

BLM's Land Use Planning and NEPA Streamlining Report: Eviscerating Public Involvement and Transparency and Elevating Development Over All Other Activities

On September 27, 2017, the Bureau of Land Management (BLM), without notifying the public, finalized [a new report](#) that recommends sweeping limitations on the public's ability to participate in the public lands decision-making process and to obtain even basic information from BLM. The report also seeks to enshrine energy and other forms of development as the dominant uses of public lands, in spite of BLM's multiple-use mission, leaving little room for consideration and equal treatment of wildlife, outdoor recreation and wilderness. In fact, the report includes steps to prevent BLM from recognizing and protecting other resources. In spite of the enormous implications for the public, BLM kept this report under wraps for several months and it only saw the light of day after it was leaked to the media.

The report, which stretches to nearly 200 pages, includes a wide-range of legislative, regulatory and policy recommendations with dramatic implications for all aspects of BLM's multiple-use mission and compliance with NEPA. A few of the most profound changes are summarized below, along with how BLM is proposing to make those changes in the report (i.e., legislation, rulemaking, policy change).

1. Energy Development

- Establish new and increase use of existing "categorical exclusions" (CXs) for a wide range of coal, oil and gas leasing and drilling activities , which exempt the agency from complying with requirements to analyze environmental impacts and be transparent in decision-making (legislation and/or policy change).
- Broaden use of "Determinations of NEPA Adequacy" (DNAs) for a wide range of leasing and drilling activities , which are another way around obligations to ensure decisions have been adequately analyzed and vetted by the public (policy change).
- Utilize "alternate staffing models" to further streamline the approval process for oil and gas leases and drilling permits (policy change).

2. Wildlife

- Eliminate the need for Endangered Species Act (ESA) consultation with the U.S. Fish & Wildlife Service for land use planning (legislation, rulemaking and/or policy change).
- Provide BLM with the discretion to not reinstitute ESA consultation over existing land use plans when new species are listed or critical habitats are designated (legislation and/or rulemaking).

3. Categorical Exclusions from NEPA

- Broaden the use of categorical exclusions for a wide-range of activities, including for RMP revisions and amendments, vegetation management, land disposals and energy leases and drilling permits (legislation and/or policy changes).
- Redefine "extraordinary circumstances" that disqualify projects from NEPA analysis using categorical exclusions (rulemaking).

4. Additional NEPA Streamlining

- Establish and require compliance with page and time limits for NEPA analysis (policy change).
- Permit the use and adoption of state and tribal environmental documents, in lieu of preparing required federal NEPA documents (rulemaking).

- Codify the use of DNAs (rulemaking).

5. Public Participation/Information-Sharing

- Limit the number of Freedom of Information Act requests any one group/person can file and make it more expensive to obtain information (legislation).
- Broaden the use of exemptions from public-disclosure for information provided to BLM by state and local governments (legislation).
- Prohibit the awarding of attorney's fees in successful litigation against BLM) under the Equal Access to Justice Act (legislation and/or policy change).

6. Conservation Designations

- Eliminate the requirement to identify and evaluate Areas of Critical Environmental Concern (ACECs) during the land use planning process (legislation and/or rulemaking).
- Eliminate the requirement to adopt temporary measures to protect "relevant" and "important" environmental values while ACECs are under consideration (policy change).
- Eliminate the requirement to inventory for lands with wilderness characteristics as a resource to be managed by the BLM (legislation).

7. Cultural Resources

- Modify existing nationwide programmatic agreements under Section 106 of the National Historic Preservation Act (NHPA) to identify "smaller actions" that warrant expedited review (policy change).
- Eliminate Section 106 NHPA review for activities categorically excluded under NEPA. (legislation).

8. Land Use

- Eliminate the public's ability to appeal (to the Interior Board of Land Appeals (IBLA)) forest management decisions (rulemaking).
- Eliminate the public's ability to protest grazing decisions and shorten the IBLA appeal period to 15 days (rulemaking).