



4337-15

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Updates to Bureau of Indian Affairs Categorical Exclusions under the National Environmental Policy Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed action and request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend its categorical exclusions (CATEXs) under the National Environmental Policy Act of 1969 (NEPA) for certain BIA actions and is seeking comment. The BIA is requesting comment on whether to revise or delete any current CATEXs or add any new CATEXs.

DATES: Comments and related material must be postmarked no later than [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit your comments by only one of the following means: (1) By mail to: Dr. BJ Howerton, MBA, Branch Chief Environmental and Cultural Resource Management C/O Department of the Interior, 12220 Sunrise Valley Drive, Reston, VA 20192; or (2) by email to: bj.howerton@bia.gov. Please put "CATEX" in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. BJ Howerton, (703) 390-6524, email:

bj.howerton@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NEPA requires Federal agencies to consider the potential environmental consequences of their decisions before deciding whether and how to proceed. The Council on Environmental Quality (CEQ) encourages Federal agencies to use CATEXs to protect the environment more efficiently by: (a) reducing the resources spent analyzing proposals which generally do not have potentially significant environmental impacts, and (b) focusing resources on proposals that may have significant environmental impacts. The appropriate use of CATEXs allow the NEPA review to be concluded without preparing either an environmental assessment (EA) or an environmental impact statement (EIS) (40 CFR § 1500.4(p) and § 1508.4).

The CEQ regulations implementing NEPA define CATEXs as a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an EA nor an EIS is required. (40 CFR § 1508.4). The CEQ regulations encourage the use of CATEXs to reduce unnecessary paperwork and delays. A CATEX is a form of NEPA compliance; it is not an exemption from NEPA, but an exemption from requirements to prepare an EIS. Agency procedures must consider “extraordinary circumstances,” in which case a normally excluded action may have a significant effect and require preparation of an EA or EIS.

The Department of the Interior (Interior) has established CATEXs at 43 CFR § 46.210. In addition, BIA has bureau-specific CATEXs. The most recent CATEXs BIA established were three based on CATEXs currently used by the United States Forest Service (FS), as described in FS regulations 36 CFR 220, and by the Bureau of Land Management (BLM), as described the Departmental Manual, 516 DM 11. The BIA relied on the experience of the FS and BLM and applied its expertise to benchmark these CATEXs and determined these are appropriate to establish as BIA CATEXs. Because these CATEXs have important implications for actions

occurring on Indian lands, the BIA initiated consultation and requested comments from all federally recognized Tribes. This consultation period began on July 23, 2014, and concluded on September 21, 2014. A notice published in the Federal Register on November 14, 2014 (79 FR 68287) solicited public comments for that CATEX and ultimately, BIA adopted the forestry CATEXs. *See* 80 FR 8098 (Feb. 13, 2015).

This notice provides information on current BIA CATEXs and requests comment.

II. Current BIA CATEXs

Most of the current BIA CATEXs reside in the Departmental Manual in Part 516 Chapter 10: Managing the NEPA Process – Bureau of Indian Affairs. The majority of those exclusions in section 10.5 have an effective date of May 27, 2004. In addition, a CATEX for single family homesites at section 10.5(M)(7), became effective August 10, 2012. *See* 77 FR 47862. Most recently, CATEXs for forestry activities at Sections 10.5(H)(11), (12), and (13), became effective February 13, 2015. *See* 80 FR 8098. All of these CATEXs currently in effect are listed below:

10.5 Categorical Exclusions.

A. Operation, Maintenance, and Replacement of Existing Facilities.

Examples are normal renovation of buildings, road maintenance and limited rehabilitation of irrigation structures.

B. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are in a signed contract, follow BIA policy, and no change in operations or maintenance is anticipated.

C. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.

D. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.

E. Self-Determination and Self-Governance.

(1) Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

(2) Self-Governance compacts for BIA programs which are listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

F. Rights-of-Way.

(1) Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.

(2) Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from

the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.

(3) Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.

G. Minerals.

(1) Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.

(2) Approval of unitization agreements, pooling or communitization agreements.

(3) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(4) Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.

H. Forestry.

(1) Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.

(2) Approval and issuance of cutting permits for forest products not to exceed \$5,000 in value.

(3) Approval and issuance of paid timber cutting permits or contracts for products valued at less than \$25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(4) Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(5) Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.

(6) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.

(7) Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(8) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(9) Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(10) Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(11) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Removing individual trees for sawlogs, specialty products, or fuelwood.

(b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(12) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or

Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this CE, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, such that in the judgment of an experienced forest professional or someone technically trained for the work, the tree is likely to die within a few years.

Examples include, but are not limited to:

(a) Harvesting a portion of a stand damaged by a wind or ice event.

(b) Harvesting fire damaged trees.

(13) Commercial and noncommercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as

soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations (a buffer); and

(b) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

(1) Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516) or Toxic Substances Control Act (P.L. 94-469).

L. Roads and Transportation.

(1) Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

(2) Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

(3) Activities included in a "highway safety plan" under 23 CFR 402.

(4) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(5) Emergency repairs under 23 U.S.C. 125.

(6) Acquisition of scenic easements.

(7) Alterations to facilities to make them accessible for the elderly or handicapped.

(8) Resurfacing a highway without adding to the existing width.

(9) Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).

(10) Approvals for changes in access control within existing right-of-ways.

(11) Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier NEPA analysis has already been prepared.

M. Other.

(1) Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.

(2) Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

(3) Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

(4) Approval of an Application for Permit to Drill for a new water source or observation well.

(5) Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

(6) Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa-11) when the permitted activity is being done as a part of an action for which a NEPA analysis has been, or is being prepared.

(7) Approval of leases, easements or funds for single-family homesites and associated improvements, including but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous land, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

III. Comments Invited

The BIA encourages interested persons to submit written comments on any BIA CATEX. For example, comments may address keeping, revising, or deleting current CATEXS and suggest new CATEXS for consideration. Persons submitting information should include their name, address, and other appropriate contact information. Before including such personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. You may submit your information by one of the means listed under **ADDRESSES**. If you submit information by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and

electronic filing. If you submit information by mail and would like to know it was received, please enclose a stamped, self-addressed postcard or envelope. The BIA will consider all comments received during the comment period.

Dated: January 24, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary – Indian Affairs,

Exercising the Authority of the Assistant Secretary – Indian Affairs.

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