



DEPARTMENT OF THE INTERIOR

Office of the Secretary

[MO 4500183156]

Notice of Adoption of Categorical Exclusions under Section 109 of the National Environmental Policy Act

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior is notifying the public and documenting the adoption of two U.S. Forest Service, one National Park Service, and three U.S. Fish and Wildlife Service categorical exclusions (CXs) by the Bureau of Land Management (BLM), under section 109 of the National Environmental Policy Act (NEPA). In accordance with section 109, this notice identifies the types of actions to which the BLM will apply the CXs, the considerations that the BLM will use in determining the applicability of the CXs, and the consultation between the agencies on the use of the CXs, including application of extraordinary circumstances.

DATES: The adoption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Amelia Savage, Senior Planning and Environmental Analyst, Division of Support, Planning and NEPA, alsavage@blm.gov, telephone (480) 307-8665.

SUPPLEMENTARY INFORMATION:

Background

Program Backgrounds

1. Visitor Use

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701-1787)

establishes the BLM's multiple use and sustained yield mandate. In managing the public lands in accordance with FLPMA, the BLM occasionally issues temporary closure and restriction orders under 43 CFR 8364.1 to protect persons, property, public lands, and resources. The need to temporarily close or restrict the use of public land arises in various situations, for example where a recreation site requires routine maintenance or where construction or heavy visitor use is causing erosion or the creation of unauthorized trails, or when an unforeseen event warrants agency action. As resource uses and demands for access to public lands have increased, the need for the BLM to issue temporary closure and restriction orders to protect persons, property, and the public lands and their resources has also increased.

2. Aquatic Resources

Riparian and wetland areas, lakes, streams, and aquifers on public lands managed by the BLM are among the most important, productive, and diverse resources in the Nation, providing sustained value to the American public. They provide habitat for myriad species of plants, fish, and wildlife; provide ecosystem services such as drinking water, pollination, and nutrient cycling; attenuate effects of wildfires, floods, and drought; and are key to the vitality of local economies and communities. BLM-managed lands include approximately 4,600 square miles of lakes and reservoirs, over 155,000 miles of streams and rivers, and over 20,000 square miles of wetlands and riparian areas. The BLM Aquatic Resources Program protects and restores water resources, riparian and wetland areas, and aquatic habitats to provide functioning ecosystems for a combination of balanced and diverse uses, including fish and wildlife and the long-term needs of future generations. The Aquatic Resources Program restores the physical and ecological processes associated with healthy ecosystems to ensure that public land management based on multiple use and sustained yield principles provides healthy and productive habitat for fish and wildlife.

3. Land Acquisitions

The BLM may purchase or acquire land and interests in land from a willing seller (including access easements, conservation easements, mineral or water rights) if funding is available, acquisition is supported in a land use plan, and there are no title defects, hazardous materials, or other local issues that might limit such acquisition. Acquiring land through purchase can enhance recreation opportunities, preserve open space, strengthen resource protection, and provide an alternative for transferring ownership to the BLM when a land exchange or other options are not available. The BLM may accept donations of land as a gift to the United States if the lands are contiguous to, and “block-up” with, existing public lands.

4. Rights-of-Way

The BLM Realty Program processes applications for rights-of-way or other land use authorizations for specific use of parcels of public land for a specified period that facilitate commercial, non-commercial, recreational, and conservation activities to ensure that the public lands are working landscapes managed for the use and enjoyment of current and future generations, including for communication sites, transmission lines, fiber optic infrastructure, and renewable energy. The BLM has discretion to grant rights-of-way when doing so is in the public interest.

National Environmental Policy Act and Categorical Exclusions

NEPA as amended, at 42 U.S.C. 4321–4347, requires all Federal agencies to consider the environmental impact of their proposed actions before deciding whether and how to proceed. 42 U.S.C. 4321, 4332. NEPA’s aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

Under NEPA and the CEQ's NEPA implementing regulations, a Federal agency establishes categorical exclusions (CX)s—categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and therefore do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS)—in their agency NEPA procedures. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3, 1508.1(e). If an agency determines that a CX covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b); 43 CFR 46.205(c). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the CX to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt another agency's CX for a category of proposed agency actions. 42 U.S.C. 4336c. To rely on another agency's CX under Section 109, the adopting agency must identify the relevant CX listed in another agency's ("establishing agency") NEPA procedures that cover the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CX for a category of actions is appropriate; identify to the public the CX that the adopting agency plans to use for its proposed actions; and document adoption of the CX. 42 U.S.C. 4336c. The BLM has prepared this notice to describe how it has met applicable statutory requirements for the adoption of six CXs, 36 CFR 220.6(e)(7), 36 CFR 220.6(e)(18), 516 DM 8.5 (A)4, 516 DM 8.5 (B)3, 516 DM 8.5 (C)4 and 516 DM 12.5 (D)2, and to notify the public.

The Department of the Interior (Department)'s NEPA procedures are codified at 43 CFR part 46. These procedures address compliance with NEPA. The Department's

protocol for application of CXs is at 43 CFR 46.205. The Department's CXs available to all bureaus within the Department are listed in 43 CFR 46.210. Additional Department-wide NEPA policy is found in the Department's Departmental Manual (DM), in chapters 1 through 4 of part 516. Supplementary NEPA procedures for the Department's bureaus are published in additional chapters in part 516 of the DM. Chapter 11 of the 516 DM covers the BLM's NEPA procedures and the BLM CXs are listed in 516 DM 11.9.

Categorical Exclusions that are Adopted

The BLM has identified the U.S. Forest Service (USFS) CX, found at 36 CFR 220.6(e)(7) regarding modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices for adoption. The BLM will rely on this CX to approve projects that modify or maintain existing habitat improvement structures to restore streams or lake aquatic habitat. Examples of BLM's intended uses include those described in the USFS CX, and are also inclusive of, but are not limited to, modifying or maintaining existing habitat improvement structures that mimic or promote natural processes using natural materials, and modifying or maintaining fish screens. Consistent with the terms of the CX, the BLM will not rely on this CX to support approval of projects that include installation of new structures or improvements where no structure or improvement has been installed before.

The BLM has identified the USFS CX, found at 36 CFR 220.6(e)(18), regarding restoring wetlands, streams, riparian areas or other water bodies, for adoption. The BLM intends to rely on this CX for projects that remove, replace, or modify existing water control structures to restore streams or other water bodies; wetlands, including wet meadows; and riparian areas to improve water quality, habitat for native species, and overall ecosystem function, and to remove barriers to habitat connectivity. Examples of BLM's intended uses include those described in the USFS CX, and are also inclusive of, but not limited to, removing, replacing, repairing, or modifying existing structures—such

as fish screens, legacy rip-rap, and protective enclosures—with wildlife-friendly fencing. Consistent with the terms of the CX, the BLM will not rely on this CX to support approval of projects that include installation of new structures or improvements where no structure or improvement has been installed before.

Per 36 CFR 220.6(e), the USFS, when relying on these CXs, develops a supporting record and a decision memo. Under CEQ NEPA regulations, at 40 CFR 1501.4(e)(5), agencies publish documentation of the application of an adopted CX. Therefore, the documentation the BLM develops for each reliance on this adopted CX will be similar to USFS documentation, and the BLM will publish the documentation on its publicly available National NEPA Register (<https://eplanning.blm.gov/eplanning-ui/home>).

The BLM has identified the U.S. Fish and Wildlife Service (FWS) CX, found at 516 DM 8.5 (A)4, regarding acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer, that will be under the jurisdiction or control of the United States, for adoption. Examples of how the BLM would rely on this CX include, but are not limited to, acquisition of lands from a willing seller through exchange, sale, escheat, right-of-entry, escrow, lapses, donation of access easements, conservation easements, mineral or water rights under the exchange provisions of Section 206 of the FLPMA, or through acquisition under FLPMA Section 205 as allowable under a land use plan. This includes acquisitions consistent with the Uniform Relocation Act, the Land and Water Conservation Fund Act, and the Federal Land Transaction Facilitation Act. The CX language requires that acquisitions be in accordance with 602 DM 2 and the Service's procedures. As the BLM and FWS are bureaus within the Department, both are required to follow the process set forth in Departmental policy at 602 DM 2, *Real Property Pre-Acquisition Environmental Sites*

Assessments. FWS-specific policy and procedures are found in the FWS Manual (www.fws.gov/policy-library/manuals). The BLM evaluated FWS's real property management and land acquisition procedures found in parts 340 through 343 and compared them to BLM Acquisition Handbook (H-2100-1). These policies outline how each agency is required to complete the acquisition processes, including, appraisals, survey property boundaries, and title curative and conveyance actions. While the FWS's land acquisition procedures incorporate FWS-specific land acquisition authorities, the policies and procedures are similar to those of the BLM.

The BLM has identified FWS CX, found at 516 DM 8.5(B)3, regarding the construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, for adoption. The BLM intends to rely on this CX to approve projects that construct new, or add to, small structures or improvements to restore streams or other water bodies, wetlands, including wet meadows, riparian areas, and native habitats. Examples of the BLM's intended uses include those examples described in the FWS CX, and are also inclusive of, but are not limited to, installation of small permeable structures that mimic, promote, and sustain natural processes; installation of wildlife friendly fences, including drift fences and protective enclosures; development of limited access for routine maintenance of habitat structures and improvements; and habitat restoration for both terrestrial and aquatic habitats.

The BLM has identified FWS CX, found at 516 DM 8.5(C)4, regarding the issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, for adoption. The BLM intends to use this CX for the realty program, primarily to support "permitting a new right-of-way, where no or negligible environmental disturbances are anticipated." Examples include, but are not limited to, installation of single power poles, authorizing a

right-of-way for existing roads without existing rights-of-way, installation of fiber optic cable on existing structures, and authorizing development of a domestic water source with negligible environmental disturbances.

The BLM has identified the National Park Service (NPS) CX, found at 516 DM 12.5(D)2, regarding minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, for adoption. The BLM intends to use this CX to support approval of temporary closures or restrictions on the use of designated public lands, including roads, trails, waterways or specific areas; to protect persons, property, public lands, or resources; and avoid conflict among public land users.

Consultation with USFS, FWS, and NPS and Determination of Appropriateness

The BLM consulted with USFS, FWS, and NPS on the appropriateness of the adoption of these CXs for BLM's use in April 2024, October 2024, and October 2024, respectively. The consultation included a review of USFS, FWS, and NPS experience developing and applying the CXs, as well as the types of actions for which the BLM plans to utilize the CXs. The BLM actions are similar in type and scope to the actions that the USFS, FWS, and NPS conduct and therefore the effects of BLM's actions are expected to be similar to the effects of USFS, FWS, and NPS actions, which are not significant, absent the presence of extraordinary circumstances that could involve potentially significant effects. Therefore, the Department has determined that adoption of the CXs for the BLM's use as described in this notice is appropriate.

Consideration of Extraordinary Circumstances

In consultation with the USFS, FWS, and NPS, the BLM evaluated the extraordinary circumstances to be considered when applying these CXs. When applying these CXs, Responsible Officials (43 CFR 46.30) within the BLM will evaluate proposed actions covered by the CXs to determine whether any extraordinary circumstances are present. The Department's extraordinary circumstances are listed at 43 CFR 46.215 and

include, in part, consideration of impacts on public health and safety; natural resources and unique geographic characteristics; historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks, sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; other ecologically significant or critical areas; unresolved conflicts concerning alternative uses of available resources; unique or unknown environmental risks; precedent for future decision-making; historic properties; listed species or critical habitat; low income or minority populations; access by Indian religious practitioners to, and for ceremonial use of, Indian sacred sites and the physical integrity of those sites; and contribution to the introduction, continued existence, or spread of invasive weeds or non-native invasive species. The Department's list of extraordinary circumstances addresses issues also identified by the USFS and found at 36 CFR 220.6; therefore, Responsible Officials in the BLM intending to rely on these CXs will review whether the proposed action has the potential to result in significant effects as described in the Department's extraordinary circumstances. Since the BLM, FWS, and NPS are bureaus within the Department, the same extraordinary circumstances are used for all three bureaus. The Responsible Official will assess whether an extraordinary circumstance is present. If the Responsible Official cannot rely on a CX to support a decision to authorize or take a particular proposed action due to extraordinary circumstances, the proposed action must be analyzed in an EA or EIS before doing so, consistent with 40 CFR 1501.4(b)(2) and 43 CFR 46.205(c).

Notice to the Public and Documentation of Adoption

This notice identifies to the public the BLM's adoption of the USFS, FWS, and NPS CXs for the BLM's use. The notice identifies the types of actions to which the BLM would apply the CXs. The documentation of the adoption will also be available at <http://www.blm.gov/programs/planning-and-nepa/what-informs-our-plans/nepa> and at

<https://www.doi.gov/oepec/nepa/categorical-exclusions>. The BLM will add the adopted CXs to the BLM's NEPA DM Chapter in 516 DM 11.

Authorities

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Stephen G. Tryon,

Director, Office of Environmental Policy and Compliance.

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