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Neil Kornze
Director, Bureau of Land Management
U.S. Department of the Interior
Attention: 1004-AE39
1849 C Street, N.W., Room 2134LM
Washington, D.C. 20240
Electronic mail: oira_submission@omb.eop.gov

Re: Comments on Bureau of Land Management Planning 2.0 (81 FR 9674)

Dear Director Kornze:

As the state association for all 17 of Nevada's counties, the Nevada Association of Counties ("NACO") greatly appreciates the opportunity to greatly improve the BLM's proposed language and submits this comment letter on BLM Planning 2.0, which proposes to amend 43 C.F.R. 1601, 1610.¹ According to the BLM, Planning 2.0 "responds to a 2011 BLM strategic review that identified challenges and opportunities for the BLM and to recent Executive and Secretarial direction that encourages science-based decision-making; landscape-scale management approaches; adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. In this proposed rule, the BLM proposes targeted changes to the existing planning regulations in 43 CFR subparts 1601 and 1610 and explains the rationale."² Planning 2.0 seeks to achieve three goals: "(1) Improve the BLM's ability to respond to social and environmental change in a timely manner; (2) provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans; and (3) improve the BLM's ability to address landscape-scale resource issues and to apply landscape-scale management approaches. The Planning 2.0 initiative includes this proposed rule and a forthcoming revision of the *BLM Land Use Planning Handbook* (H-1601-1)."³

Integrated land management efforts which include close cooperative relationships with partners and local communities are key to successful land management planning. NACO works with county governments to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize land management planning.

¹ All materials cited herein, the majority of which are readily available online, are incorporated in full by reference.

² 81 FR 9674

³ *Id.*

Counties provide fundamental services such as local land management planning, zoning, infrastructure, maintenance, water, wildlife protection, and the first critical responses to natural disasters on both private and public lands within their jurisdiction. Thus, it is imperative that the Bureau of Land Management ("BLM") maintain regulatory language that supports the above stated goals. This can be achieved within the proposed framework provided in Planning 2.0 by re-integrating language omitted from existing regulations along with suggested changes that would improve relations.

Overview

Planning regulations help Agencies implement the directives of their authorizing statutes. Once established, and unless challenged in court, these regulations represent the Agency's interpretation of its authority and responsibilities. Regulations also help to manage internal and external expectations, and for that reason an agency must, by law, adhere to procedures established by its own regulations. Thus, the proposed regulations, or Planning 2.0, articulate the BLM's interpretation of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. ("FLPMA") and its responsibilities over land management planning. Planning 2.0 is the best chance NACO and counties will have to ensure that the BLM's regulations do in fact reflect the spirit and intent of FLPMA with respect to local government planning and coordination, and meaningful public involvement.

The BLM's goals and narrative is positive and in alignment with its statutory authority. Goals are important but the commitment can only be solidified within the regulatory text. While the discussions within Planning 2.0, narrative from press announcements and hearings, and webinars continually stress the importance of local relationships, the text of the proposed language as compared to the existing regulatory language diminishes instead of enhances the language that in practice will support the inter-governmental and public roles. It is absolutely essential that the role of local governments and the public be enhanced and not just be a box to check during the planning process. Because the language in the proposed regulations change the way the BLM will interact with State, local, and tribal governments for land management planning, it is important that we work together to ensure the language achieves in practice this positive narrative.

NACO has attended and hosted several webinars and discussions with BLM staff in an effort to further understand and provide recommended changes to the proposed regulations. After careful evaluation and because of concern about the significance of the potential impacts of the proposed changes NACO respectfully offers recommendations to improve language in support of the BLM's stated goals. We believe that there are several missed opportunities in the proposed planning regulations. Given the importance of these regulation changes, NACO has worked extensively with a coalition of stakeholders statewide and nationwide to offer the attachment "Annotated Comments and Revisions" as a formal request to change the proposed language in a way that helps achieve each and every one of the BLM's stated goals.

This comment letter details the reasoning for each proposed change within the following outline:



I. Compliance with Statutory Requirements (NEPA and FLPMA)

A. *FLPMA Requires that the BLM "Coordinate" with Other Federal, State, Local, and Tribal Governments*

- ❖ The Plan Assessment must include coordination with State and local governments regardless of cooperating agency status.
- ❖ The BLM must further provide a mechanism for accepting "advice" from State and local officials.
- ❖ Local BLM Officials should drive the planning process, especially at a landscape scale. Where planners (deciding officials and responsible officials) are elevated to positions outside of the planning area, landscape-level planning undermines the purpose of FLPMA (and NEPA).

B. *FLPMA Requires Public Involvement for the General Public*

- ❖ "Public Review" does not meet "Public Involvement" as defined by FLPMA which includes public notice and comment or more.
- ❖ The public needs longer, not shorter comment periods.
- ❖ The Plan Assessment Report and Preparation of Implementation Strategies should be made available for public notice and comment.
- ❖ Publication in the Federal Register is necessary, everywhere it was provided, in the current regulations and should also be used for the new Planning Assessment Report, which the BLM plans to rely on to develop the Resource Management Plan and for future Plan Amendments.

C. *FLPMA Requires Meaningful Public Involvement with State and local governments*

- ❖ Meaningful Public Involvement is a collaborative affair that requires more than public notice and comment.
- ❖ Meaningful Public Involvement includes the Planning Regulations. This requirement has not been met and means that the BLM should have actively sought, prior to publication, input from affected jurisdictional governments. Because the public notice and comment period has ended, NACO requests the BLM coordinate with jurisdictional governments to incorporate requested needs before a final rule is published.
- ❖ Meaningful Public Involvement must be incorporated into the planning regulations.

D. *Summary of Issues for FLPMA Requires Consistency Review with "land use and resource related planning and management programs" of other Federal agencies, State and local governments, and Indian tribes.*

- ❖ The BLM should change the language "Officially Approved and Adopted Land Use Plans" to "Land Use and Resource Related Planning and Management Programs."
- ❖ The Planning Assessment should include a preliminary consistency review as a planning exercise to consider existing planning and management programs and begin thinking about opportunities for consistency during the planning process.



- ❖ The BLM should document and discuss inconsistencies prior to release of the DEIS so that inconsistencies can be considered and resolved, to the maximum extent possible.
- ❖ State and local governments should not bear the exclusive burden of raising inconsistencies and may not be limited to *specific* inconsistencies, which is an undefined term not present in FLPMA.
- ❖ The Governor's Consistency Review should not be limited. If the Governor takes the time to provide recommendations, then they should be addressed.

E. *NEPA Considerations*

- ❖ The BLM should consider Cooperating Agency requests instead of relying solely on their judgment to invite Cooperating Agencies.
- ❖ "In Collaboration with Cooperating Agencies" Should be Added Back in, but Changed to "In Coordination with Cooperating Agencies."
- ❖ A change triggers either Plan Maintenance or a Plan Amendment; Plan Maintenance is appropriate only for "Minor Changes," a term that should be defined for clarity and consistent language.
- ❖ Landscape level planning impacts analyses should not be used to de-emphasize local impacts as required both by NEPA and FLPMA.
- ❖ Remove the term "areas of ecological importance" and move the concept to Development of Potential ACECs, or improve the clarity.
- ❖ The proposed definition for "mitigation" should align with the NEPA Regulations.
- ❖ The Handbook should include requests from the 2005 Regulation Amendments:
 - i. "The BLM should notify potential cooperating agencies early in the planning process"
 - ii. "Cooperating agencies should be involved in selecting contractors for plan preparation."

II. Unintended Yet Foreseeable Consequences

- ❖ There is no need to limit consistency requirements to "land use plans" because there have been no concerns with the plans and programs with which the BLM needed to seek consistency.
- ❖ The increased burden placed on State and local governments raises a social justice issue, as many local governments do not have the capacity to dedicate even one staff member to monitor all federal activities.
- ❖ Landscape-scale economic impact analyses present a social justice issue because it will greatly reduce the overall "cost" in the cost-benefit analysis even where the cost to a local economy might never be recovered.
- ❖ Reduced emphasis on local BLM relationships will create an inundation of requests to higher level officials.
- ❖ Less notice and comment means more litigation over issues that could have been resolved during the planning process. This creates an Equal Access to Justice issue, as many State and local governments have even fewer capacity for Attorneys than for staff members.



III. Impacts to Judicial Guidance

- ❖ The BLM should wait for Judicial guidance prior to adoption of the proposed regulations. The very sections being eliminated are cited throughout lawsuits filed by several western States and counties against the BLM requesting judicial guidance on coordination, consistency review, meaningful public involvement, the Governor's Consistency review, and NEPA issues including Cooperating Agency status requirements.

I. Compliance with Statutory Requirements (NEPA and FLPMA)

Agencies are required by law to comply with their own regulations. These regulations are purposed to implement the directives of enabling statutes. The Federal Land Policy and Management Act ("FLPMA") and National Environmental Policy Act ("NEPA") direct the BLM in its land management practices. Thus, the BLM may not adopt Regulations that are contrary to the directives of FLPMA or NEPA.⁴

To determine what the regulations must contain, according to case law "if the intent of Congress is clear, that is the end of the matter," the agency must adopt Regulations to effectuate the intent. The intent of Congress can be determined by looking at the (1) plain language of the statute; and (2) the legislative history. It is only when "the statute is silent or ambiguous with respect to the specific issue" that the BLM may interpret its duties and make policy decisions according to this interpretation.⁵

Plain language *must* be reflected in the proposed regulations. The plain language of FLPMA creates three separate but equally important responsibilities to State, local and tribal government as well as to the public: Coordination, Consistency Review, and Public Involvement. It is extremely important that these three distinct responsibilities remain separated throughout the planning process, terminology included. If the Regulations do not contain adequate and consistent language for these mandates then: (1) The BLM will not have discrete, specific steps for compliance; (2) State and local agencies and the general public will not know when or how coordination, consistency review, or [meaningful] public involvement will happen; and (3) It will be unclear whether key requirements will reliably be applied across planning efforts. Thus, the Regulations must incorporate first and foremost the specific mandates of FLPMA.

To the extent that FLPMA and NEPA overlap, the BLM should integrate FLPMA and NEPA only where it increases efficiency. The BLM ignores coordination, consistency review, and public involvement if the BLM gives to local and state government, and in some cases the public, the same treatment as another agency acting subject to NEPA review under a separate enabling statute (for example, a water project managed by the Bureau of Reclamation).

⁴ These comments focus only on FLPMA and NEPA requirements. The BLM cites to all of its authority under proposed § 1601.0-3 (Authority), including: sections 201 and 202 of the FLPMA of 1976, 43 U.S.C. 1711-1712; the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901; section 3 of the Federal Coal Leasing Plan amendments Act of 1976, 30 U.S.C. 201(a); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*; and the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA").

⁵ *Chevron U.S.A. v. NRDC*, 467 U.S. 837 (1984), 842-843.



On January 30, 2002, the Executive Office of the President Council on Environmental Quality wrote a Memorandum for the Heads of Federal Agencies Titled "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act." The purpose of the Memorandum was to "ensure that Federal agencies actively participate as cooperating agencies in other agency's NEPA processes." The first footnote highlights that:

"Cooperating agency status under NEPA is not equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or coordination process... Agencies are urged to integrate NEPA requirements with other environmental review and consultation requirements (40 C.F.R. §1500.2(c)); and reminded that not establishing or ending cooperating agency status does not satisfy or end those other requirements."

The Memorandum continues "Despite previous memoranda and guidance from CEQ, some agencies remain reluctant to engage other Federal and non-federal agencies as a cooperating agency." It notes that:

"stakeholder involvement is important in ensuring decision-makers have the environmental information necessary to make informed and timely decisions efficiently. Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decision-making authority of any agency involved in the NEPA process."

Because an RMP always triggers NEPA review, there exists a tendency to view these as inextricably intertwined. Yet absent NEPA review, the requirements of FLPMA remain. These two statutes were created for unique purposes. FLPMA requires that the BLM actively coordinate its land use planning efforts with other State, local, Federal, and tribal governments with jurisdiction over BLM managed land whereas NEPA requires an EIS and offers governmental entities Cooperating Agency status to help develop the EIS and analyze potential effects for informational purposes. Thus, the BLM should not view this process as simply informational to prevent unintended consequences. Rather, the BLM should provide additional opportunities for coordination, consistency review, and public involvement above and beyond the Cooperating Agency Status involvement as required by NEPA. It is essential that the proposed language in Planning 2.0 capture this distinction.

FLPMA requires that the BLM actively coordinate its land use planning efforts with other State, local, Federal, and tribal governments with jurisdiction over BLM managed land. The BLM's planning regulations are authorized under FLPMA and not NEPA. The NEPA Regulations are not under consideration here and must be followed regardless of the BLM's regulations. While it is helpful to have some NEPA requirements imbedded for efficiency, it is not sufficient to meet FLPMA requirements and may not conflict. FLPMA requires consistency review, meaningful public involvement for local and other governments, and public involvement. Each of these requirements must be reflected in the final planning regulations.

Cross-jurisdictional coordination is key to successful land management planning. Because these regulations propose to change the way the BLM interacts with State, local, and tribal governments for land management planning, NACO is very concerned about any changes in Regulations that



appear to reduce or fail to consider coordination, consistency review, meaningful public involvement for local and other governments, public involvement, or Cooperating Agencies from the planning regulations.

A. FLPMA Requires that the BLM "Coordinate" with Other Federal, State, Local, and Tribal Governments

The regulations as proposed fail to fully address coordination and arguably reduce the responsibility. First, the Planning Assessment level completely omits coordination outside of Cooperating Agency status and does not incorporate consistency requirements. Second, a jurisdictional entity should not be required to be a Cooperating Agency to obtain adequate coordination. Third, appointing a deciding official that is not a State Director or a Responsible Official that is not a local officer diminishes the value of the local relationships which are the cornerstone of coordination.

The BLM must coordinate with State and local governments on its land use inventory, planning regulations, and management activities. This requirement reflects that FLPMA recognizes states and local government share land management responsibilities with the BLM. In FLPMA, this is called "coordination." On coordination, FLPMA is clear: "their present and future use is projected through a land use planning process *coordinated* with other Federal and State planning efforts,"⁶ and "The Secretary shall... to the extent consistent with the laws governing the administration of the public lands, *coordinate* the *land use inventory, planning, and management activities* of or for such lands **with the land use planning and management programs** of other Federal departments and agencies and of the States and local governments within which the lands are located."⁷ **Further,** "Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him."⁸

For the plain meaning, the term "coordinate" is easily defined. Coordinate is a verb, which means the BLM must perform the action of "coordination" with other Federal, State, local, and Tribal governments. To determine the "plain meaning," courts often use a dictionary.⁹ Oxford Dictionary defines "coordinate" as "Bring the different elements of (a complex activity or organization) into a relationship that will ensure efficiency or harmony," "Negotiate with others in order to work effectively," or to "match or harmonize attractively."¹⁰ The origin is "Mid-17th century (in the senses 'of the same rank' and 'place in the same rank'): from co-'together' + Latin *ordinare* (from *ordo* 'order')."¹¹ From this assortment it is clear the term is an action that places an emphasis on rank and working together rather than unilaterally. There is no reason to suspect that Congress did not mean what the language of the statute says.¹²

⁶ 43 U.S.C. § 1701(a)(2)

⁷ 43 U.S.C. 1712 (c). (Emphasis Added).

⁸ *Id.*

⁹ *United States v. Ron Pair Enters.*, 489 U.S. 235, 246, 109 S. Ct. 1026, 1033 (1989)

¹⁰ Oxford Dictionary, "coordinate, *retrieved at* http://www.oxforddictionaries.com/us/definition/american_english/coordinate

¹¹ *Id.*

¹² *Ron Pair Enters.* at 489 U.S. 235, 246 (1989)



Planning 2.0 requires coordination with State and local governments. The only outreach provided on this process was to provide notice and comment. That is insufficient to meet the "coordination" requirement and "meaningful public involvement," described below, for an effort as large as planning regulations. FLPMA requires that the "general public" be treated differently from "State and local governments" because the legislature created two separate standards. Therefore, FLPMA imposes a different standard on the BLM for addressing each, respectively. This is not an attempt to reduce public involvement, but to weight or elevate the role of State and local governments as directed by the legislature.

The BLM must imbed coordination into the planning assessment. While the planning assessment is potentially a good thing, the BLM's proposal relies heavily on the new planning assessment without involving coordination, cooperating agencies, consistency review considerations, or even public notice and comment:

"The planning assessment is intended to assist the BLM and the public in understanding the current baseline in regards to resource, environmental, ecological, social, and economic conditions in the planning area. During the planning assessment, the BLM would describe these conditions and current management. The BLM would also identify the role of the public lands in addressing landscape-scale resource issues or in supporting national, regional, or local policies, strategies, or plans. The planning assessment would inform the preparation of the resource management plan or EIS-level amendments."¹³

The planning assessment report will "include the identification and rationale for potential ACEC's," be used in the identification of planning issues, formulation of resource management alternatives, estimation of effects of alternatives, preparation of the draft resource management plan and selection of preferred alternatives, designation of areas of critical environmental concern, and may even be used as a way for the BLM to avoid a plan amendment (see NEPA Discussion: A Change triggers either Plan Maintenance or a Plan Amendment; Maintenance is appropriate only for "Minor Changes," a term that should be defined for clarity and consistent language). Because of the intensity at which the plan assessment will be used, it is critical to incorporate coordination and consistency review at that step.

NACO understands the intent to create a deciding official and responsible official as a mechanism to appoint the most appropriate official for multiple-jurisdiction planning. This makes sense. That said, there is a potential for negative impacts to local governments the way the Regulations are written. The scenario that counties wish to avoid is where an official living thousands of miles away from the planning area reduces the ability to coordinate and incorporate the voice of local government and the role of State Directors. The proposed language, attached, provides a mechanism by which the BLM can maintain flexibility across jurisdictions without the risk of compromising coordination with State and local officials.

¹³ 81 Fed.Reg. 9675



Summary of Issues: FLPMA Requires that the BLM "Coordinate" with Other Federal, State, Local, and Tribal Governments

- ❖ The Plan Assessment must include coordination with State and local governments regardless of cooperating agency status.
- ❖ The BLM must further provide a mechanism for accepting "advice" from State and local officials.
- ❖ Local BLM Officials should drive the planning process, especially at a landscape scale. Where planners (deciding officials and responsible officials) are elevated to positions outside of the planning area, landscape-level planning undermines the purpose of FLPMA (and NEPA).

B. FLPMA Requires Public Involvement for the General Public

Public comment must be provided where the proposed regulations propose "Public Review," and the public comment periods should be longer instead of shorter. Public involvement at a bare minimum requires public notice and comment. FLPMA creates the duty that "The Secretary *shall*, with *public involvement* and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands."¹⁴ FLPMA also requires that the BLM "*consider the views of the general public*, and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision making."¹⁵ These clauses impose statutory duties.

Under FLPMA, the term "public involvement" means "the opportunity for *participation by affected citizens* in rulemaking...with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to *provide public comment* in a particular instance."¹⁶ Thus, public comment is *required* to meet "public involvement" as defined by FLPMA. The important aspect of this requirement is not that the public sees what the BLM is doing but instead so that the BLM can process (and hopefully incorporate) public feedback.

Longer comment periods are necessary for the public to properly provide their views on a given action or step in the planning process. It is rare that a comment period is sufficient for the amount of information normally provided by the BLM (sometimes thousands of pages). In practice, the BLM often extends the comment period by one to several months. Reducing the comment period from 45 days to 30 days for documents that today require on average about 90 days seems counter to the goal of increased public involvement. This is also an equal access to justice issue. Most public members are not land use planners or lawyers and therefore do not necessarily have the time to develop opinions without outside help or ample time to research and comprehend the implications of a planning effort or project.

Public comment is required for the Plan Assessment Report, which is a new and welcome step to the BLM's planning process. The BLM does have the discretion to organize and develop plans in

¹⁴ Sec. 202. [43 U.S.C. 1712] (a)

¹⁵ 43 U.S.C.S. §1701(a)(5).

¹⁶ 43 U.S.C.S. § 1702(d).



whatever way it seems fit, but only so long as it meets requirements directed by FLPMA. FLPMA does not direct the BLM to develop a Planning Assessment Report, Implementation Strategies, Identification of Planning Issues, Formulation of Resource Management Alternatives, Estimation of Effects of Alternatives, or even a Draft Resource Management Plan. While the FLPMA requirements are accounted for within this process, the process itself was created by the BLM and with great influence from NEPA requirements. This makes sense. However, just because the BLM is adding the new planning assessment step does not mean that step may escape "public involvement" as defined by FLPMA. If the BLM believes the Planning Assessment Report is helpful and necessary to the process, then FLPMA requires that the public be involved.

Summary of Issues: FLPMA Requires Public Involvement for the General Public

- ❖ "Public Review" does not meet "Public Involvement" as defined by FLPMA which includes public notice and comment or more.
- ❖ The public needs longer, not shorter comment periods.
- ❖ The Plan Assessment Report and Preparation of Implementation Strategies should be made available for public notice and comment.
- ❖ Publication in the Federal Register is necessary, everywhere it was provided, in the current regulations and should also be used for the new Planning Assessment Report, which the BLM plans to rely on to develop the Resource Management Plan and for future Plan Amendments.

C. FLPMA Requires *Meaningful* Public Involvement with State and local Governments

The definition of "meaningful" is a collaborative affair, not just as determined by the agency. "Public involvement" through public notice and comment alone does not achieve the required "meaningful" public involvement where it is mentioned for State and local governments in FLPMA.

The term "public involvement" means something less than "meaningful public involvement." In addition to statutory language that refers only to "public involvement," FLPMA directs that the BLM "...shall provide for ***meaningful*** public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including ***early public notice of proposed decisions*** which may have a significant impact on non-Federal lands."¹⁷ This only "includes," but is not limited to public notice. The language is specifically separate from "considering the views of the general public," or even "public involvement" and is not a discretionary requirement. If public notice and comment alone is sufficient only for "public involvement," then it is not sufficient for "meaningful public involvement."

It is NACO's position that *meaningful* public involvement of local government has not occurred in this rulemaking process. FLPMA uses the term "general public" separate from "State and local governments" and also imposes a different standard on the BLM for addressing each, respectively. While the BLM has provided workshops to discuss Planning 2.0, these workshops were available to the general public and the proposed regulations had already been drafted. The responses from BLM staff have only been requests that NACO submit comment. This is not enough for provision

¹⁷ 43 U.S.C.S. § 1712; FLPMA § 202(c)(9).



changes that greatly impact State and local government planning. For NACO, this provision means local government should have been involved prior to publishing the proposed regulations in the Federal Register to be finalized within 30-60 days. Had that happened, counties would not have felt blindsided by changes to local government coordination and consultation requirements.

It is also NACO's position that *meaningful* public involvement is not addressed within Planning 2.0. The BLM only plans to "notify relevant State agencies of opportunities for public involvement," and does not mention the term "meaningful public involvement" at all.

Summary of Issues: FLPMA Requires Meaningful Public Involvement with State and local governments

- ❖ Meaningful Public Involvement is a collaborative affair that requires more than public notice and comment.
- ❖ Meaningful Public Involvement includes the Planning Regulations. This requirement has not been met and means that the BLM should have actively sought, prior to publication, input from affected jurisdictional governments. Because the public notice and comment period has ended, NACO requests the BLM coordinate with jurisdictional governments to incorporate requested needs before a final rule is published.
- ❖ Meaningful Public Involvement must be incorporated into the planning regulations.

D. FLPMA Requires Consistency Review with "land use and resource related planning and management programs" of other Federal agencies, State and local governments, and Indian tribes

Consistency is required unless federal land management law forbids it or if the local program is directly counter to the purposes of FLPMA specifically. It is not a matter of stylistic differences or if the BLM is so far along in the process that it makes the duty difficult. The duty is outlined in FLPMA as a process that must begin at the Planning assessment all the way through the DEIS and FEIS. Further, the BLM must seek consistency with anything the other Federal, State, local and tribal governments are doing. This duty is not limited to "officially approved and adopted" activities or "land use" plans, or even with "plans."

In this case, even the existing regulations are in direct conflict with FLPMA. This is why it is so important that the BLM take this opportunity to imbed the consistency review beginning at the planning assessment report continuing throughout the planning process, just like the 2005 Amendments did for Cooperating Agencies. If the BLM is at any point worried about obtaining the correct information from these other governments, it is important to stress that this process is flexible. The BLM may coordinate with their points of contact to help make sure they are in compliance with coordination and consistency review. Again, this is supposed to be an interactive, iterative process rather than a box to check after the DEIS is submitted.

When Consistency Review Must Occur

FLPMA says that consistency review must occur at different stages of the planning process. Consistency review comes from four key FLPMA provisions. First, the Secretary must



"*keep apprised* of State, local, and tribal land use plans." Second, the Secretary must "*assure that consideration is given* to those State, local, and tribal plans that are germane in the development of land use plans for public lands"¹⁸ Third FLPMA requires that the BLM "*assist in resolving, to the extent practical, inconsistencies* between Federal and non-Federal Government plans"¹⁹ Third, "*Land use plans of the Secretary* under this section shall be *consistent* with State and local plans *to the maximum extent he finds consistent with Federal law and the purposes of this Act.*"²⁰

These four clauses imply a progression. It first mentions appraisal, then consideration before an attempt to resolve and finally be consistent with State and local plans. This means the BLM must incorporate consistency review beginning at the planning assessment and at various stages throughout the planning process.

The BLM's explanation for why it proposes to remove existing §1610.3-1(d) attempts to avoid this process, as this language ensures that the BLM will provide consistency review, that the BLM will respond to inconsistencies, and resolve those inconsistencies at the most appropriate times:

"This section is unnecessary and inappropriate in the regulations. Any guidance developed to inform the preparation of a resource management plan would also be required to be consistent with Federal law (see proposed §1610.1-1(a)(1)), and would therefore be mindful of FLPMA requirements for consistency. Further, guidance is an internal BLM process, which does not constitute a formal decision regarding resources management."²¹

It is not enough that the BLM provide internal guidance. There are recent examples where BLM has only discussed inconsistencies after the DEIS is released and has failed to appropriately engage in the process. This is why it is important to imbed consistency review throughout the Regulations instead of leaving it for "internal guidance," which can be changed on an as-needed basis.

Federal law conflicts do limit consistency review, but "to the maximum extent practical or consistent" with Federal laws. While conflict of laws would still apply, the legislature is clear here that absent a law that conflicts the BLM should actively obtain consistency. That is, the BLM has to show at a minimum that it made a good faith attempt. "To the extent practical" and "to the maximum extent" sets a very high bar. Practical means "likely to succeed or be effective in real circumstances; feasible... 'concerned with action', 'do, act.'"²² It does not simply mean that the State or local activity was inconsistent with the style preferred by the BLM. It only means where a specifically targeted goal or policy directly conflicts with the program in that case the BLM would

¹⁸ 43 U.S.C. 1701(a)

¹⁹ 43 U.S.C. 1712 (c). (Emphasis Added).

²⁰ *Id.*

²¹ 81 Fed. Reg. 9703

²² Oxford Dictionary, "practical", retrieved at <http://www.oxforddictionaries.com/us/definition/american-english/coordinate>



not be able to maintain consistency. Thus, the BLM should be required to describe efforts to obtain consistency and a rationale when such consistency is impractical or in conflict with Federal law.

The last change in planning regulations in 2005 "emphasize[d] the importance of working with Federal and state agencies and local and tribal governments to develop the Bureau's resource management plans."²³ To effect this change, the BLM amended § 1610.3-1 and §1610.3-2 to "require consideration of programs and policies." Where the 2005 Amendments added language that significantly increased the role of State and local governments, now the proposed regulations seek to reverse those very improvements.

In the comments from the 2005 amendments, local government requested that the existing regulations "be expanded to include comparable reviews by affected local and tribal governments." However, because the BLM "did not propose changes to this section of the planning regulations, they fall outside the scope of the proposed rule."²⁴ Because the current proposed regulations do propose changes to this section of the planning regulations, now is the best time to incorporate these and related comments.

With What Must the BLM be Consistent

The next question is with what, must the BLM be consistent. The BLM should change the language "Officially Approved and Adopted Land Use Plans" to "Land Use and Resource Related Planning and Management Programs" because limiting what qualifies as "officially approved and adopted land use plans" is overly restrictive and directly conflicts with the plain language of FLPMA. The current regulations and the proposed regulations are in conflict with FLPMA on this issue, as is the BLM's explanation.

On whether the BLM must be consistent with "policies and programs" the BLM's explanation that it does not is in direct conflict with the plain language of FLPMA. The BLM's reasoning for the proposal to remove §1610.3-2(b) states:

"The existing section *exceeds the statutory requirements* of section 202(c)(9) of FLPMA by providing that in the absence of officially approved and adopted plans, resource management plans should be consistent with "policies and programs" of other Federal agencies, State and local governments, and Indian tribes. The BLM believes that such 'policies and programs' should be reflected in the land use plans of other Federal agencies, State and local governments, and Indian tribes, and therefore would be adequately considered through the consideration of their land use plans. Further, it is inappropriate for the BLM to seek consistency with policies and programs that may or may not be officially approved or adopted by the Federal agencies, State and local governments, and Indian tribes. We also propose to remove references to consistency with "policies and programs" from throughout §1610.3-2."²⁵

²³ 70 FR 14561

²⁴ 70 Fed. Reg. 14561, 14564

²⁵ 81 Fed. Reg. 9703



Nowhere in FLPMA does the language say "officially approved," "adopted," and it does not limit consistency review to "land use plans." However, FLPMA *explicitly* mentions "plans," programs," "plans that are germane in the development of land use plans," "outdoor recreation plans," "policies of resource management programs," and even broadly includes "planning efforts." Even the CEQ NEPA Regulations mentions specifically "plans," "policies," and "controls" for a consistency review for the EIS. This language is intentionally all-inclusive. Consistency includes consideration of, but is not limited to:

"other Federal and State **planning efforts**,"

"the **statewide outdoor recreation plans** developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601–4 et seq. note], and of or for Indian tribes by, among other things, considering the **policies of approved State and tribal land resource management programs**. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal **land use plans**; assure that consideration is given to those State, local, and tribal **plans that are germane** in the development of land use plans for public lands"²⁶

"*inconsistencies* between Federal and non- Federal Government **plans**"²⁷

"The Secretary shall... to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands **with the land use planning and management programs** of other Federal departments and agencies and of the States and local governments within which the lands are located."²⁸

Environmental consequences shall include discussions of: "Possible conflicts between the proposed action and the objectives of federal, regional and local (and in the case of a reservation, Indian tribe) land use **plans, policies and controls** for the area concerned."²⁹

The consistency review process is meant to be flexible. If the BLM is engaged in coordination, then consistency depends only on what the other governmental entity is doing that intersects with BLM land use planning. When coordination occurs, the BLM will not need to worry whether "it is inappropriate for the BLM to seek consistencies with policies and programs that may or may not be officially approved or adopted by the Federal agencies, State and local governments, and Indian tribes." Going back to coordination, the legislation intended that the BLM would be working with other governments to fulfill these requirements because it is in all parties' interest that they do.

It is sufficient that those entities have the authority to provide the BLM with what is or is not approved according to their respective processes and authorities. We are concerned about BLM

²⁶ 43 U.S.C. 1701(a)

²⁷ 43 U.S.C. 1712 (c). (Emphasis Added).

²⁸ 43 U.S.C. 1712 (c). (Emphasis Added).

²⁹ 40 CFR 1502.16(c), (d).



telling a coordinator that their process or program is not "officially approved" or "adopted" and whether it is appropriate and within BLM's authority to determine that for the cooperator.

This does not mean it is the local government's responsibility to get the right information to the BLM without question; the BLM is still directed to "keep apprised" of the local government's land use and resource related planning and management programs. This is an active duty. Again, the focus is on coordination and the back and forth that comes with it. If the BLM is at any point worried about getting the correct information, it is important to stress that they should actively coordinate with State and local governments to ensure it has collected the appropriate information to conduct a thorough consistency review. Any anticipated challenges can be handled through the Land Use Planning Handbook revision and should not be inserted in the planning regulations.

NACO is content with the existing provisions in the BLM's Land Use Planning Handbook and would like the following provisions to be maintained, subject to contradictory suggested planning regulations: "IE. Coordination and Cooperation with Other Federal Agencies and State and Local Governments."³⁰

See below "III: Impacts to Judicial Guidance" for examples of the BLM's recent challenges associated with consistency review.

Summary of Issues for FLPMA Requires Consistency Review with "land use and resource related planning and management programs" of other Federal agencies, State and local governments, and Indian tribes.

- ❖ The BLM should change the language "Officially Approved and Adopted Land Use Plans" to "Land Use and Resource Related Planning and Management Programs."
- ❖ The Planning Assessment should include a preliminary consistency review as a planning exercise to consider existing planning and management programs and begin thinking about opportunities for consistency during the planning process.
- ❖ The BLM should document and discuss inconsistencies prior to release of the DEIS so that inconsistencies can be considered and resolved, to the maximum extent possible.
- ❖ State and local governments should not bear the exclusive burden of raising inconsistencies and may not be limited to *specific* inconsistencies, which is an undefined term not present in FLPMA.
- ❖ The Governor's Consistency Review should not be limited. If the Governor takes the time to provide recommendations, then they should be addressed.

E. NEPA Considerations

The BLM has not accurately reflected NEPA requirements within the planning regulations. The Executive Memorandum regarding NEPA Cooperating Agencies describes the benefits and the need for cooperating agency participation to build trust, relationships, and create integrated decisions as *early as practicable* in the planning process:

³⁰ BLM Land Use Planning Handbook H-1601, Pgs. 5-9, 11, 12, 25 (March 11, 2005); NEPA Handbook H1790-2008-1 (2008), 55.



"The benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include: disclosing relevant information early in the analytical process; applying available technical expertise and staff support; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues. Other benefits of enhanced cooperating agency participation include fostering intra-and intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process, as well as enhancing agencies' ability to adopt environmental documents. It is incumbent on Federal agency officials to identify as early as practicable in the environmental planning process those Federal, State, Tribal and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental, social or economic impacts associated with a proposed action that requires NEPA analysis."¹¹

Therefore, cooperating agency status begins the moment the BLM decides to engage in any planning effort prior to the planning assessment. It is not enough that in §1610.3 it states "where possible and appropriate, develop resource management plans collaboratively with cooperating agencies," or that cooperating agencies are omitted from key sections.¹² This suggests that the responsibility is discretionary throughout the planning process where it is not. Not only is the responsibility required, NEPA only satisfies some of the BLM's directives.

The last change in planning regulations in 2005 "emphasize[d] the importance of working with Federal and state agencies and local and tribal governments through cooperating agency relationships in developing, amending, and revising the Bureau's resource management plans."¹³ The purpose of the last amendments were:

"BLM's current planning regulations do not mention the cooperating agency relationship, an important tool for working with other agencies and governments. This final rule: Defines cooperating agency and cooperating agency status; Clarifies the responsibility of managers to offer this status to qualified agencies and governments, and to respond to requests for this status; and Formally establishes the role of cooperating agencies in the various steps of BLM's planning process."¹⁴

The new definition for "cooperating agency status" is helpful, as it is more in line with the NEPA Regulations and is easier to understand. However, we request that the 2005 language "requir[ing] the [BLM] to consider requests for cooperating agency status" be re-introduced in §1610.3-1(b). This way, if the BLM's list of eligible governmental entities is somehow faulty this provides an avenue for a potential cooperating agency to correct the error perhaps before the BLM becomes aware.

¹¹ James Connaughton, Executive Office of the President Council on Environmental Quality, Memorandum for the Heads of Federal Agencies, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (January 30, 2002).

¹² 81 Fed. Reg. 9728

¹³ 70 FR 14561

¹⁴ 70 FR 14561



Where the phrase "in collaboration with cooperating agencies" was inserted *seven times* in the 2005 amendments to the BLM's planning regulations, it has now been removed at least *twelve different times* and should be put back in. The BLM's explanation is "these references would be consolidated and moved to proposed §1610.3-1(b)(3)."³⁵ This makes the purpose seem like an efficiency issue. Yet collaboration with cooperating agencies is now limited "as feasible and appropriate ... during the following steps in the planning process: Identification of planning issues, Formulation of resource management alternatives, Estimation of effects of alternatives, Preparation of the draft resource management plan; and Preparation of the proposed resource management plan and implementation strategies."³⁶ This list does not include the planning assessment, which, again, is not going to be used purely for informational purposes as it will guide the entire process.

It is critical that cooperating agencies, coordination, and consistency review occur at the planning assessment step. A common criticism of the BLM is that land management plans are largely preconceived prior to engagement with Cooperating Agencies. The concern is that once the BLM begins to develop its plan, it is very difficult to effect any change. The formative steps are the most important without which local government in effect has no say in the most pivotal parts of the process. That this list does not include the planning assessment is in conflict with both FLPMA and NEPA which require consultation as early as possible, meaning the moment the BLM decides it is going to begin a planning effort.

In 2005, comments suggested how the BLM would work with cooperating agencies included "The BLM should notify potential cooperating agencies early in the planning process", and "Cooperating agencies should be involved in selecting contractors for plan preparation." The response in 2005 was that these issues are more appropriate for its internal guidance rather than regulations. Therefore, these two requests should be included in BLM's Handbook.

Summary of Issues for: NEPA Considerations

- ❖ The BLM should consider Cooperating Agency requests instead of relying solely on their judgment to invite Cooperating Agencies.
- ❖ "In Collaboration with Cooperating Agencies" Should be Added Back in, but Changed to "In Coordination with Cooperating Agencies."
- ❖ A change triggers either Plan Maintenance or a Plan Amendment; Plan Maintenance is appropriate only for "Minor Changes," a term that should be defined for clarity and consistent language.
- ❖ Landscape level planning impacts analyses should not be used to de-emphasize local impacts as required both by NEPA and FLPMA.
- ❖ Remove the term "areas of ecological importance" and move the concept to Development of Potential ACECs, or improve the clarity.
- ❖ The proposed definition for "mitigation" should align with the NEPA Regulations.
- ❖ The Handbook should include requests from the 2005 Regulation Amendments:
 - "The BLM should notify potential cooperating agencies early in the planning process"
 - "Cooperating agencies should be involved in selecting contractors for plan preparation."

³⁵ 81 Fed. Reg. 9710

³⁶ Proposed §1610.3-2



II. Unintended Yet Foreseeable Consequences

There is no need to limit consistency requirements to "land use plans" because there have been no concerns with the plans and programs with which the BLM needed to seek consistency. It is the consistency process with which State and local governments have expressed concern. This only further confuses the process.

Limiting consistency review to "officially approved and adopted land use plans" will require State and local governments to revisit every resource-related plan and program to find a way to call it a "land use plan." Besides the fact that it is contrary to what FLPMA says, this is very difficult to accomplish. It will take thousands of dollars and hours to make this happen and makes little sense. In this way the BLM is imposing its own requirements onto State and local governments simply because coordination is too difficult.

The increased burden placed on State and local governments raises an Equal Access to Justice problem. This includes the cost and staff required to re-name local planning efforts and to reach out to the BLM in all instances where the BLM should instead be reaching out to State and local governments. For smaller governments, the staff may not be available to provide this kind of review. In these cases, it is imperative for the BLM to coordinate in a way that ensures the local government's input is obtained.

Landscape-scale economic impact analyses also create a social justice issue because a larger assessment is likely to dwarf local economic costs, which will greatly reduce the overall "cost" in the cost-benefit analysis even where the cost to a local economy might never be recovered. This will create bias and eliminate the need to address and resolve the possible economic destruction of one or several local governments and programs as a result. This undermines both NEPA and FLPMA.

Another unintended consequence is a reduced emphasis on local BLM relationships. A landscape-scale approach that does not involve local officials means that State and local governments will need to spend more time building relationships at higher levels and the local relationships will be de-emphasized.

Finally, less notice and comment means more litigation. The planning assessment contains no public comment or coordination, implementation strategies only appear in the FEIS, and protest requirements are being limited to issues raised during the comment period. This will create additional litigation over issues that could be appropriately addressed during the planning process.

Summary of Issues for: Unintended Yet Foreseeable Consequences

- ❖ There is no need to limit consistency requirements to "land use plans" because there have been no concerns with the plans and programs with which the BLM needed to seek consistency.
- ❖ The increased burden placed on State and local governments raises a social justice issue, as many local governments do not have the capacity to dedicate even one staff member to monitor all federal activities.
- ❖ Landscape-scale economic impact analyses presents a social justice issue because it will greatly



reduce the overall "cost" in the cost-benefit analysis even where the cost to a local economy might never be recovered.

- ❖ Reduced emphasis on local BLM relationships will create an inundation of requests to higher level officials.
- ❖ Less notice and comment means more litigation over issues that could have been resolved during the planning process. This creates an Equal Access to Justice issue, as many local governments have even fewer capacity for Attorneys than for staff members.

III. Impacts to Judicial Guidance

The BLM should wait for Judicial guidance prior to adoption of the proposed regulations, and should sit down with State and local governments to discuss concerns with recent practices to coordinate ways to ensure the Regulations are done correctly.

The States of Nevada, Utah, Idaho, Colorado and Wyoming are all involved in lawsuits calling into question the BLM's "current practices" regarding land management planning for the Approved Resource Management Plans designed to protect the Greater Sage Grouse. The purpose of the lawsuit filed by the State of Nevada and nine of our counties is to ensure compliance with FLPMA and the current planning regulations, including several regulations now omitted from the proposed language.

In light of these lawsuits and explanations provided by the BLM that Planning 2.0 is simply amending the regulations to conform with "current practices" and that it only intends to improve coordination the proposed Regulations are at least untimely. These lawsuits allege that the BLM has failed to adhere to its current Regulations, and to the requirements of FLPMA and NEPA.

Summary of Issues for: Impacts to Judicial Guidance

- ❖ The BLM should wait for Judicial guidance prior to adoption of the proposed regulations. The very sections being eliminated are cited throughout lawsuits filed by several western states and counties against the BLM requesting judicial guidance on coordination, consistency review, meaningful public involvement, the Governor's Consistency review, and NEPA issues including Cooperating Agency status requirements.

Conclusion

The BLM's planning regulations must recognize the elevated role expressly granted to State and local governments through Coordination, Consistency Review, and Meaningful Public Involvement in the planning process as well as the role of the public through the Public Involvement requirement. Again, the elevated role for State and local governments was created for two important reasons: First, local, State and tribal officials are elected as representatives of the respective public. Second, State, local and tribal jurisdictional boundaries cover both private and federal land and provide fundamental services such as local land management planning, zoning, infrastructure, maintenance, water, wildlife protection, and the first critical responses to natural disasters.



NACO understands that relationships are key to any planning process. Regulations require training and consistent application and where relationships are good they should be afforded the flexibility to accomplish mutual goals. Unfortunately, the BLM cannot prevent bad relationship(s) or application(s) from impeding the correct process. This is why it is extremely important that the BLM take the time to get the proposed regulations right.

We respectfully request that the BLM seriously consider the language provided in the Attachment "Annotated Comments and Revisions." This Attachment was carefully drafted with a coalition of local and State governments. Together, we have identified needs and developed language that we believe accomplish those needs. Thank you for accepting our comments and we hope the BLM will use them as a means to achieve the certainty and trust we so desperately need to work together effectively.

Sincerely,



Jeffrey Fontaine
Executive Director

ATTCH: Annotated Comments and Revisions

CC: File



43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR by revising part 1600 to read as follows:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.

- 1601.0-1 Purpose.
- 1601.0-2 Objective.
- 1601.0-3 Authority.
- 1601.0-4 Responsibilities.
- 1601.0-5 Definitions.
- 1601.0-6 Environmental impact statement policy.
- 1601.0-7 Scope.
- 1601.0-8 Principles.

Subpart 1610—Resource Management Planning

- 1610.1 Resource management planning framework.
- 1610.1-1 Guidance and general requirements.
 - 2 Plan components.
 - 3 Implementation strategies.
- 1610.2 Public involvement.
 - 1 Public notice.
 - 2 Public comment periods.
- 1610.2-3 Availability of the resource management plan. Coordination with other Federal agencies, State and local governments, and Indian tribes.
- 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.
 - 1 Coordination of planning efforts.
- 1610.3-2 Consistency requirements.
- 1610.4 Planning assessment.
- 1610.5 Preparation of a resource management plan.
 - 1 Identification of planning issues.
 - 2 Formulation of resource management alternatives.
 - 3 Estimation of effects of alternatives.
 - 4 Preparation of the draft resource management plan and selection of preferred alternatives and preparation of implementation strategies
 - 5 Selection of the proposed resource management plan and preparation of implementation strategies.
- 1610.6 Resource management plan approval, implementation and modification.

- 1610.6-1 Resource management plan approval and implementation.
 - 2 Protest procedures.
 - 3 Conformity and implementation.
 - 4 Monitoring and evaluation.
 - 5 Maintenance.
 - 6 Amendment.
 - 7 Revision.
 - 8 Situations where action can be taken on another agency's plan, or a land use analysis.
 - 9 Management decision review by Congress.
- 1610.8 Designation of areas.
 - 1 Designation of areas unsuitable for surface mining.
 - 2 Designation of areas of critical environmental concern.
- 1610.9 Transition period.

Authority: 43 U.S.C. 1711-1712

Subpart 1601—Planning

§ 1601.0-1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM).

§ 1601.0-2 Objective.

The objective of resource management planning by the BLM is to promote the principles of multiple use and sustained yield on public lands unless otherwise provided by law, ensure participation by the public, State and local governments, Indian tribes and Federal agencies in the development of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

§ 1601.0-3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation

Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 1601.0-4 Responsibilities.

- (a) The Secretary and the Director will provide national level policy and procedure guidance for planning. The Director, after consulting with State Directors with jurisdiction over the potential planning area, determines the deciding official and the planning area for the preparation of each resource management plans that cross State boundaries. ~~The Director also determines the deciding official and the planning area for plan amendments that cross State boundaries.~~
- (b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the planning area for plan amendments. ~~that do not cross State boundaries.~~ The deciding official must be one of the State Directors with jurisdiction over the planning area for plan amendments that cross State boundaries. The State Director shall by default be the deciding official for plan amendments within that State that do not cross State boundaries.
- (c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.

§ 1601.0-5 Definitions.

As used in this part, the term: *Areas of Critical Environmental Concern or ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

Conformity or conformance means that a resource management action will be clearly consistent with the plan components of the approved resource management plan.

Consistent means that resource management plans and plan amendments will adhere to the terms, conditions, and decisions of land use and resource related planning and management programs, or in their absence, with policies and programs, subject to the qualifications of other Federal agencies, State agencies, Indian

Color Key

Blue language in current regulations that should be maintained

Green: new language that would improve planning efforts to coordinate and collaborate with State and local governments

Red: language that is not found in current regulations and should not be adopted

Orange language that was in current regulations but that is inconsistent with implementing Statutes

tribes and local governments that may be affected, subject to §1610.3 of this title.

Cooperating agency means an eligible governmental entity (see 43 CFR 46.225(a)) that has entered into an agreement with the BLM to participate in the development of an environmental impact statement or environmental assessment as a cooperating agency under the National Environmental Policy Act and in the planning processes described in § 1610.3-1 of this part. The BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of the BLM's planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources.

Deciding official means the BLM official who is delegated the authority to approve a resource management plan or plan amendment. The deciding official must be one of the State Directors with jurisdiction over the planning area for plan amendments that cross State boundaries. The State Director shall by default be the deciding official for plan amendments within that State that do not cross State boundaries.

High quality information means any representation of knowledge, such as facts or data, that are applicable to the planning area, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users. For the purposes of this regulation, "high quality information" will include, but is not limited to, information, data and facts generated by local and state government.

Implementation strategies means strategies that assist in implementing future actions consistent with the plan components of the approved resource management plan. An implementation strategy is not a plan component.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.

Minor change² means a technical, editorial, or nonsubstantial factual correction that does not result in any change in the scope of resource uses or restrictions, or change terms, conditions, or decisions of the approved plan.

Mitigation (see 40 CFR §1508.20) includes:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an

action;

- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing or providing substitute resources or environments. ~~the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.~~

Multiple use means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

Land use and resource related planning and management programs ~~Officially approved and adopted land-use plans means plans, policies, programs, controls and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local authorities.~~ ~~land-use-plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, or local constitutions, legislation, or charters which have the force and effect of State law.~~

Plan amendment means an amendment to an approved resource management plan or management framework plan (see § 1610.6-6).

Plan components means the elements of a resource management with which future management actions will be consistent.

Plan maintenance means minor change(s) to an approved resource management plan to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6-5).

Plan revision means a revision of an approved resource management plan that affects the entire resource management plan or major portions of the resource management plan (see § 1610.6-7). Preparation or development of a resource management plan includes plan revisions.

Planning area means the geographic area for the preparation or amendment of a resource management plan.

Planning assessment means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area. A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan.

Planning issue means disputes, controversies, or opportunities related to resource management.

Public means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of State, local, and Indian tribal governments.

Public lands means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the BLM. Public lands do not include lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

Resource management plan means a land use plan as described under section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), including plan revisions. Approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

Responsible official means a BLM employee who is delegated the authority to prepare a resource management plan or plan amendment. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.⁴

Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

Color Key

Blue: language in current regulations that should be maintained

Green: new language that would improve planning efforts to coordinate and collaborate with State and local governments

Red: language that is not found in current regulations and should not be adopted

Orange: language that was in current regulations but that is inconsistent with implementing Statutes

§ 1601.0-6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed resource management plan will be accomplished as part of the resource management planning process and, wherever possible, the proposed resource management plan will be published in a single document with the related environmental impact statement.

§ 1601.0-7 Scope.

- (a) These regulations apply to all public lands.
- (b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0-8 Principles.

The development, approval, maintenance, amendment, and revision of resource management plans will provide for public involvement and will be consistent with the principles described in section 202 of FLPMA. Additionally, the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at appropriate scales. The BLM also will consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests.

Subpart 1610—Resource Management Planning

§ 1610.1 Resource management planning framework.

§ 1610.1-1 Guidance and general requirements.

- (a) Guidance for preparation and amendment of resource management plans may be provided by the Director and deciding official, as needed, to help the responsible official prepare a specific resource management plan. Such guidance may include the following:
 - (1) Policy established through Presidential, Secretarial, Director, or deciding official approved documents, so long as such policy is consistent with the Federal laws and regulations applicable to public lands; and
 - (2) Analysis requirements, planning procedures, and other written

information and instructions required to be considered in the planning process.

- (b) The BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers will be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield, or other applicable law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.
- (c) The BLM will use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

§ 1610.1-2 Plan components.

- (a) Plan components guide future management actions within the planning area. Resource management plans will include the following plan components:
 - (1) *Goals.* A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within a planning area, or a portion of the planning area, toward which management of the land and resources should be directed.
 - (2) *Objectives.* An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. To the extent practical, objectives should also:
 - (i) Identify standards to mitigate undesirable effects to resource conditions; and
 - (ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors.
- (b) Resource management plans also will include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law:

- (1) *Designations.* A designation identifies areas of public land where management is directed toward one or more priority resource values or uses.
 - (i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8-2).
 - (ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.
 - (2) *Resource use determinations.* A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies.
 - (3) *Monitoring and evaluation standards.* Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.
 - (4) Lands identified as available for disposal from BLM administration under section 203 of FLPMA, as applicable.
- (c) A plan component may only be changed through a resource management plan amendment or revision, except to correct ~~typographical or mapping errors or to reflect minor changes in data.~~

§ 1610.1-3 Implementation strategies.

- (a) A resource management plan may also include, but is not limited to, the following types of implementation strategies:
 - (1) *Management measures.* A management measure is one or more potential action(s) the BLM may take in order to achieve the goals and objectives of the resource management plan. Management measures may include, but are not limited to, resource management

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practices, best management practices, standard operating procedures, provision for the preparation of more detailed and specific plans, feasibility, or other measures as appropriate;

- (2) *Monitoring procedures.* Monitoring procedures describe methods for monitoring the resource management plan (see § 1610.6–4 of this part).
- (b) Implementation strategies are not a plan component. Implementation strategies are intended to assist the BLM to carry out the plan components.
- (c) Implementation strategies may be updated at any time if the BLM determines that relevant new information is available. Updates to an implementation strategy do not require a plan amendment or the formal interagency coordination as described under §§ 1610.2 and 1610.3. The BLM will make updates to an implementation strategy available for public review at least ~~30~~ 45 days prior to their implementation.

§ 1610.2 Public involvement.

- (a) The BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. Public involvement in the resource management planning process will conform to the requirements of the National Environmental Policy Act and associated implementing regulations.
- (b) The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.
- (c) Public involvement activities conducted by the BLM will be documented by a record or summary of the principal issues discussed and comments made. The record or summary of the principal issues discussed and comments made will be available to the public and open for ~~30~~ 60 days to any participant who wishes to review the record or summary.
- (d) Before the close of each fiscal year, the BLM will post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Web site.

§ 1610.2–1 Public notice.

- (a) When the BLM prepares a resource management plan or amends a resource management plan and prepares an environmental impact statement to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:
- (1) **General notice at the outset of the process** inviting preparation of the planning assessment, as appropriate (see § 1610.4);
 - (2) Identification of planning issues (see § 1610.5–1);
 - (3) Review of the preliminary resource management alternatives and preliminary rationale for alternatives (see § 1610.5–2(c));
 - (4) Review of the basis for analysis (see § 1610.5–3(a)(1));
 - (5) Comment on the draft resource management plan (see § 1610.5–4); and
 - (6) Protest of the proposed resource management plan (see §§ 1610.5–5 and 1610.6–2).
- (b) When the BLM amends a resource management plan and prepares an environmental assessment to inform the amendment, the BLM will notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following steps in the planning process:
- (1) Identification of planning issues (see § 1610.6–6(a));
 - (2) Comment on the draft resource management plan amendment, as appropriate (see § 1610.6–6(a)); and
 - (3) Protest of the proposed resource management plan amendment (see §§ 1610.5–5 and 1610.6–2).
- (c) The BLM will announce opportunities for public involvement by posting a notice on the BLM's Web site, at all BLM offices within the planning area, **and at other public locations, and in the Federal Register**, as appropriate.
- (d) Individuals or groups may request to be notified of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM will notify those individuals or groups through written or electronic means.
- (e) The BLM will notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting.
- (f) When initiating the identification of planning issues (see § 1610.5–1), in

addition to the public notification requirements of §§ 1610.2–1(c) and 1610.2–1(d), the BLM will notify the public as follows:

- (1) When the BLM initiates the preparation of a plan amendment and an environmental assessment will be prepared to inform the amendment, the BLM will publish a notice in appropriate media, including newspapers of general circulation in the planning area.
- (2) When the BLM initiates the preparation of a resource management plan, or a plan amendment and an environmental impact statement will be prepared to inform the amendment, the BLM will also publish a notice of intent in the **Federal Register**. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40CFR 1501.7).
- (3) This notice will include the following:
 - (i) Description of the proposed planning action;
 - (ii) Identification of the geographic area for which the resource management plan is to be prepared;
 - (iii) The general types of issues anticipated;
 - (iv) The expertise to be represented and used to prepare the resource management plan, in order to achieve an interdisciplinary approach (see § 1610.1–1(b));
 - (v) The kind and extent of public involvement opportunities to be provided, as known at the time;
 - (vi) The times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences, or other gatherings, as known at the time;
 - (vii) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and
 - (viii) The location and availability of documents relevant to the planning process.
- (g) A list of individuals and groups known to be interested in or affected by a resource management plan or amendment shall be maintained by the responsible official and those on the list shall be notified of public participation activities. Individuals or groups may

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ask to be placed on this list. Public participation activities conducted by the BLM shall be documented by a record or summary of the principal issues discussed and comments made. The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.

- (h) At least 15 days' public notice shall be given for public involvement activities where the public is invited to attend
- (i) If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will, in coordination with cooperating agencies, notify the public and request written comments on the change and consider comments received before the resource management plan or plan amendment is approved (see § 1610.6- 1(b)).
- (j) The BLM will notify the public when a resource management plan or plan amendment has been approved.
- (k) When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least ~~30~~ 45 days prior to their implementation.
- (l) When changes are made to an implementation strategy, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.

§ 1610.2-2 Public comment periods.

- (a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM will notify the public and provide for at least ~~30~~ 45 calendar days for response, unless a longer period is required by law or regulation.
- (b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM will provide at least ~~45~~ 90 calendar days for response. The ~~45~~ 90-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the Federal Register.
- (c) When requesting written comments on a draft resource management plan and

draft environmental impact statement, the BLM will provide at least ~~60~~ 90 calendar days for response. The ~~60~~ 90-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the Federal Register.

§ 1610.2-3 Availability of the resource management plan.

- (a) The BLM will make copies of the draft, proposed, and approved resource management plan or plan amendment ~~reasonably~~ available to the public. At a minimum, the BLM will make copies of these documents available electronically and at all BLM offices within the planning area.
- (b) Upon request, the BLM will make single printed copies of the draft or proposed resource management plan or plan amendment available to individual members of the public during the public involvement process. After the BLM approves a resource management plan or plan amendment, the BLM may charge a fee for additional printed copies. Fees for reproducing requested documents beyond those used as part of the public involvement activities and other than single printed copies of the resource management plan or plan amendment may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

§ 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3-1 Coordination of planning efforts.

- (a) *Objectives of coordination.* In addition to the public involvement prescribed by § 1610.2, and to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations, the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of this coordination are for the BLM to:
 - (1) Keep apprised of non-BLM land use and resource related planning and management programs;
 - (2) Assure that the BLM considers those plans that are germane in the development of resource management plans for public lands;
 - (3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal

government plans;

- (4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands; and
- (5) Where possible and appropriate, develop resource management plans ~~collaboratively~~ in coordination with cooperating agencies.
- (b) *Cooperating agencies.* When preparing a resource management plan, the responsible official will ~~invite~~ ~~follow applicable regulations regarding the invitation of~~ eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment. In addition, the responsible official must consider a request by an eligible governmental entity to participate as a cooperating agency (see 43 CFR 46.225(c)). If there is a denial for a request to become a cooperating agency, the deciding official will respond to the request explaining why the denial is appropriate.
 - (1) When a cooperating agency is a non-Federal agency, a memorandum of understanding will be used and will include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts (see 43 CFR 46.225(d)).
 - (2) The responsible official will collaborate with cooperating agencies ~~as feasible and appropriate given their interests, scope of expertise and the constraints of their resources;~~ during the following steps in the planning process:
 - (i) Identification of planning issues (see § 1610.5-1);
 - (ii) Formulation of resource management alternatives (see § 1610.5-2);
 - (iii) Estimation of effects of alternatives (see § 1610.5-3);
 - (iv) Preparation of the draft resource management plan and implementation strategies (see § 1610.5-4); and
 - (v) Preparation of the proposed resource management plan ~~and~~

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~~implementation strategies~~ (see § 1610.5– 5).

(c) *Coordination requirements.* The BLM will provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs.

(1) To facilitate coordination with State governments, deciding officials should seek the input of the Governor(s) on the timing, scope, and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.

(2) Deciding officials may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the deciding official will provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the deciding official has reason to believe could affect or influence State government programs.

(3) The responsible official will notify relevant State agencies of opportunities for ~~meaningful~~⁶ public involvement in the preparation and amendment of resource management plans consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist. The responsible official also will notify Federal agencies, the elected heads of county boards, other local government units, and elected government officials of Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment. These notices will be issued simultaneously with the public notices required under § 1610.2–1 of this part.

(4) The BLM will provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and

comment on resource management plans and plan amendments.

(d) *Consistency Review.* The deciding official, in compliance with section 1611 of this title, shall:

(1) Ensure that it is as consistent as possible with land use and resource related planning and management programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by § 1610.3-2 of this title:

(2) Identify areas where the proposed resource management plan or plan amendment is inconsistent with such land use and resource related planning and management programs and provide reasons why the inconsistencies exist and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the deciding official believes may lead to resolution of such inconsistencies.

(4) The resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

(e) *Resource advisory councils.* When an advisory council has been formed under section 309 of FLPMA for the area addressed in a resource management plan or plan amendment, the BLM will inform that council, seek its views, and consider them throughout the planning process.

§ 1610.3–2 Consistency requirements.

(a) Resource management plans will be consistent with ~~officially approved or adopted land-use plans~~ land use and resource related planning and management programs of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.

(1) The BLM will, to the extent practical, keep apprised of ~~officially approved and adopted land-use plans of State and local governments and Indian tribes~~ State and local governmental and tribal land use and resource related planning and management programs, ~~and give consideration to~~

~~those plans that are germane in the development of resource management plans.~~

(2) The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified in writing by State and local governments or Indian tribes of an apparent inconsistency.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be ~~specific~~ inconsistencies between the BLM resource management plan and their ~~officially approved and adopted land-use plans~~ land use and resource related planning and management programs, the BLM will, in coordination with any cooperating agencies, ~~resource management plan~~ provide, within 90 days, documentation ~~will~~ describing the extent to which the BLM could reconcile any inconsistencies and show whether the BLM plans to ~~show how these inconsistencies were addressed and~~, if possible, resolved them.

(4) Where ~~the officially approved and adopted land-use plans of State and local government differ from each other~~ land use and resource related planning and management programs differ, those of the higher authority will normally be followed.

(b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official will submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and will identify any ~~relevant~~ known inconsistencies with the ~~officially approved and adopted land-use plans of State and local governments~~ State or local land use and resource related planning and management programs.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with ~~officially approved and adopted land-use plans of State and local governments~~ State or local land use and resource related planning and management programs and provides recommendations to remedy the identified

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- inconsistencies; or
- (ii) Waives or reduces the 60-day period.
- (2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.
- (3) If the document submitted by the Governor(s) recommends **substantive** changes that were not considered during the public involvement process, the BLM will notify the public and request written comments on these changes.
- (4) The deciding official will notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.
 - (i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.
 - (ii) ~~The Director will consider the Governor(s)' comments in rendering a final decision. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director will notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM will notify the public of this decision and make the written decision available to the public publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.~~

§ 1610.4 Planning assessment.

Before initiating the preparation of a resource management plan the BLM will, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment

- (a) *Information gathering.* The responsible official will:
 - (1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, including the identification of potential ACECs (see § 1610.8-2). Inventory data and information will be gathered in a manner that aids the planning process and avoids unnecessary data-gathering;

- (2) Identify, in coordination with cooperating agencies, relevant national, regional, or local land use and resource related planning and management programs for consideration in the planning assessment. These may include, but are not limited to, executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State or multi-state resource plans;
- (3) Provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans described under paragraph (a)(2) of this section,⁹ for the BLM's consideration in the planning assessment; and
- (4) Identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.
- (b) *Information quality.* The responsible official will evaluate the data and information gathered under paragraph (a) of this section to determine if it is high quality information appropriate for use in the planning assessment and to identify any data gaps or further information needs and identify strategies to obtain missing or incomplete data or information.¹⁰
- (c) *Assessment.* The responsible official will assess the resource, environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official will consider and document the following factors in this assessment when they are applicable:
 - (1) Resource management authorized by FLPMA and other relevant authorities;
 - (2) Land status and ownership, existing resource uses, infrastructure, and access patterns in the planning area;
 - (3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;
 - (4) Known resource ~~thresholds~~ opportunities, ~~constraints, or limitations~~;
 - (5) ~~Specific requirements and constraints to achieve consistency~~ and avoid possible conflicts with land use and resource related planning and management programs of other Federal agencies, State and local government agencies, and Indian tribes.
 - (6) Areas of potential importance within the planning area, including:
 - (i) Areas of tribal, traditional, or cultural importance;

- (ii) Habitat for special status species, including State and/or federally-listed threatened and endangered species;
- (iii) Other areas of key fish and wildlife habitat such as big game wintering and summer areas, birdnesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat;
- (iv) ~~Areas of relative ecological importance¹¹, such as~~ Areas focused on dominant patterns of habitat extent, habitat condition, habitat connectivity, and overall plant and animal species diversity, ~~that increase the ability of terrestrial and aquatic within the planning area to adapt to, resist or recover from change;~~
- (v) Lands with wilderness characteristics, candidate wild and scenic rivers, or areas of significant scenic value;
- (vi) Areas of significant historical value, including paleontological sites;
- (vii) Existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs;
- (viii) Areas with potential for renewable or non-renewable energy development or energy transmission;
- (ix) Areas of importance for recreation activities or access;
- (x) Areas of importance for public health and safety, such as abandoned mine lands or natural hazards;
- (7) Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change; and
- (8) The various goods and services, including ecological services, that people obtain from the planning area such as:
 - (i) The socioeconomic impacts and contributions ~~The degree of local, regional, national, or international importance of these goods and services;~~¹²
 - (ii) Available forecasts and analyses related to the supply and demand for these goods and services; and

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- (iii) The estimated levels of these goods and services that may be produced on a sustained yield basis.
- (d) *Planning assessment report.* The responsible official will document the planning assessment in a report made available for public review comment, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM's Website.
- (e) *Plan amendments.* Before initiating the preparation of a plan amendment for which an environmental impact statement will be prepared, the BLM will complete a planning assessment for the geographic area being considered for amendment. The deciding official may waive this requirement for maintenance.¹³ ~~minor amendments or if an existing planning assessment is determined to be adequate.~~

§ 1610.5 Preparation of a resource management plan.

When preparing a resource management plan, or a plan amendment for which an environmental impact statement will be prepared, the BLM, in coordination with any cooperating agencies, will follow the process described in §§ 1610.5-1 through 1610.5-5.

§ 1610.5-1 Identification of planning issues.

- (a) The responsible official will prepare a preliminary statement of purpose and need, which briefly indicates the underlying purpose and need to which the BLM is responding (see 43 CFR 46.420). This statement will be informed by Director and deciding official guidance (see § 1610.1-1(a)), public views (see § 1610.4(a)(4)), the planning assessment (see § 1610.4(c)), the results of any previous monitoring and evaluation within the planning area (see § 1610.6-4), Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations. The BLM will initiate the identification of planning issues by notifying the public and making the preliminary statement of purpose and need available for public review.
- (b) The public, other Federal agencies, State and local governments, and Indian tribes will be given an opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management for consideration in the preparation of the resource

management plan. The responsible official, in coordination with cooperating agencies, will analyze those suggestions and other available data and information, such as the planning assessment (see § 1610.4-1), and determine the planning issues to be addressed during the planning process. Planning issues may be modified during the planning process to incorporate new information. The identification of planning issues should be integrated with the scoping process required by regulations implementing the National Environmental Policy Act (40CFR 1501.7).

§ 1610.5-2 Formulation of resource management alternatives.

(a) *Alternatives development.* The BLM, in coordination with any cooperating agencies, will consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study. The decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM.

- (1) The alternatives developed will be informed by the Director and deciding official guidance (see § 1610.1(a)), in coordination with any cooperating agencies, the planning assessment (see § 1610.4), and the planning issues (see § 1610.5-1).
 - (2) In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.
 - (3) One alternative will be for no action, which means continuation of present level or systems of resource management.
 - (4) The resource management plan will note any alternatives identified and eliminated from detailed study and will briefly discuss the reasons for their elimination.
- (b) *Rationale for alternatives.* The resource management plan will describe the rationale for the differences between alternatives. The rationale will include:
- (1) A description of how each alternative addresses the planning issues, consistent with the principles of multiple use and sustained yield, or other applicable law;
 - (2) A description of how each alternative does or does not achieve consistency with land use and resource related planning and management programs of other

Federal agencies, State and local government agencies and Indian tribes, that were identified during the planning assessment or in coordination with cooperating agencies. Where an inconsistency exists, the rationale for alternatives should describe the extent to which the BLM could reconcile any such inconsistency.¹⁴

- (3) A description of management direction that is common to all alternatives; and
 - (4) A description of how management direction varies across alternatives to address the planning issues.
- (c) *Public review of preliminary alternatives.* The responsible official will make the preliminary alternatives and the preliminary rationale for alternatives available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.
- (d) *Changes to preliminary alternatives.* The BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds if it determines that public suggestions or other new information make such changes necessary.

§ 1610.5-3 Estimation of effects of alternatives.

- (a) *Basis for analysis.* The responsible official, in coordination with any cooperating agencies, will identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.
- (1) The responsible official will make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft environmental impact statement.
 - (2) The BLM may change the procedures, assumptions, and indicators as planning proceeds if it determines that public suggestions or other new information make such changes necessary.
- (b) *Effects analysis.* The responsible official, in coordination with any cooperating agencies, will estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects will be guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act. The estimate

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may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.5-4 Preparation of the draft resource management plan, selection of preferred alternatives and preparation of implementation strategies.

- (a) The responsible official, **in coordination with any cooperating agencies**, will prepare a draft resource management plan based on Director and deciding official guidance, **cooperating agency input**, the planning assessment, the planning issues, and the estimation of the effects of alternatives. The draft resource management plan and draft environmental impact statement will evaluate the alternatives, identify one or more preferred alternatives and, if provided, **potential implementation strategies** and explain the rationale for the preference. The decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement will be forwarded to the deciding official for publication and filing with the Environmental Protection Agency for publication in the Federal Register.
- (b) The responsible official will prepare implementation strategies for the proposed resource management plan, as appropriate. Preparation of any implementation strategies requires interagency coordination as described under §§ 1610.2 and 1610.3.
- (c) This draft resource management plan and draft environmental impact statement will be provided for comment to the Governor(s) of the State(s) involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that the deciding official has reason to believe would be interested (see § 1610.3-1(c)). This action constitutes compliance with the requirements of § 3420.1-7 of this title.

§ 1610.5-5 Selection of the proposed resource management plan and preparation of implementation strategies.

- (a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official will, **in coordination with any cooperating agencies**, evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement.
- (b) ~~The responsible official will prepare~~

~~implementation strategies for the proposed resource management plan as appropriate.~~

- (c) The deciding official will publish these documents and file the final environmental impact statement with the Environmental Protection Agency.

§ 1610.6 Resource management plan approval, implementation and modification.

§ 1610.6-1 Resource management plan approval and implementation.

- (a) The deciding official may approve the resource management plan or plan amendment for which an environmental impact statement was prepared no earlier than 30 days after the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement in the Federal Register.
- (b) Approval will be withheld on any portion of a resource management plan or plan amendment being protested (see § 1610.6-2) until final action has been completed on such protest. If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM will notify the public and request written comments on the change before the resource management plan or plan amendment is approved.
- (c) The approval of a resource management plan or a plan amendment for which an environmental impact statement is prepared will be documented in a concise public record of the decision, **meeting the requirements of regulations for the National Environmental Policy Act of 1969** (see 40 CFR § 1505.2).

§ 1610.6-2 Protest procedures.

- (a) Any person who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see §§ 1610.4 and 1610.5).
- (1) *Submission.* The protest must be in writing and must be filed with the Director. The protest may be filed as

a hard-copy or electronically. The responsible official will specify protest filing procedures for each resource management plan or plan amendment, including the method the public may use to submit a protest electronically.

- (2) *Timing.* For resource management plans or plan amendments for which an environmental impact statement was prepared, the protest must be filed within 30 days after the date the Environmental Protection Agency published the notice of availability of the final environmental impact statement in the Federal Register. For plan amendments for which an environmental assessment was prepared, the protest must be filed within 30 days after the date that the BLM notifies the public of availability of the amendment.
- (3) *Content requirements.* The protest must:
- (i) Include the name, mailing address, telephone number, email address (if available), and interest of the person filing the protest;
 - (ii) State how the protestor participated in the preparation of the resource management plan or plan amendment;
 - (iii) Identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands or the purposes, policies and programs of such laws and regulations, or in their absence, land use and resource related planning and management programs of State agencies, Indian tribes and local governments;
 - (iv) Concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations, or land use and resource related planning and management programs of State agencies, Indian tribes and local governments and identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; and
 - (v) Include a copy of all documents addressing the issue or issues that were submitted

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during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record.

(4) *Availability*. Upon request, the Director will make protests available to the public.

- (b) Except as otherwise provided in § 1610.6-1(b), the Director will render a written decision on all protests before approval of the resource management plan or plan amendment. The Director will notify protesting parties of the decision. The decision on the protest and the reasons for the decision will be made available to the public. The decision of the Director is the final decision of the Department of the Interior.
- (c) The Director may dismiss any protest that does not meet the requirements of this section.

§ 1610.6-3 Conformity and implementation.

- (a) All future resource management authorizations and actions, and subsequent more detailed or specific planning, will conform to the plan components of the approved resource management plan.
- (b) After a resource management plan or plan amendment is approved, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement, or other instrument of occupancy and use, the BLM will take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements, or other instruments for occupancy and use, conform to the plan components of the approved resource management plan or plan amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or plan amendment may appeal such action pursuant to 43 CFR 4.400 at the time the specific action is proposed for implementation.
- (c) If a proposed action is not in conformance with a plan component, and the deciding official determines that such action warrants further consideration before a resource management plan revision is scheduled, such consideration will be through a resource management plan amendment in accordance with § 1610.6-6 of this part.
- (d) More detailed and site specific plans for coal, oil shale and tar sand

resources will be prepared in accordance with specific regulations for those resources: part 3400 of this title for coal; part 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans will be in conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.6-4 Monitoring and evaluation.

The BLM will monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards and monitoring procedures to determine whether there is sufficient cause to warrant amendment or revision of the resource management plan. The responsible official will document the evaluation of the resource management plan for public review.

§ 1610.6-5 Maintenance.

Resource management plans may be maintained as necessary to ~~reflect correct typographical or mapping errors or to reflect minor changes~~¹⁶ ~~in mapping or data~~. Maintenance will not change a plan component of the approved resource management plan and ~~except to correct typographical or mapping errors or to reflect minor changes in mapping or data~~ shall not result in expansion in the scope of resource uses or restrictions, or change terms, conditions, and decision of the approved plan. Maintenance is not considered a resource management plan amendment and does not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this part or the preparation of an environmental assessment or environmental impact statement. When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation. Maintenance shall be documented in plans and supporting records.

§ 1610.6-6 Amendment.

- (a) A plan component may be changed through amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. An amendment will be made in conjunction

with an environmental assessment of the proposed change, or an environmental impact statement, if necessary. When amending a resource management plan, the BLM will provide for public involvement (see § 1610.2), interagency coordination and consistency (see § 1610.3), and protest (see § 1610.6-2). In all cases, the effect of the amendment on other plan components will be evaluated. If the amendment is being considered in response to a specific proposal, the effects analysis required for the proposal and for the amendment may occur simultaneously.

- (b) If the environmental assessment does not disclose significant impacts, the responsible official may make a finding of no significant impact and then make a recommendation on the amendment to the deciding official for approval. Upon approval, the BLM will issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.
- (c) If the BLM amends several resource management plans simultaneously, a single programmatic environmental impact statement or environmental assessment may be prepared to address all amendments.

§ 1610.6-7 Revision.

The BLM may revise a resource management plan, as necessary, when monitoring and evaluation findings ~~(§ 1610.4-9)~~ (§ 1610.6-4)¹⁷, new data, new or revised policy, or other relevant changes in circumstances affect the entire resource management plan or major portions of the resource management plan. Revisions will comply with all of the requirements of this part for preparing and approving a resource management plan.

§ 1610.6-8 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area, including mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the BLM and another Federal agency. The BLM may rely on the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

- (a) Another agency's plan (Federal, tribal, State, or local) may be relied on as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way

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comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement ~~and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations.~~¹⁸

- (b) After evaluation and review, the BLM may adopt another agency's plan for continued use as a resource management plan so long as ~~the plan is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs of such laws and regulations,~~ and an agreement is reached between the BLM and the other agency to provide for maintenance and amendment of the plan, as necessary.
- (c) A land use analysis may be relied on to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public participation as required by § 1610.2, the consultation and consistency determinations required by § 1610.3, the protest procedure prescribed by § 1610.6-2, and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of FLPMA.

§ 1610.7 Management decision review by Congress.

FLPMA requires that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, will be reported by the Secretary to Congress before it can be implemented. This report is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination of use(s). The required report will be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1610.8 Designation of areas.

§ 1610.8-1 Designation of areas unsuitable for surface mining.

- (a)
- (1) The planning process is the chief process by which public land is reviewed to assess whether there are

areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

- (2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the BLM for comment, the resource management plan, or plan amendment if available, will be the basis for review.
- (3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.
- (b)
- (1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.
- (2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the BLM, the resource management plan, if available, will be the basis for determinations for designation.
- (3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the BLM will take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

§ 1610.8-2 Designation of areas of critical environmental concern.

- (a) Areas having potential for ACEC designation and protection will be identified through inventory of public lands and during the planning assessment. The inventory data will be analyzed to determine whether there are areas containing resources, values, systems or processes, or hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria must be met:
- (1) *Relevance.* There must be present a

significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard; and

- (2) *Importance.* The value, resource, system, process, or hazard described in paragraph (a)(1) of this section must have substantial significance and values. This generally requires qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.
- (b) Potential ACECs will be considered for designation during the preparation or amendment of a resource management plan. The identification of a potential ACEC does not, in of itself, change or prevent change of the management or use of public lands.
- (c) Potential ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.
- (1) Upon release of a draft resource management plan or plan amendment involving a potential ACEC, ~~the BLM will notify the public of each potential ACEC and any special management attention which would occur if it were formally designated.~~ the deciding official shall publish a notice in the **Federal Register** listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation.
- (2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan will include a list of all designated ACECs, and include any special management attention identified to protect the designated ACECs.

§ 1610.9 Transition period.

- (a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

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- (1) The management framework plan must be in compliance with the principle of multiple use and sustained yield, or other applicable law, and must have been developed with public involvement and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this part.
- (2) For proposed actions a determination will be made by the responsible official whether the proposed action is in conformance with the management framework plan. Such determination will be in writing and will explain the reasons for the determination.
- (i) If the proposed action is in conformance with the management framework plan, it may be further considered for decision under procedures applicable to that type of action, including the regulatory provisions of the National Environmental Policy Act.
- (ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further consideration before a resource management plan is scheduled for preparation, such consideration will be through an amendment to the management framework plan under the provisions of § 1610.6-6 of this part.
- (b)
- (1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis deemed necessary by the BLM to make an informed decision, will be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.
- (2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.6-6 of this part for amending a plan.
- (c)
- (1) When considering whether a proposed action is in conformance with a resource management plan, the BLM will use an existing resource management plan approved prior to April 25, 2016 until it is superseded by a resource management plan or plan amendment prepared under the regulations in this part. In such circumstances, the proposed action must either be specifically provided for in the resource management plan or clearly consistent with the terms, conditions, and decisions of the approved plan.
- (2) If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must either be consistent with the plan components of the approved resource management plan or the terms, conditions, and decisions of the approved resource management plan.
- (3) If the preparation, revision, or amendment of a plan was formally initiated by issuance of a notice of intent in the **Federal Register** prior to April 25, 2016, the BLM may complete and approve the resource management plan or plan amendment pursuant to the requirements of this part or to the provisions of the planning regulations in 43 CFR part 1600 (revised as of October 1, 2015).

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¹ This is a term of art that should be defined for compliance with FLPMA §202(c)(9), DOI Regulations, and NEPA Regulations.

² "Minor Change" is added for better consistency throughout the document. The language is pulled from the BLM Land Use Planning Handbook H-1601 at Appendix F, page 14 and existing 43 C.F.R. § 1610.5-4.

³ FLPMA requires consistency with four different types of "plans," not just "land use," and not "officially adopted," or "approved." *Accord* FLPMA § 202(c)(9): State, local, and tribal "land use planning and management programs... statewide outdoor recreation plans... approved land resource management programs... land use plans... plans germane in the development of land use plans... land use programs... local plans." The NEPA Regulations also speak to consistency at 40 C.F.R. § 1502.16(c): "This section [Environmental consequences] shall include discussions of: (c) Possible conflicts between the proposed action and the objectives of federal, regional and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d))."

⁴ This language is from the 2012 U.S. Forest Service Planning Regulations at 36 C.F.R. § 219.2(b)(3). *See* 71 Fed. Reg. 21162, 21261 (April 9, 2012).

⁵ Replaces existing § 1610.3-1. Coordination of planning efforts. (b) "State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate." *Accord* DOI's NEPA Regulations at 43 C.F.R. 46.225 (c): "The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*"

⁶ FLPMA § 202(c)(9) requires meaningful public involvement.

⁷ Elimination of Duplication with State and Local Procedures, 40 C.F.R. § 1506.2(d) ("Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.")

⁸ There is no definition for the term "substantive." This means the BLM can interpret its meaning in its sole discretion. This will take staff time to determine first if the recommendation is "substantive," then how to respond. The BLM should respond to every recommendation if the Governor took the time to draft them. This does not serve the BLM's purposes to save money on staff time or to ensure State involvement.

⁹ This shouldn't be limited to what's considered in (a)(2) if the public or non-cooperating agencies want to suggest "other policies, guidance, strategies, or plans."

¹⁰ This is helpful for public review and involvement. If the public knows what the BLM does not have or cannot obtain, then it gives the public the opportunity to help obtain that data or offer to develop studies. New language from BLM Land Use Planning Handbook H-1601-1, Appendix G, Page 1. The U.S. Geological Survey could also use this information to base future research efforts towards areas where information is lacking and needed from management decisions.

¹¹ We ask that the BLM either omit or clearly define the meaning of "relative ecological importance." The BLM Land Use Planning Handbook has a section in Appendix F entitled, "Identify Areas of Relative Ecological Importance to Guide Land Uses and Management." To maintain existing language, the three paragraphs can be pared down to this as a suggested revision to 1610.4 (c)(5)(iv): *Areas of relative ecological importance focused on dominant patterns of habitat extent, habitat condition, habitat connectivity, and overall plant and animal species diversity.*

¹² The BLM's NEPA Handbook H 1790-1 at page 62 states "Socioeconomic impacts are usually indirect and largely fall on communities and local government institutions, by definition located outside BLM-managed lands. While some mitigation strategies are within the BLM's control, (such as regulating the pace of mineral exploration and development to minimize rapid, disruptive social change), most mitigation strategies require action by other government entities—typically cities, counties, and State agencies," *citing* the BLM Handbook of Socio-Economic Mitigation, IV-2.

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¹³ There is either plan maintenance or a plan amendment. There is no in-between. If an EIS is required, then this cannot be waived.

¹⁴ See 40 C.F.R. § 1506.2. The goal is to describe inconsistencies early on in the planning process to determine how inconsistencies can be reconciled prior to the draft.

¹⁵ Adding this exercise could help to prevent non-implementable decisions.

¹⁶ See definition for "minor change."

¹⁷ § 1610.4-9 does not exist in the proposed Regulations. It was instead moved to § 1610.6-4.

¹⁸ This language is unnecessary. The agency must always be consistent with Federal laws and policy.

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