



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

May 20, 2016

Mr. Neil Kornze
Director, Bureau of Land Management
U.S. Department of the Interior
1849 C St. NW, Room 5665
Washington, DC 20240

RE: Resource Management Planning, Proposed Rule; Docket Number BLM-2016-0002

Dear Director Kornze:

The Rural County Representatives of California (RCRC) is an association of thirty-five California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties. RCRC member counties are tasked with a variety of decision-making responsibilities related to land use and development in rural California communities and are challenged with environmental stewardship, economic vitality, and social equity at the local level. RCRC welcomes this opportunity to provide comment on the Bureau of Land Management's (BLM) proposed Resource Management Planning regulations as part of the agency's "Planning 2.0" effort.

The BLM manages 15.2 million acres of land and mineral resources in California, which is nearly 15 percent of California's total land mass. As such, the proposed rule will have a significant impact on how BLM plans for and manages lands within the boundaries of RCRC member counties. As co-regulators and intergovernmental partners in BLM's mission, California counties have a significant interest in providing the most meaningful information and analysis possible to help in BLM's resource management planning activities, especially relating to the significant role local governments and locally generated information should play in guiding the planning process. Given the potentially significant impact of this regulation and the volume of information involved, as well as the staffing and budgetary realities facing California's rural counties, RCRC offers the following comments:

The proposed rule significantly weakens consistency between federal and local plans.

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Section 202 (c) (9) of the Federal Land Policy and Management Act (FLPMA) states:

“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; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and 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.”

The proposed rule weakens BLM’s ability to ensure consistency with local plans by revising consistency requirements so that resource management plans must only be consistent with officially adopted local land use plans. If this revision is made, BLM would no longer have to consider official local land use policies, programs, or actions that have been implemented by local governments. The change would also mean that BLM would no longer have to consider local land use plans that are in the process of being developed or revised, which would significantly impact the ability of BLM and local governments to work together to ensure that the needs of the surrounding communities are met during the resource management planning process.

The proposed rule also strikes an important section from the existing rule language, Section 1610.3-1(d), which requires not only consistency with officially adopted and approved resource related plans, policies or programs, but also requires BLM to identify and notify local governments when inconsistencies exist, provide reasons if they cannot be remedied, and work with those local governments to identify ways to achieve consistency. County governments should be considered partners by BLM and other planning agencies, particularly when the use of resources within county boundaries is in question. Without this provision, we are concerned that coordination of resource management plans between BLM and local governments will become much more complicated and difficult to achieve without being specified in statute, which violates the spirit and intent of FLPMA. RCRC recommends that BLM leave the consistency language in the rule as is in order to ensure fully informed planning processes in the future.

The move to landscape scale planning devalues local government input into the planning process.

The revised USDA Forest Service (USFS) National Forest System Land Management Planning Rule adopted in 2012 used a similar landscape level planning process to the one proposed in the current BLM rulemaking. While RCRC does not have

a fundamental objection to landscape level land management, the process so far has borne out the fact that it simply does not allow for the same meaningful county government input as a more localized version of planning. This is especially a concern in light of the fact that USFS has only undertaken one plan revision so far in California, and it has still not been completed because of the additional complexities involved in planning for such large areas.

Landscape scale planning, particularly across state lines as discussed in the proposed rule, unfortunately results in decisions being made by land managers that are far removed from the communities, land, and resources impacted by the plans. While county governments are more than able and willing to provide information and resources to aid decision makers in the planning process, the proposed removal of certain consistency requirements will make it even more difficult to ensure that final plans reflect the best use of the lands at the local level. RCRC recommends that BLM afford local governments some additional opportunities for input to ensure that future proposed plan amendments properly consider all local implications.

The proposed rule diminishes opportunity for public input through the use of implementation strategies rather than plan components.

The proposed rule distinguishes between plan components, which can only be amended or revised through a resource management planning process including local government coordination, and implementation strategies which are merely guidance strategies that can be amended or changed at any time without meaningful public input. The BLM's analysis states that actions such as resource protection and access development could be undertaken as implementation strategies, which overlooks the fact that many rural California counties rely on things like public lands access to drive tourism and boost local economies. By undertaking such actions through implementation strategies, BLM will prevent local governments from offering meaningful, valuable input on proposals that could ultimately have significant, avoidable negative impacts on rural communities. RCRC recommends that the proposed rule be changed to clarify that the modification of both plan components and implementation strategies must include full coordination with local governments and the opportunity for meaningful public input.

The proposed rule concentrates more decision-making in Washington, DC

The BLM enjoys an unparalleled reputation among federal agencies because of its historically stronger working relationship with state and local governments. The proposed rule threatens that relationship by shifting the responsibility for developing resource management plans from the resource area to BLM headquarters in Washington, DC. We strongly urge that the final rule retain the State Director and field managers as responsible parties. Under the proposed rule, the BLM Director would determine the "deciding official," who determines the planning area and all aspects of plan development. The BLM Director would also determine the planning areas that cross state boundaries.

It is not inconceivable that the planning area decisions and deciding officials could be far removed from the affected resource area, contrary to the spirit and intent of FLPMA. While in many cases, the Director would likely choose the State Director and field manager to be the responsible parties for a planning area that would traditionally be subject to their purview, the proposed rule establishes the certain opportunity for BLM to deviate from that practice and develop a resource management plan far removed from state, local, and tribal governments.

30-day review periods are insufficient for meaningful local government analysis and input.

RCRC appreciates the additional public input opportunities afforded in the proposed rule. However, many of those public review periods allow a minimum 30-day period for input, which is insufficient for local governments to analyze complex planning proposals and provide meaningful input. The majority of California counties that are impacted by resource management planning efforts are in rural areas of the State and do not have the staff resources to review and analyze complicated planning proposals in a short 30-day time frame. If a county needs to provide official written comment, staff must obtain approval from the county Board of Supervisors at an official hearing, which also means providing proper public notice to county residents in accordance with California law. A review period of 30 days is simply not enough time for county governments to complete the necessary steps to provide meaningful input. RCRC recommends review periods of at least 45 days for changes made to plans through plan maintenance, and review periods of at least 60 days for all other changes.

The comment period provided for the proposed rule is not sufficient for meaningful input from many county governments.

RCRC is concerned that the current comment period closing May 25, 2016 does not provide adequate time for counties to respond to BLM on this important issue. While we realize the comment period affords a total of 90 days for counties to comment, many rural counties simply do not have the staff time and resources to do the necessary analysis of the substantive regulatory changes presented in the proposed rule in that time frame. Additionally, county government staff must follow a strict process of obtaining Board of Supervisors approval for any official correspondence on such a proposal, which requires extra lead time. California's rural counties are also in the midst of dealing with other significant resource challenges such as wildfire cleanup and mitigation and, most immediately, the urgent tree die-off as a result of pest infestation due to recent severe drought conditions, all of which are requiring significant staff time to address the associated public health and safety risks. RCRC recommends and requests an additional public comment period for this proposed regulation of at least 60 days so that those counties with limited resources have adequate time to review the proposal and engage with BLM in this regulatory process.

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Finally, the National Association of Counties (NACo) is submitting with their comments a "redline" version of the rule with proposed amendments to address their member counties' concerns with the rulemaking. RCRC fully supports NACo's proposal, as we feel it accurately reflects our comments and remedies many of the issues present in the proposed rule.

If you should have any questions or would like to discuss our comments further, please contact me at (916) 447-4806 or sheaton@rcrcnet.org or Thane Young at (202) 638-1950 or tyoung@vsadc.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Staci Heaton", with a stylized flourish at the end.

STACI HEATON
Regulatory Affairs Advocate

cc: RCRC Board of Directors

Attachment: NACo's Annotated Comments and Revisions

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"Planning 2.0" (81 Fed. Reg. 9674)

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.
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Subpart 1610—Resource Management Planning

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- 1610.1–1 Guidance and general requirements.
 - 2 Plan components.
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- 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.** Resource management plan approval, implementation and modification.
- 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*¹ 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

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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 process as 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 change*² 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.³ ~~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.

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§ 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.⁵
 - (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 (see § 1610.5–4); and
 - (v) Preparation of the proposed resource management plan and implementation strategies (see

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- (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.⁷ *show how those 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 inconsistencies; or

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- (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**⁸ 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.~~
- 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 aquties 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
 - (iii) The estimated levels of these goods and services that may

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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 1610.5-75.

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

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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 strategies¹⁵** 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 during the planning process by the protesting party or an

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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 changes¹⁶ ~~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 comparable to the manner in which it would have been considered in a

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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:
 - (1) The management framework plan must be in compliance with the

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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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