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Bureau of Land Management
20 M Street SE, Room 2134 LM
Attention: Regulatory Affairs, Washington, DC 20003

Federal eRulemaking Portal:

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Comment Tracking Number: **1k0-8ptd-j9vx**

Dear Planning 2.0 Team:

I am writing regarding the proposed Bureau of Land Management (BLM) planning rule for the development of Resource Management Plans (RMPs) as directed by the Federal Land Policy and Management Act (FLPMA). Notice was published in the Federal Register on February 25, 2016 (81 Fed. Reg. 9674-9734), comment period extended April 22, 2016 (81 Fed. Reg. 23666-23667). The development of procedures to guide the planning process and to assure the proper application of FLPMA, the National Trails System Act (NSTA), Omnibus Public Land Management Act of 2009, other pertinent legislation, and Executive Orders is critical to the future of the public lands, their resources, and in particular, National Scenic and Historic Trails (NSHTs).

The new planning rule should provide for protecting the rights-of-way corridors for NSHTs, especially on Federal lands. The values of National Trails include: (1) visitor experience opportunities and settings, and (2) the conservation/protection of scenic, natural, historical, and cultural qualities of the corridor. National Trail Comprehensive Plans (Section 5(e)/(f)) components, and the selection of the National Trail System Act (NTSA) rights-of-way (Section 7(a)), point to the need for resource management plans to map the extent of the National Trail corridors and apply to each described corridor appropriate plan components to protect National Trail values that embody the nature and purposes for which that Trail was designated by Congress.

Further, Executive Order (E.O.) 13195 - Trails for America in the 21st Century states: "Federal agencies will . . . protect, connect, promote, and assist trails of all types. . . . This will be accomplished by . . . protecting the trail corridors associated with National Scenic Trails . . . to the degree necessary to ensure that the values for which [the] trail was established remain intact."

Accordingly, resource management plans for units through which a National Scenic or Historic Trail passes need to address the nature and purposes of the corresponding Trail and, in accordance with the requirements of the National Trails System Act, including guidance found in National Historic or Scenic Trail Comprehensive Plans, provide for:

- a. A management area corridor that is broad enough to protect natural, recreation, scenic, historic, and cultural values and features;
- b. Prescribe desired plan components; and

- c. Establish a monitoring program to evaluate the condition of the National Scenic or Historic Trail corridor.

I appreciate that the BLM developed directives for the National Landscape Conservation System (NLCS), including for National Trails, to guide the management and planning of these special areas (e.g., MS-6100, MS-6250, and MS-6280). The revised rule offers the opportunity to provide for planning processes that integrate the requirements of FLPMA and the procedures that are found in NLCS designating legislation, including the National Trails System Act, and the recently enacted NLCS manual series.

The following are additional and specific comments on the proposed rule. They are presented in three sections:

- National Landscape Conservation System
- Section by Section Recommendations
- General Recommendations

National Landscape Conservation System

A primary recommendation is for the final Rule to prescribe resource management planning processes that provide for the conservation, protection, and restoration of the NLCS. The revised planning rule should address planning processes that lead to integrated planning of NLCS areas, including NSHT corridors, throughout the development and establishment of Resource Management Plans. To facilitate protecting NLCS values, all NLCS areas should be addressed as Areas of Critical Environmental Concern (ACEC).

The Omnibus Public Land Management Act of 2009 (P.L. 111-11, 16 U.S.C. 7202) established NLCS areas. Section 2002 of this Act describes, in part, “In order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System. (b) COMPONENTS.—The system shall include each of the following areas administered by the Bureau of Land Management: (1) Each area that is designated as—(A) a national monument; (B) a national conservation area; (C) a wilderness study area; (D) a national scenic trail or national historic trail designated as a component of the National Trails System; (E) a component of the National Wild and Scenic Rivers System; or (F) a component of the National Wilderness Preservation System. Furthermore, the legislation states, “The Secretary shall manage the system—(1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and (2) in a manner that protects the values for which the components of the system were designated.”

The Federal Land Policy and Management Act of 1976, as amended (P.L. 94-579), section 102, states, “regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.” In addition, Section 103 describes, “(a) The term “areas of critical environmental concern” means areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or

scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.”

“In the development and revision of land use plans, the Secretary shall– (3) give priority to the designation and protection of areas of critical environmental concern; ...and (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located...” (FLPMA Section 202)

“The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” (FLPMA Section 302)

National Landscape Conservation System landscapes are clearly areas where “special management attention is required” as specified in the FLPMA definition of an ACEC, and in fact, the Bureau of Land Management has already addressed the need for such special attention, as in MS-6250 and MS-6280 with regard to NSHTs. The recognition of NLCS components as ACECs as defined in FLMPA provides a mechanism for the identification of these areas and the protection of their values through the development and implementation of Resource Management Plans.

The proposed planning rule Federal Register notice describes appropriately that, “Non-discretionary designations made by the Secretary of the Interior, Congress, or the President are not established or amended through the BLM land use planning process. These non-discretionary designations would, however, be identified in a resource management plan, and management direction for the designation, including plan components, would be developed, consistent with the over-arching direction provided in the proclamation, legislation, or order through which the non-discretionary designation was established.”

To further the recognition of NLCS areas, the magnitude of the “designated area” for Wild and Scenic Rivers (WSRs) and NSHTs need to be defined. The “designated area” for WSRs should be defined as the extent of the established boundary (16 U.S.C. 1274(b)). The extent of a “designated area” for NSHTs should be described as its selected rights-of-way corridor (16 U.S.C. 1246(a)(2)). However, a special situation exists for identifying corridors, since most of the rights-of-way boundaries are yet to be selected.

The final rule should provide that if the right-of-way has not been selected, the provisions of Section 7 of the NTSA, Section 2002 of the Omnibus Public Land Management Act of 2009, and guidance found in Executive Order 13195 (Trails for America, Section 1(B)), “Protecting the trail corridors associated with national scenic trails...to the degrees necessary to ensure that the values for which each trail was established remain intact...” should be used as a basis for delineating the trail corridor within a resource management planning area.

The final rule should further described that, “The designation area for a National Scenic or Historic Trail is defined as the area within the selected rights-of-way or National Trail Management Corridor.” The final rule would then support existing land use planning direction that I endorse: “Through the land use planning process, the BLM must establish a National Trail Management Corridor for a public land area of sufficient width to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored. Through the land use planning process, the BLM must establish allowable uses, management actions, and necessary restrictions for the NTMC; and coordinate with and consider all BLM resource programs and uses within the NTMC to achieve National Trail goals and objectives,” MS-6280, Management Standard, page 1-19.

The location and width of each identified NTMC must be sufficient to allow for the protection of the nature and purposes values for which the National Trail was designated or is being proposed for designation (16 U.S.C 1244(b)).” National Trail Management Corridors would reside within or be identical to the extent of the selected rights-of-way. Boundaries are further discussed in BLM directive MS-6120.

The final rule should maintain the existing RMP and DEIS review and comment periods. The proposed planning rule stresses the importance of collaboration in the assessment phase of planning, which I support. However, I do not believe that shortening the timeframe for public review and comment of a draft RMP and DEIS is justified. The true understanding of the effects of proposed allocations and plan components are not clearly discernable to the public until draft RMP and associated NEPA documents are available for public review and comment. Resource Management Plans will continue to take several months or years to develop, and maintaining existing review and comment periods would not substantially affect this timeline. Maintaining existing review and comment periods could lead to more sustainable decisions as informed by better public assessments of draft documents. In addition, a shortened review and comment period could have the inadvertent effect of the public providing less thoughtful and/or poorly articulated comments, which would be less useful to the deciding official. I recommend retaining the existing comment periods, or at a minimum, adding at least 15 days to each of the proposed comment periods.

Section by Section Recommendations

§1601.0-3 Authority. {Recommending adding to authorities as indicated.}

These regulations are issued under the authority of Sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); **the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7201-7203); the National Trails System Act of 1968, as amended (16 U.S.C. 1241-1251); the Wild and Scenic River Act of 1968, as amended (16 U.S.C. 1271-1287);** the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); Section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); Sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§1601.0-5 Definitions.

As used in this part, the term: **{Recommend adding to the rule:}**

National Trail Management Corridor. Allocation established through the land use planning process, pursuant to Section 202 of Federal Land Policy and Management Act and Section 7(a)(2) of the National Trails System Act (“rights-of-way”) for a public land area of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored. (MS-6280)

National Trail Right(s)-of-Way. Term used in Section 7(a)(2) of the National Trails System Act to describe the corridor selected by the National Trail administering agency in the trailwide Comprehensive Plan and which includes the area of land that is of sufficient width to encompass National Trail resources, qualities, values, and associated settings. The National Trail Right-of-Way, in the context of the National Trails System Act, differs from a Federal Land Policy and Management Act (FLPMA) Title V right-of-way, which is a grant issued pursuant to FLPMA authorities. It becomes a key consideration in establishing the National Trail Management Corridor in a Resource Management Plan. (MS-6280)

National Trail Nature and Purposes. The term used to describe the character, characteristics, and congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; the primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of National Trails. (MS-6280)

§ 1610.1-2 - Plan components.

(a) Plan components guide future management actions within the planning area. Resource management plans ~~will~~ **must** include the following plan components:

... (2) Objectives. An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. Provide integrated consideration of resource, environmental, ecological, social, and economic factors. ~~To the extent practical, objectives should also:~~

{Recommend adding:} “(3) Standards: Identify standards to mitigate undesirable effects to resource conditions; and provide integrated consideration of resource, environmental, ecological, social, and economic factors. A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.”

(b) Resource management plans also ~~will~~ **must** include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield or other applicable law. **{Recommend adding:} “The plan must indicate whether specific plan components apply to the entire plan area, to specific designations, or to other areas as identified in the plan. The extent of all designations must be mapped and displayed as part of the Resource Management Plan.”**

(1) Designations... **{Recommend adding as indicated:}**

(ii) Non-discretionary designations are designated by the President, Congress, the Secretary of the Interior, or **the Secretary of Agriculture** pursuant to other legal authorities. **“Designations must include the area within the National Landscape Conservation System boundaries as described in the authorizing legislation where defined. The designation extent for a Wild and Scenic River is defined as the area within the established boundary. The designation area for a National Scenic or Historic Trail is defined by the area that has the greater extent as either: (a) the area within the selected rights-of-way, or (b) the area within the National Trail Management Corridor.”**

(iii) **“A designation requires appropriate resource use determinations to protect the priority values and uses as determined by the plan or legal authorities establishing the designation, including limiting or restricting other uses.”**

... (2) Resource use determinations. A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. **{Recommend adding:} “Resource use determinations must be consistent with identified desired outcomes and conditions.”**

§ 1610.2-2 Public Comment Periods. {Recommend modifying review periods as indicated.}

(a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM will notify the public and provide for at least ~~30~~ **15** (sic) **45** calendar days for response, unless a longer period is required by law or regulation.

(b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM will provide at least ~~45~~ **60** calendar days for response. The ~~45-60~~-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the Federal Register.

(c) When requesting written comments on a draft resource management plan and draft environmental impact statement, the BLM will provide at least ~~60~~ **75** calendar days for response. The ~~60~~ **75**-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the Federal Register.

§ 1610.3-2 Consistency requirements. {Recommend addressing WSR and National Trail Comprehensive Plans as indicated.}

(a) Resource management plans ~~will~~ **should** be consistent with officially approved or adopted land use plans, **including Wild and Scenic River and National Trail Comprehensive Plans** of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds ~~practical~~ **practicable** and consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be specific inconsistencies between the BLM resource management plan and their officially approved and adopted land use plans, **including Wild and Scenic River and National Trail Comprehensive Plans**, the resource management plan documentation will show how those inconsistencies were addressed and, if possible, resolved.

§ 1610.8-2 - Designation of areas of critical environmental concern

§ 1610.8-2(b)(2) {Recommend these clarifying edits:} “The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan will include a list of all designated ACECs, and include any special management attention identified to protect the designated ACEC. **BLM must set specific resource use determinations for each ACEC in order to protect ACECs from irreparable harm and provide special management attention for the ACEC.**”

§ 1610.8-2(c) {Recommend adding:} “**Components of the National Landscape Conservation System must be designated as areas of critical environmental concern. The extent of the area of an ACEC designation for a NLCS component must encompass – at a minimum – the area within the designated area boundary and may be expanded where necessary to provide for the purposes for which the designated area was established.**”

General Recommendations

To improve readability and understanding, the final rule and planning directives should re-establish the degree of compliance direction that was found in Release 1-1736 of BLM directive H-1221-1 (10/21/2011):

- a. “Must” indicates a mandatory requirement. “Must not” means that the action is absolutely prohibited.
- b. “Should” indicates suggested action. The action is desirable but not mandatory.
- c. “May” and “can” indicate that the suggested action is optional.
- d. “Will” conveys only future tense and implies little urgency in carrying out a directive.
- e. Do not use the word “shall” in BLM directives. “Shall” is an ambiguous word that can alternately convey obligation or simple future action. Use “must” to indicate mandatory action, and “will” to indicate future tense.
- f. **{Recommend adding:} “Direction written with a verb in the imperative mood is also mandatory.”**

To improve understanding, accountability, and coordination with the U.S. Forest Service as described under consistency requirements, the final rule should add standards (aka thresholds) to the list of plan components that are required using the definition of standards as found in the Forest Service Planning Rule, 36 CFR 219.7:

“(e) *Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan.

(1) *Required plan components.* Every plan must include the following plan components:

(iii) *Standards.* A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements...”

The forthcoming revised MS-1601 Land Use Planning Handbook needs to embed and/or clearly adopt the land use planning direction that is found or referenced in NLCS directive MS-6100, MS-6250, and MS-6280. The planning and management guidance in these established NLCS manuals is important to integrated resource management planning, including providing for “conserving, protecting, and restoring nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.”

Thank you for this opportunity to be involved in this important rule making process.

Sincerely,

Greg Warren

Greg Warren
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cc: Kristin Bail, Assistant Director, Office of National Conservation Lands and Partnerships