



## Recommendations for BLM Streamlining Planning & NEPA

July 24, 2017

### A. Focused Analysis: How can the BLM reduce duplicative and disproportionate analyses?

1. Solution #1 – Develop Guidance that Broadly Interprets Plan Conformance to Reduce the Need for Plan Amendments

Provide for a broader interpretation of “plan conformance” to reduce the need for plan amendments. Pursuant to current regulation (43 C.F.R. § 1601.0-5(b)), plan conformance means that an action is either “specifically provided for in the plan” or “if not specifically mentioned, [] clearly consistent with the terms, conditions and decisions of the approved plan or plan amendment.” The term “clearly consistent” with respect to “terms, conditions and decisions of an approved plan or plan amendment” could be broadly interpreted (via written policy) to reduce the need for plan amendments.

2. Solution #2 – Provide Enhanced Staff Training

BLM must provide its staff specific training to strictly follow the current planning regulations and manage third party contractors assisting the agency with their analysis. Analysis should focus on the truly significant impacts and minimize discussion and consideration of nominal effects for the sake of coverage of every conceivable impact.

3. Solution #3 – Utilize High Quality, Available Information with a Focus on Local Input and Tiering

BLM must utilize high quality information derived from inventory data consistent with the requirements of the Data Quality Act and NEPA. State and local governments commonly maintain localized data that should be utilized. “Citizen-science” must be disclosed and scrutinized for quality before it is utilized. Tiering is a well-established tool that should be used where practicable. During the preparation plan phase, an audit of existing NEPA documentation should be completed and an annotated bibliography developed that identifies the available NEPA documentation relevant to the new planning effort.

4. Solution #4 – Develop and Utilize Model Plan Forms

Disproportionate analysis is endemic to the NEPA. Addressing the problem may require legislative reform of NEPA. EAs commonly turn into mini-EIS documents in order to “bullet-proof” the analysis to withstand judicial scrutiny. Modern EISs are comprised of massive volumes of content that



are laborious to review and unwieldy to administer. One possible solution is the use of a model form(s) for land use plans/amendments and related NEPA documents with specific size limitations. Such forms could be required pursuant to BLM policy in the form of an instructional memorandum or modification to BLM’s Land Use Planning Handbook.

**B. User-friendly Planning: How can the BLM help state and local governments, tribal partners, and other stakeholders understand and participate in the planning process?**

1. Solution #1 – Strictly Adhere to the Provisions of FLPMA

BLM should strictly adhere to the provisions of FLPMA that require: (i) coordination with State and local governments; (ii) meaningful public involvement; (iii) opportunities for furnishing advice to the Secretary; and (iv) consistency with State and local land use plans. Coordination is a legal requirement of FLPMA and is not co-equal to public comment, collaboration or cooperating agency status under NEPA.

2. Solution #2 – Designate Outreach/Education Liaisons before Plan Preparation

The outreach and coordination process must start well in advance of the relevant planning process and cannot be limited to the opportunities for participation provided by the NEPA process (scoping, commenting on draft NEPA documents and the Governor’s consistency review). Designated outreach liaisons associated with each planning exercise may be helpful. In addition, state and local governments must be educated about the coordination process and the importance of their role in that process (43 U.S.C. § 1712(c)(9)). BLM might also consider issuing guidance for coordination to facilitate meaningful and streamlined utilization.

3. Solution #3 – Seek Opportunities for Developing Knowledge of and Involvement in State and Local Planning Processes

BLM should seek to better understand state and local land use planning processes to aid in understanding inherent distinctions from the FLPMA process and identifying inconsistencies. The education process must be a two-way street that involves continual communication. BLM should strive to educate state, local and tribal partners about the potential inclusion of certain land use planning elements that may be unique to FLPMA, but have some application at a local level as well as in enhancing the likelihood of making an “apples to apples” comparison of plans across multi-jurisdictional levels.

4. Solution #4 – Identify Contact and Commence Outreach for Governor’s Consistency Review at the Outset of the Planning Process

Outreach to state officials in conjunction with the Governor’s consistency review process must start well in advance of the 60-day period set forth in regulations (43 C.F.R. § 1610.3-2(e)). State



officials have to coordinate input from multiple agency heads and review periods often expire before organizational efforts can be undertaken to distribute the NEPA document for review. Efforts should be undertaken to develop a single point of contact within each state in the preparation plan phase to ensure appropriate time for state review and consideration.

**C. Transparency: How can the BLM foster greater transparency in the NEPA process?**

1. Solution #1 – Policy Should Not Dictate Planning Outcome

BLM should never initiate a planning process that will have a pre-determined outcome, nor should any process be based on policies designed to undercut the applicable statutory and regulatory process. Over the course of the last decade, land use planning outcomes have been improperly influenced toward pre-ordained outcomes by virtue of the adoption of overarching policies that elevated conservation values over multiple-use values. Examples of this include the recently rescinded climate change and mitigation policies, the latter of which imposed a net-benefit or no-net loss standard on all land use activities.

2. Solution #2 – Maintain a Website Dedicated to Planning Processes and Administration

BLM should host and maintain plan specific websites where the following are published, maintained and updated: (i) planning rules and policies and schedules for upcoming planning efforts; (ii) preparation plans; (iii) stakeholder outreach plans; (iv) the analysis of the management situation documentation; (v) links to the documentation BLM is relying on for baseline assessments and effects analysis conclusions; (vi) agendas and meeting notes from coordination efforts; (vii) public notices; (viii) draft and final NEPA and related protest documentation; and (ix) final plans, plan amendments and plan maintenance data.

3. Solution #3 – Early Stakeholder Involvement

NEPA is designed to foster transparency and, when properly utilized, is effective. BLM should involve stakeholders at the outset of preparation plan development. However, stakeholder input must be properly managed to achieve targeted and relevant input that is not a mere “voting” exercise based on value judgements about uses of public lands. The publication of a notice of intent should not be the first time the public is made aware of a planning process. Stakeholder and BLM RAC involvement in identifying available and missing data, formulating a participation plan and identifying key issues and management concerns will help expedite the process and ensure a good result.

4. Solution #4 – Effectively Coordinate to Help Achieve Plan Consistency

Embrace the coordination process for land use inventory, planning and management activities; mandate that BLM staff keep apprised of state, local and tribal land use plans and meet regularly with those officials to discuss planning constraints and consistency issues. BLM should genuinely strive to



obtain plan consistency and empower state and field offices to develop, revise and amend plans based on state and local values minimizing Washington D.C. bias and politics. BLM should also consider drafting targeted guidance for resolving inconsistencies instead of defaulting to generally applicable dispute resolution processes.

**D. Being Good Neighbors: How can the BLM build trust and better integrate the needs of state and local governments, tribal partners, and other stakeholders?**

1. Solution #1 – Use the Resource Advisory Councils (RACs) as FLPMA Mandates

The BLM must use the RACs as intended by FLPMA and the current planning regulations and not as a mere forum for agency departments to provide general updates. The core function of RACs is to provide advice to the BLM on the preparation and implementation of land use plans BLM should utilize RAC-based technical review teams to aid in gathering and analyzing data and developing recommendations to aid in the planning process. RACs could also serve as a liaison between BLM and stakeholders and could facilitate stakeholder working groups to help inform agency planning. BLM’s failure to involve the RACs in the development of the Proposed BLM 2.0 Planning Rules was a missed opportunity.

2. Solution #2 – Adhere to FLPMA and the Mandate of Multiple Use

BLM should strictly adhere to the provisions of FLPMA, the principle of multiple-use, and the existing regulations governing land use planning. Simply following existing statutory and regulatory provisions is critical to rebuilding trust. This includes giving appropriate import to the provisions of the Mining and Minerals Policy Act during the planning process as intended by Congress when adopting FLPMA (“public lands must be managed in a manner which recognizes the nation’s need for domestic sources of minerals, food, timber, and fiber from public lands including implementation of the Mining and Minerals Policy Act of 1970 as it pertains to public lands”) (43 U.S.C. § 1701(a)(12)).

3. Solution #3 – Minimize or Eliminate the Utilization of Predictive Tools

Eliminate the practice of utilizing geo-spatial tools as the centerpiece of analysis and decision-making. Tools such as rapid eco-regional assessments (REAs) and habitat equivalency analysis (HEAs) only scratch the surface of data gathering and should drive agency decision-making. There is no substitute for localized data collection that is ground-truthed for reliability. Too much emphasis has been placed on predictive trends, identifying regionally-significant riparian habitats and estimating habitat loss. Not enough focus is being placed on local land use conditions and implementing management objectives grounded in multiple-use.

4. Solution #4 – Eliminate or Minimize the Zoning Approach to Land Use Management



BLM must retain flexibility in land use plans to address the needs of various state and local governments and tribal partners. Accordingly, the agency should move away from the “zoning” approach where certain classes of activities are prohibited or intensive uses are directed to a specific area(s) for administrative convenience or reasons grounded in pressure from non-governmental organizations. This trend grew out of the renewable energy boom (designation of solar energy zones or SEZs) but does not work well for other types of land uses (e.g., mineral exploration and development, linear projects, grazing).

**E. Reducing Litigation: How can the BLM create legally defensible documents and avoid the delays associated with legal challenges?**

1. Solution #1 – Properly Train Staff to Administer Planning Processes and Manage Third Party Consultants

BLM should provide increased training to dedicated staff who then become planning team leads. Those team leads should then select third party contractors who have land use planning expertise and appropriately direct and manage those contractors to ensure quality documentation that will withstand judicial scrutiny. NEPA processes (both planning and project level) have become consultant driven with the tendency to over-analyze for the sake of covering every conceivable baseline condition and potential effect to the detriment of quality documentation that meets the specific criteria of the planning regulations.

2. Solution #2 – Follow Applicable Law and Regulations and Eliminate Sue and Settle Practices

Rigidly adhering to the provisions of FLPMA and the planning regulations will lead to defensible NEPA documents, plan amendments and revisions. Law suits are inevitable but when filed, the agency should vigorously defend their analysis to put an end to the “sue and settle” phenomenon. Non-governmental organizations (NGOs) constantly allege NEPA deficiencies because it is common for agencies to cede to their demands for additional analysis instead of defending the analysis that was completed. NGOs then seek reimbursement of their fees under the Equal Access to Justice Act and the cycle continues. The number of legal challenges can be reduced by eliminating this practice.

3. Solution #3 – Eliminate Use of Administrative Designations Not Authorized by Congress

The utilization of “administrative designations” that severely limit land use activities should be eliminated to the extent possible. The designation of Areas of Critical Environmental Concern (ACECs), Resource Natural Areas (RNAs) and Back-Country areas has become prolific. In addition, other special management areas (e.g., SEZs, military land use nexus zones) and related plans (e.g., Travel Management Plans, Visual Resource Management Plans) layer additional management restrictions that are impossible for stakeholders to navigate and BLM to administer. These designations trigger lawsuits which would be reduced if eliminated.



4. Solution #4 – Address Rather than Dismiss Valid Protests

BLM should make modifications to plans, revisions or amendments when valid protests warrant. Too often, BLM will reject valid protests for invalid reasons anticipating that protesters will not take the next step to appeal the decision. Legal challenges may be reduced by virtue of earnestly working to resolve protests instead of flatly dismissing them.

**F. “Right-sized” Environmental Analysis: How can the BLM more closely match the level of NEPA analysis to the scale of the action being analyzed?**

1. Solution #1 – Provide Adequate Staff Training and Appropriate Oversight of Third Party Consultants

Quality NEPA analysis that is consistent with the requirements of FLPMA and the land use planning regulations is critical. Quality is often sacrificed at the expense of quantity under the guise of creating a defensible NEPA document. BLM must provide adequate and specialized training to its planning leads. In turn, those agency professionals must be responsible for monitoring the process, focusing the analysis on significant issues and not be led by third party consultants who may not be motivated by strict regulatory compliance or appropriate scale.

2. Solution #2 – Utilize Smaller Planning Areas that Coincide with Local Jurisdictional Boundaries

Consider smaller planning areas that are sub-regions of a geographic area associated with a particular field office. This can be authorized by the State Director pursuant to existing regulation (43 C.F.R. § 1610.1(b)). Aspects of regional and ecosystem planning may have intellectual merit or appear attractive in terms of reduced workload, but they are not practicable, timely or cost-effective. Modern land use plan revisions can take over a decade to complete. This is not what Congress intended and BLM cannot properly serve its customers (i.e., the public land users) by continuing in this fashion.

3. Solution #3 – Effectively Use EAs and Categorical Exclusions

For plan amendments, consider increased utilization of environmental assessments and expand utilization of categorical exclusions for activities beyond plan maintenance by updating the Department of Interior’s Departmental Manual (516 DM 11.9(J)). Newly developed categorical exclusions could be effectively utilized for certain classes of plan amendments that are not wholly inconsistent with existing plans and that are otherwise consistent with applicable legislation or regulation. Further, review should be undertaken of the current list of “extraordinary circumstances” (516 DM Appendix 5) so as not to preclude widespread utilization of any newly developed categorical exclusions.

4. Solution #4 – Utilize Scheduling and Meet Milestone Deadlines



Prior to undertaking any land use plan amendment, BLM should develop a preliminary milestone schedule for the various stages of the NEPA process. Agency staff and third-party consultants should then be held to that schedule and only modified under extenuating circumstances. An up-to-date milestone schedule should be posted on a website dedicated to that land use planning effort.

**Please include any additional information you would like to provide below.**

Senator Jeff Flake (R-AZ) has expressed concerns with the BLM usage of RACs, particularly the Arizona RAC. In a May 25, 2016 letter to then-Director of the BLM, Neil Kornze, Senator Flake wrote of "significant concerns on the level of outreach BLM conducted when drafting the proposed rule." He went on to highlight that "no opportunity for the RACs to comment was provided, this goes against the very purpose for which they were established." Senator Flake again pressed the BLM at a June 27, 2016 hearing during which he questioned Kornze on the lack of meaningful consultation with the Arizona RAC during the drafting of BLM Planning 2.0. It makes no sense that RAC members were given no opportunity to participate in the development of the first new land planning rules developed by BLM in thirty years despite the fact that is what RACs were established to do. This should be corrected moving forward.