the inclusion of project design features consistent with LUP decisions and relied upon existing NEPA analysis and scientific research to determine that this scope is appropriate to ensuring no significant effects would occur. The establishment of a CX does not imply that no effects would occur – indeed, the purpose of the proposed actions covered by the CX is to have a beneficial effect on mule deer and sage-grouse habitats. The scope of the CX is defined to identify parameters that constrain the action such that it would not result in significant effects. Reliance on the CX would

also be subject to review for extraordinary circumstances that, if present, would preclude reliance on the CX for a particular project approval.

In implementing actions in conformance with LUPs, the BLM identifies project design features to define the parameters of the project, including any protective measures needed to ensure LUP conformance or to reduce adverse effects based on the site-specific circumstances. The BLM defines and refines the action proposed regardless of the level of NEPA compliance, including for projects supported by CXs. The BLM develops LUPs for specific regions of the country in coordination with a public engagement process. These LUPs vary based on the environmental conditions and objectives for the region. Therefore, while the proposed CX points to the category of project design feature to include, the applicable LUPs, which BLM would consult during project implementation, provide regionally appropriate and site-specific design features for resource protection for individual projects proposed. The Verification Report evaluated previously implemented actions that incorporated project design features according to management direction in the relevant LUP and found that those projects do not cause significant environmental effects. The BLM has revised the text of the CX at paragraph (b) to clarify that a proposed action covered by the CX must include project design features providing protections consistent with the decisions of the applicable LUPs.

USE OF THE CX

Comment: The BLM received comments stating that the CX could be misused to increase forage for livestock grazing operations and requested that the BLM add language to the CX restricting projects where livestock grazing is permitted. In addition, the BLM received comments that suggested the BLM analyze grazing management in the Verification Report and the effects of grazing (such as an increase in cheatgrass and damage to biological soil crusts) on the habitat restoration goals that are the purpose for establishing the proposed CX. The comments provided several scientific references

noting the effects of grazing and recommended that the BLM consider and incorporate the relevant scientific references documenting these effects in the Verification Report.

Response: Projects authorized in reliance on this CX for NEPA compliance must demonstrate a benefit to sage-grouse or mule deer habitat, not livestock. If, based on site-specific conditions, the BLM finds that the proposed action is designed specifically for the purposes of benefiting sage-grouse or mule deer and habitat, focuses solely on removal of PJ, is in conformance with relevant LUPs, and there are no extraordinary circumstances requiring preparation of an EA or EIS, then use of this CX for NEPA compliance to authorize the removal would be appropriate regardless of whether increases to livestock forage occur as a result.

The BLM analyzed and considered the effects on grazing management of PJ treatments. Appendix A and Appendix B of the Verification Report describe the anticipated effects of PJ treatments described in the EAs used to support the CX, which included 1) temporary loss in areas available for livestock grazing, 2) short-term decreases in forage availability, 3) long-term minor improvements in forage availability, and 4) loss of shade trees that could concentrate livestock. These effects were not anticipated to be significant, and after-action observation revealed they were not. As noted in Appendix B of the Verification Report, removal of livestock grazing is usually not required as part of PJ removal treatments unless site-specific protection is needed for seedlings, revegetation, or where required by land use plans. Other design features to reduce the effects on livestock grazing, if needed, typically include pasture deferments or modifications to grazing systems. Due to limited vegetation and soil disturbance caused by these PJ management projects, described in the Methods sections 1.B(f) and 2.A(d) of the Verification Report, these measures adequately provide for post-treatment recovery in areas subject to livestock grazing.

ANALYSIS AND REVIEW OF THE CX

Comment: The BLM received comments that the BLM has not demonstrated that it has adequately monitored past vegetation removal projects to ensure that the treatments do not cause significant, long-term damage to overall ecosystem health. Comments stated the Verification Report did not include adequate detail regarding how the BLM collected and analyzed information and data related to the 18 EAs relied on in the Verification Report to support its conclusions.

Response: The BLM engages in routine monitoring, either for specific projects or as part of overall land health monitoring, to evaluate the effectiveness of projects. Providing separate compilations of detailed monitoring data for the projects identified is one possible way to support establishment of a CX but is not necessary to justify the establishment of this CX. The Administrative Process section of the Verification Report describes the methods by which an agency can establish a CX, and the introduction to the Methods section describes the methods BLM employed to validate this CX. These included 1) evaluating effects of implementing PJ removal projects for which the BLM prepared EAs and FONSI, and 2) reviewing scientific literature and citing research findings from peer-reviewed published studies.

Comment: The BLM received comments that the BLM failed to analyze the cumulative impacts of the proposed CX, because the BLM did not include its methodology or any quantified results supporting its conclusory statements in the Verification Report. The commenters requested the BLM assess cumulative impacts on a programmatic level and ensure that impacts are assessed at a level of detail such that useful data can be generated to facilitate review.

Response: Commenters are conflating the analysis required when a CX is established with the consideration required when an agency relies on an established CX to support a proposed action. In its updated regulations, CEQ requires agencies to

identify all effects of a proposed action that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. In evaluating effects of PJ treatments, the BLM examined data and evidence per the CEQ's guidance for establishing a new CX, including analyzing previously implemented actions and their observed environmental consequences. In so doing, as documented in the Findings section of the Verification Report, based on effects analyses in the relevant EAs and post-implementation monitoring, "[n]o [significant impacts] were predicted in the BLM EAs and FONSI's for the activities included in the proposed CX for PJ control, the observed post-implementation effects were similar to or less impactful than the effects predicted in the EAs/FONSI's, and there were no unanticipated impacts from the treatments." Based on the evidence, the specific category of actions described in the CX consistently do not produce significant environmental impacts, and the BLM considered and analyzed potential effects from PJ treatments in the Verification Report.

Comment: The BLM received comments that stated that the BLM failed to analyze the potential for large-scale removal of pinyon trees within a PJ woodland to create juniper-only communities. The comments referred to a scientific source noting the effects of PJ removal and subsequent alteration of PJ communities and recommended that the BLM consider and incorporate its results in the Verification Report.

Response: In conducting its review and analysis to establish the CX, the BLM considered large scale removal of PJ and possible alteration of PJ communities. The BLM reviewed the scientific source submitted with comments regarding possible transformation of PJ communities and found that the scientific source cited is specific to chaining treatments and treatments that have been reseeded using non-native species, neither of which could be authorized under the CX. The proposed CX language in the Verification Report (section 1(1) under the Introduction) specifically states that covered actions under the CX "shall not include: (a) 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.” Therefore, the cited information, with its focus on chaining, is not relevant to the establishment of this CX.

Comment: The BLM received comments that the BLM failed to include in the narratives in the Methods section of the Verification Report the effects on soil erosion and biological soil crusts, even though those effects appeared in Appendix A, and stated that the discussions of scientific literature provide conflicting summaries from the sources cited regarding soils.

Response: Section 1.B.f (“Observed environmental consequences of projects as implemented - Soil Disturbance”) under the Methods section of the Verification Report presents actual effects observed on the ground after project implementation, whereas Appendix A lists the potential effects as described in the Environmental Consequences sections of the EAs relied upon in establishing this CX. When post-implementation observations did not detect the effects, those effects were not noted, and thus would be absent from the section, as was the case with soil effects. Appendix B of the Verification Report provides a summary of predicted (potential) effects on soils noted in the EAs, followed by the validated (observed on the ground) effects, under the Soils/Vegetation section of the table. Section 2.A.d, under the Peer-reviewed scientific research findings, describes potential effects of the PJ removal methods supported under the CX on soil erosion and biological soil crusts. The BLM has reviewed the findings of Redmond et al. 2013 and determined that they are appropriately summarized in the Verification Report.

Comment: The BLM received comments that the Verification Report fails to adequately consider the potentially significant effects of the proposed CX on pinyon jays and does not adequately support its findings in the Verification Report regarding impacts on pinyon jays and PJ-obligate species from PJ removal. The comments provided

scientific references noting the potential impacts of PJ removal on these species and recommended that the BLM consider and incorporate relevant scientific references documenting these effects in the Verification Report.

Response: The BLM has considered the effects of the actions covered by the CX on pinyon jays. The BLM has reviewed the findings in the scientific references provided by the comments (i.e., Somershoe et al. 2020, Boone et al. 2018, and Johnson et al. 2019) and has concluded that the findings do not conclusively indicate that pinyon jays would experience significant impacts due to PJ removal treatments. As Somershoe et al. 2020 notes, “[t]he effects of thinning treatments on pinyon jays have been studied, but little information is available about the effects of woodland removal, especially in the Great Basin.” The few studies cited in Somershoe et al. 2020 are site-specific and do not support a finding that pinyon jays would experience negative impacts at a landscape-scale from PJ removal. The commenter does not cite to any other references to support the stance that best available science indicates that the implementation of projects supported under this CX could have significant impacts on pinyon jays.

Comment: The BLM received comments that recommended the BLM include additional research in the Verification Report to better encompass the benefits of PJ management for big game species, specifically, research highlighting the need to focus on forage and nutrition, not thermal cover, for elk management, and research demonstrating that treatments to remove PJ in sagebrush/sage-steppe systems would greatly improve forage for big game, including Cook et al. 1998; Cook et al. 2005, Sorensen et al. 2020, Roerick et al. 2019, and Maestas et al. 2019.

Response: The BLM’s review of the scientific literature provided by the commenter supports the BLM’s finding in the Verification Report that forage abundance and availability for mule deer is considered to be an equal, if not more important, indicator of the quality of winter range for big game than thermal and hiding cover.

Likewise, the beneficial effects of PJ removal to other big game species, including elk, are discussed in the Verification Report. Therefore, the BLM has made no changes in the Verification Report relative to this comment.

Comment: The BLM received comments indicating that, by citing regional unpublished habitat guidelines and studies (specifically Watkins et al. (2007) and Cox et al. (2009)) to generalize the entire array of ecosystems managed by the BLM nationwide, the BLM is not consulting the best available science.

Response: The mule deer habitat guidelines (Watkins et al. 2007; Cox et al. 2009) are based on a substantial number of peer-reviewed mule deer studies, Ph.D. dissertations, and M.S. theses, and state agency verification reports from across a wide geographic area in the Colorado Plateau and Intermountain West. In addition to these guidelines, the BLM reviewed and has relied upon recent published literature, such as Jones (2019) and Miller et al. (2005), as described in the Verification Report (section 2.A.c, Mule Deer). The BLM finds that these represent the best available science.

Comment: The BLM received comments that most western Native American Tribes rely heavily on pinyon nut harvests and other use of natural resources on public lands, and reliance on large-scale CXs concerning mechanical reduction or elimination of such resources without an opportunity for public review and comment on such actions as is provided through the EA process ignores the potential adverse effects on Native American communities and people and the associated environmental justice concerns.

Response: The BLM has considered the issues raised. As stated in the Verification Report, while Tribes are generally supportive of PJ treatments for the restoration of ecological health and reduction of the risks that catastrophic wildfire presents to cultural resources, the BLM acknowledges in the Verification Report that there are potential risks to cultural resources from PJ treatment projects. These risks would be substantially reduced by requirements to conduct field inventories/surveys,

consult with Tribes and state and Tribal historic preservation offices, and implement appropriate impact avoidance and minimization measures. These measures are often referenced in applicable LUPs, and even when they are not, compliance with legal requirements such as the National Historic Preservation Act (NHPA) and the Federal Government's requirements for government-to-government consultation apply to all BLM projects independent of requirements for compliance with NEPA. The importance of pinyon nut harvests to Tribal interests would be addressed at the time of project proposal, regardless of the level of NEPA review completed. Common project design features include full-avoidance or restricting treatment methods to hand-treatment only within and adjacent to sites and measures that mask cultural sites and preclude physical intrusion. In some areas, cultural sites coincide with the presence of old-growth timber, areas that could not be disturbed in projects supported by the CX.

For the establishment of CXs, the CEQ NEPA regulations require consultation with CEQ and publication of the proposed CX for comment, as the BLM has done here. *See* 40 CFR 1507.3(e)(2). CEQ does not require any public review for the application of a CX to a proposed action once the CX has been established. Although public involvement is not required to determine that a project qualifies for a CX, the BLM NEPA Handbook does identify that the BLM can elect to involve the public when relying on a CX to support an action. The BLM also notes that many public land management programs administered by the BLM, such as land tenure adjustment and public land grazing management, have their own independent public involvement requirements.

Comment: The BLM received comments that the failure to consider carbon sequestration in PJ forests and the potential for loss of the carbon if the forests are removed invalidates the BLM's claim that there are no significant environmental impacts from the management activities that could be supported by the proposed CX. Comments note that removing tens of thousands of acres of public forests, if not hundreds of

thousands of acres, could greatly increase carbon emissions and thus climate change impacts. The comments provided scientific references noting carbon sequestration benefits and the value of vegetated land uses in storing carbon.

Response: The BLM has considered the effect of covered projects on carbon sequestration and greenhouse gases. The PJ removal projects evaluated in the EAs and after-action observation relied on to validate the CX were of similar or greater acreages than the 10,000-acre CX limit and neither the EAs nor the after-action observation identified that these projects would or did result in significant effects on carbon sequestration and greenhouse gases. Furthermore, the scientific references provided in the comments offered no specific evidence that PJ removal projects caused significant effects on carbon sequestration and greenhouse gases. Therefore, the BLM has considered the potential effects of carbon sequestration during the validation process for this CX.

Comment: The BLM received comments that the Verification Report referenced water in the professional opinions sections (Appendices B and C) under Methods (section 1), but not in the section with *Peer-reviewed research findings, professional opinions and reports* (Methods section 2), specifically, information about the benefits of PJ removal for improving the quantity of water on the landscape. The comments provided several scientific references noting these benefits and recommended that the BLM consider and incorporate relevant scientific references documenting these effects in the Verification Report.

Response: The BLM has reviewed the scientific studies submitted by the commenters and has included updates in the Verification Report (section 2.A.f.), summarizing the findings in Ochoa et al. 2019 and other research studies (Kormos et al. 2017, reviewed in Miller et al. 2019 and Williams et al. 2019) indicating that western juniper control can increase water availability.

Comment: The BLM received comments that the Verification Report does not adequately analyze the potential impacts of PJ treatments on bat species (including BLM-identified sensitive bat species, such as the fringed bat) and does not sufficiently incorporate data suggesting the importance of PJ habitat to bat species. The comments provided several scientific references noting the importance of PJ habitat for bat species and the potential effects of PJ treatments on bat species and recommended that the BLM consider and incorporate relevant scientific references documenting these effects in the Verification Report.

Response: The BLM analyzed the potential impacts of PJ removal on wildlife species, including bat species, in the EAs used to support the CX, and found that the activities proposed to be covered by the CX would not cause significant environmental effects on these species. The projects included identification of habitat within the project areas for BLM sensitive species (which include many bat species), the northern long-eared bat (a species listed as Threatened under the Endangered Species Act), and other bat species. Where potential habitats were identified in the project areas, the BLM conducted surveys for bats as indicated by LUP management direction and BLM protocols.

The analyses recognized that some bats utilize cavities in snags and forage for aerial insects over PJ and sagebrush woodlands, and therefore, juniper reduction would negatively affect some species (e.g., the silver-haired and long-legged myotis) and positively affect other species (California and hoary bats) depending on their habitat needs. Over the long term, analyses concluded that the reduction in fuel loads from PJ removal would be beneficial by reducing the risk of future large-scale wildfire. None of the EAs identified the potential for significant effects on bats. When implementing projects covered by this CX, the BLM will conduct the same types of inventories and provide protections for bats, like other wildlife, as required by LUPs and BLM protocols

for federally listed and BLM sensitive species. Since the EAs themselves documented scientific literature on bats, including the reference provided by the commenter (Chung-MacCoubrey 2005), as well as many other wildlife species, the BLM did not update the Verification Report.

Comment: The BLM received comments that suggested the Verification Report's analysis of the potential for invasive plant species expansion after PJ treatment is unsubstantiated, saying, for example, that the Verification Report inaccurately determined that cheatgrass always decreases over time, even if it initially increases post-treatment, despite none of the studies cited in the Verification Report supporting this conclusion. The comments provided several scientific references noting the effects of PJ removal on cheatgrass and other invasive species and recommended that the BLM consider and incorporate relevant scientific references documenting these effects in the Verification Report.

Response: The Verification Report acknowledges that the "literature indicates that PJ removal activities often increase the abundance of invasive annual grasses, with cheatgrass being a focus of much of the research" (Methods section 2.A.b), and "that with the current level of understanding, the advance of invasive species, whether pre-existing or new, may be an outcome of PJ treatment" (Findings section). The Verification Report discusses the complex relationships among treatment types, site conditions, pre-existing vegetation composition, and vegetative outcomes from PJ removal in section 2.A.a and focuses on invasive species research results in section 2.A.b, many showing increase of cheatgrass after treatments. The Findings section of the Verification Report concludes that after the types of PJ treatments in the CX, "native sagebrush and sage-steppe vegetative composition and forage production improve despite the presence of invasive plant species." The BLM considered the references provided, many of which

were used in the Verification Report, and determined that the Verification Report analyzed the issues brought up by the comments.

Comment: The BLM received comments that the Verification Report inaccurately determined that understory plants predominantly increase after treatment, and the BLM failed to consider several scientific references that came to different conclusions in determining the appropriate scope of the CX. Comments also pointed to the concept of site resistance and resilience (Chambers et al., 2014) and stated it contradicts the conclusion that native vegetation and forage production improve despite the presence of invasive plants.

Response: The BLM recognizes that while outliers may exist in the larger body of scientific knowledge, the BLM accurately depicted the results of the research in that the literature focused most clearly on the types of mechanical PJ removal covered by the CX and the effect on understory vegetation. The BLM reviewed the literature and citations included with the comments and determined that some readers may have misinterpreted results when cheatgrass was observed to increase at the same time as native plants. To clarify, cheatgrass and other non-native plants often increased at the same time as more desirable native plants, as documented in section 2.A.b of the Verification Report, but that result does not contradict the benefits of and the literature's conclusions that "an increase in understory cover and density, including increased richness and cover of perennial and annual grasses and native forbs" occurs after PJ treatments. These findings of post-treatment vegetation responses do not contradict the concept of site resistance and resilience, which looks at pre-treatment conditions to predict vegetative outcomes and is summarized in section 2.A.b the Verification Report: "researchers have increasingly noted that perennial native herbaceous species are a primary determinant of site resilience to disturbance and management treatments or resistance to cheatgrass and exotic forbs under some site conditions." The comments do

not specify why this concept invalidates the scientific research results cited in the Verification Report. The BLM carefully reviewed the literature evaluated in the Verification Report to find the results of the specific PJ removal treatments covered by the CX, discrete and distinct from the results of burning, chaining, or cabling, which are not included. Therefore, the BLM accurately summarized the scientific literature cited in the Verification Report relative to understory vegetation and found no reason to change the scope of the CX or revise the Verification Report.

Comment: The BLM received comments that the Verification Report inaccurately determines that the overwhelming result of PJ treatments is that they have positive effects on soils, soil erosion, and hydrological function, and noted that research shows that PJ forest ecosystems are complex and depend on the interaction of a variety of factors, and management must be carefully planned according to individual site characteristics on a site-specific basis. The comments provided a list of literature citations for the BLM's review and consideration in support of their statements.

Response: The BLM has reviewed all literature provided by the commenters. The BLM acknowledges that PJ forest ecosystems are complex and has updated section 2.A.d of the Verification Report to add to the description of the Williams et al. 2018 summary that ecohydrological impacts of treatments on PJ woodlands largely depend on: (1) the degree to which perturbations alter vegetation and ground cover structure, (2) the initial conditions, and (3) inherent site attributes. The BLM also notes that LUPs address heterogeneity among sites.

Comment: The BLM received comments that stated the two literature reviews cited in the Verification Report improperly informed consideration of cumulative effects of PJ removal projects (Jones 2019 and Miller et al. 2019), given that these sources: aggregate data and observations from multiple reports on individual research projects; draw generalizations from the body of research; and fail to explicitly address the

cumulative impacts of many such projects in proximity across the landscape on a wider scale. Comments included several scientific references noting the cumulative impacts of PJ treatments and recommended that the BLM consider and incorporate relevant scientific references documenting these effects in the Verification Report.

Response: The revised CEQ regulations require agencies to identify all effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action. Although CEQ's regulations specifically do not require evaluation of cumulative effects, *see* 40 CFR 1508.1(g)(3), the BLM nevertheless utilized evaluations and observations of previously implemented projects to determine the environmental effects from the activities covered by the CX to address such effects. Those evaluations and observations led to the findings stated in the Verification Report that the specific categories of actions described in the CX consistently would not cause significant environmental effects, whether the activities were to be implemented individually or in combination. The literature review supported this finding ("informed the consideration of cumulative effects") in that the aggregated studies pertaining to specific resources (soils, vegetation, etc.) over space and time did not reveal significant effects. The BLM did not rely solely on the aggregated trend data in Jones (2019) to identify effects from the relevant PJ removal treatments. The literature review in the Verification Report presents scientific data directly from numerous research projects representing different situational circumstances, and these data provided the basis for the BLM's conclusions. One of the references provided by comments cited the results of sagebrush removal treatments, which would not occur under the CX, and is therefore not relevant to PJ removal. Based on the relevant studies focused on the PJ removal activities specified in the CX, the BLM did not find the reasonably foreseeable effects to be highly uncertain or potentially significant. The BLM has determined that its statements are supported by the scientific references cited in the Verification Report.

Comment: The BLM received comments that the BLM incorrectly summarized the findings in the peer-reviewed literature section in the Verification Report regarding the impacts of PJ removal on sage-grouse. The comments referred to several scientific references cited within Jones (2019) for PJ treatment effects on sage-grouse and recommended that the BLM consider and incorporate additional findings from these references in the Verification Report.

Response: In one of the examples provided by the comments, Jones (2019) summarized that “[o]f the five studies of PJ treatment effects on sage-grouse, three showed positive effects and two showed non-significant effects.” (Note that “significant” in this context refers to statistical significance such that “non-significant” conveys a neutral result.) Therefore, all five of these studies had no proven negative effects. The other Jones (2019) example provided by the comments referred to 11 studies of sagebrush treatment effects; however, sagebrush treatments (removing sagebrush) are not included in this CX, and those results are therefore not relevant.

Comment: The BLM received comments that the BLM incorrectly determined in the Verification Report that PJ mechanical treatments have variable effects on deer and elk use of sage-steppe ecosystems, given that the literature cited in the Verification Report found that mechanical treatments have a mostly negative or statistically non-significant effect on mule deer and elk. The commenter provided a list of literature citations for the BLM’s review and consideration in support of their statements.

Response: In the Verification Report (section 2.A.c, Mule Deer), the BLM summarizes findings of studies cited by Bombaci and Pejchar (2016) and Jones (2019) that mechanical treatments have variable effects on deer and elk use of sage-steppe ecosystems. Notably, Bombaci and Pejchar (2016) found that the proportions of negative, positive, and non-significant results (statistically non-significant, therefore, neutral for these purposes) were similar following mechanical removal and thinning treatments.

Jones (2019) concluded that “mechanical treatments have variable effects on deer and elk use of sage-steppe ecosystems both seasonally and annually, ranging from decreased use to increased use” and “treatments were found to improve forage values, sometimes at the expense of cover used for other daily and seasonal needs.” The BLM therefore concludes that its determination that PJ mechanical treatments have variable effects on deer and elk use of sage-steppe ecosystems was correct.

Comment: The BLM received comments that the BLM did not adequately evaluate the impacts of landscape-scale disturbance to PJ woodlands on wildlife species that inhabit and depend on these woodlands (including obligate bird species, semi-obligate bird species, and mammals), as well as on migration corridors and wildlife-dependent recreational activities.

Response: The BLM has considered impacts of the kinds of treatments included in this CX on PJ obligate species. The BLM has updated the Verification Report (section 2.A.c, Other Birds and Mammals) to clarify that “Research of bird species responses to PJ removal have been relatively consistent in reporting that use of the treated areas by sagebrush-associated species increased after PJ treatments, while use by PJ woodland species, including pinyon jay nests, decreased (Johnson et al. 2018; Jones 2019).” Relative to other wildlife-related effects, Appendix B of the Verification Report provides a summary of environmental consequences of the actions included in the CX by resource, including impacts on wildlife and recreation. The commenter does not provide any further information or scientific sources to demonstrate how the BLM failed to evaluate landscape-scale disturbance impacts from PJ removal treatments.

Comment: The BLM received comments suggesting that the BLM improperly used mitigated FONSI to support the proposed CX and that not all project design features contained in the referenced EAs were included in the proposed CX.

Response: Consistent with CEQ's guidance, Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (Nov. 23, 2010), mitigated FONSI's can support development of a CX when measures are included as part of the CX. The actions included in the Verification Report to support the CX were selected based on BLM's review of EAs and FONSI's that incorporate project design features developed to ensure conformance with LUPs and reduce adverse effects, which has been shown to be an effective process in developing PJ removal projects that have no significant impacts.

Comment: The BLM received comments that questioned the Verification Report's assumption that projects with NEPA completed after 2016 have not been implemented and stated that there are numerous projects where NEPA was completed after 2016 and implementation has occurred. The comments suggested that because these are more recent projects, they would be more representative of the types of projects being implemented in the future. Comments also stated that the number of projects used are not sufficient to draw a conclusion that there have been no significant environmental impacts from the actions that would be covered in the CX and requested that the BLM analyze all PJ management projects to make this determination.

Response: The Methods section of the Verification Report details the methodology the BLM used to identify the evaluated EAs. While the BLM relied on an ePlanning query of projects from 2012 to 2016, the BLM also contacted all offices with EAs analyzing the types of actions that would be covered by this CX and asked questions regarding the status of NEPA analysis and implementation status of projects for which the BLM had already reached a decision. Based on this feedback from offices, the BLM utilized information in the Verification Report only from those projects that were completed to a point that all actions authorized had been implemented, such that monitoring and observations of the effects and effectiveness of the actions were

available. While the BLM found projects where NEPA was completed after 2016, implementation of these projects was not complete or was so recently completed that any post-implementation impacts were not yet observable. Although BLM did not limit the inclusion of any EAs by date, use of these criteria resulted in the most recent EAs included in the Verification Report to be dated in 2016 and prior.

Comment: The BLM received comments that the BLM should not rely on programmatic EAs to conclude that significant impacts would not result from PJ removal projects, given that programmatic EAs usually do not analyze site-specific impacts associated with future projects. In addition, comments stated that the BLM should not rely on EAs tiered to an EIS to conclude that significant impacts would not result from PJ projects implemented under an EIS, given that tiered EAs rely on the analysis, mitigations, and constraints set forth in the EIS, and therefore do not demonstrate an absence of significant impacts. Comments also stated that the BLM cannot rely on 6 of the projects included in the Verification Report because the EAs fail to demonstrate that the projects will not result in significant impacts and suggested that 12 projects are too few to provide a basis for the BLM's determination that this category of projects will not result in significant impacts.

Response: While 3 of the 18 EAs that the BLM reviewed for the CX were large-scale, programmatic analyses, the other 15 were management-unit implementation-level projects. It is important to note that the programmatic EAs did identify specific locations and specific acreages to be treated and, despite awareness that all of the areas would be treated (within the same potential timeframe), the BLM did not find any reason to prepare an EIS for potential significant effects from these treatments. Further, all projects implemented under the programmatic EAs had additional documentation of NEPA adequacy to evaluate if the effects would exceed those disclosed in the programmatic EA. All EAs evaluated in the Verification Report have supported implemented projects that

demonstrate that the actions identified did not result in significant impacts at the site-specific implementation level.

Further, the Verification Report referenced EAs that analyzed activities proposed for this CX, without including the results of analyses that grouped mechanical PJ removal with other management activities (such as jackpot burning, broadcast burning, road building, etc.). None of the EAs reviewed and utilized to support the establishment of this CX tiered to an EIS analysis in order to conclude that the project would not have significant effects beyond those disclosed in an EIS.

Comment: The BLM received comments that the BLM should not have excluded those projects supported by an EIS, where potentially significant impacts were disclosed, and major issues and actions addressed are similar to those addressed in the EAs used to support the CX in the Verification Report.

Response: As noted in the Verification Report, the PJ removal projects evaluated through EISs are quite different in size and scope from the projects evaluated through EAs; most notably the EIS-supported projects encompassed far more acres or included activities not proposed for coverage in this CX, or both. Consequently, the results of the EIS analyses are not appropriately applied to the specific type and scope of activities authorized by this CX given their dissimilarity.

Comment: The BLM received comments that the actions covered by this CX are not the same as the actions analyzed in the EAs, and the Verification Report fails to recognize that the EAs addressed a number of site-specific issues (such as old-growth, roads, wilderness values, soil erosion, and impacts to wildlife) through project refinement, alternatives analysis, expert agency consultation, and mitigation. Comments concluded that the proposed CX should be updated to account for site-specific differences to ensure that PJ management does not result in significant environmental impacts.

Response: As noted in the comments, the PJ removal actions evaluated in the EAs all included some form of manual or mechanical cutting, combined with various methods of spreading or disposal of debris, including yarding and piling, pile burning or log removal, lop/scatter, and mastication with mulching. Appendix A includes a cross-reference for which type of actions included in this CX were evaluated in each EA. This process allowed iterative refining of the scope of the CX. The CX includes that suite of activities found not to have significant effects in the EAs evaluated. All projects implemented under the CX will be in conformance with the relevant LUP. In implementing actions in conformance with LUPs, the BLM identifies project design features to define the parameters of the project, including any protective measures needed to ensure LUP conformance or to reduce adverse effects based on the site-specific circumstances. The BLM defines and refines the action proposed regardless of the level of NEPA review, including for projects covered by CXs. Conditions that would require actions or considerations beyond those identified as within the scope of this CX would require preparation of either an EA or an EIS, as appropriate.

Comment: The BLM received comments that the BLM inappropriately relied on projects designed to be implemented over several years, given that the impacts resulting from a project implemented in one discrete time period instead of over a multi-year phased period are different.

Response: As noted in the comments, several of the EAs and after-action observation relied on to substantiate the CX stated that implementation (treatment on all acres evaluated in the EA) may take place over a span of several years. However, the analyses for these EAs did not assume phased-in effects over time and were thus conducted as if the total proposed acreage would be implemented at the same time, as indicated by the footnotes in the Verification Report (Appendix A – Section 2).

Therefore, the predicted and verified impacts from the projects analyzed in these EAs are comparable to projects that will be implemented under the CX.

Comment: The BLM received comments that the 18 projects analyzed in the Verification Report are not enough and are not representative geographically or ecologically of BLM-managed lands across the country, given that the types and intensities of impacts resulting from a category of projects may vary depending on geographic or ecological conditions. The comments also questioned the BLM's selection process for projects, noting that, in searching for PJ management projects on the BLM ePlanning website, 41 projects have a status of "complete" that meet the Verification Report's search criteria; however, these projects were not included in the BLM's analysis. Other comments requested adding EAs from Idaho and Nevada to better represent the range of PJ removal projects, including the Central Basin and Range area, and to include maintenance actions (not defined) that may be needed after a PJ removal project.

Response: The Methods section of the Verification Report details the methodology the BLM used to identify the projects supported by EAs to evaluate, resulting in selection of projects throughout the ecoregions where the BLM is implementing PJ removal actions. The BLM utilized information in the Verification Report only from those projects that were completed to a point that all actions authorized had been implemented and monitoring and observations of the effects and effectiveness of the actions were available. While the BLM found projects where NEPA was completed after 2016, implementation of these projects was not complete or was so recently completed that any post-implementation impacts were not yet observable. Note that while the BLM relied on a query of projects in ePlanning from 2012 to 2016, the BLM also reached out to BLM field and state office program leads to identify additional similar projects that may have been completed prior to 2012.

As stated in the Verification Report, the goal of the query process was to collect representative BLM environmental analysis information from NEPA documents for each action, in order to provide an objective assessment of the overall environmental effects from all actions proposed for inclusion in the CX across the geographic spectrum.

Although the BLM did not identify any projects in the Central Basin and Range area, the BLM identified and evaluated 18 EAs representing a broad geographical range from 6 states (Arizona, California, Colorado, Montana, Oregon, and Utah) that authorized the same or similar actions to those described in the proposed CX. The BLM also included peer-reviewed research findings, professional opinions, and reports in the Verification Report that examined effects of the same or similar actions to those described in the CX from a comprehensive geographic spectrum, including studies in the Central Great Basin. In combination, the EAs and research examined in the Verification Report are inclusive of ecoregions across BLM lands where PJ removal projects have occurred and will likely occur. Relative to “maintenance” activities, the CX can be used for the covered activities whether the activity is considered “maintenance” of a prior project or not, if all criteria for using the CX apply.

Comment: The BLM received comments that the Programmatic EIS for Fuel Breaks and the Tri-state Fuel Breaks projects are not juniper treatment projects and should not be used as examples supporting this CX.

Response: The referenced EISs were not used as examples to support the CX. They were mentioned in the Verification Report only to help identify thresholds of significance in defining the scope of the CX by identifying actions and treatment sizes that were not appropriate to include in the CX terms. As the Verification Report states, the projects in those EISs encompassed far more acres and included and analyzed activities not included in this CX.

Comment: The BLM received comments that requested clarification on “extraordinary circumstances,” and how they are interpreted and used in the Verification Report. Specifically, the comments recommended that the BLM more clearly state the interpretation of extraordinary circumstances in the Verification Report, identify how extraordinary circumstances should limit applicability for proposed projects that take place adjacent to or in close proximity to previously implemented projects to avoid cumulative impacts (43 CFR 46.215(f)), and acknowledge that, if any of the extraordinary circumstances listed in the BLM’s regulations are present, the action should be presumed to have a significant effect.

Response: The CEQ Regulations at 40 CFR 1507.3(e)(2)(ii) require agency NEPA procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis. Any action that is normally categorically excluded must be evaluated to determine whether any of the extraordinary circumstances in 43 CFR 46.215 are present;¹ if they are present, further analysis and environmental documentation must be prepared for the action. Pursuant to 40 CFR 1501.4(b)(1), agencies may categorically exclude a proposed action when an environmental resource or condition identified as a potential extraordinary circumstance is present if the agency determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects. Where extraordinary circumstances are present, and there are no circumstances that lessen impacts or other conditions sufficient to avoid significant effects, the BLM would proceed with the appropriate level of NEPA review other than a CX, in accordance with 40 CFR 1501.3 and 43 CFR 46.205. For example, the effects of contiguous PJ

¹ To the extent that any existing agency NEPA procedure is inconsistent with CEQ’s new rule implementing NEPA, CEQ’s new rule controls, unless there is a clear and fundamental conflict with the requirements of another statute. *See* 40 CFR 1507.3(a).

treatments may fall under the extraordinary circumstance that considers whether the project may “have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks” (43 CFR 46.215(d)).

CX ESTABLISHMENT PROCEDURES

Comment: The BLM received comments that stated that establishment of the new CX constitutes a “major Federal action” under NEPA, as it constitutes a new agency policy and procedure, and a NEPA review is required to determine whether it is “significant.” In evaluating the significance of the impact of establishing this CX, the BLM received comments that stated that the BLM must consider both the context of the action as well as the intensity. Another commenter concluded that in deciding not to prepare an environmental analysis of the proposed CX, the BLM has failed to take the obligated “hard look” at potential environmental impacts and is not fulfilling its obligation to comply with the procedural requirements of NEPA to the fullest extent possible.

Response: The commenters conflate the process of establishing a CX as a part of an agency’s NEPA procedures with the process of conducting environmental review of a proposed major Federal action. The establishment of a CX as a part of an agency’s NEPA procedures is largely administrative, and distinct from the analysis required for a proposed major Federal action. *Heartwood, Inc. v. United States Forest Service*, 230 F.3d 947, 954 (7th Cir. 2000) (Forest Service is not required to prepare an EA or EIS prior to promulgating a CX). In establishing the proposed CX, the Department is following CEQ’s procedural regulations, which include publishing the notice of the proposed CX in the Federal Register for public review and comment, considering public comments, and consulting with the CEQ to obtain CEQ’s written determination of conformity with NEPA and the CEQ regulations. *See* 40 CFR 1507.3(b)(2). To substantiate the proposed CX as a category of actions that do not normally have a significant effect on the human

environment, the BLM also has developed the Verification Report, an administrative record to support the category of actions to be covered by the CX. This analysis includes a review of multiple environmental documents in which actions that would fall under the proposed CX have been found to not have a significant effect on the human environment.

In evaluating the significance of the impact of activities that would fall under the CX, the BLM considered the significance of such actions consistent with 40 CFR 1501.3(b).² The BLM properly determined that the actions covered by the proposed CX do not rise to the level of a significance that would warrant preparation of an EIS or EA to support implementation of such action. Additionally, the Verification Report documents how the BLM has experience taking a sufficiently close look at the potential impacts of actions proposed for coverage by the CX and has determined, based on this experience as well as additional evidence, that in general these impacts do not rise to the level of significance, and therefore, the BLM can rely on a CX to support taking these kinds of actions.

Comment: The BLM received comments that stated that the BLM must complete a programmatic consultation with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) to identify the potential harms resulting from the establishment of the CX pursuant to Section 7 of the Endangered Species Act (ESA).

Response: As described in the comment response above, the administrative procedure of establishing a CX is different from relying on a CX for NEPA compliance to support a proposed action. To the extent that establishment of this CX is subject to the requirements of Section 7 of the ESA, the action has no effect on listed species or critical habitat.

² The BLM notes that CEQ revised its regulations to move the definition of “Significantly” to 40 CFR 1501.3(b) and revise the provisions that formerly addressed context and intensity. *See* 85 FR 43,332.

Since the ESA imposes its own requirements independent of NEPA's requirements, projects the BLM may pursue in reliance on this CX to implement PJ treatments would be subject to review under Section 7 of ESA and, if the parameters of the proposed action and site-specific conditions require, appropriate consultation with the Services would occur.

Comment: The BLM received comments that stated that the importance of PJ habitat for pinyon jays is one example of an unresolved conflict under section 102(2)(E) of NEPA, and pursuant to the CEQ regulations, even if the BLM determines that it does not need to prepare an EIS per section 102(2)(C) of NEPA. The BLM received comments that stated that it "must still prepare an EA that outlines reasonable alternatives to the proposed CX." The BLM received comments that provided several scientific references noting the impacts of PJ removal treatments on pinyon jays and stated that the BLM failed to consider these in determining the appropriate scope of the CX.

Response: In each case where the BLM is proposing a treatment of PJ vegetation, the BLM would need to consider the appropriate level of NEPA compliance (whether CX, EA, or EIS) to support that proposed action. If the proposed action involved unresolved conflicts, then the BLM would not be able to rely on a CX, because the presence of unresolved conflicts is an extraordinary circumstance (43 CFR 46.215(c)). In establishing the CX, the BLM analyzed the relevant scientific literature regarding the importance of PJ habitat for pinyon jays, including the references submitted, and determined that the references submitted did not substantially change the current analysis of the potential impacts of PJ treatments on pinyon jays included in the Verification Report.

Comment: The BLM received comments that stated that the BLM's proposed CX violates the limitations in relation to total acreage, use in wilderness areas, and requirements for monitoring and maintenance plans established for it through the

Agriculture Improvement Act of 2018 (2018 Farm Bill), and that the BLM must be consistent with the defined limitations identified in the law.

Response: The 2018 Farm Bill CX directed by Congress is a distinct and different CX from this BLM administratively established CX. In order to establish this CX, the BLM must comply with the CEQ's requirements for establishing NEPA procedures at 40 CFR 1507.3, including consulting with the CEQ and publishing the proposed CX for comment. The BLM has followed the CEQ's *Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (75 FR 75628, Dec. 6, 2010).

Though at a broad level, the two CXs hold similar purposes to provide for the management of mule deer and sage-grouse habitat, the BLM has developed this administratively established CX with different specific parameters to the scope of actions authorized and limitations on treatment acres and locations. The BLM considered the effects of previously implemented actions of the type proposed for inclusion in the proposed CX and the NEPA analyses prepared to evaluate the impacts of such actions. Most of these actions were evaluated in EAs, for which a FONSI was reached. The BLM established the 10,000-acre size for this CX because it was well within the bounds of acres analyzed in the BLM's EAs for which FONSIs were reached, yet is near the upper limit of what many BLM offices can plan for and treat from an operational standpoint, given their capacity (as constrained by labor and budgets). Finally, the effects of the larger projects were evaluated to be the same as those of the smaller projects. There were no differences in effects at the larger treatment sizes that would suggest further limiting the acreage of a treatment that could be conducted in reliance on the CX.

The BLM considered the effects of previously implemented actions of the type proposed for coverage by the CX and the NEPA analysis prepared to evaluate the impacts of such actions, including the impacts to wilderness values. The Department's NEPA

regulations require that any action approved or authorized in reliance upon a CX established by the BLM must consider extraordinary circumstances (43 CFR 46.205 and 46.215). Therefore, the BLM would evaluate PJ removal projects for extraordinary circumstances and determine whether reliance on a CX would be appropriate. The BLM's assessment showed that there have been no occurrences where observed impacts from the types of actions included in the CX have disqualified any areas from findings of wilderness characteristics, including size, naturalness, and opportunities for solitude. Further, the BLM is required to comply with applicable wilderness and wilderness study area policies when implementing any actions in such areas.

The BLM has a robust monitoring program for terrestrial and aquatic conditions and trends across BLM-managed land. The data collected through this rigorously applied program allows the BLM to monitor the effects of the actions of the type to be included in the CX. There is nothing in this CX that precludes the inclusion of site-specific monitoring for a proposed action. The BLM can include additional monitoring parameters in a proposed action approved in reliance on this CX when it would be appropriate to do so. Furthermore, maintenance of the effectiveness of treatments or re-treatments is important and can be included in any proposed action approved in reliance on the CX.

Comment: The BLM received comments that stated that the BLM's proposed CX does not incorporate the provisions relating to the management of mule deer and sage-grouse habitat established for it through the 2018 Farm Bill, and that the BLM must be consistent with the defined actions identified in the law.

Response: The 2018 Farm Bill CX directed by Congress is a distinct and different CX from this BLM administratively established CX. The guidelines and maps referenced in the 2018 Farm Bill CX are useful tools for the BLM but are not the only means to identify mule deer or sage-grouse habitat. Under the Federal Land Policy and

Management Act (FLPMA), the BLM manages the public land according to LUPs developed for specific planning areas, and all actions taken must conform to the applicable LUP. LUPs in areas of mule deer or sage-grouse habitat generally address desired conditions for these habitats and prescribe the constraints under which actions must take place to meet those conditions in the planning area. Here, any action taken, regardless of level of NEPA review (CX, EA, EIS) must be conducted in conformance with the applicable LUP (which addresses where the needs of the different habitats may conflict), and reliance on the CX requires that the project be conducted to benefit mule deer or sage-grouse habitat.

Comment: The BLM received comments that stated that the BLM's proposed CX violates the provisions of the 2018 Farm Bill by excluding actions allowed through the 2018 Farm Bill such as the use of non-native seeding, chaining, herbicide application, and temporary road construction, and that the BLM must be consistent with the defined actions identified in the law.

Response: The 2018 Farm Bill CX directed by Congress is a distinct and different CX from this BLM administratively established CX. The scope of actions included in the 2018 Farm Bill CX directed by Congress is different than the scope of actions included in this CX developed in response to Secretary's Order 3356. For example, the only element of the 2018 Farm Bill CX that allows for the use of non-native seedings is for the purpose of emergency stabilization, which is not an action covered by this CX. The other actions included in the 2018 Farm Bill CX but not the proposed CX were deemed to be beyond the scope of the agency's objectives for this CX.

Categorical Exclusion

The Department and the BLM find the category of actions described in the CX normally does not have a significant effect on the quality of the human environment. This

finding is based on the analysis and information presented in the Verification Report to establish this CX. The BLM's review of the available literature demonstrates that the activities covered by this CX would not cause significant environmental effects.

As discussed in the Methods section of the Verification Report, the BLM has analyzed the effects of many PJ removal projects in EAs and has monitored post-implementation results. All associated NEPA documents were reviewed to determine the scope of environmental consequences anticipated to result from the proposed actions. There were no instances where any of the evaluated projects would have resulted in a need to complete an EIS. Often, through application of design features, environmental effects are minimized to the degree that resource issues were eliminated from further analysis due to application of these project elements. While long-term benefits of reducing fuel loading and improving sagebrush-steppe habitats (PJ treatments) are primarily beneficial, neutral, or result in no effect findings, there are documented instances of adverse, residual environmental consequences associated with implementation of these treatments. The BLM has concluded that these environmental consequences are not significant based on the EA analyses, which are summarized by resources in the Methods section of the Verification Report for soil disturbance, soil moisture, invasive plants, wildlife, PJ obligate species, visual resource, big game species, wilderness characteristics, cultural artifacts, tribal resources, air quality, and biomass. These conclusions have been validated by post-implementation observation of professional land managers.

In addition to the BLM's review of completed EAs and projects as implemented, the BLM's review of the available scientific literature demonstrates that the activities covered by this new CX would not normally cause significant environmental effects. As discussed in detail in the Verification Report Methods section, the research overwhelmingly shows that PJ removal restores ecosystem values associated with the

rebound of native shrubs (including sagebrush), perennial grasses, and forbs, even when there may be a component of non-native forbs and annual grasses. Despite the expectation that annual grasses (e.g., exotics like cheatgrass) often increase after PJ treatment, the current literature shows that the native plant communities reestablish after mechanical PJ removal treatments, becoming dominant (over nonnative species) either within the first growing season after treatment or within a few years.

The BLM's experience with implementing and monitoring these types of projects mirrors the scientific literature; taken together, they support establishment of this CX, providing the evidence that this type and scope of PJ removal treatment can be categorically excluded from further detailed analysis. As described in detail in the Verification Report, establishment of this new CX would not have significant impacts on the human environment, and its use, like that of other administratively established CXs, would be subject to extraordinary circumstances review.

The intent of this CX is to improve the efficiency of the environmental review process for the management of PJ for the benefit of mule deer and sage-grouse habitat. Each proposed action must be reviewed for extraordinary circumstances that could preclude the use of this CX. The list of extraordinary circumstances under which a normally excluded action would potentially require further analysis and documentation to determine whether preparation of an EA or EIS is necessary is found at 43 CFR 46.215. If a proposed PJ management project is within the activity described in this CX, then these "extraordinary circumstances" will be considered in the context of the proposed project to determine if there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects, or they indicate the potential for effects that merit additional consideration in an EA or EIS. If any of the extraordinary circumstances indicate such potential, the CX would not be used, and an EA or EIS would be prepared.

Amended Text for the Departmental Manual

516 DM 11 at Section. 11.9 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.

Authorities: NEPA, the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ regulations (40 CFR 1500-1508).

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