

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, OR 97208**

In Reply Refer to:

9212/1790/6841 (OR-934) P

January 22, 2003

EMS TRANSMISSION 01/24/2003
Instruction Memorandum No. OR-2003-037
Expires: 9/30/2004

To: All District Managers

From: State Director

Subject: National Environmental Policy Act, Endangered Species Act and National
Historic Preservation Act Process for National Fire Plan Wildland-Urban Interface
Community Assistance Grants

DD:
02/04/03
03/28/03

Program Area: Wildland Urban Interface (WUI) Community Assistance Grants.

Purpose: To clarify the process for addressing the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA) with respect to National Fire Plan Community Assistance Grant Projects.

Policy/Action:

National Environmental Policy Act Compliance

From a NEPA perspective, selection and funding of projects on private lands constitutes a Federal action, thus is subject to documentation under the Act's requirements.

Documentation requirements need not be burdensome. Most frequently, a categorical exclusion (CE) may be used. In particular, the following Bureau of Land Management (BLM) CEs (516 DM 6, Appendix 5) may be applicable:

C.2. Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

C.4 Pre-commercial thinning and brush control using small mechanical devices.

In addition, the following CE may apply when projects are co-funded by another Department of Interior agency (U.S. Fish and Wildlife Service, National Park Service or Bureau of Indian Affairs):

H.11 Actions where the (BLM) has concurrence or co-approval with another Department of Interior agency and the action is categorically excluded for that agency.

Attachment 2 is a sample (CE) format. BLM's NEPA Handbook also contains a sample format. If any of the exceptions listed in the Departmental Manual (516 DM 6, Appendix 2) apply, more extensive documentation is necessary: for example, a Determination of NEPA Adequacy or Environmental Assessment. It is very unlikely projects occurring as part of the fire

grant program would have *significant* environmental effects triggering the need for an Environmental Impact Statement (EIS). If it is determined a project may have significant impacts, contact and work with the State Office lead for the fire grant program to determine if project redesign or funding re-allocation is appropriate. Funding and staff are not available to support EIS preparation in support of grant projects.

Endangered Species Act Compliance

Section 7(a)(2) of the ESA requires Federal agencies, in consultation with the Secretary of the Interior, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify any designated critical habitat. These actions can take place on Federal or non-Federal lands. When BLM provides funding to local communities for hazardous fuels reduction, it is an action that requires compliance with Section 7(a)(2).

This consultation should be conducted using the Streamlining Protocols outlined in the Instruction Memorandum dated May 31, 1999, and updated by subsequent Instruction Memoranda. When working with the community assistance recipients, remember to provide suggestions that will assist them in modifying their projects (if necessary) to meet the not-likely-to-affect status. There is National Fire Plan Consultation design criteria, as well as other local level 1 team design criteria, available to offer to the grant recipients for ideas.

Cultural Resources Considerations for Fire Grants

For all proposed BLM undertakings that might affect significant historic properties, BLM must comply with Section 106 of the NHPA as amended. This includes actions and authorizations funded in whole or in part under the BLM's direct or indirect jurisdiction and regardless of whether an undertaking would take place on Federal or non-Federal lands. Regulations of the Advisory Council on Historic Preservation, implementing Section 106, define undertakings requiring compliance with the NHPA as: A...a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; [and] those requiring a Federal permit, license or approval@ 36 CFR 800.16(y). The primary question is whether significant historic properties would be affected, not who owns them.

In Oregon, the 1997 Cultural Protocol with the Oregon State Historic Preservation Office (SHPO) guides BLM compliance with Section 106. The protocol exempts most BLM projects from strict consultation requirements. BLM is still compelled to perform all of the routine internal considerations of potential effects, including possible pre-project field inspections and subsequent completion of an inventory report and completed site forms. If no significant cultural resources are identified by the review, the results of the cultural resource assessments are provided to the BLM decision-maker and resulting cultural resources documentation is submitted to SHPO for information purposes. The project may proceed without waiting for SHPO response. If cultural resources are identified in the proposed project area, the nature and importance of effects are evaluated and mitigation measures are considered according to procedures in the SHPO protocol. If the resources are determined to be eligible to the National Register of Historic Places, the project work can usually be redesigned as necessary to avoid impacts. In Washington, compliance with Section 106 of the NHPA more strictly follows procedures described in 36 CFR 800. Commonly, individual projects for which field survey is deemed appropriate by the field office is submitted to the Washington SHPO for review and comment. This consultation step must be completed before project approval is granted by the agency.

In summary, Section 106 requires Federal decision-makers to *take into account* potential effects on significant historic resources through a process that weighs and reconciles competing public interests. Its purpose is to ensure that agencies will not proceed without giving historic preservation due consideration.

Coordination

Districts are requested to identify and provide the name, phone number and email address of the person(s) in their office responsible for coordinating NEPA, ESA and NHPA for each project listed. This information can be provided to Lauren Maloney in the Oregon State Office at (503) 808-6587 or by email to Lauren_Maloney@or.blm.gov.

Summary

Implementation of fuels treatment mitigation actions, such as prescribed burns, mechanical treatments, chemical treatments or biological treatments on Federal land, requires documentation of compliance with all three of the above laws. Implementation of these actions on non-Federal land requires NEPA review when BLM is involved in site-specific project selection and/or project implementation. Projects on non-Federal land funded in whole or in part by BLM require compliance with NHPA and/or ESA. Funding will be transferred for non-Federal land projects through Cooperative Agreements coordinated at the State Office. When required, it continues to be BLM's policy to ensure that NEPA, NHPA and ESA compliance documentation is completed prior to implementing on-the-ground actions.

Timeframe: Please provide contact information for the person(s) in your office responsible to coordinate NEPA, ESA and NHPA reviews for any listed project by February 4, 2003. Please complete NEPA, ESA and NHPA reviews by March 28, 2003, or request any necessary extension within that timeframe.

Background: The BLM, in addition to treating fuels in the WUI on Federal lands, is providing community assistance to help resolve WUI fire issues on state-protected and private lands. While our state partners coordinate many of these projects, we are also working directly with a number of local governments and nonprofit organizations. A list of community projects, grant recipients and contact information is included as Attachment 1. This Instruction Memorandum is intended as guidance to aid you in completing NEPA, ESA and NHPA reviews for projects in your districts.

Manual/Handbook Sections Affected: BLM Manual Sections 9212, 1790 and 6841.

Coordination: Lauren Maloney, Program Analyst; Barbara Kennedy, Forest Service/BLM Cooperative Specialist; Leslie Frewing-Runyon, Planning and Environmental Coordinator; Dorothy Mason, Eastside OR/WA ESA Coordinator; and Richard Hanes, State Office Program Leader.

Contact: The following people are the coordinators for this effort statewide. They will periodically contact district coordinators that you identify to check on the status. They are also available for questions. For WUI Community Assistance Grant information, contact Lauren Maloney at (503) 808-6587 or Barbara Kennedy at (503) 808-2323; for NEPA information, contact Leslie Frewing-Runyon at (503) 808-6088; for ESA information, contact Dorothy Mason at (541) 523-1308; for NHPA information, contact Richard Hanes at (541) 683-6669.

Districts with Unions are reminded to notify their unions of this Instruction Memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
Charles E. Wassinger
Associate State Director

Authenticated by
Mary O'Leary
Management Assistant

4 Attachments

- 1 – [2003 National Fire Plan Community Assistance Projects with Ground Disturbing Activity](#) (1p)
- 2 – [Record of Plan Conformance and CE Determination](#) (1p)
- 3 – [Documentation of CE Exceptions](#) (1p)
- 4 – [Documentation of Recommended Mitigation](#) (1p)

Distribution

WO-100 (5633, MIB) – 1

2003 National Fire Plan Community Assistance Grants with Ground Disturbing Activity

Project No.	Project Name	Grant Recipient	Project Coordinator Name and Contact Information	BLM District
13	La Pine New Neighborhood Survivable Space Treatment	Deschutes County	Catherine Morrow, Principal Planner Descutes County Community Development Department (541) 385-1708	Prineville
38	Applegate Hazardous Roads Fuel Reduction Project (AHRFRP)	Applegate Valley Rural Fire District #9	Brett Fillis, Fire Chief Applegate Valley Rural Fire District #9 (541) 899-1050	Medford
94	Black Butte Ranch Common Areas Hazardous Fuels Mitigation	Black Butte Ranch Association	Bill Burkart, Fuels Mitigation Projects Chairman Friends of Black Butte/ Homeowners Association (541) 595-2568	Prineville
14	Gilson Gulch Fuels Reduction Strategy & Treatments	REACH, Inc.	Bjorn Everson, Director of Workforce Training, Ecosystem Workforce Training Project (541) 882-8803	Medford
15	Bly Neighbors Community Fire Planning & Hazard Fuel Reduction	REACH, Inc.	Bjorn Everson, Director of Workforce Training, Ecosystem Workforce Training Project (541) 882-8803	Lakeview
17	Trout Creek Conservation and Fuels Reduction	Heart of Oregon Corps	Janice Jaworski Chairperson, Heart of Oregon Corps (541) 617-6040	Prineville
26	Complete Defensible Spaces and Fuel Treatments	Sun Mountain Ranch Club & Membership Association, Inc.	Fred Edelman, President Sun Mountain Ranch Club & Membership Association, Inc. (509) 996-3820	Spokane
21	Kittitas County FireWise 2002-2	Kittitas FireWise	Derald Gaidos, Fire Marshal Kittitas County Building & Fire Safety (509) 962-7000	Spokane

Grant Applications can be found by number online at:

<http://www.fs.fed.us/r6/fire/2003grants/>

**RECORD OF PLAN CONFORMANCE AND
CATEGORICAL EXCLUSION (CX) DETERMINATION**

Lease or CX Log #: _____ Serial #: _____

Project Name: _____

Applicant: _____ Location: _____

Address: _____ County: _____

BLM Office: _____ Phone #: _____

CX Number from Current Department or Bureau List: _____

Description of the Proposed Action:

PLAN CONFORMANCE

The above project has been reviewed and found to be in conformance with one or more of the following BLM plans:

Reviewer: _____ Date: _____

Attachment 2

Documentation of Categorical Exclusion (CX) Exceptions

The proposed action would not create adverse environmental effects under the CX exceptions, unless as noted. The proposed action will:

Yes	No	CX Exception
-		1. Have significant adverse effects on public health or safety.
-		2. Have significant, adverse effects on unique geographic characteristics or features, or on special designation areas such as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; sole or principal drinking water aquifers; or prime

		farmlands. This also includes ecologically significant or critical areas, <i>such as significant caves, ACECs, National Monuments, WSAs, RNAs</i> , and those listed on the National Register of Natural Landmarks.
-		3. Have highly controversial environmental effects (40 CFR 1508.14).
-		4. Have highly uncertain and potentially significant environmental effects or unique or unknown environmental risks.
-		5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.
-		6. Be directly related to other actions with individually insignificant, but significant cumulative environmental effects. <i>This includes connected actions on private lands (40 CFR 1508.7 and 1508.25(a)).</i>
-		7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places. <i>This includes Native American religious or cultural sites, archaeological sites, or historic properties.</i>
-		8. Have adverse effects on species listed or proposed to be listed as Federally Endangered or Threatened Species, or have adverse effects on designated critical habitat for these species. <i>This includes impacts on BLM-designated sensitive species or their habitat. When a Federally listed species or its habitat is encountered, a Biological Evaluation (BE) shall document the effect on the species. The responsible official may proceed with the proposed action without preparing a NEPA document when the BE demonstrates either 1) a No effect@ determination or 2) a May effect, not likely to adversely effect@ determination.</i>
-		9. Fail to comply with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act (<i>water resource development projects only</i>).
-		10. Violate a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, <i>where non-Federal requirements are consistent with Federal requirements.</i>
-		11. <i>Involve unresolved conflicts concerning alternative uses of available resources (NEPA section 102(2)(E)) not already decided in an approved land use plan.</i>
-		12. <i>Have a disproportionate significant adverse impacts on low income or minority populations; Executive Order 12898 (Environmental Justice).</i>
-		13. <i>Restrict access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites; Executive Order 13007 (Indian Sacred Sites).</i>
-		14. <i>Have significant adverse effect on Indian Trust Resources.</i>
-		15. <i>Contribute to the introduction, existence, or spread of: Federally listed noxious weeds (Federal Noxious Weed Control Act); or invasive non-native species; Executive Order 13112 (Invasive Species).</i>
-		16. <i>Have a direct or indirect adverse impact on energy development, production, supply, and/or distribution; Executive Order 13212 (Actions to Expedite Energy-Related Projects).</i>

DOCUMENTATION OF RECOMMENDED MITIGATION

For any item checked "Yes" identify the mitigating measures proposed. If not, the conditions for CX cannot be met.

Item No. Can be Mitigated Cannot be Mitigated Mitigation Measures

SUMMARY OF FINDINGS

The proposed action would not create adverse environmental impacts or require the preparation of an environmental assessment (EA) or environmental impact statement (EIS) under 516 DM 6, Appendix 2 or Appendix 5. The proposed action has been reviewed against the 16 criteria for an exception to a categorical exclusion (listed above) as identified in 516 DM 2.3 A(3) and criteria added by executive order, does not fall under any exception, and is therefore categorically excluded from NEPA documentation.

CX DETERMINATION

The proposed action and any specified mitigation measure(s) has been determined to meet the criteria for a CX and does not fall under any of the CX exceptions.

Date

Prepared by: _____

Title: _____

Date

Reviewed by: _____

Title: _____

Date

Approved by: _____

Field Manager: _____

**2003 National Fire Plan Community
Assistance Grants with Ground Disturbing Activity**

Project No.	Project Name	Grant Recipient	Project Coordinator Name and Contact Information	BLM District
13	La Pine New Neighborhood Survivable Space Treatment	Deschutes County	Catherine Morrow, Principal Planner Deschutes County Community Development Department (541) 385-1708	Prineville
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BLM Office: _____ Phone #: _____

CX Number from Current Department or Bureau List: _____

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Date

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Title: _____

Date

Reviewed by: _____

Title: _____

Date

Approved by: _____

Field Manager: _____