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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Parts 1600 and 6100

[LLHQ230000.23X.L117000000.PN0000]

RIN: 1004-AE92

#### Conservation and Landscape Health

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes new regulations that, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, would advance the BLM’s mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data. To support these activities, the proposed rule would apply land health standards to all BLM-managed public lands and uses, clarify that conservation is a “use” within FLPMA’s multiple-use framework, and revise existing regulations to better meet FLPMA’s requirement that the BLM prioritize designating and protecting Areas of Critical Environmental Concern (ACECs). The proposed rule would add to provide an overarching framework for multiple BLM programs to promote ecosystem resilience on public lands.

**DATES:** Please submit comments on this proposed rule on or before **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or 15 days after the last public meeting. The BLM is not obligated to consider comments made after this date in making its decision on the final rule.

**ADDRESSES:** Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St., N.W., Room 5646, Washington, DC 20240, Attention: 1004–AE92.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "1004-AE-92" and click the "Search" button. Follow the instructions at this website.

*For Comments on Information-Collection Requirements:* Written comments and recommendations for the information-collection requirements should be sent within 30 days of publication of this document to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this specific information collection by selecting “Currently under Review – Open for Public Comments” or by using the search function. You may also provide a copy of your comments to the BLM’s Information Collection Clearance Officer via the above address with “Attention PRA Office,” or via email to [BLM\\_HQ\\_PRA\\_Comments@blm.gov](mailto:BLM_HQ_PRA_Comments@blm.gov). Please reference OMB Control Number 1004-0NEW and RIN 1004-AE92 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Miller, Deputy Division Chief for Wildlife Conservation, at 202–317–0086, for information relating to the BLM’s national wildlife program or the substance of this proposed rule. For information on procedural matters or the rulemaking process, you may contact Chandra Little, Regulatory Analyst for the Office of Regulatory Affairs, at 202–912–7403. Individuals in the United States who are deaf, deafblind, or hard of hearing, or who have a speech disability, may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

- I. Executive Summary
- II. Public Comment Procedures
- III. Background
- IV. Section-by-Section Discussion
- V. Procedural Matters
- I. Executive Summary**

Under FLPMA, the principles of multiple use and sustained yield govern the BLM’s stewardship of public lands, unless otherwise provided by law. The BLM’s ability to manage for multiple use and sustained yield of public lands depends on the resilience of ecosystems across those lands—that is, the health of the ecosystems and the ability of the lands to deliver associated services, such as clean air and water, food and fiber, renewable energy, and wildlife habitat. Ensuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use. To ensure the resilience of renewable resources on public lands for future generations, the proposed rule promotes “conservation” and defines that term to include both protection and restoration activities. It also advances tools and processes to enable wise management decisions based on science and data.

The proposed rule provides a framework to protect intact landscapes, restore degraded habitat, and ensure wise decisionmaking in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. To do so, the proposed rule applies the fundamentals of land health and related standards and guidelines to all BLM-managed public lands and uses; current BLM policy limits their application to grazing authorizations. In implementing the fundamentals of land health, the proposed rule codifies the need across BLM programs to use high-quality information to prepare land health assessments and evaluations and make determinations

about land health condition. The proposed rule requires meaningful consultation during decisionmaking processes with Tribes and Alaska Native Corporations on issues that affect their interests, including the use of Indigenous Knowledge.

To support efforts to protect and restore public lands, the proposed rule clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework. Consistent with how the BLM promotes and administers other uses, the proposed rule establishes a durable mechanism, conservation leases, to promote both protection and restoration on the public lands, while providing opportunities for engaging the public in the management of public lands for this purpose. The proposed rule does not prioritize conservation above other uses; it puts conservation on an equal footing with other uses, consistent with the plain language of FLPMA. Finally, the proposed rule would amend the existing ACEC regulations to better ensure that the BLM is meeting FLPMA's command to give priority to the designation and protection of ACECs. The proposed regulatory changes would emphasize ACECs as the principal designation for protecting important natural, cultural, and scenic resources, and establish a more comprehensive framework for the BLM to identify, evaluate, and consider special management attention for ACECs in land use planning. The proposed rule emphasizes the role of ACECs in contributing to ecosystem resilience by providing for ACEC designation to protect landscape intactness and habitat connectivity.

## **II. Public Comment Procedures**

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, or through the <https://www.regulations.gov> website (see the **ADDRESSES** section).

Please make your comments on the proposed rule as specific as possible, limit them to issues pertinent to the proposed rule, explain the reason for any changes you

recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under the **ADDRESSES** section. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. Although 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.

As explained below, this proposed rule includes revisions to information-collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information-collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the “**DATES**” and “**ADDRESSES**” sections above. Please note that due to COVID-19, electronic submission of comments is recommended.

### **III. Background**

#### **A. THE NEED FOR RESILIENT PUBLIC LANDS**

The BLM manages more than 245 million acres of public lands, roughly one-tenth of the country. The BLM’s stewardship of these lands and resources is guided by FLPMA, unless otherwise provided by law. FLPMA provides the BLM with ample authority and direction to conserve ecosystems and other resources and values across the public lands. Section 102(a)(8) of FLPMA states the policy of the United States 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; and that will provide for outdoor recreation and human occupancy and use” (43 U.S.C. 1701(a)(8)). Each of these services and values that FLPMA authorizes the BLM to safeguard emanates from functioning and productive native ecosystems that supply food, water, habitat, and other ecological necessities.

Furthermore, FLPMA requires that unless “public land has been dedicated to specific uses according to any other provisions of law,” the Secretary, through the BLM, must “manage the public lands under principles of multiple use and sustained yield” (43 U.S.C. 1732(a)). The term “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” (43 U.S.C. 1702(h)). The BLM recognizes this need for ecosystems to continue to provide services and values when declaring, in its mission statement, its goal “to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.” (blm.gov (emphasis added); see also 43 U.S.C. 1702(c).) Without ensuring that native ecosystems are functioning and resilient, the agency risks failing on this commitment to the future.

The term “multiple use” means, among other things, “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”; “the use of some land 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 nonrenewable resources, including, but not limited to, recreation, range,

timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values”; “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land 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.” (43 U.S.C. 1702(c)). FLPMA’s declaration of policy and definitions of “multiple use” and “sustained yield” reveal that conservation is a use on par with other uses under FLPMA. The procedural, action-forcing mechanisms in this proposed rule grow out of that understanding of multiple use and sustained yield.

Public lands are increasingly degraded and fragmented. Increased disturbances such as invasive species, drought, and wildfire, and increased habitat fragmentation are all impacting the health and resilience of public lands and making it more challenging to support multiple use and the sustained yield of renewable resources. Climate change is creating new risks and exacerbating existing vulnerabilities.<sup>1</sup>

To address these threats, it is imperative for the BLM to steward public lands to maintain functioning and productive ecosystems and work to ensure their resilience, that is, to ensure that ecosystems and their components can absorb, or recover from, the effects of disturbances and environmental change. This proposed rule would pursue that goal through protection, restoration, or improvement of essential ecological structures and functions. The resilience of public lands will determine the BLM’s ability to effectively manage for multiple use and sustained yield over the long term. The proposed rule, in acknowledging this reality, identifies and requires practices to ensure that the BLM manages the public lands to allow multiple uses while retaining and building

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<sup>1</sup> See generally Carr, et al., A Multiscale Index of Landscape Intactness for the Western United States (2016), <https://www.sciencebase.gov/catalog/item/57d8779de4b090824ff9acfb>; Doherty et al., A Sagebrush Conservation Design to Proactively Restore America’s Sagebrush Biome (Open-file report 2022-1081 USGS), <https://pubs.er.usgs.gov/publication/ofr20221081>.

resilience to achieve sustained yield of renewable resources. This proposed rule is designed to ensure that the nation's public lands continue to provide minerals, energy, forage, timber, and recreational opportunities, as well as habitat, protected water supplies, and landscapes that resist and recover from drought, wildfire, and other disturbances. As intact landscapes play a central role in maintaining the resilience of an ecosystem, the proposed rule emphasizes protecting those public lands with remaining intact, native landscapes and restoring others.

#### B. MANAGEMENT DECISIONS TO BUILD RESILIENT PUBLIC LANDS

The proposed rule recognizes that the BLM has three primary ways to manage for resilient public lands: (1) protection of intact, native habitats; (2) restoration of degraded habitats; and (3) informed decisionmaking, primarily in plans, programs, and permits.

The BLM protects intact landscapes using various tools, including designation of ACECs. The proposed rule uses the term "conservation" in a broader sense, however, to encompass both protection and restoration actions. Thus, it is not limited to lands allocated to preservation, but applies to all BLM-managed public lands and programs.

While BLM policy and guidance outlined in Manual Sections 6500, 6840, 5000, and 1740 encourage programs to implement conservation and ecosystem management, the BLM does not currently have regulations that promote conservation efforts for all resources. This proposed rule is intended to address this gap in the Bureau's regulations.

The proposed rule would require the BLM to plan for and consider conservation as a use on par with other uses under FLPMA's multiple use framework and identify the practices that ensure conservation actions are effective in building resilient public lands.

Conservation, in this proposed rule, includes management of renewable resources consistent with the fundamentals of land health (described below), designed to reach desired future conditions through protection, restoration, and other types of planning, permitting, and program decisionmaking.



The proposed rule addresses protection of intact, native landscapes. One of the principal tools the BLM has available to manage public lands for that type of conservation use is the designation of ACECs. ACECs are areas where special management attention is needed to protect important historic, cultural, and scenic values, fish, or wildlife resources, or other natural systems or processes, or to protect human life and safety from natural hazards. The proposed rule clarifies and expands existing ACEC regulations to better ensure that the BLM is meeting FLPMA's command to give priority to the designation and protection of these important areas. These proposed regulatory changes support and enhance BLM's protection of intact landscapes through ACEC designation and better leverage this statutory tool for ecosystem resilience.

The proposed rule also addresses restoration of degraded landscapes. It offers a new tool, conservation leases, that would allow the public to directly support durable protection and restoration efforts to build and maintain the resilience of public lands. These leases would be available to entities seeking to restore public lands or provide mitigation for a particular action. They would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use. The proposed rule would establish the process for applying for and granting conservation leases, terminating or suspending them, determining noncompliance, and setting bonding obligations. Conservation leases and ACECs could also provide opportunities for co-stewardship with federally recognized Tribes and additional protections for cultural resources.

Conservation leases would be issued for a term consistent with the time required to achieve their objective. Most conservation leases would be issued for a maximum of 10 years, which term would be extended if necessary to serve the purposes for which the lease was first issued. Any conservation lease issued for the purposes of providing

compensatory mitigation would require a term commensurate with the impact it is offsetting.

Further, to ensure the BLM does not limit its ability to build resilient public lands when authorizing use, the proposed rule includes provisions related to mitigation (i.e., actions to avoid, minimize, and compensate for certain residual impacts). The proposed rule reaffirms the BLM's adherence to the mitigation hierarchy for all resources. The proposed rule also requires mitigation, to the maximum extent possible, to address adverse impacts to important, scarce, or sensitive resources, and it sets rules for approving third-party mitigation fund holders. There are already several existing approved third-party mitigation fund holders that may receive and administer funds for the mitigation of impacts to natural resources, as well as other funds arising from legal, regulatory, or administrative proceedings that are, subject to the condition that the amounts be received or administered for purposes that further conservation and restoration. The new provisions would ensure that the public enjoys the benefits of mitigation measures and support those seeking permission to use public lands by enhancing mitigation options.

#### C. SCIENCE FOR MANAGEMENT DECISIONS TO BUILD RESILIENT PUBLIC LANDS

To support conservation actions and decision making, the proposed rule applies the fundamentals of land health (taken verbatim from the existing fundamentals of rangeland health at 43 CFR 4180.1 (2005)) and related standards and guidelines to all renewable-resource management, instead of just to public-lands grazing. Broadening the applicability of the fundamentals of land health would ensure BLM programs will more formally and consistently consider the condition of public lands during decisionmaking processes. Renewable resources on public lands should meet the fundamentals of land health overall at the watershed scale. The proposed rule recognizes, however, that in

determining which actions are required to achieve the land health standards and guidelines, the BLM must take into account current land uses, such as mining, energy production and transmission, and transportation, as well as other applicable law. The BLM welcomes comments on how applying the fundamentals of land health beyond lands allocated to grazing will interact with BLM's management of non-renewable resources.

To implement the fundamentals of land health, the proposed rule directs BLM programs to use high-quality information to prepare land health assessments and evaluations and make determinations about the causes of failing to achieve land health. Such information is derived largely from assessing, inventorying, and monitoring renewable resources, as well as Indigenous Knowledge. The resulting data provides the means for detecting trends in land health and can be used to make management decisions, implement adaptive strategies, and support conservation efforts to build ecosystem resilience.

#### D. INVENTORY, EVALUATION, DESIGNATION, AND MANAGEMENT OF ACECS

To implement FLPMA's direction to "give priority to the designation and protection of areas of critical environmental concern," the BLM follows regulatory requirements found at 43 CFR 1610.7-2 and policy instruction found in Manual Section 1613. The BLM currently inventories, evaluates, and designates ACECs requiring special management direction as part of the land use planning process. The BLM's land use planning process guides BLM resource management decisions in a manner that allows the BLM to respond to issues and to consider trade-offs among environmental, social, and economic values. Further, the planning process requires coordination, cooperation, and consultation, and provides other opportunities for public involvement that can foster relationships, build trust, and result in durable decisionmaking.

In the initial stages of the planning process, the BLM, through inventories and external nominations, identifies any potential new ACECs to evaluate for relevance, importance, and the need for special management attention. The BLM determines whether such special management attention is needed by evaluating alternatives in the land use plan and considering additional issues related to the management of the proposed ACEC, including public comments received during the planning process. Special management measures may also provide an opportunity for Tribal co-stewardship. In Approved Resource Management Plans, the BLM identifies all designated ACECs and provides the management direction necessary to protect the relevant and important values for which the ACECs were designated.

In more than 40 years of applying the procedures found at 43 CFR 1610.7-2 and in Manual Section 1613, the BLM has identified several needed revisions. Additionally, the BLM's procedures for considering and designating potential ACECs are currently partially described in regulation and partially described in agency policy. The proposed rule would codify these procedures in regulation, providing more cohesive direction and consistency to the agency's ACEC designation process. The proposed rule maintains the general process for inventorying, evaluating, designating, and managing ACECs, described here, but makes specific changes to clarify and improve that process.

As part of this rulemaking, the BLM proposes establishing procedures that require consideration of ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions in designating and managing ACECs. The BLM may also revise the ACEC manual and develop an ACEC handbook to integrate the existing rule as well as the changes proposed in this rulemaking, if finalized, into policy. The BLM would thus provide additional guidance for how to incorporate ACECs into resource management decisions in a way that considers trade-offs among environmental, social, and economic values during land use planning.

## E. STATUTORY AUTHORITY

The Federal Land Policy and Management Act of 1976, as amended, is the BLM's organic act; it establishes the agency's mission to manage public lands. FLPMA further establishes the policy of the United States that public lands be managed in a manner that recognizes the nation's need for natural resources from those lands, provides for outdoor recreation and other human uses, maintains habitat for fish and wildlife, preserves certain public lands in their natural condition, and protects the quality of the scientific, scenic, historical, ecological, environmental, water-resource, and archaeological values of the nation's lands (43 U.S.C. 1701).

FLPMA governs the BLM's management of the public lands and directs the BLM to manage such lands "under principles of multiple use and sustained yield" (except for lands where another law directs otherwise) (43 U.S.C. 1732(a)). Multiple use is defined as the management of the public lands and their various resource values so that they are utilized to the combination that will best meet the present and future needs of the American people; making the most judicious use of the land 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 land 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 nonrenewable 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 land 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. (43 U.S.C. 1702(c)). FLPMA also authorizes the Secretary to promulgate implementing

regulations necessary “to carry out the purposes” of the Act (43 U.S.C. 1740). The rule proposed here under that authority would (1) define and regulate conservation use on the public lands in service of FLPMA’s multiple-use and sustained-yield mandates; (2) provide for third party authorizations to use the public lands for conservation under FLPMA section 302(b) (43 U.S.C. 1732(b)); and (3) revise the existing regulations implementing FLPMA’s direction in sections 201(a) and 202(c)(3) (43 U.S.C. 1711(a), 1712(c)(3)) that the BLM shall give priority to ACECs. (See also 43 U.S.C. 1701(a)(11) (“it is the policy of the United States that—regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.”))

Section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202) legislatively established the National Landscape Conservation System (NLCS), to include public lands carrying certain executive or congressional designations and set parameters for the management of lands within the system. NLCS lands are subject to regulatory requirements like other BLM-managed public lands. The regulations proposed here define the term “conservation” in a way that is distinct from the use of the term in section 2002. Here, “conservation” is a shorthand for the direction in FLPMA’s multiple-use and sustained-yield mandates to manage public lands for resilience and future productivity. “Conservation,” as the term is defined in these regulations, is part of the BLM’s mission not only on lands within the NLCS, but on all lands subject to FLPMA’s multiple-use and sustained-yield mandates. At the same time, these regulations also would support the BLM’s execution of the statutory direction in section 2002 to “manage the [NLCS] in a manner that protects the values for which the components of the system were designated” (16 U.S.C. 7202(c)(2)).

#### F. RELATED EXECUTIVE AND SECRETARIAL DIRECTION

The proposed rule responds to, and advances directives set forth in several Executive and Secretary’s Orders and related policies and strategies. These directives call on the

Department of the Interior (DOI), and the Federal Government more generally, to use landscape-scale, science-based, collaborative approaches to natural resource management. Recent Presidential and Secretarial directives also emphasize the importance of responding to, and mitigating the effects of, climate change. Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis highlights the need to use science to reduce greenhouse gas emissions, bolster resilience to the impacts of climate change, and prioritize environmental justice. Executive Order 14008: Tackling the Climate Crisis at Home and Abroad calls for quick action to build resilience against the impacts of climate change, bolster adaptation, and increase resilience across all operations, programs, assets, and mission responsibilities with a focus on the most pressing climate vulnerabilities. Section 211 of Executive Order 14008, calls on Federal agencies to develop a Climate Action Plan. In 2021, the DOI completed that plan, which creates policy to confront and adapt to the challenges that climate change poses to the Department's mission, programs, operations, and personnel.

The Department will use the best available science to take concrete steps to adapt to and mitigate climate-change impacts on its resources. Secretary's Order 3399: Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process establishes a Departmental Climate Task Force to prioritize the use of the best available science to evaluate the climate change impacts of Federal land uses. Multiple directives related to climate change also emphasize the importance of collaboration, science, and adaptive management as well as the need for landscape-scale approaches to resource management. The Departmental Manual chapter on climate-change policy (523 DM 1), issued on December 20, 2012, directs DOI bureaus and agencies to "promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems." The

Department of the Interior Climate Action Plan and Climate Adaptation and Resilience Policy, issued on October 7, 2021, provides further guidance.

Secretary's Order 3289: Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources, issued on September 14, 2009, and amended on February 22, 2010, directs DOI bureaus and agencies to work together, with other Federal, State, Tribal, and local governments, and also with private landowners, to develop landscape-level strategies for understanding and responding to climate change impacts.

Secretary's Order 3403: Joint Secretary's Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, issued November 15, 2021, reiterates the Departments' commitment to the United States' trust and treaty obligations as an integral part of managing Federal lands. The Order emphasizes that "Tribal consultation and collaboration must be implemented as components of, or in addition to, Federal land management priorities and direction for recreation, range, timber, energy production, and other uses, and conservation of wilderness, refuges, watersheds, wildlife habitat, and other values." The Order also notes the benefit of incorporating Tribal expertise and Indigenous Knowledge into Federal land and resources management.

Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies, recognizes that healthy forests are "critical to the health, prosperity, and resilience of our communities." It states a policy to pursue science-based, sustainable forest and land management; conserve America's mature and old-growth forests on Federal lands; invest in forest health and restoration; support indigenous traditional ecological knowledge and cultural and subsistence practices; honor Tribal treaty rights; and deploy climate-smart forestry practices and other nature-based solutions to improve



the resilience of our lands, waters, wildlife, and communities in the face of increasing disturbances and chronic stress arising from climate impacts.

The Executive order (E.O.) calls for defining, identifying, and inventorying our nation's old and mature forests, then stewarding them for future generations to provide clean air and water, sustain plant and animal life, and respect their special importance to Tribal Nations. This proposed rule would advance all of these objectives.

#### **IV. Section-by-Section Discussion of Proposed Rule**

##### **Subpart 6101 – General Information**

##### **Section 6101.1 – Purpose**

This section describes the overall purpose for this proposed rule. It is designed to ensure healthy wildlife habitat, clean water, and ecosystem resilience so that our public lands can resist and recover from disturbances like drought and wildfire. It also aims to enhance mitigation options, establishing a regulatory framework for those seeking to use the public lands, while also ensuring that the public enjoys the benefits of mitigation measures. The proposed rule discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring. Pursuant to Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies, and consistent with managing for multiple use and sustained yield, the BLM is working on various aspects of ensuring that forests on Federal lands, including old and mature forests, are managed to: promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development. While there are ongoing inter-departmental efforts related to implementing the Executive

Order, the BLM is also interested in public comments on whether there are opportunities for this rule to incorporate specific direction to conserve and improve the health and resilience of forests on BLM-managed lands. What additional or expanded provisions could address this issue in this rule? How might the BLM use this rule to foster ecosystem resilience of old and mature forests on BLM lands?

### **Section 6101.2 – Objectives**

This section lists the six specific objectives of the proposed rulemaking. These objectives were discussed at length earlier in the preamble for this proposed rule.

### **Section 6101.3 – Authority**

This section identifies the authorities under which this proposed rule will be promulgated, which include the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as amended, and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202).

### **Section 6101.4 – Definitions**

This section provides new definitions for concepts such as conservation, resilient ecosystems, sustained yield, mitigation, and unnecessary or undue degradation, along with others used throughout the proposed rule text. These definitions apply only in 43 CFR part 6100.

The proposed rule would define the term “best management practices” as state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time. This definition would provide clarity and consistency as the BLM authorizes restoration and compensatory mitigation actions under the proposed rule.

The proposed rule would define the term “casual use” so that, in reference to conservation leases, it would clarify that the existence of a conservation lease would not

in and of itself preclude the public from accessing public lands for noncommercial activities such as recreation. Some public lands could be temporarily closed to public access for purposes authorized by conservation leases, such as restoration activities or habitat improvements. However, in general, public lands leased for conservation purposes under the proposed rule would continue to be open to public use.

The proposed rule would define “conservation” in the context of these regulations to mean maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions. The overarching purpose of the proposed rule is to promote the use of conservation to ensure ecosystem resilience, and in doing so the proposed rule would clarify conservation as a use within the BLM’s multiple use framework, including in decisionmaking, authorization, and planning processes. The proposed rule would include a stated objective to promote conservation on public lands, and proposed subpart 6102 would outline principles, directives, management actions and tools – including establishing a new tool in conservation leases – to meet this objective and fulfill the purpose of the proposed rule. Because conservation is the foundational concept for the proposed regulations, the proposed definition would provide important guidance and clarity for the BLM to meet the spirit and intent of the proposed rule. Within the framework of the proposed rule, “protection” and “restoration” together constitute conservation.

The proposed rule would define the term “disturbance” to provide the BLM with guidance in identifying and assessing impacts to ecosystems, restoring affected public lands, and minimizing and mitigating future impacts. Identifying and mitigating disturbances and restoring ecosystems are important components of ensuring ecosystem resilience on public lands.

The proposed rule would define the term “effects” as the direct, indirect, and cumulative impacts from a public land use, and would clarify that the term should be viewed synonymously with the term “impacts” for the purposes of the rule.

The proposed rule would define the term “high-quality information” so that its use would ensure that the best available scientific information underpins decisions and actions that would be implemented under the proposed rule to achieve ecosystem resilience. The proposed definition would also clarify that Indigenous Knowledge can be high-quality information that should be considered alongside other information that meets the standards for objectivity, utility, integrity, and quality set forth in Federal law and policy.

The proposed rule would define the terms “important,” “scarce,” and “sensitive” resources to provide clarity and consistency in BLM’s implementation of mitigation requirements, including under the proposed rule.

The proposed rule would define the term “Indigenous Knowledge” to reflect the Department of the Interior’s policies, responsibilities, and procedures to respect, and equitably promote the inclusion of, Indigenous Knowledge in the Department’s decision making, resource management, program implementation, policy development, scientific research, and other actions.

The proposed rule would define the term “intact landscape” to guide the BLM with implementing direction. The proposed rule (§ 6102.1) would require the BLM to identify intact landscapes on public lands, manage certain landscapes to protect their intactness, and pursue strategies to protect and connect intact landscapes.

The proposed rule would define “land enhancement” to provide clarity for interpreting provisions of the proposed rule that would authorize the BLM to issue conservation leases for the purpose of facilitating land enhancement activities.

The proposed rule would define “landscape” to characterize a meaningful area of land and waters on which restoration, protection and other management actions will take place. Assessing how BLM’s management can affect the functionality and resilience of ecosystems may require considering resources at the landscape scale.

The proposed rule would define “mitigation” consistent with the definition provided by the Council on Environmental Quality regulations (40 CFR 1508.20), which identify various ways to address adverse impacts to resources, including steps to avoid, minimize, and compensate for residual impacts. As a tool to achieve ecosystem resilience of public lands, the BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then to minimize, and then to compensate for any residual impacts. This definition and the related provisions in this proposed rule supplement existing DOI policy, which among other things provides boundaries to ensure that compensatory mitigation is durable and effective.

The proposed rule would define the term “mitigation strategies” to identify documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in advance of anticipated public land uses.

The proposed rule would define the term “monitoring” to describe a critical suite of activities involving observation and data collection to evaluate (1) existing conditions, (2) the effects of management actions, or (3) the effectiveness of actions taken to meet management objectives. Management for ecosystem resilience requires the BLM to understand how proposed use activities impact resource condition at many scales. Monitoring is a critical component of BLM’s Assessment, Inventory and Management (AIM) framework that provides a standardized strategy for assessing natural resource condition and trends on BLM public lands.

The proposed rule would define the term “permittee” to identify those persons with a valid permit, right-of-way grant, lease, or other land use authorization from the

BLM. The proposed rule largely discusses “permittees” when identifying the responsibility of parties in the context of mitigation and in discussing the opportunities to rely on third parties in complying with mitigation requirements.

The proposed rule would define “protection” in the context of the overarching purpose of the rule, which is to promote the use of conservation measures to ensure ecosystem resilience of public lands. “Protection” is a critical component of conservation, alongside restoration, and describes acts or processes to preserve resources and keep them safe from degradation, damage, or destruction. The proposed rule (§ 6101.2) would include a stated objective to promote the protection of intact landscapes on public lands, as a critical means to achieve ecosystem resilience.

The proposed rule would define “public lands” in order to clarify the scope of the proposed rule and its intended application to all BLM-managed lands and uses. The proposed definition is the same as the definition of “public lands” that appears at § 6301.5.

The proposed rule would define “reclamation” to identify restoration practices intended to achieve an outcome that reflects project goals and objectives, such as site stabilization and revegetation. While “reclamation” is a part of a continuum of restoration practices, it contrasts with other actions that are specifically designed to recover ecosystems that have been degraded, damaged, or destroyed. Reclamation often involves initial practices that can prepare projects or sites for further restoration activities. The proposed rule (§ 6102.4-2) discusses reclamation in the context of bonding conservation leases to ensure lessees hold sufficient bond amounts to provide for the reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations.

The proposed rule would define “resilient ecosystems” in the context of the rule’s foundational precept that BLM’s management of public lands on the basis of multiple use

and sustained yield relies on resilient ecosystems. The purpose of the proposed rule is to promote the use of conservation to ensure that ecosystems on public lands can resist disturbance maintain and regain their function following environmental stressors such as drought and wildfire. The proposed rule identifies and requires the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring to ensure BLM is managing for resilient ecosystems.

The proposed rule would define “restoration” in the context of the overarching purpose of this proposed rule which is to promote the use of conservation to ensure the ecosystem resilience of public lands. “Restoration” is a critical component of conservation, alongside protection, and describes acts or processes of conservation that assist the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM employs a variety of restoration approaches, including mitigation, remediation, revegetation, rehabilitation, and reclamation. The proposed rule (§ 6102.3) would direct the BLM to emphasize restoration across the public lands and requires the inclusion of a restoration plan in any new or revised Resource Management Plan.

The proposed rule would use the FLPMA definition of “sustained yield.” This proposed rule promotes the use of conservation to achieve resilient ecosystems on public lands, which are essential to managing for multiple use and sustained yield.

The proposed rule would define “unnecessary or undue degradation” in the context of these regulations to mean “harm to land resources or values that is not needed to accomplish a use’s goals or is excessive or disproportionate.” This proposed definition is consistent with BLM’s affirmative obligation under FLPMA to take action to prevent unnecessary or undue degradation. The proposed rule would establish overarching principles for ecosystem resilience and would direct the BLM to implement those principles in part by preventing unnecessary or undue degradation in its decisionmaking.

### **Section 6101.5 – Principles for Ecosystem Resilience**

The proposed rule relies upon express direction provided in FLPMA to manage public lands on the basis of multiple use and sustained yield, and it would establish the principle that the BLM must conserve renewable natural resources at a level that maintains or improves ecosystem resilience in order to achieve this mission.

Section 6101.5(d) in the proposed rule would direct authorized officers to implement principles of ecosystem resilience by recognizing conservation as a land use within the multiple use framework, including in decisionmaking, authorization, and planning processes; protecting and maintaining the fundamentals of land health; restoring and protecting intact public lands; applying the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and preventing unnecessary or undue degradation.

#### **Subpart 6102 – Conservation Use to Achieve Ecosystem Resilience**

The proposed rule would clarify that conservation is a use on par with other uses of public lands under FLPMA's multiple use framework. FLPMA directs the BLM to manage the public lands in a manner that protects the quality of ecological, wildlife, recreation, scenic, environmental, scientific, air, and water resources, among other resources and values, and that protects certain public lands in their natural condition. The BLM implements this mandate through land use plan designations, allocations, and other planning decisions that conserve public land resources and seek to balance conservation use with other uses such as energy development and recreation. The BLM also implements this mandate in other decisionmaking and management actions by promoting conservation use, limiting subsequent authorizations when incompatible with conservation use, and mitigating impacts to natural resources on public lands. The proposed rule would provide specific direction for implementing certain programs in a way that emphasizes conservation use and provide new tools and direction for managing conservation use to ensure ecosystem resilience on public lands.



### **Section 6102.1 – Protection of Intact Landscapes**

Section 6102.1(a) of the proposed rule would identify the principles for protecting intact landscapes in the context of increased pressure and increased landscape vulnerability due to climate change and other disturbance. Section 6102.1(b) would call on authorized officers to prioritize protection of such landscapes.

### **Section 6102.2 – Management to Protect Intact Landscapes**

Authorized officers would be required by § 6102.2(a) and (b) to identify and seek to maintain intact landscapes, including by utilizing available watershed condition classifications and other available data. During the resource management planning process, some tracts of public lands should be put into a conservation use, such as by appropriately designating or allocating the land, to maintain or improve ecosystem resilience. When determining, through planning, whether conservation use is appropriate in a given area, authorized officers would determine “which, if any” landscapes to manage to protect intactness, necessarily taking into account other potential uses in accordance with the BLM’s multiple use management approach. (§ 6102.2(b)) In identifying the areas that are most suitable for management as intact landscapes, the BLM could work with communities to identify areas that the communities have targeted for strategic growth and development; managing those areas for intactness is less likely to be appropriate. Section 6102.2(c) would require authorized officers to prioritize acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems, and § 6102.2(d) would direct the BLM to develop a national system for collecting and tracking disturbance data and to use those data to minimize disturbance and improve ecosystem resilience.

### **Section 6102.3 – Restoration**

Restoration is the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM employs a variety of restoration approaches, including mitigation, remediation, revegetation, rehabilitation, and reclamation. The proposed rule would direct the BLM to emphasize restoration across the public lands to enable achievement of its sustained yield mandate and would encourage active management to promote restoration when appropriate to achieve ecosystem resilience.

### **Section 6102.3-1 – Restoration Prioritization**

Section 6102.3-1 would direct authorized officers to identify priority landscapes for restoration at least every five years. Landscape prioritization is to be based on land health and watershed condition assessments, the likelihood that restoration efforts would succeed, partnership opportunities that would enable coordination across a broader landscape, benefits to local communities, and opportunities also to prevent unnecessary or undue degradation of the public lands.

### **Section 6102.3-2 – Restoration Planning**

The proposed rule would require authorized officers to include a restoration plan in any new or revised Resource Management Plan, which would have to address criteria set forth in § 6102.3-2(a). Included in the restoration plan would be actions that, under § 6102.3-2(b), would be implemented to achieve set goals and objectives; the actions would have to be performed at the appropriate spatial and temporal scale, and they would have to address the cause of degradation. Authorized officers would plan in 5-year increments, but of course the schedule could describe longer term goals and efforts. Actions would be coordinated with partners, and the BLM would use conservation leases issued under § 6102.4 for the purpose of restoring, managing, and monitoring priority landscapes. Locally appropriate best management practices would be implemented in accordance with § 6102.3-2(b)(5). Authorized officers would also be required to track progress toward achieving restoration goals and ensure restoration projects are consistent

with the land health standards, restoration goals and objectives, best management practices, and Resource Management Plan restoration plans.

#### **Section 6102.4 – Conservation Leasing**

Section 302(b) of FLPMA, 43 U.S.C. 1732(b), grants the Secretary authority to regulate through appropriate instruments the use, occupancy, and development of the public lands. As the U.S. Court of Appeals for the Tenth Circuit has recognized, the authority granted in section 302(b) is considerably broader than the authority granted in subject-specific provisions of FLPMA. *Greater Yellowstone Coal. v. Tidwell*, 572 F.3d 1115, 1126–27 (10th Cir. 2009). Under that broad authority, the proposed rule would provide a framework for the BLM to issue conservation leases on public lands for the purpose of pursuing ecosystem resilience through mitigation and restoration. The BLM will determine whether a conservation lease is an appropriate mechanism based on the context of each proposed conservation use and application, not necessarily as a specific allocation in a land use plan. Conservation leases could be issued to any qualified individual, business, non-governmental organization, or Tribal government. The BLM seeks comments on whether State and local governments, including state agencies managing fish and wildlife, also should be eligible for holding conservation leases.

Section 6102.4(a)(2) would establish that conservation leases would be issued for the necessary amount of time to meet the lease objective and specify that a lease issued for restoration or protection purposes would be issued for a renewable term of up to 10 years, whereas a lease issued for mitigation purposes would be issued for a term commensurate with the impact it is mitigating. All conservation leases would be reviewed for consistency with lease provisions at regular intervals and could be extended beyond their primary terms.

Section 6102.4(a)(3) would specify that conservation leases may be issued either for “restoration or land enhancement” or “mitigation.” The proposed rule would only authorize issuance of conservation leases for ecosystem protection where that protection is related to a restoration or land enhancement project or to support mitigation for a particular action. For example, as part of authorizing a renewable energy project on public lands, the BLM and the project proponent may agree to compensate for loss of wildlife habitat by restoring or enhancing other habitat areas. A conservation lease could be used to protect those areas. Similarly, the BLM may require compensatory mitigation for residual impacts that cannot be avoided. A conservation lease could be used to put compensatory mitigation dollars to work restoring compromised landscapes.

This provision is not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation. Conservation leases should not disturb existing authorizations, valid existing rights, or state or Tribal land use management. Rather, this proposed rule is intended to raise conservation up to be on par with other uses under the principles of multiple use and sustained yield.

The BLM requests public comment on the following aspects of the conservation lease proposal.

- Is the term “conservation lease” the best term for this tool?
- What is the appropriate default duration for conservation leases?
- Should the rule constrain which lands are available for conservation leasing? For example, should conservation leases be issued only in areas identified as eligible for conservation leasing in an RMP or areas the BLM has identified (either in an RMP or otherwise) as priority areas for ecosystem restoration or wildlife habitat?
- Should the rule clarify what actions conservation leases may allow?

- Should the rule expressly authorize the use of conservation leases to generate carbon offset credits?
- Should conservation leases be limited to protecting or restoring specific resources, such as wildlife habitat, public water supply watersheds, or cultural resources?

Proposed § 6102.4(b) and (c) would set forth the application process for acquiring a conservation lease. Applicants would be required to submit detailed information regarding the proposed conservation use, anticipated impacts and costs, conformance with BLM plans, programs and policies, and the schedule for any restoration activities. The authorized officer would be able to require additional information such as environmental data and proof that the applicant has the technical and financial capability to perform the conservation activities. Once a conservation lease is issued, § 6102.4(a)(4) would preclude the BLM, subject to valid existing rights and applicable law, from authorizing other uses of the leased lands that are inconsistent with the authorized conservation use. Section 6102.4(a)(5) clarifies that the rule itself should not be interpreted to exclude public access to leased lands for casual use of such lands, although the purposes of a lease may require that limitations to public access be put in place in a given instance (for example, temporarily limiting public access to newly restored areas).

Section 6102.4(d) would provide for assignment or transfer of a conservation lease if no additional rights would be conveyed and the proposed assignee or transferee is qualified to hold the lease.

Conservation leases would be available on BLM-managed lands that are not allocated to inconsistent uses, including lands within units of the National Landscape Conservation System. The BLM requests public comments on managing conservation leases within the National Landscape Conservation System, including whether separate regulations should apply to these areas.

Cost recovery, rents, and fees for conservation leases would be governed by existing regulations at 43 CFR 2920.6 and 2920.8. Under those regulations, the BLM must charge a rent of at least fair market value. The BLM seeks comment on how fair market value would be determined in the context of restoration or preservation. Would existing methods for land valuation provide valid results? Would lands with valuable alternative land uses be prohibitively expensive for conservation use? Should the BLM incorporate a public benefit component into the rent calculation to account for the benefits of ecosystem services?

### **Section 6102.4-1 – Termination and Suspension of Conservation Leases**

Proposed § 6102.4-1 would outline processes for suspending and terminating conservation leases. Where the lease holder fails to comply with applicable requirements, fails to use the lease for its intended purpose, or cannot fulfill the lease's purpose, the BLM would be authorized to suspend or terminate a conservation lease. An authorized officer would be authorized to issue an immediate temporary suspension of the lease upon determination that a noncompliance issue adversely affects or poses a threat to public lands or public health. Following termination, the lease holder would have sixty days to fulfill its obligation to reclaim the site, *i.e.*, return the site to its prior condition or as otherwise provided in the lease. That obligation is distinct from the goal of restoring the site to its ecological potential that underlies the lease.

### **Section 6102.4-2 – Bonding for Conservation Leases**

The proposed rule includes bonding obligations for any conservation use that involves surface-disturbing activities, with § 6102.4-2 establishing regulations for conservation lease bonds. The BLM seeks public comment on whether this rule should allow authorized officers to waive bonding requirements in certain circumstances, such as when a Tribal Nation seeks to restore or preserve an area of cultural importance to the

Tribe. Should the waiver authority be limited to such circumstances or are there other circumstances that would warrant a waiver of the bonding requirement?

### **Section 6102.5 – Management Actions for Ecosystem Resilience**

Proposed § 6102.5 would set forth a framework for the BLM to make wise management decisions based on science and data, including at the planning, permitting, and program levels, that would help to ensure ecosystem resilience. As part of this framework, authorized officers would be required to identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts; develop and implement mitigation, monitoring and adaptive management strategies to protect resilient ecosystems; and meaningfully consult with Tribes and Alaska Native Corporations. Authorized officers would be required to include Indigenous Knowledge in decisionmaking and encourage Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and identification of mitigation measures.

Consistent with applicable law and the management of the area, authorized officers would also be required to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience. Permanent impairment of ecosystem resilience would be difficult or impossible to avoid, for example, on lands on which the BLM has authorized intensive uses, including infrastructure and energy projects or mining, or where BLM has limited discretion to condition or deny the use. The proposed rule also would require the authorized officer to consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified and provide justification for decisions that may impair ecosystem resilience. In other words, the proposed rule does not prohibit land uses that impair ecosystem resilience; it simply requires avoidance and an explanation if such impairment cannot be avoided.

To ensure the best available science is underpinning all management actions, the proposed rule would require the BLM to use national and site-based assessment, inventory, and monitoring data, along with other high-quality information, as multiple lines of evidence to evaluate resource conditions and inform decisionmaking. In particular, proposed § 6102.5(c) would require the authorized officer to gather high-quality data and select relevant indicators, then translate the values from those indicators into a watershed condition classification framework and document the results. The goal is to use monitoring objectives and possibly conceptual models to identify if watersheds are in properly functioning condition and how the landscape is functioning as a whole.

### **Section 6102.5-1 – Mitigation**

The proposed rule would affirm that the BLM will generally apply the mitigation hierarchy of avoid, minimize, and compensate for impacts to all public land resources. Further, § 6102.5-1(a) would require mitigation to address adverse impacts in the case of important, scarce, or sensitive resources, to the maximum extent possible.

The proposed rule would authorize the BLM to use third-party mitigation fund holders to facilitate compensatory mitigation. Proposed § 6102.5-1(d) would require authorized officers to establish mitigation accounts as appropriate when multiple permittees have similar compensatory mitigation requirements, or a single permittee has project impacts that require substantial, long-term compensatory mitigation. Proposed § 6102.5-1(f) would establish criteria that third parties must meet to be approved as mitigation fund holders. Among other things, the proposed rule would require potential mitigation fund holders to have “a history of successfully holding and managing mitigation, escrow, or similar corporate accounts.” This language is intended to ensure that mitigation fund holders have sufficient experience to ensure that they are capable of managing funds. The BLM seeks comment on this language. Does it create a barrier to entry for new mitigation banks? Is there alternative language that would be preferable?



The requirement that a third party lack any “family connection” to the mitigating party refers to the leadership of the potential mitigation fund holder.

## **Subpart 6103 Tools for Achieving Ecosystem Resilience**

### **Section 6103.1 – Fundamentals of Land Health**

Proposed § 6103.1 would establish four fundamentals of land health—watershed function, ecological processes, water quality, and wildlife habitat—that would form the basis for land health standards and guidelines that the BLM would develop in land use plans under § 6103.1-1 of this proposed rule. Fundamentals of land health are currently addressed in the BLM’s grazing regulations for rangeland health (43 CFR 4180.1 (2005)). The proposed rule would extend the fundamentals of land health to all BLM lands and program areas. The BLM is not proposing any changes to the four fundamentals of land health as articulated in the applicable grazing regulations.

#### **Section 6103.1-1 – Land Health Standards and Guidelines**

Proposed § 6103.1-1 would instruct authorized officers to implement land health standards and guidelines that conform to the fundamentals of land health across all lands and program areas. This includes reviewing land health standards and guidelines during the land use planning process and developing new or revising existing land health standards and guidelines as necessary, and periodically reviewing land health standards and guidelines in conjunction with regular land use plan evaluations. Until the authorized officer has an opportunity to review and update land health standards and guidelines through land use planning processes, § 6103.1-1(a)(1) of the proposed rule would direct authorized officers to apply existing land health standards and guidelines, including those previously established under subpart 4180 of the agency’s grazing regulations (fundamentals of rangeland health), across all lands and program areas.

Proposed § 6103.1-1(b) through (d) would require the authorized officer to establish goals, objectives, and success indicators to ensure that each land health standard can be measured against resource conditions and to periodically review authorized uses for consistency with the fundamentals of land health. Once land health standards and guidelines are established, any action in response to not meeting them would be subject to § 6103.1-2(e)(2) and taken in a manner that takes into account existing uses and authorizations. Under the proposed rule, the BLM may establish national indicators in support of the implementation of the fundamentals of land health.

### **Section 6103.1-2 – Land Health Assessments, Evaluations, and Determinations**

The proposed rule would require authorized officers to consider land health assessments, evaluations, and determinations across all program areas to inform decisionmaking, including preparing new land health assessments, evaluations, and determinations as warranted. Proposed § 6103.1-2(c) would provide direction for completing land health evaluations, including using multiple lines of evidence and documenting supporting information.

In cases where land health standards are not being achieved, proposed § 6103.1-2(d) would require a determination of causal factors. If existing management practices are determined to be a causal factor, the proposed rule would require the authorized officer to take appropriate action to make significant progress toward fulfillment of the standards and compliance with the guidelines. That requirement would be limited, however, by the caveat that appropriate action must be “consistent with applicable law and the terms and conditions of existing authorizations.” Thus, when determining what actions are “appropriate” to meet the land health standards, the authorized officer would have to take into account existing uses and authorizations.

### **Section 6103.2 – Inventory, Assessment, and Monitoring**

The proposed rule would require the BLM to complete watershed condition classifications as part of all land use planning. It is anticipated that watershed condition classifications would frequently be completed not by BLM state offices, but by national-level resources, such as by the National Operations Center, utilizing standardized procedures and existing data and analyses.

Proposed § 6103.2(b) would clarify that the BLM's inventory of public lands includes both landscape components and core indicators that address land health fundamentals, and would require the use of inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decisionmaking across program areas. Proposed § 6103.2(c) would establish principles to ensure that inventory, assessment, and monitoring activities are evidence-based, standardized, efficient, and defensible.

## **Subpart 1610 – Resource Management Planning**

### **Section 1610.7-2 – Designation of Areas of Critical Environmental Concern**

The proposed rule includes changes to the land use planning regulations to emphasize the role of ACECs as the principal designation for public lands where special management attention is required to protect important natural, cultural, and scenic resources, and to protect against natural hazards. It would also emphasize the requirement that the BLM give priority to the identification, evaluation, and designation of ACECs during the planning process as required by FLPMA and would provide additional clarity and direction for complying with this statutory requirement. The proposed rule would codify in regulation procedures for considering and designating potential ACECs that are currently only partially described in regulation and partially described in agency policy.

Proposed § 1610.7-2(c) would require authorized officers to identify areas that may be eligible for ACEC status early in the planning process and would highlight the

need to target areas for evaluation based on resource inventories, internal and external nominations, and existing ACEC designations.

Proposed § 1610.7-2(d) would provide more specificity for determining whether an area meets the criteria for ACEC designation of relevance, importance, and requiring special management attention. Requiring a finding that special management attention is necessary is consistent with BLM practice but is not a feature of the existing regulations.

Under the proposed rule § 1610.7-2(d)(2), resources, values, systems, or processes may meet the importance criterion if they contribute to ecosystem resilience, including by protecting landscape intactness and habitat connectivity. The proposed rule would also clarify the scope of the importance criterion by striking “more than local significance” in current §1610.7-2(a)(2). The BLM has found the use of “local significance” in the existing definition creates confusion because it may be conflated with the separate question under NEPA as to whether environmental impacts are “significant.” Moreover, requiring something more than “local significance” is unnecessarily restrictive. In the context of ACECs, a wide variety of areas can support the BLM’s management of public lands by contributing to ecosystem resilience.

Proposed § 1610.7-2(e) would newly emphasize that resources, values, systems, processes, or hazards that are found to have relevance and importance are likely to warrant special management attention and would further identify four considerations when evaluating the need for special management attention, to inform potential ACEC designations in a land use plan.

Proposed § 1610.7-2(g) would clarify that land use plans must include at least one plan alternative that analyzes in detail all proposed ACECs, in order to analyze the consequences of both providing and not providing special management attention to identified resources.

Proposed § 1610.7-2(i) would require authorized officers to ensure that inventories used to obtain information and data on the relevance and importance of values, resources, systems or processes, and natural hazards are kept current, consistent with section 201(a) of FLPMA “so as to reflect changes in conditions and to identify new and emerging resource and other values” (43 U.S.C. 1711(a)). Authorized officers (likely, here, BLM State Directors) would be required to produce annual reports detailing activity plan status and completed and planned implementation actions for designated ACECs.

Section 1610.7-2(j) would direct that ACEC designations may be removed only when special management attention is no longer needed because the identified resources are being provided an equal or greater level of protection through alternate means or the identified resources are no longer present.

The proposed rule eliminates the existing requirement in current § 1610.7-2(b) that the BLM publish a Federal Register notice relating to proposed ACECs and allow for 60 days of comment, in addition to the other Federal Register publication requirements that apply to land use planning. The BLM has found that these Federal Register publication requirements do not provide value above and beyond the general public involvement process, including through notices in the *Federal Register*, that otherwise applies to land use planning. The public would still have opportunity to comment on proposed ACECs through that latter process.

Finally, throughout the proposed rule under § 1610.7-2, the term “value” would be replaced with the phrase “resources, values, systems, processes, or hazards.” “Value” has been used as a shorthand reference to all the items in the longer phrase but doing so has created confusion. The proposed rule provides for this change as well as other minor changes designed to improve readability throughout the rule text.

The proposed rule provides that “ACECs shall be managed to protect the relevant and important resources for which they are designated.” The BLM is interested in public

comment on whether additional regulatory text would help the BLM best fulfill its mandate under FLPMA section 202(c)(3) to “give priority to the ... protection of [ACECs].” Should the regulations further specify how ACECs should be managed?

### **Severability**

The provisions of the proposed rule should be considered separately. If any portion of the rule were stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools to advance conservation on the public lands. Hence, if a court prevents any provision of one part of this proposed rule from taking effect, that should not affect the other parts of the proposed rule. The remaining provisions would remain in force.

## **V. Procedural Matters**

### **Regulatory Planning and Review (Executive Order 12866 and 13563)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this proposed rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this proposed rule in a manner consistent with these requirements.

As outlined in the attached Economic and Threshold Analysis, the proposed rule would not have a significant effect on the economy.

For more detailed information, see the Economic and Threshold analysis prepared for this proposed rule. This analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE92", click the "Search" button, open the Docket Folder, and look under Supporting Documents.

### **Regulatory Flexibility Act**

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the “notice-and-comment” rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

For the purpose of conducting its review pursuant to the RFA, the BLM believes that the proposed rule would not have a “significant economic impact on a substantial number of small entities,” as that phrase is used in 5 U.S.C. 605.

### **Congressional Review Act (CRA)**

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This proposed rule:

- a. Does not have an annual effect on the economy of \$100 million or more. The BLM did not estimate the annual benefits that this proposed rule would provide to

the economy. Please see the Economic and Threshold Analysis for this proposed rule for a more detailed discussion.

- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed rule would benefit small businesses by streamlining the BLM's processes.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule would not have adverse effects on any of these criteria.

#### **Unfunded Mandates Reform Act (UMRA)**

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or the private sector, of \$100 million or more in any 1 year.

This proposed rule is not subject to the requirements under the UMRA. The proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. The proposed rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

#### **Government Actions and Interference with Constitutionally Protected Property Rights Takings (E.O 12630)**



This proposed rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The proposed rule would not interfere with private property. A takings implication assessment is not required.

### **Federalism (E.O 13132)**

Under the criteria in section 1 of E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

### **Civil Justice Reform (E.O 12988)**

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### **Consultation and Coordination with Indian Tribes (E.O 13175 and Departmental policy)**

The Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We

have evaluated this proposed rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, and that consultation under the DOI's tribal consultation policy is not required. However, consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will consult with federally recognized Indian Tribes on any proposal that may have a substantial direct effect on the Tribes.

### **Paperwork Reduction Act**

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the PRA. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has generally approved the existing information collection requirements contained in the BLM's regulations contained in 43 CFR subpart 1610 under OMB Control Number 1004-0212. The proposed rule would not result in any new or revised information collection requirements that are currently approved under that OMB Control Number.

For the reasons set out in the preamble, the BLM proposes to amend 43 CFR by creating part 6100 which would result in new information collection requirements that require approval by OMB. The information collection requirement contained in part 6100 will allow the BLM to issue a conservation lease to qualified individuals or businesses or State, local, or Tribal governments for the purpose of ensuring ecosystem sustainability. The proposed new information collection requirements contained in this proposed rule are discussed below.

### **New Information Collection Requirements**

*Section 6102.4 (b) and (c) - Conservation Leasing:* Applications for conservation leases shall be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. Applications for conservation leases shall include a description of the proposed conservation use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed conservation use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed conservation use, any threat to public health and safety posed by the proposed use, and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs, and policies for the public lands covered by the proposed use. The description shall include but not be limited to:

- Details of the proposed uses and activities;
- A description of all facilities for which authorization is sought, including access needs and special types of easements that may be needed;
- A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;
- Schedule for restoration or land improvement activities; and

- Name and legal mailing address of the applicant.

*Section 6102.4(c)(1)(E)- Conservation Leasing (additional information):* After review of the project description, the authorized officer may require the applicant to provide additional studies or to submit additional environmental data if such data are necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed conservation use. An application for the use of public lands may require documentation or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approval documents. The authorized officer may require evidence that the applicant has, or prior to commencement of conservation activities will have the technical and financial capability to operate, maintain, and terminate the authorized land use.

*Section 6102.4-1(d)(3) -Termination and Suspension of Conservation Leases:* Upon determination that there is noncompliance with the terms and conditions of a conservation lease which adversely affects land or public health or safety, or impacts ecosystem sustainability, the authorized officer shall issue an immediate temporary suspension. Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

*Section 6102.4-2(a) -Bonding for Conservation Leases:* Prior to the commencement of surface-disturbing activities, the conservation lease holder shall submit a surety or a personal bond, conditioned upon compliance with all the terms and conditions of the conservation lease(s) covered by the bond.

*Section 6102.5-1(e) – Mitigation - Approval of third parties as mitigation fund holders:* § 6102.5-1(e) would allow in certain limited circumstances authorized officers to approve third parties as mitigation fund holders to establish mitigation accounts for use

by entities granted land use authorizations by the BLM. The authorized officer will approve the use of a mitigation account by a permittee only if a mitigation fund holder has a written agreement with the BLM.

*Section 6102.5-1(g) - Mitigation - Approval of third parties as mitigation fund holders / State and local government agencies:* State and local government agencies are limited in their ability to accept, manage, and disburse funds for the purpose outlined in § 6102.5-1 and generally should not be approved by the BLM to hold mitigation funds for compensatory mitigation sites on public or private lands. An exception may be made where a government agency is able to demonstrate, to the satisfaction of the BLM, that they are acting as a fiduciary for the benefit of the mitigation project or site, essentially as if they are a third party, and can show that they have the authority and perform the duties described in § 6102.5-1.

The information collection requirements contained in this proposed rule are needed to ensure that accountability through restoration monitoring and tracking is carried out effectively and that project goals are being met. The estimated annual information collection burdens for this proposed rule are outlined below:

*Title of Collection:* Ecosystem Resilience and Conservation (43 CFR part 6100).

*OMB Control Number:* 1004-0NEW.

*Form Number:* None.

*Type of Review:* New collection of information (Request for a new OMB Control Number).

*Respondents/Affected Public:* Private sector businesses; Not-for-profit organizations; and State, local, or Tribal governments.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* On occasion.

*Estimated Completion Time per Response:* Varies from 5 hours to 240 hours per response, depending on activity.

*Number of Respondents:* 37.

*Annual Responses:* 37.

*Annual Burden Hours:* 1,380.

*Annual Burden Cost:* \$0.

If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information-collection by the date indicated in the **DATES** and **ADDRESSES** sections as previously described.

### **National Environmental Policy Act (NEPA)**

The BLM intends to apply the Department Categorical Exclusion (CX) at 43 CFR 46.210(i) to comply with the National Environmental Policy Act. This CX covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The BLM plans to document the applicability of the CX concurrently with development of the final rule.

### **Actions Concerning Regulations That Significantly Affects Energy Supply, Distribution, or Use (E.O. 13211)**

Federal agencies must prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order

12866, or any successor order; (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) Is designated by the Administrator of OIRA as a significant energy action. This proposed rule is not a significant action within the meaning of Executive Order 12866 or any successor order. This proposed rule does not affect energy supply or distribution.

### **Clarity of this Regulation (Executive Orders 12866, 12988 and 13563)**

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “**ADDRESSES**” section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### **Authors**

The principal authors of this proposed rule are: Stephanie Miller, BLM Deputy Division Chief, Wildlife Conservation; Darrin King, BLM Division of Regulatory Affairs; Chandra Little, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor.

**Laura Daniel-Davis,**

*Principal Deputy Assistant Secretary for Land and Minerals Management.*



## List of Subjects

### 43 CFR Part 1600

Administrative practice and procedure, Coal, Environmental impact statements, Environmental protection, Intergovernmental relations, Public lands, Preservation and conservation.

### 43 CFR Part 6100

Ecosystem resilience, Conservation use, Land health, and Restoration.

Accordingly, for the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 1600 and add a new 43 CFR part 6100 as set forth below:

#### **PART 1600—PLANNING, PROGRAMMING, BUDGETING**

1. The authority citation for part 1600 continues to read as follows:

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

2. Amend § 1610.7-2 to read as follows:

#### **§ 1610.7-2 Designation of areas of critical environmental concern.**

(a) An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes, or to protect life and safety from natural hazards. The BLM designates ACECs when issuing a decision to approve a Resource Management Plan, plan revision, or plan amendment. ACECs shall be managed to protect the relevant and important resources for which they are designated.

(b) In the land use planning process, authorized officers must identify, evaluate, and give priority to areas that have potential for designation and management as ACECs.

Identification, evaluation, and priority management of ACECs shall be considered during the development and revision of Resource Management Plans and during amendments to Resource Management Plans when such action falls within the scope of the amendment (*see* §§ 1610.4-1 through 1610.4-9).

(c) The Field Manager must identify areas to evaluate for eligibility as ACECs early in the planning process, including by considering the following sources:

(1) The Field Manager must analyze inventory data to determine whether there are areas containing resources, values, systems, processes, or hazards eligible for designation as ACECs.

(2) The Field Manager must evaluate existing ACECs when plans are revised or when designations of ACECs are within the scope of an amendment, including considering potential changes to boundaries and management.

(3) The Field Manager must seek nominations for ACECs, during public scoping, from the public, State and local governments, Indian tribes, and other Federal agencies (*see* §1610.2(c)) when developing new plans or revising existing plans, or when designations of ACECs are within the scope of a plan amendment. If nominations are received outside the planning process, interim management may be evaluated, considered, and implemented to protect relevant and important values until the BLM completes a planning process to determine whether to designate the area as an ACEC, in conformance with the current Resource Management Plan.

(d) To be designated as an ACEC, an area must meet the following criteria:

(1) *Relevance*. The area contains resources with significant historic, cultural, or scenic value; a fish or wildlife resource; a natural system or process; or a natural hazard potentially impacting life and safety.

(2) *Importance*. The resources, values, systems, processes, or hazards have substantial importance, which generally requires that they have qualities of special worth,

consequence, meaning, distinctiveness, or cause for concern. Authorized officers may consider the national or local importance, subsistence value, or regional contribution of a resource, value, system, or process. Resources, values, systems, or processes may have substantial importance if they contribute to ecosystem resilience, including by protecting intact landscapes and habitat connectivity. A natural hazard can be important if it is a significant threat to human life and safety.

(3) *Special Management Attention*. The resources, values, systems, processes, or hazards require special management attention. “Special management attention” means management prescriptions that:

(i) Conserve, protect, and restore relevant and important resources, values, systems, processes, or that protect life and safety from natural hazards; and

(ii) Would not be prescribed if the relevant resources, values, systems, processes, or hazards were not present.

(e) Resources, values, systems, processes, or hazards that are found to have relevance and importance are likely to require special management attention. In evaluating the need for special management attention, the Field Manager must consider:

(1) Whether highlighting the resources with the designation will protect or increase the vulnerability of the resources, and if so, how to tailor a designation to maximize protection and minimize unintended impacts;

(2) The values of other resource uses in the plan;

(3) The feasibility of managing the designation; and

(4) The relationship to other types of designations available.

(f) The Field Manager must identify the boundaries of proposed ACECs to encompass the relevant and important resources, values, systems, processes, or hazards, and any areas required for the special management attention needed to provide protection for the relevant and important resources, values, systems, processes, or hazards.

(g) Planning documents must include at least one alternative that analyzes in detail all proposed ACECs to provide for informed decisionmaking on the trade-offs associated with ACEC designation.

(h) The approved plan shall list all designated ACECs, identify their relevant and important resources, values, systems, processes, or hazards, and include the special management attention, including mitigating measures, identified for each designated ACEC.

(i) The State Director shall:

(1) Ensure that inventories used to obtain information and data on relevance and importance are kept current. Monitoring shall be performed and inventories shall be updated at intervals appropriate to the sensitivity of the relevant and important resources, values, systems, processes, or hazards, to ensure that data are available to identify trends and emerging issues during plan evaluations (see § 1610.4-9).

(2) Prioritize acquisition of inholdings within ACECs and adjacent or connecting lands identified as holding related relevant and important resources, values, systems, processes, or hazards as the designated ACEC.

(3) Provide annual reports within the first quarter of each fiscal year identifying for each designated ACEC within the State:

(i) Whether or not an activity plan is deemed necessary and, if so, whether it has been prepared;

(ii) Implementation actions accomplished during the previous fiscal year, highlighting those actions contributing to the conservation, enhancement, or protection of the resources, values, systems, or processes, or protection from natural hazards; and

(iii) Scheduled implementation measures for the ensuing fiscal year.

(j) The State Director, through the land use planning process, may remove the designation of an ACEC, in whole or in part, only when:

(1) The State Director finds that special management attention is not needed because another legally enforceable mechanism provides an equal or greater level of protection; or

(2) The State Director finds that the resources, values, systems, processes, or natural hazards of relevance and importance are no longer present, cannot be recovered, or have recovered to the point where special management is no longer necessary. The findings must be supported by data or documented changes on the ground.

3. Add part 6100 to read as follows:

## **PART 6100—ECOSYSTEM RESILIENCE**

### **Subpart 6101—General Information**

Sec.

6101.1 Purpose.

6101.2 Objectives.

6101.3 Authority.

6101.4 Definitions.

6101.5 Principles for ecosystem resilience.

### **Subpart 6102—Conservation Use to Achieve Ecosystem Resilience**

Sec.

6102.1 Protection of intact landscapes.

6102.2 Management to protect intact landscapes.

6102.3 Restoration.

6102.3-1 Restoration prioritization.

6102.3-2 Restoration planning.

6102.4 Conservation leases.

6102.4-1 Termination and suspension of conservation leases.

6102.4-2 Building for conservation leasing.

6102.5 Management actions for ecosystem resilience.

6102.5-1 Mitigation.

### **Subpart 6103—Tools for Achieving Ecosystem Resilience**

Sec.

6103.1 Fundamentals of land health.

6103.1-1 Land health standards and guidelines.

6103.1-2 Land health assessments, evaluations and determinations.

6103.2 Inventory, assessment and monitoring.

**Authority:** 16 U.S.C. 7202; 43 U.S.C. 1701 et seq.

### **Subpart 6101 – General Information**

### **§ 6101.1 Purpose.**

The BLM's management of public lands on the basis of multiple use and sustained yield relies on healthy landscapes and resilient ecosystems. The purpose of this part is to promote the use of conservation to ensure ecosystem resilience. This part discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring.

### **§ 6101.2 Objectives.**

The objectives of these regulations are to:

(a) Achieve and maintain ecosystem resilience when administering Bureau programs; developing, amending, and revising land use plans; and approving uses on the public lands;

(b) Promote conservation by protecting and restoring ecosystem resilience and intact landscapes;

(c) Integrate the fundamentals of land health and related standards and guidelines into resource management;

(d) Incorporate inventory, assessment, and monitoring principles into decisionmaking and use this information to identify trends and implement adaptive management strategies;

(e) Accelerate restoration and improvement of degraded public lands and waters to properly functioning and desired conditions; and

(f) Ensure that ecosystems and their components can absorb, or recover from, the effects of disturbances or environmental change through conservation, protection, restoration, or improvement of essential structures, functions, and redundancy of ecological patterns across the landscape.

### **§ 6101.3 Authority.**

These regulations are issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended; and section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202).

**§ 6101.4 Definitions.**

As used in this part, the term:

*Best management practices* means state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time.

*Casual use* means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to such activities.

*Conservation* means maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions.

*Disturbance* means a discrete event in time that affects the structure and function of an ecosystem. Disturbances may be viewed as “characteristic” when ecosystems and species have evolved to accommodate the disturbance attributes or “uncharacteristic” when the attributes are outside an established range of variation.

*Effects* means the direct, indirect, and cumulative impacts from a public land use; effects and impacts as used in this rule are synonymous.

*High-quality information* means information that promotes reasoned, fact-based agency decisions. Information relied upon or disseminated by BLM must meet the standards for objectivity, utility, integrity, and quality set forth in applicable federal law and policy. Indigenous knowledge may qualify as high-quality information when that knowledge is authoritative, consensually obtained, and meets the standards for high-quality information.

*Important, Scarce, or Sensitive resources:*

(1) *Important resources* means resources that the BLM has determined to warrant special consideration, consistent with applicable law.

(2) *Scarce resources* means resources that are not plentiful or abundant and may include resources that are experiencing a downward trend in condition.

(3) *Sensitive resources* means resources that are delicate and vulnerable to adverse change, such as resources that lack resilience to changing circumstances.

*Indigenous Knowledge (IK)* means a body of observations, oral and written knowledge, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. IK is applied to phenomena across biological, physical, social, cultural, and spiritual systems. IK can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. IK is developed by Indigenous Peoples including, but not limited to, Tribal Nations, American Indians, Alaska Natives, and Native Hawaiians.

*Intact landscape* means an unfragmented ecosystem that is free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's structure or ecosystem resilience, and that is large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes have high conservation value, provide critical ecosystem functions, and support ecosystem resilience.

*Land enhancement* means any infrastructure or other use related to the public lands that is designed to improve production of forage; improve vegetative composition; direct patterns of use to improve ecological condition; provide water; stabilize soil and water conditions; promote effective wild horse and burro management; or restore, protect, and improve the condition of land health or fish and wildlife habitat. The term



includes, but is not limited to, structures, treatment projects, and the use of mechanical devices or landscape modifications achieved through mechanical means.

*Landscape* means a network of contiguous or adjacent ecosystems characterized by a set of common management concerns or conditions. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. Areas described in terms of aquatic conditions, such as watersheds or ecoregions, may also be “landscapes.”

*Mitigation* means:

(1) Avoiding the impacts of a proposed action 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 of the action 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; and

(5) Compensating for the impact of the action by replacing or providing substitute resources or environments. In practice, the mitigation sequence is often summarized as avoid, minimize, and compensate. The BLM generally applies mitigation hierarchically: first avoid, then minimize, and then compensate for any residual impacts from proposed actions.

*Mitigation strategies* means documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area, at relevant scales, in advance of anticipated public land uses.

*Monitoring* means the periodic observation and orderly collection of data to evaluate:

- (1) Existing conditions;
- (2) The effects of management actions; or
- (3) The effectiveness of actions taken to meet management objectives.

*Permittee* means any person that has a valid permit, right-of-way grant, lease, or other land use authorization from the BLM.

*Protection* is the act or process of conservation by preserving the existence of resources while keeping resources safe from degradation, damage, or destruction.

*Public lands* means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

*Reclamation* means, when used in relation to individual project goals and objectives, practices intended to achieve an outcome that reflects the final goal to restore the character and productivity of the land and water. Components of reclamation include, as applicable:

- (1) Isolating, controlling, or removing of toxic or deleterious substances;
- (2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;
- (3) Rehabilitating fisheries or wildlife habitat;
- (4) Placing growth medium and establishing self-sustaining revegetation;
- (5) Removing or stabilizing buildings, structures, or other support facilities;
- (6) Plugging drill holes and closing underground workings; and
- (7) Providing for post-activity monitoring, maintenance, or treatment.

*Resilient ecosystems* means ecosystems that have the capacity to maintain and regain their fundamental structure, processes, and function when altered by environmental stressors such as drought, wildfire, nonnative invasive species, insects, and other disturbances.

*Restoration* means the process or act of conservation by assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.

*Sustained yield* means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of BLM-managed lands without permanent impairment of the productivity of the land. Preventing permanent impairment means that renewable resources are not depleted, and that desired future conditions are met for future generations. Ecosystem resilience is essential to BLM's ability to manage for sustained yield.

*Unnecessary or Undue degradation* means harm to land resources or values that is not needed to accomplish a use's goals or is excessive or disproportionate.

#### **§ 6101.5 Principles for ecosystem resilience.**

Except where otherwise provided by law, public lands must be managed under the principles of multiple use and sustained yield.

(a) To ensure multiple use and sustained yield, the BLM's management must conserve the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; preserve and protect certain public lands in their natural condition (including ecological and environmental values); maintain the productivity of renewable natural resources in perpetuity; and consider the long-term needs of future generations, without permanent impairment of the productivity of the land.

(b) The BLM must conserve renewable natural resources at a level that maintains or improves future resource availability and ecosystem resilience.

(c) Authorized officers must implement the foregoing principles through:

(1) Conservation as a land use within the multiple use framework, including in decisionmaking, authorization, and planning processes;

- (2) Protection and maintenance of the fundamentals of land health and ecosystem resilience;
- (3) Restoration and protection of public lands to support ecosystem resilience;
- (4) Use of the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and
- (5) Prevention of unnecessary or undue degradation.

## **Subpart 6102—Conservation Use to Achieve Ecosystem Resilience**

### **§ 6102.1 Protection of intact landscapes.**

(a) The BLM must manage certain landscapes to protect their intactness. This requires:

- (1) Maintaining intact ecosystems through conservation actions.
- (2) Managing lands strategically for compatible uses while conserving intact landscapes, especially where development or fragmentation is likely to occur that will permanently impair ecosystem resilience on public lands.
- (3) Maintaining or restoring resilient ecosystems through habitat and ecosystem restoration projects that are implemented over broader spatial and longer temporal scales.
- (4) Coordinating and implementing actions across BLM programs, offices, and partners to protect intact landscapes.
- (5) Pursuing management actions that maintain or mimic characteristic disturbance.

(b) Authorized officers will seek to prioritize actions that conserve and protect intact landscapes in accordance with § 6101.2.

### **§ 6102.2 Management to protect intact landscapes.**

(a) When revising a Resource Management Plan under part 1600 of this chapter, authorized officers must use available data, including watershed condition classifications, to identify intact landscapes on public lands that will be protected from activities that

would permanently or significantly disrupt, impair, or degrade the structure or functionality of intact landscapes.

(b) During the planning process, authorized officers must determine which, if any, tracts of public land will be put to conservation use. In making such determinations, authorized officers must consider whether:

(1) The BLM can establish partnerships to work across Federal and non-Federal lands to protect intact landscapes;

(2) Multiple lines of evidence indicate that active management will improve the resilience of the landscape through reducing the likelihood of uncharacteristic disturbance;

(3) The BLM can work with communities to identify geographic areas important for their strategic growth and development in order to allow for better identification of the most suitable areas to protect intact landscapes;

(4) The BLM can identify opportunities for co-stewardship with Tribes;

(5) Conservation leases (see § 6102.4) can be issued to manage and monitor areas within intact landscapes with high conservation value and complex, long-term management needs; and

(6) Standardized quantitative monitoring and best available information is used to track the success of ecological protection activities (see § 6103.3).

(c) When determining whether to acquire lands or interests in lands through purchase, donation, or exchange, authorized officers must prioritize the acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems.

(d) Authorized officers must collect and track disturbance data that indicate the cumulative disturbance and direct loss of ecosystems at a watershed scale resulting from BLM-authorized activities. This information must be included in a national tracking

system. The BLM must use the national tracking system to strategically minimize surface disturbance, including identifying areas appropriate for conservation and other uses in the context of threats identified in watershed condition assessments, to analyze landscape intactness and fragmentation of ecosystems, and to inform conservation actions.

### **§ 6102.3 Restoration.**

(a) The BLM must emphasize restoration across the public lands to enable achievement of its multiple use and sustained yield mandate.

(b) In determining the restoration actions required to achieve recovery of ecosystems and promote resilience, the BLM must consider the degree of ecosystem degradation and develop restoration goals and objectives designed to achieve ecosystem resilience and land health standards (see § 6103.1-1).

(c) The BLM should employ active management to promote restoration. Over the long-term, restoration actions must be durable, self-sustaining, and expected to persist based on the resource objective.

#### **§ 6102.3-1 Restoration prioritization.**

(a) Not less than every five years, authorized officers must identify priority landscapes for restoration. In doing so, authorized officers must consider:

(1) Results from land health assessments, watershed condition classifications and other best available information (see subpart 6103 of this part);

(2) The likelihood of success of restoration activities to achieve resource or conservation objectives;

(3) The possibility of implementing a series of coordinated restoration actions benefiting multiple resources at scales commensurate to the cause of the degradation in areas where the BLM manages sufficient lands or partnerships exist to work across jurisdictions;

(4) Where restoration actions will have the greatest social, economic, and environmental justice impacts for local communities; and

(5) Where restoration can concurrently or proactively prevent unnecessary or undue degradation, such as ecosystem conversion, fragmentation, habitat loss, or other negative outcomes that permanently impair ecosystem resilience.

**§ 6102.3-2 Restoration planning.**

(a) Authorized officers must include a restoration plan in any Resource Management Plan adopted or revised in accordance with part 1600 of this chapter. Each restoration plan must include goals, objectives, and management actions that require:

(1) Measurable progress toward attainment of land health standards;

(2) Clear outcomes and monitoring to describe progress and enable adaptive management (see subpart 6103).

(3) Coordination and implementation of actions across BLM programs and with partners to develop landscape restoration objectives.

(4) Attainment of statewide and regional needs as identified in the assessment of priority landscapes for restoration and consistent with Resource Management Plan goals.

(5) Restoration of landscapes that land health assessments, watershed condition classifications and other best available information suggest should be prioritized for restoration.

(b) Authorized officers must design and implement restoration actions to achieve the goals and objectives adopted under paragraph (a) of this section. In doing so, authorized officers must:

(1) Ensure that actions are designed, implemented, and monitored at appropriate spatial and temporal scales using suitable treatments and tools to achieve desired outcomes.

(2) Ensure that restoration management actions address causes of degradation, focus on ecological process-based solutions, and where possible maintain attributes and resource values associated with the potential or capability of the ecosystem.

(3) Coordinate and implement actions across BLM programs and with partners to develop holistic restoration actions.

(4) Issue conservation leases under § 6102.4 for the purpose of restoring, managing, and monitoring areas within priority landscapes.

(5) Ensure incorporation of locally appropriate best management practices that address the following:

(i) A five-year schedule that describes activities prior to planning (such as pretreatments and native-plant materials procurement), implementation actions (including operation, maintenance, and repair), monitoring (see § 6103.2), and reporting;

(ii) Potential remedial and contingency measures that account for drought and changed circumstances that could delay implementation; and

(iii) Opportunities for compensatory mitigation for important, scarce, or sensitive resources or resources protected by law.

(c) Authorized officers must annually track restoration-project progress toward achieving goals, projects that have achieved project goals, and projects completed without meeting project goals. When assessment and monitoring efforts reveal that restoration outcomes have not been met, authorized officers must assess and track why restoration outcomes are not being achieved and what, if any, additional resources or changes to management are needed to achieve restoration goals.

(d) Authorized officers may authorize a restoration project or approve compensatory mitigation as part of a broader land use authorization only if the proposed restoration project or compensatory mitigation will be consistent with the land health



standards, restoration goals and objectives, best management practices and Resource Management Plan restoration plans described in paragraph (a) of this section.

**§ 6102.4 Conservation leasing.**

(a) The BLM may authorize conservation use on the public lands by issuing conservation leases on such terms and conditions as the authorized officer determines are appropriate for the purpose of ensuring ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.

(1) Conservation leases on the public lands may be authorized for the following activities:

- (i) Conservation use that involves restoration or land enhancement; and
- (ii) Conservation use that involves mitigation.

(2) Authorized officers may issue conservation leases to any qualified individual, business, non-governmental organization, or Tribal government.

(3) Conservation leases shall be issued for a term consistent with the time required to achieve their objective.

(i) A conservation lease issued for purposes of restoration or protection may be issued for a maximum term of 10 years and shall be reviewed mid-term for consistency with the lease provisions.

(ii) A conservation lease issued for purposes of mitigation shall be issued for a term commensurate with the impact it is mitigating and reviewed every 5 years for consistency with the lease provisions.

(iii) Authorized officers shall extend or further extend a conservation lease if necessary to serve the purpose for which the lease was first issued. Such extension or further extension can be for a period no longer than the original term of the lease.

(4) Subject to valid existing rights and applicable law, once the BLM has issued a conservation lease, the BLM shall not authorize any other uses of the leased lands that are inconsistent with the authorized conservation use.

(5) No land use authorization is required under the regulations in this part for casual use of the public lands covered by a conservation lease.

(b) The process for issuing a conservation lease is as follows:

(1) An application for a conservation lease must be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. The filing of an application gives the applicant no right to use the public lands.

(2) If the lease application is approved, the authorized officer will issue an approved conservation lease on a form approved by the Office of the Director, Bureau of Land Management.

(c) An application for a conservation lease must include:

(1) A description of the proposed conservation use in sufficient detail to enable authorized officers to evaluate the feasibility of the proposed conservation use; the impacts, if any, on the environment; the public or other benefits from the conservation use; the approximate cost of the proposed conservation use; any threat to public health and safety posed by the proposed use; and how, in the opinion of the applicant, the proposed use conforms to the Bureau of Land Management's plans, programs, and policies for the public lands covered by the proposed use. The description shall include but not be limited to:

(i) Details of the proposed uses and activities;

(ii) A description of all facilities for which authorization is sought, including access needs and special types of leases that may be needed;

(iii) A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;

(iv) A schedule for restoration or land enhancement activities if applicable; and

(v) The following additional information, upon request of authorized officers:

(A) Additional studies or environmental data, if such studies or data are necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed conservation lease.

(B) Documentation of or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approvals.

(C) Evidence that the applicant has, or prior to commencement of conservation activities will have, the technical and financial capability to operate, maintain, and terminate the authorized conservation use.

(2) The application shall include the name and legal mailing address of the applicant, as well as a statement of the applicant's interest in the resource or purpose of the lease.

(3) If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(4) If any of the information required in this section has already been submitted as part of a separate conservation use proposal, the application need only refer to that proposal by filing date, office, and case number. The applicant shall certify that there have been no changes in any of the information.

(d) Approval of the application is not guaranteed and is solely at the discretion of the authorized officer.

(e) A conservation lease may only be assigned or transferred with the written approval of the authorized officer, and no assignment or transfer shall be effective until the BLM has approved it in writing. Authorized officers may authorize assignment or transfer of a conservation lease in their discretion if no additional rights will be conveyed

beyond those granted by the original authorization, the proposed assignee or transferee is qualified to hold the lease, and the assignment or transfer is in the public interest.

(f) Administrative cost recovery, rents and fees for conservation leases will be governed by the provisions of §§ 2920.6 and 2920.8.

**§ 6102.4-1 Termination and suspension of conservation leases.**

(a) If a conservation lease provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the conservation lease shall automatically terminate by operation of law upon the occurrence of such event.

(b) A conservation lease may be terminated by mutual written agreement between the authorized officer and the lessee to terminate the lease.

(c) Authorized officers have discretion to suspend or terminate conservation leases under the following circumstances:

(1) Improper issuance of the lease;

(2) Noncompliance by the holder with applicable law, regulations, or terms and conditions of the conservation lease;

(3) Failure of the holder to use the conservation lease for the purpose for which it was authorized; or

(4) Impossibility of fulfilling the purposes of the lease.

(d) Upon determination that the holder has failed to comply with any terms or conditions of a conservation lease and that such noncompliance adversely affects or poses a threat to land or public health or safety or impacts to ecosystem resilience, authorized officers shall issue an immediate temporary suspension.

(1) Authorized officers may issue an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, authorized officers

shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. Authorized officers may also take such action considered necessary to address the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience.

(2) Authorized officers may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal or State agency.

(3) Any time after an order of temporary suspension has been issued, the holder may file with authorized officers a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request. Authorized officers may grant the request upon determination that the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience are resolved.

(4) Authorized officers may render an order either to grant or to deny the request to resume within 5 working days of the date the request is filed. If authorized officers do not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal as if an order denying the request had been issued.

(e) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a conservation lease, authorized officers shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to address the legal basis the authorized officer identifies for suspension or termination.

(2) After due notice of termination or suspension to the holder of a conservation lease, if grounds for suspension or termination still exist after a reasonable time, authorized officers shall give written notice to the holder and refer the matter to the

Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to part 4 of this chapter. The authorized officers shall suspend or revoke the conservation lease if the Administrative Law Judge determines that grounds for suspension or revocation exist and that such action is justified.

(3) Authorized officers shall terminate a suspension order when authorized officers determine that the grounds for such suspension no longer exist.

(4) Upon termination of a conservation lease, the holder shall, for 60 days after the notice of termination, retain authorization to use the associated public lands solely for the purposes of reclaiming the site to its use conditions consistent with achieving land health fundamentals, unless otherwise agreed upon in writing or in the conservation lease terms. If the holder fails to reclaim the site consistent with the requirements of these regulations and the conservation lease terms within a reasonable period, all authorization to use the associated public lands will terminate, but that shall not relieve the holder of liability for the cost of reclaiming the site.

**§ 6102.4-2 Bonding for conservation leases.**

(a) *Bonding obligations.* (1) Prior to the commencement of surface-disturbing activities, the conservation lease holder shall submit a surety or a personal bond conditioned upon compliance with all the terms and conditions of the lease covered by the bond, as described in this subpart. The bond amounts shall be sufficient to ensure reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations. Such restoration may be required after the abandonment or cessation of operations by the conservation lease holder in accordance with, but not limited to, the standards and requirements set forth by authorized officers.

(2) Surety bonds shall be issued by qualified surety companies certified by the Department of the Treasury.

(3) Personal bonds shall be accompanied by:

(i) Cashier's check;

(ii) Certified check; or

(iii) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a conservation use authorization.

(b) *State-wide bonds.* In lieu of bonds for each individual conservation lease, holders may furnish a bond covering all conservation leases and operations in any one State. Such a bond must be at least \$25,000 and must be sufficient to ensure reclamation of all of the holder's conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations in the State.

(c) *Filing.* All bonds shall be filed in the proper BLM office on a current form approved by the Office of the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Bonds shall be filed in the Bureau State office having jurisdiction of the conservation use easement covered by the bond.

(d) *Default.* (1) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a conservation lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(2) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by authorized officers. In lieu thereof, the principal may file separate or substitute bonds for each

conservation use covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by authorized officers. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from authorized officers.

(3) Failure to comply with these requirements may:

(i) Subject all leases covered by such bond(s) to termination under the provisions of this title;

(ii) Prevent the bond obligor or principal from acquiring any additional conservation lease or interest therein under this subpart; and

(iii) Result in the bond obligor or principal being referred to the Suspension and Debarment Program under 2 CFR part 1400 to determine if the entity will be suspended or debarred from doing business with the Federal Government.

#### **§ 6102.5 Management actions for ecosystem resilience.**

(a) Authorized officers must:

(1) Identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts;

(2) Develop and implement strategies, including mitigation strategies, and approaches that effectively manage public lands to protect resilient ecosystems;

(3) Develop and implement monitoring and adaptive management strategies for maintaining sustained yield of renewable resources, accounting for changing landscapes, fragmentation, invasive species, and other environmental disturbances (*see* § 6103.2);

(4) Report annually on the results of land health assessments, including in the land health section of the *Public Land Statistics*;



(5) Ensure consistency in watershed condition classifications both among neighboring BLM state offices and with the fundamentals of land health; and

(6) Store watershed condition classification data in a national database to determine changes in watershed condition and record measures of success based on conservation and restoration goals.

(b) In taking management actions, and as consistent with applicable law, authorized officers must:

(1) Consistent with the management of the area, avoid authorizing uses of the public lands that permanently impair ecosystem resilience;

(2) Promote opportunities to support conservation and other actions that work towards achieving sustained yield;

(3) Issue decisions that promote the ability of ecosystems to recover or the BLM's ability to restore function;

(4) Meaningfully consult with Indian Tribes and Alaska Native Corporations during the decisionmaking process on actions that may have a substantial direct effect on the Tribe or Corporation;

(5) Allow State, Tribal, and local agencies to serve as joint lead agencies consistent with 40 CFR 1501.7(b) or as cooperating agencies consistent with 40 CFR 1501.8(a) in the development of environmental impact statements or environmental assessments;

(6) Respect include Indigenous Knowledge, including by:

(i) Encouraging Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and when necessary, identification of mitigation measures; and

(ii) Communicating to Tribes in a timely manner and in an appropriate format how their Indigenous Knowledge was included in decisionmaking, including addressing management of sensitive information;

(7) Develop and implement mitigation strategies that identify compensatory mitigation opportunities and encourage siting of large, market-based mitigation projects (e.g., mitigation or conservation banks) on public lands where durability can be achieved;

(8) Consider a precautionary approach for resource use when the impact on ecosystem resilience is unknown or cannot be quantified; and

(9) Provide a justification for decisions that may impair ecosystem resilience.

(c) Authorized officers must use national, regional, and site-based assessment, inventory, and monitoring data as available and appropriate, along with other high-quality information, as multiple lines of evidence to evaluate resource conditions and inform decisionmaking, specifically by:

(1) Gathering high-quality available data relevant to the management decision, including standardized quantitative monitoring data and data about land health;

(2) Selecting relevant indicators for each applicable management question (e.g., land health standards, restoration objectives, or intactness);

(3) Establishing a framework for translating indicator values to condition categories (such as quantitative-monitoring objectives or science-based conceptual models); and

(4) Summarizing results and ensuring that a clear and understandable rationale is documented, explaining how the data was used to make the decision.

#### **§ 6102.5-1 Mitigation.**

(a) The BLM will generally apply the mitigation hierarchy to avoid, minimize and compensate for, as appropriate, adverse impacts to resources when authorizing uses of

public lands. As appropriate in a planning process, the authorized officer may identify specific mitigation approaches for identified uses or impacts to resources.

(b) Authorized officers shall, to the maximum extent possible, require mitigation to address adverse impacts to important, scarce, or sensitive resources.

(c) For compensatory mitigation, the BLM may use a third-party mitigation fund holder. Authorized officers may approve third-party mitigation fund holders to establish mitigation accounts for use by entities granted land use authorizations by the BLM, when such accounts are an appropriate and efficient method for implementing mitigation measures required through a BLM decision document. Approved mitigation fund holders are allowed to collect and manage mitigation funds collected from permittees and to expend the funds in accordance with agency decision documents and permits.

(d) Authorized officers may establish mitigation accounts as appropriate when multiple permittees have similar compensatory mitigation requirements or a single permittee has project impacts that require substantial compensatory mitigation that will be accomplished over an extended period and involve multiple mitigation sites.

(e) Authorized officers may approve the use of a mitigation account by a permittee only if a mitigation fund holder has a written agreement with the BLM as described in paragraph (h) of this section.

(f) Authorized officers may approve a third party as a mitigation fund holder if the party:

(1) Qualifies for tax-exempt status in accordance with Internal Revenue Code (IRC) section 501(c)(3);

(2) Has a history of successfully holding and managing mitigation, escrow, or similar corporate accounts;

(3) Is a public charity bureau for the state in which the mitigation area is located, or otherwise complies with applicable state laws;

(4) Is a third party organizationally separate from and having no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee;

(5) Adheres to generally accepted accounting practices that are promulgated by the Financial Account Standards Board, or any successor entity; and

(6) Has the capability to hold, invest, and manage the mitigation funds to the extent allowed by law and consistent with modern “prudent investor” and endowment law, such as the Uniform Prudent Management of Institutional Funds Act of 2006 (UPMIFA) or successor legislation when funds are needed for long-term management and monitoring. UPMIFA incorporates a general standard of prudent spending measured against the purpose of the fund and invites consideration of a wide array of other factors. For states that have not adopted UPMIFA, analogous state legislation can be relied upon to achieve this purpose.

(g) The BLM may not approve a state or local government agency to hold mitigation funds under paragraph (f) of this section unless the government agency is able to demonstrate, to the satisfaction of the BLM, that it is acting as a fiduciary for the benefit of the mitigation project or site and can show that it has the authority and ability to:

(1) Collect the funds;

(2) Protect the account from being used for purposes other than the management of the mitigation project or site;

(3) Disburse the funds to the entities conducting the mitigation project or management of the mitigation site;

(4) Demonstrate that it is organizationally separate from and has no corporate or family connection to the entity accomplishing the mitigation program or project, the project proponent, and the permittee; and

(5) Adhere to generally accepted accounting practices that are promulgated by the Governmental Accounting Standards Board or any successor entity.

(h) The BLM must execute an agreement with any approved mitigation fund holder. All mitigation fund holder agreements must be recorded with the BLM within 30 days of the agreement being fully executed. The BLM office originating the mitigation fund holder agreement must ensure that annual fiscal reports are accurate and complete.

### **Subpart 6103—Tools for Achieving Ecosystem Resilience**

#### **§ 6103.1 Fundamentals of land health.**

(a) Standards and guidelines developed or revised by the BLM in a land use plan must be consistent with the following fundamentals of land health:

(1) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(2) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment to support healthy biotic populations and communities.

(3) Water quality complies with state water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives established in the land use plan such as meeting wildlife needs.

(4) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed and Candidate species, and other special status species.

(b) Authorized officers must manage all lands and program areas to achieve land health in accordance with the fundamentals of land health and standards and guidelines, as provided in this subpart.

**§ 6103.1-1 Land health standards and guidelines.**

(a) To ensure ecosystem resilience, authorized officers must implement land health standards and guidelines that, at a minimum, conform to the fundamentals of land health across all lands and program areas.

(1) Authorized officers must apply existing land health standards and guidelines, including those previously established under subpart 4180 of this chapter, across all lands and program areas.

(2) Authorized officers must review land health standards and guidelines during the land use planning process and develop new or revise existing land health standards and guidelines as necessary for all lands and program areas to ensure the standards and guidelines serve as appropriate measures for the fundamentals of lands health.

(3) Authorized officers will periodically, but not less than every 5 years in conjunction with regular land use plan evaluations, review land health standards and guidelines for all lands and program areas to ensure they serve as appropriate measures for the fundamentals of land health. If existing standards and guidelines are found to be insufficient, authorized officers must evaluate whether to revise or amend the applicable land use plans.

(b) Authorized officers must determine the priority and scale for evaluating standards and guidelines based on resource concerns.

(c) Authorized officers must establish an appropriate set of goals, objectives, and success indicators to ensure that each land health standard can be measured against resource conditions. New and amended standards:

(1) May include previously identified indicators if they are applicable to the new or amended standard;

(2) Must incorporate appropriate quantitative indicators available from standardized datasets;

(3) Must address changing environmental conditions and physical, biological, and ecological functions not already covered by existing standards; and

(4) May require consultation with relevant experts within and outside the agency.

(d) The BLM may establish national indicators for all lands and program areas taken from existing indicators and the development of new indicators, as needed, in support of the implementation of the fundamentals of land health.

(1) Authorized officers must periodically review authorized uses for consistency with the fundamentals of land health for all lands and program areas.

(2) Reserved.

**§ 6103.1-2 Land health assessments, evaluations, and determinations.**

(a) Authorized officers must consider existing land health assessments, evaluations, and determinations in the course of decisionmaking processes regardless of program area. Authorized officers may prepare new land health assessments, evaluations, and determinations in connection with decisionmaking, and must do so if required by other law or regulation.

(b) In the course of conducting land health assessments, authorized officers must measure applicable indicators.

(c) In the course of conducting land health evaluations, authorized officers must:

(1) Document whether land health standards are achieved through land health assessments, documented observations, standardized quantitative data, or other data acceptable to authorized officers as described in § 6103.2.

(2) Use multiple lines of evidence. Indicator values can be compared to benchmark values to help evaluate land health standards. Attainment or nonattainment of a benchmark for one indicator can be considered as one line of evidence used in the assessment and evaluation.

(d) If resource conditions are determined to not be meeting, or making progress toward meeting, land health standards, authorized officers must determine the causal factors responsible for nonachievement.

(e) Authorized officers must make progress toward determining the causal factors for nonachievement as soon as practicable but not later than within a year of the land health assessment identifying the nonachievement.

(1) Upon determining that existing management practices or levels of use on public lands are significant factors in the nonachievement of the standards and guidelines, authorized officers must take appropriate action as soon as practicable.

(2) Taking appropriate action means implementing actions, consistent with applicable law and the terms and conditions of existing authorizations, that will result in significant progress toward fulfillment of the standards and significant progress toward compliance with the guidelines.

(3) Relevant practices and activities may include but are not limited to the establishment of terms and conditions for permits, leases, and other use authorizations and land enhancement activities.

(4) If authorized officers determine that existing management practices or levels of use on public lands are not significant causal factors in the nonachievement of the standards, other remediating actions should be identified and implemented as soon as practicable to address the identified causal factors.

(5) Authorized officers may authorize changes in management or development of a restoration plan to meet other objectives.



## **§ 6103.2 Inventory, assessment, and monitoring.**

(a) Watershed condition classifications must be completed as part of all land use planning processes.

(b) The BLM will maintain an inventory of public lands. This inventory must include both critical landscape components (e.g., land types, streams, habitats) and core indicators that address land health fundamentals. Authorized officers will use inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decisionmaking across program areas, including but not limited to:

- (1) Authorization of permitted uses;
- (2) Land use planning;
- (3) Land health evaluation;
- (4) Available watershed assessments;
- (5) Restoration planning, including prioritization;
- (6) Assessments of restoration effectiveness;
- (7) Evaluation and protection of intactness;
- (8) Mitigation planning; and
- (9) Other decisionmaking processes.

(c) Authorized officers must inventory, assess, and monitor activities employing the following principles:

(1) Structured implementation of monitoring activities through interdisciplinary monitoring plans, which guide monitoring program development, implementation, and data use for decision-makers;

(2) Standardized field measurements to allow data comparisons through space and time in support of multiple management decisions;

(3) Appropriate sample designs to minimize bias and maximize applicability of collected data;

(4) Data management and stewardship to ensure data quality, accessibility, and use; and

(5) Integration with remote sensing products to optimize sampling and calibrate continuous map products.

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