

# **Response to Public Comments on BLM's Resource Management Planning Rule**

November 22, 2016



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## Foreword

The BLM published the proposed rule in the Federal Register on February 25, 2016 (81 FR 9674) for a 60-day comment period ending on April 25, 2016. In response to public requests for an extension, the BLM extended the comment period for an additional 30 days on April 22, 2016 (81 FR 23666). The extended comment period closed on May 25, 2016. During that time, the BLM hosted a variety of public outreach events and briefings for a wide range of interested parties and conducted government-to-government consultation with all federally recognized Indian tribes with which the Bureau normally consults regarding land use planning.

The BLM received 3,354 comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (<http://www.regulations.gov>) (search Docket ID: BLM-2016-0002). The BLM has reviewed all public comments, and has made changes, as appropriate, to the final rule based on those comments and internal review. This document summarizes all substantive comments received on the proposed rule and provides responses to those summaries. Each comment received consideration in the development of the final rule.

### Comments Tied to Subpart 1601—Planning

#### Section 1601.0-1 Purpose

##### Multiple Use and Sustained Yield

**Comment:** One comment indicated that the purpose must include the principles of multiple use and sustained yield and that a failure to include these principles would be in conflict with Congressional direction.

**Response:** Final § 1601.0-1 is revised to include the phrase “consistent with the principles of multiple use and sustained yield unless otherwise specified by law.” It is important

to note, however, that the existing, proposed, and final planning rules do not conflict with Congressional direction as all three are consistent with applicable Federal laws, including FLPMA.

## **Section 1601.0-2 Objective**

### *Objective Statement and Public Involvement*

**Comment:** Comments stated the phrases “ensure participation by the public” and “public participation” used in the proposed rule §§ 1601.0-2 and 1610.6-8(c), respectively, are not consistent with FLPMA, and do not accurately convey responsibilities under FLPMA to provide opportunities for public participation as opposed to ensuring public participation.

**Response:** The final rule replaces the existing and proposed language stating that an objective of resource management planning is to “ensure participation by the public” with “provide for meaningful public involvement by the public” for consistency with FLPMA and for consistent use in terminology throughout this part. The final rule adds a definition for public involvement at § 1601.0-5 to clarify this term in the context of the FLPMA responsibilities for resource management planning. The final rule also replaces “public participation” with “public involvement” in § 1610.6-8(d) for consistency with FLPMA and for consistent use in terminology throughout. Please see the discussion at the preamble for § 1610.6-8(d) for more information on this revision.

**Comment:** One comment requested that the BLM include reference to private landowners potentially impacted by the BLM’s management in § 1601.0-2, and not just governments.

**Response:** Final § 1601.0-2 describes, in part, the objective of resource management planning as to “provide for meaningful public involvement by the public, State and local

governments, Indian tribes, and Federal agencies in the preparation and amendment of resource management plans.” Existing, proposed, and final § 1601.0-5 defines “public” as including “affected or interested individuals,” which encompasses private landowners. Therefore, it is not necessary to make changes to the regulations text to include potentially impacted private landowners in public involvement efforts as these private landowners are already included in the definition of “public” and all related public involvement efforts. The BLM has not revised this statement in the objectives to identify private landowners separately from other members of the public included in the definition at § 1601.0-5.

*Objective Statement and Government Coordination*

**Comment:** The BLM received comments recommending § 1601.0-2 recognize and highlight the difference between public participation and coordination with governments. Several of these comments recommended specific edits to the proposed regulations text to accomplish this recommendation.

**Response:** FLPMA directs the BLM to “provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands.” (See 43 U.S.C. 1712(c)(9).) The final rule reflects this statutory direction by including an objective of resource management planning to “provide for meaningful public involvement by the public, State and local governments, Indian tribes and Federal agencies in the preparation and amendment of resource management plans.” In response to public comments, this statement of objective has been revised to more closely align with the language used in FLPMA. Further, coordination with governmental entities is encompassed by this broader objective statement “to provide for meaningful public involvement.” The final rule addresses specific requirements for coordination

with other Federal agencies, State and local governments, and Indian tribes at § 1610.3, consistent with the requirements of FLPMA.

*Objective Statement and Multiple Use*

**Comment:** Several comments suggested that the proposed language in the objectives section regarding multiple-use is weaker than the statutory language that mandates multiple-use. Comments recommended the BLM change this language to better reflect the mandates of FLPMA.

**Response:** In the final rule, § 1601.0-2 is revised by replacing “promote the principles of” with “manage public lands on the basis of.” The revised language is consistent with FLPMA (see 43 U.S.C. 1701(a)(7)).

**Comment:** Several comments raised concern that the proposed removal of the existing phrase “maximize resource values for the public” represents a change in the BLM’s management and emphasis for land use planning. Concerns stated that the removal reflects a deliberate departure from the principles of multiple use and sustained yield, stating that the change places a greater emphasis on conservation and is an effort to bias the planning process against resource extraction. Comments recommended the BLM retain the language from the existing planning rule.

**Response:** The final rule adopts the proposal to remove the phrase “maximize resource values” in order to remove vague language and for consistency with FLPMA. The existing rule does not define the meaning of the phrase “maximize resource values” or describe how such maximization is to occur in accordance with FLPMA’s direction for management on the basis of multiple use and sustained yield. FLPMA defines multiple use, in part, as “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” as well as “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.” (See 43 U.S.C. 1702(c).) This language provides a more precise explanation of how FLPMA directs the BLM to consider resource values during the planning process. This final rule includes language from FLPMA to “manage on the basis of multiple use and sustained yield” in order to provide clarity on the BLM’s mandate under this statutory direction. The BLM is required to comply with FLPMA, and the final planning rule does not represent a departure from management on the basis of multiple use and sustained yield.

**Comment:** The BLM received several comments expressing concern the BLM is making a shift in public policy by departing from FLPMA and multiple-use policy through the proposed rule. Comments reflect a concern that the BLM is redefining the concept of multiple use and that changes reflect the BLM’s intent to manage public lands for conservation. One comment specifically identified the inclusion of “will preserve and protect certain public lands in their natural condition” as a major shift in public policy because the phrase is not found in FLPMA. Comments recommended that the BLM verify that existing multiple land uses are retained as BLM policy and that multiple use and sustained yield continues to be the guiding policy for resource management planning.

**Response:** The BLM is required under FLPMA to manage the public lands on the basis of multiple use and sustained yield, unless otherwise specified by law. The final rule at § 1601.0-2 states this as an objective of resource management planning. The BLM currently

applies, and will continue to apply, the definition of multiple-use as it is defined under FLPMA. The final rule adopts the proposal, with minor edits, to incorporate into § 1601.0-2 language from FLPMA (see 43 U.S.C. 1701(a)(8) and (a)(12)), which describes the manner by which the public lands are to be managed. Resource management plans describe how the public lands will be managed within a geographic area; therefore it is appropriate that an objective of resource management planning is to develop management direction that is consistent with statutory direction describing the manner by which public lands are to be managed. The phrase “will preserve and protect certain public lands in their natural condition” is in FLPMA. The BLM is currently required to comply with FLPMA so the language in the proposed and final rule does not reflect a departure from FLPMA and multiple-use and sustained yield management, nor does it represent a shift in public policy.

**Comment:** A few comments expressed concern that proposed § 1601.0-2 would diminish existing multiple use practices, including surface and extractive uses, and emphasized these uses should be retained in the final rule. Comments recommended amending proposed § 1601.0-2 to emphasize that the term “multiple use,” as used in the rule, is consistent with its definition in section 102 of FLPMA.

**Response:** Multiple use is defined in § 1601.0-5 of the existing, proposed, and final rule. The final rule adopts the existing definition and is consistent with the definition for multiple use provided at section 103(c) of FLPMA. It is not necessary for the BLM to include a statement at § 1601.0-2 stating that these definitions are consistent.

#### *Resource Uses and Resource Values*

**Comment:** Several comments noted the FLPMA language added to this section in the proposed rule (43 U.S.C. 1701(a)(12) omitted the reference to the Mining and Minerals Policy

Act. The comments state the BLM's omission of the full citation of paragraph (12), and specifically the portion requiring implementation of the Mining Minerals Policy Act, diminishes emphasis on mineral development and highlights the BLM's intent to shift from traditional land and resource uses to preservation and conservation. Comments identified this shift to be contrary to FLPMA's multiple-use mandate, and stated that the BLM's objective must be consistent with FLPMA and its recognition of the Mining and Minerals Policy Act. Comments recommended that the BLM revise § 1601.0-2 to include the complete text of paragraph (12) and its reference to the Mining and Minerals Policy Act.

**Response:** The BLM is required to comply with Federal law, including the Mining and Minerals Policy Act and all other Federal laws that are applicable to management of the public lands. It is not necessary to list the Mining Minerals Policy Act, or other applicable laws, in the planning regulations as the BLM must comply with these laws, regardless of these regulations. Further, it would not be practical, nor is it necessary, to include a comprehensive list of all Federal laws applicable to the public lands and with which the BLM must comply during the resource management planning process in these regulations. In revising § 1601.0-2, the BLM has endeavored to find a balance between including those statutory provisions in the planning regulations which provide useful context, while also maintaining concise regulations that are easy to read and understand.

**Comment:** One comment indicated that resource management plans need to recognize and provide opportunities to develop domestic sources of minerals, food, and other resources. The comment recommended revising the planning rule objective to add a statement to also "provide opportunities for development of" domestic sources of minerals, food, timber, and fiber from the public lands.

**Response:** The objectives section provides the objectives for establishing resource management plans on BLM-managed lands. In response to public comment, the final rule includes language stating that an objective of resource management planning is to ensure that the public lands be managed in a manner that recognizes the Nation's need for “renewable and non-renewable resource.” This language reflects the language in FLPMA’s definition of multiple use (see 43 U.S.C. 1702(c)). Through the implementation of the final rule, the BLM will provide opportunities for development, as appropriate, to ensure that the public lands are managed in a manner that recognizes the Nation's need for “renewable and non-renewable resource.” Providing opportunities for development, however, is not in and of itself an objective for resource management planning. Such opportunities are provided in the context of the principles of multiple use and sustained yield, unless otherwise specified by law.

**Comment:** One commenter noted the proposed objective to “protect lands in their natural conditions” is unneeded because FLPMA already provides for withdrawals. The comment further identifies that this objective, without a definition, creates a new functional equivalent of a withdrawal from resource uses that appears to be an invitation to curtail and exclude livestock grazing.

**Response:** The added language is consistent with FLPMA (see 43 U.S.C. 1701(a)(8)). The BLM has restated this FLPMA provision in the planning regulations to provide context to the objectives of resource management planning in relation to the declaration of policy (see 43 U.S.C. 1701) delivered to the BLM by Congress. FLPMA and these regulations direct the BLM to manage the public lands on the basis of multiple use and sustained yield, and these uses include livestock grazing.

**Comment:** The BLM received comments expressing that the proposed rule dilutes the intent of FLPMA, and that only partially including the FLPMA paragraph at section 102(a)(8) appears to emphasize resource extraction. Comments recommended that the BLM revise § 1601.0-2 to include the complete text of the Declaration of Policy verbatim from FLPMA.

**Response:** The objectives section provides the objective for establishing resource management planning on BLM-managed lands. The BLM has included language from section 102(a)(8) and 102(a)(12) of FLPMA in § 1601.0-2 to provide context for the declaration of policy delivered to the BLM by Congress. However, the BLM must comply with FLPMA, and other applicable Federal laws, in their entirety, regardless of these regulations. The BLM has not revised § 1601.0-2 to include all of section 102 (the Declaration of Policy) from FLPMA because much of this policy is not directly applicable to the objectives for establishing resource management planning. In revising § 1601.0-2, the BLM has endeavored to find a balance between including those statutory provisions in the planning regulations which provide useful context, while also maintaining concise regulations that are easy to read and understand.

**Comment:** A few comments requested the BLM expand § 1601.0-2 to include electric energy and production. Comments recommended adding “electric energy production and delivery” as one of the resource uses listed in the last statement of the objectives section. One comment recommended revising the objectives to include cultural resources in the list of resources managed, stating that doing so would more adequately represent tribal interests and be consistent with section 103(a) of FLPMA.

**Response:** The BLM is not revising § 1601.0-2 of this final rule to specifically identify electric energy production because this is encompassed by the phrase “renewable and non-renewable resources.” The BLM is not revising § 1601.0-2 to explicitly identify cultural

resources, or other resource values not described in sections 102(a)(8) and (12) of FLPMA as these resource values are encompassed by the definition of multiple use (see § 1601.0-5). The BLM must comply with all applicable Federal laws, including the National Historic Preservation Act of 1966, during BLM planning and management. Please also note that the final planning rule adopts proposed additional responsibilities regarding cultural resources, which are discussed in § 1610.4(d)(5)(i) of the preamble.

**Comment:** The BLM received a few comments suggesting that including some resources, but not all resources, in the objectives statement at § 1601.0-2 indicates that those resources which were included hold higher value. Commenters suggest that the presentation in the proposed rule is unnecessary and confusing, and attempts to elevate conservation and protection above other values.

**Response:** The BLM must comply with all requirements under FLPMA, and other applicable laws, during BLM planning and management. The list of resources provided at § 1601.0-2 is not intended to be exclusive and does not preclude consideration of other resources, nor does it prioritize any single resource over other resources, including those not identified in § 1601.0-2. To the contrary, FLPMA and final § 1601.0-2 require that management be on the basis of multiple use and sustained yield and the concept of multiple use encompasses all resource values and uses applicable to the public lands. FLPMA directs the BLM to manage the public lands and their various resource values in the combination that will best meet the present and future needs of the American people (see § 1601.0-5 for a definition of multiple use). It is not practical or necessary to include all resources in § 1601.0-2. The BLM has not revised § 1601.0-2 to add or remove listed resources from those listed in sections 102(a)(8) and (12) of FLPMA.

**Comment:** The BLM received a comment stating that “air and atmospheric values” are values under the jurisdiction of other federal agencies, and that the BLM is outside of their regulatory authority in establishing an objective that could control human activities that may cause air quality issues.

**Response:** FLPMA at section 102 (a)(8) directs the BLM to manage public lands “in a manner that will protect the quality of ... air and atmospheric ... values ....” Although not explicitly described in FLPMA, the BLM interprets this to include resource values such as air quality and greenhouse gas emissions. The BLM must comply with all applicable Federal laws, including the Clean Air Act during BLM planning. In protecting resource values for which other agencies hold responsibility for declaring standards or thresholds, including air and atmospheric values, the BLM would implement this rule to comply with all relevant laws and consider establishing any air quality standards or thresholds during BLM development or amendment of a specific resource management plan.

**Comment:** The BLM received a comment recommending retaining the existing rule’s objective statement. The commenter stated that the changes in the proposed rule at § 1601.0-2 dilute the meaning by straying from the Congressional intent and that it contains a fundamental shift in objectives.

**Response:** This language reiterates existing statutory direction under FLPMA. The BLM believes that the reiteration of statutory direction in the regulations is helpful in providing context for these regulations in relation to existing statute and does not agree it contains a fundamental shift in objectives.

**Comment:** The BLM received a comment stating that the objective to retain lands in a “natural condition” is subjective and not measurable. The comment recommends the BLM define this term for consistent interpretation.

**Response:** The objectives section provides the objective for establishing resource management planning on BLM-managed lands; it does not prescribe specific resource management objectives for any given resource management plan and therefore need not be specific or measurable. The BLM has identified the objective for resource management planning consistent with meeting the purpose of this subpart stated at § 1601.0-1. Guidance on developing specific and measurable resource management plan objectives is described in § 1610.1-2. The term “natural condition” is in section 102(a)(8) of FLPMA. The BLM manages a diversity of landscapes, and it is not appropriate to define what “natural condition” means for each of these in the planning rule; that condition is better defined as part of the planning process, and specifically, as part of the resource management plan goals and objectives. The BLM will continue to manage lands consistent with FLPMA, including those appropriate to preserve and protect in their natural conditions.

*Unnecessary and Undue Degradation*

**Comment:** The BLM received some comments suggesting the proposed rule failed to acknowledge that the BLM is required under section 302(b) of FLPMA to prevent unnecessary or undue degradation of public lands. The comments recommended that the objectives statement at § 1601.0-2 be revised to clarify FLPMA’s requirement to prevent unnecessary or undue degradation of the public lands is an objective of resource management planning.

**Response:** The BLM has the authority under section 302(b) of FLPMA to prevent unnecessary or undue degradation of public lands; however, it is not practical or necessary to

include all the authority the BLM has under FLPMA in this subpart. The final rule complies with all requirements under the FLPMA. No change is made to the final rule in response to this comment.

*Valid Existing Rights*

**Comment:** The BLM received a comment that the objectives fail to include a statement reflecting the BLM’s commitment to honor valid existing rights. The comment identified that the rule must clearly state that the BLM will honor valid existing rights and interests in carrying forward resource management planning.

**Response:** The objectives section provides the objective for establishing resource management planning on BLM-managed lands. The BLM has identified objectives consistent with meeting the purpose of this subpart stated at § 1601.0-1. The BLM has not included language in the objectives at § 1601.0-2 identifying an objective of compliance with Federal laws because such language is not necessary. The BLM must comply with all applicable Federal laws, including a variety of statutes that direct that planning and other BLM decisions are made subject to valid existing rights, during the implementation of the final rule.

**Section 1601.0-3 Authority**

*Recommendations to Include Additional Legal Authorities*

**Comment:** The BLM received several comments stating a need to include responsibilities under laws for cultural resources in § 1601.0-3. Comments recommended adding the National Historic Preservation Act of 1966 and the Archaeological Resources Protection Act of 1979 to this section. Comments recommended the BLM revise the rule to create an “other authorities” section and include the National Historic Preservation Act of 1966; 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); and the Wild and Scenic River Act of 1968, as amended (16 U.S.C. 1271-1287).

**Response:** Section 1601.0-3 provides the relevant authorities for establishing procedures to develop, amend, and maintain resource management plans. The final rule appropriately identified all authorities relevant to establishing these procedures and the BLM will continue to comply with all applicable Federal laws during resource management planning.

This section does not provide an exhaustive list of Federal laws with which the BLM must comply during resource management planning, as the BLM must comply with all applicable Federal laws during resource management planning.

The final rule does not add an “other authorities” section because it is not practical or necessary to list all applicable Federal laws with which the BLM must comply, or to explain the requirements they place on the BLM, in this subpart. Although the statutes listed are applicable to resource management planning, they do not include any authority relevant to establishing BLM procedures for resource management plans.

**Comment:** Several comments asserted that the BLM should add the following statutes to § 1601.0-3: FLPMA (43 U.S.C. 1732(a)) and 43 U.S.C. 1701(a)(12); Mining and Minerals Policy Act (84 Stat. 1876, 30 U.S.C. 21a); National Materials and Minerals Policy, Research and Development Act (30 U.S.C. 1602 and 1605); and the General Mining Law of 1872 (43 CFR 3809).

**Response:** Section 1601.0-3 already includes FLPMA as an authority, and it is neither appropriate nor necessary to further specify certain sections of that law in the rule’s Authorities section. Section 1601.0-3 provides the relevant authorities for establishing procedures to develop, amend, and maintain resource management plans, and the BLM has appropriately

identified all authorities relevant to establishing those procedures. Although the statutes listed are applicable to resource management planning, they do not include any authority relevant to establishing BLM procedures for resource management plans.

#### **Section 1601.0-4 Responsibilities**

##### *Selection of Deciding Officials and Responsible Officials*

**Comment:** Several comments indicated that the proposed rule is unclear on how the BLM Director would delegate authority for approval or preparation of a resource management plan or plan amendment. Comments recommended that the BLM establish selection criteria or guidance for selecting both the deciding official and the responsible official. Comments also recommend the BLM identify a preference for the level of the deciding official and responsible official. Other comments expressed concern over the BLM Director's authority to select deciding officials without public involvement. These comments expressed that the public should be satisfied with the deciding official and recommended providing the public an opportunity to provide input on the deciding official and limiting the deciding official to the next-highest level of authority.

**Response:** The selection of a deciding official and responsible official is an internal BLM process. The BLM will select qualified officials appropriate to the scope of the planning effort. The BLM does not seek public input on internal processes of hiring or assigning responsibilities to BLM staff. The Secretary has the authority to delegate responsibilities, independent of these planning regulations, which are captured in the BLM's delegation of authority manual (MS-1203). Under existing delegation of authority policy, the authority to approve a resource management plan cannot be delegated below a BLM State Director. The BLM believes that it is not appropriate to establish criteria for delegation of authority in the

planning regulations as this is an internal process and the BLM cannot reasonably predict all factors that may be taken into consideration when delegating a deciding official for a specific planning effort.

The final rule revises § 1601.0-4(a) to identify that the BLM Director will determine deciding officials for planning areas that cross State boundaries; when planning areas are wholly within a single State boundary, the deciding official shall be the corresponding State's BLM State Director, unless otherwise determined by the Director

**Comment:** Several comments suggested the proposed rule would reduce the role of the BLM State Directors in resource management planning. Comments recommended the BLM retain the responsibilities at § 1601.0-4 in the existing planning rule, which establish State Directors as the deciding officials. Comments also recommended the role of State Directors be delineated in the final rule.

**Response:** The BLM did not retain the language from the existing regulations; the final rule more clearly demonstrates how the BLM will determine the deciding official for a plan or amendment. There are several examples of resource management plans and plan amendments under the current planning rule where deciding officials were BLM managers other than State Directors. Planning areas have been both smaller and larger than field offices, including for example, the Greater Sage-Grouse Resource Plan Amendments, West Eugene Wetlands Resource Management Plan, and Resource Management Plans for Western Oregon. The State Director's role in the process is not reduced by this final rule and is described in § 1601.0-4 of the final rule. Where planning areas are wholly within a single State boundary, the deciding official shall be the corresponding State's BLM State Director, unless otherwise determined by the Director. If the planning area crosses State boundaries, the BLM Director will determine the

deciding official. The BLM expects that often the deciding official will be one of the State Directors with jurisdiction over part of the planning area, but it also may be another BLM official, at the discretion of the BLM Director. This is not a change from existing BLM practice or policy, but the final rule clarifies the BLM's existing process to the public. The BLM made no changes from the proposed to final rule in response to these comments.

**Comment:** Several comments expressed concern that the proposed rule does not require that the deciding official or responsible official have jurisdiction or familiarity with the planning area. Comments suggested that officials without local awareness would not be able to adequately understand unique areas or would not give consideration to resource issues of local importance.

**Response:** The selection of the deciding official and responsible official is an internal process and would be based on the scope of the planning effort, including the management concerns to be considered. The final rule revises paragraph (a) of this section to specify that when the planning area does not cross State boundaries, the deciding official will be the BLM State Director, unless otherwise determined by the Director. The Secretary has the authority to delegate responsibilities within the BLM independent of these planning regulations, which are captured in the BLM's delegation of authority manual. Generally, the deciding official for a planning area that does not cross state boundaries will be the BLM State Director, who will be familiar with the public lands under that State's jurisdiction. In situations where the planning area crosses State boundaries, the BLM Director will select a deciding official with qualifications appropriate to the scope of the planning effort. The final rule revises paragraph (b) of this section to specify that the deciding official determines the responsible official for each resource

management plan or plan amendment. The BLM has identified deciding officials and responsible officials appropriately within the scope of its authorities.

**Comment:** Several comments stated that transference of decision-making authorities to the Washington, D.C. level would inhibit discretionary decisions at the local level because the deciding official would not have familiarity with stakeholders, local conditions, and natural resource needs. Comments asserted that the BLM is attempting to lessen the influence that State and local governments, and residents have in the planning process. A few comments stated that appointing a deciding official that is not a State Director or a responsible official that is not a local officer diminishes the value of the local relationships, which are the cornerstone of coordination. Comments recommend the BLM require a State Director with jurisdiction over one of the States included in the planning area be designated as the deciding official and not designate higher-level managers in Washington, D.C.

**Response:** The final rule revises § 1601.0-4 to identify that the BLM Director will determine deciding officials for planning areas that cross State boundaries; when planning areas are wholly within a single State boundary, the deciding official shall be the corresponding State's BLM State Director, unless otherwise determined by the Director. In situations where a different deciding official is delegated the authority to approve a resource management plan or plan amendment, the deciding official will be selected based on the scope of the planning effort, including the management concerns to be considered as well as the geographic location of the planning area. The final rule, consistent with the proposed rule, does not transfer the authorities of the deciding official to the BLM's national headquarters; rather the final rule provides the BLM flexibility to determine the appropriate deciding officials for planning across State boundaries or for resource management plans and plan amendments of national significance.

This is consistent with current policy and practice. Under existing regulations, there are several examples where the Secretary has approved a resource management plan or plan amendment of national importance, or where a plan or plan amendment has been approved by a BLM official other than a BLM State Director. For example, in 2012 under existing regulations, the Resource Management Plan Amendments and Record of Decision for Solar Energy Development in Six Southwestern States was approved by former Secretary of the Interior Ken Salazar. In 2016, the Northwestern and Coastal Oregon Resource Management Plan and Record of Decision and the Southwestern Oregon Resource Management Plan and Record of Decision were both approved by the BLM's Deputy Director. In these situations, the relevant BLM State Directors were actively involved in the preparation of the resource management plan or plan amendment, but were not the deciding official that approved the resource management plan or plan amendment. The final rule affirms this existing authority.

The Secretary has the authority to delegate these responsibilities independent of these planning regulations, Delegations are currently addressed in the BLM's delegation of authority manual (MS-1203).

**Comment:** The BLM received a few comments stating the terms “deciding official” and “responsible official” are vague. The comments recommended identifying BLM officials by positions, such as State Director or District Manager.

**Response:** The BLM disagrees these terms are vague. The final rule clearly defines the terms deciding official and responsible official at § 1601.0-5 and the responsibilities assigned to each official are described in § 1601.0-4.

*Responsibilities of Deciding Officials and Responsible Officials*

**Comment:** A comment expressed concern that the proposed rule was unclear regarding the roles and interactions of the deciding official and responsible official.

**Response:** The final rule describes the general responsibilities of the deciding official and responsible official at § 1601.0-4 and defines both terms at § 1601.0-5. More specific descriptions of deciding official and responsible official roles in the planning process are described throughout the rule.

**Comment:** A comment expressed concern regarding the responsible official being able to hold responsibilities for resource management plans that cross State boundaries. The comment suggested that this could lead to a great deal of difficulty in notifying local governments of planning endeavors and placing additional burden on local governments to know whom to interact with, particularly when conducting multi-State planning.

**Response:** FLPMA directs the BLM to “provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands” (see 43 U.S.C. 1712(c)(9)). The use of the term responsible official and the descriptions of the responsibilities of the responsible official in the final rule do not change the BLM’s legal requirements under FLPMA. Section 1610.3-2 of the final rule describes specific coordination requirements that specify that “the BLM,” not the responsible official, provide Federal agencies, State and local governments, and Indian tribes opportunities for review, advice, and suggestion on issues and topics that may affect or influence other agency or government programs. Section 1610.3-2(c)(3) requires that the responsible official notify governmental entities that have requested to be notified or that the responsible official has reason to believe would be interested in

opportunities for public involvement. Additionally, members of local governments would be able to find the name, title, address, and telephone number of the BLM official who may be contacted for information about a planning effort, along with a description of the planning area in the required Notice of Intent (NOI) published in the *Federal Register* at the outset of the planning process (see § 1610.2-1(f)(1) of the final rule).

#### Determination of Planning Areas

**Comment:** The BLM received several comments expressing concern about the BLM Director determining future planning areas. These concerns were expressed in regards to the determination of geographically large, multi-State planning areas, as well as the determination of geographically small, locally important planning areas. Comments expressed concerns that the BLM Director would be too far removed to adequately be aware of resources, issues, and management concerns important to local stakeholders. Comments also noted that the BLM Director would not have time to adequately address these important decisions and would result in unnecessary delays. Comments recommended the final rule either provide criteria the BLM Director would use in determining the planning area, or move the authority down to a lower-level manager such as a State Director or Field Manager.

Comments also expressed concern that the BLM Director would determine planning areas without public involvement.

**Response:** The final rule includes new criteria for consideration in identifying the preliminary planning area (see § 1610.4(a)). The final rule revises proposed § 1601.0-4 to specify that the BLM Director determines the planning areas only for resource management plans and plan amendments that cross State boundaries, and that the deciding official (by default a BLM State Director) would decide planning areas for those that do not cross State lines.

The final rule revises § 1601.0-4(a) to specify that when a resource management plan or plan amendment does not cross State boundaries, the deciding official will determine the planning area boundary. In situations where the resource management plan or plan amendment does cross State boundaries, the BLM believes it is appropriate for the BLM Director to determine the planning area boundary; however, the BLM intends that this determination would be made in consultation with relevant BLM State Directors, as well as local District Managers and Field Managers. A new provision in final § 1610.4(a) requires the identification of a preliminary planning area as a component of the planning assessment. The preliminary planning area will be made available for public review prior to the publication of the NOI in the *Federal Register*. Please see the preamble discussion of § 1610.4(a) for more information on preliminary planning areas.

**Comment:** A comment suggested that the planning area for a resource management plan should be identified as an issue under § 1610.5-1 and reflected in the formulation of alternatives under § 1610.5-2.

**Response:** The final rule is not revised in response to this comment. A planning issue is defined as a dispute, controversy, or opportunity related to resource management (see § 1601.0-5). The “planning area” does not fit within this definition of a planning issue, and a planning area must be identified in order to then identify the planning issues. The alternatives developed must address the planning issues. A planning area boundary, however, does not change by alternative. The final rule includes new language describing the process for selecting a preliminary planning area boundary, including an opportunity for public review (see § 1610.4(a)).

**Comment:** The BLM received several comments expressing concern about the BLM including “landscape-scale planning areas” in the final rule. Comments noted that proposed changes to determine a planning area boundary would take away transparency, eliminate intuitive understanding of factors used to define planning area boundaries, and fail to acknowledge that not all resource issues are landscape scale. Some comments included the view that a focus on “landscape-level planning” would be detrimental to State and local communities. These comments raised concerns that there would be reduced consistency review, that compliance with the FLMPA mandate to coordinate its activities with State and local governments would be extremely difficult, that the cost-benefit analysis would be broadened to render local impacts irrelevant, and that a sparsely populated State might have less influence than its more populated neighbors. Some comments stated that “landscape-scale planning areas” will likely need a Washington, DC-based planning team which will further erode local input and control over planning processes and reduce stakeholder and public access to the planning team; these comments included the view that “landscape-level planning” undermines the purposes of FLPMA and that remotely based planning teams will lead to poor land use planning decisions. Several comments recommended retaining the existing regulations to ensure local planning expertise, and that the default boundary should be at the local level using known criteria such as district or State lines, at the smallest scale possible, and decided by the State Director.

**Response:** The final rule revises § 1601.0-4 to specify that when a resource management plan or plan amendment does not cross State boundaries, the deciding official (by default the BLM State Director) will determine the planning area boundary. In situations where the resource management plan or plan amendment does cross State boundaries, the BLM believes that it is appropriate for the BLM Director to determine the planning area boundary; however,

the BLM intends that this determination would be made in consultation with relevant BLM State Directors, as well as local district managers and Field Managers. The BLM does not intend that planning teams would be located remotely in Washington, D.C.

The final rule includes a new provision at final § 1610.4(a) requiring the identification of a preliminary planning area as a component of the planning assessment and criteria for consideration in identifying the preliminary planning area. The preliminary planning area will be made available for public review prior to the publication of the NOI in the *Federal Register*. Please see the preamble discussion of § 1610.4(a) for more information on this topic. It is also important to note that the final rule, consistent with the proposed rule, does not prescribe any specific planning area boundary or geographic scale for such a boundary. Rather, the final rule provides flexibility to determine the appropriate planning area boundary based on relevant landscapes and management concerns. This does not represent a substantive change from the existing regulations, as the BLM currently may determine any planning area boundary. The final rule provides increased transparency to the public by adding criteria for consideration when determining a preliminary planning area boundary, and an opportunity for public review of the preliminary planning area. As defined in § 1601.0-5, “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.”

Final § 1610.3-2(c) describes coordination requirements with State and local governments and final § 1610.3-3 describes requirements for consistency with State and local plans. These requirements apply regardless of where the planning team members are located or the size of the planning areas. The BLM will continue to coordinate with State and local

governments and will consider local impacts as well as local input when developing resource management plans.

**Comment:** The BLM received several comments expressing that “landscape-scale planning” is not precluded under the existing regulations, and that landscape plans should be an exception to the normal process. Comments also stated that the BLM fails to explain how the current planning rule hinders addressing issues at a landscape scale or how increasing the size of a planning area will accomplish the goals of the proposed rule.

**Response:** The final rule, consistent with the proposed rule, does not require any specific planning area boundary or geographic scale for such a boundary. Rather, the final rule provides flexibility to determine the appropriate planning area boundary based on relevant landscapes and management concerns. As noted in the comments, this does not represent a substantive change from the existing regulations because the BLM currently may determine any planning area boundary. Although not a substantive change in the regulations, the BLM believes that the final rule provides increased transparency to the public that the BLM no longer intends to use field office boundaries as a default planning area, as in existing regulations. The new requirements in final § 1610.4 require the BLM to develop a preliminary planning area as the basis for the planning assessment. In doing so, the BLM expects to address management concerns identified through monitoring and evaluation, as well as relevant landscapes based on these management concerns, in addition to other items. These revisions support the goal of applying landscape-scale management approaches by ensuring that the BLM considers relevant landscapes when developing a preliminary planning area. It is important to note that consideration of relevant landscapes does not inherently mean that all planning areas will increase in size. As stated in § 1601.0-5, “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.” For more information on the preliminary planning area, please see the discussion of § 1610.4(a) in the preamble.

**Comment:** The BLM received several comments expressing support for “landscape-scale planning areas.” Comments suggested that the BLM should further emphasize that planning area boundaries should not be constrained to traditional field office or district boundaries, and should instead be bound based on ecological and social conditions. Comments recommended the BLM include text to state that the BLM would set planning boundaries by common management concerns and not default to the BLM’s State, district, or field office boundaries.

**Response:** The final rule, consistent with the proposed rule, does not require any specific planning area boundary or geographic scale for such a boundary. Rather, the final rule provides flexibility to determine the appropriate planning area boundary based on relevant landscapes and management concerns, in addition to other items such as Director and deciding official guidance, officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, and other relevant information, as appropriate (please see the discussion of § 1610.4(a) in the preamble for more information on considerations for determining a preliminary planning area). It is important to note that in some future situations, the BLM’s State, district, or field office boundaries may be the most appropriate planning area boundary. For example, if a BLM district or field office boundary adequately encompasses relevant landscapes and management concerns, the planning rule provides flexibility to select the BLM district or field office as the planning area boundary.

**Comment:** The BLM received one comment expressing concern that plan amendments could have different planning areas from those plans they would be amending, especially when

considering landscape-scale plans that cross State lines. The comment requested the BLM clarify the final rule to address these circumstances.

**Response:** Under the existing planning rule, the BLM frequently implements plan amendments with differing planning area boundaries from those plans they are amending, including discrete plan amendments located within a resource management plan, and plan amendments that cross multiple resource management plan boundaries and amend multiple resource management plans. The BLM currently determines and will continue to determine plan amendment planning areas to encompass appropriate areas of land for the needed plan amendment, independent of a resource management plan boundary. The final rule has been revised to include criteria for consideration in identifying the preliminary planning area (see § 1610.4(a) of the preamble for more information on these criteria).

**Comment:** The BLM received a comment recommending review of existing memoranda of understanding and memoranda of agreement that designate management of BLM lands from the jurisdiction of one BLM district or field office to a different BLM district or field office prior to identifying planning areas. The comment recommended these documents be updated and that the BLM Director decisions on planning areas be consistent with management agreements.

**Response:** The final rule describes the procedural framework for preparing and amending resource management plans. The review and update of memoranda of understanding and memoranda of agreement is outside the scope of this planning rule.

#### **Section 1601.0-5 Definitions**

Areas of Critical Environmental Concern or ACEC

**Comment:** Several comments supported the revisions made to the definition to conform to the wording in FLPMA. Comments also supported improvements to the way the BLM resource management plans would identify ACECs. Comments supported those changes and the BLM's other efforts to increase opportunities for public participation and comment.

**Response:** Final § 1601.0-5 adopts the proposed definition of "Areas of Critical Environmental Concern" with no changes, including the language supported by the comments.

**Comment:** Several comments suggested that the definition of ACEC include language stating: "The BLM will give priority to the identification, designation, and protection of ACECs." The reasoning behind this suggestion is that ranches and ranching operations under the permit system of using the public lands typically have existed for over 85 years. Ranching operations, therefore, should be given special consideration where they are important and define cultural and historic resources on the public, private, and state lands.

**Response:** The final rule is not revised to incorporate the suggested language to "give priority to the identification, designation, and protection of ACECs" in the definition. The definition for an ACEC in the final rule is consistent with the definition of an ACEC provided in FLPMA. Further, the suggested language would establish policy, and is therefore not appropriate in the definitions section. Section 1610.8-2 of the final rule provides more information on the criteria and process to be used in designating ACECs. Language has been inserted in this section to reflect that potential ACECs shall be considered for designation consistent with the priority established by FLPMA at 43 U.S.C. 1712-(c)(3). The BLM agrees that many ranchlands have significant historical, cultural, and/or scenic value and some have

been designated as an ACEC. For example, the Sand Hills/JO Ranch ACEC was designated by the Rawlins resource management plan in Wyoming, in part, for its historical and cultural values.

**Comment:** A few comments stated that the final rule needs to avoid any unauthorized expansion of the ACEC definition under FLPMA, and ensure the use of the ACEC designation is in accordance with FLPMA and the intent of Congress.

**Response:** The definition of ACECs, as it was in the proposed rule and is in the final rule at § 1601.0-5, is taken verbatim from FLPMA at 43 U.S.C. 1702(a).

**Comment:** One comment stated that the planning rule eliminates a sentence in the existing ACEC definition, “the identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands,” and that this change grants the BLM the ability to eliminate multiple uses from ACECs.

**Response:** This change, as provided in the proposed rule, is adopted in the final rule at §§ 1601.0-5 and 1610.8-2(b). This change is not a change in practice or policy. As discussed in the preamble, the last sentence of the definition of this term in the existing regulations (“[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands”) is moved to the ACEC provisions in § 1610.8-2(b) of the final rule. This change makes the definition of an ACEC more consistent with FLPMA. Because the sentence is not part of the definition of an ACEC provided in FLPMA and it establishes policy for a potential ACEC, the sentence is relocated to the policy provisions governing ACECs.

#### Conformity or conformance

**Comment:** A few comments suggested that the BLM use the term “shall” instead of “will,” and that it define “conformity or conformance” so that it is not dependent on the “plan

components” definition. The comments add that when conformity and conformance are read together with plan components, it directs that future actions must be consistent with plan components, which are elements with which actions must be consistent. This direction is circular and provides no guidance regarding the specific plan element with which actions must be consistent. Another comment suggested additional language to the definition, to add that the action will be consistent with, and not exceed, the scope of the plan and limits of the plan components.

**Response:** The final rule replaces the term “will” of the proposed rule with “shall” in this definition and throughout the final rule, unless specifically noted, as the BLM agrees that this provides for consistent use in terminology.

The final rule replaces “terms, conditions, and decisions” with “plan components” of an approved resource management plan in the definition of conformity or conformance. These changes are consistent with changes to § 1610.1-2, which refer to plan components instead of terms, conditions, and decisions. The changes reflect that plan components provide the planning-level management direction guiding all future management actions, thus a proposed action must be consistent with the planning-level management direction. The final rule adds information to the definition of “plan components” in § 1601.0-5 in response to this comment.

The final rule also includes a reference to § 1610.6-3 in the definition of “conformity or conformance” to clarify what is meant by “approved resource management plan.”

*Consistent with officially approved and adopted plans*

**Comment:** Several comments stated that the proposed change to remove the existing definition of consistency would greatly diminish coordination with local governments.

Comments suggested that the BLM retain the definition of “consistent” from the existing rule in

the final rule. One comment stated that continued inclusion of a regulatory definition for “consistent” can help ensure the integrity of agency guidance and those reliant on it in the absence of a definition in FLPMA.

**Response:** The BLM proposed to remove the definition because it is commonly used terminology. In response to public comment, the final rule includes a definition of “consistent with officially approved and adopted plans,” which incorporates concepts from the existing definition of “consistent.” The final rule adopts “consistent with officially approved and adopted plans,” rather than the existing regulation’s definition of “consistent” because the word “consistent” appears numerous times in the final rule and in different contexts.

*Cooperating agency*

**Comment:** Several comments expressed concern that the proposed rule would limit the role of State and local agencies in developing resource management plans by including the phrase “as feasible and appropriate, given the scope of their expertise” in the definition of cooperating agency. The comments asserted that State, local, and tribal governments represent the citizens of a planning area as the primary groups that are impacted by BLM planning decisions and have the right to participate in the process as cooperating agencies, regardless of expertise. The comments suggested that the BLM revise the proposed rule to explain what the phrase “scope of expertise” means, and that the definition be consistent with CEQ regulations. Further, the final rule should clarify that the limitation of special expertise applies only to other Federal agencies and not State, local, and tribal government agencies that will be directly impacted by planning decisions.

**Response:** The final rule does not adopt the sentence “Cooperating agencies will participate in the various steps of the BLM's planning process as feasible, given the constraints of their

resources and expertise” (existing § 1601.0-5) or the sentence “Cooperating agencies will participate in the various steps of the BLM’s planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources” (proposed § 1601.0-5).

Cooperating agencies must meet the requirements defined in the DOI National Environmental Policy Act (NEPA) implementing regulations at 43 CFR 46.225(a), which include special expertise or jurisdiction by law. 43 CFR 46.225(a) references the Council on Environmental Quality regulations’ definition of special expertise at 40 CFR 1508.26 and jurisdiction by law at 40 CFR 1508.15. These requirements apply to both Federal and non-Federal governments, such as State, local, and tribal governments. The BLM will continue to use these definitions to determine eligibility for cooperating agencies.

Eligible governmental entities are not required to be cooperating agencies if they do not have sufficient resources; therefore, the reference to “constraints of their resources” is unnecessary. The BLM acknowledges that it is the decision of the potential cooperating agency to decide whether to participate.

**Comment:** Several comments stated that the term “eligible governmental agency” is confusing and should be defined as it applies to cooperating agencies. The comments also expressed concern that this term may exclude some local governments’ participation. These comments asserted that the definition of “eligible governmental agency” should be consistent with “cooperating agency” and DOI NEPA regulations.

**Response:** The term “eligible governmental entity” is defined at 43 CFR 46.225(a), which is in the DOI NEPA regulations. This citation is referenced in the definition of cooperating agency contained in the final rule. The inclusion of this term does not exclude

certain governments from participating, as potential cooperating agencies will need to meet the requirements under 43 CFR 46.225(a).

**Comment:** One comment expressed support for the replacement of the word “tribe” with the term “eligible government entity” to include other entities like Alaska Native Corporations that are lawfully eligible for government-to-government consultation status in Alaska. Another comment expressed support for the definition of “cooperating agency” in the proposed rule.

**Response:** The definition of “eligible cooperating agencies” at § 1601.0-5(d) of the existing regulations includes Federal agencies that are qualified to participate by virtue of jurisdiction by law or special expertise as defined by the CEQ NEPA regulations, or “[a] federally recognized Indian tribe, a state agency, or a local government agency with similar qualifications.”

The change to adopt the term “eligible government entity” is intended to provide consistency with the DOI NEPA regulations at 43 CFR 46.225(a). Eligible governmental entities include federally recognized Indian tribes that are eligible to participate as cooperating agencies by virtue of their jurisdiction by law or special expertise. Additionally, the definition of Indian tribe is retained in the final rule. Adoption of the term “eligible government entity” is not intended to change current policy or practice, as the BLM must follow the DOI NEPA Implementing regulations at 43 CFR 46.225(a) for cooperating agency relationships.

Alaska Native Corporations are not governmental entities, and thus are not considered “eligible government entities” under 43 CFR 46.225(a). However, it is important to note that the final rule does not affect implementation of “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). The BLM remains

committed to meaningful consultation with Alaska Native Corporations during the planning process.

**Comment:** One comment supported the proposal to remove the word “written” from the definition of cooperating agency because a Federal agency should not need to enter into a written memorandum of understanding or any other written agreement to confirm its status under NEPA as outlined in the DOI NEPA guidelines at 46 CFR 46.225.

**Response:** The final rule adopts the proposed definition for cooperating agency, which does not include the word “written.” The requirement for a memorandum of understanding in final § 1610.3-2(b)(2) only applies to non-Federal agencies. However, the final rule does not preclude other Federal agencies from entering into written agreements, such as a memorandum of understanding. Written agreements are helpful to define roles and responsibilities for the BLM and Federal cooperating agencies.

#### *Deciding official*

**Comment:** Several comments stated that the term “deciding official” is vague. The comments recommended identifying the BLM officials by positions, such as State Director or District Manager.

**Response:** The final rule defines “deciding official” at § 1601.0-5. It is not appropriate to identify the deciding official based on a position title, such as State Director, as resource management plans or plan amendments may cross several states, and the BLM Director has discretion to choose the appropriate deciding official in those cases. However, final § 1601.0-4(a) is revised to make clear that for resource management plans or plan amendments that do not cross State boundaries, the default deciding official shall be the BLM State Director, unless

otherwise determined by the BLM Director. Please see the preamble discussion and the response to comments for § 1601.0-4 for more information.

**Comment:** Several comments expressed concern regarding the BLM Director’s authority to designate deciding officials without public involvement. The comments asserted that the deciding official should be acceptable to the public. The comments recommended providing the public an opportunity to provide input on the deciding official and limiting the deciding official to the next-highest level of authority.

**Response:** The BLM does not currently seek public input on internal processes of hiring or assigning responsibilities to the BLM staff. The Secretary has the authority to delegate responsibilities within the BLM independent of these planning regulations, which are captured in the BLM’s delegation of authority manual. See also comment responses at § 1601.0-4.

*High quality information*

**Comment:** Many comments asserted that the proposed definition of high quality information is vague. These comments asserted that “high quality information” is difficult to verify and does not comply with the Data Quality Act or NEPA. One of these comments suggested that the BLM use the term “best science and commercial data available” instead. Another comment suggested that the BLM link the definition of high quality information to the Data Quality Act in order to provide a degree of objectivity and integrity of information that the BLM uses in the planning process. Many comments requested that the BLM remove the term “high quality information” and its definition from the final rule.

**Response:** The final rule adopts the definition of “high quality information” without revisions in § 1601.0-5. The high quality information standard will be applied consistently with the Information Quality Act (or Data Quality Act). The BLM will continue to adhere to Federal

standards, such as the CEQ's NEPA regulations regarding the use of "high quality" information and "[a]ccurate scientific analysis" (40 CFR 1500.1(b)). Further, where certain types of information or certain situations are subject to specific Federal standards, the BLM will conform to those standards. Section 1610.1-1(c) of the preamble details the relationship between the high quality information standard and Federal law.

The BLM expects that its March 2015 publication, "Advancing Science in the BLM: An Implementation Strategy" will provide guidance to responsible officials who are evaluating data and information against the high quality information standard.

The final rule does not adopt the term "best science and commercial data available" because not all information used in planning meets this definition. For example, final § 1610.4(d)(5)(ix) requires the planning assessment to consider areas of importance for recreation activities or access. This information may not be available from scientific or commercial sources. However, under the final rule information on recreation gathered would still be required to meet the "high quality information" standard.

**Comment:** A few comments requested that the BLM ensure high quality information is applicable to the planning area by revising the definition to read, in part: "High quality information means any representation of knowledge, such as facts or data, that are applicable to the planning area...."

**Response:** The final rule adopts the definition of high quality information in § 1601.0-5 without revisions. Adding the phrase "applicable to the planning area" has the potential to artificially limit the information considered. The definition of high quality information does require information to be "useful to its intended users." The BLM believes that this addresses the comment's concerns while allowing the responsible official to consider relevant information.

For more information on information gathering and evaluation, please see the discussion of §§ 1610.4(a) and (b) in the preamble.

**Comment:** A few comments urged the BLM to consider data and facts generated by local and State governments as high quality information, and to revise the definition to reflect that consideration.

**Response:** The BLM acknowledges that State and local government data and information is often the best available information, and will consider information from these sources if it meets the definition of high quality information; however, the final rule adopts the definition of high quality information in § 1601.0-5 without revisions. All information and data that the BLM uses in resource management planning must meet the objective high quality information standard, and it would therefore be inappropriate to name in the definition any source of data or information as automatically meeting that standard.

**Comment:** One comment suggested adding the term “verifiable” to the definition of high quality information.

**Response:** The final rule adopts the definition of high quality information in § 1601.0-5 without revisions. This definition requires that data and information be accurate, reliable, unbiased, not compromised through corruption or falsification, and useful to its intended users. This definition is consistent with the implementing guidelines of OMB, DOI, and the BLM for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. The final rule does not include the term “verifiable” in the definition, as suggested by the comment. The BLM believes that it is appropriate to align with existing guidelines related to high quality information.

**Comment:** Several comments were supportive of the proposed definition of high quality information. These comments asserted that the inclusion of the proposed “high quality information” definition could allow for the use of additional quantitative and qualitative local data in resource management planning.

**Response:** With this revision of its resource management planning process, the BLM intends to affirm its commitment to science-based decision-making. The final rule adopts the definition of high quality information, in § 1601.0-5, without revisions.

#### Implementation strategies

**Comment:** Several comments requested that the BLM more specifically define the term “implementation strategies” to include clarification of the difference between these and plan components. These comments state that the definition and explanation provided in the proposed rule seems to refer to a management action that could circumvent public review and Federal rulemaking requirements associated with land use planning.

**Response:** In response to public comments, the proposed definition of the term “implementation strategies” is not included in the final rule. In addition, after consideration of public comment, and for reasons described in the preamble, the BLM has decided that the concept of “implementation strategies” is not appropriate for the final rule; therefore, the final rule does not adopt proposed § 1610.1-3. Please refer to the discussion of proposed § 1610.1-3 in the preamble for the BLM’s detailed rationale regarding this removal.

#### Indian tribe

**Comment:** One comment expressed support for the recognition of the BLM’s obligation to consult with Alaska Native Claims Settlement Act corporations in the preamble to this section,

and asserted that the planning process must provide for meaningful, early, and ongoing consultation with Alaska Native Claims Settlement Act corporations.

**Response:** The BLM will continue to consult with Alaska Native Claims Settlement Act corporations, as discussed in the proposed and final rule. The final rule does not affect implementation of the “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012).

### Landscape

**Comment:** Many comments expressed concern that the following terms are not defined in the planning rule: “landscape-scale,” “landscape-scale approach,” “landscape approach,” and “landscape planning.” These comments questioned the existence of authority for the BLM to expand its scope and scale of resource management planning at a landscape level and that the term “landscape-level” could be applied in a manner to expand the scope of resource management plans beyond the BLM’s statutory and jurisdictional limitations. The comments provided a number of recommendations for clarifying these terms, including adding a definition of “landscape” that tiers from the DOI’s mitigation policy at 600 DM 6, and defining it in a way that ensures non-BLM lands within or near the BLM planning area are not affected by the BLM plan.

**Response:** Although the term “landscape” does not appear in the existing or proposed regulations, it is included in final § 1610.4(a)(1)(ii), which requires the BLM to consider “relevant landscapes” when identifying a preliminary planning area. Therefore, final § 1601.0-5 includes a definition of “landscape.” This definition aligns with the definition of “landscape” adopted by DOI in the DOI mitigation policy manual at 600 DM 6. The BLM does not intend

this definition to expand the scope of its authority or jurisdiction, and will comply with FLMMA and other relevant statutes during the planning process.

### Mitigation

**Comment:** Many comments asserted that the proposed definition for the term “mitigation” is confusing and does not belong in the planning process because it is inconsistent with the Council on Environmental Quality’s (CEQ) definition at 40 CFR 1508.20. These comments added that the proposed definition has no clear grounding in FLPMA; therefore, the BLM lacks the authority to include mitigation requirements in the proposed rule. The comments further asserted that the definition, if included, should be consistent with CEQ’s and that the BLM should remove the “compensating for remaining unavoidable impacts” language or recommended that the BLM remove all references to mitigation obligations.

**Response:** The BLM believes that the inclusion of the term “mitigation” in the final rule at § 1601.0-5 is necessary in the context of land use planning, and because of this, the final rule adopts the proposed definition. The definition is consistent with the Department of the Interior Manual chapter on “Implementing Mitigation at the Landscape-scale” (600 DM 6), as well as with Secretarial Order 3330, “Improving Mitigation Policies and Practices of the Department of the Interior” (2013). The use of mitigation is within the BLM’s statutory authority under FLPMA and the BLM has an obligation to include this in the final rule. The final rule does not create a new obligation to mitigate during the planning process; rather, by including this definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process.

The final rule does not remove references to compensatory mitigation. The definition of mitigation in 40 CFR 1508.20(e) includes compensating for impacts by replacing or providing

substitute resources or environments. Therefore, it would be inappropriate for the BLM to not reference that as an option for mitigation.

**Comment:** One comment suggested that the BLM include key elements of the President's recent memorandum on mitigation in the final rule, because the BLM should perform its duty to "adopt a clear and consistent approach for avoidance and minimization of, and compensatory mitigation for, the impacts of their activities and the projects they approve." Additionally, it should "design policies to promote avoidance of impacts" to "resources that are of such irreplaceable character that minimization and compensation measures, while potentially practicable, may not be adequate or appropriate."

**Response:** The BLM believes that the inclusion of the term "mitigation" in the proposed rule at § 1601.0-5 is necessary in the context of land use planning, and because of this, it will carry this definition forward into the final rule. The definition is consistent with the Department of the Interior Manual chapter on "Implementing Mitigation at the Landscape-scale" (600 DM 6), as well as with Secretarial Order 3330, "Improving Mitigation Policies and Practices of the Department of the Interior" (2013). The BLM has the authority under FLPMA to require mitigation to mitigate resource impacts.

The BLM does not believe that specific language from Presidential Memorandum "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment," issued in November 2015, needs to be included in the BLM's regulation as it is direction identifying the importance of revising the planning regulations and is used as guidance and a reference in the regulation's priorities on mitigation strategy. In addition, recent directives associated with mitigation practices emphasize the importance of a collaborative, landscape-scale approach. In 2013, the BLM issued a draft Regional Mitigation Manual Section (MS-

1794) as interim guidance, promoting both the consideration of mitigation in a broader regional context as well as the development of mitigation strategies. This correlates directly into the new planning rule and the BLM's mitigation hierarchy, which involves a sequence of avoidance, minimization and compensation. For additional information on "mitigation" and its role in the BLM's land use planning process in accordance with the final rule, please refer to the discussions on §§ 1601.0-5 and 1610.1-2 as well as the "Background" and "Related Executive and Secretarial Direction" sections in the preamble.

**Comment:** One comment suggested that including the proposed definition of mitigation ("the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts") in § 1601.0-5 of the proposed rule will allow for resource management alternatives to be preemptively negated, which would be based upon preliminary information.

**Response:** By including the definition for mitigation in the planning regulations, the BLM acknowledges that this sequence applies to the planning process, and that resource management plans and plan amendments may consider standards to mitigate undesirable impacts to resource conditions as part of plan objectives (see § 1610.1-2(a)(2)(i)). However, the BLM will develop a reasonable range of alternatives, as required by NEPA and final § 1610.5-2. Additionally, the BLM expects that the public involvement in the planning assessment and public review of preliminary alternatives will provide an opportunity for the public to identify any missing reasonable alternatives prior to the publication of the draft resource management plan.

The definition is consistent with the Department of the Interior Manual chapter on "Implementing Mitigation at the Landscape-scale" (600 DM 6), as well as with Secretarial Order

3330, “Improving Mitigation Policies and Practices of the Department of the Interior” (2013), and the final rule adopts the proposed definition without change.

Multiple use

**Comment:** A few comments asserted that the proposed rule has changed the definition of “multiple-use,” disagreed with this, and suggested that the BLM clarify that the definition of multiple-use in the final rule does not override the Congressional intent in adopting the Oregon and California (O&C) Act.

**Response:** The definition of multiple-use in the proposed and final rule is derived directly from FLPMA and has not changed. The definition of the term in the final rule at § 1601.0-5 is the same definition in the existing regulation; there has been no change between the existing, proposed, and final rules. FLPMA, as amended, establishes the agency’s mission to manage the public lands on the basis of multiple-use and sustained yield, unless otherwise specified by law, such as those with Congressional intent like the O&C Act. Throughout the final rule, the BLM makes clear that actions must be consistent with the principles of multiple use and sustained yield, “unless otherwise specified by law” (See, for example, § 1601.0-1). Therefore, it is not necessary to reference all potential laws that may express a different Congressional intent in this definition.

**Comment:** One comment supported the BLM using the definition of multiple-use verbatim from FLPMA.

**Response:** The final rule adopts the existing and proposed definition of “multiple use,” which is taken verbatim from FLPMA.

**Comment:** One comment suggested that the BLM add “cultural” to the list of renewable and non-renewable resources in the proposed definition of “multiple-use.”

**Response:** The final rule does not adopt this recommendation. The definition of multiple use is taken verbatim from FLPMA. However, the BLM does specify cultural resources where relevant in final §§ 1610.4(d)(5)(i) and 1610.8-2(a)(1).

*Officially approved and adopted plans*

**Comment:** A few comments recommended that the BLM review the definition of “officially adopted land use plans” as there may be other types of policies, programs, and regulations that are relevant, such as county-adopted policies and plans including fire abatement plans, weed and pest management plans, zoning resolutions, and development plans. The comments also state that the BLM should not limit its coordination with other Federal agencies, State and local governments, and Indian tribes as these groups may have significant policies, programs, and processes that influence land management decisions but may not qualify as a “land use plan.”

**Response:** Based on public comments, the final rule adopts the term “officially approved and adopted plans,” removing the phrase “land use.” Within the definition, the final rule replaces “land use plans” with “resource-related plans.” This change acknowledges that other Federal agencies, State and local governments, and Indian tribes may have resource related plans beyond land use plans, such as the examples listed in the comments.

**Comment:** Several comments asserted that the proposed changes to the definition would limit consistency requirements to only “officially approved and adopted land use plans,” as opposed to the existing requirement of consistency with “local land use plans and the policies, programs, and processes of local governments.”

Comments stated that the BLM would eliminate its existing obligation to consider the “policies, programs and processes” of local governments and the requirement to adhere to the

terms, conditions, and decisions of local plans, or their policies and programs. A few comments asserted that FLPMA does not afford the agency the discretion to impose such limiting factors on its duty to engage with non-federal governmental entities; FLPMA directs consistency with multiple types of plans, not just officially adopted or approved land use plans. Some comments suggested that the final rule retain the existing definition that includes local governments' resource related plans, policies, programs, and processes, or revise the proposed definition to include "land use and resource related planning and management programs." A comment suggested replacing the proposed definition of "officially approved and adopted land use plans" with "Land use and resource related planning and management programs means plans, policies, programs, controls and processes prepared in accordance with authorization provided by Federal, State or local authorities."

**Response:** The final rule adopts the proposal to remove the words "policies, programs, and processes" from the definition of officially approved and adopted plans to make this term consistent with final § 1610.3-3. This change is consistent with FLMPA (see 43 U.S.C. 1712(c)(9)). This change does not eliminate the BLM's obligation to consider plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes. The BLM's consideration of these is addressed in final § 1610.3-2(a). However, the final rule distinguishes between coordination and consideration of plans, policies, and management programs under its coordination responsibilities (see final § 1610.3-2) and consistency requirements (§ 1610.3-3). This is based on the requirements of FLPMA at 43 U.S.C. 1712(c)(9). Please see the discussion of this term at § 1601.0-5 of the preamble and the preamble discussion of § 1610.3-3(a) for more information.

**Comment:** A few comments suggested that the phrase “force and effect of State law” is confusing and unclear as to the intent.

**Response:** The final rule removes the word “State” from this phrase. Force and effect of law means that the Federal, State, tribal, or local constitutions are legally binding.

#### Plan amendment

**Comment:** One comment suggested that the planning regulations need clarification on the subtle difference between amendments and revisions.

**Response:** The final rule adds to the proposed definition of a plan amendment to clarify that an amendment changes “one or more plan components.” A plan amendment is when changes are warranted to one or more plan components, but not all of them. A plan revision is when changes are warranted to the entire resource management plan or major portions of the resource management plan. A more detailed distinction is provided in the plan amendment and plan revision sections of the final rule at §§ 1610.6-6 and 1610.6-7, respectively. See also the response to public comment at the definition of “plan revision” in this section.

#### Plan components

**Comment:** A comment asserted that plan components need to be defined independently from implementation strategies.

**Response:** The concept of implementation strategies is not adopted in the final rule. The definition of plan components is revised to include a list of each plan component for improved clarity. Plan components are further explained at § 1610.1-2.

#### Plan maintenance

**Comment:** One comment suggested including a definition for “minor change.”

**Response:** The term “minor change” was used twice in the definition for plan maintenance in § 1601.0-5 of the proposed rule. The first time the term was used was to reflect the nature of the changes that would be made to the resource management plan for the purposes of maintenance. The second time the term was used was to reflect the nature of the changes necessary in mapping or data that would necessitate a maintenance action. As is reflected in the final rule, an edit was made to the definition of plan maintenance in this section by removing “minor” in the term “minor change(s)” in the first instance. The section on plan maintenance at § 1610.6-5 of the final rule provides more information on which changes can be made through maintenance. In the second instance, the term “minor change” was carried over from the existing regulation at § 1610.5-4 and did not include a definition. The BLM interprets this term, consistent with its use in existing § 1610.5-4, to mean a change that is small in both scope and scale, and will not alter or modify a plan component. Final § 1610.6-5 provides adequate context to support this definition and a new definition is not needed.

*Plan revision*

**Comment:** One comment requested that the BLM clarify the subtle difference between amendments and revisions.

**Response:** The final rule revises the definition of “plan amendment” at § 1601.0-5 to clarify that it involves a change to one or more plan components. A plan amendment is when changes are warranted to one or more plan components, but not all of them. A plan revision, in contrast, is when changes are warranted to the entire resource management plan or major portions of the resource management plan. The important distinction between a plan amendment and a plan revision is that a plan revision changes most or all of the plan components, whereas a plan amendment only changes some of the plan components. A more detailed distinction is

provided in the plan amendment and plan revision sections of the final rule at §§ 1610.6-6 and 1610.6-7, respectively.

Planning area

**Comment:** Several comments expressed concern over the use of the term “planning area” and stating that the proposed rule does not provide direction on the scope, scale, or process by which a planning area would be identified. Comments recommended removing the term “planning area” or defining it along with the criteria for identifying appropriate planning areas.

**Response:** The final rule adopts the proposed definition of “planning area” with no changes. However, in response to public comment, the BLM has added criteria for identifying the preliminary planning area in final § 1610.4(a). Final § 1601.0-4 is also revised to specify that the BLM Director determines the planning areas only for resource management plans and plan amendments that cross State lines, and that the State Director determines planning areas for those that do not cross State lines. Please see the preamble discussion and response to comments for §§ 1601.0-4 and 1610.4(a) for more information.

Planning assessment

**Comment:** A few comments suggested that it may not be appropriate for the BLM to use the planning assessment to inform the implementation of the resource management plan as the information gathered during the assessment may be outdated and may no longer represent the best available information.

**Response:** The BLM may use the planning assessment to inform the implementation of a resource management plan as appropriate. The planning assessment will provide a comprehensive report of current conditions in the planning area, including, for example, any known trends related to current resource conditions (see § 1610.4(d)(3) of the final rule) or

known resource constraints, or limitations (see § 1610.4(d)(4) of the final rule). This information may be useful and appropriate when the BLM is evaluating whether a future proposed action conforms to an objective for that resource in the approved resource management plan. Under § 1610.6-4 of the final rule, the BLM will also monitor and evaluate the resource management plan to determine whether the plan's objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of an amendment or revision to the resource management plan.

**Comment:** A few comments requested additional clarification regarding how resource, environmental, ecological, social, economic, and institutional data and information will be determined to be “relevant” under § 1610.4(a)(1) of the proposed rule. One of these comments asserted that the rule or the Land Use Planning Handbook should require the BLM to consult potential cooperating agencies when making the “relevance” determination.

**Response:** By including the term “relevant,” the BLM intends to convey that it must conduct the planning assessment within reasonable budgets and timeframes, and must limit the information and data it gathers and considers to that which is relevant to the planning effort. The BLM intends that “relevant” information and data will include inventory of the land and resources and any other available high quality information, including the best available scientific information, relevant to the planning process and necessary to address the applicable factors described in § 1610.4(d) of the final rule. Under § 1610.4(c) of the final rule, the responsible official will evaluate all data and information that the BLM gathers or assembles to determine whether it is high quality information. Final § 1610.3-2(b)(3)(i) addresses the role of cooperating agencies in the planning assessment. The BLM will coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process,

including during the planning assessment, and will assess the conditions in the planning area in collaboration with cooperating agencies.

For more information on data quality standards, please see the discussion of § 1610.1-1(c) in the preamble. For more information on cooperating agencies and coordination, please see the discussion of § 1610.3-2 in the preamble.

**Comment:** One comment asserted that the rule itself does not, and should, include the important information from the description of the planning assessment in the preamble to the proposed rule, which is as follows: “[t]his new definition would describe an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area, which is developed to describe the current status of lands and resources in the planning area, project demand for those resources, and to assess how these demands can be met consistent with the BLM's multiple use and sustained yield mandate.”

**Response:** The final rule incorporates one revision in the definition of “planning assessment,” which is a parenthetical reference to § 1610.4. That section describes the planning assessment stage, including provisions for projecting demand for resources (see final § 1610.4(d)(7)(ii)) and assessing how those demands can be met consistent with the BLM’s multiple use and sustained yield mandate (see §§ 1610.4(d)(7)(iii), among others). The full description of the planning assessment in final § 1610.4 captures the concepts in the comment’s recommendation, therefore the final definition of planning assessment does not adopt the recommendation.

**Comment:** One comment urged the BLM to change the term “relevant” to “existing” when describing that a planning assessment is “an evaluation of relevant resources....” The

comment also urged the BLM to include “cultural” in the list of conditions considered in the planning assessment.

**Response:** The final rule adopts the definition of “planning assessment” without revisions, except for a citation to the planning assessment section of the final rule. The final rule’s definition of planning assessment is the same as that suggested in the comment, except the final rule uses “relevant” in place of “existing.” The BLM must limit the planning assessment to that information which is relevant to the planning effort. Additionally, the planning assessment, as described in § 1610.4(d), will consider trends related to current resource, environmental, ecological, social, and economic conditions, as well as dominant ecological processes, disturbance regimes, and stressors, such as climate change. It is important for the BLM to consider resource trends in order to remain relevant as the planning area changes.

The final rule does not adopt the recommendation to include “cultural,” as “cultural” is included in resource conditions. The BLM expects that the forthcoming Land Use Planning Handbook revision will include more information on the consideration of cultural resources throughout the planning process.

**Comment:** One comment requested that the BLM revise the definition of “planning assessment” to require the BLM to develop planning assessments in coordination with State and local governments and Indian tribes.

**Response:** The BLM has not incorporated this suggestion into the final rule because it is unnecessary. The BLM will coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process, including the planning assessment. Coordination and cooperation on the planning assessment is specifically acknowledged in § 1610.3-2(b)(3)(i) and throughout § 1610.4. For more information on

coordination in the planning assessment, please see the discussion of §§ 1610.3-2 and 1610.4 in the preamble.

### Planning issue

**Comment:** A couple of comments suggested that the term “planning issue” does not add any value to the regulations, aside from providing some platform for those who feel their dispute, controversy, or opportunity was excluded/included improperly from “issue” status.

**Response:** The current planning regulations required identification of issues (see § 1610.4-1). The final rule adopts the proposal to use the term “planning issue” and add a definition to § 1601.0-5. The final rule requires identification of planning issues (see § 1610.5-1), which should be integrated with the scoping process required by regulations implementing NEPA (40 CFR 1501.7). Planning issues are useful to inform both the planning process and the analysis under NEPA. By including this step early in the planning process, the public can suggest concerns, needs, opportunities, conflicts, or constraints related to resource management. The value is that the responsible official, now aware of the public’s issues, will be able to analyze that input along with other information, and determine what to address during the planning process.

### Public

**Comment:** Several comments expressed disagreement with the inclusion of State, local, or tribal officials in the definition of “public” and suggest removing “officials of State, local, and Indian tribal governments” from the definition. The comments asserted that this term is inappropriate for State, local, or tribal officials who are elected to represent the public in their positions of authority; just as the BLM and its employees are not considered “the public” in matters associated with the workings of the government agency, neither are State and local

elected officials considered as such. According to the comments, there is a potential to diminish the influence of State and local governments and Indian tribal governments by equating them with the “public.”

**Response:** The definition for “public” in the proposed rule was carried forward from the existing planning regulations. The definition in the final rule additionally includes “Federal” agencies, for clarity that they may also participate in the public involvement activities. “Public” is an inclusive term for any affected or interested individuals. Although officials of Federal, State, local, and Indian tribal governments are afforded unique roles during the development of resource management plans that are not provided to other members of the public, such as through coordination and cooperating agency status (see §§ 1610.3-1 to 1610.3-3), they may also choose to participate in public involvement activities that are afforded to all members of the public. This does not represent a change in policy or practice, nor does the BLM intend their inclusion in this definition to diminish their role under other sections of the final rule. Please see the preamble discussion of §§ 1610.3-1 through 1610.3-3 for more information on consultation, coordination, cooperation, and consistency.

**Comment:** One comment suggested that Federal agencies should be included in the definition of “public” to clarify that other Federal agencies may participate in public involvement activities.

**Response:** The BLM has accepted this recommendation, and the final rule includes Federal agencies in the definition of “public” because they may participate in public involvement activities.

**Comment:** A few comments expressed disagreement with the inclusion of grazing permittees in the definition of “public” because they are stakeholders, not just interested parties

or the public. According to the comments, permittees should not be grouped under the “public” category because they are fundamentally exclusive under FLPMA and the Taylor Grazing Act and have a recognized special relationship regarding resource management.

**Response:** Grazing permittees are not specifically mentioned in the existing, proposed, or final definition of “public” but are considered “public land resource users.” The BLM recognizes that grazing permittees are stakeholders in the planning process and the rule does not alter the BLM's relationship with them as set forth under FLPMA and the Taylor Grazing Act. Stakeholders, including grazing permittees, represent an important point of view during the resource management planning process; however, FLPMA does not recognize a separate role for grazing permittees during the planning process. This is consistent with current practice under the existing rule. “Public,” as defined in § 1601.0-5 of the final rule, “means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of Federal, State, local, and Indian tribal governments.” Many other groups under this definition have unique relationships with the BLM or to public lands, and the BLM recognizes those distinctions. For example, a Federal, State, or local agency may be a cooperating agency, but would still be included under this broad definition of “public.” The final rule does not adopt a change in response to the issues raised in this comment.

#### Public involvement

**Comment:** Several comments suggested that the BLM add a definition of “public involvement,” “public comment,” and “public participation” to clarify the scope of proposed § 1610.2. The comments noted that the term “public participation” was omitted from the proposed

rule, and asserted that the final rule needs to include it in accordance with 43 U.S.C. 1702(d) and to align with FLPMA.

**Response:** In response to public comments, the final rule includes a new definition for public involvement. The BLM removed “public participation” and has replaced it with “public involvement” to better align with § 103(d) of FLPMA, which broadly defines the term “public involvement” as “the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.” The final rule at § 1601.0-5 will include a similar definition, stating, “[p]ublic involvement means the opportunity for participation by the public in decision making and planning with respect to the public lands.” Please refer to the discussion regarding the definition of “public involvement” in the preamble discussion of § 1601.0-5.

**Comment:** One comment asked how public involvement differs from coordination.

**Response:** In response to public comments, the final rule includes a new definition of “public involvement” at § 1601.0-5. This definition is from FLPMA (43 U.S.C. 1702(d)) and describes “the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.” In contrast, § 1610.3-2(a) includes the objectives of coordination with other Federal agencies, State and local governments, and Indian tribes. Although Federal agencies, State and local governments, and Indian tribes may participate in public involvement activities, this does not diminish their ability to participate

in coordination. For more information on coordination of planning efforts, please see the discussion of § 1610.3-2(a) in the preamble.

### Resource Management Plan

**Comment:** Several comments expressed support for simplifying the definition of a resource management plan by referencing section 202 of FLPMA (43 U.S.C. 1712). A few comments suggested that the BLM define its plans to be “land use” plans rather than “resource management” plans because FLPMA refers to “land use plans.”

**Response:** The final rule retains the existing term “resource management plan” and defines a resource management plan as “a land use plan as described under section 202 of FLPMA, including plan revisions.” The BLM believes it is appropriate to retain the existing term “resource management plan” because establishing a new term would create unnecessary confusion. For more information, refer to the definition for resource management plan in the discussion of § 1601.0-5 in the preamble to the final rule.

### Responsible official

**Comment:** Several comments asserted that neither the proposed term “responsible official” nor the criteria for the selection of the responsible official were clearly defined. Some comments recommended adding language to clarify that State Directors should hold the authority to designate responsible officials. Other comments recommended identifying the BLM officials by positions, such as State Director or District Manager.

**Response:** The final rule defines the term “responsible official” in § 1601.0-5, and describes the responsibilities for the responsible official in § 1601.0-4. In response to public comments, final § 1601.0-4(b) is revised to provide that the deciding official determines the responsible official for the preparation of each resource management plan or plan amendment.

For resource management plans or plan amendments that do not cross State boundaries, the default deciding official will be the BLM State Director, unless otherwise determined by the BLM Director. The final rule does not, however, identify a default responsible official. The BLM believes that it is appropriate for the deciding official to select the responsible official because the deciding official is the BLM official who is responsible for supervisory review of a resource management plan or plan amendment.

*State and local government*

**Comment:** A few comments stated that the proposed definition of “local government” limits who qualifies as a local government, and asserted that the definition should align more with FLPMA’s use of “local government.” The comments stated that the phrase “local government” is used in a broader context throughout FLPMA, and requested that the final rule specifically reference county and municipal levels of local government.

**Response:** The final rule replaces the proposed term “local government” with “State and local government.” State and local government means “the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.” This definition includes the State and all local governments with authorities that are germane to the development of resource management plans. Local governments with authorities that are not germane to the development of resource management plans may still participate as members of the public. Local government is not defined in FLPMA. The definition in the final rule is consistent with the existing regulations, except that it broadens the definition to include the State.

### Sustained yield

**Comment:** Several comments asserted that it is not necessary for the rule to define “sustained yield” because it is already defined in FLPMA. Some comments asserted that the term “sustained yield” needs to be clearly separate from the term “sustainable.”

**Response:** The final rule adopts the proposed definition of “sustained yield,” which is consistent with the definition provided in FLPMA (43 U.S.C. 1702(h)). The BLM believes that including some statutory definitions in the regulations helps to improve readability of the regulations and clarifies that the planning rule uses this term in same way that it is used in statute. Though a member of the public may find the definition in FLPMA, the BLM cannot reasonably expect all members of the public to be aware of the FLPMA definitions. By including this and other definitions in the regulations, the public is not burdened to spend time searching for the location of definitions that help to interpret the planning regulations.

The term “sustainable” is not referenced in the regulations or in the definition for sustained yield.

**Comment:** A few comments expressed concern that including a definition of “sustained yield” may create a misleading impression with respect to planning on the Oregon and California (O&C) Lands. The comments asserted that the California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 is based on a forestry definition of sustained yield, not the broader definition of “sustained yield” included in FLPMA, and that the California Railroad and Coos Bay Wagon Road Grant Lands Act provides that these forested lands shall be managed for permanent forest production on a sustained yield basis. Comment recommended that the final rule remove the definition or explicitly acknowledge that the term “sustained yield” differs in the context of the California Railroad and Coos Bay Wagon Road Grant Lands Act.

**Response:** The BLM must comply with all applicable laws when conducting resource management planning. FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law (43 U.S.C. 1701(a)(c)) and to use and observe the principles of multiple use and sustained yield set forth in FLPMA and other applicable law (43 U.S.C. 1712(c)(1)). The BLM believes it is appropriate to include the FLPMA definitions of “multiple use” and “sustained yield” in the planning regulations because in most situations the public lands will be managed based on the principles of multiple use and sustained yield as defined in FLPMA. In response to public comments, the final rule is revised throughout to clarify that management must be on the basis of multiple use and sustained yield “unless otherwise specified by law,” to address the BLM’s requirement to comply with the principles of other legal authorities (see, for example, § 1601.0-1).

Suggested new definitions

**Comment:** Several comments suggested the final rule add definitions for terms that were not defined in proposed § 1601.0-5. These included:

- adaptive management
- citizen science
- comprehensive
- cultural resources
- ecological
- environmental
- expertise
- ecosystem services or ecological services
- government-to-government consultation

- historical property
- innovative data
- interdisciplinary approach
- land use and resource-related planning and management program
- meaningful involvement
- minor change
- minor EA-level amendment
- minor EIS-level amendment
- national trail management corridor
- national trail rights-of-way
- national trail nature and purposes
- participated
- person, persons, or people (comment requested that the definition include they must be a citizen of the United States consistent with the definition for public involvement in FLPMA (43 U.S.C. 1702(d))
- policy
- relevant public views
- renewable or non-renewable resource
- resource(s)
- science-based decision-making
- significant/significantly/significance
- social and environmental change
- social conditions

- State government (comment requested the definition include the State historic preservation officer and tribal historic preservation officer)
- traditional ecological knowledge
- unnecessary and undue degradation

**Response:** The final rule does not include definitions for the terms listed above. The final regulations text does not use many of these terms, and it is therefore unnecessary and inappropriate to define them in the regulations. Some of the terms are used in the preamble, but not the regulations text, and in those situations, the BLM has endeavored to provide either a definition or description in the preamble to support understanding of the meaning of the term in the preamble discussion.

Some of the terms, such as “comprehensive,” are used in the regulations text but are commonly used terms, and therefore a definition is not necessary in the regulations. It is not practical to include definitions for all commonly used terms in the regulations text.

Some of the terms, such as “minor change,” must be read in context as these terms can have different meanings depending on the context of the term’s usage. The BLM believes that it is not appropriate to define these terms in the regulations as it could introduce confusion over the intended meaning in different contexts. In these situations, the BLM has endeavored to provide descriptions of the intended meaning of the term in the context in which it is used in the associated discussion for the provision in the preamble to the final rule (for example, please see the description of “minor change” in the discussion of the definition of “plan maintenance” in § 1601.0-5 of the preamble to the final rule).

**Comment:** Some comments suggested that the final rule include definitions for the terms “designation” and “resource use determination.”

**Response:** The final rule defines the terms “designation” and “resource use determination” at §§ 1610.1-2(b)(2) and 1610.1-2(b)(3). The BLM has chosen to include these definitions in provisions related to plan components in § 1610.1-2 instead of the definitions in § 1601.0-5 because we believe this approach makes the provisions related to plan components easier to understand.

**Comment:** Several comments requested that the final rule include definitions for terms related to coordination, cooperation, and consultation. These included “coordination,” “coordinating,” “coordinative,” “cooperation,” “cooperating,” “consulting,” and “collaboration.”

**Response:** The final rule does not include definitions for the terms listed above. The BLM believes that definitions for “coordination,” “cooperation,” and “consultation,” as well as derivatives of these words, are not necessary in the regulations because they are commonly used existing terms. The final rule applies these terms in the same way and with same meaning as in existing policy.

### **Section 1601.0-6 Environmental Impact Statement Policy**

The BLM did not receive public comments specific to this section, therefore there is no response to comments for this section.

### **Section 1601.0-7 Scope**

The BLM did not receive public comments specific to this section, therefore there is no response to comments for this section.

### **Section 1601.0-8 Principles**

#### *Principles from Section 202 of FLPMA*

**Comment:** A few comments noted that § 1601.0-8 of the proposed rule omits several requirements mandated by sections 202(c) of FLPMA when conducting land use planning,

including requirements that the BLM “consider present and potential uses of the public lands; consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values” and “weigh long-term benefits to the public against short-term benefits” (43 U.S.C 1712 (c)(5)(6)(7)). Comments suggested the BLM explain these omissions or develop regulatory language to ensure that new resource management plans or amendments address these criteria. Other comments noted that § 1601.0-8 fails to mention the priority FLPMA places on the identification and protection of ACECs. The comments suggested that the general reference to principles of section 202 of FLPMA, without an explicit reference to FLPMA’s obligation that the BLM identify and protect ACECs, is insufficient and the proposed rule has the potential to undermine BLM’s authority to prioritize such work. Comments suggested that the BLM include as a principle in § 1601.0-8 an explicit statement of priority for ACECs, as contained in section 202 of FLPMA, and make clear the utility and value of ACECs in landscape-scale planning.

**Response:** The final rule states that, “the development, approval, maintenance, amendment, and revision of resource management plans... shall be consistent with the principles described in section 202 of FLPMA” which includes those referenced by the comments. This requirement is equivalent to listing each provision of section 202(c) of FLPMA in the regulations and requires that the BLM “consider present and potential uses of the public lands; consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values” and “weigh long-term benefits to the public and gains short-term benefits” (43 U.S.C 1712 (c)(5)(6)(7)) and that the BLM “give priority to the designation and protection of [ACECs]” (43 U.S.C 1712 (c)(3)). Please see § 1610.8-2 of the

preamble for further discussion on the designation of ACECs. No changes were made in response to these comments.

*Impacts of Resource Management Plans*

**Comment:** Several comments expressed concern that the proposed removal of the requirement to consider the impacts of resource management plans on local economies would inappropriately eliminate the need to account for local economic impacts of a resource management plan. Comments stated that local communities, economies, customs, and cultures are most impacted by changes in federal land management. One comment expressed concern that the proposed change would mean that input from state and local governments, local stakeholders and landowners would not be included in the planning process. Other comments noted that Section 202(c)(7) of FLPMA allows for “weigh[ing] long-term benefits to the public against short-term benefits” during the land use planning process and suggested that local benefits should be provided more weight than national, regional, or global benefits because land use plans are likely to have a more significant impact at the local scale. Comments recommended that the BLM revise the final rule to specify that local impacts must be considered, or to retain provisions from the existing rule at § 1601.0-8 to provide for consideration of “the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests.” Some comments recommended the final rule place a higher degree of importance on local issues versus landscape-scale or global issues.

**Response:** The final rule replaces the word “appropriate” with “relevant” in the second sentence of § 1601.0-8 to clarify that the BLM will consider scales that the agency has reason to believe are relevant to the decision. The BLM will make this change to provide clarity to the final rule, but intends no change in practice or meaning from this revision. Specifically, the

BLM has included consideration of other relevant scales, in addition to local scales, because the BLM believes it is appropriate for a deciding official to consider all relevant scales and information before rendering a decision. The final rule does not prescribe greater weight be afforded to any particular scale or type of impact.

**Comment:** Some comments expressed concern that measuring impacts at a regional scale might result in masking local economic impacts, particularly if planning areas are large in size. The comments recommended the final rule clearly state how local economic issues will be balanced with other issues, and provide more emphasis regarding impacts to local agricultural producers and communities. Additionally, comments recommended that the BLM define “appropriate scale” as the smallest scale that encompasses the planning area.

**Response:** The final rule replaces the word “appropriate” with “relevant” in the second sentence of § 1601.0-8 to clarify that the BLM will consider scales that the agency has reason to believe are relevant to the decision. Consideration of impacts at a regional scale does not diminish the need to consider impacts at local scales, nor does it mask impacts at local scales. The BLM will consider impacts at all relevant scales when rendering a decision.

**Comment:** A few comments expressed support for proposed § 1601.0-8, which would have required the BLM to evaluate the impacts of resource management plans on environmental, ecological, social, and economic conditions “at appropriate scales.” Comments stated that this language allows for more consideration of on-the-ground knowledge in a balanced approach and that the BLM has historically given too much deference to local economic interests at the expense of the national scale. Other comments indicated that more clarity is needed in regards to this provision. These comments questioned how the BLM will determine the scale and impact of

each of the listed conditions, how the BLM will incorporate potential impacts on local governments and citizens, and how the BLM will weigh impacts at appropriate scales.

**Response:** The final rule replaces the word “appropriate” with “relevant” in the second sentence of § 1601.0-8 to clarify that the BLM will consider scales that the agency has reason to believe are relevant to the decision. The final rule does not prescribe greater weight be afforded to any particular scale or type of impact. The BLM expects to include more detailed guidance about implementing this subpart in the forthcoming revision of the Land Use Planning Handbook.

**Comment:** Some comments stated that the BLM needs to create additional guidance in the final rule to direct the deciding official to assess and analyze at appropriate scales via the planning assessment process. One comment expressed concern that in multiple state plans, the deciding official may not be a State Director; and, that at least one State Director will not be the deciding official. To address this, the comment suggested the rule require State Directors that are not the deciding official be specifically included in the planning process to provide guidance to the deciding official.

**Response:** The final rule more clearly demonstrates how the BLM will determine the deciding official for a resource management plan or plan amendment. There are several examples of resource management plans and plan amendments under the current planning rule where deciding officials have been BLM managers other than State Directors. Planning areas have been both smaller and larger than field offices, including for example, the Greater Sage-Grouse Resource Plan Amendments, West Eugene Wetlands Resource Management Plan, and Resource Management Plans for Western Oregon. The State Director’s role in the process is not reduced by this final rule and is described in § 1601.0-4 of the final rule.

If the planning area crosses State boundaries, the BLM Director will determine the deciding official. The deciding official will generally be one of the State Directors with jurisdiction over part of the planning area, but may be another BLM official, at the discretion of the BLM Director. This is not a change from existing BLM practice or policy, but the final rule clarifies the BLM's existing process to the public. The BLM made no changes from the proposed to final rule in response to these comments. Please also see the comment responses for § 1601.0-4, and the preamble discussion of § 1601.0-4 for more information.

**Comment:** A few comments asserted that the provision in § 1601.0-8 to “consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions...[and on] adjacent or nearby Federal and non-Federal lands” in developing resource management plans is contrary to the Economic Threshold Analysis for the planning rule. The comments stated that individual groups, grazing industries, and those who live and work near public lands are affected by the BLM land management decisions. The comments further stated that because those who live and work near the public lands are affected by the BLM land management decisions, the proposed rule would have significant economic impacts and adverse effects on employment and productivity.

**Response:** The final rule establishes the procedural framework for preparing and amending resource management plans. Section 1601.0-8 affirms that the BLM must consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions and on adjacent or nearby Federal and non-Federal lands. The impacts of future resource management plans will be assessed and considered during the resource management planning process and not in the economic analysis for this final rule.

**Comment:** Comments suggested that this rule would change the requirement for the BLM to manage for multiple use and sustained yield as required by FLPMA and would instead provide for value-based decision-making. Specifically, comments expressed concern that adding the requirement that the BLM consider the impacts of resource, environmental, ecological, social, and economic conditions complicates or undermines the existing process, which is based on multiple use and sustained yield.

**Response:** The BLM is required to comply with FLPMA, including the requirement to manage on the basis of multiple use and sustained yield, unless otherwise specified by law. The final rule does not change this requirement.

**Comment:** Comments expressed that consideration of social concerns is inconsistent with FLPMA and that adding ambiguous language such as “social impacts” will expand the potential for lawsuits. Comments suggested removing reference in § 1601.0-8 to “social” conditions.

**Response:** The final rule retains references to social considerations in § 1601.0-8. FLPMA directs the BLM to use and observe principles of multiple use and sustained yield when developing resource management plans so that public lands are utilized in a combination that best meet the needs of the American people. In doing so, the BLM develops resource management plans, which take into consideration the long term needs of future generations for renewable and non-renewable resources. This inherently includes consideration of social conditions, as these conditions are relevant to understanding the needs of the American people.

**Comment:** A few comments expressed support for the provision in § 1601.0-8 requiring that the BLM “consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal or non-Federal lands....”

**Response:** The final rule adopts these provisions, consistent with the proposed rule.

*Resource Management Concerns*

**Comment:** A few comments noted that the proposed rule is unclear on how the BLM will address resource management concerns such as climate change or wildlife corridors that are reported as part of the planning assessment and suggested that § 1601.0-8 is an appropriate section for doing so. Specifically, these comments suggested that the final rule should include language in section 1601.0-8 that is consistent with the DOI climate change adaptation policy, which directs that agencies advance approaches to managing linked human and natural systems that help mitigate the impacts of climate change. Comments also suggested that the final rule consider language from the 2012 U.S. Forest Service planning rule, “to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan areas, including plan components to maintain or restore structure, function, composition, and connectivity” (36 CFR 219.9(a)(1)).

**Response:** The final rule does not incorporate the proposed language, as the BLM believes that the concept is adequately captured in the rule. Section 1601.0-8 directs the BLM to consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales. This will include consideration of climate change and wildlife corridors, as appropriate.

The BLM will consider relevant resource management concerns such as climate change and wildlife corridors when identifying the planning issues for any given resource management plan (see § 1610.5-1). The planning issues will be informed by, among other things, the planning assessment, and will inform the development of the plan components. Final § 1610.4(b)(2) requires that, as part of the planning assessment, the BLM “identify relevant

national, regional, state, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.” The BLM believes that this is the appropriate location for individual resource management planning efforts to consider relevant policies such as the departmental climate change adaptation policy. The final rule does not incorporate the suggested language from the U.S. Forest Service 2012 planning rule. The regulations of this part establish the procedural framework for preparing and amending resource management plans but do not prescribe specific management outcomes. The BLM, through the land use planning process, will develop plan components to address desired management outcomes within the planning area.

#### *Landscape-Scale Planning*

**Comment:** One comment noted that the BLM needs to clarify the landscape-scale concept in the final rule. The comment suggests that referencing the concept in the final rule at § 1601.0-8 would identify it as a governing principle, and defining the term for purposes of use in a resource management plan would provide clarity. The comment provided suggested language and definition.

**Response:** In response to these concerns, final § 1601.0-5 is revised to include a definition of the term landscape. The BLM has also revised the final rule at § 1610.4(a)(1) to include a requirement to consider landscapes when developing the preliminary planning area. The final rule does not reference the concept of “landscape-scale” in § 1601.0-8.

## Comments Tied to Subpart 1610—Resource Management Planning

### Section 1610.1 Resource Management Planning Framework

#### Planning Area (Existing § 1610.1(b))

**Comment:** Comments expressed concern that the removal of existing 1610.1(b), which directs that an RMP should be prepared and maintained on a resource or field area basis, leaves both the public and the agency without any guidance as to how the BLM will plan in the future. A few comments supported the proposed change to remove the BLM field office as the default planning area. Other comments recommended that the BLM field office should be the default planning area, as described in existing § 1610.1(b).

**Response:** The final rule provides detailed direction regarding determination of the geographic area for the preparation and amendment of resource management plans *i.e.*, the planning area (see § 1601.0-5). Final § 1601.0-4 describes the responsibilities for determination of the planning area. The final rule revises proposed § 1601.0-4 to specify that the BLM Director determines the planning areas for resource management plans and plan amendments that cross State boundaries, and that the deciding official (by default a BLM State Director) would decide planning areas for those that do not cross State lines. The final rule also includes new criteria for consideration in identifying the preliminary planning area (see final § 1610.4(a)). The preliminary planning area will be made available for public review prior to the publication of the NOI in the *Federal Register*. Please see the preamble discussion of § 1610.4(a) for more information on preliminary planning areas.

### Section 1610.1-1 Guidance and General Requirements

Appropriate BLM Official to Develop Guidance (§ 1610.1-1(a))

**Comment:** A few comments asserted that it is inappropriate to move the role of developing guidance for resource management plans to the BLM Director, and requested that the BLM return to the existing § 1610.1(a)(3). Comments further stated the deciding official may not ignore BLM policy developed by State Directors.

**Response:** The final rule does not move the role of developing guidance solely to the BLM Director, as suggested by the comment. The final rule adopts proposed § 1610.1-1(a), which is similar to the existing rule, in that guidance may be provided by the Director, as needed. The final rule also adopts the proposal to replace “State Director” with “deciding official” throughout this subpart; however, changes to the final rule specify that the default deciding official will be the respective BLM State Director unless the planning area crosses State boundaries. Therefore, in situations where the planning area does not cross State boundaries, the BLM State Director will retain the role of developing guidance for the preparation and amendment of resource management plans. In situations where the planning area crosses State boundaries, the BLM Director will determine an appropriate deciding official. Deciding officials will not ignore policy developed by BLM State Directors. The deciding official will consider and incorporate applicable policy developed by BLM State Directors for their respective States when developing guidance specific to the planning effort.

**Comment:** A comment suggested the BLM revise § 1610.1-1(a) to identify legislation and congressional statements of policy as serving as a basis for preparation of plans and amendments, in addition to agency and Executive policy.

**Response:** The BLM is required to comply with Federal law, therefore it is not necessary to include all laws the BLM must comply with in § 1610.1-1(a). The final rule does not preclude

the BLM from considering other guidance in the preparation or amendment of a resource management plan, if appropriate. The BLM did not accept this recommendation.

**Comment:** A few comments expressed support for new provisions that allow for policy guidance to be established at the deciding official level. Comments opposed guidance established at the national level. A comment stated that land management decisions should be made at the level closest to the lands being managed, with more deference given to state and local plans, policies and programs.

**Response:** The final rule adopts proposed § 1610.1-1(a)(1), which includes guidance developed by the BLM Director and the deciding official. This is consistent with the existing regulations (see existing § 1610-1(a)), which provide that that the Director and State Director may provide guidance, as necessary. The BLM believes it is appropriate to develop guidance at the national level, in addition to the deciding official level, to support the preparation and amendment of resource management plans. National level guidance supports consistency across BLM resource management plans and aids in consideration of issues of national significance. Deciding official guidance supports consideration of local issues, policies, and opportunities. Both types of guidance are relevant to resource management planning.

*Basis for Guidance (§ 1610.1-1(a))*

**Comment:** A comment expressed concern that "guidance" would allow elected/appointed officials to tilt the process on controversial topics. The comment stated that specifying that any guidance must be "consistent" with applicable law only adds potential for controversy. The comment suggested the BLM revise the language to "...any guidance shall comply with applicable law."

**Response:** Section 1610.1-1(a)(1) of the final rule is revised to replace the phrase “is consistent” with to “complies,” as suggested in the comment. This change clarifies that any policy must comply with Federal laws and regulations applicable to public lands. The BLM may only develop or apply policy that complies with Federal laws and regulations.

**Comment:** A comment supported the emphasis on guidance based on external policies, such as secretarial and executive orders. The comment recommended the Land Use Planning Handbook incorporate examples of how external policies can be applied.

**Response:** The final rule does not emphasize any specific type of policy when developing guidance, as suggested in the comment; rather, § 1610.1-1(a)(1) provides that guidance may include policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands. The BLM is currently revising the Land Use Planning Handbook to provide detailed guidance to implement these regulations.

**Comment:** One comment objected to the removal of the current language referencing national level policy in statutes. According to the comment, the proposed rule would allow the BLM Director to create national policy just for the resource management plan and it would be inappropriate for the BLM Director to establish policy that conflicts with existing law where Congress has already set the national policy, or when policy conflicts with the organic act for the BLM.

**Response:** Final § 1610.1(a)(1) provides that guidance may include policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands. This means

that policy established by the BLM Directory may not conflict with existing law, including FLPMA.

**Comment:** A few comments expressed concern with the continued and increased reliance on executive orders, secretarial orders and memoranda and other such national level edicts serving as guidance and direction for the development and management of the public lands. Commenters noted that there is no opportunity for public input on these policies.

**Response:** The President of the United States and the Secretary of the Interior have the authority, respectively, to develop Executive Orders and Secretarial Orders, and the BLM follows the direction provided in these Orders. The planning regulations do not change the authorities granted to the President or the Secretary of the Interior, nor do the regulations change the need for the BLM to follow direction developed under such authorities. The BLM must also comply with applicable laws and regulations. Guidance developed by the BLM may not dictate a final decision, nor can it be used to artificially narrow the range of alternatives considered or the consideration of best available information. The decision-making process is subject to the regulatory requirements of this part as well as NEPA requirements, and other applicable law.

*Government Coordination on Guidance (existing § 1610.1(a)(3))*

**Comment:** Several comments expressed concern over the removal of the requirement from proposed § 1610.1-1 (existing § 1610.1(a)(3)) that State level guidance be developed, "...with necessary and appropriate governmental coordination..." Comments indicated that coordination and consistency with State, local, and tribal plans and policies are paramount to successful planning efforts and required by FLPMA. Policies, analysis requirements, planning procedures, and other instructions have a major effect on the outcome of land management

planning. Comments requested existing coordination and consistency requirements for guidance should be included in the final rule.

**Response:** The final rule adopts the proposed change to remove existing § 1610.1(a)(3). Existing § 1610.1(a)(3) exceeds the statutory requirements of FLPMA and places an unnecessary burden on the BLM. The development of guidance is an internal BLM process intended to assist a responsible official in preparing a resource management plan. The final rule does not preclude the BLM from coordinating with other Federal agencies, state and local governments, and Indian tribes when developing guidance for a resource management plan; however, such coordination would be at the discretion of the deciding official. Please see the preamble discussion regarding § 1610.3-2, which discusses the removal of existing § 1610.3-1(d). Existing § 1610.3-1(d) is unnecessary as it describes an internal BLM process and exceeds the statutory requirements of FLPMA, which provides for consistency with resource management plans, but not the BLM guidance (see 43 U.S.C. 1712(c)(9)). The removal of existing § 1610.1(a)(3) is consistent with this change as well.

*Interdisciplinary Approach (§ 1610.1-1(b))*

**Comment:** One comment asserted that the proposed rule is contradictory, as it requires the BLM to use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences, but then states that the BLM cannot adequately consider “economic” factors that would be “purely speculative” on page 7 of the Economic and Threshold Analysis. The comment explained that the “best science” approach is preferable, and that economics will work itself out once the planning is in place.

**Response:** Page 7 of the BLM’s Economic and Threshold Analysis for the Planning 2.0 Proposed Rule states that the BLM “cannot reasonably predict how this consideration of resource, environmental, ecological, social and economic conditions at appropriate scales and on adjacent or nearby lands might change eventual planning and implementation decisions. Any discussion of the costs or benefits to specific individuals or groups would be purely speculative.” This statement pertains to § 1601.0-8 and the additional regulatory requirement to consider the impacts of resource management plans on resource, environmental, ecological, social and economic conditions at appropriate scales and on adjacent or nearby lands. This statement, while similar in language, does not pertain to the BLM’s requirement to use a systematic interdisciplinary approach under final § 1610.1-1(b). FLPMA (see 43 U.S.C. 1712(c)(2) and NEPA at 43 CFR 1502.6 require the use of an interdisciplinary approach in the land use planning and NEPA processes. FLPMA specifically references economic sciences in this approach. The BLM will continue to consider economics when forming interdisciplinary teams and in the revision and amendment of resource management plans.

**Comment:** One comment stated that it is appropriate for the BLM to consider all relevant scientific information when developing resource management plans, and the plain language of the proposed rule indicates that the list of relevant sciences is not exclusive. According to this comment, however, historic BLM planning efforts have frequently failed to adequately consider the presence of and potential for mineral resources within the planning area. The comment stated that this lack of consideration may lead to inappropriate balancing of multiple uses in those limited areas having mineral potential. The comment suggested adding reference to “geological” sciences in this section.

**Response:** Final § 1610.1-1(b) requires the BLM to use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. This section will not specifically reference “geological” science; however, geology, as a subset of physical science, is encompassed by this section and will be considered an appropriate discipline in the preparation and amendment of resource management plans. For example, interdisciplinary teams typically include geologists, physical scientists and experts in these fields. Further, the preparation of resource management plans includes the development of mineral occurrence and development potential reports. This information is then incorporated into the resource management plan and associated NEPA document. These reports are described in the BLM Manual 3031.

**Comment:** A few comments objected to the inclusion of social and ecological science in the interdisciplinary approach. Comments stated that FLPMA only directs consideration of “physical, biological, economic, and other sciences.” Further, the BLM has not offered any explanation for the addition of “ecological” or “social” considerations. According to the comments, the unexplained inclusion of the terms “social” and “ecological” is arbitrary and capricious. Comments asserted that the BLM should not expand the planning considerations outlined in proposed § 1610.1-1(b) beyond those identified in FLPMA. Comments also requested that the final rule remove the words “social” and “ecological.”

**Response:** FLPMA provides that in the development and revision of land use plans, the BLM shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences (see 43 U.S.C. 1712(c)(2)). This provision does not exclude ecological or social sciences, as indicated by the inclusion of “other sciences.”

Further, CEQ's regulations regarding interdisciplinary preparation (see 40 CFR 1502.6) state that environmental impact statements (EIS) shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. The BLM conducts socioeconomic analyses in all of its planning processes, and the associated NEPA review, and therefore, it is necessary to include social sciences in any interdisciplinary approach. Ecology is a subset of natural science.

The inclusion of ecological or social sciences is not arbitrary and capricious. These terms are included in § 1610.1-1(b) for consistency with other sections (for example, see final §§ 1610.1-2(a)(1) and 1610.4(b)(1) which refer to ecological characteristics and ecological conditions) and to reflect current practices under existing law and regulations.

**Comment:** One comment expressed concern that partner information might be used in disciplines where the agency or organization does not have expertise. For example, a Landscape Conservation Cooperatives brochure referenced the following quotation from the National Oceanic and Atmospheric Administration; "Preserving cultural artifacts and traditions creates vibrant, healthy communities." The comment stated that, while the National Oceanic and Atmospheric Administration do great work, their expertise is not in cultural resources.

**Response:** The cooperation and coordination between other Federal agencies, State and local governments, and Indian tribes is described in final §§ 1610.3-1, 1610.3-2, and 1610.3-3. Final § 1610.3-2(b)(3) directs the BLM to collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise, during the planning process, including during the preparation of the planning assessment, the identification of planning issues, the formulation of resource management alternatives, the estimation of the effects of alternatives, the preparation of the draft resource management plan,

and the preparation of the proposed resource management plan. While the cooperating agency relationship does not prevent other agencies from commenting on other issues, their role in the planning and NEPA processes is specific to their jurisdiction or area of special expertise. The roles and responsibilities of non-Federal cooperating agencies will be defined in a memorandum of understanding between the agencies. Through the interdisciplinary approach, as required by FLPMA and NEPA, the BLM will achieve integrated consideration of all relevant resources and ensure that the expertise of the preparers is appropriate to the resource values involved, per final § 1610.1-1(b). Information submitted by other Federal agencies, State and local governments, and Indian tribes will be subject to the requirement of final § 1610.1-1(c), that the BLM shall use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

**Comment:** One comment stated that it is not clear from the proposed rule who the BLM envisions would be working with the responsible official and whether there would be any constraints on who qualifies as, for example, an “advisor,” nor is the proposed rule clear on whether non-BLM stakeholders would be involved in the “interdisciplinary approach.” The proposed rule provides that the “responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.” The comment further stated that the planning process should not be designed to incorporate the advice of unnamed government personnel without visibility for non-governmental stakeholders or the ability for those stakeholders to participate.

**Response:** Final § 1610.1-1(b) states that the “expertise of the preparers shall be appropriate to the resource values involved, the issues identified during the issue identification and EIS scoping stage of the planning process, and the principles of multiple use and sustained

yield, unless otherwise specified by law.” Generally, interdisciplinary teams consist of BLM staff, cooperating agency staff, and any personnel under contract with the BLM to work on the resource management plan. However, the BLM may utilize other experts in a certain field to serve as consultants to the process. In these cases, the consultant would provide information and advice related to their field of expertise, but would not be afforded privileges beyond their role as a consulting expert.

Final § 1610.1-1(b) is based on existing § 1610.1(c), which also states that the BLM will use a necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

The final rule provides a framework for future planning processes. While terms such as consultants, contractors, and advisors in these regulations may seem general to commenters, the roles of these individuals will be identified for specific planning processes. For example, Council on Environmental Quality regulations at 40 CFR 1502.17 requires that EISs list the names and qualifications of the persons who were primarily responsible for preparing the EIS or significant back papers, including basic components of the statement. It is also important to note that although the BLM may use a combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach, the BLM retains the decision-making authority for individual planning efforts.

**Comment:** One comment stated that imposing coordination requirements across programs adds further uncertainty, creating additional risk.

**Response:** The BLM is directed to use an interdisciplinary approach under FLPMA (43 U.S.C. 1712 (c)(2) and NEPA (43 CFR 1502.6). Such an approach requires coordination between BLM programs.

**Comment:** One comment noted that Federal agencies sometimes do not show appropriate respect to the expertise of tribal government agency staff, or for the expertise of tribal elders regarding historic properties that hold traditional religious or cultural significance. In the context of the National Historic Preservation Act Section 106 process, the American Council on Historic Preservation provides that the Federal agency official “shall acknowledge” such special expertise. Specifically, the agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them. The comment suggested that § 1610.1-1(b) add language requiring the agency official to acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

**Response:** The final rule includes a new section titled “Consultation with Indian tribes,” which will be designated as § 1610.3-1. This section states that the BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. Further, tribes are considered an “eligible governmental entity” under 43 CFR 46.225(a), and will be invited to participate as cooperating agencies in the planning process as required by final § 1610.3-2(b). While a tribe may elect not to participate as a cooperating agency, the BLM is must still consult and coordinate with tribes during the planning process in accordance with §§ 1610.3-1 and 1610.3-2, respectively.

Final § 1610.1-1(b) will not adopt the suggested language. The BLM acknowledges that Indian tribes have special expertise and that the BLM has specific requirements to consult and coordinate with tribes during the planning process. The BLM believes that the final rule reflects these requirements.

High Quality Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))

**Comment:** Several comments suggested that the proposed “high quality information” standard may allow biased, subjective, unsubstantiated, or questionable scientific data or information to inform planning. One comment specifically noted potential for bias in the planning assessment and monitoring phases of planning.

**Response:** The final rule adopts the proposed definition for high quality information in § 1601.0-5. The definition specifies high quality information is “accurate, reliable, and unbiased” and includes the “best available scientific information.”

**Comment:** Several comments expressed concern that the high quality information standard is a relaxing of current data evaluation standards, and suggested that this standard conflicts with currently established data standard laws or policy. Other comments asserted that there is no reason for the BLM to create a new standard for data quality because the BLM already must adhere to existing data standards and the addition of another standard is confusing. Comments cited existing laws or policies including FLPMA, the Data Quality Information Act, the BLM and DOI Information Quality Guidelines, NEPA requirements for scientific integrity and high quality information, and the Endangered Species Act requirement for the use of the best available scientific information.

**Response:** The final rule adopts the requirement to use “high quality information” in § 1610.1-1(c). The BLM believes that adopting such a requirement in the planning regulations will provide more clarity on existing standards for information quality and the relationship of these standards to resource management planning. The provision to use “high quality information” does not relax or deviate from current data evaluation standards. The BLM must comply with data standards set forth by Federal law and regulations, and will continue to comply

with data standards established through other relevant policy. The final rule defines high quality information in § 1601.0-5 and establishes the standard to use high quality information in § 1610.1-1(c) of the final rule; this standard broadly addresses all information used in the preparation and amendment of resource management plans and is in keeping with other Federal standards for data quality. This standard will improve consistency in the quality of information used across all BLM plans. Further, the BLM will continue to adhere to Federal standards during planning, such as the CEQ's NEPA regulations regarding "high quality" information and "[a]ccurate scientific analysis" (40 CFR 1500.1(b)). Where more specific Federal standards in Federal law apply to certain types of information, the BLM will conform with those Federal standards as well. For more information on the use of high quality information and consistency with other Federal information standards, see the discussion for § 1610.1-1(c) in the preamble.

**Comment:** A few comments asserted that the proposed language that information must be "useful to its intended users" puts the BLM at odds with data quality standards contained in other Federal requirements, such as the Endangered Species Act and NEPA. One comment asserted that usefulness is a subjective determination.

**Response:** The final rule includes "useful to its intended users" in the definition of high quality information for consistency with the "OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication," (OMB Guidelines) (67 FR 8452). In the guidelines, OMB defines "quality" as the "encompassing term, of which 'utility,' 'objectivity,' and 'integrity' are the constituents." The guidelines further define "utility" as referring to the "usefulness of the information to its intended users, including the public." This standard allows the BLM to focus on relevant information during resource management planning. Section § 1610.1-1(c) does not conflict with

other Federal requirements, such as the Endangered Species Act and NEPA, as there is no existing Federal requirement that requires the BLM to use information that is not relevant to a planning process.

It is also important to note that in defining “utility” the OMB Guidelines state “when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.” Section 1610.2 of the final rule requires the BLM to provide opportunities for public involvement, where the public can comment on the usefulness of data/information, along with other aspects of the planning documents.

**Comment:** A few comments requested that the BLM define “information quality.” Some of these comments specifically requested that the definition include three components: “utility,” “integrity,” and “objectivity.”

**Response:** The final rule defines “high quality information” in § 1601.0-5 and further addresses the use of high quality information in § 1610.1-1(c), consistent with the proposed rule. It is not necessary to also define “information quality,” as this term is only used as a heading to identify the step during the planning assessment when the responsible official evaluates data and information to determine if it “high quality information” (§ 1610.4(c)). The three components of information quality (utility, integrity, and objectivity) which are described in the OMB Guidelines are incorporated into the definition of “high quality information” in the final rule (see § 1601.0-5), which uses plain language derived from the definitions of these three components (utility, integrity, and objectivity) in the OMB Guidelines. For more information regarding information quality, see the discussions for §§ 1601.0-5, 1610.1-1(c) and 1610.4(c) of the preamble.

**Comment:** One comment requested that the BLM disclose situations in which it has used lower quality information because no high quality information existed or because there were data gaps.

**Response:** Existing resource management plans comply with the laws and regulations in place when the record of decision for the resource management plan was signed, including NEPA, the Data Quality Act, the Endangered Species Act, as well as any other applicable laws or regulations. For more information on the data and information used in any existing resource management plan, please see the final EIS associated with that approved resource management plan and record of decision. The requirements of this final rule apply to all applicable future resource management plans (see § 1610.9(d)) but do not apply to previously approved resource management plans.

**Comment:** One comment asked whether the BLM can use data that was collected before the rule is finalized in future planning efforts.

**Response:** The BLM will use high quality information, including the best available scientific information, when preparing or amending future resource management plans. The specific timeframe the information was gathered does not preclude its use in planning so long as the information is determined to be high quality information (see §§ 1601.0-5 and 1610.1.1(c)).

**Comment:** One comment asserted that the BLM must justify land use planning decisions with sufficient high quality, factual information. This comment was particularly concerned about using such information when designating Areas of Critical Environmental Concern.

**Response:** Section 1610.1-1(c) of the final rule requires the BLM to use high quality information to inform the preparation, amendment, and maintenance of resource management plans. This includes the designation of Areas of Critical Environmental Concern. The definition

of high quality information, in § 1601.0-5 of the final rule, is “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.”

**Comment:** One comment asserted that the proposed rule's discussion of high quality information does not incorporate BLM's requirements under Section 202(c)(9) of FLPMA to prepare and maintain an inventory on a continuing basis, and to coordinate the land use inventory with state and local governments.

**Response:** The final rule addresses inventory requirements in § 1610.4, requiring the responsible official to arrange for the gathering or assembling of inventory data in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located, and in a manner that aids the planning process and avoids unnecessary data-gathering (see § 1610.4(b)(1)). This paragraph reflects the BLM's responsibilities under FLPMA to prepare and maintain an inventory of the public lands and their resource and other values, as well as the importance of early coordination with other Federal agencies, State and local governments, and Indian tribes.

**Comment:** A few comments asserted that the high quality information standards in the proposed rule will lead to increased litigation over whether the BLM failed to consider “high quality” information or whether the BLM inappropriately considered information that was not actually “high quality.”

**Response:** The high quality information standard is informed by the Information Quality Act, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, and the implementing guidelines of OMB, DOI, and the BLM. The BLM also adheres to

the requirements in the CEQ's NEPA regulations for using "high quality" information and "[a]ccurate scientific analysis."

Under the final rule, the responsible official will evaluate the data and information gathered to ensure the use of high quality information in the planning assessment (see § 1610.4(c)) and will make a summary report of the planning assessment available for public review (see § 1610.4(e)). This will provide the public an opportunity to review information and bring any concerns to the BLM's attention for consideration; however, the BLM retains the discretion to make the final determination regarding information quality. The BLM cannot reasonably predict whether this provision will result in increased litigation.

**Comment:** Several comments requested that the BLM withdraw the definition of "high quality information" and all references to that term from the final rule. Comments suggested that the BLM instead continue to allow the evaluation of assessments of information under the Administrative Procedure Act's standard of "arbitrary and capricious."

**Response:** The final rule adopts the definition of high quality information in § 1601.0-5 as well as related provisions at §§ 1610.1-1(c) and 1610.4(c). This standard reaffirms current practice and policy and will improve consistency in the quality of information used across all the BLM resource management plans. Where more specific Federal standards in Federal law apply to certain types of information, the BLM will conform to those Federal standards as well.

*Best Available Scientific Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))*

**Comment:** Several comments expressed support for the BLM's use of the best available scientific information and of updating plans based on it. One comment urged the BLM to make science the primary driving force behind management policies. Some comments noted that the best available scientific information helps provide an accurate yet impartial basis for important

land management issues. One comment suggested that the BLM specifically state that it will use the best available scientific information when making decisions related to sensitive species, and that it must maintain or expand populations.

**Response:** The BLM will adhere to Federal standards during planning, including incorporating the CEQ's NEPA regulations regarding "high quality" information and "[a]ccurate scientific analysis" (40 CFR 1500.1(b)) into the planning process, and committing to using "high quality information" as part of the planning process through § 1610.1-1(c). Please also see the preamble discussion of the definition of "high quality information" at § 1601.0-5. Where more specific Federal standards apply to certain types of information, the BLM shall conform to those standards as well. High quality information, as defined in § 1601.0-5 of the final rule, includes "the best available scientific information" and any other representation of knowledge "which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users." The BLM Manual 6840 further addresses sensitive species, and the final rule does not preclude the BLM from requiring use of best available scientific data to inform decisions on sensitive species in the future.

The final rule does not include a statement regarding maintaining or expanding species. This rule is procedural in nature and does not prescribe any specific management outcomes. Statements that prescribe specific management outcomes will be developed as plan components for each future resource management plan.

**Comment:** Several comments asserted that it is important that the best available scientific information be up-to-date. These comments expressed concern that neither the definition for high quality information in § 1601.0-5 nor § 1610.1-1(c) of the proposed rule

contain any direction regarding using up-to-date information. The comments asserted that using outdated best available scientific information could lead to misinformed decisions.

**Response:** The high quality information standard will require that data and information used in planning must be, among other qualities, accurate and reliable. The timeframe for when the data was collected will be taken into consideration when evaluating data for accuracy and reliability.

**Comment:** A few comments provided suggestions for scientific information or integrity standards. One comment suggested that the BLM adopt science integrity standards similar to those adopted by the National Research Council. Other comments suggested the BLM adopt the Council on Environmental Quality's NEPA regulations regarding integrity of scientific information.

**Response:** The BLM must adhere to any Federal standards established through laws or regulations during resource management planning, including CEQ's NEPA regulations regarding "high quality" information and "[a]ccurate scientific analysis" (40 CFR 1500.1(b)). The BLM also acts consistent with the existing DOI policy regarding "Integrity of Scientific and Scholarly Activities" (305 DM 3). The final rule does not adopt any additional information standards, other than those described in § 1610.1-1(c).

*Public Involvement and High Quality Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))*

**Comment:** A few comments expressed concern that requests for data from the public will result in delays to the planning process. These comments asserted that more data will increase the BLM's workload and result in a significant amount of information that requires review and evaluation. A separate comment was supportive of the BLM's call for information from the public and from others early in planning.

**Response:** The BLM recognizes the importance of an efficient planning process as that is grounded in high quality information, including the best available scientific information. The final rule includes a requirement for the responsible official to provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information for the BLM's consideration in the planning assessment (see § 1610.4(b)(3)). The BLM acknowledges that this new step will create additional workload for the BLM staff to review and evaluate data and information submissions to ensure the use of high quality information in the planning assessment. The BLM believes that this additional workload is appropriate because this new step will help the BLM to identify the best available information early in the process. Further, the BLM must currently consider data and information submitted by a member of the public. By providing an early step for these submissions, it will increase the likelihood that data and information submissions are received by the BLM early in the process, which is the most efficient time for the BLM to consider data and information, and, as appropriate, use this data and information to inform the planning process.

**Comment:** A few comments suggested that the BLM post guidelines for submitting data. These comments suggested that posting guidelines will help the BLM inventory and monitor resources and change.

**Response:** The BLM recognizes the importance of providing guidelines to the public on submitting data and information for the BLM's consideration (see § 1610.4(b)(3)); however, these guidelines are not appropriate for inclusion in regulations. The BLM expects to issue guidance after publication of this rule, possibly including but not limited to manuals, handbooks, and digital and paper publications. The BLM does commit to using high quality information to

inform the planning process. The BLM will consider this commitment when evaluating data submitted by outside parties in a particular planning effort.

**Comment:** Several comments requested that the BLM publicly disclose the sources of information, including voluntarily submitted information, and the rationale for choosing a source of information. Comments also urged the BLM to document and publicly release its evaluation of information collected from the public and to disclose whether that information is considered “high quality,” the use of the data or an explanation why it was not used, as well as the BLM’s rationale for this determination.

**Response:** The BLM will document the planning assessment in a report made available for public review (see § 1610.4(e)) and will also document data and information used during the preparation or amendment of a resource management plan where appropriate in the NEPA and planning documents. The responsible official will document his or her determination of high quality information in the administrative file for the planning effort and will summarize this determination in the planning assessment report.

**Comment:** A few comments asserted that the BLM planning efforts should utilize all sources of data, including stakeholders and organizations with specific expertise, as long as they meet the minimum standards. Other comments requested the BLM outline a clear process and protocol in the final rule that details the inclusion and balanced consideration of data from both Federal experts and local on-the-ground knowledge, and to include a rationale for how the BLM will make decisions based on balanced analysis.

**Response:** The final rule requires the BLM to use high quality information, which includes the best available scientific information, to inform the preparation, amendment, and maintenance of resource management plans (see § 1610.1-1(c)). This information may come

from any source, as long as it is high quality information and meets other standards established through Federal laws and regulations. The BLM expects to provide more detailed guidance on high quality information through future guidance such as manuals and handbooks or instructional memorandums.

**Comment:** One comment asserted that the BLM should respond to any disagreement regarding the quality of the data it has used during resource management planning.

**Response:** The BLM planning process outlines opportunities for public involvement, including public comment, in § 1610.2. The BLM must issue a formal response to any substantive comments submitted for a draft resource management plan or EIS-level plan amendment, including substantive comments regarding the quality of information used in preparation of the resource management plan or EIS-level plan amendment (see § 1610.2-2). The BLM may choose to issue a formal response to public input at other stages of the planning process, but there is no requirement to do so.

**Comment:** One comment expressed concern that the rule grants final determination of the best available scientific information to the BLM without regard or assessment by State and local governments, Indian tribes, and the public. A few comments asserted that whether or not data or information meets the high quality standard should be subject to review by a third party or to appeal by the submitter. Some of the comments suggested that the BLM establish science advisory committees that have resources and authority to review and act on questions raised during planning processes. Other comments urged the BLM to establish a third party review committee who could evaluate the quality of available information and science in order to settle disagreements.

**Response:** The final rule includes new opportunities for public involvement including an opportunity for public review of the planning assessment report (see § 1610.4(e)), public review of the basis for analysis (*i.e.*, the procedures, assumptions, and indicators) (see § 1610.5-3(a)), and an opportunity for formal public comment on the draft resource management plan and draft EIS (see § 1610.2(-2)). The BLM recognizes the importance of transparency and the importance to provide the public an opportunity for input on the information used during the planning process, and the final rule provides such transparency and opportunity for input. It is appropriate for the BLM to make the final determination regarding information quality, including the determination on best available scientific information, because the BLM is responsible for preparing resource management plans and for the management of the public lands.

The final rule does not provide opportunities for the public to appeal the evaluation of the data they have submitted; however, the public may provide comments on the draft resource management plan and draft EIS regarding information quality, and may also submit a protest on the proposed resource management plan regarding information quality in relation to one or more plan components. The final rule also does not establish a requirement for a third party review committee on information quality. Such an approach would not be practical given the magnitude of information used during the preparation of a resource management plan. The BLM will evaluate the data and information it receives and uses to ensure it meets all applicable Federal standards. Regulatory requirements, policies, and strategies relating to information, including scientific information, will guide responsible officials as they ensure that information used in resource management planning is high quality. These regulatory requirements, policies, and strategies, including the BLM's own guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information, are discussed in detail in the discussion of §

1610.1-1(c) in the preamble for the final rule. This process may vary depending on the discipline, and therefore it is more appropriate to address through guidance. It is also important to note that the final rule does not preclude the responsible official from using a third party review when it is appropriate.

**Comment:** Many comments expressed concern that the BLM will use the high quality information evaluation procedures to selectively bar or accept certain evidence. Some of these comments asserted that the rule does not establish a quality control process for screening the data and information that the public submits to the BLM.

**Response:** The requirement for “high quality information” will be applied to all types of information, and will not be used to selectively bar or accept evidence. The responsible official will document his or her determination of high quality information in the administrative file for the planning effort and will summarize it in the planning assessment report. Further guidance on the evaluation of high quality information is expected to be in the forthcoming revision of the Land Use Planning Handbook.

*Traditional Ecological Knowledge (TEK) and High Quality Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))*

**Comment:** A few comments asserted that the intent and definition of the term TEK is not clear. A few comments suggested that the BLM define TEK and explain how it will be considered and who can contribute it. Some comments specifically suggested that it is not clear whether this term means that the BLM would use local knowledge and history in planning, or whether it is an opportunity for the BLM to rely on information from suspect sources. Other comments expressed concern that the definition of “high quality information” may prevent inclusion of TEK because of the statement that the rule “would further emphasize the role of

science in the planning process” and that one of the BLM’s key objectives is ensuring that public lands are managed in a manner “that will protect the quality of scientific ... values.”

**Response:** The proposed and final regulations do not include the term TEK, therefore there is also no definition of TEK in the regulations. However, the discussion for § 1610.1-1(c) of the preamble explains that TEK refers to the knowledge specific to a location acquired by indigenous and local peoples over hundreds and thousands of years through direct contact with the environment. Under the final rule, TEK may be considered a type of high quality information so long as it is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods. Further, TEK must be documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification. The BLM will apply the same standards to the consideration of TEK as it applies to the consideration of other types of information. For example, the BLM would not use TEK submitted by a member of the public if the TEK was not documented using accepted methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification. Any member of the public is welcome to submit information for the BLM’s consideration; the BLM retains the authority to determine if such information meets the standards for high quality information described in §§ 1601.0-5 and 1610.1-1(c).

In regards to the role of science in planning, the final rule requires the use of the best available scientific information, as a type of high quality information, but does not preclude the inclusion of other types of information when appropriate, including TEK. For example, TEK can provide valuable information on historical ecosystems, climates, or species distributions to inform resource management planning.

**Comment:** One comment urged the BLM to recognize local knowledge of traditional customs and culture, such as livestock grazing, mining, and timber harvest, as a component of TEK. Other comments expressed concern that the BLM will include TEK as high quality information, but will disregard traditional customs.

**Response:** The proposed and final regulations do not include the term TEK, therefore there is also no definition of TEK in the regulations. The discussion for § 1610.1-1(c) of the preamble explains that TEK refers to the knowledge specific to a location acquired by indigenous and local peoples over hundreds and thousands of years through direct contact with the environment. This may include traditional customs and culture specific to a location. Further, the discussion for § 1610.1-1(c) of the preamble describes TEK as an example of high quality information, but does not preclude the consideration of other types of information so long as the information meets the standards for “high quality information.”

**Comment:** One comment asserted that the final rule should not impose a timeframe on what constitutes TEK (i.e. hundreds and thousands of years).

**Response:** The timeframe described in the preamble discussion for § 1610.1-1(c) in the proposed rule was intended to provide context for the meaning of TEK but does not impose a strict requirement regarding the timeframe on what constitutes TEK. The discussion of TEK was provided as an example to help illustrate the concept of high quality information; this discussion does not represent a regulatory provision regarding TEK. The BLM expects to provide guidance regarding the collection of TEK in future guidance documents such as manuals and handbooks or instructional memorandums.

**Comment:** Several comments opposed the use of TEK as a type of high quality information because it fails to meet the standards of “utility” and “objectivity” pursuant to the

Data Quality Act and subsequent guidance documents. These comments asserted that data and science, not opinions or other non-traditional, anecdotal, and unverifiable sources of information, must inform land use planning.

**Response:** Under the final rule, TEK is considered a type of high quality information so long as it is documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification. The inclusion of TEK does not conflict with the Data Quality Act and subsequent guidance documents. Through the disciplines of anthropology, as well as other social science disciplines, accepted scientific methodologies have been established for documenting ethnographic information and other types of social information. Such methodologies, and the information collected through these methodologies, are widely accepted by the scientific community and appropriate for consideration during resource management planning.

*Citizen Science and High Quality Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))*

**Comment:** Several comments expressed concern over the use of citizen science during resource management planning. Some comments asserted that citizen science falls short of a “best available science” threshold. One comment asserted that the BLM should not use citizen science to fill nonexistent research gaps. A few of the comments also expressed concern that using citizen science will invite litigation. Comments recommended that the BLM, instead of using citizen science, review all the science it currently uses to identify gaps in knowledge, and then conduct targeted research to fill those gaps.

**Response:** The final rule defines high quality information as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is

useful to its intended users” (see § 1601.0-5). This standard applies to all information used in resource management planning, including citizen science. It does not preclude the use of citizen science, so long as the information meets this standard.

On September 30, 2015, the Director of the Office of Science and Technology Policy issued a memorandum titled “Addressing Societal and Scientific Challenges through Citizen Science and Crowdsourcing.”<sup>1</sup> This memo outlined principles for effective use of citizen science by Federal agencies. In regards to data quality, this memo states “[i]nformation collected and/or used by volunteers should be credible and usable. Recognizing that a “one-size-fits-all” quality-assurance approach will not work for all projects, Federal agencies should apply the principle of “fitness for use,” ensuring that data have the appropriate level of quality for the purposes of a particular project. In addition, citizen science projects should incorporate the same practices generally followed by all science projects, including data-quality assurance, data management, and ongoing project evaluation; relevant Federal and agency policies for scientific integrity and ethics; and other applicable agency principles, policies, and practices.” In addition to standards for high quality information, the BLM will apply the principles described in this memorandum, including the concept of “fitness for use” when using citizen science to inform the preparation or amendment of a resource management plan.

*Rapid Ecoregional Assessments and High Quality Information (§§ 1610.1-1(c), 1601.0-5, and 1610.4(c))*

**Comment:** A few comments asserted that the BLM cannot rely on Rapid Ecoregional Assessments (REAs) because they do not qualify as high quality information. Comments stated that REAs are prepared rapidly, with little or no ground-truthing, by agglomerations of public

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<sup>1</sup>[https://www.whitehouse.gov/sites/default/files/microsites/ostp/holdren\\_citizen\\_science\\_memo\\_092915\\_0.pdf](https://www.whitehouse.gov/sites/default/files/microsites/ostp/holdren_citizen_science_memo_092915_0.pdf)

and private organizations, some of which may have distinct agendas. The comments further noted that REAs are a snapshot in time; they do not show trends. Other comments urged the BLM to remove REAs from the rule and preamble entirely.

**Response:** The term “Rapid Ecoregional Assessments” or “REAs” does not appear in the proposed or final regulations. The background discussion in the preamble to the final rule describes REAs in regards to other initiatives that are related to Planning 2.0 to help provide context to how the Planning 2.0 initiative relates to other BLM initiatives. The BLM disagrees that REAs are not high quality information. REAs are identified as “rapid” because they do not involve conducting research or collecting new data; rather, they synthesize the existing best available data within an ecoregion. Though REAs can and do identify trends, it is not a requirement of the high quality information standard that the data and information in question show trends. REAs are valuable for landscape-scale management approaches because they synthesize data for broad geographic areas.

### **Section 1610.1-2 Plan Components**

#### *Goals and Objectives (§ 1610.1-2(a))*

**Comment:** A few comments asserted that the definition of “goal” provided at § 1610.1-2(a)(1) exceeds the BLM’s management authority under FLPMA. The comments stated that the BLM’s authority to establish goals in a resource management plan is limited to goals related to renewable resources on the BLM lands, and that the BLM may not establish goals for a broader variety of resources such as air quality or socioeconomic conditions for counties. The comments recommend revising the definition of “goals” at § 1610.1-2(a)(1) to clarify that the BLM would only set goals for renewable resources as is consistent with FLPMA.

**Response:** The final rule does not revise the definition of “goals” at § 1610.1-2(a)(1) to limit the BLM’s authority to establish goals in a resource management plan to renewable resources only. This definition is consistent with FLPMA and does not exceed the BLM’s management authority under FLPMA, which directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA, means in part the management of the public lands so they are utilized in the combination that best meet the needs of the American people; further, multiple use takes into account the long term needs of future generations for renewable and non-renewable resources. The “needs of the American people,” including future generations, are reflected in the goals of a resource management plan. These needs may address a broad range of desired outcomes related to resource, environmental, ecological, social, or economic characteristics. For example, the needs of local communities may include economic outcomes related to development of the public lands, or they may include social outcomes such as access to public lands for recreation, solitude, or gathering of traditional plants.

**Comment:** A comment requested the BLM add “cultural” to the list “resource, environmental, ecological, social, or economic characteristics” at §§ 1610.1-2(a)(1) and 1610.1-2(a)(2)(ii).

**Response:** The final rule does not add “cultural” to §§ 1610.1-2(a)(1) and 1610.1-2(a)(2)(ii). Cultural characteristics are encompassed by the term “resource characteristics” and therefore the inclusion of this term, or other types of resources, is not necessary. The BLM expects to include further information and guidance on the development of goals in the forthcoming Land Use Planning Handbook.

**Comment:** A comment asserted that the proposed rule inappropriately prioritizes “goals” and “objectives” over other plan components. The comment stated that FLPMA does not authorize the BLM to establish goals and objectives and recommended the BLM withdraw the proposed language at § 1610.1-2 or revise it to be consistent with FLPMA.

**Response:** FLPMA specifically directs “goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law.” (See 43 U.S.C. 1701(a)(7).) Further, FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA, means in part the management of the public lands so they are utilized in the combination that best meet the needs of the American people; further, multiple use takes into account the long term needs of future generations for renewable and non-renewable resources. The “needs of the American people,” including future generations, are reflected in the goals of a resource management plan. The BLM has appropriately identified plan components under the direction and authority established by FLPMA.

**Comment:** A comment stated that the goals and objectives set by the BLM in resource management plans cannot supersede goals established by Congress in FLPMA and other laws related to public lands.

**Response:** The BLM must comply with Federal laws and regulations when developing resource management plans. As stated by the comment, plan components may not supersede Federal law; rather, plan components are developed to implement FLPMA (see 43 U.S.C. 1712(a)).

**Comment:** Several comments requested the BLM develop clear goals and objectives for desired habitat conditions in resource management plans. Comments stated that many BLM managed habitats are threatened by noxious weeds, past management practices, and decades of fire suppression.

**Response:** The final rule does not prescribe specific requirements related to habitat conditions. The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM expects to develop goals and objectives related to habitat conditions for resource management plans developed using the procedures described in these regulations.

*Objectives (§ 1610.1-2(a)(2))*

**Comment:** A comment noted that objectives should consider the opinions of all stakeholders while following scientifically driven management objectives.

**Response:** The development of plan components, including objectives, will be informed through public involvement described in the rule at § 1610.2 and subject to the requirements of high quality information at § 1610.1-1(c).

**Comment:** A few comments suggested that the BLM should include a mechanism in the final rule by which a decision-maker can “override” the requirements of a resource management plan. Comments stated that it is not possible for the BLM to predict every potential occurrence or proposed action and set objectives accordingly and the BLM will be forced to complete plan amendments every time a proposed action does not precisely fit the plan objectives.

**Response:** The final rule does not include a mechanism that would allow decision-makers to override plan components, other than to formally amend or revise the resource management plan. All future management actions within a planning area must conform to plan

components. The purpose of establishing plan components is to provide planning-level management direction within the planning area. Once a record-of-decision has been signed for an approved plan or amendment, the BLM must complete a plan amendment consistent with the process outlined in these regulations to change a plan component in a resource management plan.

**Comment:** A comment recommended the BLM strike “[t]o the extent practical” at § 1610.1-2(a)(2).

**Response:** The final rule revises § 1610.1-2(a)(2) to replace “[t]o the extent practical” with “[a]s appropriate.” This change is intended to clarify that there may be situations when it is not appropriate to identify a mitigation standard in a resource management plan, such as within a wilderness area where development is not allowed, or when there is insufficient scientific information available to develop a standard. The BLM intends no substantive change in meaning from this change.

**Comment:** A few comments included concerns regarding how the BLM plans to meet objectives as defined in the proposed rule at § 1610.1-2(a)(2). The comments cite *Norton v. Southern Utah* as ruling that the BLM cannot include “language in the plan itself [that] creates a commitment binding on the agency.” Comments also asserted the BLM may not have the budget to meet plan objectives, and that including a requirement for objectives to have “established time-frames” (§ 1610.1-2(a)(2)) would expose the BLM to litigation on the basis to meet these self-imposed timelines. Comments recommended the BLM revise the final rule to match the mandates as directed under FLPMA.

**Response:** The final rule does not revise § 1610.1-2(a)(2) to exclude timeframes for objectives, however the inclusion of these time-frames in a resource management plan is discretionary. Objectives are intended to guide progress towards the achievement of one or more

goals and in some situations the BLM may determine to include timeframes in a particular plan in order to achieve the goal. The resource management plan objectives do not represent “a commitment binding on the agency,” as the BLM cannot guarantee achievement of the objectives, particularly in regards to factors, which are outside of the agencies control, such as future available budgets, or environmental factors such as drought, or wildfires. Rather, the resource management plan objectives are a tool that guides future decisions that are within the agencies control, including future authorizations or prioritization of funds.

**Comment:** A comment stated that establishing time-frames for objectives should not be discretionary, and that the BLM should revise the final rule at § 1610.1-2(a)(2) to require that objectives establish time-frames.

**Response:** The final rule does not revise § 1610.1-2(2) to require the establishment of time frames for objectives. Time frames for achieving an objective may not be relevant or appropriate in some situations. For example, an objective related to the visual resource management class for an area may not have a relevant time frame for achievement.

**Comment:** A few comments stated that the final rule should be revised to clarify that objectives may be established to achieve goals for desired economic and social outcomes, in addition to resource conditions.

**Response:** An objective is a concise statement of desired resource conditions developed to guide progress toward one or more goals, including goals, which address social or economic outcomes. The objective itself only includes statements in regards to resource conditions because the BLM manages natural resources and therefore management direction must be appropriately linked to these natural resources. The BLM manages these natural resources however in order to achieve a variety of goals, including social and economic goals. The final

rule is not revised as it already reflects this relationship between resource management and broader social and economic goals.

**Comment:** Several comments stated support for the application of “S.M.A.R.T” (Specific, Measureable, Achievable, Relevant, Time-Oriented) objectives. Comments stated that S.M.A.R.T. objectives will ensure a comprehensive and thorough discussion of plan goals.

**Response:** The final rule states that objectives are “specific, measurable, and should have established time-frames for achievement.” The BLM believes this is the appropriate level of detail to describe objectives and is consistent with the concept of developing “S.M.A.R.T.” objectives. Additional guidance on developing objectives is expected in the forthcoming revision of Land Use Planning Handbook.

**Comment:** Several comments recommended that the BLM add language to the final rule to set objectives and identify measures that are meaningful and robust, and not set them based on existing or anticipated resource limitations or personnel shortages.

**Response:** The final rule does not include the suggested language. The planning rule appropriately describes the procedures for developing a resource management plan in § 1610.5 Plan components, including objectives, will be developed using the procedures described in this section as well as through the public involvement requirements described in § 1610.2. When developing plan objectives, the BLM will consider any relevant information, including the purpose and need for the resource management plan, the planning issues, the results of the planning assessment, as well as available resources and staffing necessary to implement the resource management plan.

Mitigation Standards (§ 1610.1-2(a)(2)(i))

**Comment:** A comment expressed concern that mitigation sites would be identified through implementation strategies and not adequately disclosed to the public. The comment recommends the BLM disclose the exact lands it intends to set aside for mitigation purposes and how they are to be managed in conjunction with other multiple uses as plan components and not as part of the management measures in an implementation strategy. Other comments noted that the proposed rule does not mention implementation of a compensatory mitigation strategy or identification of mitigation sites as outlined in BLM policy and recommended the BLM incorporate language in the final rule at § 1610.1-2 to state that resource management plans would be required to contain applicable mitigation strategies.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not develop comprehensive policy related to mitigation. The final rule addresses mitigation in regards to developing plan objectives, stating that as appropriate the plan objectives should “[i]dentify standards to mitigate undesirable impacts to resource conditions” (see § 1610.1-2(a)(2)(i)). These standards are intended to provide guidelines to link mitigation to resource management plan objectives. Comprehensive mitigation policy, including the development of mitigation strategies and the identification of mitigation sites, is outside the scope of this rulemaking and may be provided through other means, such as manuals and handbooks.

**Comment:** A comment expressed concern that the identification of standards of mitigation at the outset, rather than during the course of implementation, threatens to impose unwarranted mitigation requirements. Another comment expressed concern that the proposed

rule would require the BLM to seek compensatory mitigation to ensure a "net resource benefit" or a "no net loss."

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans. The final rule addresses mitigation in procedures for developing plan objectives, stating that as appropriate the plan objectives should “[i]dentify standards to mitigate undesirable impacts to resource conditions” (see § 1610.1-2(a)(2)(i)). These standards are intended to provide guidelines to link mitigation to resource management plan objectives. Mitigation standards will be developed as appropriate, and will identify standards for resource conditions; they will not prescribe specific mitigation practices. The planning rule does not require the BLM to seek compensatory mitigation to ensure a "net resource benefit" or a "no net loss," however a mitigation standard for “no net loss” to a resource could be established in a specific resource management plan prepared under these regulations in the future, as appropriate.

**Comment:** A comment expressed support for the application of the “mitigation hierarchy.” The comment recommended the BLM include a clearer statement that the hierarchy considers avoidance preferable to minimization, which is in turn preferable to compensation.

**Response:** The definition of mitigation in final § 1601.0-5 describes mitigation as “the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.” This definition incorporates the mitigation hierarchy by describing it as a “sequence.” This means that impacts are first avoided, then minimized, and finally compensated for in that particular order.

**Comment:** The BLM received several comments stating that the language “to the extent practical” for the establishment of mitigation standards was confusing and needed clarification.

Comments stated that this language could lead to disputes among stakeholders and the BLM over what is “practical.”

**Response:** The final rule replaces “[t]o the extent practical” with “as appropriate” at § 1610.1-2(a)(2). Although there is not a substantive difference between these phrases, this change is intended to clarify that there may be situations when it is not appropriate to identify a mitigation standard in a resource management plan, such as within a wilderness area where development is not allowed, or when there is insufficient scientific information available to develop a standard. The BLM retains the discretion to determine what is “appropriate” in regards to the establishment of mitigation standards.

**Comment:** A few comments requested the final rule identify mitigation standards as non-discretionary designations in land use planning, citing the BLM Regional Mitigation Manual Section 1794 and the Presidential Memorandum on “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.” Comments stated that the Presidential Memorandum presents the context under which the BLM should be required to consider mitigation standards as non-discretionary.

**Response:** The final rule addresses mitigation in regards to developing plan objectives, stating that as appropriate the plan objectives should “[i]dentify standards to mitigate undesirable impacts to resource conditions” (see § 1610.1-2(a)(2)(i)). The final rule includes the phrase “as appropriate” because there are situations when it may not be appropriate to establish a mitigation standard. The final rule does not identify mitigation standards as a non-discretionary designation.

**Comment:** Several comments stated that the proposed rule would establish a requirement for the BLM to impose mitigation on permittees, and that the BLM does not have the authority to

require mitigation. Comments assert that FLPMA does not authorize the BLM to require advanced, compensatory, or off-site mitigation. Comments also assert that the requirement to seek mitigation in the absence of clear and objective criteria or guidance opens the door for subjective, inconsistent, and arbitrary application on a project-by-project basis of mitigation requirements.

**Response:** The final rule addresses mitigation when developing plan objectives, stating that as appropriate the plan objectives should “[i]dentify standards to mitigate undesirable impacts to resource conditions” (see § 1610.1-2(a)(2)(i)). This language does not explicitly require mitigation; rather, it provides a method to establish standards for resource condition that will help guide future mitigation for specific projects consistent with the plan objectives. The BLM does have the authority under FLPMA to require mitigation to mitigate resource impacts.

**Comment:** A comment requested that the BLM add “cultural and natural” as descriptors for “resource conditions” at § 1610.1-2(a)(2)(i).

**Response:** The final rule does not add the words “cultural and natural” in front of “resource conditions” at § 1610.1-2(a)(2)(i) because these terms are encompassed by the term “resource conditions” and therefore not necessary for inclusion in the final rule.”

**Comment:** The BLM received a comment stating that the simultaneous development of the planning rule and mitigation policy is leading to potential for conflicting aspects and does not provide an opportunity to look at cumulative impacts, unintended consequences, and conflicting guidance.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not develop comprehensive policy related to mitigation. The final rule is consistent with existing mitigation policy, including the

Departmental Manual chapter on mitigation. Future policy regarding mitigation must be consistent with this final rule.

*Indicators for Evaluating Progress towards Objectives (§ 1610.1-2(a)(2)(iii))*

**Comment:** Several comments stated support for the identification of attributes and indicators as an important way to relate current conditions with habitat standards and adaptive management. Comments recommend revising the final rule to require and define these attributes and indicators. Some comments stated that indicator should be used to measure achievement towards plan goals and achievement towards mitigation goals.

**Response:** In response to public comment, the final rule establishes an additional requirement (final § 1610.1-2(a)(2)(iii)) that as appropriate, objectives should identify indicators for evaluating progress toward achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives should align with the indicators described in the monitoring and evaluation standards. This approach will ensure that the BLM is able to determine if the plan objective is being met through monitoring and evaluation.

The final rule does not include specific language regarding “attributes.” The BLM believes that this concept is more appropriately described through guidance, such as the forthcoming revision of the BLM Land Use Planning Handbook H-1601-1.

*Integrated Consideration of Resource, Environmental, Ecological, Social, and Economic Factors (§ 1610.1-2(a)(2)(ii))*

**Comment:** The BLM received one comment stating that the final rule should be revised to remove “social” from the list of factors for developing objectives.

**Response:** The final rule is not revised to remove the word “social” from § 1610.1-2(a)(2)(ii). The removal of this word would be inconsistent with other sections to this final rule, including § 1610.1-2(a)(1). Objectives are developed to guide progress towards the achievement of goals, and therefore objectives may need to consider “social factors” when related goals address “social characteristics.”

*Designations (§ 1610.1-2(b)(1))*

**Comment:** The BLM received several comments stating that the proposed rule did not adequately explain how management would be “directed” toward certain uses, or what the consequences would be if such uses did not occur.

**Response:** Management will be directed towards priority resource values and resource uses through the development of resource use determinations and through future implementation actions. The resource management plan does not guarantee that a use will occur; rather it establishes that an area is appropriate for a use, and prioritizes this use by excluding any conflicting uses, or minimizing use restrictions, as appropriate.

**Comment:** Several comments recommended the final rule include language prohibiting the creation of overlapping designations. Comments stated that many BLM plans allow incompatible designations, and that overlapping designations are redundant and lead to unnecessarily restrictive and confusing decisions.

**Response:** The final rule does not prohibit the establishment of overlapping designations because there are situations where overlapping designations are necessary or important for achieving plan objectives. For example, a wild and scenic river segment could be designated within a National Monument, or a special recreation management area might be designated within a National Monument. Providing for multiple compatible resource uses, where

appropriate, is consistent with the concept of multiple use and sustained yield. The BLM, through the land use planning process, will evaluate different resource use determinations through the development of a range of alternatives and effects analysis (see §§ 1610.5-2 and 1610.5-3), including the interaction between overlapping resource use determinations. In general, the BLM seeks to avoid overlapping designations where they are not necessary or helpful, and the BLM expects that the forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on this topic.

*Planning Designations (§ 1610.1-2(b)(1)(i))*

**Comment:** Several comments stated support for the inclusion of planning designations. Comments recommended that alternate planning designations be identified in the final rule and in the BLM Land Use Planning Handbook. Some comments requested the final rule identify specific types of planning designations, including dark sky areas, wildlife migration corridors, and backcountry conservation areas. Some comments requested that planning designations listed in the forthcoming revision to the Land Use Planning Handbook be provided as examples, and not an exhaustive or unchangeable list.

**Response:** The final rule identifies ACECs as an example of a planning designation; however, this is not intended to be an exhaustive list, rather it provides an example to illustrate the concept. The final rule is not revised to list other examples of planning designations as this is not necessary, nor would it be practical to list all planning designations. The planning rule establishes the procedural framework for preparing and amending resource management plans, including plan components. The BLM expects to provide a list of planning designations available for use in the forthcoming revision to the Land Use Planning Handbook. The BLM does not intend that this list would preclude the development of future types of planning

designations when appropriate, subject to the requirements established in the planning rule at § 1610.1-2(1).

**Comment:** Several comments stated support for the use of planning designations to identify areas that deserve priority management for outdoor recreation or other values, as appropriate. These comments expressed concern, however, by the lack of a requirement to explicitly connect priorities identified through designations with resource use determinations, management measures, or other steps to ensure that values prioritized through designations are in fact protected on the landscape.

**Response:** In response to this comment, the final rule adds language § 1610.1-2(b)(1)(i) stating, “resource use determinations shall be consistent with or support the management priorities identified through designations.” This language is intended to connect priorities identified through designations with resource use determinations. The concept of “management measures” was not adopted in the final rule (see proposed § 1610.1-3).

**Comment:** A comment stated opposition to the establishment of special areas, stating that a one-size fits all approach has failed in the past. A few comments requested that the BLM not create additional designations that are not authorized by FLPMA, and expressed discontent regarding ACECs.

**Response:** Designations identify areas of public land where management is directed toward one or more priority resource values or resource uses. FLPMA directs the BLM to give priority to the designation and protection of ACECs (see 43 U.S.C 1712(c)(3)), but this does not preclude the BLM from establishing other planning designations. Planning designations are an important tool for management on the basis of multiple use and sustained yield, as they allow the BLM to identify areas important resource values or resource uses that need be prioritized. The

BLM expects to develop a list of planning designations available for use during the planning process as part of the forthcoming revision of the Land Use Planning Handbook. For more information on the designation of ACECs, please see § 1610.8-2(a).

Under the final rule, planning designations will be identified in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies. The establishment of designations is consistent with the concept of multiple use and sustained yield which allows for “the use of some land for less than all of the resources” (43 U.S.C. 1702 (c)) and the FLPMA direction to “give priority to the designation and protection of [ACECs]” (43 U.S.C. 1712(c)(3)).

**Comment:** A comment expressed concern over the addition of administrative land conservation designations, stating that the proposed rule contains no criteria, definition, or description of biological significance for the administratively applied designations of Riparian Conservation Areas, High Priority Restoration Watersheds, Sensitive Caribou Winter Range, or any of the other designations recently used in BLM Alaska planning. The comment stated that the proposed rule provides too many designations and newer designations that will create confusion.

**Response:** The final rule applies to future resource management plans. Existing resource management plans were prepared under the regulations in place during their preparation. The planning rule establishes the procedural framework for preparing and amending resource management plans, including plan components, but does not provide an exhaustive list of all planning designations or the criteria for identifying those designations. The BLM expects that the forthcoming revision to the Land Use Planning Handbook will provide more detailed

information on planning designations, including a list of designations available for use during the planning process and the criteria for identifying those designations.

**Comment:** A comment stated that the final rule should clarify or make explicit the intention and legal requirement to prioritize designations such as ACECs and lands with wilderness characteristics. The comment recommended the final rule restate the prioritization of FLPMA in identifying and protecting ACEC.

**Response:** In response to public comment, the final rule is revised at § 1610.8-2(b) to state that potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan “consistent with the priority established by FLPMA.” This new language references the statutory requirement to “give priority to the designation and protection of Areas of Critical Environmental Concern” (see 43 U.S.C. 1712(c)(3)). The final rule is not revised to prioritize lands with wilderness characteristics because FLPMA does not require prioritization of lands with wilderness characteristics.

**Comment:** The BLM received a comment stating that National Landscape Conservation System components in general, and national scenic and historic trails in particular, are and should be managed as ACECs.

**Response:** The designation of ACECs is addressed in § 1610.8-2. The BLM may designate a component of the National Landscape Conservation System as an ACEC should the area meet the criteria for relevance and importance described in § 1610.8-2(a) and also require special management attention to protect and prevent irreparable damage to the relevant and important values.

**Comment:** One comment stated that planning designations demonstrate that the proposed planning rule attempts a fundamental policy shift away from traditional public land

uses identified in FLPMA. The comment asserted that the result of planning designations is that more lands will be “designated” as wilderness, or Areas of Critical Environmental Concern, or otherwise, and that local communities will lose multiple uses and suffer both social and economic harm, creating impacts to the custom and culture of the region.

**Response:** The final rule does not represent a policy shift away from public land uses identified in FLPMA. The BLM does not hold the authority to designate wilderness areas and FLPMA requires the BLM to “give priority to the designation and protection of ACECs” (43 U.S.C. 1712(c)(3)). Further, the BLM currently designates special areas, such as ACECs under the existing planning regulations. The final rule identifies planning designations, along with the other plan components, to provide greater detail to the process by which the BLM provides management direction that guides future management decisions under resource management plans in accordance with FLPMA.

**Comment:** One comment requested that the planning rule exclude “suitability” determinations for potential Wild and Scenic Rivers from the planning process.

**Response:** The final rule does not exclude suitability determinations for potential wild and scenic rivers from the planning process. The BLM policy directs suitability determinations to be done through the land use planning process (BLM Manual 6400).

*Non-Discretionary Designations (§ 1610.1-2(b)(1)(ii))*

**Comment:** A comment suggested the final rule specify geographical extents required for non-discretionary designations and recommended adding the Secretary of Agriculture to the list of designating authorities for non-discretionary designations.

**Response:** The final rule does not specify geographical extents for non-discretionary designations. These boundaries are not determined by the BLM and therefore outside the scope

of this rulemaking. The final rule also does not include the Secretary of Agriculture as a designating authority because the Department of Agriculture is under separate administrative jurisdiction and does not hold authorities or jurisdictions over lands managed by the BLM. Should a unique circumstance occur in the future, the final rule does not preclude inclusion of non-discretionary designations from other designating authorities.

**Comment:** A few comments requested that congressionally designated National Scenic and Historic Trails be identified as non-discretionary designations in the planning rule and that the final rule include language specifying that the identification of trail corridors must be based upon the designating legislation and comprehensive management plan. Comments also suggested the final rule prescribe planning processes regarding National Scenic Trails and other National Conservation Lands in general.

**Response:** National Scenic and Historic Trails are designated by Congress, and therefore will be considered non-discretionary designations under the final rule. National Scenic and Historic Trail “corridors,” however, are designated through resource management planning and are therefore planning designations. The BLM final rule does not add language regarding requirements for establishing trail management corridors, nor does it specifically call out National Scenic and Historic Trails as an example of a non-discretionary designation. These examples and requirements are more appropriately addressed through guidance (see MS-6250 National Scenic and Historic Trail Administration and MS-6280 Management of National Scenic and Historic Trails and Trails Under Study or Recommended as Suitable for Congressional Designation). Planning processes regarding National Scenic and Historic Trails or other National Conservation Lands must comply with the requirements of this part.

**Comment:** One comment stated that resource development activities should be considered in planning designations as many lands managed by the BLM have high potential, which can be explored and developed safely.

**Response:** The BLM will consider resource development activities during the resource management planning process as appropriate based on the results of the planning assessment (see final § 1610.4), and the identification of planning issues (see final § 1610.5-1).

**Comment:** A comment suggested that language in the preamble which calls for consistency with “proclamation, legislation, or order” regarding plan consistency with non-discretionary designations should also emphasize the full extent of such consistent planning.

**Response:** It is not practical or appropriate for the rule or preamble to provide detailed guidance on how a resource management plan will be consistent with “proclamation, legislation, or order.” Such guidance is more appropriately described in manuals, handbooks, or instructional memoranda. The BLM will identify relevant laws, regulations, policies, guidance, strategies, or plans for consideration during the planning assessment. This will include the applicable proclamations, legislation, or orders for a non-discretionary designation. Please see final § 1610.4(b)(2) for more information.

**Comment:** A comment requested the BLM consider the designation of new Wilderness Study Areas pursuant to FLPMA for all identified lands with wilderness characteristics. The comment recommended the final rule contain language to specifically require this consideration.

**Response:** The BLM does not have the authority to designate new Wilderness Study Areas, so the BLM cannot make this requested revision to the final rule.

Resource Use Determinations (§ 1610.1-2(b)(2))

**Comment:** A comment stated support for the development of broad land use allocations at eco-regional scales identifying landscapes generally suitable for resource uses such as oil and gas leasing, timber harvest, or grazing. The comment recommends these broad-scale land use allocations be included to protect areas from development where assessment determines the resource potential for use to be low.

**Response:** The final rule adopts a related concept of resource use determinations. A resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, 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.

**Comment:** Several comments requested the final rule specify requirements for specific resource uses. Examples of specific requirements and uses included defining permissible activities within visual resource management classes, prioritizing already disturbed lands for renewable energy development, requiring phased-development approaches for extractive uses such as oil and gas, and not placing limitations on locations available for oil and gas leasing.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM has provided the appropriate level of detail to this procedural framework for development of a resource management plan or plan amendment. The BLM expects to provide additional guidance on the development of resource use determinations in the forthcoming revision of the Land Use Planning Handbook or other policy documents.

**Comment:** Comments expressed concern that the use of designations and resource use determinations would apply a zoning approach, and that such an approach would limit the BLM's ability to adequately predict future use opportunities. The comments recommended the BLM allow for user groups to inform the agency of where interests lie through lease nominations, renewable energy right-of-way applications, or increased or new recreational activity in an area.

**Response:** In considering the many different values and uses of public lands, the BLM must identify lands where uses are allowed, restricted, or prohibited in order to manage on the basis of multiple use and sustained yield. The use of designations and resource use determinations does not represent a significant change from current practice, as the BLM currently identifies allowable uses and special designations in existing resource management plans (see the existing Land Use Planning Handbook, H-1601-1). The BLM would address future changes within a planning area through evaluation and, as appropriate, amendment of the resource management plan as described at § 1610.6-6.

**Comment:** One comment recommended the final rule explicitly state that resource use determinations must be consistent with identified desired outcomes and conditions.

**Response:** This change is not necessary as the final rule already states that resource use determinations are identified "in order to achieve the goals and objectives of the resource management plan or plan amendment," therefore they must be consistent with these goals and objectives. The final rule defines goals at § 1610.1-2 (a)(1) as "a broad statement of desired outcomes" and objectives at § 1610.1-2 (a)(2) as "a concise statement of desired resource conditions."

*Mining Law and Minerals*

**Comment:** Several comments stated that plan components cannot remove lands from operation of the Mining Law of 1872 and that such an action can only be accomplished through withdrawals taken under section 204 of FLPMA. Comments recommended that the final rule clarify this, and state that the final rule may not be used to justify a designation or resource use determination to the extent that it conflicts with the mandates of FLPMA or established plan goals and objectives. The comments further recommended that the BLM should be required to identify and designate areas where mining activities would thrive.

**Response:** The BLM must comply with all applicable Federal laws in developing plan components. The BLM has the authority through land use planning to identify lands as recommended for withdrawal from operation of the Mining Law of 1872 where such recommendation is determined appropriate to meet plan goals and objectives to protect resource values. The final rule is not revised at § 1610.1-2(2) as suggested in these comments. The BLM, through the land use planning process, will evaluate resource uses and consider uses as appropriate to achieve the goals and objectives of the resource management plan.

The final rule is not revised to adopt the recommendation to require that the BLM identify and designate areas where mining activities would thrive. The planning rule establishes the procedural framework for preparing and amending resource management plans, including plan components, but does not provide an exhaustive list of all planning designations or the criteria for identifying those designations. The BLM expects that the forthcoming revision to the Land Use Planning Handbook will provide more detailed information on planning designations, including a list of designations available for use during the planning process and the criteria for identifying those designations.

**Comment:** A comment requested clarification on when mineral leasing decisions would occur under the proposed rule. The comment stated that conflicting responses had been provided at public meetings during the rulemaking process.

**Response:** The final rule provides that resource use determinations identify areas of public lands or mineral estate where, subject to valid existing rights, 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. Resource use determinations include the specific restrictions on an allowed use that will be required for all future activities and authorizations within the area. Resource use determinations related to mineral leasing include open or closed to mineral leasing, or open to mineral leasing subject to standard terms and conditions or major or moderate constraints (including the specific constraints, such as no surface occupancy, controlled surface use, or timing limitations). A resource use determination that identified an area as open to leasing would not represent a final decision to allow mineral leasing within the area. Decisions authorizing specific leasing actions (which could include site-specific conditions of approval) are implementation decisions that would be required to be made in conformance with applicable plan components, following the approval of a resource management plan and based on site-specific NEPA analysis.

**Comment:** A comment stated that the final rule should incorporate provisions that present a framework for more consistent, adaptive, and integrated management of fluid mineral resources. The comment specifically identified that land use plans should identify lands as open to leasing, closed to leasing, or requiring more focused planning before leasing such as provided under master leasing plans, and that the final rule should clarify that plan-level decisions may be sufficient to determine that development is appropriate.

**Response:** The final rule establishes resource use determinations, which may identify areas as open or closed to minerals leasing, or open to mineral leasing subject to standard terms and conditions or major or moderate constraints (including the specific constraints). A resource use determination that identified an area as open to leasing would not represent a final decision to allow specific leasing within the area. Decisions authorizing specific leasing actions are implementation decisions that would be required to be made in conformance with applicable plan components. The final rule does not address master leasing plans. This rule provides a general framework for all uses of the public lands. The BLM believes that more detailed planning, such as master leasing plans, is more appropriately developed through guidance, such as manuals or handbooks.

*Valid Existing Rights*

**Comment:** Several comments expressed concern that the proposed rule would allow for the development of plan components that would conflict with or restrain the exercise of valid existing rights.

**Response:** Plan components established within resource management plans must comply with all applicable Federal laws, including FLPMA, which requires management consistent with valid existing rights. Final § 1610.1-2(b)(2) is revised to clarify that resource use determinations are subject to valid existing rights. This language is unnecessary because all plan components and other types of management decisions are subject to valid existing rights under FLPMA. The final rule includes this language specifically in § 1610.1-2(b)(2), however, because resource use determinations describe exclusions and restrictions to use, which are directly related to valid existing right qualifications.

*Relationship between Designations and Resource Use Determinations (§§ 1610.1-2(b)(1) and (b)(2))*

**Comment:** Several comments requested more clarification in the final rule of what constitutes a “designation” (§ 1610.1-2(1)) and what constitutes a “resource use determination” (§ 1610.1-2(2)) and how these terms differ from “management actions” in existing resource management plans.

**Response:** Designations and resource use determinations are both defined in § 1610.1-2(b). Final § 1610.1-2(b)(2) is revised in response to this comment to state the “resource use determinations shall be consistent with or support the management priorities identified through designations.” This language clarifies that the resource use determination must be consistent with any designations. The final rule does not include the term “management action” which is used in the existing Land Use Planning Handbook (H-1601-1) and many existing resource management plans. Under this final rule, some common “management actions” described in resource management plans prepared under the existing planning regulations will be classified as “resource use determinations,” such as any explicit restrictions to an allowed use at the land use planning level; other management actions will no longer be included in resource management plans because they do not provide planning-level management direction. For more information on this topic, please see the discussions of §§ 1610.1-2(b)(2) and proposed 1610.1-3 in the preamble to the final rule.

**Comment:** Several comments suggested that the BLM should integrate “designations” (§ 1610.1-2(b)(1)) and “resource use determinations” (§ 1610.1-2(b)(2)). Comments stated that this would result in a more clearly defined set of criteria for determining whether future actions are in conformance with plan components. Some comments expressed that the distinction creates a

blurry line between prioritized or prohibited uses identified in a designation and allowed uses identified in a resource use determination.

**Response:** The final rule does not combine designations and resource use determinations. After consideration of public comments, the BLM believes that the distinction between designations and resource use determinations is appropriate. Designations are intended to establish priorities, when appropriate. Resource use determinations are intended to identify exclusions, restrictions, or allowance of use. Resource use determinations must be consistent with the priority established through designations and the final rule is revised to include language clarifying this relationship (§ 1610.1-2(b)(2)).

*Monitoring and Evaluation Standards (§ 1610.1-2(b)(3))*

**Comment:** Several comments expressed support for monitoring and evaluation but were concerned over the BLM's staffing resources, stating that the BLM may not have the capacity to implement monitoring and evaluation. Some comments suggested the BLM revise the final rule to revise monitoring and evaluation standards as tools available to the BLM, but not enforceable requirements of resource management plans or plan amendments. Other comments recommended adding text to the final rule at § 1610.1-2(b)(3) to require providing adequate personnel, including consideration of volunteers, as a required component of monitoring and evaluation standards.

**Response:** The final rule is not revised to re-define monitoring and evaluation standards as these plan components are necessary to understand whether the plan objectives are being met. The final rule is also not revised to require adequate staffing, as this type of requirement would not be appropriate in regulations and the BLM cannot reasonably predict future budgets and staffing availability. The BLM recognizes that the implementation of monitoring and evaluation

may depend on some factors outside of the BLM's control, including available staffing and budgets. The intent of this plan component is to guide the BLM in prioritizing available staffing and budgets in order to achieve the goals and objectives of the plan most effectively.

**Comment:** Several comments stated that adaptive management depends on a strong monitoring and evaluation process and that the planning process cannot be successful without monitoring and evaluation actions that track specific and measurable factors and are analyzed against predetermined goals within a set time. The comments recommend the BLM revise the final rule at § 1610.1-2(b)(3) to include language describing a detailed strategy on how monitoring and evaluation at the implementation level should be used to help facilitate adaptive management.

**Response:** The final rule is not revised to include language describing a detailed strategy on how monitoring and evaluation at the implementation level should be used to help facilitate adaptive management. The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM has adequately established the framework for resource management plans and plan amendments to be able to incorporate plan components, including monitoring and evaluation standards, to incorporate adaptive management techniques. Further detail is more appropriately provided through guidance, such as manuals or handbooks.

**Comment:** A comment expressed confusion regarding the difference between monitoring and evaluation standards identified at § 1610.1-2(b)(3) and monitoring procedures identified at § 1610.1-3(a)(2).

**Response:** Monitoring and evaluation standards, as described in final § 1610.1-2(b)(3), are a mandatory plan component that identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there

is relevant new information that may warrant amendment or revision of the resource management plan. In response to public comment, the final rule does not adopt proposed § 1610.1-3, which described implementation strategies, such as monitoring procedures. It is important to note, however, that this change between the proposed and final rule does not preclude the BLM from developing monitoring procedures (*i.e.*, the specific methods for monitoring) in the future apart from or concurrently with the resource management planning process. Please see the discussion of proposed § 1610.1-3 in the preamble to the final rule for more information on this topic.

**Comment:** A comment recommended that the BLM create and share regular status reports on resource condition indicators, stating that such reports would ensure that monitoring and evaluation is being completed and that results are made available to staff and stakeholders.

**Response:** The final rule at § 1610.6-4(b) requires that “[t]he responsible official shall document the evaluation of the resource management plan in a report made available for public review.” This report will include an evaluation of whether the plan objectives are being met (based on resource condition indicators) and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

*Lands Available for Disposal (§ 1610.1-2(b)(4))*

**Comment:** A comment requested the final rule specify that resource management plans should ensure no net loss of public lands. The comment also suggested the BLM specify that acquisitions should prioritize those lands with high conservation or public recreation values. Another comment stated that the BLM plans must never become a vehicle for the Federal agency to lay groundwork for acquisition of private land intermingled with Federal estate.

**Response:** The final rule is not revised to specify a no-net-loss of public lands requirement or to establish prioritization requirements for acquisitions. FLPMA describes the criteria for disposal of public lands (43 U.S.C. 1713 (a)) and the final rule is consistent with this statutory direction. Prioritizations for acquisition are appropriately determined during the preparation or amendment of any given resource management, and not in these regulations. Land tenure decisions, including identification of areas for retention or disposal, will be made through the planning process, and will include opportunities for coordination with local governments.

**Comment:** A comment noted that, due to checkerboard patterns of State and Federal lands, that the BLM resource management plans can greatly impact a State’s ability to generate income from their trust assets. The comment recommended that resource management plans identify Federal-State land exchange priorities.

**Response:** Federal-State land exchange priorities may be identified as lands available for disposal (see § 1610.1-2(b)(4)) consistent with FLPMA (43 U.S.C. 1713(a)).

*Changes to Plan Components (§ 1610.1-2(c))*

**Comment:** A few comments requested the final rule revise § 1610.1-2(c) to allow the BLM to “correct changes” or “correct minor changes” to plan components without triggering a plan amendment.

**Response:** The final rule is not revised as requested. Changes to a resource management plan that do not require a plan amendment are appropriately described as plan maintenance in § 1610.6-5 and include changes to “correct typographical or mapping errors or to reflect minor changes in mapping or data.” Changes to plan components will go through the plan amendment

or plan revision process, which includes appropriate NEPA analysis and public involvement. The BLM believes these steps are important when considering changes to plan components.

*General Comments Regarding Plan Components (§ 1610.1-2)*

**Comment:** Several comments stated that the proposed rule fails to identify why the existing planning framework is inadequate and why a change is warranted. Comments specifically identified that the removal of existing land use plan elements in the existing regulations and their replacement with plan components and implementation strategies has the potential to dramatically increase agency discretion while disenfranchising the public, State and local governments, and stakeholders from involvement in these important aspects of planning. Other comments expressed support for the replacement of the existing planning framework with plan components, stating that several items enumerated in the definition of a resource management plan under existing § 1601-5 are in reality plan components.

**Response:** The final rule provides a rationale for the need to revise the planning rule in the “Background” discussion of the preamble. The final rule also provides a detailed rationale for the removal of existing planning elements and the addition of each plan component in the discussion at § 1610.1-2 of the preamble. The final rule provides for extensive public involvement in the development of plan components, as these represent planning level management direction, and does not disenfranchise the public and stakeholders from involvement. In response to public comment, the proposed concept of implementation strategies was not adopted in the final rule.

**Comment:** Several comments requested the final rule clarify that plan components must be developed consistent with the principles of multiple use and sustained yield as required by

FLPMA, or with other management principles required by governing statutes such as the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937.

**Response:** Under FLPMA, resource management plans (which includes plan components) must be developed consistent with the principles of multiple use and sustained yield, unless otherwise specified by law (see 43 U.S.C. 1701(a)(7) and 1712(c)(1)). The final rule is revised at § 1601.0-1 to state that the purpose of this part is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the BLM, “consistent with the principles of multiple use and sustained yield unless otherwise specified by law.”

**Comment:** Several comments expressed concern that plan components would limit principal or major uses described in section 104(l) of the FLMPA and requested that final rule develop specific requirements for plan components related to the principal and major uses identified in FLPMA.

**Response:** The BLM believes that these comments are referring to section 103(l) of FLPMA, which defines “principle or major uses.” The planning rule establishes the procedural framework for preparing and amending resource management plans, including plan components, but does not prescribe or limit any use, including the principal or major uses described in section 103(l) of FLPMA. FLPMA does not prohibit limitations on principle or major uses, and the BLM will consider management of these uses through the planning process and development of plan components, following the procedures outlined in the final rule. The final rule is not revised to establish specific requirements related to the principal and major uses, other than the existing requirements described in final § 1610.7, which requires that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or

major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented.

**Comment:** A few comments stated that the proposed rule describes each of the plan components and elements of the process, but does not specify how those various components relate to one another. Comments noted that the proposed rule does not explain how the planning assessment relates to plan components, making it unclear how the planning assessment should be used in the plan. Comments further stated that the development of alternatives, environmental analysis, and implementation should be dependent on and adequately supported by the information found in the planning assessment. The comments recommended the BLM include a logical process for each of the plan components and elements and how they relate to each other in the final rule.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans, including the sequential process for conducting the planning assessment (§ 1610.4) and preparing resource management plans or plan amendments (§ 1610.5). The BLM believes that the final rule provides the appropriate level of detail regarding the relationship between plan components (*i.e.*, the content of a resource management plan) and the steps taken to prepare a resource management plan, including the role of the planning assessment to inform these steps.

Final §§ 1610.5-1 to 1610.5-5 describe the process the BLM will follow to develop a resource management plan. The planning assessment is used specifically during the identification of planning issues (§ 1610.5-1(a)); the formulation of resource management alternatives (§ 1610.5-2(a)(1)); the effects analysis (§ 1610.5-3(b)); and the preparation of the draft resource management plan (§ 1610.5-4(a)). The plan components described in final §

1610.1-2 are the basis for the resource management alternatives and the draft resource management plan, and therefore will also be informed by the planning assessment. More detailed guidance on the development of plan components is expected in the forthcoming revision of the Land Use Planning Handbook.

**Comment:** Several comments expressed support for the use of adaptive management principles. These comments cited the potential efficiencies an adaptive management model provides in land use planning amendments. Comments expressed concern that the proposed rule does not clearly tie the goals, objectives, and monitoring standards together closely enough for the adaptive management process to be clearly linked. Comments proposed several revisions and additions to the proposed rule to clarify this, as well as recommended adding text to document the adaptive management process specifically.

**Response:** In response to public comment, the final rule establishes an additional requirement (final § 1610.1-2(a)(2)(iii)) that, as appropriate, objectives should identify indicators for evaluating progress toward achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives will be the same indicators as described in the monitoring and evaluation standards. Identifying these same indicators in both the objectives and the monitoring and evaluation standards more clearly links the achievement of objectives to monitoring and evaluation and will ensure that the BLM is able to determine if the plan objective is being met through monitoring and evaluation.

By identifying objectives, while maintaining flexibility to vary the actions taken to achieve the objectives, the BLM will be able to more readily respond to change. These changes are consistent with current guidelines for applying adaptive management. The DOI technical

guide on adaptive management describes “adaptive management” as a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Adaptive management requires explicit and measurable objectives so that progress toward their achievement can be assessed, and performance that deviates from objectives may trigger a change in management. Adaptive management also requires flexibility to change management actions when necessary. The final rule supports the use of these types of adaptive approaches, while still providing direction in resource management plans regarding the areas of public lands available for use, and the goals and objectives to be achieved, as provided for in FLPMA. More detailed guidance regarding adaptive management and the relationship between plan components is expected through subsequent guidance, such as the forthcoming revision of the Land Use Planning Handbook.

**Comment:** A comment requested the BLM provide a more detailed explanation of a predictable process for amending the plan components, including a timeline, criteria for evaluation, and how various aspects of a resource management plan may be revised or amended from time to time without amending or revising the entire document. The comment specifically asked if goals or objectives could be amended without public involvement.

**Response:** Goals and objectives may not be amended without public involvement. Plan components, including goals and objectives, may only be changed through a resource management plan amendment or revision, except to correct typographical or mapping errors or to reflect minor changes in mapping or data (see final § 1610.1-2(c)). The plan amendment procedures are described at final § 1610.6-6, and the requirements for public involvement during a plan amendment are described at final § 1610.2. More detailed guidance regarding plan

amendments is expected through subsequent guidance, such as the forthcoming revision of the Land Use Planning Handbook. It is not appropriate to develop specific timelines for plan amendments, as amendments will vary based on complexity, issue, public involvement, and geographic scope. Each of those factors may influence timing.

**Comment:** A comment requested the BLM require plan components be geospatially identified and available. The comment stated that geospatial identification of plan components would improve effects analysis, especially when conducting land use planning at landscape-scales across traditional boundaries.

**Response:** The final rule does not include a requirement for all plan components to be geospatially referenced. While the BLM agrees that the geospatial availability of plan components would be beneficial to land use planning, the BLM does not currently have the resources available to digitize all plan components across the agency. The BLM is currently working to develop these capabilities through a Geospatial Strategic Plan and expects to develop future guidance regarding geospatial identification of plan components.

**Comment:** Several comments noted that the proposed rule suggests that the achievement of goals and objectives and implementation of monitoring and evaluation could be enforceable commitments under the Administrative Procedures Act and recommended the BLM revise the final rule to expressly state that goals, objectives, and monitoring measures in resource management plans do not commit the BLM to future courses of action, and that the BLM actions are dependent upon appropriation of necessary funds and agency priorities, and are not intended to be enforced by third parties through legal remedies. Comments also recommend including language to state that these plan components cannot be enforced by the general public under 5 U.S.C. 706(1). The comments cited several court rulings supporting this statement.

**Response:** The final rule does not include the language suggested by these comments, but the BLM has addressed this comment in the preamble to the final rule. Resource management plans provide planning level management direction intended to help the BLM prioritize available funds and to guide future management decisions, including future proposed actions. The BLM does not intend that plan components be discrete agency actions that the BLM is required to take and therefore enforceable under § 706(1) of the APA. However, plan components do bind the BLM to the extent that all future actions taken by the BLM must conform to the plan components. Should, through the process of monitoring and evaluation, the BLM determine that the goals and objectives are not being met, the BLM has the discretion to identify appropriate remedies, including the option to revise or amend the resource management plan.

**Comment:** A comment requested clarification in the final rule that specific designations and resource use determinations, such as visual resource classifications, research natural areas, riparian management areas or transportation routes, are plan components that require conformance.

**Response:** The final rule does not identify specific designations and resource use determinations; rather it defines types of plan components. Specific designations and resource use determinations are more appropriately described in future guidance, such as the forthcoming revision of the Land Use Planning Handbook.

**Comment:** A comment suggested reclassifying reasonably foreseeable development scenarios for oil and gas development as plan components.

**Response:** The final rule does not reclassify reasonably foreseeable development scenarios for oil and gas developments as plan components, as these scenarios are predictive

models, and do not represent planning level management direction. These types of information are appropriate for inclusion in the planning assessment, and are expected to be described in more detail in the forthcoming revision of the Land Use Planning Handbook.

**Comment:** Several comments recommended the planning rule incorporate connectivity for special areas, landscapes, and resources into the plan components, such as “core-and-corridor conservation planning.” Comments specifically identified connectivity as important between NLCS units and other protected area and for wildlife habitat.

**Response:** The final rule requires that during the planning assessment the responsible official identify areas of key fish and wildlife habitat such as habitat connectivity or wildlife migration corridors, as well as existing designations in the planning area (see § 1610.4(d)(5)). This information will inform the development of plan components, and under the final rule the BLM may develop plan components to support connectivity, as appropriate. The final rule does not identify plan components specifically related to connectivity. This is not necessary, as the plan components described in the final rule provide the appropriate framework to plan for connectivity.

**Comment:** Several comments expressed concern that the proposed rule does not adequately address coordination or consistency requirements pursuant to section 202(c)(9) of FLPMA. Comments recommended adding a new section to the final rule at § 1610.1-2 clarifying that the BLM will coordinate plan components with the land use planning and management programs of States, local governments, and Indian tribes which may be affected and that the BLM will further ensure plan components are as consistent as possible with officially approved and adopted land use plans, and the policies and programs contained therein of other

Federal agencies, State agencies, local governments, and Indian tribes in accordance with FLPMA.

**Response:** The final rule does not revise § 1610.1-2 to include a discussion of coordination and consistency requirements. Coordination and consistency with other Federal, State, Tribal, and local governments is already discussed at § 1610.3.

**Comment:** The BLM received a comment stating that planning designations and resource use determinations should not be made without local input.

**Response:** Planning designations and resource use determinations are plan components that would be subject to the public involvement requirements at § 1610.2.

**Comment:** A comment stated that the BLM should revise the final rule to include an additional plan component of “standards” as defined by the U.S. Forest Service in their 2012 planning rule. The comment suggested that this would improve understanding, accountability, and coordination with the U.S. Forest Service as described under the consistency requirements.

**Response:** The U.S. Forest Service and the BLM have different statutory authorities. The BLM developed this final rule consistent with FLPMA, which governs the BLM and those lands administered by the BLM. FLPMA has different requirements than the National Forest Management Act, which is applicable to the U.S. Forest Service. The BLM will continue to coordinate with the U.S. Forest Service on future planning efforts developed under the procedures provided in this final rule.

**Comment:** The BLM received comments requesting clarification on the requirement to include each plan component in resource management plans or plan amendments, or if consideration for which plan components to include would be based on the planning area.

**Response:** The final rule requires that all resource management plans must include goals, objectives, designations, resource use determinations and monitoring and evaluation standards. In contrast, lands identified as available for disposal from BLM administration, including sales under section 203 of FLPMA, are only included in a resource management plan if they are applicable based on the planning area.

#### Proposed Section 1610.1-3 Implementation Strategies

**Comment:** The BLM received comments in opposition to and in support of proposed § 1610.1-3. Several comments expressed confusion about the proposed implementation strategies and the role they would play in future management. Some comments stated that if implementation strategies were not resource management plan decisions and were merely a ‘forecast’ of what actions the BLM might elect to take or otherwise require of permitted activities, that they defeat the fundamental purpose of planning as they provide no certainty for land and resource users. Several comments requested specific changes to the requirements for implementation strategies, clarifications related to implementation strategies, or specific concerns related to implementation strategies. These included:

- Requests for clarification that implementation strategies only apply to the BLM lands and cannot be applied to adjacent nearby private or state lands.
- Requests for clarification as to whether mitigation would be considered an implementation strategy or a plan component.
- Concerns that the analysis of plan components would be incomplete without the consideration of implementation strategies.

- Concerns that implementation strategies would include such things as best management practices, required design features, as well as a net conservation gain standard, and could have significant effects on how activities are conducted.
- Concerns that the proposed rule would eliminate several required components of land use planning and recast them as implementation strategies which would be developed solely by the BLM following publication of the draft resource management plan or plan amendment, would not be subject to public notice and comment, and would be subject to modification at any time at the BLM's sole discretion. These comments recommended inclusion of implementation strategies as plan components, subject to all the same applicable public notices and comment periods.
- Concerns that the proposed rule did not provide adequate opportunities for public involvement in the development or revision of implementation strategies.
- Requests that implementation strategies be included in the draft resource management plan or plan amendment and subject to a formal public comment period and that a formal public comment period be provided for any changes made to implementation strategies after the completion of the resource management plan or plan amendment.
- Confusion over whether or not implementation strategies could be protested or appealed as part of the land use planning process. These comments suggested that implementation strategies might present arbitrary and capricious information and recommended that they be made subject to protest.

- Requests that the final rule identify how the BLM would be required to notify the public of changes to implementation strategies.
- Concerns that the proposed implementation strategies would allow the BLM to take management action on public lands in a manner that is beyond the oversight of the State and local governments, stakeholders, or the public.
- Assertions that § 1610.1-3 violates FLPMA and NEPA in stating that implementation strategies are not subject to coordination and consistency requirements with State, local, and tribal governments. Comments requested the BLM revise this section to explicitly state that coordination and consistency would be required in accordance with of FLPMA (43 U.S.C. 1712(c)(9)).
- Support for the flexibility of implementation strategies in applying adaptive management, but concern that changes to implementation strategies without public involvement would reduce transparency on how the BLM was accomplishing plan goals and objectives and could lead to a loss of credibility with the public.
- Requests that the final rule define a threshold for types of changes to implementation strategies that would require a plan amendment to adopt.
- A concern that implementation strategies could impact the values of grazing permits and leases on public lands.
- A concern regarding including special management attention for ACECs as implementation strategies because this would result in special management attention no longer being included in a draft resource management plan or draft plan amendment and therefore not available for public comment.

- Concerns that NEPA and decision-making processes could vary depending on the type of action associated with an implementation strategy.
- Concerns that implementation strategies would confine the BLM's decision space in project-level planning.
- Concerns that the distinction between plan components and implementation strategies would undercut valid existing rights and reasonable expectations, and would create the risk of arbitrary and capricious delineations between plan components and implementation strategies.
- Assertions that management actions were integrated into the "planning" side of the equation to give the public an opportunity to understand and clearly participate in what the BLM was specifically going to achieve with the prescribed goals and objectives, and therefore they should not be separated or removed from the rest of the resource management planning process.
- Support for adaptive management but assertions that the role of implementation strategies with adaptive management was unclear.
- An assertion that the development of and modification to implementation strategies is a place where potential inter-agency differences could be reduced and timesavings could be achieved.
- Requests that more content be included in plan components than in implementation strategies because plan components hold the most weight as to what can and cannot occur on the ground. These comments identified a potential need for another tier of decision-making in resource management planning that would fill the gap between plan components and implementation strategies.

- Support for the delineation between “firm” plan components and “flexible” implementation strategies. These comments stated the flexibility of implementation strategies, while conforming to plan components, would establish a significant and positive change.

**Response:** The final rule does not adopt proposed section 1610.1-3. Proposed § 1610.1-3 described implementation strategies that the BLM proposed to develop in conjunction with a resource management plan, but that would not represent planning level management direction and would not be considered components of the resource management plan. As proposed, implementation strategies would be included as an appendix to the resource management plan. The proposed rule described implementation strategies as examples of how the BLM would implement future actions consistent with the planning-level management direction. After careful consideration of public comment, the BLM believes that this proposed concept is not appropriate for inclusion in this rule.

As a consequence of not adopting proposed § 1610.1-3(a)(1), several elements described in the existing definition of a resource management plan are not retained in the final rule. These elements do not represent requirements under existing regulations, as they are described as “generally” included in a resource management plan. The existing elements include “general management practices,” the “need for an area to be covered by more detailed and specific plans,” “general implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action,” and some “support action[s].” These existing elements are removed from the final rule because they require site-specific information before a final decision can be rendered, or they describe procedures and are not associated with a formal decision, and therefore they do not represent planning-level management direction and are not

appropriate for inclusion in a resource management plan. Further, they could inhibit the BLM's ability to apply adaptive management approaches.

Under current practice, some of these existing elements are generally described as "management actions" (for a definition of management actions, please see the current Land Use Planning Handbook (H-1601-1)) and the removal of these existing elements represents a change from current practice; however, not all "management actions" are removed from the final rule, those that represent planning level management direction will be incorporated into the plan components provided the direction is consistent with the plan components section of the final rule (see § 1610.1-2). For example, under the final rule a restriction on use, such as a lease stipulation, will be a resource use determination; similarly a statement that describes desired resource conditions, such as a desired vegetation composition, will be a plan objective.

The final rule does not preclude development of the information described in the two types of proposed implementation strategies – management measures and monitoring procedures; rather, it affirms that this information is not required as planning-level management direction and need not be included in a resource management plan. The BLM recognizes that this type of information is important for resource management and essential to the effective implementation of adaptive management procedures. Where the BLM elects to develop management measures and monitoring procedures, such development would be subject to all relevant laws and regulations, including FLPMA and NEPA, among others, and would be in conformance with the resource management plan for the applicable area. In some situations, the BLM may choose to develop this information concurrently with resource management planning, and the final rule does not preclude this option. The BLM may also choose to identify implementation type actions, such as management measures, during the development of a

resource management plan to establish an analytical framework for the effects analysis under NEPA. Such a framework would be used to inform the effects analysis, and would not constitute a formal decision related to management measures.

In regards to the BLM's management authority for any planning-level management direction or implementation actions, it is important to note that the BLM does not have the authority to make decisions for lands that are outside the BLM's jurisdiction, including private lands. In regards to clarifications related to mitigation, please see the discussion of § 1610.1-2(a)(2)(i) in the preamble. In regards to clarification on special management attention for ACECs, please see discussion of § 1610.8-2 in the preamble.

## **Section 1610.2 Public Involvement**

### *General Comments on Public Involvement (§ 1610.2(a))*

**Comment:** One comment indicated that the BLM should identify and document local and public views prior to any initial draft proposal and incorporate responses to those views as part of the draft.

**Response:** By providing multiple opportunities for public involvement in the planning process, the final rule improves the ability of the BLM to collaborate with the public, states, local governments, Tribes, and Federal agencies on resource management plans. Local and public views will be captured as part of the planning assessment and scoping early in the planning process and will be incorporated into draft proposals (see also §§ 1610.2 and 1610.4 of the final rule). Final § 1610.3-2 also provides opportunities for local governments to participate as cooperating agencies and coordinate with the BLM on resource management plans and plan amendments.

**Comment:** One comment supported the BLM's efforts to encourage collaboration through the proposed rule. It noted that other agencies use regulations such as the Federal Advisory Committee Act (FACA) and cooperating agency status to reduce collaboration. On the other hand, another comment recommended that the BLM add a statement to the final rule indicating that involvement, coordination, and collaboration with stakeholders will be in compliance with requirements of FACA Management overview.

**Response:** By providing multiple opportunities for public involvement in the planning process, the final rule improves the ability of the BLM to collaborate with the public, State and local governments, Tribes, and Federal agencies on the development of resource management plans. The BLM will continue to comply with the provisions of FLPMA and the Federal Advisory Committee Act (FACA) in the planning process. The BLM will also continue to work with cooperating agencies. The BLM does not believe that working with cooperating agencies or complying with FACA will reduce collaboration and opportunities for public involvement. Adding language referencing FACA management compliance is unnecessary to include in the final rule, since the BLM must comply with all Federal laws, including FACA and does not need to list them all in the planning regulations.

**Comment:** A few comments included the opinion that the Federal government is attempting to keep the public from having any say in what happens on its land or is seeking to wholly eliminate local input in Federal land management. One comment questioned whether increasing public involvement would result in greater transparency.

**Response:** FLPMA requires public involvement in the development and amendment of resource management plans. The final rule establishes regulations at § 1610.2 to provide for this participation by revising the provisions for public involvement, public notification, public

comment, and the availability of the resource management plan. For the reasons outlined in the preamble, the BLM believes that the increased public involvement opportunities afforded by the final rule increases transparency.

**Comment:** A few comments noted that the BLM has a poor history of engaging the public in the development of resource management plans. According to these comments, some partnerships have become strained and the BLM should work to fix these relationships during the revision of the land use planning process. One comment included the view that state and local stakeholders were not meaningfully engaged in Greater Sage-Grouse planning and this project should not be used as an example of successful collaboration, while another comment noted that there are certain areas where BLM has positive ongoing relationships with stakeholders.

**Response:** The BLM recognizes the challenges posed by varying degrees of success of public engagement during previous land use planning efforts. The final rule is intended to improve relationships with stakeholders by increasing opportunities for public involvement and increasing transparency. The BLM intends to learn from past experiences, such as the Greater Sage-Grouse planning effort, in the both the development of future resource management plans and in the forthcoming revisions to the Land Use Planning Handbook and related training materials.

**Comment:** Several comments were supportive of increased opportunities for public involvement. One comment included the viewpoint that public input on natural resource management is valuable. Another comment included general support for the BLM's efforts to expand public involvement and the variety of strategies the BLM proposes for outreach. This comment requested that the final rule include a requirement that the BLM offices provide the

public with an anticipated timeline, including milestones for public engagement, before initiating any planning process.

A few comments expressed support of new stages for early public involvement, including the planning assessment step and review of preliminary alternatives and rationale step. These comments indicated that the sharing of preliminary alternatives will help the public to more constructively engage in resource management plan revisions and amendments, thereby potentially resolving contentious issues early in the process and avoiding later Congressional involvement or later litigation.

One comment requested that while providing the opportunity for local officials to get involved early, the BLM not delegate the writing of the plan to those officials. This comment suggested that the BLM include discussion in the final rule that explains how the BLM will review and use input it receives.

**Response:** FLPMA requires public involvement in the development and amendment of resource management plans. The final rule establishes regulations at § 1610.2 to provide for this participation by revising the provisions for public involvement, public notification, public comment, and the availability of the resource management plan. The BLM final rule adopts provisions that allow for meaningful public involvement in the planning process, including public review of the preliminary resource management alternatives, preliminary rationale for alternatives, and the basis for analysis, as appropriate. Please see final § 1610.2-1(a) for more information.

The BLM expects that the forthcoming revision of the Land Use Planning Handbook will provide information on the expected timeframes for public involvement at different points in the

planning process. However, these timeframes will differ across plans due to factors such as complexity, geographic scale, and budgets.

The final rule provides for public involvement under § 1610.2 and consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes. The level of involvement of local officials will vary based upon individual planning efforts; however, the BLM retains final decision-making authority on resource management plans.

**Comment:** Many comments included support for the BLM's plan to solicit stakeholder input, including a specific statement that the new rule encourages science-based decision-making and active partner and stakeholder collaboration and coordination. Several comments included praise for the addition of the planning assessment step, claiming that it will widen the scope of review of current resource, economic, and environmental conditions. Others mentioned the focus on landscape-scale planning, claiming that it will give the BLM more flexibility. Some comments also included suggestions to provide for public involvement throughout the entire planning process and by using a mix of approaches.

Another comment included a request for the BLM to allow members of the public to deliver comments orally at public meetings, since oral testimony ensures that public concerns are heard by the media, elected officials, and other individuals. According to this comment, the current common practice of holding unrecorded meetings is not an effective way to solicit and receive public input.

**Response:** The final rule is not revised to specifically address the format of public meetings or the requirement to allow oral testimony at public meetings. There are many methods

of public involvement and meeting formats and the final rule provides the BLM discretion to tailor public meetings to meet the needs of individual planning efforts and communities.

The BLM expects that the forthcoming revised Land Use Planning Handbook will provide recommendations on how it can effectively engage with the public throughout the planning process and to include science-based decision-making approaches. The methods of public involvement will vary depending on the situations of each resource management plan or plan amendment.

**Comment:** One comment noted that the BLM has limited ability to seek and consider public input under FLPMA. According to this comment, the BLM may only consider public views where Congress has delegated authority to make land use decisions to the BLM. Based on this view, the Bureau should explain to the public the rights it has and does not have to make land use decisions in a given area. The comment referenced oil and gas leasing and suggested that the number of acres with valid leases and the requirement to offer land for leasing as examples of information that should be communicated to the public early on. This comment suggested that sharing this type of information would enable the public to provide more useful feedback during planning assessments.

**Response:** The BLM agrees that it is important to communicate the scope of the BLM's decision as part of public outreach and the planning assessment, as outlined in final § 1610.4, will assure that the BLM gathers and makes relevant information available. However, because the scope of a decision is determined on a case-by-case basis, the level of detail proposed by the comment is not appropriate to include in the regulations. The BLM expects the forthcoming Land Use Planning Handbook revisions will provide recommendations on how it can effectively engage with the public throughout the planning process.

**Comment:** One comment included concerns about clarity and transparency of the planning process as it relates particularly to wild horses and burros.

**Response:** Although neither the final rule nor the existing regulations explicitly mention wild horses and burros, the final rule increases transparency of planning for the management of all resources within the context of resource management plans and plan revisions.

**Comment:** One comment questioned the need to change the term “public participation” to “public involvement.”

**Response:** The term “public involvement” better aligns with the language used in FLPMA. Please see the preamble discussion of the definition of “public involvement” in § 1601.0-5 for more information.

**Comment:** One comment included a recommendation that the BLM to extensively engage and educate residents living within a given the BLM district, as they are the predominant users of their local public lands.

**Response:** In response to public comment, the final includes a provision at § 1610.2-1(c) regarding additional notification for local communities located within the planning area. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance and recommendations on how to reach out to and educate residents living in the BLM districts.

**Comment:** One comment requested that the final rule include a statement that public involvement, coordination, and collaboration with stakeholders will be in compliance with the requirements of the Federal Advisory Committee Act (FACA).

**Response:** The BLM must comply with all Federal laws and regulations including the Federal Advisory Committee Act. It is not necessary or practical to list all relevant laws and regulations in the final rule.

**Comment:** One comment included a recommendation that the BLM needs to work with all stakeholders such as local officials, business owners, ranchers, and others at the start of the process to ensure that all stakeholders get an opportunity to voice their opinion and be heard during the process.

**Response:** One of the goals of Planning 2.0 is to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of the BLM resource management plans. Although the BLM cannot require stakeholders to participate in the planning process, nor would it be appropriate to do so, the provisions of § 1610.2 on public involvement and of § 1610.3 on coordination provides for interested stakeholder involvement early and throughout the planning process.

*Methods of Public Involvement (§ 1610.2(a))*

**Comment:** One comment indicated that it is unclear in proposed §§ 1610.2 and 1610.2-1 when public notice and comment will be required and when other forms of public involvement will be used. It requested clarification of the BLM's intent regarding level of public involvement for each stage of the planning process.

**Response:** The final rule is not revised in response to this comment, as the BLM believes that, taken together, final §§ 1610.2, 1610.2-1, and 1610.2-2 provide sufficient guidance on public involvement requirements. Final §§ 1610.2-1(a), 1610.2-1(b), and 1610.2-1(f) outline the notification requirements and opportunities for public involvement when the BLM prepares or amends a resource management plan. Formal notice and comment will occur with any public comment periods described in § 1610.2-2 of the final rule. Please see Table 2: Public Notification and Involvement Opportunities Under the Final Rule in the preamble for an overview of public involvement opportunities.

Structure of public involvement (§ 1610.2(a))

**Comment:** One comment indicated that the purpose of public involvement restructuring is unclear in the preamble requested more information regarding the need to alter this section. Another comment included support for streamlining management processes but included a request that the BLM maintain its multiple use and due process responsibilities.

**Response:** The final rule provides additional opportunities for public involvement. These new opportunities will not increase the minimum number of public comment periods but will allow for increased participation earlier and more frequently in planning process. The BLM considers public involvement to be an important part of the planning process and believes the additional opportunities for public involvement will increase transparency and improve resource management plans. As explained in the Background section of the preamble, the BLM reviewed the current planning process and established three goals of Planning 2.0. For the reasons outlined in the preamble discussion of §§ 1610.2, 1610.2-1, and 1610.2-2, the BLM believes that the proposed changes to public involvement will better meet the Planning 2.0 goals.

Through revisions to the purpose and objectives at §§ 1601.0-1 and 1601.0-2, the final rule clarifies FLPMA requirements that the BLM plan for and manage resources for multiple use and sustained yield.

**Comment:** One comment expressed concern that if a member of the public did not participate in the scoping phase, he or she may be precluded from participating in the later stages of the planning process.

**Response:** A member of the public may participate at any stage of the planning process, regardless of previous participation, except for the resource management plan protest. For

information on eligibility to protest, please see the preamble discussion of §§ 1610.6-2 and 1610.6-2(a).

*Relationship to NEPA (§ 1610.2(a))*

**Comment:** One comment included the viewpoint that the BLM must develop public involvement provisions under FLPMA first and that public involvement provisions drawn from NEPA must be secondary to FLPMA-mandated provisions.

**Response:** The final rule implements FLPMA. As appropriate and as directed by CEQ regulations, NEPA is integrated into the planning process. These public involvement provisions are not tiered in relation to each other and often include opportunities for overlap, such as the *Federal Register* NOI to initiate identification of planning issues in § 1610.2-1(f) of the final planning rule that will also serve as a scoping notice as required by NEPA.

*Relationship to Cooperation and Coordination (§ 1610.2(a))*

**Comment:** A few comments suggested that an increase in public involvement is unnecessary for Federal agencies, local and State governments, Indian tribes, and the public because these groups are already afforded an adequate opportunity to participate in the land use planning process. Further, these comments suggested that changing the current process will not lead to increased public involvement and that earlier involvement does not mean better or more involvement.

**Response:** FLPMA requires public involvement in the development and amendment of resource management plans and the final rule establishes regulations to provide for this participation by all interested parties. Past experience and research, such as the 2008 General Accounting Office report “Natural Resource Management: Opportunities Exist to Enhance Federal Participation in Collaborative Efforts to Reduce Conflicts and Improve Natural Resource

Conditions,” indicate that an upfront investment of resources in public involvement can improve the outcomes of natural resource management. The final rule also aligns with the objectives of the 2009 Presidential Memorandum “Transparency and Open Government” as well as the 2012 OMB and CEQ memorandum on Environmental Collaboration and Conflict Resolution.

**Comment:** Many comments included concerns that by emphasizing new opportunities for public involvement, the proposed rule would diminish the BLM’s unique obligations to State, local, and tribal governments. One comment suggested that the BLM only collaborate with cooperating agencies that represent the public and that open meetings, workshops, and webinars creates collusion between the BLM and special interest groups. Some of these comments referenced passages from FLPMA (see 43 U.S.C. 1712) that mandate coordination and consistency with State, local, and tribal governments. Some comments included suggested additional language throughout the proposed rule that would promote coordination with State and local governments.

**Response:** All members of the public are invited to participate in public involvement activities, including Federal agencies and State, local, and tribal governments. Consistent with FLPMA, the planning rule provides for additional coordination with Governmental entities at § 1610.3-2 and the opportunity for eligible governmental entities to participate as cooperating agencies. Please see the preamble discussion of § 1610.3-2 for further details regarding coordination with governmental entities and cooperating agency status.

The BLM disagrees that providing additional opportunities for public involvement will diminish the role of State, local, or tribal governments in resource management planning. Final §§ 1610.3-1, 1610.3-2, and 1610.3-3 address consultation with Indian tribes; coordination with other Federal agencies, State and local governments, and Indian tribes; and requirements for

consistency with the officially approved and adopted plans of those entities. These sections recognize the unique role of other Federal agencies, State and local governments, and Indian tribes in the planning process; this role that is not diminished by increased opportunities for public involvement. The BLM believes that increased opportunities for public involvement will also increase opportunities for coordination with other Federal agencies, State and local governments, and Indian tribes. Further, Federal agencies, State and local governments and Indian tribes that elect to participate as a cooperating agency, as described in § 1610.3-2(b), will have additional opportunities to partner with the BLM in developing resource management plans collaboratively.

*Scope of Public Involvement (§ 1610.2(a))*

**Comment:** One comment expressed concern that the language of proposed § 1610.2 limits public involvement in plans that are not resource management plans because the statement “(a) The BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans” does not acknowledge other plans with which the public can be involved under FLPMA, such as coordinated activity plans, travel management plans, and invasive species plans.

**Response:** As set forth in final § 1601.0-1, the purpose of these regulations is to establish a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the BLM. Therefore, these regulations only apply to resource management plans. The BLM must comply with NEPA for all planning activities, which includes opportunities for public involvement when the action is analyzed under an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Information Quality (§ 1610.2(a))

**Comment:** A few comments expressed the viewpoint that the proposed rule lacks standards, criteria, and assessments for the quality and type of information that would be sought from or submitted by the public in the planning process and how that information would be used. These comments also contained concerns that these omissions would violate the Administrative Procedures Act. One commented noted that the evaluation of submissions will be expensive, making verification and validation haphazard, thus leading to further delays and legal problems.

**Response:** The final rule adopts proposed § 1610.1-1(c) on high quality information. Specific standards, criteria, and assessments for the quality and type of information are developed through guidance and are not appropriate for this regulation. The BLM did not include a provision in the final rule explaining how it will use the information it receives from the public. It is not necessary or appropriate to detail BLM operations at this level in the regulations. During the implementation of this final rule, the BLM will provide guidance, consistent with all applicable Federal laws, for responsible officials on how to evaluate and use the information received from the public during the land use planning process.

The BLM currently considers data submitted by the public, so this provision does not create any additional financial burden on the BLM. This change merely identifies the appropriate points in the process for the public to submit information, and makes the process more transparent.

For more information on information quality and public involvement in submitting data as part of the planning assessment, please see the responses to comments regarding final § 1610.4(c).

Meaningful Public Involvement (§ 1610.2(a))

**Comment:** One comment noted that FLPMA requires “meaningful public involvement,” not just “public involvement.” According to this comment, meaningful public involvement includes, but is not limited to, public notice and comment. This comment included the view that the proposed rule does not incorporate meaningful public involvement at all. Another comment included a recommendation that “meaningful” be further defined in the proposed rule because diminishing “meaningful involvement” to simply “involvement” violates the NEPA requirement that all substantive comments be analyzed and receives response.

**Response:** The BLM disagrees with the assertion that public notice and comment is the only “meaningful” form of public involvement and declines to define this term in the regulations. The definitions section of the regulations only includes terms that are used throughout the regulations, therefore it would not be appropriate to define the term “meaningful.”

FLPMA directs the BLM to provide for public involvement, but leaves the agency the discretion to determine how that will occur. The final rule identifies a variety of ways that the public will be involved throughout the planning process. In addition to the formal notice and comment requirements of the NEPA process required by CEQ, the BLM provides other points at which it will make documents available for public review, post documents to its Website, or notify interested parties

The final rule provides opportunities for meaningful public involvement including through the points contained in § 1610.2-1(a) and the public notice and comment provisions of § 1610.2-2. The public involvement afforded by the final rule is meaningful because it may influence the decisions in the resource management plans or plan amendments. The BLM will also comply with all NEPA requirements during the planning process, including the

requirements to solicit and respond to comments on EISs. This regulation does not change the requirements for public involvement under the CEQ NEPA Implementing regulations.

**Comment:** One comment included a recommendation that the BLM use the information it collects from the public because if there is no intent to use it, then it should not be sought. Further, this comment included the view that public participation efforts should be well planned and have specific goals.

**Response:** The BLM intends to use public input to inform the process but cannot guarantee that the input will meet the standards of high quality information (as described at § 1601.0-5) or be relevant to the planning area and issues identified. To ensure efficient collection and use of information, final § 1610.4(b) requires the BLM to gather information “...in a manner that aids the planning process and avoids unnecessary data-gathering.” Final § 1610.4(b), “information gathering,” explains how the BLM will gather information and § 1610.4(c), “information quality,” explains the standards to which the BLM will hold this data. Goals of public involvement, including specific information sought from the public at each point in the planning process, are expected to be addressed in the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment asserted the new and early coordination strategies, such as the planning assessment and review of preliminary alternatives, are ineffective. According to the comment, the proposed new steps will not preclude the need for a thorough review of the draft plans, particularly due to a presumed lack of sufficient detail in the early stages and potential for significant changes between drafts.

**Response:** The BLM believes that enhanced public involvement will promote a more efficient planning process and improved outcomes by ensuring that diverse viewpoints are

considered early and often when they can help inform the development of the resource management plan and supporting NEPA analysis. The public involvement opportunities at each step of the planning process will provide an opportunity to review a segment of the resource management plan or plan amendment. Under this framework, each step of review will build on the previous and rather than see draft plans twice, the public will see the plan as it is being developed and be able to provide input at each step. The BLM will disclose changes between documents to the public to aid in the public review. For example, final § 1610.5-2(d) states that if the BLM makes changes to the preliminary alternatives and preliminary rationale for alternatives after public review of those documents, a description of the changes must be made available to the public as part of the draft resource management plan.

*Funding and Capacity for Public Involvement (§ 1610.2(a))*

**Comment:** One comment indicated support for increased public involvement but contained concerns about the BLM's capacity and resources for increasing public review and comment opportunities. This comment included concerns that increasing the number of public involvement opportunities will be expensive for local governments, possibly resulting in less input from them. The comment specifically notes that there is no analysis or data to back up the BLM claim that costs for greater public involvement will be at least partially offset elsewhere in the planning process and includes a recommendation to provide a single opportunity for public comment between scoping and draft EIS, rather than the proposed multiple opportunities for public involvement proposed.

**Response:** Past experience and research, such as the 2008 General Accounting Office report "Natural Resource Management: Opportunities Exist to Enhance Federal Participation in Collaborative Efforts to Reduce Conflicts and Improve Natural Resource Conditions," indicate

that an upfront investment of resources in public involvement can reduce overall costs to Federal agencies in planning for and managing natural resources. The additional opportunities for public input provided in § 1610.2-1(a) of the final rule are optional for participation by local governments or members of the public and would not directly place a burden on these entities. For instance, local governments may choose to only review the draft resource management plan.

**Comment:** Several comments included the viewpoint that additional public involvement activities, including substantial information gathering and assessment before initiating a plan amendment, may cause significant delay in planning. One comment asserted that that the quality of a final plan will decrease because BLM staff; State, local, and tribal government staff; and the public will be overburdened with extra work. These comments recommended that the BLM not accept comments requesting that the early “public review” steps be turned into formal public notice and comment periods in the final rule and that the BLM maintain the proposed shortened formal comment periods at later planning stages.

**Response:** Past experience and research, such as the 2008 General Accounting Office report “Natural Resource Management: Opportunities Exist to Enhance Federal Participation in Collaborative Efforts to Reduce Conflicts and Improve Natural Resource Conditions,” indicate that an upfront investment of resources in public involvement can reduce the amount of time required for planning for and analyzing the impacts of natural resource management decisions by identifying potential concerns early and avoiding or reducing later conflicts or disputes that result in delays. This report also indicates that collaboration can improve the quality of plans and natural resource management. The final rule does not turn the additional public review points into formal public comment periods; however, the final rule does extend public comment periods

in final § 1610.2-2(b) and (c) and the deciding official will have the discretion to add additional formal public comment periods as necessary.

**Comment:** Several comments included the opinion that effective, high-quality landscape-level planning and related coordination will require substantial effort by the BLM and its partners. One comment included a recommendation for the BLM to ensure that it engage proper and reasonable partners, both private and public, for each individual planning effort.

**Response:** The BLM recognizes that high-quality planning, particularly at a landscape scale, will require substantial effort. The partners engaged for each individual planning effort will be site-specific. The forthcoming Land Use Planning Handbook will contain additional information on identifying and reaching out to potential partners and the public.

#### Litigation Risk

**Comment:** A few comments included the viewpoint that additional public involvement opportunities will or may cause planning delays and increase the risk of litigation. These comments note that the BLM cannot ignore public input and it must document its rationale for rejecting information or recommendations. Further, more opportunities for public involvement would allow potential litigants to strategically withhold or present certain information at various points throughout the planning process. One comment included the view that the use of ePlanning and geospatial data will create opportunities for obstructionists to sue over minute details.

**Response:** The BLM cannot reasonably predict whether increased opportunities will increase or decrease litigation risk in individual situations, however the BLM believes that these opportunities and using tools such as GIS and ePlanning will lead to a more transparent planning process and may help improve stakeholder relationships. Providing an increased amount of data

to the public, as appropriate, aligns with the objectives of the Open Government Initiative. For more information on the Open Government Initiative, please see the “Related Executive and Secretarial Direction” section of the preamble. Past experience and research, such as the 2008 General Accounting Office report “Natural Resource Management: Opportunities Exist to Enhance Federal Participation in Collaborative Efforts to Reduce Conflicts and Improve Natural Resource Conditions,” indicate that an upfront investment of resources in public involvement can reduce conflicts or disputes that result in delays, appeals, or litigation. The final rule provides the opportunity for public involvement at multiple points in the planning process. The final rule does not include any revisions to alter the structure of public involvement to reduce litigation risk, nor is it clear what strategic advantage a party would gain by withholding information early in the process.

**Comment:** One comment noted that the proposed rule affords fewer opportunities for notice and comment, thereby increasing the risk of litigation. It included the view that this structure is unfair because local governments do not have sufficient resources to pursue legal challenges with the BLM, which the comment considers “an Equal Access to Justice issue,” as many local governments have minimal capacity to retain legal counsel.

**Response:** In response to public comment, the following sections are revised from the proposed rule in order to provide expanded opportunity for notice and **Comment:**

- Final § 1610.2-1(f) is revised to retain the previous rule requirements to publish a NOI in the *Federal Register* when initiating the identification of planning issues for a resource management plan or plan amendment. This requirement applies to amendments for which either an EIS or an EA is prepared.

- Final §§ 1610.2-2(d) and 1610.8-2 are revised to include a requirement that the BLM request written comments when a potential ACEC is being considered for designation.
- Final § 1610.2-1(c) is revised to require the responsible official to identify additional forms of notification for local communities within the planning area, as appropriate.
- Final § 1610.2-2 is revised to require public comment periods of at least 60 days for draft EIS-level plan amendments and at least 100 days for a draft resource management plan.

Other opportunities for public involvement will require notifications as described in final § 1610.2-1. The BLM believes that the final rule provides appropriate opportunities for notice and comment during resource management planning. The BLM disagrees that the planning rule is unfair to local governments. The final rule provides more opportunities for public review of preliminary documents and these opportunities are available to local governments. In addition to opportunities for public involvement, local governments can also participate as cooperating agencies. For more information on cooperating agency status, please see the discussion of § 1610.3 in the preamble. The BLM also believes that providing additional opportunities for public involvement may reduce protests and lawsuits challenging agency decisions.

*Public Review and Public Comment*

**Comment:** Many comments raised concerns about the distinction between making documents available for public review and formal public comment periods. Several comments expressed that this proposal is confusing. Some comments stated that public review does not constitute meaningful public involvement because “public review” places no requirement on the

BLM to consider public input. Other comments expressed confusion over how the BLM will respond to comments on preliminary documents, such as the preliminary alternatives. In addition, comments raised the following specific points related to public review:

- Comments stated it would be unclear to the public which input is included in the formal administrative record, and it would be difficult to determine which parties have standing to file protests without establishing clear beginning and ending timeframes for public input. Comments requested the BLM consider any relevant public comment submitted during public reviews to be part of the administrative record.
- Comments requested providing some mechanism for acknowledgement of comments received and reviewed during public review.
- A comment requested the BLM ensure the counting, recording, and meaningful consideration of all comments received and report the number of comments and their sentiments in final planning documents.
- A comment requested the BLM create a publicly accessible database of all comments received.
- A comment requested the BLM provide an individual response to each substantive comment. Another comment requested that the BLM respond to comments received during a public review planning phase in the following planning phase and that after a public review, the BLM identify whether any changes made to a plan component or other element were in response to comments and why the changes were made.

- Comments requested the final rule establish a reasonable timeframe for public input for all documents made available for public review.
- A comment requested the BLM produce and publicly post a summary or brief report of comments received during public review.
- A comment requested the BLM clarify exactly the level of public involvement (*i.e.*, notice, review, comment, or something else) for all NEPA steps and resource management plan preparation, revision, and amendment steps.
- Some comments requested the final rule leave public participation process as it is currently.

**Response:** The final rule addresses public involvement requirements during the preparation or amendment of resource management plans, including the type of public involvement to be provided, in § 1610.2.

The final rule provides new opportunities for public review of preliminary documents, including a public review of the preliminary alternatives, preliminary rationale for alternatives, and basis for analysis during the preparation of a resource management plan or EIS-level amendments as appropriate. In response to public comments, the final rule is revised to include a requirement that a description of changes made to the preliminary alternatives, preliminary rationale for alternatives, and the basis for analysis shall be made available to the public in the draft resource management plan (see §§ 1610.5-2(d), § 1610.5-3(a)(2), and 1610.5-4(a)(1)). This description is not intended to identify every change made to these preliminary documents; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan. For example, a citizen-proposed alternative might be incorporated into the draft resource management plan as a result of public involvement

activities associated with the review of the preliminary alternatives. In this situation, the draft resource management plan would describe the origin and purpose of the citizen-proposed alternative.

The final rule is not revised to establish additional requirements when documents are made available for public review, including suggested requirements for the BLM to summarize or respond to comments received when there is no associated comment period. The BLM does not intend for “public review” steps to replace formal public comment periods; rather, these steps are intended to provide transparency on the development of a draft resource management plan and increased opportunities for the public to provide input prior to the formal comment period on the draft resource management plan. The BLM will consider any relevant public comments submitted during the planning process, including when preliminary documents are made available for public review and include the comments as part of the administrative record. If a member of the public feels that his or her input on a preliminary document was not adequately captured or addressed in the draft resource management plan, he or she can comment as such as part of the formal public comment on the draft resource management plan and the BLM will issue a response, if the comment is substantive (see § 1610.2-2 for more information on public comment periods). There is no obligation for the public to participate public review, nor does not participating in public review preclude the public from providing comment during formal comment periods.

When making a document available for public review, the BLM may conduct public involvement activities such as public meetings, workshops, or listening sessions. Final § 1610.2(b) requires the BLM to prepare a record or summary of issues discussed or comments made during public involvement activities conducted by the BLM and to make this available to

the public for 30 days. This requirement applies to any public involvement activities conducted by the BLM during the preparation of a resource management plan or plan amendment. This record or summary will be included in the administrative record for the planning effort. In regard to standing to file a protest, a member of the public may submit a copy of the written input they provided on preliminary documents or the date the issue or issues were discussed for the record as proof of standing (see § 1610.6-2(a)(3)(v)).

The final rule is not revised to require the BLM to create a publicly accessible database of all comments received. The final rule retains flexibility for the BLM to determine whether the full comments, a summary, or report is best suited to an individual resource management plan or plan amendment. Additionally, the final rule does not commit the BLM to use a specific platform, which allows the BLM flexibility to adapt to changing technologies. The final rule is also not revised to require a timeframe for public input to be submitted on preliminary documents. A responsible official may choose to provide a time period to the public when input on preliminary documents would be the most useful to the BLM but the BLM will continue to consider public input at any stage during the preparation of the draft resource management plan and document such consideration as records in the project file.

**Comment:** A comment stated that “public involvement” under FLPMA requires public comment and not merely public review and requested the final rule change all public review periods to public comment periods.

**Response:** Section 1601.0-5 includes a definition for “public involvement” stating that public involvement means the opportunity for participation by the public in decision making and planning with respect to the public lands. This definition is consistent with FLPMA (see 43 U.S.C. 1702(d) and 1712(f)). FLPMA does not preclude the inclusion of public review as a

means to increase transparency and involve the public outside of public comment periods. The final rule retains existing opportunities for public comment and provides for new additional opportunities for public review.

**Comment:** One comment recommended the BLM count form comments that can be personalized and are submitted through advocacy platforms as individual comments, not just as one comment.

**Response:** The final rule is not revised to address form comments or form letters. In most cases the number of form letters is counted, but only a single summary or response is issued because issuing multiple responses would not add value and would be inefficient. Where form letters have personalized components, any unique comments are tracked separately.

**Comment:** A few comments stated that the removal of public comment on planning criteria would remove an opportunity for meaningful public involvement.

**Response:** Under the existing regulations, the planning criteria are currently made available for public review, but the BLM does not issue a response to comments on the planning criteria. Under the final rule, many elements of the planning criteria have been incorporated into the rationale for alternatives (§ 1610.5-2(b)) and the basis for analysis (§ 1610.5-3(a)), which will both be made available for public review when the BLM prepares a draft resource management plan, or an EIS-level amendment as appropriate.

*Record or Summary of Public Involvement Activities (§ 1610.2(b))*

**Comment:** Several comments stated that there is an inconsistency between the preamble and § 1610.2 regarding public review. According to these comments, the preamble states that the BLM does not anticipate formally summarizing comments received during the public review

period; however § 1610.2(b) says that public involvement activities will be documented by a record or summary of the principal issues discussed and comments made.

**Response:** Final § 1610.2(b) states that public involvement activities that are conducted by the BLM will either be documented by a record or a summary of the principal issues discussed. Changes between the proposed and final rule add the word “either” for clarification. If the public submits a comment letter on a preliminary document that the BLM has made available for public review, then the comment letter will be included as a record in the project file. If the BLM conducts a public involvement activity such as a public meeting, workshop, or listening session, then the BLM may either include a record of the meeting in the project file, such as an agenda or a transcript from the meeting, or the BLM may summarize the principal issues discussed at the meeting and include this summary in the project file.

**Comment:** A comment requested that the BLM allow comments on public involvement activities after record of involvement is released. The comment suggested § 1610.2(b) be revised to read “[t]he record or summary of the principal issues discussed and comments made will be available to the public and open for 30 days to any participant who wishes to review the record or summary and provide comments for consideration by the BLM.”

**Response:** Final § 1610.2(b) is not revised in response to this comment. The suggested language is unnecessary as the BLM already considers comments that are submitted after the record of a public involvement activity is made available to the public.

*Status of Resource Management Plans (§ 1610.2(c))*

**Comment:** One comment included support for the BLM’s proposal to post the status of each resource management plan on the website before the end of the fiscal year, but would like more frequent, detailed updates.

**Response:** Final § 1610.2(c) is not revised to require more frequent updates on the status of resource management plans. The requirements of § 1610.2(c) are a minimum commitment and more frequent updates may be provided by the BLM, as appropriate.

### **Section 1610.2-1 Public Notice**

#### *Notice and Opportunities for Public Involvement (§ 1610.2-1(a))*

**Comment:** One comment indicated that the proposed rule eliminates critical planning steps and reduces public comment opportunity.

**Response:** The final rule enhances opportunities for public involvement during planning by establishing new public involvement opportunities compared to the existing regulations and a longer minimum public comment period for draft resource management plans (see § 1610.2-2(c)). The final rule does not eliminate any public comment periods from the existing rule; however some minimum comment periods for plan amendments are reduced to promote an efficient planning process when appropriate. In response to public comment, the final rule does not adopt the proposed changes to remove several existing *Federal Register* notice requirements, including the requirement to publish a NOI for plan amendments requiring an EA (§ 1610.2-1(f)), and notice and comment when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs (§ 1610.8-2(b)(1)). The BLM believes that the final rule appropriately provides for public involvement during the preparation and amendment of resource management plans.

**Comment:** One comment requested that the BLM solicit and accept public comments on purpose and need statements during scoping before any alternatives are suggested. This comment stated that the public should be able to decide what is best for them.

**Response:** Final § 1610.2-1(a)(2) is revised to clarify that there will be an opportunity for public review of the preliminary statement of purpose and need. The BLM intends that this opportunity will generally occur concurrently with the scoping process and before the formulation of alternatives. The public may also submit comments on the purpose and need statement during the public comment period on the draft resource management plan. For more information on the statement of purpose and need, please see the discussion of § 1610.5-1(a) in the preamble to the final rule.

**Comment:** A few comments requested that the BLM continue the practice of publishing a NOI when it makes proposed planning criteria available for public comment under existing § 1610.4-2(c). These comments included the view that proposed opportunity for review of the rationale behind alternatives as substitute for comment on the proposed planning criteria is merely providing information to people, and it does not satisfy the requirement for substantive public engagement.

**Response:** Under the existing regulations, the planning criteria are currently made available for public review, but the BLM does not issue a response to comments on the planning criteria. The final rule removes the requirement that the BLM develop planning criteria. Under the final rule, many elements of the planning criteria have been incorporated into the rationale for alternatives (§ 1610.5-2(b)) and the basis for analysis (§ 1610.5-3(a)), which will both be made available for public review when the BLM prepares a draft resource management plan, or an EIS-level amendment as appropriate. Please see the preamble discussion of § 1610.5 for more information.

**Comment:** One comment recommended that the BLM provide public notice to release a request for information at the beginning of a planning assessment phase.

**Response:** Final § 1610.2-1(a)(1) includes the requirement to notify the public of opportunities for public involvement during the planning assessment but does not specify the exact timing for the BLM to provide notification of opportunities for the other Federal agencies, State and local governments, Indian tribes, and the public to submit existing data and information for the BLM’s consideration (see § 1610.4(b)(2)). The final rule provides the BLM flexibility to identify the appropriate time to provide these opportunities during the planning assessment.

**Comment:** One comment requested that the BLM specify how it will notify the public that preliminary alternatives and their preliminary rationale will be made available to the public. It requests that the BLM not rely only on the BLM website and that it instead use multiple avenues for this notice.

**Response:** Final section 1610.2-1(c) describes how the BLM shall announce opportunities for public involvement, including providing additional forms of notification for local communities, as appropriate. The BLM does not rely exclusively on its website for this notification. This notification applies to all points in the planning process described in § 1610.2-1(a), including public review of preliminary alternatives and their preliminary rationale. Individuals and organizations may also request that they be notified of opportunities for public involvement under final § 1610.2-1(d).

**Comment:** One comment recommended the BLM offer public review of preliminary alternatives only “to the extent practical,” rather than requiring public review for plan revisions but not amendments. According to this comment, since the BLM has a goal of responding to change in a timely manner, allowing itself flexibility in the regulations is key. Other comments requested that the final rule require the BLM to seek public input on preliminary alternatives and

that it incorporate comments on preliminary alternatives into the draft resource management plan.

**Response:** Final §§ 1610.2-1(a)(3), 1610.5-2(c) and 1610.5-3(a)(1) provide that public review for the preliminary alternatives, preliminary rationale, and basis for analysis is required when the BLM prepares a draft resource management plan, but will be provided “as appropriate” for EIS-level amendments. This provides flexibility for a more efficient process for EIS-level amendments when a review of preliminary documents is not appropriate.

When the BLM makes a document “available for public review,” the BLM is not required to provide a formal opportunity for public comment, including a time period for submission of comments or a formal summary or response to any public comments it has received. To the extent practical, the responsible official will consider and document the input in the decision file associated with the resource management plan or plan amendment. For example, written comments will be documented as a record in the project file. Because the preliminary alternatives and the rationale for preliminary alternatives are not required to have a formal comment period, the final rule does not incorporate the suggestion to require the BLM to respond to public comments on the preliminary alternatives in the draft resource management plan. The final rule at §§ 1610.5-4 does, however, require that the BLM describe any changes made to the preliminary alternatives when it prepares the draft resource management plan. For more information, please see the preamble discussion of §§ 1610.5-2(c) and 1610.5-3(a)(1).

**Comment:** Some comments requested the final rule put mechanisms in place to ensure a certain threshold of involvement is met, even if elements of a planning process are waived. For example, comments suggested waiving release of preliminary alternatives for an EIS-level

amendment if a planning assessment was completed and the impact analysis strategy was made public.

**Response:** The final rule is not revised in response to these comments. The final rule already provides minimum requirements for public involvement in § 1610.2. Under the final rule, these minimum requirements for public involvement may not be waived. The final rule requires a public for review of preliminary alternatives for an EIS-level amendment “as appropriate.” Should the BLM determine that a public review is not appropriate, such as for a project-specific amendment that is small in scope, the BLM will still provide a public comment period on the draft EIS-level amendment.

**Comment:** One comment included a request that a separate *Federal Register* notice be published inviting the public to review and provide input on draft alternatives. This comment notes the public should be given sufficient time to consider them and have an opportunity to comment because they take time to develop.

**Response:** It is not clear whether the comment is referring to draft alternatives, which are included in the draft resource management plan or plan amendment, or preliminary alternatives, which are made available prior to the publication of the draft resource management plan or plan amendment. Sections 1610.2-2(b) and 1610.2-2(c) of the final rule outline the provisions regarding public comment periods for draft resource management plans and plan amendments. These provisions include *Federal Register* notices. The BLM will make preliminary alternatives available for public review. However, the BLM will not publish a *Federal Register* notice or provide a formal comment period on the preliminary alternatives. Please see the preamble discussion of § 1610.5-2(c) for additional information on the public review of preliminary

alternatives. The BLM will follow the notification procedures in final § 1610.2-1 when notifying the public of the availability of the preliminary alternatives.

**Comment:** One comment requested that the general public should have notification of and access to protest information. The comment recommended that the BLM include protest information on its website.

**Response:** Section 1610.2-1(a) of the final rule lists the points in the planning process that include public notification and the opportunities for public involvement, including protest of the proposed resource management plan. Protest information includes the protest letters and the Director's decision on the protest. Sections 1610.6-2(a)(4) and 1610.6-2(b) of the final rule outlines how the protest and the Director's decision on the protest will be made available to the public. For more information, please see the preamble discussion regarding those sections.

*Public Involvement for EA-level Plan Amendments (§ 1610.2-1(b))*

**Comment:** A few comments demonstrate an agreement with the different set of steps with public involvement for EA-level plan amendments. One comment includes support for more intensive public involvement for amendments at the EIS level, and asserts that different procedures for public involvement are appropriate at the EA level. Another comment indicated that the lesser public input on EA-level amendments is appropriate because EA-level plan amendments tend to have relatively minor effects on resources and multiple uses.

**Response:** The final rule allows for different amounts of public involvement for EIS-level and EA-level plan amendments. The final rule includes requirements for public involvement for EIS-level plan amendments in § 1610.2-1(a) and for EA-level plan amendments in § 1610.2-1(b).

**Comment:** One comment included the viewpoint that in order to determine whether the level of public involvement on EA-level amendments is adequate, more clarity is needed regarding what constitutes a minor change. This comment also included the view that all EA-level changes should nevertheless be made available to the public.

**Response:** The final rule refers to “minor amendments” in § 1610.4(f), which states that “[b]efore initiating the preparation of a plan amendment for which an EIS will be prepared, the BLM shall complete a planning assessment consistent with the requirements of this section for the geographic area being considered for amendment. The deciding official may waive this requirement for project-specific or other minor amendments.” In these specific circumstances, a planning assessment will not be conducted and therefore there would be no opportunities for public involvement at this stage. However, when a planning assessment is conducted, the BLM must notify the public and provide opportunities for public involvement. For more information on this waiver, please see the discussion in the preamble of § 1610.4(f).

In accordance with CEQ NEPA regulations, the BLM will consider whether or not an amendment would have significant effects when determining to utilize an EA or EIS, not on whether an amendment is “minor.” The provisions of § 1610.2-1(b) of the final rule provides for public involvement in EA-level plan amendments.

*Methods of Notification: Public Outreach (§ 1610.2-1(c))*

**Comment:** Many comments reflected concerns that the proposed reduction in notification requirements would limit access to the planning process for stakeholders. Some of these comments included a recommendation that the BLM revise the rule to require BLM to contact all potentially impacted stakeholders.

- One comment included an argument that the planning assessment outreach in particular is inadequate and will limit public involvement.
- One comment noted that since notification lists already exist that they should continue to be maintained.
- One comment demonstrated support for the new option for people to opt-in to notification but includes concern that it is not fully sufficient.
- One comment demonstrated particular concern about how the BLM will engage local people who utilize public lands for recreation.

**Response:** The final rule adopts the proposed § 1610.2-1(d) that allows for individuals or groups to request to be notified of opportunities to participate in a resource management planning process. The final rule neither includes the requirement in the existing § 1610.2-1(d) to maintain a mailing list nor does it include a provision to contact “all” impacted stakeholders because this places an unnecessary burden on the BLM to find contact information. The BLM will, however, continue its practice of reaching out to interested or affected stakeholders. Additionally, § 1610.2-1(c) will require the responsible official to identify additional forms of notification to reach local communities located within the planning area.

**Comment:** One comment supported the BLM using electronic means for notification and communication, but includes concern that it may encourage form comments from the non-local members of the public and dilute local voices.

**Response:** The final rule adopts the proposed § 1610.2-1(d) with minor modifications to allow for electronic means of notification for public involvement. The BLM will consider all public comments in the planning process, including those from both national and local sources.

Final § 1610.2-1(c) is revised to require the responsible official to identify additional forms of notice to reach local communities located within the planning area.

The BLM acknowledges that in many rural communities, Internet access may not be readily available and residents often live many hundred or more miles from BLM offices. In these situations, the BLM will provide additional notifications using formats that are relevant and accessible to the various publics interested in or affected by the planning effort, including local communities. For example, the BLM may also post an announcement at a local library, post-office, or other frequently visited location; issue a local, regional, or national press release; notify community leaders of the opportunity; or post an announcement using various social media. The use of these additional formats will vary based on the location and public interest in the planning effort.

In addition, the final rule includes requirements to coordinate with local governments. For more information on coordination requirements and cooperating agency statuses available to local governments, please see the preamble discussion regarding § 1610.3.

**Comment:** Many comments supported the BLM's proposal to post notices for public involvement opportunities on the BLM website and in the BLM offices, and support the dissemination of information by email to people who have requested such information. One comment included a request that such dissemination be required and written into the rule. Other comments added that communication to the public should be as broad as possible, and some suggested expanding the BLM's use of social media. One reason for this support is that many recreational users of the BLM lands may live outside the planning area but are still be interested in providing input on that planning area and, as such, it is unfair to focus notice only on the local media. These comments included suggestions that the BLM develop various communication

means and methods to ensure interested parties are informed in a timely fashion and that the BLM publish all notices in the BLM NEPA register and provide a “subscribe option” so users can receive an alert for a specific geographic region or nationwide. The comments also recommend that the BLM continue to reach out to local stakeholders and make more regular use of widely advertised public meetings as well as further clarifying in the final rule and Land Use Planning Handbook how and how frequently the BLM will contact the public.

**Response:** The final rule adopts the proposed § 1610.2-1(d) with minor modifications to allow for electronic means of notification for public involvement. The BLM will adopt a revision to § 1610.2-1(c) that includes a provision for the responsible official to identify additional forms of public notification for local communities in the planning area, as appropriate. This section also includes a provision that the BLM will announce opportunities on the BLM Website. It is expected that the forthcoming Land Use Planning Handbook revision will include more information on how to notify the public of opportunities for involvement such as through social media, localized outreach, and advertising for public meetings. However, the BLM recognizes specific outreach tactics will be based on individual planning efforts’ geographic scope and planning issues. The final rule provides for flexibility and allows for changes in technology, such as new or different social media platforms. These new notification requirements are consistent with current practice in many BLM offices and ensure consistency in implementation throughout the BLM. Final § 1610.2-1(c) provides certainty to the public on where, at a minimum, they can find information on all public involvement opportunities.

The BLM expects the Land Use Planning Handbook revision will also include information on how and how frequently the BLM will contact interested parties. The BLM expects to continue to develop the NEPA and Land Use Planning register through the ePlanning

system, however, the final rule does not include a requirement to use the ePlanning system to allow flexibility to adopt changing technology.

**Comment:** One comment demonstrated concerns about the new notification procedures, specifically for tribes. According to the comment, both placing the burden on tribal governments to request to be notified by the BLM and the responsible official needing “reason to believe” a tribe would be interested do not conform to DOI’s Policy on Consultation with Indian Tribes. The DOI policy states that the BLM “must notify” an appropriate Indian tribe of the opportunity to consult when there is a “Departmental Action with Tribal Implications” and “will consult” with tribes on these actions at the beginning of an initial planning stage. The comment requested that the final rule include a revision to require the BLM to affirmatively notify tribes of all aspects of the process of developing, revising, or amending resource management plans that may have a substantial direct effect on those tribes.

**Response:** In response to public comments, the final rule is revised to include a new section on tribal consultation. Final § 1610.3-1 provides that the BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. The requirement for tribal consultation is in addition to requirements related to coordination in final § 1610.3-2 and public notification in § 1610.2-1(d). For more information on consultation with Indian tribes, please see the preamble discussion of § 1610.3-1.

**Comment:** One comment recommended that the BLM should maintain a list of people who receive new plans and the BLM should only remove parties upon request.

**Response:** The final rule adopts the proposed § 1610.2-1(d) that allows for individuals or groups to request to be notified, including for the planning assessment or for individuals or

groups that visit the BLM lands to recreate. The final rule neither includes the requirement in the existing § 1610.2-1(d) to maintain a mailing list nor does it include a provision to contact “all” impacted stakeholders because this places an unnecessary burden on the BLM to find contact information. The BLM will, however, continue its practice of reaching out to interested or affected stakeholders.

**Comment:** One comment included a concern about the proposed rule negatively impacting rights-of-way and included a request that adequate notice and opportunity to comment be provided for proposed changes to management plans.

**Response:** In response to public comment, the final rule adopts a revised § 1610.4(d)(7) that will include rights-of-way in the planning assessment. Additionally, a right-of-way holder may request to be notified of public involvement opportunities under § 1610.2-1(d).

*Methods of Notification: Electronic Distribution of Information (§ 1610.2-1(c))*

**Comment:** Several comments included support of the BLM’s proposal to provide more information electronically. One comment in particular included support for annual posting of the status of each resource management plan on the BLM’s website, and others recommended the use of social media.

**Response:** It is expected that the forthcoming Land Use Planning Handbook revision will include recommendations for how the BLM can use electronic means such as social media in the distribution of information. Section 1610.2-1(c) in the final rule carries forward the requirement to announce opportunities online while adding in a revision to use additional forms of notification to reach local communities as appropriate.

**Comment:** Many comments included concerns about the proposal to provide public notice using the BLM Website. It is unclear whether this would be a centralized, national

website or individual field office websites. One comment indicated a particular concern about requiring the public to monitor the BLM website for changes to implementation strategies.

These comments included the following recommendations:

- Create a centralized, national website for public notice posting and widely disseminate its address.
- Work with tribal groups that may not have regular internet access to ensure they are able to receive public notices.
- Create a planning website for each the BLM State office. The websites would contain an updated Schedule of Proposed Action, all documents and plans open for public review, and announcements.
- Before finalizing the rule, provide more detail regarding how the BLM will ensure transparency and consistency in requesting public involvement for all steps in the planning process.
- Continue using the *Federal Register* as the BLM currently does.
- Set up an automatic notification system. When users sign up, allow them to apply filters to adjust which types of notices they receive, their frequency, and the option for a regular summary email.

**Response:** The final rule allows the BLM to notify the public of opportunities to participate in a number of formats. The final rule, § 1610.2-1(c), revises the proposed rule to include a provision for the responsible official to identify additional forms of notification to reach local communities in the planning area, as appropriate. This provision does not provide greater detail but rather flexibility for using notification systems that are appropriate in

individual situations. This provision will also assist with some of the concerns in the comments such as notification for tribal groups that may not have regular internet access.

Regarding particular Website requests such as either using a centralized, national website or developing state office planning websites, the rule does not provide more specificity due to the ever-evolving nature of online technology. The rule allows flexibility to meet the demands of current and future technology.

For the *Federal Register*, the final rule adopts existing regulations about *Federal Register* notices for initiating the identification of planning issues for resource management plans or plan amendments. It also will also include provisions on *Federal Register* notices when plans or plan amendments include one or more proposed ACECs and for notices of availability of draft EISs for plans or plan revisions. See the preamble discussion of § 1610.2-1(f) and 1610.2-2(d) for more information.

Regarding an automatic notification system, the final rule includes a provision in § 1610.2-1(d) allowing individuals or groups to request notification about resource management plans or plan amendments. It is expected that the forthcoming Land Use Planning Handbook revision will include recommendations on how to maintain this type of notification system. The rule allows flexibility to maintain notification systems that are appropriate for different areas as well as for advancements in technology.

*Methods of Notification: Federal Register Notices (§ 1610.2-1(c))*

**Comment:** Many comments demonstrated concerns about the BLM's diminished reliance on the *Federal Register*. Several requested that the BLM continue to use the *Federal Register* as it does now, with one comment noting its value as the standard for early communication and initiating the NEPA process. Many comments included support for using

other methods of notification, but only in addition to the *Federal Register*, since, according to these comments, the *Federal Register* is the only established standard for publication of current and accurate notices, deadlines, and opportunities for involvement. Some comments noted that the *Federal Register* is the only form of notice accepted by courts as constructive notice and that publication outside the *Federal Register* is not binding. Some comments noted that the BLM lands are public lands, and publishing in the *Federal Register* will ensure the national public is aware of proposals on these lands.

**Response:** In response to public comments, the final rule maintains the number of *Federal Register* notices required by the existing rule, with the exception of situations where the Governor's consistency review includes changes not considered during the public involvement process (see preamble discussion of final § 1610.3-3(b)(3)), and does not adopt the proposal to eliminate the *Federal Register* NOI for EA-level plan amendment or for proposed ACECs. Specifically, the BLM does not adopt a revised § 1610.2-1(f) in the final rule which, in doing so, will maintain use of the *Federal Register* when initiating identification of planning issues for all resource management plans and plan amendments. The BLM recognizes the standard that the *Federal Register* presents for this purpose as well as its national reach for proposals on public land. However, the BLM believes that the *Federal Register* is not always the appropriate method of notification and has provided other methods to announce opportunities for public involvement in final § 1610.2-1(c). The BLM believes that the required announcements in the *Federal Register* as provided by the final rule provide sufficient notice for interested members of the public to become involved.

**Comment:** Many comments stated that it is counterintuitive to remove opportunities for public involvement while expressing a goal to increase public involvement. According to these

comments, the proposed rule would reduce stakeholder involvement and transparency and allow the BLM to make unilateral decisions. Several comments indicated that the reason for ceasing publishing notices of intent in the *Federal Register* is not clear. These comments indicate the rationale to use the *Federal Register* is that it is historically accurate, complete, and neutral. Other comments requested additional requirements for publication in the *Federal Register*. Comments included the following specific recommendations related to public notice:

- Retain all provisions for publication in the *Federal Register* from the existing regulations.
- Publish notices in the *Federal Register* whenever announcing opportunities for public involvement.
- Publish notices in the *Federal Register* whenever initiating a public involvement period with a time limit, including, for example, periods for identification of planning issues and for public review of documents. According to this comment the BLM website is not an appropriate forum for official notice if there is a time limit for public comment.
- Require nationwide notices of potential ACECs, of intent to conduct EAs for plan amendments, and of the reason for the Director's decision on a governor's appeal.
- Publish Planning Assessment reports in the *Federal Register*.
- Publish in the *Federal Register* any requests for information, data, or conservation plans during the planning assessment phase, including what information the BLM is requesting and the appropriate BLM point of contact to receive notification of all future plan elements and public involvement opportunities. Comments

suggested that announcements about public meetings, workshops, webinars, should be distributed through this email list, as well as posted online.

**Response:** In response to public comment, the final rule is revised to retain some existing *Federal Register* notice requirements that were proposed for removal. Final § 1610.2-1(f) is revised to retain the existing requirement that the BLM publish a NOI in the *Federal Register* when initiating the identification of planning issues for a resource management plan or plan amendment. The NOI will include the name, title, address, and telephone number of the BLM official who may be contacted for further information, including a request to be added to the BLM's list to receive future notifications via email. Final § 1610.8-2(b)(1) is revised to retain the existing requirement that the BLM publish a notice in the *Federal Register* when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs and requires that the BLM request written comments on the possible designations.

The final rule does not, however, include all public recommendations for *Federal Register* publication requirements. The final rule is not revised to require a *Federal Register* notice whenever the BLM announces opportunities for public involvement; initiates a public involvement period with a time limit; requests information, data, or conservation plans during the planning assessment phase (see § 1610.4(b)(3)); or with the reason for the Director's decision on a governor's appeal (see § 1610.3-3(b)(4)). The final rule is also not revised to require the BLM to publish the planning assessment report in the *Federal Register* (see § 1610.4(e)). It is not practical or necessary for the BLM to publish in the *Federal Register* each time it initiates a public involvement opportunity or shares documents or information with the public. Such a requirement would unnecessarily increase the cost and decrease the efficiency of planning

efforts. Final § 1610.2-1(c) provides for other methods for public notification, requiring that “The BLM shall announce opportunities for public involvement by posting a notice on the BLM’s website, at all the BLM offices within the planning area, and at other public locations, as appropriate. The responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.” The BLM believes that these methods of notification combined with the requirements for *Federal Register* notices in the final rule provides sufficient notice for members of the public to be aware of and participate in the planning process.

**Comment:** One comment expressed support for the proposal to remove the requirement to publish a NOI in the Federal Register for EA-level plan amendment and instead place an action on the environmental notification internet site.

**Response:** In response to public comment, the final rule retains the existing requirement to for the BLM to publish a NOI in the Federal Register for all plan amendments, including EA-level amendments. For more information, please see discussion in the preamble of § 1610.2-1(f).

**Comment:** A few comments include recommendations for the BLM to make public notices simple and easy to understand while also meeting legal standards by summarizing the issue for an average reader and providing clear direction for how to contact the BLM for questions or comments. According to these comments, stakeholders with limited time and experience dealing with rulemaking processes should not have to wade through large and complex material to find this information.

**Response:** Section 1610.2-1(f)(2) of the final rule outlines what a *Federal Register* notice will include when the BLM initiates identification of planning issues for a resource management plan or plan amendment, including contact information and the general types of

issues anticipated. The BLM recognizes that the public needs time to understand and respond to the complex planning documents that must meet the requirements of FLPMA, NEPA, and other Federal statutes. It is expected that the forthcoming Land Use Planning Handbook revision will provide more information on how to develop notifications for public involvement throughout the planning process and how to explain and involve the public effectively in the planning process.

*Request for Notification (§ 1610.2-1(d))*

**Comment:** One comment included a concern about the proposal that groups who may want to participate in a planning effort should make an explicit request to be notified because national or regional non-governmental organizations may be unintentionally or unnecessarily excluded from public involvement due to lack of awareness of the development of a particular resource management plan.

**Response:** The BLM cannot predict who may want to be involved in a planning process or how to contact them if there has been no request to be notified. However, the BLM will provide ample notification through a variety of means, as appropriate. The final rule retains *Federal Register* notice requirements for resource management plans and plan amendments. National or regional organizations should contact the local office if they want to be involved in the planning process. Additionally, under § 1610.2(c), the BLM will post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Website.

**Comment:** One comment included support for the requirement that the BLM notify all parties that have requested notification of public involvement opportunities.

**Response:** The final rule adopts this provision from the proposed rule.

**Comment:** A few comments indicated that it is unclear when and how often members of the public should submit a request for notification of public comment opportunities. These comments included questions about how this process would work and how an interested party would know whom to contact. For example, comments indicate that it is unclear whether a group can request notification for all future revisions and amendments of a resource management plan or whether they must request notification at the beginning of each particular revision or amendment. The comments requested that the BLM clarify the timing and process for notification requests and make a good-faith effort to communicate the change from the BLM maintaining a list of parties known to be interested to requiring interested parties to request notification.

**Response:** The final rule does not change the BLM's practice of conducting outreach to individuals or groups that are known to be interested in or affected by a resource management plan. Consistent with current practice, the BLM will continue to conduct outreach to individuals or groups that are known to be interested in or affected by a resource management plan to the best of our ability. The changes to § 1610.2-1(d) simply reflect that the BLM cannot "guarantee" that it will be able to identify or find contact information for all interested or affected individuals or groups.

Members of the public may request to receive notifications through several ways. The BLM expects that information regarding a planning effort will generally be available on the BLM's website, including details on who to contact for more information such as a request to receive future notifications regarding a planning effort. A member of the public may also contact the public room at a local the BLM office and request information on the appropriate BLM official to contact for more information regarding a planning effort. Finally, when the

BLM initiates the identification of planning issues for the preparation of a resource management plan or plan amendment, it is required to publish a notice in appropriate media, including newspapers of general circulation in the planning area; in the *Federal Register*; and on the BLM's website. This notice is required to include [t]he name, title, address, and telephone number of the BLM official who may be contacted for further information (see § 1610.2-1(f)(2)(vii)). A member of the public may contact this BLM official and request to receive future notifications regarding a planning effort.

The BLM generally retains existing mailing lists from previous planning efforts and uses these lists to initiate outreach for a new planning effort. However, these lists can become out-of-date, particularly if there is a long length of time between planning efforts, and the BLM may choose to develop a new contact list for a planning effort.

*Notification of Public Meetings (§ 1610.2-1(e))*

**Comment:** One comment requested that the BLM provide adequate notice of public meetings.

**Response:** Consistent with existing requirements, § 1610.2-1(e) requires the BLM to notify the public at least 15 days before any public involvement activities. Fifteen days is a minimum requirement, and the BLM may provide longer advance notice.

*Notice of Intent: Plan Amendments (§ 1610.2-1(f))*

**Comment:** Several comments agreed with the proposal to remove the requirement to publish notices of intent in the *Federal Register* for EA-level plan amendments. One comment noted that a NOI should not be required because the amendment proposed would have “no significant effect.” One comment included a request that the BLM continue to post notice of EA-level amendments on the BLM Environmental Notification site and noted that the BLM

should notify involved coordinators and cooperators before posting the notification. One comment only indicated support for this approach if the BLM adopts some form of automatic email notification.

**Response:** Proposed § 1610.2-1(f) would have removed the requirement for a NOI in the *Federal Register* for EA-level amendments from the existing regulations. In response to public comments, the final rule retains the existing requirement for publishing a NOI for all plan amendments, including EA-level amendments. This requirement will not change current practices regarding posting notice of EA-level amendments on the BLM Website or notifying involved cooperating agencies or other governmental entities.

The BLM does not currently have plans to adopt an automatic email notification system, but individuals or groups that request to be notified under the provisions of § 1610.2-1(d) of the final rule will receive notification through the means requested. The BLM expects to continue to adopt new technologies to improve notification techniques, but in order to allow the BLM to adapt to changing technology, it is not appropriate to include those commitments in the final rule.

**Comment:** Many comments requested that the BLM not remove the requirement to publish notices of intent for EA-level plan amendments in the *Federal Register*. One comment included a particular concern on this point due to the BLM's increased use of EAs for land use plan amendments. Some of the comments noted that the *Federal Register* is the Federal government's official journal and a historical record, so it is appropriate to publish all notices there, regardless of their scope, and that the value of additional public comment outweighs the efficiency gained by not publishing a NOI. One comment expressed concerns with transparency when there is a relatively short 30-day comment period for an EA-level amendment, but no

formal method of public notification. Other comments noted that removing this requirement weakens opportunities for the public and local governments to learn about planning actions relevant to them. For example, some rural newspapers are printed only weekly, so publishing in newspapers is not an adequate substitute. Another comment noted that the BLM risks undermining efficiency that may be gained through EA-level amendments by failing to include the interested public at the outset of the planning process and publishing a NOI is necessary for adequate, up-front public engagement. Local outreach and notifying parties who have already signaled their interest in potential amendments to the agency cannot be presumed to represent all stakeholders and members of the public who may wish to be informed and comment.

**Response:** The proposed § 1610.2-1(f) would have removed the requirement for a NOI in the *Federal Register* for EA-level amendments from the existing regulations. In response these public comments, the final rule retains the existing requirement for publishing a NOI regardless of if a plan amendment requires an EIS or an EA.

*Notification of a Substantially Different Selected Alternative (§ 1610.2-1(g))*

**Comment:** One comment recommended that the BLM publish a notice in the *Federal Register* when seeking comments on its decision to select an alternative from the final EIS or EA that is substantially different than the proposed resource management plan or amendment.

**Response:** Section 1610.2-1(g) provides that if, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final EIS or EA but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved. The final rule does not require the BLM to publish a notice in the

*Federal Register* in this situation because interested individuals or groups will have had many opportunities to request to receive notifications by this late point in the planning process (see § 1610.2-1(d)).

**Comment:** One comment proposed including the phrase “in coordination with cooperating agencies” after “the BLM will” in the proposed § 1610.2-1(g) as well as inserting the phrase “and consider comments received” prior to “before the resource management plan or plan amendment is approved.”

**Response:** The BLM does not consider either of these additions to be necessary. Section 1610.3 of the final rule includes provisions describing the BLM’s relationship with cooperating agencies including how the responsible official shall collaborate, to the fullest extent possible, at different points in the planning process in § 1610.3-2(b)(3) of the final rule. The BLM considers these provisions sufficient to describe the role of cooperating agencies. The BLM does not consider the phrase “and consider comments received” to be necessary because the BLM already considers all public comments that it receives when requesting written comments.

*Notification of Plan Maintenance (§ 1610.2-1(i))*

**Comment:** One comment indicated support for the proposal that changes to an approved resource management plan made through plan maintenance be available for public review at least 30 days before they are implemented. The comment requested that the BLM post maintenance actions on the BLM’s Website and clearly label them as such and that the BLM maintain an interested-parties email list so those parties can be automatically notified of plan maintenance actions.

**Response:** Final § 1610.2-1(i) requires that when changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make

the changes available for public review at least 30 days prior to their implementation. Section 1610.2(c) requires that the BLM announce the opportunity for public involvement (*i.e.*, the opportunity for public review of plan maintenance) on the BLM's Website, at all the BLM offices within the planning area, and at other public locations as appropriate. The final rule does not require the BLM to maintain an interested-parties email list after the approval of a resource management plan or plan amendment (see § 1610.2-1(d) which only applies during the preparation or amendment of a resource management plan). The BLM may choose to maintain such a mailing list; however, a requirement to do so indefinitely would not be practical.

**Comment:** A few comments included concerns about the public review periods for changes through plan maintenance and changes in implementation strategies. There were concerns with how individual comments will be addressed, if the comments will be incorporated into the BLM decision, and if plan maintenance changes and changes to implementation strategies can be appealed. These comments recommended that the BLM clarify in the final rule how comments regarding plan maintenance will be reviewed, if and how they will receive a response, and any appeal procedure.

**Response:** Plan maintenance is not considered a plan amendment and does not require formal public involvement and interagency coordination. Final § 1610.2(b) describes how the BLM will document information gathered through public involvement activities. This process applies to the public review of changes made through plan maintenance in accordance with § 1610.2-1(i) of the final rule. Should a member of the public submit a comment related to plan maintenance, the BLM will consider this comment and it will be documented as a record. The BLM expects that the responsible official will be responsible for considering comments on plan maintenance; however, the final rule provides flexibility for another BLM official to fulfill this

role. Changes made as a result of plan maintenance are not appealable to the Interior Board of Land Appeals (IBLA).

In response to public comment, the final rule does not adopt proposed § 1610.1-3, which described implementation strategies, and any related provisions. For more information, please see discussion of proposed § 1610.1-3 in the preamble to the final rule.

*Notification of Changes to Implementation Strategies (Proposed § 1610.2-1(j))*

**Comment:** The BLM received many comments on proposed § 1610.2-1(j). Many comments included a recommendation for the proposed rule to include language providing an opportunity for public comments on implementation strategies and before changes are made to implementation strategies. One comment included the view that the absence of a public comment period for management actions such as implementation strategies circumvents the law and another comment noted that moving several steps in the planning process to the implementation strategy category further reduces engagement opportunities. Another comment requested a provision for appealing administrative changes to implementation strategies. One comment included an observation that proposed § 1610.2-1(j) is both duplicative of and is somewhat inconsistent with proposed § 1610.1-3(c) regarding implementation strategies and included a recommendation to remove one of the sections. A few comments included support for the proposal that updates to implementation strategies be made available to the public at least 30 days before implementation. One comment noted that the proposed rule contains no requirement for the BLM to notify the public of changes to implementation strategies, and indicates concerns about that. These comments included a recommendation to treat changes to implementation strategies like plan maintenance and to post clearly labeled notice on the BLM website and maintain an email distribution list. One comment included a recommendation for

the BLM to provide 45 days for public review of changes to implementation strategies, rather than 30. It notes that 30 days is not a realistic amount of time for people to learn of a notice, research the issues, and bring questions to the BLM. A few comments included concern about the lack of public review for or input on changes to implementation strategies. These comments noted that the lack of oversight and notification requirements for implementation strategies could reduce or eliminate Federal grazing permits' and leases' protections and assurances. In turn, the value of grazing permits and leases on BLM land will be diminished.

**Response:** The final rule does not adopt proposed § 1610.1-3, which described implementation strategies, and also does not adopt related provisions, including proposed § 1610.2-1(j) which described public notification for implementation strategies. For more information, please see the discussion of proposed § 1610.1-3 in the preamble to the final rule.

### **Section 1610.2-2 Public Comment Periods**

#### *Length of Comment Periods (§ 1610.2-2)*

**Comment:** One comment includes the opinion that resource management plan documents are far too long and difficult to manage or understand for the average citizen. This comment also includes the view that the proposed rule does not consider citizens when it decreases opportunities for public involvement in the proposed rule and suggests that the BLM revise the rule to enable the average citizen to be involved.

**Response:** Section 1610.2-1(a) of the final rule provides for several opportunities for public involvement in the development and amendment of a resource management plan. The final rule also adopts provisions that allow for public comments. Section 1610.2-2(a) of the final rule requires that when requesting written comments, the BLM will provide a comment period of at least 30 calendar days, unless a longer period is required by law or regulation. The final rule

revises the proposed rule, and require at least 60 calendar days for public comment for draft EIS-level amendments according to paragraph § 1610.2-2(b). The BLM will adopt the proposal to revise § 1610.2-2(c) to provide at least 100 calendar days for public comment, a period longer in length than the existing requirement.

This additional time is intended to allow citizens to have the opportunity to read and respond to these planning and environmental documents. The BLM recognizes that some planning documents and associated environmental reviews can be long and cumbersome for the general public to digest. However, the BLM must provide as much analysis as is necessary to satisfy NEPA requirements and cannot shorten or cap the length of these documents. In response to these concerns, the BLM has increased the mandatory lengths for comment responses in the final rule.

**Comment:** Several comments included the view that changes which reduce the public's response period are not justified and should not be made. Many comments included recommendations that the length of time for public review of planning documents should be increased from the current time allowed because more review time will improve the quality of the final product and many local clubs or county governments meet only once a month and need time to review, discuss, and comment on proposals. Comments included a variety of suggestions, including: lengthening public comment periods, increasing public comment periods to 120 days, and decreasing the general public comment period requirement to 15 days while increasing the review period for draft EIS-level plan amendments to 60 days and draft resource management plans to 75 days.

These comments reflect the view that early engagement and an opportunity to review portions of the plan early is not a substitute for the existing comment periods. The length of time

for public review of planning documents should stay the same as under the existing planning rule, or even increased.

According to these comments, resource management plans and EIS documents can consist of thousands of pages, plus detailed technical appendices, and the public needs significant time to understand them. These comments expressed concern that the preliminary alternatives, rationale for alternatives, and basis for analysis, may not have the same level of technical detail associated with the draft EIS and resource management plan and sharing them early does not justify decreasing public comment periods. Further, engagement on preliminary content does not necessarily afford the public knowledge of a BLM decision that would ultimately take shape. Therefore, early coordination is not a reason to reduce comment periods. Others expressed concern that early coordination between the state and the BLM is ineffective because very little is required of the BLM to meet their FLPMA "coordination" responsibilities. Shortening public comment periods for the later stages is problematic because it is at those later stages when a preferred alternative is identified.

Some shared that shortening comment periods lessens the ability to provide meaningful and effective feedback and will lead to impacted individuals and communities being cut out of the planning process, causing burdens on local governments and the public. According to some comments, counties struggle with existing comment periods being too short, and the frequent requests by local and State governments for extensions is indicative of the need to maintain or increase comment periods. For example, local government entities that normally meet monthly may have to hold additional meetings to meet the BLM's timing requirements. Locally elected officials may have other responsibilities, which make it unrealistic to review BLM planning documents in the allotted time. Some expressed concern that the shorter review period is an

infringement on the ability of local government to coordinate, cooperate, and collaborate with the BLM. From a public perspective, it is a daunting task for all-volunteer non-profits to digest voluminous information. Many individuals in certain counties are retirees who travel extensively and according to some comments, it would be detrimental to their ability to comment to reduce the amount of time. Some were concerned that truncated comment deadlines ignore the reality of the BLM not functioning in a manner that is in synch with Tribal governments' schedules, since they have schedules for cultural activities and for elections of new officials and related turnover.

According to some comments, shortening the public comment periods will not significantly reduce the overall time needed to develop resource management plans and reductions in review time will elevate the need for state agency involvement and conflict resolution early in the planning process. Some shared that the shorter review period has no rational basis since the BLM has unlimited time to write land use plans and amendments. By allowing more time for comment, counties can help the BLM identify and mitigate any unintended consequences and challenges. The reviews that occur for the draft resource management plan allow for important legal- and adjacent landowner- consistency matters to be raised and addressed. Draft and proposed plans may conflict with other plans and this requires detailed review. Finally, some expressed that less notice and comment would result in more litigation over issues that could have been resolved during the planning process.

**Response:** In response to public comment, including in response to the reasons summarized above, the final rule requires at least 60 calendar days for public comment for draft EIS-level amendments according to paragraph § 1610.2-2(b). The BLM will adopt the proposal to revise § 1610.2-2(c) to provide at least 100 calendar days for public comment, a period longer

in length than the existing requirement. The BLM will adopt a minimum 30-day public comment period for any other request for public comments in § 1610.2-2(a) of the final rule. This length is the same as in the existing regulations. After considering public comments recommending different lengths for these comment periods, the BLM considers these to be appropriate minimums for public review and substantive responses on most plans and amendments. The considerations for these lengths include providing sufficient comment periods that accommodate typical meeting schedules of local clubs or county governments. The BLM is adopting these longer public comment periods out of recognition of the factors included in comments on the proposed rule, such as the complexity of planning documents; the important role that public comments periods play that cannot be replaced by other public involvement opportunities; and the time needed for landowners, local governments, Tribes, and others in the public to read and respond substantively.

The BLM will adopt the in the final rule the minimum 30-day public comment period for other instances when the BLM requests written comments in the planning process in § 1610.2-2(a) of the proposed regulations. This minimum amount is the same as in § 1610.2(e) of the existing regulations. If the BLM requests written comments with the NOI in the *Federal Register* to initiate the identification of planning issues, the BLM will include a minimum 30-day period. The deciding official will have the discretion to determine if written comments are appropriate at this point or if the BLM will use other forms of public involvement. The BLM expects the forthcoming Land Use Planning Handbook revision to provide guidance on public involvement at this point.

One reason given in these comments for providing a longer time period for public comments on draft resource management plans or plan amendments is that the BLM may modify

the preliminary alternatives, rationale for alternatives, and basis for analysis initially released to the public in response to public input and in this case the public will need additional time to analyze the information in the document. The BLM recognizes that such changes would be time consuming to review. While the timeframes in the final rule represent the minimum, the responsible official will have discretion to extend these comment periods. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance on this topic. In addition to the longer minimum comment period than in the proposed regulations, the final rule also includes a provision in § 1610.5-2(d), requiring that a description of any changes made to preliminary alternatives be provided in the draft resource management plan. For more information on changes to preliminary alternatives, please see the preamble discussion of § 1610.5-2(d).

**Comment:** A few comments included suggestions that the BLM keep the current length of time for public review of most planning documents, but that the BLM also must allow longer times for larger planning efforts. These comments include a recommendation to revise the rule to state that the length of the public comment period must be proportionate to the scale of the planning effort. For example, if the BLM proposes a planning effort that will encompass multiple states and affect numerous land uses, a longer comment period should be provided.

**Response:** In response to public comments, the BLM will adopt longer minimum public comment periods in the final rule for resource management plans and EIS-level amendments than in the proposed rule. The minimum 100-day public comment period for draft resource management plans in § 1610.2-2(c) of the final rule is longer than the 90-day period in the existing regulations. The BLM will have the discretion to extend the public comment period further for more complex projects, such as multi-state plans or amendments. The BLM expects

that the forthcoming Land Use Planning Handbook revision will provide guidance on factors that the deciding official should consider when determining the appropriate length of the public comment period. The final rule does not include a revision to state that the length should be proportionate to the scale of the planning effort because such a concept would be vague and because considerations regarding comment period extensions are better suited for guidance than the regulation.

**Comment:** Several comments indicated that the effect of the proposed rule expanding planning efforts to larger areas and scales and addressing more diverse issues would be in conflict with shorter comment periods. The resulting plans are likely to be longer and take more time because planning areas are larger and the complexity of land ownership patterns is even more so pronounced. As a result, these comments recommend that the BLM should allow more time than allowed in the existing planning rule for public review and comment.

**Response:** The minimum length for public comment periods in the final rule includes a consideration of the varying complexity of resource management plans and plan amendments. The final rule increases the length the comment period for resource management plans from 90 to 100 days and reduces the comment period for EIS-level amendments from 90 to 60 days (the latter representing an increase from the proposed rule, which proposed a minimum of 45 days for EIS-level amendments). However, the deciding official will have the discretion to extend the public comment period length, for plans that include a large or multi-state landscape for geographic scope. The BLM recognizes that the public will need more time to read and respond to some plans or plan amendments. The BLM expects that the forthcoming Land Use Planning Handbook revision will include more guidance on the length of public comment periods.

**Comment:** A few comments include concerns that limiting the public comment period duration pose challenges to and will disadvantage Alaska Native communities. These comments noted that shortening the public comment periods later in the process will not significantly reduce the overall time needed to develop resource management plans. Further, these comments shared that in Alaska, it is often very difficult to maintain consistent communication and robust collaboration with tribes, due to large distances, extreme weather, and isolated communities.

**Response:** Based on public comment, the BLM will adopt longer minimum public comment periods in the final rule for draft resource management plans and EIS-level amendments than in the proposed rule. The minimum 100-day public comment period for draft resource management plans in § 1610.2-2(c) of the final rule is be longer than the 90-day period in the existing regulations. Although the final rule's increase from 45 days to 60 days for EIS-level amendment actually reduces the comment period for EIS-level amendments compared to the existing rule, the BLM will have the discretion to extend the public comment periods in § 1610.2-2 of the final rule, including out of consideration for isolated communities or weather. For example, BLM-Alaska provided for a 150-day comment period for the public review of the Eastern Interior Draft Resource Management Plan to accommodate unique conditions for public involvement in Alaska. The final rule does not preclude the BLM from taking similar actions in the future, as appropriate. Alaska Native communities will also have the opportunity to participate in the planning process through the consultation and coordination provisions in § 1610.3 of the final rule. For more information on tribal consultation, cooperating agency status, and coordination requirements, please see the preamble discussion of § 1610.3.

**Comment:** One comment included a suggestion to reduce the amount of time it takes to complete a planning process by combining planning steps or looking for ways to save time internally instead of reducing the amount of time for commenting.

**Response:** The final rule includes a minimum 60-day public comment period for an EIS-level draft plan amendment and a minimum 100-day public comment period for a draft resource management plan. In response to public comment, the BLM will combine public review of the preliminary alternatives, preliminary rationale, and basis for analysis into one point for public involvement in § 1610.2-1(a) of the final rule. The BLM believes that providing opportunities for earlier and more engaged public involvement in the planning process will reduce the amount of time required for planning. While the BLM will pursue internal efficiencies in an effort to expedite planning, FLPMA and NEPA require certain standards analysis that can be time-consuming to complete.

**Comment:** One comment objected to the proposal to remove the requirement for a NOI for EA-level plan amendments and removal of public comment on the “Development of the Planning Criteria.”

**Response:** The final rule requires publishing notices in the *Federal Register* and public comments when initiating identification of planning issues for a resource management plan or plan amendment (§ 1610.2-1(f)), when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs (§ 1610.8-2(b)(1)), and when publishing a notice of availability for a draft EIS (§§ 1610.2-2(b) and 1610.2-2(c)). At other points in the planning process, the final rule includes public notification and public review, as described in § 1610.2-1. One point in § 1610.2-1(a) of the final rule includes public review of the preliminary alternatives, preliminary rationale, and basis for analysis, as appropriate. This

point will be similar to the development of planning criteria in the existing regulation. The BLM considers the public notification and public review at this step to constitute meaningful public involvement and does not consider a *Federal Register* notice to be necessary at this point. In addition to public review at this point, the public will have the opportunity to provide public comments on the draft resource management plan if they believe that their input was not considered appropriately at this point. The BLM will not be requesting a public comment period on the planning criteria because the final rule no longer requires planning criteria. Please see the preamble discussion of § 1610.5 for more information.

**Comment:** One comment included a view that a reduction in the length of comment periods is appropriate because of the added public involvement opportunities earlier in the planning process.

**Response:** The BLM will adopt longer minimum public comment periods for draft resource management plans and EIS-level plan amendments in the final rule than those included in the proposed rule for § 1610.2-2. The longer minimum comment periods reflect the time often needed by the public to respond to complex documents. The BLM believes that providing additional public involvement opportunities in the planning process will increase transparency and improve the ability of individuals and groups to participate. However, even with these added public involvement opportunities, it is important to provide sufficient time for public comment.

**Comment:** One comment contains a recommendation for review periods of at least 45 days for changes made through plan maintenance, and review periods of at least 60 days for all other changes. The comment notes that counties may not have the staff resources to review and analyze complicated planning proposals in a short 30-day time frame. If a county needs to

provide official written comment, staff must obtain approval from county officials at an official hearing.

**Response:** Changes made to a plan through maintenance are not planning proposals or plan amendments. Therefore, the BLM will not adopt the recommendation to include a public comment period for them.

The minimum length for public comment when the BLM requests written comments will be 30 days, in accordance with § 1610.2-2(a) of the final rule, representing the minimum the BLM believes to be sufficient time needed for meaningful input on less complicated proposals. In contrast, plan amendments believed to have significant effects, and thereby requiring an EIS, will receive at least a 60-day public comment period in accordance with § 1610.2-2(b) of the final rule. The BLM considers these time periods sufficient to address the schedules and needs of local officials. State and local governments can also participate as cooperating agencies. For more information on cooperating agencies, please see the preamble discussion of § 1610.3. For more information on plan maintenance, please see the preamble discussion of § 1610.6-5.

**Comment:** One comment suggested adding the phrase “after consulting with State and local governments and Indian tribes” before requests or requesting “written comments” in the paragraphs of § 1610.2-2.

**Response:** The BLM did not accept the suggestion because it is unnecessary. Section 1610.3 of the final rule includes the provisions related to cooperating agencies and consultation. Section 1610.2-2 of the final rule addresses public participation. Including information on coordination, consultation, and cooperating agencies in this section would be redundant and unnecessary. Please see the preamble discussion of § 1610.3 for more information on consultation, coordination, and cooperating agencies.

### Coordination (§ 1610.2-2)

**Comment:** A few comments note that if State and local governments are adequately coordinated with throughout the planning process in an effort to strive for consistency, then requests for comment period extensions by State and local governments would decrease. A few comments asked the BLM to consider workloads for county governments when setting comment and review periods. These comments stated that the time period for review of plan amendments could be shorter than for review of resource management plans.

**Response:** Although the BLM cannot predict if coordination with State and local governments will result in fewer requests to extend public comment periods, past experience and research indicates that upfront coordination and collaboration in the planning process can reduce later delays, appeals, and litigation. The final rule provides for effective coordination with State and local governments, as requested in the comment. The comment periods set forth in § 1610.2-2 are minimums and the responsible official will have the discretion to extend them. The BLM expects that the forthcoming revised Land Use Planning Handbook will provide guidance on situations in which extensions should be considered. For information on how State and local governments, Indian tribes, and other Federal agencies can work as cooperating agencies, please see the preamble discussion of § 1610.3.

### Consideration of Form Letters

**Comment:** One comment indicated that during comment periods, the BLM should give less consideration to form letters and should give more weight to interests of the local public and supporting agencies because of their familiarity with the local landscape and understanding of the effects.

**Response:** The BLM will continue to consider all public comments received during the planning process. These comments will either be captured in summaries or reports through public involvement described in § 1610.2(b) in the final rule or will be responded to if received during formal public comment periods. Generally, if the BLM receives multiple copies of the same letter, the BLM will tally the number received and provide one response to any substantive issues raised. The BLM does not have the authority to weigh certain public viewpoints, such as those of local residents, as more important than others. The BLM does coordinate with and engage in cooperating agency relationships with state and local governments. For information on how State and local governments, Indian tribes, and other Federal agencies can work as cooperating agencies, please see the preamble discussion of § 1610.3.

*Comments on EA-level Amendments (§ 1610.2-2)*

**Comment:** A few comments insisted that the BLM provide a comment period on EA-level plan amendments and that the final rule retain the requirement from the existing regulations to do so. These comments contended that public should be able to comment on the adequacy of the BLM's analysis and present evidence as to why the BLM may need to instead complete an EIS. These comments also noted that EAs can be controversial and that the public should be allowed to contribute to their development. One comment expressed a request for flexibility for the amount of time given to review amendments since some are more complicated than others. One comment suggests that if there is not a comment period on an EA-level amendment that it should all be made available to the public through a state clearinghouse.

**Response:** The BLM will have the discretion to increase the length of a comment period, which it may do if the responsible official considers a plan amendment is more complex and there would be a benefit from having a longer comment period. Section 1610.2-2(a) of the final

rule provides for a minimum 30-day public comment period any time the BLM requests written comments outside of the minimum comment period lengths identified in final §§ 1610.2-2(b) and (c).

The existing rule does not require a comment period for an EA-level plan amendment, although it is common practice to provide a 30-day comment period. The existing and final rules only require the BLM to publish a NOI in the *Federal Register* when beginning an EA-level amendment. Interested parties may request to be notified of further developments under § 1610.2-1(d). The BLM believes it is important to preserve this flexibility for plan amendments that are not controversial and that have little public interest. If the effects of a plan amendment are potentially significant, as defined by the NEPA regulations, the BLM would analyze this amendment through an EIS. For EA-level plan amendments with a high level of public interest, the responsible official will have the discretion to expand public involvement opportunities and public comment periods beyond the minimums established by the final rule. However, because the amount of public interest in an EA-level plan amendment varies depending on the scope and impact of the amendment, it is not always necessary to include the same public involvement opportunities as is necessary with an EIS-level amendment.

The amount of public interest in an EA-level plan amendment varies depending on the scope and impact of the amendment, so the final rule does not require any particular practices such as the use of state clearinghouses for making an EA-level amendment available for public review. The BLM anticipates using the ePlanning Land Use Planning Register to post resource management plans and plan amendments. Final § 1610.2-1(f) will adopt the existing requirement, not included in the proposed rule, that the BLM publish a NOI for plan amendments requiring an EA.

Comment Period Extensions (§ 1610.2-2)

**Comment:** Several comments requested a process for extending public comment periods or provide additional public comment opportunities. Some of those comments expressed support for the shortened comment periods if the rule explicitly provided for extensions to be granted for longer plans, more complex plans, or controversial issues. These comments suggested specific text stating, “the BLM will notify the public and provide for at least 30 calendar days for response, unless a longer period is necessary due to more complex or controversial issues or is required by law or regulation.”

Some comments requested the BLM add specific criteria to consider when deciding whether to extend a comment period. One comment wanted the BLM to provide a comment period on resource management plans and amendments that is longer than 90 days if the documents exceed 300 pages, and another comment requested an extension of the comment period if there were multiple preferred alternatives. A few comments requested that the proposed rule more explicitly state that the 45-day comment period is the minimum and more than 45 days is warranted when there is a lengthy or complicated document. These comments proposed that the proposed § 1610.2-2(b) should include the following text at the end of the first sentence: "...the BLM will provide at least 45 calendar days for response unless a longer period is necessary due to more complex or controversial issues.”

According to these comments, longer comment periods would reduce the frequent requests for extension of time and result in comments that are more helpful to the BLM. Another comment suggested that a process could be codified in the planning rule by which the BLM would extend the public comment period if a member of the public requests it. This comment noted that seeking to make the planning process more streamlined by shortening the public

comment period may not bring the desired efficiency. Finally, a few comments wanted the proposed rule to explicitly state that the 60-day comment period on resource management plans is the minimum, and more than 60 days is warranted for lengthy, complicated or controversial document.

One comment included a recommendation for the BLM to incorporate transparent mechanisms for the public to request, and the BLM to respond to, comment period extensions, additional public comment opportunities, and review of additional relevant information. The comment also includes a request for the BLM to provide all relevant data, reports and planning documents for a resource management plan or amendment on the ePlanning website as soon as available.

Specific to plan amendments, one comment included a recommendation that the BLM should be flexible with the required review times for both EA-level and EIS-level amendments. Thirty days may be sufficient for some review periods for amendments, but others may need a little more time. Therefore, the review times should be changed to 30-45 days (a range) instead of only 30 days.

**Response:** The BLM will have the discretion to extend the length of the public comment period in § 1610.2-2(c) of the final rule for draft resource management plans, which will be at least 100 days. For EIS-level amendments, the comment period would be at least 60 days, per § 1610.2-2(b). If the BLM requests written comments on an EA-level amendment, the comment period would be at least 30 days, per § 1610.2-2(a).

The phrase “more complex or controversial issues” is vague and would be difficult for the BLM to implement. Instead, the deciding official will have the discretion of when to extend public comment periods. The final rule does not limit this discretion by including particular

circumstances, such as page length or number of preferred alternatives, that would require an extended time period. The final rule does not require the BLM to extend a comment period based on a request from the public. This could potentially lead to members of the public using extensions to prolong the planning process even if an extension is not needed. When there is disagreement between members of the public and the BLM as to the length of a public comment period, the final decision on the length of the comment period will remain with the BLM. The BLM expects the forthcoming revision to the Land Use Planning Handbook will include guidance regarding what factors the responsible official should consider when determining the length of the public comment period beyond the minimum as well as how to consider requests to extend the public comment period.

The final rule includes several points for public involvement as listed in § 1610.2-1(a). In some circumstances, the deciding official may request written comments at the points for public involvement. If the deciding official exercises the discretion to make additional requests for written comments, they must include an at least 30-day comment period in accordance with § 1610.2-2(a) of the final rule.

In response to public comments, the final rule includes a new provision at § 1610.2-3(a) for the BLM to make any scientific or technical reports used in the preparation of the resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law. Depending on the size and complexity of the documents, the BLM expects that these reports may be made available for viewing at local BLM offices or other public locations or posted to the BLM website.

Public Meetings (§ 1610.2-2)

**Comment:** One comment wanted public meetings to be held in the communities near where the actions in the resource management plan would occur. This would allow stakeholders most likely to experience the direct effect of the resource management plan to have an opportunity to become informed and offer comments.

**Response:** It is expected that the forthcoming Land Use Planning Handbook revision will include recommendations on how to conduct public engagement including locations for public meetings. Additionally, in response to public comments the BLM will adopt a new provision as part of § 1610.2-2(c) of the final rule indicating that the responsible official shall identify additional forms of notification for opportunities for public involvement in the planning process to reach local communities located within the planning area, as appropriate. The form of this notification will vary depending on circumstances. However, requiring public meetings in “communities near” proposed actions in the resource management plan is vague, and will vary based on the planning area. Therefore, it is more appropriate to outline factors to consider in guidance than to include a requirement in the final rule.

Comment Periods for Draft Plan Amendments (§ 1610.2-2(b))

**Comment:** Based on the following rationale, many comments expressed that the BLM should retain the current 90-day comment period for EIS-level plan amendments:

- The abbreviated public comment period is inconsistent with FLPMA. FLPMA directs that the BLM provide "adequate notice and opportunity to comment upon and participate in the formulation of plans."
- The BLM reasons that EIS-level amendments tend to be smaller in scope than the preparation of a resource management plan. This assumption is not always true,

such as the planning effort to conserve the Greater Sage-Grouse, where the scope of the amendment was actually be larger than the scope of a plan revision.

- Truncated comment deadlines ignore the reality of the BLM not functioning in a manner that is in synch with tribes' calendars. Tribes have internal schedules for cultural activities and for elections of new officials and related turnover.
- Individuals and local governments are charged with day-to-day business in support of their constituent groups and they do not have substantial time to devote to one planning project.
- Certain NEPA requirements were generated decades ago and reflect the intent that EIS pages would number in the dozens, not thousands. The BLM should acknowledge current trends and retain a 90-day comment period for an EIS.
- Members of the public may not realize the impact of a proposal until impacts are disclosed in a draft EIS. Earlier engagement opportunities are not a substitute for the comment periods provided by the existing rule, since much of the work in commenting on a draft EIS stems from responding to the analysis and technical material.
- Agencies should make it easier, not harder, for individual members of the public to comment in a fully informed way at every stage in the planning process.

**Response:** In response to public comments, the final rule provides a public comment period of at least 60 days for EIS-level plan amendments in § 1610.2-2(a). The scope and complexity of EIS-level plan amendments varies considerably, and the 60-day period will be appropriate as a minimum for EIS-level plan amendments that may be narrower in scope. This length of time is consistent with both NEPA and FLPMA. The BLM expects that the

forthcoming Land Use Planning Handbook revision will provide more detailed guidance regarding extensions to public comment periods or situations when the BLM should consider providing a longer initial comment period than the minimum requirement.

*Comment Periods for Draft Resource Management Plans (§ 1610.2-2(c))*

**Comment:** One comment expressed that there should be flexibility in timeframes for comment periods on a draft plan because resource management plans are often thousands of pages in length and the public needs significant time to simply understand any changes proposed.

**Response:** Section 1610.2-2(c) of the final rule states that “the BLM shall provide at least 100 calendar days for response.” This length will be the minimum for a public comment period for a resource management plan and will allow for flexibility in timeframes for comment periods beyond that minimum.

**Comment:** Many comments asserted that the BLM should retain the current 90-day public review and comment period for resource management plans, or even lengthen it. These comments included the following reasons:

- Comment periods on plans are often extended. For instance, the comment period for the Southern Nevada Resource Management Plan was extended for nearly two years.
- These documents are voluminous and represent years of work. The effort is so great that it is puzzling why the BLM would want to skimp on the review and comment period for the public.
- The BLM needs to commit to expeditious and efficient internal reviews of documents to avoid delays, rather than reducing the comment periods for the public and cooperating agencies.

- The proposed 60-day timeline is a major reduction in time, and will likely not result in an improvement in high-quality written comments.
- The reduction of the comment period, particularly when combined with the reduced notification requirements, provides an unacceptably short window for stakeholder engagement and will lead to reduced public participation.
- Even for people and organizations who engaged in the earlier opportunities, much of the work in commenting on a draft EIS stems from responding to the analysis and technical material.
- Existing periods are not unreasonably long when measured against the complexity of resource management plans or the expected lifetime of those plans.
- Truncated comment deadlines ignore the reality of the BLM not functioning in a manner that is in synch with Tribes' calendars. Tribes have internal schedules for cultural activities and for elections of new officials and related turnover.
- Many times the State and county governments still have to request extensions on planning activities with the existing comment periods.
- Individuals and governmental agencies are entitled to a sufficient amount of time to read, study and prepare comments on resource management plans that will be in effect for 20 years.
- A reduction in review time will elevate the need for Department involvement and conflict resolution early in the planning process.
- Reduced review and comment time is not adequate time for stakeholders that have daily business responsibilities and must research and study plans or amendments in their spare time.

- Agencies should make it easier, not harder, for individual members of the public to comment in a fully informed way at every stage in the planning process.

One comment suggested the comment period for Draft resource management plans should be at least 180 days, and another suggests 120 to 180 days. These comments note that the proposed reduction to 60 days is simply too short of a review period for the public, agencies and interest groups for documents that are as lengthy as BLM's draft resource management plans and draft EISs and that the length of time is too short, particularly in Alaska where many rural residents have specific seasons for subsistence activities and where communication, including Internet access, may at times be difficult.

**Response:** The BLM recognizes that draft resource management plans and plan amendments can be complex, and the BLM currently receives many requests to extend public comment periods under the existing rule. In response to public comments, the BLM will adopt a minimum 100-day public comment period for draft resource management plans and draft EISs in § 1610.2-2(c) of the final rule. This comment period is longer than the 90-day public comment period in the existing regulations. In recognition of this minimum being longer than the one provided for in the existing regulation and the additional public involvement activities that will be included in § 1610.2-1 of the final rule, the BLM will not adopt a longer minimum public comment period. The BLM will have the discretion to extend the public comment period as appropriate. For example, the BLM may consider stakeholders' needs, such as Tribal calendars, when appropriate. While the BLM believes that early public involvement activities such as the planning assessment (§ 1610.4) and the public review of preliminary alternatives and the basis for analysis (§§ 1610.5-2 and 1610.5-3)), this change recognizes that public comment on the draft resource management plan is an important step in the planning process.

Comment Periods for ACECs (§ 1610.2-2(d))

**Comment:** One comment included concern about public notice of ACECs. The comment also included a recommendation for BLM to clarify in the revised rule that a notice of availability of a draft EIS will identify each separate potential ACEC and its special management prescriptions. A few comments included requests for the BLM to retain the formal notice and 60-day comment period for potential ACECs. These comments noted that ACECs may limit resource use or require special management, which is important and the reason current regulations require *Federal Register* notice of proposed ACECs. One comment included a request for BLM to always allow public comment on EA-level amendments if they include a new or expanded ACEC.

**Response:** In response to public comment, § 1610.2-2(d) of the final rule requires the BLM to request written comment on designations under consideration when a draft resource management plan or plan revision includes one or more potential ACECs. This request for comment may be combined with the NOA of a draft resource management plan or amendment. For more information, please see the preamble discussion of § 1610.8-2(b)(1).

**Section 1610.2-3 Availability of the Resource Management Plan.**

Publication and Delivery of Resource Management Plans (§ 1610.2-3(a))

**Comment:** One comment suggested that the BLM needs to print and deliver the copies of the draft to the individual and not to a community center. Another comment included the view that the BLM needs to still offer printed plans to individuals who request it. This comment noted that not everyone uses or has available the resources to access digital media, and field offices can be over 100 miles from people with a vested interest but no computer or internet access.

**Response:** The existing and final rules require the BLM to make resource management plans reasonably available to the public. The BLM will make single printed copies available upon request. Section 1610.2-3(b) of the final rule describes the process for requesting an individually printed copy of the draft or proposed resource management plan or plan amendment available to individual members of the public. However, the BLM will not automatically provide printed copies to individuals without a request. Printing costs can represent a large portion of a project budget. The approach in the final rule is consistent with BLM policy to maximize the use of electronic media as the primary means by which NEPA and Planning documents are distributed and made available to the public, while still providing printed copies by request. For more information, please see BLM Instruction Memorandum No. 2013-144, “Transitions from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats” (June 21, 2013), [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2013/IM\\_2013-144.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html).

*Electronic Formats (§ 1610.2-3(a))*

**Comment:** One comment supports moving to online publication and digital options to save resources. Another comment suggested that the BLM provide a website or disc with digital copies when providing notice.

**Response:** The BLM believes that publishing draft, proposed, and approved resource management plans and plan amendments online will both save resources and increase transparency. The BLM will have discretion to determine the best means of making the draft, proposed, and approved resource management plan or plan amendment available to the public electronically in accordance with the provisions of § 1610.2-3(a) of the final rule. This

flexibility will allow for determining the most effective methods in individual situations or adapting to new or evolving technologies to distribute these documents.

**Comment:** One comment included the opinion that reducing the availability of a resource management plan to online only will increase the likelihood that local governments or others will miss opportunities for commenting on or reviewing a plan

**Response:** The BLM will not limit the availability of a draft, proposed, or approved resource management plan or plan amendment available to only on the Internet. Section 1610.2-3(a) of the final rule sets a minimum requirement of making these documents available electronically and at all BLM offices within the planning area. The BLM has the discretion to make these documents available through other means as well. Additionally, individuals may request single printed copies of the draft or proposed resource management plan or plan amendment in accordance with the provisions of § 1610.2-3(b) of the final rule. Finally, regardless of how the documents are made available, the BLM is required to follow the notification requirements of §§ 1610.2-1 and 1610.3-2(c)(3), which will provide local governments with notification of the availability of draft or proposed resource management plans and plan amendments.

*Availability of Supporting Documents (§ 1610.2-3(a))*

**Comment:** A few comments expressed concern that only “key” supporting documents will be posted on the Website. One comment noted that if the BLM requires members of the public to obtain information through Freedom of Information Act requests, the time consumed in doing so leaves little or no time to review and incorporate information into protests. Comments include the view that removing the existing requirement of supporting documents that support decisions of a resource management plan or other planning document does not fulfill the intent

of NEPA. Some comments recommend that all supporting documents be posted on the web with appropriate indexing and be in a searchable format.

Another comment suggested that the following kinds of information be considered supporting documents and be made readily available to the public: copies of letters from Federal, State and local agencies, including cooperating agencies; scientific and technical reports or studies referenced or cited in the main planning and NEPA documents; and copies of letters from trade organizations, academic institutions, NGOs, political entities, permittees, and members of the public. One comment suggested adding language that documents made available to the public would not include the cooperating agency administrative draft in § 1610.2-3(a) of the proposed rule.

**Response:** In response to public comment, the BLM will adopt a provision in § 1610.2-3(a) of the final rule that states that the “BLM shall also make scientific or technical reports the responsible official uses in the preparation of a resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law.”

The final rule does not include the phrase “supporting documents” as used in existing § 1610.2(h) because the term is vague. However, the final rule adopts a provision at final § 1610.2-3(a) requiring the BLM to make scientific or technical reports available, which provides greater clarity to the public about what will be available. However, the BLM does not adopt the requirement that all supporting documents be posted online with a searchable index. Posting additional documents would be an undue burden on the BLM, as would making additional documents searchable or indexed.

Specifically with regards to letters and cooperating agency comments, the BLM will not, however, make letters received available in the same fashion. The BLM will respond to letters

or public comments in accordance with current BLM, DOI, and Federal policy. The BLM will consider all public comments and letters received and make summaries and reports of public involvement activities available publicly. For more information on how the BLM will document and make public the issues discussed and comments received during public involvement, please see the preamble discussion of § 1610.2.

The final rule is not revised to adopt the recommendation to exclude cooperating agencies' comments on administrative drafts from this provision because the BLM does not believe the proposed language is necessary. Section 1610.3-2(b)(2) of the final rule provides that the BLM will enter into a memorandum of understanding with non-Federal agencies that are cooperating agencies that includes a commitment to confidentiality of documents and deliberations prior to the public release of BLM documents, including drafts. Including the proposed language in § 1610.2-3(a) would be redundant and unnecessary. The memorandum of understanding may have additional information on how cooperating agencies' comments will be handled by the BLM. However, in many cases cooperating agency administrative drafts are considered part of the administrative record, and the BLM must comply with Federal records laws, including the Freedom of Information Act, in making records available to the public. For more information on cooperating agencies, please see the discussion of § 1610.3-2 in the preamble.

*Removal of Existing § 1610.2(j) and § 1610.2(k)*

**Comment:** One comment included support for the removal of § 1610.2(j) and § 1610.2(k) of the existing regulations, regarding public involvement and coal, in the proposed rule.

**Response:** The final rule adopts the proposal to remove the existing §§ 1610.2(j) and 1610.2(k).

**Comment:** One comment included opposition to the elimination of Section 1610.2(j) of the existing regulations regarding public involvement and coal mining. The comment included the view that the planning process is the best time for the BLM to contact surface owners about their preferences regarding leasing. For instance, if the majority of surface owners oppose leasing, the BLM can prohibit surface mining early on. According to the comment, this approach would discourage coal companies from undertaking a surface mining proposal in an area where surface mining will ultimately be prohibited. Another comment opposed removal of § 1610.2(k). According to the comment, § 1610.2(k) may not be redundant because the similar notice prescribed by the BLM's leasing regulations to private surface owners may come after coal-related decisions in an resource management plan or plan amendment have been finalized. It is important for adjacent private surface owners to understand coal-related proposals before approval of those plans. Additionally, the comment asserts that the BLM should not make coal-related regulatory changes until the ongoing review of the Federal coal program and its associated PEIS are finished.

**Response:** The final rule is not revised in response to this comment. Input and consent from a qualified surface owner is required at the leasing stage under 43 CFR 3427.1, therefore existing 1610.2(j) is duplicative of the consultation requirements at 43 CFR 3427.1 and unnecessary. Furthermore, since publication of the resource management plan only designates areas as open to coal leasing and no longer approves coal leases over the entire open area, the public hearing in existing 1610.2(k) is no longer appropriate. Final § 1610.2-1(c) has been revised to include a requirement that the responsible official identify additional forms of

notification to reach local communities located within the planning area, as appropriate, which will provide notification to land owners within the planning area.

The BLM believes that removing § 1610.2(k) will help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal-specific requirements in the coal regulations, where they are more appropriate. Further, the BLM will provide for public involvement during the preparation and amendment of resource management plans, including for any coal-related issues. These regulatory changes will not be a change in current practice or policy during coal leasing.

As a separate matter, Secretarial Order 3338 issued on January 15, 2016, requires the BLM to conduct a comprehensive review to modernize the Federal coal program, including a discretionary Programmatic EIS. The regulatory changes in this final rule are unrelated to and will not impact the Secretarial Order or the BLM's comprehensive review.

### **Section 1610.3-1 Consultation with Indian Tribes**

**Comment:** Some comments expressed concern that the proposed rule did not recognize the sovereign status of tribes. According to the comment, the proposed rule provides minimal reference to the role of the tribes' position of sovereign government-to-government collaborator while focusing most attention on the public's concerns.

**Response:** In response to comments, the final rule is revised to include a new section on tribal consultation (final § 1610.3-1). This section provides that the BLM will initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This section is added to the final rule to reflect the fact that the BLM is required to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM's request

for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. This government-to-government consultation shall be initiated regardless of an Indian tribe's status as a cooperating agency or any on-going coordination with the Indian tribe. Should an Indian tribe choose to participate as a cooperating agency or to coordinate with the BLM, the BLM is still required to initiate government-to-government consultation.

**Comment:** Several comments raised concerns that technology is replacing in person conversation. Comments requested that tribes still be able to consult on resource management plans in person and that electronic means of communication do not replace the current process. Other comments stated that the final rule should not replace the way the BLM currently consults with tribes. Some comments stated that the BLM needs to engage with different parts of the tribe directly. For example, it can take a long time for correspondence and info to filter from the chairperson to the tribal historic preservation officer.

**Response:** The BLM does not intend changes to the way the BLM currently consults with Indian tribes and does not intend for electronic means to replace current processes for consultation, including in-person conversation. The BLM recognizes that in-person conversation is an effective and important method of communication during government-to-government consultation and the preferred method of communication for many Indian tribes. The BLM also recognizes that some Indian tribes may prefer electronic communication such as email correspondence, and the BLM will employ such communication techniques where they are helpful and appropriate.

The final rule does not address how the BLM will engage with "different parts" of a tribe, such as tribal historic preservation offices. There is significant variability on how Indian tribes prefer to receive notifications or how they prefer to engage with the BLM. The BLM believes

that it is appropriate for the regulations to provide flexibility in this regard, so that tribal consultation processes may be tailored to the needs of individual tribes and individual BLM offices.

**Comment:** Several comments included the view that cultural resources and important tribal heritage resources, including sacred sites, are best preserved if they are identified by the BLM through early government-to-government tribal consultation and through appropriate planning processes. This information would also help to inform consultation with Tribes when future implementation projects are proposed. Comments referenced Executive Order 13007 on Indian Sacred Sites from May 24, 1996, and the rights recognized under the United Nations Declaration on the Rights of Indigenous Peoples.

**Response:** In response to public comment, the final rule is revised to include a new section § 1610.3-1. This new section requires the BLM to initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This consultation will occur early in the process and throughout the process. The BLM recognizes the importance of Executive Order 13007 and the United Nations Declaration on the Rights of Indigenous Peoples in the planning process and implementation of projects. The BLM expects that the forthcoming Land Use Planning Handbook revision will include additional information and guidance on tribal consultation, including initiating early consultation with affected tribes.

**Comment:** A few comments included concerns as to whether the proposed rule adequately incorporates early consultation opportunities for tribes. The comments stated that the actual process for consultation described in the proposed rule and some of the definitions contained therein do not fully promote all of the important goals of coordination with tribes and

need to be further amended. Comments recommended providing advance notice to tribes where additional time may be needed to allow for adequate tribal consultation. One comment stated that the final rule will not change the BLM's obligation to consult with tribes on land use plans.

**Response:** The final rule recognizes the role of government-to-government consultation with Indian tribes. The final rule is revised to include a new § 1610.3-1 regarding tribal consultation. This language reflects the fact that the BLM is obliged to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM's request for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. Although this is a new provision in the planning regulations, it is an existing requirement for the BLM. This consultation will occur early in the process and throughout the process. Final § 1610.2 and 1610.3 describe the minimum steps that the responsible official must follow for public outreach, tribal consultation, and coordination with other Federal agencies, State and local governments, and tribal governments. Tribal governments may be involved in any of these steps. However, this rule does not preclude the responsible official from additional consultation or coordination efforts, as appropriate.

**Comment:** A few comments recommended that the BLM should consult with tribes early in the process to address concerns regarding landscapes and historic properties with religious and cultural importance. Comments noted that the process of documenting and evaluating traditional cultural properties takes time and involves interviews with elders. One comment recommended that § 1610.3-1 (final § 1610.3-2) include the following new paragraph: "(3) The responsible official also will make a reasonable good and good faith effort to identify and provide notice to any Indian tribe that attaches religious and cultural significance to any historic property that may be affected by the resource management plan or plan amendment." Another comment suggested

that proposed § 1610.3-1 include a requirement for the BLM to “Provide for consultation with Indian tribes regarding the identification, evaluation, and management of historic properties on public lands under BLM jurisdiction, so that measures to avoid adverse effects on such properties can be included in the development of resource management plans.”

**Response:** In response to public comment, the final rule is revised to include a new section § 1610.3-1. This new section requires the BLM to initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This consultation will occur early in the process and throughout the process.

The final rule is not revised, however, to include the recommended text related to historic properties. Section 106 of the National Historic Preservation Act governs the identification and management of historic properties on public land, including consultation with State Historic Preservation Officers and Tribal Historic Preservation Officers, and others. The BLM intends that consultation during the new planning assessment step will help to identify concerns of Indian tribes, such as historic properties, early in the planning process (see final §§ 1610.2-1(a)(1) and 1610.4).

**Comment:** One comment asserted that it is important for the BLM to consult not only with tribes who reside in a given planning area, but also with tribes who have ancestral cultural affiliations to that area.

**Response:** The BLM will continue to consult with Indian tribes, including tribes that have historic affiliations to the land in the planning area, consistent with Federal law and existing BLM policy. Please see Section 106 of the National Historic Preservation Act (36 CFR 800) and the BLM’s Guidelines for Conducting Tribal Consultation (H-8120-1) for more information.

**Comment:** Several comments expressed concern that larger planning areas under the new rule would mean less meaningful tribal consultation because consultation may be conducted by BLM staff from other offices or even states that have never engaged with the tribe or have limited interaction with the Tribe; comments also expressed concern that tribes may have potentially less influence over BLM planning decisions.

**Response:** The final rule does not explicitly prescribe larger planning areas. However, should future planning areas increase in size, the BLM will continue to conduct meaningful consultation with Indian tribes, including in person meetings. The BLM intends that these meetings will generally continue to be conducted by local BLM officials with which the tribe normally consults.

**Comment:** Several comments stated that Alaska's federally recognized tribes possess government-to-government consultation privileges that the BLM must recognize in the planning process. These comments included the following recommendations:

- The BLM should define what counts as consultation.
- The BLM should define the role of tribally-authorized organizations in the consultation process through a model memorandum of understanding reflecting tribal concerns
- The BLM should define when information should be exchanged in consultation.
- The BLM should define the flexible and collaborative process. Provide a road map of steps that might be taken in the consultation process to optimize collaborative decision-making.
- The BLM should define how consultation may inform agency decision making.

**Response:** The final rule recognizes the government-to-government relationship between the BLM and Alaska's federally recognized tribes, and the consultation based on that relationship. Final § 1601.0-5 defines the term Indian tribe as an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994. This definition includes Alaska's federally recognized Indian tribes. The final rule is revised to include a new § 1610.3-1 which requires the BLM to initiate government-to-government consultation with Indian tribes during the preparation and amendment of resource management plans. The final rule does not define consultation because that term is defined in Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments (2000) and Secretarial Order 3317 – Department of the Interior Policy on Consultation with Indian Tribes (2011). These Executive and Secretarial Order's outline the types of processes, how consultation may inform decision making, and what information should be exchanged in consultation. The BLM will conduct consultation consistent with these Executive and Secretarial Orders. The methods of consultation and its content may vary, however, by particular circumstances. The final rule is not revised to define the role of tribally-authorized organizations in the consultation process through a model memorandum of understanding reflecting tribal concerns. This level of detail is more appropriately addressed through guidance. The BLM expects that the forthcoming Land Use Planning Handbook revision will include additional information and guidance on tribal consultation, including a discussion of potential roles and responsibilities to guide responsible officials.

**Comment:** A few comments included the view that the BLM must provide substantially greater resources for outreach, community visits, and consultation in Alaska. These comments noted that much of Alaska is made up of expansive roadless landscapes with remote rural

communities scattered across millions of acres. The comments recommended that the BLM add capacity and resources and consider providing funds to assist tribal communities participating in consultation with the agency.

**Response:** The BLM recognizes the challenges of public involvement and tribal consultation in Alaska. However, the BLM cannot commit to out-year funding information in regulations or elsewhere. Allocation of resources occurs through internal budgeting processes and depends on available budgets. The final rule includes a requirement to initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans (see final § 1610.3-1) but does not address funding for consultation.

### **Section 1610.3-2 Coordination of Planning Efforts**

#### *Objectives of Coordination (§ 1610.3-2(a))*

**Comment:** Many comments raised concerns that proposed § 1610.3-1(a)) improperly narrows the scope of coordination under Section 202(c)(9) of FLPMA by requiring coordination “to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.” The comments stated that coordination is not subordinate to regulations, purposes, policies, and programs and that this change exceeds FLPMA, which provides that coordination, is required “to the extent consistent with the laws governing the administration of the public lands.” Several comments stated that Secretarial orders, regulations, policies, directives, and other guidance do not limit the BLM’s obligations under FLPMA to coordinate with State and local governments. The comments also noted that the policies under the Federal statutes can change with the President, Secretary of the Interior, and BLM Director in control at the time. The proposed language may limit the ability

of local governments to coordinate in some circumstances. Comments recommend removing this language. Some comments stated that if a change must be made, it should be consistent with Section 202(c)(9) of FLMPA.

**Response:** In response to these public comments, final § 1610.3-2(a) retains the phrase “to the extent consistent with Federal laws and regulations applicable to public lands” and is revised to remove the phrase “the purposes, policies and programs of such laws and regulations.” Coordination is a process in which the BLM engages with other governmental entities to better share data and understand each other’s plans, policies, and programs and therefore it is not restricted by existing policies and programs. Although FLPMA (43 U.S.C. 1712(c)(9)) only refers to the “laws governing the administration of the public lands,” the BLM interprets this phrase to encompass the regulations implementing these laws, as these regulations have the full force and effect of law and the BLM must comply with Federal laws and regulations, including in regards to coordination.

**Comment:** A comment recommended adding several new coordination objectives in proposed § 1610.3–1(a), to read as follows: (1) Keep the BLM apprised of State and local governments and Indian tribes land use and resource related planning and management programs; (2) The BLM will likewise keep State and local governments and Indian tribes apprised of any proposed plans, amendments, and changes to plan components and implementation strategies; (3) Assure that the BLM works with State and local governments and Indian tribes to achieve consistency in content and outcome between the BLM's plan and the State and local governments and Indian tribes' plans that are germane in the development of resource management plans for public lands; (4) Assure that the BLM plans and amendments are made in conjunction with those of State and local governments and Indian tribes; (5) Assure that

the plans of State and local governments and Indian tribes are integrated into the BLM's plans and amendments; (6) Assure that the BLM follows the plans of State and local governments, and tribes, to the maximum extent the Secretary finds consistent with Federal law and the purposes of FLPMA; (7) Assure that the plans of State and local governments and Indian tribes are the principal plan to which the BLM's plan and amendments are coordinated; (8) Assure that the BLM treats State and local governments and Indian tribes as equal partners and work fully with them; (9) Assure that the BLM listens carefully to the position of a State and local governments and Indian tribes in a matter to determine whether a conflict exists; (10) Work in an amicable manner to assist in resolving, to the greatest extent possible, inconsistencies between Federal and non-Federal government plans; (11) Provide for early and meaningful confidential involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, from before issuance of the NOI and forward through release of the public draft; including early notice of final decisions that may have a significant impact on non-Federal lands; and (12) To the greatest extent possible consistent with Federal law, develop resource management plans in coordination with cooperating agencies.

Some comments requested that proposed § 1610.3-1(a)(1) be revised to state that the BLM will keep apprised of “State and local governments and Indian tribes’ plans and management programs.”

**Response:** Final § 1610.3-2(a) retains the existing objectives of coordination (see existing § 1610.3-1(a)) with some revisions. In response to public comment, this section is revised to include the additional objective of coordination for the BLM to keep apprised of and consider the “policies, and management programs” of other Federal agencies, State and local

governments, and Indian tribes, in addition to their plans. The objectives described in final § 1610.3-2(a) are consistent with FLPMA (43 U.S.C. 1712(c)(9)). The final rule is not revised to include additional suggested edits from this comment. Several of the concepts described in the suggested edits are already addressed elsewhere in final § 1610.3-2 through the requirements for coordination, cooperating agency provisions, or consistency requirements. Other concepts are not included as an objective of coordination because they exceed the statutory requirements of FLPMA (43 U.S.C. 1712(c)(9)). The BLM believes that the revised objectives in final § 1610.3-2(a) appropriately describe the objectives of coordination.

**Comment:** One comment noted that proposed § 1610.3-1(a) identified five “objectives” of coordination. The comment recommended that these should not be identified as “objectives” and should instead be identified as requirements of coordination to comply with Section 202(c)(9) of FLPMA.

**Response:** Final § 1610.3-2(a) (proposed § 1610.3-1(1)(a)) is not revised to change the term “objectives” of coordination to “requirements” of coordination. The use of the term objectives is carried forward from existing § 1610.3-1(a). The final rule addresses the specific requirements of coordination in final § 1610.3-2(c).

**Comment:** Several comments indicated support for the objectives of coordination as they closely mirror the BLM’s obligations under FLPMA. The comments concur with the intent to reaffirm coordination and consistency requirements with State, local, and tribal plans.

**Response:** Final § 1610.3-2(a) retains the existing objectives of coordination (see existing § 1610.3-1(a)) with some revisions. In response to public comment, this section is revised to include the additional objective of coordination for the BLM to keep apprised of and

consider the “policies, and management programs” of other Federal agencies, State and local governments, and Indian tribes, in addition to their plans.

**Comment:** A few comments expressed concern that the objective in proposed § 1610.3-1(a)(1) to “[k]eep apprised of non-BLM plans” is very vague and could include anyone. Comments also noted that the reference in proposed § 1610.3-1(a)(2) to “plans that are germane” is vague and could include anyone with a plan and an agenda. According to these comments this lack of specificity would allow the introduction of special interest activities, information, and goals, which were never given allowance under FLPMA. The comments requested that the final rule specify whose plans the BLM will keep apprised of, specifically State, local and tribal plans. One comment recommended adding, “land use and resource related planning and management programs” after “non-BLM plans” in this paragraph.

**Response:** In response to public comments, final § 1610.3-2(a)(1) (proposed § 1610.3-1(a)(1)) is revised to clarify that the BLM is to “[k]eep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes.” The introductory text of final § 1610.3-2(a) clearly states that coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes; therefore the objectives of this section apply uniquely to governmental entities and their plans, policies, and management programs. The final rule retains the existing objective of coordination for the BLM to consider those plans that are “germane in the development of resource management plans for public lands.” The BLM disagrees that this language is vague. This language is consistent with FLPMA and refers to the plans of other Federal agencies, State and local governments, and Indian tribes. It does not include the plans of non-governmental entities.

**Comment:** One comment stated that the language regarding consideration of plans that are “germane in the development of resource management plans” is too limited in scope (see final § 1610.3-2(a)(2)). The comment noted that the BLM conducts planning for many other purposes in addition to resource management plans and FLPMA mandates coordination for those as well. FLPMA states that this is to take place for those “State, local, and tribal plans that are germane to the development of land use plans for public lands.” (See 43 U.S.C. 1712(c)(9)). The comment recommended that the BLM change “resource management plans” to “land use plans” in the final rule.

**Response:** In response to public comments, final § 1610.3-2(a)(2) is revised to include “plans, policies, and management programs” that are germane in the development of resource management plans for public lands. The final rule is not revised, however, to replace “resource management plans” with “land use plans.” Resource management plans are defined in § 1601.0-5 as “a land use plan as described under section 202 of FLPMA.” The purpose of these regulations is to establish a process for the development, approval, maintenance, and amendment of resource management plans (see § 1601.0-1). Procedures related to the preparation of other types of plans that do not meet the definition of resource management plan, such as an implementation-level plan, are outside the scope of this rule.

**Comment:** Several comments recommended revising proposed § 1610.3-1(a)(2) to require that the BLM considers those plans that are germane in the development of resource management plans for public lands and ensure that resource management plans are consistent with non-BLM plans to the maximum extent consistent with Federal law and the purposes of FLPMA.

**Response:** Final § 1610.3-2(a)(2) is not revised in response to these comments. Final § 1610.3-2(a)(3) retains the existing objective that the BLM “[a]ssist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans” which is consistent with FLPMA (43 U.S.C. 1712(c)(9)). Specific consistency requirements, such as those suggested by the comment, are addressed in final § 1610.3-3 and reflect FLPMA requirements for consistency of resource management plans with the plans of other Federal agencies, State and local governments and Indian tribes (see final § 1610.3-3(a)).

**Comment:** Several comments objected to the proposed change to use the word “practical” instead of “practicable” in proposed § 1610.3-1(a)(3). Comments stated that “practicable” has the more narrowly defined meaning “capable of being put into practice” whereas “practical” means “capable of being put to use.” Therefore the proposed rule would result in changing the meaning of the requirements.

**Response:** The existing word “practicable” (see existing § 1610.3-1(a)(3)) is replaced with “practical” in the final rule for consistency with FLPMA (see 43 U.S.C. 1712(c)(9)). The BLM disagrees there is a substantive difference between the words “practicable” and “practical” but acknowledges the subtle distinction in the meaning of these terms; however, we believe this change is appropriate for consistency with FLPMA, which uses the term “practical.” (See 43 U.S.C. 1712(c)(9) (“the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans . . .”).)

**Comment:** One comment requested the final rule remove the phrase “[w]here possible and appropriate” from proposed § 1610.3-1(a)(5). The comment asserted that it should always be possible and appropriate to include coordinating agencies.

**Response:** The final rule is not revised to remove the words “where possible and appropriate” proposed § 1610.3-1(a)(5). This is existing language (see existing § 1610.3-1(a)(5)) which acknowledges that there may be a situation when it is not possible or appropriate for the BLM to collaborate with a cooperating agency; for example if no eligible governmental entities wish to enter into a cooperating agency relationship then it is not possible or appropriate for the BLM to collaborate with cooperating agencies.

In response to public comments, final § 1610.3-2(b)(1) is revised to require the responsible official to consider any request by an eligible governmental entity to participate as a cooperating agency and final § 1610.3-2(b)(3) is revised to state that “the responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.” These requirements reflect the BLM’s commitment to collaborating with cooperating agencies during the planning process.

**Comment:** One comment recommended substituting the term “in coordination” with “collaboratively” in proposed § 1610.3-1(a)(5) of the proposed rule.

**Response:** The final rule is not revised in response to this comment. The word “collaboratively” in final § 1610.3-2(a)(5) is existing language (see existing § 1610.3-1(a)(5)). The BLM believes that this existing language is appropriate because cooperating agencies may participate in the preparation of resource management plans in a capacity that exceeds the general coordination requirements described in final § 1610.3-2(c). For example, cooperating agencies may review and provide feedback on documents that are in development and not yet publicly available. The word “collaboratively” acknowledges the role of cooperating agencies in working with the BLM to develop documents, outside of normal public review processes or coordination requirements.

Cooperating Agencies (§ 1610.3-2(b))

**Comment:** One comment raised concerns that the proposed rule would remove opportunities for cooperators with scientific expertise and regulatory authority to collaborate in scientific analysis.

**Response:** The final rule does not remove opportunities for cooperating agencies with scientific expertise and regulatory authority to collaborate in scientific analysis. Section 1610.1-1(b) provides that the responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach. This interdisciplinary approach is used to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences and may include cooperating agencies with scientific expertise.

Final § 1610.3-2(b) provides for eligible governmental entities that have either special expertise or jurisdiction by law to participate in the planning process as cooperating agencies. Scientific expertise is encompassed by the term “special expertise,” and regulatory authority is encompassed by the term “jurisdiction by law.” In response to public comments, final § 1610.3-2(b)(2) is revised to provide “[t]he responsible official shall collaborate, to the fullest extent possible, will all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.” These changes are consistent with DOI NEPA regulations (43 CFR 46.230) and CEQ NEPA regulations (40 CFR 1501.6(a)(3)).

**Comment:** Several comments requested the BLM notify potential cooperating agencies early in the planning process. A few comments requested for the BLM to provide advance, direct notice to potential cooperating agencies before a planning process begins. One comment suggested that such notice come a year prior to the start of the process. These comments also

stated that notices published in newspapers or the *Federal Register* often do not reach local governments, who may not be within the distribution area of the newspaper or do not have the staff resources to monitor the *Federal Register*. Another comment recommended the BLM help cooperating agencies to ensure they obtain adequate resources before the planning process begins.

Several comments stated that the BLM should consider cooperating agency requests instead of relying solely on their judgment to invite cooperating agencies. Many comments objected to proposed changes to existing § 1610.3-1(b) which would eliminate the State Director's review of a denial of cooperating agency status by the BLM authorized officer, leaving the decision to a single BLM official. Comments requested that the final rule retain the State Director's review. Other comments recommended revisions to proposed § 1610.3-1(b) to state, "when preparing a resource management plan, the responsible official will issue a timely invitation to eligible governmental entities (see 43 C.F.R. 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an EIS to inform the amendment. In addition, the responsible official must consider a request by an eligible governmental entity to participate as a cooperating agency (see 43 C.F.R. 46.225(c)). If there is a denial for a request to become a cooperating agency, the deciding official will respond to the request explaining why the denial is appropriate."

**Response:** Final 1610.3-2(b) requires that the responsible official follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. This includes the requirement to "invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an environmental impact statement" (43 CFR 46.225(b)). Although the BLM intends to invite

eligible governmental entities early in the planning process, consistent with current practice, the planning rule does not identify specific requirements for the timing of invitations because the BLM may not be aware of an eligible governmental entity until the process is underway. The final rule requires the BLM notify any Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement in the preparation or amendment of a resource management plan (see § 1610.3-2(c)(3)). The timeframe for these notifications will be the same as those for the public (see § 1610.2-1). The BLM cannot commit to out-year funding or assisting local governments in acquiring resources to participate in the planning process. The BLM will post a list online of the status of each resource management plan in process or scheduled to be started by the end of each fiscal year under the provisions of § 1610.2(c). Interested members of the public may review that list for information on upcoming plans in advance of the BLM initiating public involvement opportunities. Additionally, in response to public comment final § 1610.2-1(c) is revised to require that the “responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.” This provision addresses concerns about local governments that may not be reached by notices in the *Federal Register* or through online notifications.

In response to public comments, the final rule is revised to include new § 1610.3-2(b)(1). This section requires the responsible official to consider any request by an eligible governmental entity to participate as a cooperating agency and provides that if the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or she shall inform the deciding official of the denial. The deciding official shall

determine if the denial is appropriate and state the reasons for any denials in the EIS. This revised process includes review by more than one BLM official, consistent with the existing regulations; however the final rule replaces references in the existing regulations to “Field Manager(s)” with “responsible official(s)” and references to “State Director(s)” with “deciding official(s)” for consistency with changes made throughout these regulations. This section also provides transparency on the process by requiring the BLM to include the reasons for any denials in the EIS.

**Comment:** Several comments recommended that the BLM consider eliminating the requirement for confidentiality for cooperating agencies and tribal governments by piloting new standards for open discussion. These comments noted that the public’s work should be done in public wherever possible to provide transparency. A few comments stated that meetings with cooperating agencies generally occur behind closed doors and raised concerns that the BLM may be excessively pressured by local interests and politicians. One comment included the view that granting local government’s access to preliminary data and planning proposals puts conservation groups and individuals at a disadvantage in the planning process. The comment noted that the views of conservation groups are often at direct odds with local governments. Comments recommended live streaming all meetings, providing a moment for public testimony at meetings with cooperating agencies, opening cooperating agency meetings to all stakeholders to attend but not participate in, or posting all communications with cooperating agencies online within 30 days.

**Response:** The final rule is not revised to eliminate requirements for confidentiality for cooperating agencies and tribal governments or to establish new regulatory requirements for cooperating agency interactions such as live streaming cooperating agency meetings, providing a

moment for public testimony at meetings with cooperating agencies, opening cooperating agency meetings to all stakeholders to attend but not participate in, or posting all communications with cooperating agencies online within 30 days.

The final rule provides for collaboration with cooperating agencies during the preparation or amendment of resource management plans, consistent with the DOI NEPA regulations (43 CFR § 46.230), the CEQ NEPA regulations (40 CFR § 1501.6), and the existing planning regulations. This collaboration may involve deliberations and documents that are not yet publicly available. Under the final rule, non-Federal cooperating agencies are required to sign a memorandum of understanding which includes a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts (see § 1610.3-2(b)(2)). Although the BLM may choose to make some meetings with cooperating agencies open to members of the public, it is not always appropriate to do so. For example, it would not be appropriate for the BLM to invite the public to a meeting in which confidential information, such as the location of sensitive cultural resources, or draft, deliberative documents are being discussed. It is important to note that information discussed at cooperating agency meetings is subject to the Freedom of Information Act, and the public may seek access to information through Freedom of Information Act procedures.

The BLM recognizes that members of public, including individuals, organizations, and State and local governments may have differing interests or views. One of the goals of Planning 2.0 is to provide opportunities for meaningful public involvement during the planning process. Through these opportunities any interested member of the public may influence the development of the resource management plan or plan amendment; however, the BLM retains decision-

making authority. The final rule includes new opportunities for public review of preliminary documents and increases transparency during the preparation and amendment of resource management plan (see § 1610.2).

**Comment:** Many comments included support for the requirement of a memorandum of understanding under proposed § 1610.3-1(b), including its commitment to maintain confidentiality. These comments noted that confidential review affords agencies the opportunity to identify and resolve conflicts without creating public worry or confusion and that both internal and cooperating agency review should be retained. The comments included these recommendations:

- The BLM should engage and extend cooperating agency invitations through the NOI in the *Federal Register* for all levels of plans and amendments.
- The BLM should use a temporary, limited scope memorandum of understanding that would apply to the planning assessment only. This memorandum of understanding would memorialize that the BLM would withhold confidential information provided by cooperating agencies during this phase. A separate memorandum of understanding could then be entered into at a later time.
- The final rule should require that cooperating agencies are invited to participate as early in the process as practical, but at a minimum, at the point the BLM has identified the goal that triggers the process.
- The final rule should require that a cooperating agency memorandum of understanding must be in place prior to commencement of the planning assessment.

- The Handbook should include a cooperative agreement and engagement letter outlining confidentiality expectations in the invitation to participate.

**Response:** Final § 1610.3-2(b)(2) adopts the requirement that when a cooperating agency is a non-Federal agency, a memorandum of understanding shall be used and shall include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts. The BLM agrees that this confidentiality is important to support effective cooperating agency relationships, including identifying and resolving potential conflicts.

The final rule does not adopt the recommendation to create a separate memorandum of understanding for the planning assessment. Final § 1610.3-2(b)(2) does not specify the length or scope of the memorandum of understanding and provides sufficient flexibility for the BLM and cooperating agencies to enter into a memorandum of understanding limited to the planning assessment or to have multiple memoranda of understanding, if necessary. The status of information provided to the BLM may be addressed in individual memorandums of understanding. It is also important to note that any information provided to the BLM by a cooperating agency or other entity is subject to the Freedom of Information Act.

In response to public comments, the final rule is revised to require the BLM to publish a NOI in the *Federal Register* for all resource management plans and plan amendments as described in final § 1610.2-1(f). The final rule does not, however, require an invitation for cooperating agencies to be included in the NOI. This is consistent with current regulations, which also does not require an invitation for cooperating agencies in the NOI. The NOI will include the kind and extent of public involvement activities to be provided, as known at the time, as well as contact information for a BLM official for further information. Eligible governmental

entities may contact this BLM official to request cooperating agency status and the BLM must consider this request (see final § 1610.3-2(b)(1)). The responsible official will also invite eligible governmental entities to participate as cooperating agencies as provided for in final § 1610.3-2(b). The BLM expects that in most cases these invitations will be extended when initiating the planning assessment; however the final rule does not establish a requirement for the timing of initiating cooperating agency relationships. The BLM will collaborate with cooperating agencies as early as possible in the planning process. Final § 1610.3-2(b)(3) includes the steps of the planning process where the BLM will collaborate with cooperating agencies; the earliest step in this section is the planning assessment.

The final rule does not adopt a provision that a cooperating agency memorandum of understanding must be in place before the commencement of the planning assessment. Eligible governmental entities have the option of entering into memoranda of understanding as cooperating agencies but are not required to do so at a specific point in the planning process. Creating a requirement to have a memorandum of understanding in place prior to the planning assessment would limit eligible government entities from joining as cooperating agencies later in the planning process. The BLM does not foresee any problems working with eligible governmental entities without a memorandum of understanding during the planning assessment step since this step primarily involves information gathering by the BLM.

The BLM expects to provide additional guidance related to cooperating agencies in the forthcoming revision of the Land Use Planning Handbook.

**Comment:** A few comments suggested that the BLM should engage State and local governments before hosting a public process as part of the planning assessment (*i.e.*, an “envisioning process”). According to these comments, this would allow the BLM to become

familiar with existing State and local planning, allow agencies to discuss goals and work out conflicts before opening the discussion up to the broader public, and would help facilitate meaningful involvement. Additionally, the presence of representatives from all agencies at an envisioning event would help efficiently answer the public's questions.

**Response:** The final rule is not revised to require any specific timing or sequencing for coordination with State and local governments and public involvement during the planning process. The BLM agrees that early coordination with State and local governments is important for a successful planning effort; however, the BLM also believes that detailed requirements regarding the timing of coordination and public involvement are not appropriate in regulations. The BLM expects that the forthcoming revision of the Land Use Planning Handbook will include more detailed guidance on coordination and public involvement during the planning assessment.

**Comment:** One comment recommended the final rule revise proposed § 1610.3-1(b)(2) to state that the responsible official will confidentially coordinate with cooperating agencies to the greatest extent consistent with Federal law given their interests, scope of expertise and the constraints of their resources, during the following steps in the planning process: (i) Discussions at the earliest practicable stage prior to issuance of a NOI; (ii) Preparing and issuing the NOI.

**Response:** Final § 1610.3-2(b)(3)(i) provides that the responsible official shall collaborate to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise during the preparation of the planning assessment. This step occurs prior to the publication of a NOI. The specific details for this collaboration, including roles and responsibilities, are established in a memorandum of understanding for each cooperating agency relationship. The final rule is not revised to include the suggested language in the comment. The BLM believes that the language in final § 1610.3-

2(b)(3)(i) appropriately provides for early collaboration with cooperating agencies while allowing flexibility for local offices to establish a cooperating agency relationship specific to their needs. The final rule is also not revised to require “confidential” collaboration. Agreements for confidentiality are addressed through the development of memoranda of understanding between the BLM and cooperating agencies (see § 1610.3-2(b)(2)) and must comply with Federal laws, such as the Freedom of Information Act.

**Comment:** A few comments recommended that cooperating agencies should be afforded a level of engagement from the lead Federal agency not afforded to the general public. These comments noted that locally elected commissioners are often the only people involved in planning with a broad view of the benefits and impacts of management decisions and who are directly accountable to the public.

**Response:** The final rule provides for collaboration with cooperating agencies during the preparation or amendment of resource management plans, consistent with the DOI NEPA regulations (43 CFR § 46.230) and the CEQ NEPA regulations (40 CFR § 1501.6). Cooperating agencies are provided a unique role in the BLM’s planning process as partners in developing the resource management plan or plan amendment. This role is not provided to other members of the public. For example, cooperating agencies may collaborate with the BLM during internal steps of the planning process, including the development of deliberative, draft documents.

**Comment:** Some comments suggested cooperating agencies should be involved in selecting contractors for plan preparation.

**Response:** The final rule is not revised to require that cooperating agencies be involved in selecting contractors for plan preparation. The BLM must select contractors in accordance with Federal acquisition laws and regulations. The BLM may seek the advice of cooperating

agencies, but this will be determined on a case-by-case basis, and must be in compliance with Federal laws and regulations.

**Comment:** Many comments raised concerns that the proposed rule would diminish the opportunity for State, local, and tribal governments to participate in planning processes, particularly by including the language “the responsible official will collaborate with cooperating agencies, as feasible and appropriate given their interests, scope of expertise and constraints of their resources.” These comments stated that the language implies that the BLM will determine on behalf of other agencies whether that agency believes they are able to adequately serve as a cooperating agency. Comments expressed that these discussions should occur as part of the memorandum of understanding development process instead of being contained in the rule. Additionally, comments asserted that FLPMA does not instruct the BLM to determine the feasibility and appropriateness of expertise or resource constraints of other agencies. Some comments stated that the provision in the proposed rule could make the public role more powerful than cooperating agencies by limiting cooperating agencies to their areas of expertise and allowing nongovernmental organizations to submit information, comment on alternatives, and protests plans. Comments included the following specific recommendations:

- The final rule should include existing language from the BLM’s “Cooperating Agency Desk Guide” that will reinforce the obligation of the agency to coordinate with local governments as well as the opportunities for counties to participate as cooperating agencies.
- If the BLM has questions of feasibility, constraints, and scope, those should be identified through the cooperating agency invitation process, not as inferred by the proposed

language. The BLM could ask the local government to address those elements in their response to an invitation.

- Section 1610.3-1(b) should replace the terms “as feasible and appropriate,” with “to the fullest extent possible.”

**Response:** In response to public comment, the final rule is revised to include a new § 1610.3-2(b)(1) which provides that the responsible official shall consider any request by an eligible governmental entity to participate as a cooperating agency. If the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or she shall inform the deciding official of the denial. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the EIS. This language is consistent with the DOI NEPA regulations (see 43 CFR 46.225) and ensures that the BLM considers requests for cooperating agency status.

In response to public comment, final § 1610.3-2(b)(2) (proposed § 1610.3-1(b)(2)) is revised to state that the responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. The final rule removes the phrase “as feasible and appropriate given their interests, scope of expertise and the constraints of their resources” as requested by public comments. For more information on these changes, please see the discussion of final § 1610.3-2(b)(2) in the preamble.

The BLM believes the final rule does not diminish the role of cooperating agencies, or afford the public an elevated role in the planning process above cooperating agencies. Cooperating agencies are provided a unique role in the BLM’s planning process as partners in developing the resource management plan or plan amendment. This role is not provided to other

members of the public. Focusing cooperating agencies efforts on those issues relating to their jurisdiction and special expertise is consistent with the DOI NEPA regulations (43 CFR 46.230) and CEQ NEPA regulations (40 CFR 1501.6). Although the BLM intends to continue to use the concepts in the “Cooperating Agency Desk Guide,” the current version of the guide will need to be updated to conform to the final rule.

**Comment:** Many comments stated that the proposed rule dilutes the importance of cooperating agency status by elevating citizens and nongovernmental organizations to a similar level. These comments noted that local governments provide special expertise as local stakeholders that have been elected to represent their constituents and that the views of state and local governments should receive particular consideration in the planning assessment process. Comments raised concerns that elevating citizens to the same level as cooperating agencies may be inconsistent with the Federal Advisory Committee Act (FACA). The comments noted that coordination must include private meetings where officials can openly share expertise, assess the resource, environmental, ecological, social, and economic conditions of the planning area, and formulate objectives. Comments included the following specific recommendations:

- The BLM should explain how the rule provides for meaningful involvement of State and local government officials in the development of land use plans.
- Local governments should have more than just a seat at the table and should also have voting or veto authority.
- The final rule should clarify what is meant by the “additional role” for non-Federal agencies that is mentioned in § 1610.3-1 of the preamble for the proposed rule.

- The final rule should provide clarity on how the BLM will commit to ensuring that cooperating agencies will be able to participate in organizing planning processes and preparing analyses, not only be limited to providing comments in the process.

**Response:** One of the goals of Planning 2.0 is to “provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans.” The final rule supports this goal by including new opportunities for public involvement in the planning process (see § 1610.2). Individuals, organizations, other Federal agencies, State and local governments, and Indian tribes will be able to participate in these new opportunities. Providing new opportunities for public involvement, however, does not diminish the role of cooperating agencies, nor does it elevate citizens to the same level as cooperating agencies. The BLM will provide for meaningful involvement of State and local government officials through the public involvement provisions in final § 1610.2, the coordination provisions in final § 1610.3-2(a), and through cooperating agency relationships as provided in final § 1610.3-2(b). The BLM considers the involvement in these sections to be “meaningful” because it can affect the outcome of the planning process. Individuals and nongovernmental organizations are not eligible to become cooperating agencies under final § 1610.3-2(b). The final rule complies with the provisions of the Federal Advisory Committee Act and the BLM will comply with it through individual planning processes.

The BLM recognizes the jurisdiction and special expertise of cooperating agencies. In response to these public comments, final § 1610.3-2(b)(2) is revised to provide that the “responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.”

The “additional role” for cooperating agencies mentioned in the preamble for the proposed rule is the opportunity for cooperating agencies to participate in the planning assessment. The final rule includes this opportunity as a provision of § 1610.3-2(b)(3)(i). The planning assessment will occur prior to formal scoping and represents an opportunity for early and meaningful involvement for cooperating agencies and other governmental entities in planning. This role is “additional” in the sense that it is a new step in the planning process.

The final rule is not revised to provide local governments voting or veto authority on resource management plans or plan amendments. Giving local governments voting or veto authority in the planning process would be inconsistent with FLPMA, which provides the BLM decision-making authority on the public lands. The BLM retains this decision-making authority under the final rule. Nothing in the final rule changes existing authorities of State and local governments.

The final rule is not revised to identify how cooperating agencies will be able to participate in organizing planning processes and preparing analyses. This level of detail is more appropriately addressed in the memoranda of understanding developed between the BLM and eligible governmental entities.

**Comment:** Several comments supported expanded involvement of cooperating agencies under proposed § 1610.3-1(b). These comments noted that in some circumstances past planning efforts have lacked meaningful involvement by cooperating agencies. The comments recommend that coordination should be a continual dialogue and that the BLM should take additional steps to encourage this dialogue with all governmental entities with interests relevant to the development of resource management plans.

**Response:** The final rule adopts § 1610.3-2(b) (proposed § 1610.3-1(b)). The BLM will provide for meaningful involvement of State and local government officials through the public involvement provisions in § 1610.2 of the final rule and the coordination provisions in § 1610.3. The BLM considers the involvement in these sections to be “meaningful” because it can affect the outcome of the planning process.

**Comment:** One comment recommended that § 1610.3 include direction for the types of input that are allowable for cooperating agencies. It suggested that the final rule should prescribe that cooperating agencies be able to share their local perspectives and current management plans; however, cooperating agencies should not be given any authority or influence over the selection of alternatives to be considered or the preferred alternative. Cooperating agency input should be weighed by the BLM equally with all of the other public comments in the NEPA process.

**Response:** The final rule is not revised to describe the types of input that are allowable for cooperating agencies. The BLM will consider all input received during the preparation of amendment of resource management plan, including input from cooperating agencies and other members of the public. The BLM does not believe that a provision limiting the types of input from cooperating agencies to be appropriate, just as it would not consider a provision limiting the types of input from the public to be appropriate. The BLM recognizes that cooperating agency status and the coordination process are unique opportunities for other Federal agencies, State and local governments, and Indian tribes to participate in the planning process. However, their participation in those opportunities does not diminish the importance of public input during public involvement opportunities. Under the final rule, the BLM is responsible for preparing the resource management plan or plan amendment, including the formulation of alternatives; the BLM retains exclusive responsibility to select the preferred alternative (see § 1610.5-4(a)(3));

the BLM also retains exclusive decision-making authority regarding the approval of the resource management plan (see §§ 1601.0-4 and 1610.6-1).

**Comment:** One comment recommended that states fulfill their obligations by having a county natural resource plan on-file, as well as by participating as a cooperating agency at multiple levels.

**Response:** The final rule does not require State or local governments to have a natural resource plan on-file or to participate as a cooperating agency. Participation in the BLM's planning process is optional. The BLM will coordinate with States and local governments on their natural resource plans and will invite eligible governmental entities to participate as cooperating agencies, but the BLM cannot guarantee the existence of such plans or State and local government interest in participation.

**Comment:** Many comments raised concerns that the substitution of "cooperating agency" with "eligible governmental entity" will lead to confusion and potentially exclude some government entities.

**Response:** The final rule is not revised in response to these comments. The final rule uses the term "eligible governmental entity" to describe eligibility to participate as a cooperating agency. This term is used in the existing definition of "cooperating agency" (§ 1601.0-5) and in the DOI NEPA regulations (43 CFR 46.225). The use of this term in the final rule is not a change from existing practice or policy and therefore will not lead to confusion over cooperating agency eligibility or exclude some government entities that are eligible to participate as cooperating agencies.

**Comment:** One comment supported the inclusion of the term “eligible governmental entity,” which includes other entities like Alaska Native Corporations that are lawfully eligible for government-to-government consultation status.

**Response:** The BLM did not adopt this change in the final rule because Alaska Native Corporations are not “eligible governmental entities” as defined at 43 CFR 46.225. The final rule does not affect implementation of “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). The BLM remains committed to meaningful consultation with Alaska Native Corporations during the planning process.

**Comment:** One comment raised concern regarding the level of participation afforded to other Federal agencies in the planning process. The comment noted that the word “appropriate” has been removed when describing Federal agencies that may participate as cooperating agencies in proposed § 1601.0-5 and that this may have the effect of opening up cooperation with more Federal agencies than historically included rather than limiting their participation by expertise and jurisdiction.

**Response:** Final §§ 1601.0-5 and 1610.3-2(b) limit cooperating agency status to eligible governmental entities, *i.e.*, governmental entities that have either special expertise or jurisdiction by law (see 43 CFR 46.225). This does not represent a change from current practice or policy under the existing regulations.

**Comment:** One comment supported the consolidation of cooperating agency references in the proposed rule that indicate that the BLM will continue to ensure local governments’ opportunity to participate as cooperating agencies early in the planning process. Another comment included no objection to the consolidation of cooperating agency references as

proposed for clarity and readability. Other comments requested that the phrase “in collaboration” with cooperating agencies be added back in, but changed to “in coordination with cooperating agencies.”

**Response:** The final rule adopts the proposal to consolidate existing references to collaborating agencies and move these references to final § 1610.3-2(b)(3). The BLM intends no change in practice or policy by consolidating these references; rather, the BLM believes that consolidating these references improves readability and clarity. The final rule is not revised to retain the existing phrase “in collaboration with cooperating agencies” used throughout existing § 1610.4 or to replace the existing phrase with “in coordination with cooperating agencies.” These suggested changes are unnecessary because cooperating agency references are consolidated in final § 1610.3-2(b)(3).

**Comment:** Several comments noted potential differences between the rule and NEPA provisions. One comment referenced the 2002 CEQ memo on “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” and how the role and duties of a cooperating agency differ significantly from, and cannot be used to substitute for, the requirements for coordination and plan consistency. Other comments noted the proposed rule fails to recognize that the cooperating agency role is separate from the “coordination” and “consistency” roles under FLPMA. These comments suggest that the final rule should provide for cooperating agency status as required under NEPA.

**Response:** Final § 1610.3-2(b) provides for collaboration with cooperating agencies during the preparation or amendment of resource management plans, consistent with the DOI NEPA regulations (43 CFR 46.230) and the CEQ NEPA regulations (40 CFR 1501.6). The final rule separately describes the objectives of coordination (final § 1610.3-2(a)), specific

requirements for coordination (final § 1610.3-2(c)), and specific requirements for consistency with the officially approved and adopted plans of other governmental entities (final § 1610.3-3). The BLM believes that cooperating agency relationships help to support effective coordination between the BLM and other governmental entities, but regardless of another agencies decision to participate or not participate as a cooperating agency, the BLM will coordinate with other governmental entities pursuant to §§ 1610.3-2(a) and (c) and will comply with the consistency requirements of § 1610.3-3.

**Comment:** Many comments raised concerns that the proposed rule limits local governments to “cooperator” status by failing to provide for “coordination” status, per FLPMA, and places an unfair burden on such governmental entities. These comments included the view that Federal agencies coerce county governments to agree to cooperator status, thus implying de facto agreement with BLM plans, and that State and local governments should not be required to be a cooperating agency to benefit from meaningful coordination and consistency review in the planning process. They also noted that many local governments cannot effectively coordinate with the BLM if their discussions and documents are subject to confidentiality requirements and that local governments often do not have the resources to serve as cooperating agencies.

Comments included the following recommendations:

- Arrangements should be in place to allow local governments that choose not to participate as a cooperating agency meaningful input in the planning process.
- Proposed § 1610.3-1(b) should be removed from the final rule.
- The final rule should distinguish between cooperating agency responsibilities and coordination responsibilities.
- The definition of coordination should be restored.

**Response:** The BLM recognizes that State and local governments may choose not to participate as cooperating agencies for a variety of reasons such as limited resources or confidentiality concerns. Under the final rule, participation as a cooperating agency is optional. The final rule includes a number of ways for State and local governments to meaningfully participate in the planning process outside of cooperating agency status. State and local governments may participate in the opportunities for public involvement described in § 1610.2 of the final rule. Additionally, the BLM will coordinate with State and local governments in accordance with final §§ 1610.3-2(a) and (c) and will also comply with the consistency requirements of final § 1610.3-3. The final rule is consistent with FLPMA (43 U.S.C. 1712(c)(9)).

The final rule is not revised to remove proposed § 1610.3-1(b), as requested by some comments. This section is based on existing § 1610.3-1(b) and provides for collaboration with cooperating agencies consistent with DOI NEPA regulations (43 CFR 46.230) and CEQ NEPA regulations (40 CFR 1501.6). The BLM believes that it is appropriate to include provisions related to cooperating agencies in the planning regulations because these relationships have proven to be valuable in many of BLM's previous planning efforts.

The existing regulations do not include a definition for coordination, as suggested by public comment; the final rule is also not revised to include a definition for this term, as this is a commonly used term.

The final rule appropriately distinguishes between cooperating agency relationships (final § 1610.3-2(b)) and coordination requirements (final § 1610.3-2(c)).

**Comment:** Several comments requested that the BLM contact cooperating agencies if a protest is filed against a proposed decision and if a document is changed due to plan maintenance.

**Response:** Specific details regarding cooperating agency relationships, including roles and responsibilities, will be established through memoranda of understanding for individual planning efforts (see § 1610.3-2(b)(2)). This document may include procedures for communication between the BLM and the cooperating agency, including how to address protests. The BLM will provide notifications to governmental entities, regardless of cooperating agency status, consistent with final § 1610.3-2(c)(3). The final rule does not include specific notification requirements for cooperating agencies outside of the general notification requirements for governmental entities.

Section 1610.2-1(i) requires that the BLM notify the public of any changes made through plan maintenance and provide at least 30 days for public review prior to implementation. The final rule does not establish further notification requirements for cooperating agencies because a formal cooperating agency relationship is established for the preparation or amendment of a resource management plan. Once the resource management plan or plan amendment is approved, the cooperating agency relationship established for the planning effort is complete. The BLM may, however, continue to coordinate with governmental entities regarding implementation of or changes to the resource management plan through on-going coordination, as appropriate.

**Comment:** A few comments expressed concern that the proposed rule may exclude cooperating agencies from participating in the revision of implementation strategies stating that this exclusion would jeopardize successful implementation. These comments suggested that

cooperating agencies should be involved throughout all stages of the planning process, including the application of implementation strategies.

**Response:** The final rule does not adopt proposed § 1610.1-3. Proposed § 1610.1-3 described implementation strategies that the BLM proposed to develop in conjunction with a resource management plan, but that would not represent planning level management direction and would not be considered components of the resource management plan. As proposed, implementation strategies would be included as an appendix to the resource management plan. The proposed rule described implementation strategies as examples of how the BLM would implement future actions consistent with the planning-level management direction. After careful consideration of public comment, the BLM believes that this proposed concept is not appropriate for inclusion in this rule. For more information, please see the discussion on proposed § 1610.1-3 in the preamble to the final rule.

*Coordination Requirements (§ 1610.3-2(c))*

**Comment:** Several comments included the view that proposed § 1610.3-1(c)(1) inappropriately imposes the burden of satisfying coordination requirements on Governors and does not explain what happens to local coordination if the Governor fails to accept the duties imposed by this section. Comments requested the final rule clarify that FLPMA imposes the requirement on BLM to coordinate with State and local governments.

**Response:** The final rule does not impose the burden of satisfying coordination requirements on Governors, as suggested by the comment. Final § 1610.3-2(c) requires that the BLM shall provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. This coordination responsibility is not limited to State

governments. The requirements of final §§ 1610.3-2(c)(1), (c)(2), and (c)(4) are specific to the BLM's coordination with State governments, but do not limit coordination with other Federal agencies, local governments, or Indian tribes. Final §§ 1610.3-2(c)(3) and (c)(5) apply more broadly to coordination with other Federal agencies, State and local governments and Indian tribes.

**Comment:** One comment stated that the proposed rule conflicts with the intention of a State legislature to make certain local government units independent of the Governor by establishing a requirement that matters for consultation with the BLM must first be approved by the Governor. For example, individual Soil and Water Conservation Districts were intended to be independent of the Governor in their State.

**Response:** The final rule does not require that “matters for consultation with the BLM must first be approved by the Governor.” The final rule provides for coordination with local governments (see final § 1610.3-2) and local governments with either special expertise or jurisdiction by law (see 43 CFR 46.225) may participate in the preparation or amendment of a resource management plan as a cooperating agency. The final rule also describes consistency requirements which apply to the officially approved and adopted plans of local governments (see final § 1610.3-3). The final rule describes a few unique requirements that apply only to Governor's (see §§ 1610.3-2(c)(1) and (c)(2), and 1610.3-3(b)), such as the Governor's consistency review. These provisions, however, do not preclude the BLM from coordinating with local governments independent of a Government, and would not preclude those agencies from participating as cooperating agencies under.

**Comment:** One comment stated that proposed § 1610.3-1(c)(1) permissively allows the BLM to consult with Governors, but this consultation provision should be obligatory to the BLM. The comment recommended the final rule replace the word “should” with “will.”

**Response:** Final § 1610.3-2(c)(1) provides that “to facilitate coordination with State governments, deciding officials should seek the input of the Governor(s).” The final rule is not revised to replace the word “should” with “will” as suggested by the comment. The word “should” is retained from the existing regulations and does not represent a change in policy from existing regulations.

**Comment:** One comment requested that the final rule reference a recently adopted memorandum of understanding between the BLM and a particular State agency, which specifies consistency and coordination responsibilities between the two agencies.

**Response:** The final rule is not revised to cite a specific memorandum of understanding as this level of detail would be inappropriate in regulations. The final rule establishes in regulations a process for the development, approval, maintenance, and amendment of resource management plans, but does not provide detailed guidance regarding implementation of this process. The BLM expects to provide more detailed guidance in a forthcoming revision to the Land Use Planning Handbook.

**Comment:** A few comments raised concerns that the phrase "coordination with other Federal agencies, State and local governments, and Indian tribes," would not include a State land management agency that is constitutionally separate from the State's Governor under State law.

**Response:** Final § 1601.0-5 is revised to define “State and local governments” as “the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.” Using

this definition, the BLM will coordinate with any State land management agency that is a political subdivision of the State, including those that are constitutionally separate from the State's Governor under State law.

**Comment:** Many comments raised concerns that the proposed rule limits opportunities for coordination with State and local governments and diminishes their ability to inform the BLM of conflicts between state and local land use plans and policies and Federal land use plans. Because of this, the comments stated the proposed rule as written violates FLPMA (43 U.S.C. 1712(c)(9)). Comments noted the following points and assertions in regards to coordination:

- The proposed rule would remove existing § 1610.1(a)(3) which requires that guidance be developed with necessary and appropriate governmental coordination and related existing § 1610.3-1(d). By deleting these sections, local government involvement would be limited to only BLM land use plans and not the guidance provided to develop such plans. Comments requested that the final rule retain requirements for coordination on guidance.
- Coordination under the proposed rule only includes providing “opportunity for review, advice and suggestions on issues and topics which may affect or influence other agency or governmental programs.” Comments requested the final rule provide specific details as to how and when government entities will be afforded opportunities for review, advice, and suggestion. Some comments suggested that proposed § 1610.3-1(c) (final § 1610.3-2(c)) should be revised to state that the BLM must provide governments and tribes opportunity for review, advise, and suggestions “on the development of resource management plans,” not on “issues

and topics which may affect or influence other agency or other government programs.”

- The proposed rule provides no opportunity for coordination on inventories in advance of land use plan development. Comments requested the final rule include provisions for coordination on inventories and requirements for early coordination in the process, particularly in the planning assessment (*e.g.*, after the deciding official is selected and in conjunction with the determination of the planning area).

**Response:** The final rule does not limit opportunities for coordination with State and local governments or diminish their ability to inform the BLM of conflicts between state and local land use plans and policies and Federal land use plans. Final § 1610.3-2 appropriately provides for coordination, consistent with FLPMA (43 U.S.C. 1712(c)(9)).

The final rule removes existing §§ 1610.1(a)(3) and 1610.3-1(d), which describe requirements related to guidance. These existing sections are unnecessary as they describe an internal BLM process. Further, existing § 1610.3-1(d) exceeds the statutory requirements of FLPMA, which provides for consistency with resource management plans, but not BLM guidance. (See 43 U.S.C. 1712(c)(9).) The removal of these existing sections represents a change from existing requirements; however, the BLM believes that this change is appropriate and does not limit opportunities for coordination.

The final rule is not revised to provide more specific details as to how and when government entities will be afforded opportunities for review, advice and suggestion. Final § 1610.3-2(c) describes the general requirements related to coordination, including notification requirements and opportunities for review and comment on planning documents. More specific

details will vary based on individual planning efforts and unique local circumstances. The final rule is also not revised to replace “issues and topics which may affect or influence other agency or other government programs” with “on the development of resource management plans.” The development of resource management plans is encompassed by this broader language.

In response to public comment, final § 1610.4(b)(1) is revised to state that to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located. This change acknowledges the importance of early coordination on inventory prior to the preparation of a resource management plan.

**Comment:** Several comments included concerns that the proposed rule fails to establish when coordination should occur or provide procedural detail on how specifically the BLM plans to coordinate with State and local entities. One comment noted that the proposed rule lacks specific details regarding how the BLM will coordinate with State wildlife agencies, and requested that the BLM add this information to the rule. Some comments requested that proposed § 1610.3-1(c) be revised to accomplish the objectives stated in proposed § 1610.3-1(a). Some comments requested that these procedural details be developed by providing an additional comment period for the final rule to allow meaningful public and partner input.

**Response:** Final § 1610.3-2 describes specific requirements for coordination with other agencies and governmental entities, such as State wildlife agencies during the preparation and amendment of resource management plans. This includes requirements for notification and opportunities for review and comment on resource management plans and plan amendments. Final § 1610.3-2(c)(3) requires that the responsible official notify Federal agencies, State and

local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement in the preparation or amendment of a resource management plan. The timing for these notices is described in § 1610.2-1. Final § 1610.3-2(c)(5) requires that the responsible official provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and comment on resource management plans and plan amendments.

These provisions represent minimum requirements for coordination. The BLM expects that additional coordination will occur through on-going communication between the BLM and other governmental entities in order to achieve the objectives described in final § 1610.3-2(a) (proposed § 1610.3-1(a)). The details of this on-going communication, however, will vary based on unique local circumstances. For example, this communication could occur through the establishment of a cooperating agency relationship, or it could occur through regularly scheduled meetings between a responsible official and representatives from other governmental entities.

It is also important to note that the final rule establishes in regulations a process for the development, approval, maintenance, and amendment of resource management plans, but does not provide detailed guidance regarding implementation of this process. The BLM expects to provide more detailed guidance regarding coordination in a forthcoming revision to the Land Use Planning Handbook.

The BLM does not agree that an additional public comment period on the proposed rule is necessary or warranted. The BLM published the proposed rule in the *Federal Register* on February 25, 2016 (81 FR 9674) for a 60-day comment period ending on April 25, 2016. In response to public requests for an extension, the BLM extended the comment period for an

additional 30 days on April 22, 2016 (81 FR 23666). The BLM received 3,354 comment letters, which are available for viewing on the regulations.gov website by entering Docket ID: BLM-2016-0002 in the “Search” bar. The BLM considered all of these comments when developing the final rule.

**Comment:** One comment recommended that the BLM consult with local governments potentially affected by a planning effort before the BLM formulates conclusions, recommendations, or determines relevancy of issues based on information obtained during the planning assessment.

**Response:** Under the final rule, the BLM will coordinate with local governments during the planning assessment (see § 1610.4(b)) and during the preparation of a resource management plan or plan amendment. This coordination will be initiated prior to the formulation of any conclusions, recommendations, or identification of planning issues. It is important to note, however, that coordination is an on-going process that occurs throughout the preparation of a resource management plan or plan amendment. Final § 1610.3-2 describes the coordination process including the objectives of coordination, cooperating agency relationships, and coordination requirements. Final § 1610.3-3(c) requires that the BLM provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestions on issues and topics which may affect or influence other agency or other government programs. This includes requirements for notification and opportunities for review and comment on resource management plans and plan amendments.

**Comment:** One comment raised concerns on the implications of changing “State Directors, Field Managers or District Managers” as the ones to exercise the coordination responsibility to a generic “BLM.” The comment stated that while it is the BLM’s responsibility

to coordinate, failure to identify specific individuals will result in a lack of accountability. The comment recommended that the final rule acknowledge that while it is BLM's coordination responsibility, the front-line coordination duty lies with the BLM decision-maker. He or she can then be held accountable by a local government or BLM leadership for any failure to meet coordination requirements under FLPMA.

**Response:** The final rule refers to “the BLM” in places where a responsibility may apply more broadly than to a single BLM official or where the BLM believes it would be inappropriate to attribute the responsibility to a specific BLM official in regulation because, for example, the appropriate official to fulfill the responsibility could change in the future or depending on unique circumstances. When a specific action is clearly required from a single BLM official and it is appropriate to identify such official in regulations, the final rule identifies either the “responsible official” or the “deciding official.” The BLM believes this approach provides transparency and accountability while still maintaining flexibility as needed. In response to public comment, final 1610.3-2(c)(4) and (c)(5) are revised to replace “the BLM” with “the responsible official.” In these circumstances, the BLM believes it is appropriate to attribute responsibility to the responsible official.

**Comment:** One comment recommended the final rule revise proposed § 1610.3-1(c) to state that “in addition to following the coordination requirements of § 1610.3-1(a),” the BLM will provide Federal agencies, State and local governments and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs.

**Response:** The final rule is not revised to include the recommended text. Final § 1610.3-2(a) (proposed § 1610.3-1(a)) describes the overall objectives of coordination, whereas final §

1610.3-2(c) (proposed § 1610.3-1(c)) describes specific requirements related to coordination. It would be confusing and inaccurate to reference final § 1610.3-2(a) as coordination “requirements.”

**Comment:** Several comments included the view that the proposed rule inappropriately removes the requirement to coordinate with local governments concerning local land use policy, programmatic and process development. These comments noted that policy development is the foundation of planning and that local planning becomes a useless exercise where there is significant BLM presence in and around the local entity.

**Response:** In response to public comment, the final rule is revised to require that the BLM coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, and management programs that are germane to the development of resource management plans in order to assure that consideration is given to all of these documents during the preparation of resource management plans (see final § 1610.3-2(a)). The BLM believes that coordination on and consideration of plans, policies, and management programs is important to a successful planning effort and this coordination is appropriately addressed in § 1610.3-2 of the final rule.

*Notification Requirements (§ 1610.3-2(c))*

**Comment:** Several comments raised concerns that the proposed rule would not provide adequate notice to State and local governments. Some comments noted that local governments represent those most affected by public lands. Some comments asserted that the proposed rule would narrow or eliminate notification requirement and this would cause harm to State and local governments and diminish the BLM’s coordination responsibilities under FLPMA (43 U.S.C. 1712(c)(9)). Several comments stated that under FLPMA, the BLM must provide for the

meaningful public involvement of non-Federal government entities, including early public notice of proposed decisions that may have significant impacts on non-Federal lands.

Many comments expressed concerns about eliminating the mandatory notification requirements from the BLM to affected local governments and replacing it with BLM notifying local governments “that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment.” Several comments stated that the notification requirements effectively make notification discretionary; if State and local governments have not requested notification, then their notification is dependent on whether the responsible official thinks they would be interested. Comments stated that it would be difficult for the BLM to determine who should receive information and asserted that the proposed regulations could allow the BLM to disengage under the premise that they believe local governments are not concerned or interested. Comments also stated that it should not be necessary for State or local officials to monitor BLM websites or visit BLM offices to obtain notice of involvement opportunities. Several comments stated that it would be much easier for agencies to miss the opportunity to seek cooperating agency status. Some comments asserted that the limitation to notify “elected heads of county boards” is inconsistent with 1610.3-1(a)(4), to “provide for meaningful public involvement of local government officials, both elected and appointed.” Several comments expressed that the BLM should put more effort into outreach, especially within rural counties.

Several comments requested that existing notification requirements be retained. Several comments requested the BLM provide early notification to the State and local government, prior to public notice, of all BLM actions or plans that will affect the local population. One comment requested the final rule require BLM to notify local governments of NOIs prior to public

notification through mail or email as appropriate. Other comments requested the final rule include separate “early public notice to non-Federal government entities.”

Some comments requested that the BLM contact all interested parties to notify them of information collection efforts in the planning assessment phase. One comments requested that this notification be in writing. The comment also noted that in response to such a notification, counties could then provide the BLM with county plans and data that would assist in the assessment and start the process of ensuring consistency with local plans

Some comments requested the BLM continue the current process of notifying State and local agencies via email or mail. Some comments requested the BLM continue to publish all notices in the *Federal Register*. Several comments requested that all government agencies and tribes within a proposed planning area be notified regardless of whether or not they have submitted a request. One comment recommended the final rule include a requirement that the responsible official will notify relevant State agencies of opportunities for meaningful government-to-government involvement in the preparation and amendment of resource management plans consistent with State procedures for coordination of Federal activities.

Some comment expressed that the harm from changes to the notification requirements is compounded by shifting the consistency burden to affected State, local, and tribal governments, so that they may have to request notification in order to evaluate plans for consistency. Some comments asserted that the changes to the notification provisions of the regulations violate the White House’s memo on transparency and open government.

**Response:** The final rule does not diminish the BLM’s coordination responsibilities under FLPMA. Under the final rule, the BLM will provide for the meaningful public involvement of State and local government officials, including early public notice of proposed

decisions which may have a significant impact on non-Federal lands, consistent with FLPMA (43 U.S.C. 1712(c)(9)). Final § 1610.3-2(c)(3) requires the BLM to notify other Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement in the preparation or amendment of a resource management plan. This notification requirement includes, but is not limited to: public meetings or workshops; opportunities to submit data and information for the planning assessment; review of the planning assessment report; review of the preliminary purpose and need statement; opportunities related to the identification of planning issues; review of the preliminary alternatives, rationale for alternatives and basis for analysis; comment on the draft resource management plan; and protest of the proposed resource management plan (see § 1610.2-1(a)).

The final rule specifically provides for notification to those governmental entities that “have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment” because the BLM cannot reasonably guarantee that the BLM will be aware of all governmental entities that are interested in the planning effort. The BLM interprets the phrase “interested in” to include those “affected by” a resource management plan. The BLM will work to keep apprised of and provide early notification to any affected or interested governmental entities to the best of our ability, consistent with current practice.

The existing regulations do not include mandatory notification requirements from the BLM to any affected local governments, as suggested by several comments. Existing regulations require the BLM submit the NOI for a planning effort to “to Federal agencies, the heads of

county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment” (existing § 1610.3-1(e)). The final rule expands this existing requirement to include those believed to be “interested in” a planning effort, and to include notification for all opportunities for public involvement, not just the NOI. In response to public comment the final rule replaces the phrase “Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders” with the more general phrase “Federal agencies, State and local governments, and Indian tribes.”

The final rule removes the existing requirement for the BLM to maintain a list of groups or individuals “known to be interested in or affected by a resource management plan” (existing § 1610.2(d)) because this requirement places an unnecessary burden on the BLM to find contact information for groups or individuals that may not be readily available. Final § 1610.3-2(c)(3) instead requires the BLM to notify any groups or individuals that have explicitly requested to be notified of opportunities for public involvement, or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment. Under the final rule the BLM will continue its current practice to conduct outreach to all individuals or groups known to be interested in or affected by a resource management plan. The BLM believes that such outreach is essential to a successful planning process. The final rule simply reflects the fact that the BLM cannot “guarantee” that such individuals or groups will be added to the mailing list unless they request to be added and provide the BLM with current contact information.

The final rule is not revised to require notice be provided to State and local governments prior to notifying the public. The BLM endeavors to provide notification to all interested parties

as early as possible, include State and local governments. The final rule is also not revised to require notification of the planning assessment must be provided in writing. Should a State or local government request notification, the BLM will provide such notification through written or electronic means, such as email communication (see § 1610.2-1(d)). In other situations, however, other forms of notification, such as a telephone call or in-person meeting, may be more effective and preferred by the State or local government representative. The final rule provides flexibility for responsible officials to identify effective means to provide notification. Final 1610.3-2(c)(4), however, requires that the responsible official shall notify relevant State agencies consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist.

In response to public comment, the final rule retains most existing requirements for *Federal Register* notices, including publishing a NOI in the *Federal Register* for all plan amendments (see § 1610.2-1(f)). When the BLM is not required to provide notification through publication in the *Federal Register*, the BLM will still provide direct notification through written or electronic means to those that have requested to be notified. In response to public comments, final § 1610.2-1(c) is revised to provide that the responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.

The final rule is consistent with the President's 2009 Open Government Directive (M-10-06). This directive describes the three principles of transparency, participation, and collaboration as the cornerstone of an open government by promoting accountability to the public, sharing of information, and partnerships and cooperation within the Federal Government, across all levels of government, and between the government and private institutions. The final rule supports this

directive by providing increased transparency and opportunities for public involvement in resource management planning.

**Comment:** One comment asserted that the proposal to notify Indian tribes when the responsible official has “reason to believe” an Indian tribe is interested is contrary to the DOI’s Policy on Consultation with Indian Tribes. The BLM “must notify” an appropriate Indian tribe.

**Response:** In response to public comment, the final rule is revised to include a new section § 1610.3-1. This new section requires the BLM to initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This requirement is in addition to notification requirements described in final § 1610.3-2(c).

**Comment:** One comment stated that, under the proposed rule and its notification changes, the BLM is still obligated by local cooperative memoranda of understanding and county coordination to provide advance notice to involved State and local governments. The comment noted the importance of this based on how these entities need to structure staff workloads in anticipation of increased planning work with BLM.

**Response:** The final rule does not change existing memoranda of understanding regarding notice to State and local governments, so long as the memoranda of understanding do not conflict with the provisions of the final rule. The final rule also does not preclude the development of future memoranda of understanding between the BLM and State and local governments. The development of future memoranda of understanding will be at the discretion of the deciding official, subject to applicable law and regulation.

Alaska Native Corporations (§ 1610.3-2(c))

**Comment:** A few comments noted that the proposed rule revises existing provisions in Section 1610.3-1(e) to replace “Tribal Chairmen or Alaska Native Leaders” with “elected government officials of Indian tribes” and that this change would effectively exclude Alaska Native Corporations from the required notice. The comments recommend that § 1610.3-1(c)(3) should provide for specific notice to the leaders of Alaska Native Corporations that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan.

**Response:** Final § 1610.3-2(c)(3) is revised to replace existing language with a more general statement to notify “Federal agencies, State and local governments, and Indian tribes.” This statement is more consistent with the language used throughout this subpart. Section 1610.3-2 applies to coordination with other Federal agencies, State and local governments, and Indian tribes, consistent with FLPMA (43 U.S.C. 1712(c)(9)). This section does not apply to Alaska Native Corporations, which are not a governmental entity. The BLM will, however continue to notify any Alaska Native Corporations that have requested to be notified or that the responsible official believes may be interested in a resource management plan. The BLM intends no change from current practice; rather, this change is intended to clarify that § 1610.3-2 applies to coordination as described in FLPMA (43 U.S.C. 1712(c)(9)). It is also important to note that the final rule does not affect implementation of “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). BLM remains committed to meaningful consultation with Alaska Native Corporations during the planning process.

**Comment:** One comment stated that Alaska Native Corporations must be provided the opportunity to meaningfully participate in the development and implementation of resource management plans that could impact their ability to fulfill the purposes for which they were established under the Alaska Native Claims Settlement Act (ANCSA) (and which were recognized and preserved under the Alaska National Interest Lands Conservation Act) and to protect and advance the economic, social, and cultural interests of their shareholders. The comment also noted that consultation with Alaska Native Corporations must commence at the earliest stages of the resource management planning process and continue with each step of the process, including the planning assessment, identification of planning issues, preliminary resource management alternatives and preliminary rationale for alternatives, the basis for the analysis, the draft resource management plan or amendment, and early notice of any final decisions that may have a significant impact on Alaska Native Corporation land interests and implementation. Another comment recommended that Alaska Native Corporations must be afforded the opportunity to participate at the community level of planning. This comment stated that Alaska Native Corporations should be given the opportunity to hear stakeholder issues and concerns firsthand and to provide their views, data, and information. The comment requested BLM provide reasonable advance notice to Alaska Native Corporations.

**Response:** The BLM will continue to consult with Alaska Native Corporations and provide opportunities for meaningful participation during the preparation and amendment of resource management plans. Notification will be provided consistent with public notices required under final § 1610.2-1, which include the planning assessment (subject to § 1610.4); identification of planning issues and review of the preliminary statement of purpose and need; review of the preliminary resource management alternatives, preliminary rationale for

alternatives, and the basis for the analysis, as appropriate; comment on the draft resource management plan; and protest of the proposed resource management plan. The final rule does not affect implementation of “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). BLM remains committed to meaningful consultation with Alaska Native Corporations during the planning process.

*Resource Advisory Councils (§ 1610.3-2(d))*

**Comment:** One comment included support of the recognition of the role that Resource Advisory Councils (RACs) may play in the planning process and encouraged increased use of them as a resource.

**Response:** Final § 1610.3-2(d) includes language recognizing the role of RACs in the land use planning process. The BLM will continue to inform RACs, seek their views, and consider them throughout the planning process, consistent with current practice and policy.

**Comment:** One comment included an opinion that public advisory committees will be harmed by proposed rule.

**Response:** The final rule does not harm committees chartered under the Federal Advisory Committee Act, such as RACs. Section 1610.3-2(d) retains existing provisions describing the role of RACs in resource management planning.

**Comment:** One comment requested information regarding how the BLM will coordinate draft review with RACs without making internal documents public.

**Response:** Section 1610.3-2(d) of the final rule describes the role of RACs. RACs will review draft resource management plans during the public comment period. All RAC meetings are open to the public, in compliance with the Federal Advisory Committee Act.

State Historic Preservation Offices and Tribal Historic Preservation Offices (§ 1610.3-2(c))

**Comment:** A few comments recommended including “State Historic Preservation Officers” and/or “Tribal Historic Preservation Officers” after the phrase “Federal agencies, State and local governments, and Indian tribes” at several points throughout § 1610.3. One comment included the view that there needs to be coordination with State Historic Preservation Offices (SHPO) and Tribal Historic Preservation Offices (THPO) on data and plans through coordination requirements and consistency review. A comment recommended the final rule specifically include the data and plans that State and Tribal Historic Protection Offices collect, create, and manage in sections where input from States and Indian tribes are recommended or called for. Some comments recommended early consultation with Tribal Historic Preservation Offices on landscape-scale assessments.

**Response:** The final rule is not revised in response to this comment. The final rule does not explicitly mention Tribal Historic Preservation Offices or State Historic Preservation Offices because this level of detail is unnecessary in the regulations. It is also not practical to describe the various types of data and plans that are relevant to the planning process or the specific governmental entities with which the BLM coordinates in the planning regulations. State Historic Preservation Offices and Tribal Historic Preservation Offices are examples of the types of offices that would be included under the requirements of final § 1610.3. The BLM expects that the forthcoming revision to the Land Use Planning Handbook will provide more detailed guidance in regards to coordination.

Coordination and Implementation Strategies

**Comment:** Many comments expressed concerns that the proposed implementation strategies would not require formal coordination or public involvement and that cooperating

agencies would be excluded when implementation strategies are revised. Comments stated that State, local, and tribal governments have special expertise germane to the development of implementation strategies and must be involved beyond the proposed 30-day review period. Some comments asserted that because implementation strategies include management measures it would be unlawful to exclude implementation strategies from coordination requirements. Comments requested that the BLM be required to engage local governments in all stages of resource management plan development and implementation. Comments also requested that the final rule clarify that the modification of implementation strategies and plan components requires full interagency coordination as described in Sections 1610.2 and 1610.3, and that local governmental entities should be consulted on implementation strategies regardless of any formalized relationship (*e.g.*, cooperating agency relationship) between the parties.

**Response:** Final § 1610.3-2 provides for coordination with local governments throughout the planning process, including the development of plan components. Plan components form the basis of the resource management plan, and therefore any coordination related to preliminary alternatives or the draft resource management plan will involve coordination on plan components.

The final rule does not adopt proposed § 1610.1-3. Proposed § 1610.1-3 described implementation strategies that the BLM proposed to develop in conjunction with a resource management plan, but that would not represent planning level management direction and would not be considered components of the resource management plan. As proposed, implementation strategies would be included as an appendix to the resource management plan. The proposed rule described implementation strategies as examples of how the BLM would implement future actions consistent with the planning-level management direction. After careful consideration of

public comment, the BLM believes that this proposed concept is not appropriate for inclusion in this rule. For more information, please see the discussion of proposed § 1610.1-3 in the preamble to the final rule.

### *Interdisciplinary Teams*

**Comment:** One comment recommended that State and local governments and Indian tribes be included on the interdisciplinary team for preparation of preliminary alternatives, rationale for alternatives and basis for analysis. The comment noted that when the public review occurs, State and local government would have provided their reasoning and positions and would have been a part of the alternative and impact dissemination scheme. This approach would provide a better and fuller disclosure of information.

**Response:** State and local governments and Indian tribes may participate on interdisciplinary teams as cooperating agencies if they are an “eligible government entity,” meaning that they have either jurisdiction by law or special expertise (see 43 CFR 46.225). The final rule provides for the BLM to collaborate with cooperating agencies during the various steps of the planning process (see § 1610.3-2(b)(3)), including the preparation of preliminary alternatives, rationale for alternatives and basis for analysis. As cooperating agencies, State and local government, and Indian tribes may participate on interdisciplinary teams; however the specific details for this participation will vary based on their jurisdiction by law and special expertise and will also depend on the specific details of the memorandum of understanding developed between the BLM and the cooperating agency. The BLM will collaborate with cooperating agencies to the fullest extent possible on issues relating to their jurisdiction and special expertise.

### Coordination on Landscape Assessments

**Comment:** Several comments noted that the preamble mentions Landscape Conservation Cooperatives (LCCs), Rapid Ecological Assessments (REAs), and other landscape-scale studies, reports, and documents, but the LCCs or other landscape-scale studies have not engaged in coordination with State and local governments in accordance with FLPMA (see 43 U.S.C. 1712(c)(9)). According to these comments, if REAs and similar “landscape-scale” studies, reports, and documents are used as a basis for land use planning, coordination with State and local governments and public involvement is necessary.

**Response:** The term “Rapid Ecoregional Assessments” or “REAs” does not appear in the proposed or final regulations. The background discussion in the preamble to the final rule describes REAs in regards to other initiatives that are related to Planning 2.0 to help provide context to how the Planning 2.0 initiative relates to other BLM initiatives. The BLM collaborated with the LCCs and other Federal agencies to develop REAs in recent years. REAs do not involve conducting research or collecting new data; rather, they synthesize the existing best available data within an ecoregion. Under the final rule, the BLM is required to use high quality information during the preparation or amendment of resource management plans (see § 1610.1-1(c)). In certain cases REAs provide some of the best information that can be used for planning but they would not represent the only sources of information on a plan.

FLPMA does not require that all information used in the planning process must be developed in coordination with State and local governments. The BLM uses information obtained from a variety of different sources including but not limited to data gathered by BLM resource specialists, information provided to the BLM by State and local governments or other Federal agencies, and information from peer-reviewed science. As appropriate, the BLM will

coordinate the gathering or assembly of inventory data and information with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located (see § 1610.4(b)(1)).

*Role of Coordination*

**Comment:** Many comments expressed the view that the proposed rule is a significant departure from existing regulations and the BLM's interpretation of FLPMA and appears to limit the opportunity for local governments to advocate their positions early in the planning process through coordination. Comments included concerns that proposed rule would provide less opportunity for local governments to have meaningful and significant input and would diminish the ability of local governments to inform the BLM of conflicts between local land use plans and policies and the Federal land use plans, as mandated by FLMPA (43 U.S.C. 1712(c)(9)). Several comments stated that the proposed rule would place local communities on the same field as any other interested party, and asserted that the end result would be the BLM prioritizing proposed alternatives from environmental groups instead of those that work for the people residing in affected communities. Comments further stated that the BLM's claim that the proposed rule does not change the BLM's practice in developing resource management plans is incorrect.

**Response:** The final rule provides substantial opportunities for local governments to participate in BLM's planning process in a meaningful way. Local governments may participate in any opportunity for public involvement that is available to the public (see § 1610.2) and are also provided the opportunity to participate as cooperating agencies, an opportunity which is not provided to other members of the public (see § 1610.3-2(b)). The BLM will additionally coordinate with local governments regarding the inventory of public lands (see § 1610.4(b)(1)) and throughout the planning process to achieve the objectives described in § 1610.3-2(a). The

final rule is consistent with FLMPA (43 U.S.C. 1712(c)(9)) and does not prioritize any stakeholder group over local communities or other members of the public. In instances where the final rule states there would be no change in practice or policy, the intention is to provide clarifying language to improve general readability and/or understanding of the regulations.

**Comment:** Many comments noted that the “cooperating agency” role under NEPA is a separate and distinct role from “coordination” and “consistency” roles afforded local governments under FLMPA. According to these comments, FLPMA requires coordination with State and local governments, thereby providing the real-time, on the ground context necessary to help the BLM make the right decision the first time, and to do so with the buy-in of the local community. One comment included the recommendation that a jurisdictional entity should not be required to be a cooperating agency to obtain adequate coordination. This comment noted that FLPMA requires the BLM must coordinate with State and local governments on its land use inventory, planning, regulations, and management activities and that The BLM must provide a mechanism for accepting advice from State and local officials.

**Response:** The BLM recognizes that State and local governments may choose not to participate as cooperating agencies. Under the final rule, participation as a cooperating agency is optional. The BLM will coordinate with State and local governments regardless of cooperating agency status in accordance with final §§ 1610.3-2 (a) and (c) which describe the objectives of coordination and specific requirements for coordination. The BLM agrees that coordination with State and local governments is an important component of resource management planning. State and local governments may also participate in the opportunities for public involvement described in § 1610.2 of the final rule. The final rule is consistent with FLPMA (43 U.S.C. 1712(c)(9)).

**Comment:** A few comments expressed concern that under the proposed rule the BLM satisfies its "coordination" requirement simply by allowing State and local governments to comment on land use plans and their amendments in the same manner as all other members of the public. The comments stated that under FLPMA, coordination means much more than an opportunity to comment and therefore, proposed § 1610.3-1 should be revised so that local governments are coordinated with as FLPMA intended. One comment expressed that the language in the proposed rule conveys an impression of a "one-way street" with regard to coordination in contrast to cohesive and coordinated planning. The comment stated that FLPMA clearly foresees partnerships. Several comments included the view that "coordination" implies some measure of input and trying to work together; however, under the proposed rule "coordination" would only include the BLM providing to local governments "the opportunity for review, advice and suggestions on issues and topics which may affect or influence other agency or governmental programs." The comments asserted that this language is inconsistent with FLPMA.

**Response:** Final § 1610.3-2 (proposed § 1610.3-1) describes the objectives of coordination, cooperating agency provisions, and specific coordination requirements. These provisions are consistent with FLPMA (43 U.S.C. 1712(c)(9)) and provide substantial opportunities for State and local governments to participate in BLM's planning process in a meaningful way. This section includes requirements for the BLM to provide opportunities for governmental entities to review and comment on resource management plans, in addition to several other types of involvement. For example, State and local governments may participate as cooperating agencies and work closely with the BLM at every stage of the planning process; this

unique partnership is provided only to governmental entities and helps the BLM develop a resource management plan that is responsive to the needs and concerns of local communities.

The BLM agrees that coordination is most effective when addressed as a “partnership” between the BLM and other governmental entities; the BLM believes that the final rule supports the development of such partnerships. For example, the objectives of coordination are described in final § 1610.3-2(a) and these objectives clearly support the development of partnerships. These include for the BLM to: (1) Keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes; (2) Assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands; (3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans; (4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands; and (5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

**Comment:** One comment stated that the BLM should not limit public involvement and early notice of final decisions that may have a significant impact on non-Federal lands to only the resource management planning process. The comment stated that Congress intended for State and local governments and Indian tribes to coordinate on all types of land use programs, land use regulations, and land use decisions, and implementation of the same, and not be limited to involvement only with resource management plans and amendments.

**Response:** The purpose of these regulations is to establish a process for the development, approval, maintenance, and amendment of resource management plans (see § 1601.0-1). Therefore, the scope of the rulemaking focuses on resource management plans and related actions. Other land use programs, regulations, decisions, and implementation of the same are beyond the scope of this rule.

**Comment:** Many comments noted that the policies and management of Federal lands have a great impact on local economies governed by state and local sub-divisions of government. Consideration of the State and local economies along with local customs, culture and multiple uses is a must in the coordination and planning process. Consultation with State and local governments can help the BLM identify opportunities for intergovernmental collaboration to address concerns and opportunities affecting the landscape at its most appropriate and effective scale.

**Response:** The BLM will consider impacts to State and local economies as well as local customs, culture, and resource uses from resource management plans or plan amendments developed under the final rule. The BLM agrees that coordination with State and local governments can help the BLM identify opportunities for intergovernmental collaboration to address concerns and opportunities affecting the landscape. The coordination provisions of § 1610.3 of the final rule apply to the all planning efforts and will assist in identifying these opportunities.

**Comment:** A few comments expressed concern that the proposed rule differs from FLPMA's requirement to coordinate, which according to the comments directs the BLM to treat the land use planning and management activities of State and local governments as equal in rank

and harmonize its land use inventory, planning, and management activities “to the maximum extent consistent.”

**Response:** The final rule is consistent with FLPMA (43 U.S.C. 1712(c)(9)) which directs the BLM, 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. The final rule appropriately provides for such coordination (see §§ 1610.3-2 and 1610.4(b)(1)).

*Other Comments related to Coordination*

**Comment:** One comment stated that the new iterative process will require the BLM to be committed to coordination and consistency with non-Federal governments.

**Response:** The final rule provides for coordination with other Federal agencies, State and local governments, and Indian tribes (see final § 1610.3-2) and consistency requirements for the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes (see final § 1610.3-3).

**Comment:** One comment stated that the proposed rule places an increased burden on local governments, and this raises a social justice issue because local governments do not have the capacity to dedicate staff to monitor all Federal activities, explaining that the proposed rule removes the BLM’s requirement for the Director to coordinate with local governments.

**Response:** The final rule does not remove the requirement for the BLM to coordinate with local governments or place an increased burden on local governments. Under the final rule, coordination will be primarily accomplished at the local level, and not by the BLM Director, consistent with current practice and policy. Final § 1610.3-2 describes the objectives of

coordination and specific requirements for coordination with other Federal agencies, State and local governments, and Indian tribes during resource management planning. The final rule includes provisions for the responsible official to keep apprised of and consider the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes, as well as notification procedures for governmental entities. The final rule does not remove coordination requirements, but rather reaffirms the BLM's obligations for coordination under FLPMA.

**Comment:** A few comments requested that the BLM work with local governments to implement a planning rule that benefits from local government input, guarantees consistency with local plans and ensures robust cooperation at all phases of the process.

**Response:** The final rule reinforces the BLM's obligations for coordination and consistency in accordance with FLPMA, and includes provisions for cooperating agencies, coordination and consistency, and public involvement. See the preamble discussion for final §§ 1610.2, 1610.3-2 and 1610.3-3 for more information. During the development of the proposed rule and the public comment period on the proposed rule, the BLM hosted a variety of public outreach activities including public meetings, public webinars, briefings provided to the BLM's Federal Advisory Committee Act chartered RACs; briefings for the Association of Fish and Wildlife Agencies; webinars for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request. The BLM received 3,354 comment letters, which are available for viewing on the regulations.gov website by entering Docket ID: BLM-2016-0002 in the "Search" bar. Many of these comment letters were submitted by local governments.

**Comment:** A few comments stated that the proposed rule should recognize counties' broad statutory responsibilities in the areas that may be germane to specific planning activities. "Special expertise" is broader than only land use planning activities; for example, a local government has responsibility in other areas, such as fire response, search and rescue, economic development, and transportation.

**Response:** Final § 1610.3-2(a) has been revised to provide that an objective of coordination is for the BLM to keep apprised of and consider the "plans, policies, and management programs" that are germane in the development of resource management plans for public lands. In regards to eligibility to participate as a cooperating agency, special expertise is described in the CEQ NEPA regulations as "special expertise with respect to any environmental issue, which should be addressed in the [environmental impact] statement" (40 CFR 1501.6). This applies more broadly than land use planning activities, and may include other areas, such as fire response, search and rescue, economic development, and transportation.

**Comment:** Several comments stated that coordination and consistency requirements are not limited to the development or amendment of resource management plans, but to all management actions taken within the confines of these plans. One comment cited *Uintah County v. Norton* and *Utah v. Babbitt* in explanation.

**Response:** The purpose of these regulations is to establish a process in regulations for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the BLM (see § 1601.0-1). Coordination and consistency for all future management actions taken by the BLM does not fit within this stated purpose and is therefore outside the scope of the final rule.

**Comment:** One comment noted that the BLM must manage wildlife and other natural resources across multiple scales, landscapes, and jurisdictions and recommended that the final rule require the BLM to identify opportunities to coordinate with other resource planning and management on all land ownerships to ensure that a given resource management plan does not undermine the goals and objectives of other BLM, Federal and non-Federal land use plans.

**Response:** The final rule provides for coordination across land ownerships through the provisions of final §§ 1610.2, 1610.3. In response to public comment, final § 1610.3-2(a)(1) and (a)(3) are revised to describe an additional objective of coordination for the BLM the keep apprised of and consider the policies, and management programs of other Federal agencies, State and local governments, and Indian tribes, in addition to their plans. Final § 1610.3-2(a)(3) provides that the BLM will assist “in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans.” These provisions support the development of coordinated goals and objectives between BLM plans and the plans of other Federal agencies, State and local governments and Indian tribes. Non-governmental landowners may participate in the BLM’s planning process through the public involvement opportunities described in § 1610.2.

**Comment:** A few comments requested that the final rule and Handbook provide explicit direction and timelines for the BLM and state wildlife agencies to collaborate on planning guidance that identifies State or shared jurisdictional wildlife species; collaboration and conflict resolution between BLM and State wildlife agencies before release of final planning documents; and coordination with State wildlife agencies during development of any planning regulation or guidance, including special designations or allocations. The comments stated that the inclusion of specific direction will support efforts to plan, and reduce the amount of time it takes to plan by resolving conflicts.

**Response:** The BLM recognizes the importance of coordination and collaboration with State wildlife agencies during resource management planning. Final § 1610.3-2 provides for coordination with State agencies, including by developing resource management plans collaboratively with cooperating agencies (see §§ 1610.3-2(a)(5) and 1610.3-2(b)). This coordination will include coordination on plan components, such as planning designations or resource use determinations (which replace “special designations or allocations” as identified by the comment).

The final rule does not require the BLM to coordinate with State wildlife agencies during the development of planning regulations or guidance. The final rule also removes existing §§ 1610.1(a)(3) and 1610.3-1(d), which describe requirements related to guidance. These existing sections are unnecessary as they describe an internal BLM process. The BLM will provide for public involvement in the development of regulations or guidance consistent with the requirements of Federal laws and regulations.

**Comment:** One comment included support for the BLM’s interest in and work toward improving the resource management planning process for all stakeholders in general and in particular regarding ways to improve the planning process between the BLM and the State fish and wildlife agencies.

**Response:** Section 1610.3-2 of the final rule includes provisions for coordination with State agencies, which includes State fish and wildlife agencies, as well as provisions for establishing cooperating agency relationships with State agencies. Final § 1610.3-2(a) provides that one of the objectives of coordination is to provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and

Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands.

**Comment:** One comment stated that an emphasis on coordination with State and local agencies throughout the planning process can help ensure that resource management plans “are based on the best scientific and commercial data available.” The comment stated that the BLM should follow the model of the United States Fish and Wildlife Service in 50 CFR Chapter IV “Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities.”

**Response:** The final rule supports early and on-going coordination with State and local agencies throughout the planning process. In response to public comment, final § 1610.4(b)(1) is revised to include new language regarding coordination during the planning assessment, stating that “[t]o the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located.” Final § 1610.4(b)(3) requires that the BLM “[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans” for the BLM’s consideration in the planning assessment. These new steps will help to ensure that resource management plans are based on the “best scientific and commercial data available.”

The “Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities” is designed to implement the Endangered Species Act; however, the BLM believes that the coordination processes in the final rule will allow the BLM

to meet similar goals, and will allow for effective coordination with Federal and State wildlife agencies.

**Comment:** One comment includes support for the proposed rule in that it seeks to solicit stakeholder input and explicitly states that the rule will encourage science-based decision-making and active coordination and collaboration with partners and stakeholders.

**Response:** The BLM will adopt the sections of the final rule that solicit stakeholder input. Please see preamble discussion of § 1610.1-1(c) regarding the use of high-quality information.

**Comment:** One comment included the view that in order to improve collaboration with local governments, strained relationships need to be repaired. The comment noted the Hermosa Creek Watershed Protection Act, passed in 2014, as an example of a way to address a number of stakeholder interests in management.

**Response:** One of the goals of Planning 2.0 is to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans. The BLM recognizes that a number of different approaches can address stakeholder interests in management, including legislation. The development of legislation, however, is outside the scope of the final rule.

**Comment:** A few comments recommended more coordination regarding conservation of wildlife corridors that extend beyond BLM boundaries. Comments recommended that the final rule add language instructing planners to consult with Federal agencies and State wildlife managers to coordinate conservation of wildlife corridors that extend beyond BLM boundaries. Another comment expressed support for the proposal to coordinate with State wildlife agencies

during the planning assessment phase to determine and describe baseline conditions early in the process.

**Response:** Coordination with other Federal agencies and State and local governments occurs on a variety of topics and issues, including those related to wildlife and wildlife corridors. It is unnecessary and not practical to list all of the topics for coordination in the regulations. Coordination will occur throughout the planning process, including during the planning assessment. The planning assessment involves identify areas of key fish and wildlife habitat including “habitat connectivity or wildlife migration corridors, and areas of large and intact habitat” (see § 1610.4(d)(5)(iii)). The BLM will coordinate with appropriate Federal and State wildlife agencies in identifying these areas.

**Comment:** A few comments noted that there are at least 13 instances in which governors or cooperating agencies are offered opportunities to participate in planning that are not offered to the general public. These comments included an opinion that this privilege should not be expanded further because the existing opportunities for State and local government are sufficient. According to the comments, agencies that choose not to take advantage of the opportunities already available to them do not need additional “coordinating privileges.”

**Response:** One of the goals of Planning 2.0 is to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans. The final rule provides opportunities for public involvement (see § 1610.2), coordination with other Federal agencies, State and local governments, and Indian tribes (see § 1610.3-2), and cooperating agency participation (see § 1610.3-2(b)). The BLM believes that the final rule achieves this goal by providing new

opportunities for participation in each of these three categories and increased transparency in the planning process.

### **Section 1610.3-3 Consistency Requirements**

#### *Consistency with Officially Approved and Adopted Plans (§ 1610.3-3(a))*

**Comment:** One comment recommended that the statement “Resource management plans will be consistent with officially approved or adopted land use plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds practical and consistent with the purposes of FLPMA and other Federal law and regulations...” be revised to read “Federal law, regulations, and directives” in order to include agency manuals and other administrative issuances.

**Response:** In addition to the phrase “Federal law and regulations,” final § 1610.3-3(a) includes the phrase “purposes, policies and programs implementing such laws and regulations,” which encompasses applicable policies and agency manuals. This is existing language and therefore does not represent a change in practice or policy.

**Comment:** Several comments asserted that the proposed rule would make steps towards building a culture of “collaborative conservation” by increased public participation rather than reinforcing FLPMA’s coordination and consistency requirements, which are separate obligations. Comments stated that the legislative history of FLPMA reaffirms the importance of coordination and consistency requirements, clarifying that the ultimate decision on consistency rests with the Secretary, and that BLM land use planning requires compliance with, rather than the consideration of, State and Federal pollution standards. A few comments stated that § 1610.3-2 omits FLPMA consistency requirements pertaining to compliance with pollution control laws, “including State and Federal air, water, noise, or other pollution standards or

implementation plans....” Comments suggested that the preamble provide an explanation of this change or provide assurances that there is no intention of stepping back from legal obligations to ensure that resource management plans shall comply with pollution control laws. Comments also suggest that the final rule retain language from existing § 1610.3-2(a) regarding pollution control laws.

**Response:** Final §§ 1610.3-2 and 1610.3-3 provide for coordination with other Federal agencies, State and local governments, and Indian tribes, and describe requirements for consistency with their officially approved and adopted plans. These provisions are consistent with FLPMA (43 U.S.C. 1712(c)(9)) and appropriately provide for coordination and consistency. The final rule provides additional opportunities for public involvement in the planning process; however, these opportunities do not replace or eliminate the BLM’s obligations for coordination and consistency.

By removing existing § 1610.3-2(b) from the regulations, the final rule removes the reference to “Federal and State pollution control laws,” which are listed as an example of Federal laws that BLM resource management plans and guidance must be consistent with. Resource management plans must comply with Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. It is unnecessary to identify all relevant laws the BLM must abide by in the regulations, as the BLM is required to comply with all applicable laws and regulations. The BLM does not intend any change in policy or practice with this change.

**Comment:** Many comments stated that proposed changes to § 1610.3-2 are inconsistent with FLPMA’s policies regarding coordination and consistency with other Federal agencies, State and local governments, and Indian tribes. Some comments asserted that in regards to

coordination and consistency review, the proposed rule “rewrites FLPMA by regulation.”

According to comments, FLPMA does not require plans to be consistent to the extent the BLM finds “practical,” nor does FLPMA afford the BLM the discretion to impose such limiting factors on its duty to engage with and solicit information from non-Federal government entities.

Comments also objected to the removal of existing § 1610.3-2(b) which provides for the BLM to strive for consistency with resource-related policies and programs in the absence of officially approved and adopted land use plans. Comments further stated that the term “officially approved and adopted” is too narrow, explaining that State, local and tribal governments develop other policies and programs to manage wildlife, water resources, etc. One comment asserted that limiting local governments’ ability to provide information to only that which is included in an “officially approved and adopted” land use plan undercuts the second goal of Planning 2.0 and violates FLPMA. Some comments stated that the proposed rule ignores that the impacts of BLM land use plans will be most pronounced at the local level.

**Response:** In response to public comment, the final rule is revised to remove the word “practical” in final § 1610.3-3(a) (proposed § 1610.3-2(a)), instead stating that resource management plans shall be consistent “to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands.” Also in response to public comment, the final rule is revised to remove the phrase “land use” from “officially approved and adopted [land use] plans” throughout these regulations and to define “officially approved and adopted plans” to include resource-related plans.

The final rule adopts the proposal to remove existing § 1610.3-2(b), which requires the BLM to be consistent with programs and policies in the absence of officially approved or adopted resource-related plans. The final rule does not, however, limit local governments from

providing other types of information. The BLM will coordinate with State and local government on data gathering and inventory during the planning assessment (see § 1610.4(b)) and the final rule requires that the BLM coordinate on all types of plans, policies, and management programs that are germane to the development of resource management plans in order to assure that consideration is given to these documents (see § 1610.3-2(a)). The consistency requirements of final § 1610.3-3 only apply to “officially approved and adopted plans,” which is consistent with the requirements of FLPMA (43 U.S.C. 1712(c)(9)). Further explanation for this change can be found in discussion at the preamble for § 1610.3-3(a).

NEPA requires the BLM to address impacts at multiple scales in the preparation of resource management plans and plan amendments, including localized impacts. Additionally, the final rule requires the BLM to consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales (see § 1601.0-8), which also includes localized impacts. The BLM will continue to coordinate with local governments within the planning areas, including through multi-State planning efforts.

**Comment:** Several comments stated that FLPMA requires the BLM to ensure consistency with State and local plans to the maximum extent it finds consistent with Federal law and the purposes of the Act, and that the BLM is required to consider the policies and programs of State and local governments. The proposed rule limits the benefits that State, local, and tribal governments can provide to the BLM during the planning process by eliminating consistency with policies and programs. Comments noted that State and local governments often have official programs or policies relevant to the BLM that are not always included in “land use plans.” For example, local government’s policies and programs include, but are not limited to, county emergency planning and policies for routes of ingress and egress. State agencies also

regularly develop policies, procedures, rules, and orders that directly govern resources, such as water and wildlife, within the State. Also, local plans may consist mostly of policies because local governments do not own most of the land within their boundaries. Comments asserted that existing provisions for consistency with “policies and programs” of State, local, and tribal governments should be retained in the final rule. For example, the final rule should retain that in the absence of officially approved and adopted plans, consistency requirements will include policies and programs, subject to the qualifications of local government, such as local transportation, water and wildlife plans.

Several comments recommended that existing §§ 1610.3-2 and 1610.3-2(b) be retained. One comment stated that because the proposed rule reverses long-standing practice or interpretation of law, a “reasoned analysis” must be completed. Some comments recommended that § 1610.3-3(a) of the final rule adopt the following language: (a) resource management plans will be consistent with officially approved and adopted land use plans of other Federal agencies, State and local governments, and Indian tribe, considering the policies of approved State, local government, and tribal land resource management programs, to the extent consistent with the laws governing the administration of public lands. (1) The BLM will consider the policies of approved State, local government, and tribal land resource management programs. (2) The BLM will, to the extent practical, keep apprised of land use plans of State and local governments and Indian tribes and give consideration to those plans that are germane in the development of resource management plans. (3) Resource management plans will be consistent with State and local plans to the maximum extent, as consistent with Federal law and the purposes of FLPMA .

**Response:** Many of the provisions of existing § 1610.3-2 are retained in final § 1610.3-3. The final rule adopts the proposals to remove existing § 1610.3-2(b) which includes removing

reference to “policies and programs.” The existing section exceeds the statutory requirements of FLPMA (see 43 U.S.C. 1712(c)(9)) by providing that in the absence of officially approved and adopted plans, resource management plans should be consistent with “policies and programs” of other Federal agencies, State and local governments, and Indian tribes. FLPMA limits consistency requirements to “State and local plans” while the broader coordination requirements of FLPMA include the consideration of policies and management programs.

In response to public comment, final § 1610.3-2(a) is revised to state that an objective of coordination is for the BLM to keep apprised of and consider the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes that are germane in the development of resource management plans. The BLM will continue to coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process, which will include consideration of plans, policies, and management programs. However, the consistency requirements of final § 1610.3-3, including the process for resolving inconsistencies, only applies to officially approved and adopted plans. The final rule represents a change from the existing regulations, but more closely aligns the BLM regulations with the requirements of FLPMA. For more information on this change, please see the preamble discussion of §§ 1601.0-5 and 1610.3-3.

Based on public comment, final § 1610.3-3(a) is revised to remove the term “land use” when describing these plans and final § 1601.0-5 is revised to define officially approved and adopted plans as “resource-related plans” prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, tribal, or local constitutions, legislation, or charters which have the

force and effect of law. This broader definition includes other types of resource-related plans that may not be considered a “land use” plan.

**Comment:** Several comments stated that the requirement for “officially approved and adopted land use plans” is undefined and places the discretion of what constitutes an officially approved and adopted plan with the BLM. Comment requested the final rule explain the meaning of this term. Some comments asserted that this would set precedence and would go against Congressional intent under FLPMA. Several comments stated this this term does not recognize that State and local governments have relevant authorities more expansive than “land use.” For example, plans for search and rescue, fire, law enforcement, transportation, recreation, economic development, etc. Some comments noted the appendix C of the current Land Use Planning Handbook requires coordination with State wildlife agencies and their action plans, such as State wildlife action plans.

Some comments stated that proposed language would exclude plans that are in the process of being crafted or revised, or could not be officially approved. One comment stated that the proposed rule would limit consistency review because some National Scenic and Historic Trails do not yet have “officially approved or adopted land use plans,” and suggested that the final rule state that resource management plans will be consistent with pending, or officially approved or adopted land use plans of Federal agencies. Another comment stated that, due to the BLM’s failure to fulfill Alaska’s entitlement requirements, it is impossible for the State to have approved and adopted land use plans for lands it has yet to receive.

Many comments recommended language from existing regulations be retained. Some comments suggested removing the term “officially approved and adopted land use plans,” and replacing it with “land use and resource related planning and management programs.” One

comment suggested that proposed § 1610.3-2(a) be revised to state “resource management plans will be consistent with State and local governments and Indian tribes’ plans to the maximum extent the Secretary finds consistent with Federal law and the purposes of FLPMA.”

**Response:** The final rule retains the existing term “officially approved and adopted” in § 1610.3, which means that a plan was prepared and approved pursuant to the authorization provided by Federal, State, tribal or local constitutions, legislation, or charters which have the force and effect of law (see § 1601.0-5). The BLM believes it would be inappropriate to require consistency with plans that were not prepared or approved pursuant to a legal authority. In response to public comment, the proposed phrase “land use” is removed from “officially approved and adopted [land use] plans” and the definition for this term is revised to include resource-related plans. This new definition encompasses the many types of resource-related plans developed by other Federal agencies, State and local governments, and Indian tribes. The BLM will keep apprised of and consider any plans, policies, or management programs, including those that are not “officially approved and adopted” through coordination with other Federal agencies, State and local governments, and Indian tribes (see § 1610.3-3(a)).

**Comment:** Several comments stated that requiring that local land use plans be consistent with BLM policies and programs diminishes local governments’ influence on those same policies and programs. For example, commenters asserted that the proposed rule would prohibit local governments from including a policy to achieve multiple use in a local land use plan if that plan is different from the BLM’s policy for achieving multiple use. According to comments, the proposed rule would remove the check and balance of local governments by providing that local plans be consistent with BLM policies and programs. Some comments suggested that proposed § 1610.3-2(a) be revised to state that resource management plans will be consistent to the

maximum extent the BLM finds practical and consistent with “the purposes of Federal law and regulations applicable to public lands.”

**Response:** Final § 1610.3-3 (proposed § 1610.3-2) does not require local land use plans to be consistent with BLM plans, policies or programs. The BLM does not have the authority to require this or to prohibit a local government from including specific policies in their land use plans. Final § 1610.3-3 requires that resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. This requirement applies to resource management plans prepared by the BLM under these regulations.

The final rule retains existing language referencing the “purposes, policies, and programs” implementing Federal laws and regulations. Inclusion of language stating that plan consistency shall only be achieved to the extent consistent with the purposes of Federal laws and regulations and the purposes, policies and programs implementing such laws and regulations is necessary in order for the Secretary of the Interior to fulfill his or her responsibilities under FLPMA. Through FLPMA, the Secretary of the Interior is provided the authority to administer the public lands (through the BLM) and the responsibility to implement the statutory direction provided in public land statutes, including FLPMA. In order to implement public land statutes and administer the public lands, the Secretary considers the purposes of the statutes and develops regulations, policies, and management programs to implement the statutes. These regulations, policies, and management programs are an important component of implementing public land statutes.

**Comment:** One comment stated that the proposed rule would eliminate the authority for State and local governmental planning, rendering State and local plans void.

**Response:** The final rule does not eliminate the authority for State and local governmental planning. The BLM does not have the authority to do this, nor would it be appropriate. The planning rule contains consistency requirements, which requires resource management plans to be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations. These regulations only apply to the BLM's resource management planning process, and will not impact the jurisdiction of State and local governments.

**Comment:** One comment recommended several revisions to proposed § 1610.3-2(a). The comment recommended that the reference to resource management plans being consistent with officially approved or adopted land use plans should be clarified to specifically include legally enacted local government zoning, subdivision, and land use regulations that can exist separate from officially approved or adopted local land use plans. The comment also recommended that the regulation provide for formal mechanisms, such as MOUs, by which the BLM and local governments can keep each other apprised of officially approved and adopted land use plans, as well as zoning, subdivision, and land use regulations. While the comment recognized that such local government adopted land use plans may not be legally binding on activities occurring on federally administered lands, it is important that there be a mechanism by which the BLM can at least be made aware of what land use planning and regulatory activities local governments are engaged in that may be relevant to the BLM's planning efforts. The

comment also recommended that the regulations include a process by which local governments can notify responsible BLM officials of their adopted land use plans, zoning, subdivision, and land use regulations in order for the consistency requirements to be appropriately addressed, particularly, if the affected local governments believe that specific inconsistencies exist between a BLM proposed resource management plan and the relevant local government plans, zoning, subdivision, and or land use regulations.

The comment explained that in some States, many statutory counties have adopted master or comprehensive plans through their planning commissions that are considered to be advisory in nature under State law and not considered to be legally binding unless the county board of commissioners has formally adopted all or part of the regulations. Also, both State constitutions and statutes confer land use planning and regulatory jurisdiction on local political subdivisions such as counties and municipalities and not on the State government, with the exception of a few situations, such as certain types of activities on State-owned property.

**Response:** The final rule removes references to “land use” and adopts the term “officially approved and adopted plans.” This change is made to include other resource-related plans of Federal, State, local and tribal governments that may be relevant to the BLM’s land use planning process. The BLM recognizes that local governments may have plans that are germane to the BLM’s land use planning process that may not be described as “land use” plans. The term “officially approved and adopted plans” will be adopted for this reason. This is intended to include plans such as local government zoning, subdivision, and land use regulations, that may exist separate from land use plans, if they constitute a formal decision regarding resource management. Section 1601.0-5 defines this term to mean resource-related plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to

and in accordance with authorization provided by Federal, State, tribal, or local constitutions, legislation, or charters which have the force and effect of law. The final rule removes the word “State” from the phrase “force and effect of [State] law.” See the preamble discussion of this term at § 1601.0-5 for more information.

Final §§ 1610.3-2(b) provide for the establishment of cooperating agency relationships with eligible governmental entities and accompanying memoranda of understanding, and final §§ 1610.3-2(c)(1) and 1610.3-2(c)(2) provide for agreements with Governors to facilitate coordination with state governments. In addition to the coordination procedures in final § 1610.3-2, local governments and other governmental entities may notify the responsible official of any known inconsistencies with the resource management plan in accordance with § 1610.3-3(a) of the final rule, or participate in the public involvement opportunities in final § 1610.2 to raise apparent inconsistencies. The final rule does not adopt the recommendation to include additional processes by which local governments can notify responsible BLM officials of adopted resource-related plans, or provide for formal mechanisms, such as memorandum of understanding, by which the BLM and local governments can keep each other apprised of officially approved and adopted resource-related plans, as the BLM believes that the final rule provides sufficient mechanisms to facilitate coordination and consistency. However, the final rule does not preclude responsible or deciding officials from entering into these agreements.

**Comment:** One comment suggested that proposed § 1610.3-2(b) adopt the phrase “officially approved and adopted land use or cultural resource plans of State and local governments.”

**Response:** This proposal will not be adopted in the final rule. “Land use” will be removed from the term “officially approved and adopted [land use] plans” to include all relevant

resource-related plans, which includes cultural resource plans. Please see the preamble discussion of the definition of “officially approved and adopted plans” at § 1601.0-5 for more information.

*Other Federal Plans (§ 1610.3-3(a))*

**Comment:** One comment suggested that the BLM consider seeking consistency with Wild and Scenic River and National Trail Comprehensive Plans of other agencies. According to this comment, should the BLM be notified of inconsistencies with these types of plans, the resource management plan should document how these inconsistencies were addressed and, if possible, resolved. Finally, the comment suggested specifically referencing “Wild and Scenic River and National Trail Comprehensive Plans” in proposed §§ 1610.3-2(a) and 1610.3-2(a)(3).

**Response:** Section 1610.3-3(a) of the final rule provides that “resource management plans shall be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The plans of other agencies, such as Wild and Scenic River and National Trail Comprehensive Plans, will be considered in the planning process pursuant to this section. Referencing specific plans within the regulations is inappropriate, as there are many types of plans that the BLM will consider during the planning process.

*Burden of Identifying Inconsistencies (§ 1610.3-3(a))*

**Comment:** Several comments expressed concern that the proposed rule places the burden of identifying inconsistencies on the Governor and local governments. Comments also stated that the provision allowing the BLM to not address consistency requirements if the responsible

official has not been notified in writing contradicts one of the objectives of coordination at § 1610.3-1, in which the BLM intends to “keep apprised of” local plans. Some comments suggested that the requirement to notify the responsible official in writing of any inconsistencies (proposed § 1610.3-2(a)(2)) should be removed in the final rule, explaining that governments should be able to notify the BLM via face-to-face meetings or by other non-written means.

Comments suggested that the final rule provide a clearly-defined process for final resolution of inconsistencies with local plans. Comments stated that consistency review and meaningful coordination must be undertaken by the BLM and when consistency cannot be reached, the BLM must specifically justify and explain why consistency could not be reached. Still other comments suggested that the proposed rule does err in not requiring the BLM to become informed or stay informed of state and local plans.

**Response:** The Governor’s consistency review represents a final of several opportunities to meet consistency requirements by affording the Governor an opportunity to identify any remaining inconsistencies with the proposed resource management plan and work with the BLM to address them. The burden of identifying inconsistencies is not placed solely on Governors or local governments, since as the BLM will make a good faith effort to identify and address inconsistencies throughout the planning process, as described by the objective of coordination in § 1610.3-2(a). The work of identifying inconsistencies is shared, and the final rule reflects this responsibility. For example, § 1610.3-3(b) of the final rule states that the deciding official shall submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments. In turn, the Governor may submit a written document within the 60-day consistency review period that identifies inconsistencies.

Final § 1610.3-2(a) describes the objectives of coordination, which include staying apprised of State and local plans. BLM hopes to achieve this objective through coordination. Final § 1610.3-3(a)(1) states that the BLM shall, to the extent practical, keep apprised of officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes....” These sections do not contradict the requirements of final § 1610.3-3(a)(2), which state that the BLM is not required to address consistency requirements that it has not received in writing. Although the BLM will make a good faith effort to identify and address apparent inconsistencies during the planning process, it cannot guarantee that all apparent inconsistencies will be identified or that another Federal agency, State or local government, or Indian tribe, will not have another interpretation of an officially approved and adopted plan. It is therefore important that the responsible official receive written notice of an apparent inconsistency so that it can be considered during the planning process.

As mentioned above, the requirements for consistency contained in final § 1610.3-3 do not represent the only opportunity to identify and remedy inconsistencies during the planning process. Coordination, as described in § 1610.3-2 of the final rule, provides the BLM with a way to identify and address potential inconsistencies with other Federal agencies, State and local governments, and tribes throughout the duration of the planning process. The BLM believes that the opportunities for coordination throughout the planning process, as provided by the final rule, will address the majority of inconsistencies prior to the publication of a proposed resource management plan. For example, as part of information gathering during the planning assessment, § 1610.4(b)(2) will require the BLM to identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment. Final §§ 1610.3-2 and 1610.4 provide opportunities for coordination on

this assessment. Please see the preamble discussion of § 1610.4 for additional information on the planning assessment and its relationship to the Analysis of Management Situation in the existing regulation.

Final § 1610.3-3(a)(3) will require that the proposed resource management plan show how inconsistencies raised by Federal agencies, State and local governments, or Indian tribes were addressed and, if possible, resolved.

Additionally, final § 1610.3-3(b) includes the requirement that the deciding official notify the Governor(s) in writing of his or her decision on the Governor's consistency review, and a requirement that the BLM notify the public of the Director's decision on any written appeal of the deciding official's decision. The BLM believes these provisions will adequately inform the public of any inconsistencies and provide justification.

**Comment:** Some comments claimed that by requiring local officials to properly identify the BLM official to receive information regarding inconsistencies, the BLM does not need to consider the input if information is submitted to the wrong person. Some believed that Governors will have to sign local plans in order for BLM to recognize them. In regard to the phrase "officially approved and adopted land use plans," one comment stated that because land use planning is equivalent to zoning in some states, it could be argued that there are no State "land use plans." Other comments stated that the proposed notification requirements would increase the cost for local governments to participate in planning processes and explained that many local government agencies do not have the resources to stay informed of every BLM planning effort and identify inconsistencies with BLM plans.

**Response:** As discussed in the preamble, because the responsible official will be the BLM employee who is delegated authority to prepare a resource management plan or plan

amendment, it is important that the responsible official receives written notice of an apparent inconsistency so that it can be considered through the planning process. The BLM cannot ensure that notice sent to someone other than the responsible official will be redirected and delivered in a reasonable timeframe, although we will attempt to do so to the best of our ability. Additionally, the statement in final § 1610.3-3(a), that the BLM is not required to address the consistency requirements of § 1610.3-3 if the responsible official has not been notified, in writing, by Federal agencies, State and local governments, or Indian tribes of an apparent inconsistency, does not represent a change in policy or practice from existing § 1610.3-2(c), which states that State Director and Field Managers will not be held accountable for ensuring consistency with State and local governmental and Indian tribal policies, plans, and programs if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency. Therefore, the BLM does not expect this to increase costs for local governments.

The economic analysis found that the revisions to final § 1610.3-3 (existing § 1610.3-2) will have no economic impact, except that allowing for a waiver of the 60-day period for the Governor's consistency review in final § 1610.3-3(b) may benefit the BLM by reducing the time spent on resource management plan development.

The final rule removes the phrase "land use" from the term "officially approved and adopted [land use] plans." For more information, see the preamble discussion of final § 1610.3-3(a), as well as the discussion of the definition of "officially approved and adopted plans" in final § 1601.0-5. The final rule does not require Governors to sign local plans for the BLM to recognize them. The definition for "officially approved and adopted plans" encompasses all relevant resource-related plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by

Federal, State, tribal, or local constitutions, legislation, or charters which have the force and effect of State law. The BLM intends for this to include local zoning if that zoning is officially approved and adopted under applicable State law.

**Comment:** Several comments asserted that the burden of identifying inconsistencies with proposed resource management plans should be placed on the BLM rather than the Governor. Comments stated that the Governor is required to identify inconsistencies after the plan is published; the BLM will only consider recommendations if they are determined to provide for a reasonable balance. Comments also said that it is unlikely that Governors will spend resources to identify inconsistencies for all affected local governments. Finally, comments expressed that FLPMA requires that BLM ensure consistency with State and local plans.

**Response:** FLMPA directs that resource management plans be consistent with State and local plans to the maximum extent the Secretary finds consistent with Federal law and the purposes of FLMPA. The BLM believes that § 1610.3-3 achieves this direction. The 60-day Governor's consistency review is contained in existing regulations and will be retained in the final rule. As stated in the section-by-section analysis for § 1610.3-3(b), the Governor's consistency review is a unique step that allows the Governor, as the elected representative of the State, a final opportunity to identify, discuss, and remedy any relevant inconsistencies within State and local plans. The Governor's consistency review does not place the burden of consistency entirely on the Governor. Final § 1610.3-2 includes opportunities for cooperation and coordination with other Federal agencies, State and local governments, and Indian tribes, which can serve as an opportunity to raise apparent inconsistencies. Additionally final § 1610.3-3(a) that resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum

extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. Through these sections, the BLM will coordinate with State and local governments and strive for consistency throughout the planning process, not only after a proposed resource management plan is published. The Governor's consistency review in final § 1610.3-3(b) represents an additional step afforded to Governors to address identified inconsistencies prior to the approval of a resource management plan or plan amendment. Final § 1610.3-3(b) requires that, prior to the approval of a resource management plan or plan amendment, the deciding official shall submit to the Governor(s), the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments. The provisions of the final rule satisfy the BLM's obligations for consistency under FLPMA and further allow the BLM and State and local governments to collaborate in order to achieve consistency requirements.

*Ensuring Consistency (§ 1610.3-3(a))*

**Comment:** A few comments stated that it is the BLM's responsibility to remain apprised of and ensure consistency with county land use plans rather than relying on local governments to raise inconsistencies. According to these comments, the proposed rule would place this responsibility and financial burden on local governments, which is especially burdensome in areas where the BLM land management is significant, such as Elko County, Nevada. FLPMA requires the BLM to ensure consistency with county land use plans. While the State, local, or tribal government will often take part in the process and raise any consistency issues, the BLM

should always be required to address the consistency requirements of this section, regardless of whether the responsible official has received the written notice mentioned.

**Response:** The requirement does not represent a shift from the existing regulations. Existing § 1610.3-1(a) describes the objectives of coordination with other Federal agencies, State and local governments, and Indian tribes. Final § 1610.3-2(a) states that objectives of coordination include the BLM keeping apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes; and assisting in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. Additionally, § 1610.3-2(b)(3) of the final rule states that the responsible official will collaborate, to the fullest extent possible, with all cooperating agencies throughout the planning process. Early coordination, as outlined in the final rule, will help to identify potential inconsistencies early in the planning process in compliance with FLPMA.

However, while the BLM believes that the coordination and cooperation provisions of the final rule will help the BLM identify apparent inconsistencies early in the process, it cannot guarantee that it will be aware of all apparent inconsistencies if the responsible official is not notified. Because the responsible official will be the BLM employee who is delegated the authority to prepare a resource management plan or plan amendment, it is important that the responsible official receives written notice of an apparent inconsistency so that it can be considered during the planning process. Final § 1610.3-3(a)(2) states that the BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by Federal agencies, State and local governments or Indian tribes of an apparent inconsistency.

This approach is consistent with existing § 1610.3-2(c), which states that State Directors and Field Managers shall not be accountable for ensuring constituency if they have not been notified in writing, by State and local governments or Indian tribes of apparent inconsistency. The final rule, although not a shift in existing requirements or policy, provides the public with a better understanding of the BLM's coordination under this section.

**Comment:** Comments stated that the proposed rule replaces “accountable for ensuring consistency” from existing § 1610.3-2(c) with “required to address the consistency requirements of this section” which does not comply with FLPMA’s requirements to “assure that consideration is given” and that plans “shall be consistent” with State and local plans.

**Response:** Final § 1610.3-3(a)(2) adopts the proposal to replace “accountable for ensuring consistency” with “required to address the consistency requirements of this section.” The final rule “assure(s) that consideration is given” to State and local plans. However, the BLM must achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations. Because of its obligations under FLPMA, the BLM cannot always ensure consistency. The final rule requires the BLM to achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations (see final § 1610.3-3(a)).

*Addressing Inconsistencies (§ 1610.3-3(a))*

**Comment:** One comment requested that proposed § 1610.3-2(a)(3) include the following language: “If a State and local governments and Indian tribe notifies the responsible official, in writing, of what they believe to be inconsistencies between the BLM resource management plan and their plans and management programs, the BLM will, in coordination with

any cooperating agencies, provide within 90 days, documentation describing the extent to which the BLM could reconcile any inconsistencies and show whether the BLM plans, if possible, resolve them.”

**Response:** The final rule does not adopt the recommended changes to final § 1610.3-3(a)(3) (proposed § 1610.3-2(a)(3)). The BLM believes that this section reflects much of the intent of this suggested change. For example, the final rule removes the words “land use” from the term “officially approved and adopted [land use] plans.” Further, this section will require that the proposed resource management plan show how inconsistencies were addressed and, if possible, resolved. Since inconsistencies will be addressed in the proposed resource management plan, and there is no way to predict the number of or complexity of inconsistencies identified, it would be inappropriate to place a time limit on when such inconsistencies are addressed. The final rule retains the word “specific” in this section as well. Identifying specific inconsistencies will help focus consistency review and aid in the process of reconciling inconsistencies. Also, it is unnecessary to insert an additional coordination requirement in this section. The BLM must coordinate with cooperating agencies throughout the planning process, per final § 1610.3-2. This includes assisting in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans under § 1610.3-2(a)(3).

*Conflicts Between Plans (§ 1610.3-3(a))*

**Comment:** One comment opposed the proposed language regarding when State and local government plans differ, that those of a higher authority will normally be followed, explaining that State and local plans will likely be different because local plans tend to be more specific while State plans are broad and general. The comment urged that equal weight be given to local plans.

Other comments stated that it is unclear how the BLM will make this determination. There will be cases where plans differ, and in these cases, State and local plans should be given equal weight during planning decisions. Comments asserted that the concept of following plans of a higher authority creates a legally unfounded concept of preemption. Comments suggested that this should be a collaborative decision between the affected governments and the BLM.

**Response:** Final § 1610.3-3(a)(4) (proposed § 1610.3-2(a)(4)) is contained existing regulations and is retained in the final rule. This provision provides for flexibility by indicating that those of a higher authority will normally be followed. State and local plans will be equally considered in accordance with final § 1610.3-3. While it may be possible that State and local plans could differ, § 1610.3-3(a)(4) provides guidance for determining consistency should there be conflicting direction between plans. The BLM will determine the higher authority on a case-by-case basis, and will document its decision as part of the consistency procedures described in final § 1610.3-3.

*Scope of Governor's Consistency Review (§ 1610.3-3(b))*

**Comment:** Several comments stated that proposed § 1610.3-2(b) inappropriately limits the scope of review to consistency with “officially approved and adopted land use plans. . .to the maximum extent the BLM finds practical and consistent.” This scope is limited when compared to existing § 1610.3-2(e). Other comments explained that many States have multiple policies and implementation plans to help guide management and future development, and it is possible that the BLM could not consider these policies or plans during the consistency review. Comments suggested that the final rule retain language from existing § 1610.3-2(e), providing that consistency review will apply to all officially adopted State and local resource-related plans. Comments recommended that the term “officially approved and adopted land use plans” should

be replaced by “State or local land use and resource-related planning and management programs.”

**Response:** Final § 1610.3-3(b) will remove the words “land use” from the term “officially approved and adopted [land use] plans” to include all relevant resource-related plans. Please see the preamble discussion of the definition of “officially approved and adopted plans” at § 1601.0-5 for more information. However, the final rule does not retain the existing reference to “policies and programs.” FLPMA limits consistency requirements to “State and local plans” while the broader coordination requirements of FLPMA include the consideration of policies and management programs. Please see the preamble discussion of the definition of “officially approved and adopted plans” for more information.

**Comment:** Some comments noted that the proposed rule only requires the BLM to consider the Governor’s recommendations. Comments noted that the proposed rule removes the requirement that a Governor’s recommendations be accepted if they “provide for a reasonable balance between the national interest and the State’s interest,” stating that the Congressional intent of FLPMA is to reach a reasonable balance between the national interests and the State or local interests without undue impacts to either the State or local governments. Comments suggested that the final rule retain language from existing § 1610.3-2(e), that the BLM will accept recommendations if they “provide for a reasonable balance between national interest and the State’s interest.” Other comments suggested that proposed § 1610.3-2(b)(4) (final § 1610.3-3(b)(4)) articulate some standard by which the BLM will accept a Governor’s recommendations.

**Response:** The final rule adopts the proposal to remove the existing language requiring the BLM Director to accept recommendations if it is determined that such recommendations “provide for a reasonable balance between the national interest and the State’s interest.” The

BLM believes this existing language does not reflect the broader range of considerations that must apply. When considering the Governor's recommendations, the Director must consider whether the recommendations are consistent with the purposes of FLPMA and other Federal laws and regulations, including whether they are consistent with the purpose and need statement for the plan revision or amendment.

The proposal to replace existing language to state that the BLM Director will consider the Governor(s)' appeal in rendering a final decision will also be adopted. In determining whether to accept a Governor's recommendations, the BLM must provide consistency with official approved and adopted State and local plans to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations. The Director will review the Governor's recommendations and determine whether the resource management plan fulfills this obligation.

**Comment:** Some comments recommended that proposed § 1610.3-2(b) remove the word "relevant" from the phrase "identify any relevant known inconsistencies."

**Response:** The final rule adopts the proposal to state that the Governor's recommendations should address relevant known inconsistencies. This change does not preclude the Governor from providing recommendations on other subjects. Rather, this provision is included to focus the consistency review on relevant inconsistencies, which is the purpose of this phase.

*Consideration and Timing of Governor's Consistency Review (§ 1610.3-3(b))*

**Comment:** A few comments stated that the lack of response from the Governor within the allotted 60-day review period should not authorize the presumption of consistency.

**Response:** Final § 1610.3-3(b)(2) will retain the provision that “if the Governor(s) do not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.” This language is contained in existing regulations; its inclusion in the final rule does not reflect a change in practice. While the BLM recognizes the important role of Governors, this timeframe is necessary to provide a role for their involvement while also ensuring the overall timeliness and efficiency of the resource management planning process. Requiring the Governor to respond if no inconsistencies are identified is impractical and could create undue delay in the planning process even if no inconsistencies exist. The BLM cannot compel Governors to respond, therefore, it does not make sense to not allow a plan to be approved if the Governor does not respond during the timeframe set forth by the regulations.

**Comment:** One comment expressed support for the proposed change in § 1610.3-2(b)(4)(ii) to “consider” the Governor(s) comments in rendering a decision.

**Response:** This provision is adopted in final § 1610.3-3(b)(4)(ii).

**Comment:** A few comments expressed support for the proposed change requiring the State Director to notify the Governor in writing of his or her decision regarding the Governor’s recommendations, as well as the ability for the Governor to waive or shorten the consistency review. Comments stated that these requirements improve the process and indicate whether the State’s concerns were considered. Further, the proposed change will increase transparency and public understanding of decisions.

**Response:** The final rule adopts the proposed provisions that require the deciding official to notify the Governor in writing of his or her decision regarding the Governor’s recommendations and allow for the Governor to waive or shorten the consistency review period.

**Comment:** Several comments stated that the shortened timeframe for the Governor’s consistency review and narrow scope of review curtails local voice and ability for the BLM and State and local governments to collaborate on resolving issues. Comments suggested the following remedies: retain the existing timeframe for the Governor’s consistency review; provide the Governor an opportunity to request an extension of the review period beyond 30 days to appeal a consistency review decision; and provide more weight to State and local plans in the consistency review process. Comments also suggested that additional time should be provided for this stage of the process.

**Response:** The final rule retains the existing 60-day Governor’s consistency review period. The Governor may shorten or waive the review period under the final rule. The final rule also retains the provision that the Governor may submit a written appeal to the BLM director within 30 days after receiving the deciding official’s decision. The BLM believes that these timeframes are sufficient. Final §§ 1610.3-2 and 1610.3-3 requires coordination with State and local governments throughout the planning process. This coordination will help ensure that inconsistencies are identified, discussed, and remedied prior to reaching a proposed resource management plan. Section 1610.3-3(b) also requires the deciding official to identify any relevant known inconsistencies when submitting the proposed resource management plan to the Governor. The 60-day review period is sufficient for these reasons. The recommendations of the Governor will be considered in accordance with § 1610.3-3(b) of the final rule.

In accordance with final § 1610.3-3(a), the resource management plans shall be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the

purposes, policies and programs implementing such laws and regulations. The BLM will not provide more weight to any particular type of plan, as the BLM believes it is important to consider the plans of all Federal plans, State and local governments, and Indian tribes.

**Comment:** One comment recommended that the Governor’s consistency review be shortened to 30 days unless the Governor requests more time, in which case the BLM could grant an extension for up to 60 days.

**Response:** The 60-day Governor’s consistency review period is retained in the final rule. The BLM believes that shortening the Governor’s consistency review period to 30 days would not add benefit, and would further restrict the BLM’s ability to collaborate with State and local governments to reconcile inconsistencies between proposed resource management plans and plan amendments and the plans of State and local governments. The final rule provides the Governor with the discretion to shorten or waive the review period without inappropriately shortening the process.

*Availability and Opportunity for Public Comment on Governor’s Consistency Review (§ 1610.3-3(b))*

**Comment:** Comments suggested that proposed § 1610.3-2(b)(3) remove the word “substantive” from the statement that “if the document submitted by the Governor(s) recommends [substantive] changes that were not considered during the public involvement process....”

**Response:** Final § 1610.3-3(b)(3) will retain the word “substantive.” The use of this word, and this particular phrase, does not represent a change from current practice under existing regulations. Rather, this statement provides a more accurate description of the public’s opportunity to comment on the Governor’s recommendations. For example, if the Governor’s

consistency review recommends minor or typographical changes, the BLM does not believe it is necessary to seek public comment on those changes and such a period would needlessly delay the planning process. If however, the Governor recommended an alternative method of managing key resources that was not considered previously in the planning process, this would constitute a substantive change that would warrant public comment.

**Comment:** One comment stated that the final rule should specify that Governor's consistency review documents submitted to the BLM should promptly be made available to the public by providing an electronic copy on the project's webpage. The comment explained that, as elected officials and public servants, Governors are not entitled to secrecy, and the public is entitled to examine the positions that they take with regard to public lands.

**Response:** Section § 1610.3-3(b)(4)(ii) of the final rule states that the BLM shall notify the public of the final decision regarding the Governor's recommendations and that this written decision will be made available to the public. The final rule does not, however, include the recommendation that the BLM make the Governor's letter immediately available to the public. The term "promptly" is vague. Additionally, these letters may be part of the deliberative process for preparing an approved resource management plan and record of decision. However, if the letter recommends substantive changes not considered during the public involvement process, final § 1610.3-3(b)(3) states that the BLM will make those changes available for public comment.

*Governor's Appeal to the BLM Director (§ 1610.3-3(b))*

**Comment:** One comment asserted that the Governor's consistency review and appeal process are redundant since the BLM State Director would be expected to confer with the Director prior to responding to a consistency review. The comment suggested that these

processes be combined into one consistency review that will be submitted to the State Director, but issued with the concurrence of the Director.

**Response:** Governors are afforded a separate consistency review and appeal process, in accordance with final § 1610.3-3(b). They are not one in the same. If after the review is sent to the BLM, and the BLM does not adopt changes recommended by the Governor, the Governor can then appeal that decision to the BLM Director. The appeal to the BLM Director is adopted from existing § 1610.3-2(e).

*Publication of Final Decision on Governor's Appeal*

**Comment:** A few comments requested that final decisions on a Governor's appeal to the BLM Director should be published in the *Federal Register* along with the notice of the Record of Decision.

**Response:** The final rule does not include the requirement in existing § 1610.3-2(e) to publish a *Federal Register* notice for this step in the process. However, the final rule adopts the commitment that the BLM shall notify the public of this decision and make the written decision available to the public. Notification requirements are outlined in final § 1610.2-1. The BLM believes that it is appropriate to move away from relying on *Federal Register* notices at this step, given that Internet communications are both readily available and widely used. Further, at this late stage of the planning process, individuals or organizations interested in the planning effort will have had many opportunities to request to be added to the mailing list (see § 1610.2-1(d)) to receive notifications related to the planning effort. In locations where Internet is not readily available, the responsible official will identify additional forms of notification to reach local communities within the planning area (see § 1610.2-1(c)). Removal of the unnecessary

requirement to publish a notice in the *Federal Register* provides for a more efficient planning process.

*Local Government Participation in Governor's Consistency Review (§ 1610.3-3(b))*

**Comment:** Several comments asserted that proposed § 1610.3-2(b) improperly bypasses local governments by attempting to satisfy consistency requirements through Governors. Comments stated that Governors are not authorized to act for counties and other units of local government, which act through their own elected officials. In addition, Western states are home to conservation districts and counties with plans in place for resources; the proposed rule does not address how these plans will be considered and incorporated in the Governor's consistency review. Comments asserted that the structure of the Governor's consistency review is not supported by FLPMA, which carries separate responsibilities to local governments. Comments suggested that the final rule should include provisions for how the BLM will respond to inconsistencies with local governments, or that the final rule provide opportunities for local governments to be included in the Governor's consistency review. Comments further explained that the Governor's consistency review does not account for the actions and responsibilities of counties. Comments also stated that Governors are limited in their consistency reviews because they cannot comment on inconsistencies with State and local policies.

**Response:** The Governor's consistency review is contained in existing regulation and will be carried forward in the final rule. However, the final rule does not adopt the recommendation to require the BLM to engage directly with local governments during the Governor's consistency review period.

Final § 1610.3-3(b) does not bypass local governments, but rather provides the Governor, as the elected representative of the State, a final opportunity to identify, discuss and remedy any

relevant inconsistencies between State and local plans prior to the approval of a resource management plan. Further, the Governor's consistency review does not replace the BLM's requirements for coordination and consistency under final §§ 1610.3-2 and 1610.3-3. The BLM recognizes that counties may have officially approved and adopted plans that are relevant to the planning process. Such plans would not be excluded from consistency review. It would be inappropriate for the BLM to create a uniform process for each Governor to consider plans, including conservation district and county plans, during the Governor's consistency review. Any inconsistencies with the plans of local governments identified during the Governor's consistency review would be addressed in conformance with final § 1610.3-3(b).

Early Consistency Review (§ 1610.3-3)

**Comment:** Several comments asserted that the proposed rule limits opportunities to coordinate with local governments early in the planning process by reconciling early consistency reviews with the Governor's consistency review at the end of the planning process, which diminishes cooperating agencies' ability to inform the BLM of conflicts. Comments recommended that the BLM provide preliminary consistency review periods at the planning assessment and draft EIS stages.

**Response:** Existing regulations do not provide formal consistency reviews at the beginning of the planning process; rather, provisions for coordination and consistency with other Federal agencies, State and local governments, and tribes are included throughout the regulations. Final § 1610.3-2 includes the objectives of coordination (paragraph (a)), procedures for cooperating agencies (paragraph (b)), and coordination requirements (paragraph (c)). In addition, the final rule includes similar provisions and increases opportunities for involvement early in the process through the planning assessment phase. For example, § 1610.4(b)(3) of the

final rule directs that the BLM provide opportunities for other Federal agencies, State and local governments, and tribes to provide data and information or suggest other laws, regulations, policies, guidance, strategies, or plans for the BLM's consideration in the planning process. This step will help address conflicts and inconsistencies early in the planning process. Further, through coordination, the BLM will assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. The BLM expects that through the coordination provisions in final § 1610.3-2, inconsistencies will be identified, and if possible, resolved early in the planning process. Therefore, the final rule does not incorporate formal consistency reviews at earlier stages of the planning process.

*Landscape-scale Planning (§ 1610.3-3)*

**Comment:** One comment stated that planning at the landscape scale circumvents Federal law by providing “artificial cover” to cite discrepancies between local plans and use those inconsistencies to excuse any lack of conformity to local plans. Another comment stated that the BLM will not have the resources to determine consistency with dozens of counties' land use plans if it develops plans at a landscape scale.

Response: Requirements for coordination and consistency apply to all land use planning processes regardless of the scale of the planning effort. All resource management plans shall be consistent with the plans of other Federal, State and local governments, and tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws and regulations applicable to public lands. Additionally, the final rule includes a new § 1610.4(a), which identifies criteria that the BLM will use to identify a preliminary planning area, including relevant landscapes based on management concerns identified through monitoring and evaluation, and officially approved and adopted plans of other Federal agencies, State and local

governments, and Indian tribes. This paragraph also requires the responsible official to make the description of and rationale for the preliminary planning area available for public review prior to the publication of the NOI in the *Federal Register*. This paragraph adds an opportunity for coordination with State and local governments.

The BLM cannot predict future funding levels, departmental and agency priorities, or other changes that may affect implementation; however, it must comply with the consistency requirements in final § 1610.3-3.

It is important to note that consideration of relevant landscapes does not inherently mean that all planning areas will increase in size. As stated in § 1601.0-5, “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.”

*Coordination Requirements (§ 1610.3-3)*

**Comment:** Many comments expressed the concern that the proposed rule eliminates or weakens requirements to coordinate and ensure consistency with State, local, and tribal governments by removing the definition of consistency in the proposed rule, limiting the scope of review to consistency with “officially approved and adopted land use plans. . . to the maximum extent the BLM finds practical and consistent. . .” and adding the requirement of consistency with Federal administrative “purposes, policies, and programs.” Comments also asserted the following:

- Government-to-government interactions will be weakened by the implementation of such additional constraints on local governments.
- The belief that the BLM will fail to work in good faith with State and local agencies.

- The proposed rule does not require the BLM to consider the policies, programs and processes of Federal, State, local and tribal governments.
- The proposed language will limit local governments' ability to make use of consistency review requirements if they do not have an officially approved or adopted land use plan.
- Limiting review to only officially approved and adopted land use plans will also require State and local governments to revisit resource-related plans and make them "land use plans," which could be costly.
- By incorporating these changes, the proposal undermines the relationship with State and local governments by elevating the role of special interest groups to "cooperator-like" status. Specifically, the proposed rule elevates public input into policies, guidance, and plans over that of local governments.
- The proposed rule further ignores that resource management plans will have the greatest impact at the local level.
- Comments stated that the proposed rule shifts the obligation to local governments to identify inconsistencies.
- The obligations for consistency with local plans do not hinge on whether or not they are consistent with Federal purposes, policies, and programs, only whether they do not contradict Federal laws.
- Requiring consistency through a third party, via Governor's consistency review, will further complicate the process of ensuring consistency.

- The proposed rule replaces coordination and consistency requirements with the public participation process, where local governments have the same standing as the public.

Comments made the following recommendations:

- That the policies, programs, and processes, such as State species management plans, be retained in the final rule.
- That the following phrase be included: “the land use plans mentioned in this paragraph include not only land or resource management plans, but also regulations and directives relating to land management that have been officially adopted.”
- That existing § 1610.3-1(d)(1) be retained.
- That existing requirements for consistency with the plans of State, local, and tribal governments be retained.
- That every reference to consistency requirements in the final rule include the word “maximum.”
- That the Governor’s consistency review be revised to ensure BLM coordinates with local governments directly.

**Response:** The final rule does not eliminate the BLM’s obligations for coordination and consistency. Sections 1610.3-2 and 1610.3-3 of the final rule reaffirm this commitment. The BLM will work in good faith with other Federal agencies, State and local governments, and tribes.

Based on public comments, final § 1610.3-3(a)(1) (proposed § 1610.3-2(a)(1)) removes the term “land use” when describing “officially approved and adopted plans.” The final rule also

defines “officially approved and adopted plans” at final § 1601.0-5. This change includes various types of resource-related plans. Resource-related plans, such as State species plans, would not be excluded from consistency as long as they meet the requirements of final §§ 1610.3-3 and 1601.0-5. The final rule does not require State and local governments to revise plans to make them “land use plans.” All officially approved and adopted plans, as discussed in §§ 1610.3-3 and 1601.0-5 of the final rule, will be considered for consistency requirements.

Final § 1610.3-3(a) (proposed § 1610.3-2(a)) adopts the requirement that resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulation applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The requirement that guidance and resource management plans be consistent with the purposes, policies and programs of Federal laws and regulations is contained in existing § 1610.3-2(a). The BLM administers the public lands and has the responsibility to implement the statutory direction provided in public land statutes, including FLPMA. The BLM must also comply with all Federal laws and regulations, consistent with the policies and programs implementing such laws and regulations. It would be inappropriate to remove an existing requirement that acknowledges the BLM’s need to comply with Federal laws and regulations and the direction provided for implementing them.

As an objective of coordination, final § 1610.3-2(a)(1) states that the BLM will keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes. Additionally, § 1610.3-3(a) states that resource management plans shall be consistent with officially approved or adopted plans of other Federal

agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA. However, the BLM will only be required to address the consistency requirements of final § 1610.3-3 if the responsible official is notified of these inconsistencies in writing. See the preamble discussion of final § 1610.3-3(a)(2) for more information on this requirement.

The Governor's consistency review and the manner in which it is conducted is contained in existing regulations. This process affords the Governor, as the elected representative of the State, an additional opportunity to identify, discuss, and remedy any outlying inconsistencies with State and local plans prior to the approval of a resource management plan. The Governor's consistency review is not a substitute for coordination with affected governments, nor does it replace the BLM's requirements for consistency with the plans of other governments, per final § 1610.3-3. The final rule does not include provisions for coordinating directly with local governments during the Governor's consistency review period. The rationale for this decision is contained in the section-by-section analysis for § 1610.3-3(b).

The Governor's consistency review is not the only opportunity for coordination, and is not intended to replace the importance of coordination with local governments. A key objective of coordination, as described in final § 1610.3-2(a), is for the BLM to work with representatives from State and local governments to avoid or resolve inconsistencies with State and local plans. Final §§ 1610.3-2 and 1610.3-3 describe the BLM's requirements for coordination and consistency in preparing resource management plans. These sections are in addition to the public involvement described in final § 1610.2, and recognize the role of other Federal agencies, State and local governments, and Indian tribes in the BLM's planning process. Please see the section-by-section analysis for these sections for further information.

The final rule adopts the proposal to remove existing § 1610.3-1(d). Please see the preamble discussion of final § 1610.3-2 for additional information related to this change. The final rule adopts the word “maximum” where appropriate, as this term is consistent with the language of FLPMA.

Terminology (§ 1610.3-3)

**Comment:** Some comments stated that, by definition, the proposed rule changes requirements from “the agency must assist in resolving inconsistencies to the extent possible (practicable)” to “resolving inconsistencies to the extent sensible or useful (practical).” The proposed rule does not indicate how the BLM will determine what State and local land use plans it finds “practical.” Comments suggested that the final rule retain the word “practicable.”

**Response:** In response to public comments, § 1610.3-3(a) of the final rule removes the word “practical” from the phrase “maximum extent the BLM finds [practical and] consistent with the purposes of FLPMA.” This language is described in final § 1610.3-2(a)(3) and is therefore unnecessary in this section. Final § 1610.3-3(a)(1) replaces the word “practicable” with “practical” for consistency with FLPMA (see 43 U.S.C. 1712(c)(9)) and final § 1610.3-2(a)(3). The BLM acknowledges that there are subtle differences between the meanings of the two terms; however, the BLM believes this change is appropriate for consistency with the terminology used in FLPMA.

**Comment:** Many comments stated that removing the current definition for consistency reduces the BLM’s obligations for consistency, which reduces the public’s right to be heard. FLPMA requires the BLM to ensure consistency with State and local plans to the maximum extent it finds consistent with Federal law and the purposes of the Act. However, the proposed

rule gives more flexibility to BLM in determining consistency. Further, the proposed rule substitutes terms like “consideration” for the legally appropriate standard of “consistency.”

One comment suggested that preliminary consistency reviews be conducted during the planning assessment and prior to the release of the draft EIS. Also, the final rule should direct that land use plans list the degree to which it has been coordinated with other agencies’ plans and specify if the preferred alternative differs from such plans and programs. Some comments suggested that proposed § 1610.3-2(a)(1) should remove the phrase “give consideration to those plans that are germane in the development of resource management plans.”

**Response:** In response to public comments, the final rule includes the definition of “consistency,” which is edited to state “consistent with officially approved and adopted plans.” The BLM believes that this change is necessary because the word “consistent” is used in the final rule in multiple contexts. Please see the preamble discussion of § 1601.0-5 for further information regarding this definition.

In accordance with FLPMA, final § 1610.3-3(a) requires resource management plans to be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws and regulations applicable to the public lands, and the purposes, policies and programs implementing such laws and regulations. The final rule does not eliminate the BLM’s obligations for consistency, but rather aligns with the provisions of FLPMA (43 U.S.C. 1712(c)(9)).

The use of the term “consideration” does not replace the BLM’s consistency requirements. For example, final § 1610.3-3(a)(1) states that the BLM shall keep apprised of officially approved and adopted plans and “give consideration to those plans that are germane in

the development of resource management plans.” FLPMA (43 U.S.C. 1712(c)(9)) directs the BLM to “assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands.” The final rule does not adopt the suggestion to remove the phrase “give consideration to those plans that are germane in the development of resource management plans.” It would be inappropriate to give consideration to plans that are not germane to the planning effort, which could diminish efficiency without adding value to the planning effort.

The BLM is subject to consistency requirements under FLPMA. The consistency requirements in final § 1610.3-3(a) represent, in part, a change from current regulations, but are consistent with the direction provided by FLPMA. The BLM will continue to strive for consistency with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. .

The final rule does not adopt the suggestion to include formal preliminary consistency reviews during the planning assessment and prior to the publication of the draft EIS. Under the coordination requirements of final § 1610.3-2, the BLM will keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes, and assist in resolving, to the extent practical, inconsistencies with these entities’ plans. Through coordination, the BLM will assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. The Governor’s consistency review process is a unique step that affords the Governor, as the elected representative of the State, a final

opportunity to address, discuss and remedy outlying inconsistencies prior to the approval of the resource management plan.

Final § 1610.3-3(a)(3) requires that the “proposed resource management plan shall show how those inconsistencies were addressed and, if possible, resolved.” The final rule does not direct that land use plans list the degree to which they have been coordinated and specify if the preferred alternative differs from the plans and programs of other agencies. Final § 1610.3-2 provides requirements for coordination that the BLM must meet in developing resource management plans. Further, § 1610.3-3(a)(3) provides transparency by requiring that inconsistencies and associated remedies are shown in the proposed resource management plan.

**Comment:** One comment stated that substituting the word “consideration” for “consistency,” as required by FLPMA, is beyond the BLM’s authority. For example, proposed § 1610.4(a)(3) requires that the BLM “provide opportunities for other Federal agencies, State and local governments, and Indian tribes to provide existing data, information, plans, or strategies for consideration in the planning process.” “Consideration” is also used in proposed § 1610.3-2(a)(1). The comment suggested that the final rule clarify the inclusion of the term “consideration.”

**Response:** The term “consideration” is contained in existing regulations and in FLPMA, and is retained in the final rule. FLPMA (43 U.S.C. (c)(9) states that “the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; [and] assure that consideration is given to those State, local, and tribal plans that are germane to the development of land use plans for public lands. . .” Proposed § 1610.4(a)(3) (final § 1610.4(b)(3)), as referenced in the comment, provides that during the information gathering stage of the planning assessment, opportunities will be given to other Federal agencies, State and local governments,

Indian tribes, and the public to provide existing data and information or suggest other policies, guidance, strategies, or plans for the BLM's consideration in the planning assessment. The use of the term "consideration" in the final rule does not replace the word "consistency." Rather, this section (final § 1610.4(b)(3)) ensures that existing data and information or laws, regulations, policies, guidance, strategies, or plans described under final § 1610.4(b)(2) are incorporated in the planning assessment.

Limited authority (§ 1610.3-3)

**Comment:** One comment suggested that proposed § 1610.3-2 should specify that consistency is limited to State and local provisions that govern activities over which the State and local government has full authority. The comment further explained that there is a possibility that State or local governments will attempt to adopt plans that govern land uses of public lands.

**Response:** The final rule does not adopt the suggestion to specify that consistency is limited to State and local provisions that govern activities over which the State and local government has full authority. FLPMA states that the land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. Final § 1610.3-3(a) reflects this language. The BLM must consider all officially approved and adopted plans that are relevant to the planning effort. The BLM does not have the authority to require or prevent State and local governments from adopting plans; however, in addressing its consistency requirements, the BLM will determine whether or not such officially approved and adopted plans are consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.

Removal of existing § 1610.3-1(d)

**Comment:** Several comments noted that the proposed rule removes requirements from existing § 1610.3-1(d) that BLM guidance be consistent with plans, policies and programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected. These comments stated that removal of this requirement is a significant and unjustified change from current regulation. Policies, analysis requirements, planning procedures, and other instructions have a major effect on the outcome of land management planning. Comments recommended that the BLM retain § 1610.3-1(d) from the existing regulations in the final rule as well as additions regarding identified inconsistencies. This recommendation would allow the BLM to satisfy coordination duties by looking at county-generated plans, policies and programs that may be germane to the process. Such an opportunity provides a meaningful bookend to cooperating agencies and would allow the BLM to mitigate conflicts.

**Response:** The final rule adopts the proposal to remove existing § 1610.3-1(d), which describes how the State Director will provide guidance to the Field Manager. The BLM recognizes the importance of the plans, policies, and programs of other Federal agencies, State agencies, Indian tribes and local governments in resource management plan development. However, existing § 1610.3-1(d) describes an internal BLM process and is not appropriate for regulation. The removal of this section does not absolve the BLM of its obligations for coordination and consistency. For example, as objectives of coordination in the planning process, final § 1610.3-2(a) directs the BLM to (1) keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes; and (2) assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans. The BLM shall also assist in

resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans.

For further information on the decision to remove existing § 1610.3-1(d), please see the discussion of § 1610.3-2 in the preamble.

#### **Section 1610.4 Planning Assessment.**

##### *General Comments (§ 1610.4)*

**Comment:** Many comments expressed broad support for the planning assessment. Some comments asserted that the addition of the planning assessment step, if based on the best scientific information and other high-quality information, could or would be a valuable tool for understanding a planning area's current baseline resource, environmental, ecological, social, and economic conditions. Other comments noted that the planning assessment would provide multiple opportunities for public involvement, including early opportunities for stakeholders to provide important, relevant baseline information before the BLM identifies planning issues and formulates resource management alternatives. One of those comments asserted that greater public involvement would result in more balanced resource decisions and fewer legal battles over final resource management plans. Some comments asserted that the early collaboration between governments for which the planning assessment provides would streamline the time it takes to prepare a resource management plan or plan amendment and make resource management plans more comprehensive.

**Response:** The BLM agrees that the planning assessment will assist the BLM in better understanding the current resource, environmental, ecological, social, and economic conditions in a planning area before the steps the BLM has traditionally taken first: the identification of planning issues and the formulation of resource management alternatives.

The BLM further agrees that the planning assessment provides new, early opportunities for public and stakeholder involvement, including opportunities to provide data and information.

The BLM agrees that the planning assessment's provisions for early coordination with other Federal agencies, State and local governments, and Indian tribes and for early collaboration with cooperating agencies will result in the consideration of a breadth of relevant policies, information, and perspectives, which will beget efficiencies in the preparation of resource management plans.

For further information on public involvement in land use planning, please see the discussion of § 1610.2 in the preamble.

For further information on consultation with Indian tribes and coordination with Federal agencies, State and local governments, and Indian tribes, please see the discussion of § 1610.3 in the preamble. For further information on collaboration with cooperating agencies, please see the discussion of § 1610.3-2(b) in the preamble.

**Comment:** A few comments were supportive of the planning assessment but suggested the BLM expand it, particularly to include some analysis of the implementation success of resource management plans. The comments asserted that some analysis in the planning assessment regarding whether current plans are effective would help convey the BLM's priorities and objectives for a planning area to the public. A couple of the comments asked the BLM to use the planning assessment to identify the parts of current resource management plans that have not been implemented due to legal actions or lack of funding, and to analyze whether new planning efforts would be appropriate in such situations. One comment suggested that the BLM communicate to the public: whether a current plan has been fully implemented and if not, why; whether a current plan has succeeded or failed or needs updating; and whether it is practicable to

use a current plan for the foreseeable future, or about five years. This comment also suggested that the BLM communicate to the public whether it had made decisions outside the direction of a current resource management plan in the planning area. One comment also suggested that the BLM document in the planning assessment past land use and management, in addition to assessing current conditions.

**Response:** The final rule includes, in §§ 1610.4(d)(1) and (d)(2), requirements that the responsible official assess “[r]esource use and management authorized by FLPMA and other relevant authorities” and the “[l]and status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights.” Details regarding how the BLM addresses these requirements and documents its evaluation in the planning assessment report are implementation-level actions and not included in the final rule; such details are better addressed in future guidance such as Handbooks, manuals, or other internal policies.

The final rule requires that the BLM monitor and evaluate the resource management plan and document that evaluation in a report that it makes available for public review. For more information on monitoring and evaluation, please see § 1610.6-4 of the preamble. Final § 1610.4(b)(a) requires the responsible official to “[a]rrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available....” This would include any relevant monitoring and evaluation data, therefore, it is not necessary to list those data specifically in this section. As required by final § 1610.6-4(a)(1), plan evaluations will include information on whether resource management plan objectives are being met. Plan evaluations will be made available to the public, and incorporated into the planning assessment.

Final §§ 1610.6-6 and 1610.6-7 include the criteria the BLM will use to decide whether to amend or revise land use plans. The BLM does not include in this criteria funding for implementation of plans, because the BLM is directed by FLPMA to develop, maintain, and, when appropriate, revise land use plans for the public lands (43 U.S.C. 1712(a)). Final § 1610.4(b)(2) includes a requirement that the responsible official identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment. These may include, but are not limited to, Executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State, multi-state, tribal, or local resource plans. This information will communicate to the public, through the planning assessment, if there are other plans, such as programmatic plan amendments, that are applicable to public lands within the planning area.

**Comment:** Many comments expressed concern or were unsupportive of the planning assessment, claiming that it represents a major policy shift from the current planning process. Some of these comments asserted that the planning assessment creates more steps and analysis for an already long and confusing process. Other comments asserted that the planning assessment, and the many factors the BLM must consider when conducting it, shift focus from resources, multiple use, and sustained yield to “value-based” decision-making. These comments asserted that the planning assessment is overly devoted to considering the impact of use on resources, and expressed concern that this consideration represents land preservation or “non-use” as the desired condition of a planning area’s resources. Finally, some comments asserted that the planning assessment nearly ignores the degree of dependence on resource use for State

and local communities, replacing those interests with consideration of national and international impacts.

**Response:** The BLM combines two steps of the existing rule, the inventory data and information collection step (existing § 1610.4-3) and the analysis of the management situation (existing § 1610.4-4) into one planning assessment step. The BLM intends for the planning assessment to help make resource management planning a more efficient process. The planning assessment requires the BLM to invest time early in the planning process, but a considered evaluation of the planning area early on will diminish the possibility of surprises and conflicts later, when the BLM has already completed a significant amount of work to prepare the resource management plan or plan amendment.

The final rule does not identify certain factors in the planning assessment as more important than others; rather, it directs the responsible official to consider and document in the planning assessment the factors listed in § 1610.4(d) of the final rule. The final rule includes all the factors identified in the existing analysis of the management situation (see existing § 1610.4-4(a)) and a number of others, some of which the BLM already may consider under the existing regulations. These factors help to inform the planning process and their inclusion in the final rule helps the public to better understand the types of information the BLM considers during the development of a resource management plan. The responsible official is not limited to the factors listed in the final rule.

While there are factors in the final rule, such as “[k]nown resource constraints, or limitations” (§ 1610.4(d)(4)) that may support a particular conservation consideration when the BLM prepares a resource management plan, the planning assessment does not represent an approach to resource management planning that prefers “non-use.” The BLM recognizes its

multiple use and sustained yield mandate under FLPMA, and the planning assessment of the proposed and final rules is consistent with FLPMA and all applicable Federal law. In response to public comments, § 1610.4(d)(1) of the final rule (proposed § 1610.4(c)(1)) is revised to include “resource use” in addition to resource management authorized by FLPMA and other relevant authorities. The term “resource management” encompasses “resource use,” but with this revision the BLM clarifies that it will continue to consider resource uses authorized by FLPMA. Paragraph 1610.4(d)(7) of the final rule (§ 1610.4(c)(7) of the proposed rule) also includes the addition of the term “uses,” so that the responsible official shall consider and document the various goods, services, and uses that people obtain from the planning area.

The BLM recognizes the importance of local dependence on resources in a planning area, and the responsible official will consider and document, per final § 1610.4(d)(7)(i), the degree of local (as well as regional, national, or international) importance of the goods, services, and uses that people obtain from the planning area. For example, where a local population is highly dependent on livestock grazing in the planning area, the BLM expects the responsible official will record that level of importance in the planning assessment. The BLM believes it is important to include regional, national, and international dependence on goods, services, and uses in the final rule because they will facilitate planning across traditional administrative boundaries and implementing landscape-scale management approaches. Goals for renewable energy generation on Federal lands under the President’s Climate Action Plan are an example of a good, service, or use with regional or national importance. In the same vein, the responsible official will identify national and regional, in addition to State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment, per § 1610.4(b)(2) of the final rule. The information gathered in the planning assessment will inform the later stages of

planning, where the priority of a particular policy or degree of dependence will vary from planning effort to planning effort.

**Comment:** One comment requested that the BLM state the purpose of the planning assessment in the final rule, including that it satisfies FLPMA obligations, because doing so would help to ensure that planning assessments are efficient, strategic, and useful. The comment suggested adding “The purpose of the planning assessment is to document current resource, environmental, ecological, social, and economic conditions in the planning area, to inventory public lands resources and values, to provide early opportunities for public engagement, and to inform the preparation of the resource management plan.”

**Response:** The BLM did not add this language to the final rule. The planning assessment’s purpose is inherent in the language of the planning assessment section of the final rule, as well as in the definition in § 1601.0-5.

**Comment:** One comment requested clarification regarding whether the planning assessment would be the basis for Chapter 3 of an EIS.

**Response:** The intent of the planning assessment is to provide baseline information that is necessary in later planning stages, including in the Affected Environment (Chapter 3) of an EIS. The planning assessment is meant to inform the BLM of current conditions, as well as potential data gaps, so that the BLM will have or be able to identify the data it needs to complete the Affected Environment section of an EIS.

**Comment:** One comment expressed concern that the planning assessment leaves the BLM open to lawsuits under the Administrative Procedure Act and under NEPA. The comment asserted that litigants could argue that the planning assessment creates judicially enforceable rights as to the scope and content of a planning assessment. The comment suggested that the

BLM add the following paragraph to proposed § 1610.4(d): “The responsible official has the discretion to determine the nature, scope, scale, content and timing of the planning assessment depending on the topic or topics to be addressed.”

**Response:** The BLM will not include the suggested language in the final rule. The planning assessment is part of the planning process and is not a final agency action. The BLM believes that final § 1610.4 creates adequate limits to define the planning assessment process, but leaves the BLM discretion to determine timing, scale, and scope.

**Comment:** A few comments asserted that it is unclear how a planning assessment would be used in the preparation of a resource management plan or plan amendment. The comments further asserted that the planning assessment should inform all major planning issues, as well as alternatives development, environmental analysis, and implementation. Another comment noted that, as written in the proposed rule, the planning assessment could result in voluminous regurgitation of information, and that the BLM should create a more purpose-driven structure for this step to facilitate later use of the information collected. The comments suggested that the BLM use the planning assessment to identify monitoring necessities, causal factors, and goals that it could reach with adaptive management.

**Response:** A planning assessment will result in a report that evaluates relevant conditions in the planning area and describes the current status of lands and resources in the planning area, projects demand for those resources, and assesses how the BLM can meet those demands consistent with its multiple use and sustained yield mandate. Paragraph 1610.4(e) of the final rule requires that the BLM make the report available for public review. The planning assessment and the report will inform the identification of planning issues (§ 1610.5-1(a)) and scoping (for both the BLM and stakeholders), the identification and development of resource management

alternatives (§ 1610.5-2(a)(1)), and, as appropriate, the implementation of a resource management plan. Specific details regarding how the BLM will use the planning assessment will vary from planning effort to planning effort, so the BLM does not include them in the final rule. The BLM expects to issue guidance on this topic in Handbooks, manuals, or other internal guidance. Specific to adaptive management, final § 1610.4(d)(4) modifies and expands on existing § 1610.4-4(i), which refers to “critical threshold levels which should be considered in the formulation of planned alternatives.” Known resource constraints or limitations will be identified based on the best available scientific information. For instance, a known limitation might include a minimum viable population number for an endangered species as determined by the U.S. Fish and Wildlife Service, or a minimum area of critical habitat, such as breeding grounds or winter range, as determined by peer-reviewed scientific research. The BLM believes this concept is important to the planning process because it informs the development of plan components in the resource management plan, including disturbance limits, mitigation standards, or decision points for applying adaptive management. For example, a land use plan could establish an objective to support viable populations for a sensitive species by protecting important habitat. If a known minimum viable population for the species was identified in the planning assessment, this information could be used to establish a decision point to consider a plan amendment if the population numbers dropped near or below the minimum.

*Terminology (§ 1610.4)*

**Comment:** One comment expressed concern about the use of the term “social” throughout proposed § 1610.4, and requested that the BLM remove all references to social data, information, and conditions and their trends. The comment asserts that FLPMA does not use the

term “social,” nor does it provide for direct consideration of social issues during the planning process.

**Response:** The final rule adopts the uses of the term “social, which include final §§ 1610.4(b)(1), 1610.4(b)(4), 1610.4(d), and 1610.4(d)(3). FLPMA (see 43 U.S.C. 1712(c)(9)) requires the Secretary, in developing land use plans, to “use an interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and” the broader “other sciences.” The final rule identifies social sciences for consistency with the CEQ NEPA implementation regulations (see 40 CFR 1502.6).

*Timing of and Timeline for Planning Assessment (§ 1610.4)*

**Comment:** Several comments emphasized the amount of time required to complete the planning assessment, asserting that it will result in yet another process and create delays in the planning timeline. A couple of comments suggested that the planning assessment risked becoming a preliminary and redundant NEPA analysis, conducted before the BLM even begins to prepare an EIS. Some of the comments further asserted that the planning assessment should be an expeditious information-gathering exercise. They suggested revising Section 1610.4 to include such a statement, as well as requirements that the BLM not undertake studies as part of the planning assessment and that it only use data and information that are readily available. Some comments also suggested reducing the amount of information the BLM must gather in the planning assessment and to identify, without conducting studies, data gaps and evaluation needs.

**Response:** The BLM believes that the planning assessment, while investing more time before it begins the preparation of a resource management plan or plan amendment, will result in efficiencies over an entire planning effort. The planning assessment allows the BLM to identify diverse viewpoints early and often, diminishing conflicts or issues that might otherwise be

discovered later in the planning process, after the BLM has completed a substantial amount of work. As a recording of the baseline conditions in a planning area, the planning assessment is intended to inform NEPA analysis, not to duplicate it. The planning assessment also identifies data gaps that the BLM will need to fill before it completes NEPA analysis.

The final rule does not limit the planning assessment to a certain amount of time, prohibit the BLM from conducting a study as part of its information gathering, or limit the data and information gathered to that which is readily available. Paragraph 1610.4(b)(1) of the final rule adopts the requirement, from § 1610.4(a)(1) of the proposed rule, for the responsible official to arrange for the gathering of relevant data and information, in a manner that aids the planning process and avoids unnecessary data gathering. The BLM will complete a planning assessment based on a reasonable budget and timeframe and in accordance with the timing of the planning effort.

The BLM does not reduce the number of factors for the responsible official to consider in § 1610.4(d) of the final rule. The responsible official will consider them when they are applicable, but he or she is not limited to these factors. The BLM already considers many of these factors under the existing regulations, and the inclusion of the list of factors in the final rule provides the public with a better understanding of the types of information the BLM considers during the preparation of a resource management plan. The BLM expects to address techniques for efficiency in future guidance, such as the Land Use Planning or other Handbook, manual, or other internal policy.

**Comment:** A couple of comments suggested that the BLM establish maximum time frames in which to complete planning assessments. They asserted that holding public meetings, collecting and processing data, engaging in collaboration, and synthesizing all the gathered

information will be time-consuming and could result in even longer planning periods. The comments requested that the BLM adopt and articulate clear internal schedules and controls to keep the planning assessment from causing delays in resource management plan development. They further noted that the Forest Service's comparable process has a maximum time frame of about one year.

**Response:** The final rule does not establish a maximum time frame in which the BLM would be required to complete a planning assessment. The BLM intends for planning assessments to be conducted efficiently, within reasonable timeframes, but the time necessary for a planning assessment may vary depending on the scope of the planning effort. The BLM expects to address conducting an efficient planning assessment in future guidance, such as the Land Use Planning or other Handbook, manuals, or other internal policy.

**Comment:** A couple of comments suggested that the BLM conduct planning assessments more regularly, perhaps annually, rather than only before the preparation of a resource management plan. They asserted that the BLM is often unable to complete the process that the planning assessment replaces, the Analysis of the Management Situation (existing § 1610.4-4), in a timely fashion, and that regular updates would keep the planning assessment from being a large, time-consuming undertaking. The comments further asserted that the Analysis of the Management Situation tends to be a static product, and in order to effectively support dynamic plans that are responsive to change, the planning assessment should be regularly updated as new information becomes available.

**Response:** The purpose of the planning assessment is to evaluate relevant conditions in the planning area specifically for informing the preparation and, as appropriate, the implementation of a resource management plan. However, the final rule adopts monitoring and

evaluation requirements and standards (see §§ 1610.6-4 and 1610.1-2(b)(3) of this final rule), with a requirement that the responsible official document the evaluation in a report that the BLM will make available for public review on the BLM's Website. The provisions for monitoring and evaluation support adaptive management strategies. As provided in § 1610.6-4(a) of the final rule, monitoring and evaluation will determine whether resource management plan objectives are being met and whether "there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan."

**Comment:** One comment asserted that it is not uncommon for the analysis of the management situation, which the planning assessment replaces, to remain incomplete throughout the formulation of alternatives.

**Response:** Unlike the analysis of the management situation, which the BLM currently undertakes after identifying issues and developing planning criteria (see §§ 1610.4-1, 1610.4-2, and 1610.4-4 of the existing rule), the planning assessment will be the first step of a planning effort. Section 1610.4 of the final rule requires that the planning assessment be complete before the BLM initiates the preparation of a resource management plan.

**Comment:** One comment urged the BLM to establish in the final rule an information-gathering threshold, and after reaching this threshold, the BLM would move on to preparing the resource management plan. The comment asserts that the BLM should not progress to planning if it does not have the requisite data to make informed decisions, as this may result in allowing management actions that could degrade or compromise resources.

**Response:** The final rule does not include this suggestion. A threshold of information necessary to complete the planning assessment may vary depending on the planning area and the scope of the planning effort, and will be determined based on the individual planning effort.

Additionally, the BLM will identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area under final § 1610.4(b)(4). This step will give the public an opportunity to help the BLM determine it has appropriate information for the planning assessment. As explained in final § 1610.4(c), the responsible official shall evaluate the data and information gathered to ensure the use of high quality information in the planning assessment and to identify any data gaps or further information needs. The BLM will use this information to determine if it has adequate information, or if there are additional data gaps before initiating a planning effort.

The BLM must conduct the planning assessment based on reasonable budgets and timeframes. The BLM will continue to manage on the basis of multiple use and sustained yield or applicable law.

*Coordination (§ 1610.4)*

**Comment:** Many comments asserted that the planning assessment phase does not allow for meaningful coordination opportunities, and that a lack of meaningful coordination opportunities could lead to a lack of consistency with State and local plans. Some comments asserted that the proposed rule treats State and local governments as members of the public and on the same level as non-governmental organizations, rather than as agencies with which the BLM must meaningfully coordinate under FLPMA. Other comments were supportive of the planning assessment, but suggested that the BLM devote more of the planning assessment step to collaboration with State and local governments and stakeholders in order to help ensure consistency with local land use plans and to diminish controversy later in the planning process. A few comments included the view that the planning assessment omits coordination outside of cooperating agency status. These comments noted that FLPMA requires the BLM to coordinate

with State and local governments on its land use inventory, planning, regulations, and management activities and recommended that the BLM imbed coordination into the planning assessment regardless of cooperating agency status.

A couple of comments noted that elected officials are beholden to their constituents and thus represent the public in a way that non-governmental organizations do not. These comments asserted that State and local governments should therefore be able to have private meetings with the BLM to share information and formulate planning objectives. Some comments specified that in order to comply with FLPMA, the responsible official must coordinate with State, local, and tribal governments when, as would be required by proposed § 1610.4(a)(2), he or she identifies the relevant national, regional, or local policies, guidance, strategies, or plans that will inform the planning assessment.

Several comments suggested that the BLM formally coordinate planning assessments with State and local governments and Indian tribes, distinct from the BLM's public outreach. Some of those comments suggested that this coordination involve meetings with State and local governments and Indian tribes to share information and expertise, assess resource conditions in the planning area, and formulate objectives. Other comments suggested that there should be notice requirements when assessments are initially contemplated, such as a specific requirement that the BLM field office notify State and local governments, including elected county commissioners, in writing before beginning the planning assessment, informing them of the opportunity to participate in the planning assessment. Some comments suggested that the BLM initiate joint government-to-government data collection and assessment efforts at the earliest possible date. A few comments included the view that the planning assessment does not adequately incorporate consistency requirements. One comment suggested that the BLM add

language to several paragraphs of the planning assessment section to strengthen coordination with State and local governments. These include: adding “opportunities” to § 1610.4(c)(4) of the proposed rule; adding a new paragraph § 1610.4(c)(5) requiring the responsible official to consider and document requirements and constraints to achieve consistency and avoid possible conflicts with land use and resource-related planning and management programs of other governmental agencies and re-numbering the subsequent paragraphs; considering the “socioeconomic impacts and contributions” in proposed § 1610.4(c)(7)(i) instead of the “degree of local, regional, national, or international importance” of goods and services; and only allowing the deciding official to waive the planning assessment requirement for maintenance, not for minor amendments, in § 1610.4(e) of the proposed rule.

**Response:** The planning assessment is intended to be primarily an information-gathering phase, before the BLM begins preparing a resource management plan or plan amendment. The BLM will conduct coordination with other Federal agencies, State and local governments, and Indian tribes during the planning assessment and every other stage in the planning process. The BLM agrees that early coordination would help to avoid later controversy. Further, through on-going coordination, the BLM will be able to assist in resolving inconsistencies between Federal and non-Federal government plans, to the extent practical. The BLM expects that in most situations it will avoid or resolve inconsistencies through early coordination.

Paragraphs 1610.4(a) and (b) of the final rule include new and clarified provisions for coordination in the planning assessment step with governmental entities, outside of cooperating agency status. Specifically, as stated in the discussion of § 1610.4(a) in the preamble, the BLM will “coordinate with other Federal agencies, State and local governments, and Indian tribes to receive feedback on the preliminary planning area.” Section 1610.4(a)(2) of the final rule allows

other Federal agencies, State and local governments, Indian tribes, and the public to provide input on the boundaries of the planning area by making the description of and rationale for the preliminary planning area available for public review before the publication of a NOI in the *Federal Register*.

The final rule revises proposed § 1610.4(a)(1), which is redesignated as § 1610.4(b)(1) in the final rule, to require the responsible official to gather or assemble inventory data and information in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes in the planning area, to the extent consistent with the laws governing the administration of the public lands and as appropriate. This language aligns with FLPMA (see 43 U.S.C. 1712(c)(9)) and reflects the importance of early coordination with other Federal agencies, State and local governments, and Indian tribes. These provisions allow for early coordination on information gathering with State and local governments, even if these governments do not enter into a cooperating agency relationship. Additionally, there are other opportunities, such as during the identification of planning issues, where the BLM can coordinate on inventory and planning in the process.

The BLM will identify plans in the planning assessment with which it will seek consistency pursuant to the consistency requirements of final § 1610.3-3, but at this step it will not identify “specific requirements and constraints to achieve consistency” (per existing § 1610.4-4(e)) as it currently does in the analysis of the management situation. The BLM will not have sufficient information to identify “requirements and constraints” related to consistency at this early step in the planning process, before the BLM begins developing resource management alternatives. Paragraph 1610.4(a)(2) of the proposed rule would have required the responsible official to “[i]dentify relevant national, regional, or local policies, guidance, strategies or plans

for consideration in the planning assessment.” The final rule revises this paragraph, as new § 1610.4(b)(2), to require the responsible official to identify relevant national, regional, State, tribal, or local laws and regulations, in addition to policies, guidance, strategies, or plans. Paragraph 1610.4(b)(3) of the final rule, as a revision to § 1610.4(a)(3) of the proposed rule, includes laws and regulations in the list of items that other Federal agencies, State and local governments, Indian tribes, and the public may suggest to the BLM for consideration in the planning assessment. The proposed and final rules are consistent with all Federal laws, including FLPMA.

The final rule does not require the BLM to contact any specific individual or group to notify them of the opportunity to participate in the planning assessment. As provided in § 1610.2-1(a)(1) of the final rule, the BLM shall notify the public and provide opportunities for public involvement before and during the preparation of the planning assessment (subject to § 1610.4). The BLM will continue its current practice of conducting outreach to all individuals or groups known to be interested in or affected by a resource management plan.

The final rule adopts § 1610.4(c)(4) of the proposed rule, designated as final § 1610.4(d)(4), without revisions. The final rule does not revise § 1610.4(c)(7)(i) of the proposed rule, designated as final § 1610.4(d)(7)(i), to include “socioeconomic impacts and contributions.” The final rule revises § 1610.4(d) of the proposed rule, designated as final § 1610.4(f), to allow the deciding official to waive the planning assessment requirement for “project-specific or other minor” amendments.

For more information on coordination of planning efforts, please see the preamble discussion of § 1610.3-2; for more information on consistency requirements, please see the

preamble discussion of § 1610.3-3(a); and for more information on notice of opportunities for involvement, please see the preamble discussion of § 1610.2-1.

**Comment:** One comment requested that the BLM include in the final rule a requirement for the BLM to specifically request an analysis from other governmental agencies in the planning area on the relevance, applicability, and need for revision of the existing resource management plan.

**Response:** The final rule does not incorporate the recommendation. Section 202(a) of FLPMA requires the BLM to “develop, maintain, and, when appropriate, revise land use plans. . . .” The BLM recognizes the importance of local government input in land use planning and the final rule reflects that importance. However, it is the BLM’s responsibility to determine the relevance, applicability, and need to revise an existing resource management plan.

**Comment:** One comment requested that the BLM contact potential coordinating agencies before beginning the planning assessment to install a Memorandum of Understanding (MOU).

**Response:** The final rule does not require an MOU between the BLM and a given non-Federal agency to be formalized before the planning assessment. The planning assessment step primarily involves information gathering by the BLM, and the BLM does not foresee any problems arising where an MOU is not in place during the planning assessment. The BLM believes that the planning assessment is a useful tool for building working relationships between the BLM and eligible governmental entities, resulting in valuable cooperating agency relationships. Still, the BLM may need to withhold confidential information until an MOU has been formalized.

**Comment:** One comment raised concerns that the removal of existing § 1610.4-4 (analysis of the management situation) also removes the existing requirements regarding resource demand forecasts and analyses as well as for coordination with state and local governments to determine “specific requirements and constraints to achieve consistency.”

**Response:** Under the final rule, the analysis of the management situation is replaced by the planning assessment. The planning assessment includes the identification of available forecasts and analyses related to the supply and demand for goods, services, and uses that people obtain from the planning area (see § 1610.4(d)(7)(ii)). This step replaces “resource demand forecasts and analyses” in the existing regulations.

The planning assessment does not, however, include “specific requirements and constraints to achieve consistency” as noted by the comment. The final rule instead provides for the identification of “specific requirements and constraints to achieve consistency” during the identification of planning issues (§ 1610.5-1). In response to public comments, § 1610.5-1 is revised to clarify that the public, other Federal agencies, State and local governments, and Indian tribes shall be given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management for consideration in the preparation of the resource management plan, “including those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes.” This change is intended to clarify that requirements and constraints to achieve consistency are appropriately addressed as planning issues.

#### *Cultural Resources (§ 1610.4)*

**Comment:** Many comments asserted that the BLM should incorporate the consideration of cultural resources more fully into the planning assessment. These comments asserted that the

collecting of cultural resources information early in the planning process should help to avoid conflicts and the need for mitigation. Some comments further asserted that the early involvement of Indian tribes is essential for ensuring proper management of the millions of cultural sites, resources, and artifacts on BLM land, noting that there is a limit to the issues that can be addressed later, in a National Historic Preservation Act (NHPA) Section 106 review. Several comments noted that FLPMA specifically calls for the protection of “historical” and “archeological” values. One comment suggested that the BLM use the planning assessment to conduct cultural resources surveys, rather than its current practice of completing surveys primarily for NHPA Section 106 reviews. One comment urged the BLM to revise § 1610.4(a)(3) of the proposed rule to specifically request, not provide opportunities for, information and data from the entities listed, including State and Tribal Historic Preservation Officers.

**Response:** In response to public comments, the final rule includes tribal laws, regulations, policies, guidance, strategies, or plans among the items the responsible official shall identify for consideration in the planning assessment in § 1610.4(b)(2) of the final rule. Section 1610.4(b)(1) of the final rule also provides that the BLM will gather or assemble inventory data or information with Indian tribes, Federal agencies, and State and local governments, which could include State and Tribal Historic Preservation Officers. The final rule adopts proposed § 1610.4(c)(5)(i), redesignated as final § 1610.4(d)(5)(i), requiring that the responsible official consider and document “areas of potential tribal, traditional, or cultural importance,” when applicable. These areas may include sites that are important for cultural or subsistence use, cultural landscapes, or traditional cultural properties. The final rule also adopts proposed § 1610.4(c)(5)(vi), redesignated as final § 1610.4(d)(5)(vi), which requires the responsible official to consider and document “areas of significant historical value, including paleontological sites,”

when applicable. The BLM intends that areas of significant historical value may also include archeological sites.

The BLM did not revise the final rule to require that the Bureau conduct cultural resources surveys in the planning assessment. The BLM recognizes the importance of cultural resources surveys and expects to address how they interact with the planning assessment in future guidance, such as handbooks, manuals, or other internal policy. However, the level of survey will vary based on the scope of the resource management plan or planning assessment, and is therefore not appropriate for the regulations.

For more information on providing notice of opportunities to the public, including Indian tribes, to participate in the planning assessment, please see the preamble discussion of § 1610.2-1.

**Comment:** Some comments requested that the BLM specifically address cultural resources inventories and data in the planning assessment, including some or all of the following: data gaps, cultural resource surveys, remote sensing mapping, and the use of predictive modeling. Those comments asserted that cultural resource surveys and predictive modeling would enable planners to differentiate low sensitivity areas from high sensitivity ones.

**Response:** In the planning assessment, as final § 1610.4(b)(1) will require, the responsible official will arrange for the gathering or assembling of relevant resource, environmental, ecological, social, economic, and institutional data and information. Final § 1610.4(b)(3) will provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information to the BLM for its consideration in the planning assessment. The final rule does not identify sources of information as specific as cultural resource surveys, remote sensing imagery, or predictive modeling, because

the presence or importance of such sources will vary depending on the planning effort. Rather, the BLM expects to address the variety of sources of information in future guidance, such as the Land Use Planning Handbook or other internal policy.

*Planning Area Determination (§ 1610.4(a))*

**Comment:** A few comments requested that the BLM clarify in the final rule how the planning assessment informs and helps to establish the planning area boundary. The comments noted that the BLM may need or want to adjust the planning area boundary after receiving input from the public and cooperating agencies, or after reviewing other data and information it obtains during the planning assessment.

**Response:** In response to public comments, the final rule revises § 1610.4 to include a new § 1610.4(a), which pertains to the establishment of the planning area. This paragraph requires the responsible official to make a description of and rationale for the preliminary planning area available for public review, before the publication of the NOI in the *Federal Register*. The responsible official will normally make the description and rationale available at the beginning of the planning assessment, and would revise it based on feedback he or she receives from other Federal agencies, State and local governments, Indian tribes, or the public during the planning assessment. The BLM will identify a final planning area, informed by the input received during the planning assessment, in the NOI.

**Comment:** One comment expressed concern that there is apparently no opportunity for public involvement in the determination of a planning area in the proposed rule. According to this comment, the boundary of a planning area is the most critical issue of landscape-scale planning and a lack of public involvement at this stage undermines FLPMA's requirement that the public and stakeholders be provided the opportunity to participate in planning.

**Response:** In response to public comment, the final rule includes a new paragraph § 1610.4(a) that includes the determination of the planning area as a part of the planning assessment. The BLM will identify a preliminary planning area, which it will use as the basis of the planning assessment. The BLM intends that the description of and rationale for the preliminary planning area would normally be made available at the start of the planning assessment step and revised, as necessary, based on feedback the BLM receives throughout the planning assessment. Feedback solicitations would include, for example, public meetings under § 1610.4(b)(4) of the final rule, as well as the coordination with other Federal agencies, State and local governments, and Indian tribes that the BLM will conduct throughout the planning assessment. The final planning area will be identified in the NOI, informed by the feedback received during the planning assessment.

*Landscape-scale Planning (§ 1610.4(a), § 1610.4(d))*

**Comment:** A few comments requested that the BLM require that the planning assessment and inventory be done on a landscape scale or that it plan on a landscape scale to the maximum extent possible. One of the comments asserted that requiring landscape-scale planning assessments would facilitate identification of ACECs that cross jurisdictional boundaries, which can only be identified effectively through a regional assessment. The other comment requested that the BLM add a sentence to the introduction of § 1610.4 as follows: “To the fullest extent possible, the planning assessment will be carried out over entire watersheds, landscapes, and ecosystems, even when they encompass land and resources not managed or controlled by the BLM.”

**Response:** In § 1610.4(a) of the final rule, the BLM must consider whether it is feasible and appropriate for the planning area to encompass the full extent of the landscape. This will

help to accomplish one of the BLM's goals for the final rule: to improve the BLM's ability to apply landscape-scale approaches to resource management. It is important to note that consideration of relevant landscapes does not inherently mean that all planning areas will increase in size. As stated in § 1601.0-5, "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." The BLM will consider multiple factors when determining the appropriate scale for assessment and inventory. Final § 1610.4 is revised to adopt § 1610.4(a), which requires the BLM to identify a preliminary planning area prior to publication of the NOI, and adopts criteria to consider when developing the preliminary planning area.

**Comment:** One comment requested that the BLM include provisions for evaluating and protecting the interconnectivity of National Landscape Conservation System units and other significant areas of naturalness in the final rule. The comment urged the BLM to ensure that the National Landscape Conservation System is an integrated system, with its designated protected areas linked to each other and to other areas of high-quality habitat. The comment asserted that the planning assessment does not provide direction for the BLM to evaluate landscape connections between National Landscape Conservation System units and other protected areas such as National Wildlife Refuges, Forest Service Wilderness Areas, or National Parks.

**Response:** The final rule does not mention National Conservation Lands by name, but several paragraphs provide for the consideration of connectivity and wildlife habitat. In § 1610.4(a) of the final rule, the planning assessment step includes the identification of the preliminary planning area. During this step, the BLM will consider, among other factors, relevant landscapes related to management concerns that the BLM has identified through monitoring and evaluation (see § 1610.4(a)(1)(ii) of the final rule). The BLM will also consider

the officially approved and adopted land use plans of other Federal agencies, State and local governments, and Indian tribes when identifying the preliminary planning area, as provided in § 1610.4(a)(1)(iv). These considerations support an approach to planning across traditional boundaries and on a landscape scale.

Paragraph 1610.4(d)(5) of the final rule requires the responsible official to consider and document a number of types of areas of potential importance in the planning area when applicable. The areas listed include: habitat for special status species, including State or federally-listed threatened and endangered species (§ 1610.4(d)(5)(ii) of the final rule); other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat (final § 1610.4(d)(5)(iii)); areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change (final § 1610.4(d)(5)(iv)); lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value (final § 1610.4(d)(5)(v)); and existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs (final § 1610.4(d)(5)(vii)).

The BLM recognizes the importance of connectivity between National Conservation Lands units and similar areas and will address planning in reference to these units in future guidance. For more information on management of National Conservation Lands, please see the National Landscape Conservation System Management Manual (MS-6100).

**Comment:** One comment urged the BLM to explicitly list “units of the National Park system” as an existing designation in the planning area in § 1610.4(c)(5)(vii) of the final rule.

The comment asserted that the BLM should consider the breadth of protected landscapes within or adjacent to the planning area in order to accomplish true landscape-scale planning.

**Response:** The final rule does not list “units of the National Park system” as an example of existing designations in as § 1610.4(d)(5)(vii) (§ 1610.4(c)(5)(vii) in the proposed rule). The term “designations” in this rule has a specific meaning, under § 1610.1-2(b)(1): “[a] designation identifies areas of public land where management is directed toward one or more priority resource values or resource uses.” These designations could be planning designations, which are identified through BLM’s land use planning process (see § 1610.1-2(b)(1)(i) of the final rule), or non-discretionary designations, which are designated by the President, Congress, or the Secretary of the Interior (see § 1610.1-2(b)(ii) of the final rule). If there are important areas managed by other Federal agencies within the planning area, the responsible official will consider and document them under final § 1610.4(d)(2) and (5). Under §§ 1610.4(d)(1) and 1610.4(d)(2), the responsible official will also consider and document resource use and management in the planning area. As required by §§ 1610.4(b)(2) and 1610.4(b)(3) of the final rule, the responsible official will identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment and will provide opportunities for other governmental entities, including other Federal agencies, to provide such documents or data and information to the BLM. These are some of the provisions in the planning assessment of the final rule that encourage landscape-scale planning, including the consideration of National Park system units in the planning area. Future guidance, such as handbooks, manuals, or other internal policy, will further address landscape-scale planning and connectivity.

General Comments on Public Input (§ 1610.4)

**Comment:** A few comments expressed opposition to the planning assessment because, they asserted, it adds vague evaluation measures (*e.g.*, “effects analysis”), which will hinder public input. One comment further asserted that it will be difficult for local stakeholders to track the planning assessment stages and be expected to develop clear and thought-provoking comments. These comments suggested that the BLM consider using the current scoping process instead of adopting the planning assessment, or that it distribute a table comparing the stages and timeframes of the planning assessment to the current scoping process to help stakeholders understand the reason for the change.

**Response:** The term “effects analysis” does not appear in the planning assessment section (§ 1610.4 of the proposed and final rule), but this term refers to the analysis of the environmental, ecological, economic, and social effects of the implementation of an alternative. For more information on the estimation of effects of alternatives, please see the preamble discussion of § 1610.5-3.

The planning assessment does not replace scoping; it will occur before scoping, and its purpose is to provide baseline information to inform later stages of planning (such as scoping). For more information on scoping and the identification of planning issues, please see the preamble discussion of § 1610.5-1.

The planning assessment is one stage, not multiple stages, and this one stage combines the inventory data and information collection (existing § 1610.4-3) and analysis of the management situation (existing § 1610.4-4) stages that the BLM currently uses. The BLM does not require members of the public to submit input or comments. For more information on public involvement, please see the preamble discussion of § 1610.2. For more information on how the

BLM will provide public notice for opportunities for public involvement, please see the preamble discussion of § 1610.2-1.

**Comment:** A few comments asserted that the planning assessment, when combined with the potential for significant changes between draft documents, will hinder meaningful early public involvement and conflict resolution.

**Response:** Public comments submitted to the BLM during Planning 2.0 early engagement expressed considerable support for a more efficient and dynamic planning process. The BLM believes the final rule, including the planning assessment, will increase efficiency and public involvement in the planning process, decreasing the need for major changes between the draft and proposed resource management plan. The planning assessment provides earlier and more frequent opportunities for public involvement before the BLM begins preparing a resource management plan. If the BLM is better informed of the concerns of the public before it even identifies planning issues, the possibility of surprise or conflict arising after publication of a draft resource management plan will diminish.

*Public Input and State and Local Governments (§ 1610.4(a), § 1610.4(b))*

**Comment:** Many comments asserted that the planning assessment would diminish input from local governments. Some of the comments elaborated that the planning assessment prioritizes public input over local government policies. Other comments asserted that Congress clearly intended local governments to have added authority in the planning process, and the planning assessment would diminish that authority by considering data submitted by special interest groups as equal to data generated by local governments. One comment suggested that the BLM prioritize public views in in this order, from highest to lowest: elected officials in the

planning area; stakeholders in the planning area; and the general public and non-governmental organizations.

**Response:** The BLM recognizes the importance of local government involvement in resource management planning and it does not intend any reduction in input from local governments by implementing the planning assessment. An emphasis on new opportunities for public involvement does not reduce local government involvement, and the final rule does not include a prioritization of public views.

The BLM will conduct coordination with local governments (as well as other Federal agencies, State governments, and Indian tribes) during every stage of the planning process, including the planning assessment. The BLM believes that early coordination is an important tool for reducing conflicts and inconsistencies in later planning stages, resulting in a more efficient planning process.

The final rule revises § 1610.4 to reflect the important role of local governments in the planning assessment. The planning assessment of the final rule includes a determination of the preliminary planning area, in § 1610.4(a). The BLM will coordinate with other governmental agencies, including local governments, to receive feedback on the preliminary planning area (see § 1610.4(a)(2) of the final rule).

Paragraph § 1610.4(b)(1) of the final rule provides for coordination with the land use planning programs of other governmental agencies, including local government, on the gathering or assembling of inventory data and information. This revision to § 1610.4(a)(1) of the proposed rule aligns with section 202(c)(9) of FLPMA and reflects the importance of early coordination. The final rule adds “laws” and “regulations” to the list of relevant items the responsible official must identify in § 1610.4(a)(2) of the proposed rule, designated as § 1610.4(b)(2) in the final

rule. The final rule also includes “tribal” and “local” resource plans among the examples listed in this paragraph.

The final rule does not consider some data to be more important than other data; it does, however, require that the responsible official evaluate the gathered data and information to determine whether it is high quality information in the planning assessment. For further information on high quality information, please see the preamble discussion of § 1610.1-1(c).

**Comment:** A few comments requested that the BLM engage State and local governments before engaging the public in the planning assessment. The comments asserted that the BLM should learn about the planning efforts of State and local governments and provide forums for all levels of government to discuss the area’s planning issues before communicating with the public. One comment suggested that the final rule require the BLM to contact local government before the planning assessment to obtain and solicit interpretation of the most current plans, policies, programs, and processes, including those that the local government is discussing but has not yet adopted. The comments asserted that this would help identify conflicts and inconsistencies early, and that the BLM and other governmental agencies could coordinate on outlining the process and framework for the planning effort.

**Response:** The initiation of the planning assessment will be announced through public notice as described in § 1610.2-1 of the preamble. The planning assessment is primarily an information-gathering exercise in which the BLM gathers and receives information. The final rule does not require the BLM to contact local government or any other type of agency before it begins the planning assessment. Paragraph 1610.4(b) of the final rule provides for several ways by which the BLM will engage other governmental entities, including State and local governments, in the planning assessment. The BLM will: gather and assemble inventory data

and information in coordination with land use planning and management programs of other governmental agencies, per § 1610.4(b)(1) of the final rule; identify their relevant national, regional State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration, per final § 1610.4(b)(2); and provide opportunities for them to suggest existing data and information as well as laws, regulations, policies, guidance, strategies, or plans, per final § 1610.4(b)(3). The BLM will also consider their feedback on the preliminary planning area through the public review process, as final § 1610.4(a)(2) provides. Further, when preparing the planning assessment, the responsible official will consider and document, among other factors, the “land status and ownership, existing resource management, infrastructure, and access patterns in the planning area....” (see § 1610.4(d)(1) of the final rule).

The BLM agrees that early coordination will help to identify conflicts and inconsistencies, in addition to other benefits, such as the establishment of fruitful cooperating agency relationships. To that end, the BLM will coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process, including the planning assessment. However, the final rule does not adopt the recommendation to require the BLM to engage State and local governments before engaging the public. There are many ways to structure the coordination and public involvement in the planning assessment, and the final rule provides the flexibility to adapt that process to an individual planning area or community’s needs.

For more information on consistency requirements, please see the preamble discussion of § 1610.3-3. For more information on coordination of planning efforts, please see the preamble discussion of § 1610.3-2.

Data Submission (§§ 1610.4(b) and 1610.4(b)(3))

**Comment:** A few comments requested that the BLM provide more details in the final rule regarding procedures for data collection by the BLM and data submission by the public, as well as how this data and information will be publicly cited.

**Response:** Opportunities for the public to submit data may include not only written communication, but also webinars, in-person meetings and workshops, collaborative websites, or other methods of communication. Section 1610.4(c) of the final rule requires the responsible official to evaluate the data and information to ensure the use of high quality information in the planning assessment. The final rule does not include specific procedures for data collection or submission, as the procedures a responsible official uses may vary between planning areas. The BLM expects to address both this topic and the citation of data in future guidance, such as handbooks, manuals, or other internal policy.

**Comment:** One comment urged the BLM to accept citizens' wilderness inventories, provided they are based on field research in accordance with BLM Handbook 6310, during the planning assessment and through the EIS comment period. The comment continued that if the submitted wilderness inventory conflicts with the BLM's own wilderness inventory, the BLM should undertake research to corroborate or disprove the submitted data.

**Response:** A member of the public may submit an inventory of lands with wilderness characteristics to the BLM for its consideration in the planning assessment under § 1610.4(b)(3) of the final rule. The responsible official will evaluate it to ensure the use of high quality information in the planning assessment, as § 1610.4(c) of the final rule requires. The ideal time to submit data to the BLM is during the planning assessment, but if a member of the public submits it as a comment on the draft EIS, the BLM will address the comment as appropriate.

The responsible official may document conflicts in data (provided the data in question is high quality information) as “further information needs” under § 1610.4(c). The final rule does not include instructions for handling conflicts in data; the BLM believes that this issue is better addressed in guidance, such as handbooks or manuals.

**Comment:** A few comments asserted that the rule provides no assurance that data submitted by the public during the planning assessment will be accurate, representative, or even truthful. These comments asserted that the planning assessment allows special interest groups to dilute valid data with biased data, to “stack the deck” against small local governments and understaffed field offices, and to collude with the BLM on data gathering. One comment noted that citizen science is not a substitute for the best available science. The comments suggested several solutions, including joint data collection efforts between the BLM and other governmental agencies as early in the planning process as possible, publishing a notice and inviting State and local agencies to participate when the BLM is initially contemplating a planning assessment, and requiring cooperating agency status for State and local agencies and government-to-government coordination at the outset of any planning assessment.

**Response:** The final rule in § 1610.4(b)(3) provides the responsible official with ensure the use of high quality information in the planning assessment. Paragraph 1610.4(c) of the final rule requires the responsible official to evaluate all data and information the BLM gathers in the planning assessment to ensure it meets these qualifications. The final rule does not include the specific methods by which the responsible official will determine that information is high quality information. Regulatory requirements, policies, and strategies, including the March 2015 publication, “Advancing Science in the BLM: An Implementation Strategy,” will guide the responsible official as he or she evaluates information for inclusion in the planning assessment.

The process for evaluating data and information received may vary depending on the discipline; therefore, it is more appropriate to address through guidance.

Paragraph 1610.4(b)(1) of the final rule includes revisions to the gathering of inventory data and information, requiring that the BLM gather or assemble such data and information in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes, to the extent consistent with the laws governing the administration of the public lands and as appropriate.

The BLM does not and will not “collude” with non-governmental organizations or anyone else in gathering data and information. The final rule does not require the BLM to notify other governmental agencies when it is considering initiating a planning assessment, though the BLM intends to conduct coordination with other Federal agencies, State and local governments, and Indian tribes throughout all stages of planning, including the planning assessment. Further, § 1610.3-2(b)(3)(i) of the final rule provides that the BLM will collaborate with cooperating agencies on the preparation of the planning assessment. Though the BLM and a given cooperating agency may not have developed a memorandum of understanding (MOU) before they begin collaborating on the planning assessment, the BLM does not foresee any problems working with eligible governmental entities without an MOU at this early, information-gathering stage. However, the BLM may need to withhold confidential information until an MOU has been formalized.

For more information on the high quality information standard, please see the preamble discussion of this term at § 1601.0-5.

For more information regarding cooperating agencies and the planning assessment, please see the preamble discussion of § 1610.3-2(b).

Outreach Methods (§ 1610.4(b))

**Comment:** A few comments expressed concerns regarding the lack of detail on the formal outreach methods that the BLM will use for the planning assessment. The comments recommended that the BLM publish any request for information from partners, stakeholders, or the public in the *Federal Register*. These comments asserted that using the *Federal Register* will ensure clarity regarding what information the BLM is requesting.

**Response:** The BLM will not conduct a planning assessment for EA-level amendments, and the deciding official may waive the requirement to conduct a planning assessment for project-specific or other minor EIS-level amendments under § 1610.4(e) of the final rule. When the BLM formally initiates a planning assessment for a resource management plan or EIS-level amendment and provides opportunities for public involvement during the planning assessment, it will post a notice on the BLM Website and at BLM offices within the planning area, as well as provide direct notification to those who have requested such notification. The BLM intends that the posted notice will provide more details, specific to the planning area and effort, regarding the information the responsible official is seeking. The final rule does not require the responsible official to publish the notice in the *Federal Register*.

For more information on notice of public involvement opportunities, please see the preamble discussion of § 1610.2-1.

**Comment:** One comment urged the BLM to use maps during the planning assessment to show the distribution of particular resources over a planning area. The comment requested that the BLM use online GIS services to allow the public to display data sets on maps on their own computers.

**Response:** The BLM recognizes the importance of sharing its maps and geospatial information with the public so that the public can be well informed during the planning process and can better comprehend the distribution of resources over the planning area. The BLM expects to release guidance based on this final rule related to data sharing, including the sharing of maps and geospatial information. This guidance would take the form of a handbook, manual, or other internal policy. However, the final rule does not require that the BLM use a particular kind of mapping or online geospatial system. This will allow the BLM to adapt its practices to best suit new technologies.

**Comment:** One comment asserted that the planning assessment section of the proposed rule fails to adequately provide notice to all impacted stakeholders, local and State governments, and the public. The comment asserted that the final rule should require the responsible official to contact all impacted stakeholders.

**Response:** Public notice of the initiation of a planning assessment and related opportunities for public involvement will take the form of a notice posted on the BLM's website, at all BLM offices within the planning area, and at other public locations, as appropriate (see § 1610.2-1(c) of the final rule). As § 1610.2-1(d) of the final rule requires, the BLM will also contact individuals or groups who have requested to be notified of opportunities for public involvement. The BLM will continue its current practice of conducting outreach to all individuals or groups known to be interested in or affected by a resource management plan; the final rule only reflects the fact that the BLM cannot guarantee that such individuals will be added to the BLM's mailing list unless they request to be added and provide current contact information.

Relevant Public Views (§ 1610.4(b)(4))

**Comment:** Many comments urged the BLM to seek public input on the planning assessment from local communities in particular. They assert that the term “relevant public views,” in § 1610.4(a)(4) of the proposed rule, is too vague. According to these comments, the planning assessment would allow more and earlier input to the non-local public and special interest groups, who can mobilize people in their funding and membership databases to submit data or comments electronically, overwhelming local interests. These comments note that the non-local public is typically unfamiliar with local resource conditions. A few comments further asserted that a failure to adequately involve local stakeholders in the planning assessment could result, inappropriately, in the inclusion of national policies as “existing conditions” in the planning area. Some of the comments suggested defining the term “relevant public views” or revising this term in the final rule to “local public views.” The comments also requested that the BLM explain how it will identify and separate local or public views from those of non-governmental organizations. Some comments were particularly concerned about the impact that State, national, or international input might have on designation of Areas of Critical Environmental Concern, which can impose restrictions on land and resource use that can substantially and disproportionately affect local dependence on planning area resources.

**Response:** Paragraph 1610.2-1(c) of the final rule provides that the BLM will announce opportunities for public involvement, including in the planning assessment as appropriate, by posting a notice on the BLM Website and at all BLM offices in the planning area. In response to public comments, § 1610.2-1(c) of the final rule also includes a requirement for the responsible official to identify additional forms of notification to reach local communities within the

planning area, as appropriate. For more information on public notice, please see the preamble discussion of § 1610.2-1.

The final rule does not adopt the recommendation to define “relevant public views” or to revise the term to “local public views.” The BLM believes it is important to provide opportunities for both local and national stakeholders. The information received will be evaluated based on the standards in final § 1610.4(c) to ensure the use of high quality information in the planning assessment. This will include an evaluation of whether that information is “useful to its intended users,” as explained in the definition of “high quality information” in § 1601.0-5. Evaluating information using this standard will help the BLM identify relevant information from all sources, including both local and national stakeholders. The BLM believes this provides adequate guidance for the responsible official to determine relevant public views and a definition is not necessary.

The final rule adopts § 1610.4(a)(4) of the proposed rule, with no edits, as § 1610.4(b)(4). As § 1610.4-1 of the existing rule provides, the BLM currently identifies public views during the identification of planning issues: “At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan.” Identifying public views in the planning assessment will help the BLM to better understand public views in relation to the planning area, including what is important to the public, where important areas are located, and why these areas are important to members of the public. The responsible official will summarize public views in the planning assessment, which will provide increased transparency, among other benefits. The

identification of public views will generally include public meetings in the planning area, though the BLM may use other techniques too.

Paragraphs 1610.4(b)(2) and 1610.4(b)(3) of the final rule include requirements that the responsible official identify laws, regulations, policies, guidance, strategies, or plans, including national ones, and that he or she provide opportunities for other governmental agencies and the public to suggest such items to the BLM. The BLM believes this provision is important because successful planning must be informed by, and advance, policies and strategies that cross traditional administrative boundaries. Any laws, regulations, policies, guidance, strategies, or plans that the responsible official identifies must be relevant to the planning effort. The BLM will consider national policies, as the BLM must comply with its own policy, but will also consider information about local plans and strategies. These local plans may be identified internally by the BLM, or raised through coordination or public involvement.

By considering the degree of importance of the goods, services, and uses that people obtain from the planning area on the local, regional, national, or international level (see § 1610.4(d)(7) of the final rule), the BLM believes the planning assessment will accurately reflect the importance of one good, service, or use on the local level in relation to the importance of, perhaps, a conflicting good, service, or use on the regional level. The BLM will then consider this information when it develops planning issues and resource management alternatives.

The BLM does not adopt the recommendation to specify how the planning assessment will distinguish between local and non-local views. Although the BLM may choose to display demographic information in the planning assessment, how that information is displayed will depend on individual planning efforts. The final rule provides the BLM the flexibility to develop a planning assessment document that is best formatted to display the information gathered.

**Comment:** One comment asserted that the planning assessment section of the proposed rule assumes the public is well informed about the various resources in a planning area. In reality, the comment asserted, this is not true; the public is usually represented by a few stakeholders with a clear factual understanding of all the resources in a planning area and a larger group of advocates with opinions and beliefs about only one or two resources in particular. This comment urged the BLM to educate the public about the types and significance of the various resources in a planning area, their current use, and their value to the BLM, the community, and the larger public. Such education, according to the comment, will lead to more informed public participation.

**Response:** The BLM believes that the planning assessment, with its opportunities for public engagement early in the planning process, will help the public to learn more about resources in their area and the planning process just as it will help the BLM to understand the baseline conditions in the planning area. By releasing the planning assessment report for public review on the BLM's Website, at BLM offices in the planning area, and other locations as appropriate before the publishing of the NOI (see § 1610.4(e) of the final rule), all parties interested in the planning process can become better informed about current conditions before the identification of planning issues. Under §§ 1610.4(d)(1), 1610.4(d)(2), 1610.4(d)(3), and 1610.4(d)(7), the planning assessment includes the types of resources in the planning area and their current uses, as well as the goods, services, and uses that people obtain from the planning area and their degree of importance on local, regional, national, or international levels.

The final rule is not revised to require the BLM to provide specific education surrounding the planning assessment. While the BLM acknowledges that effective public involvement may include outreach to inform and educate the public about the planning area and resources, such

outreach will depend on the specifics of an individual resource management plan. The forthcoming Land Use Planning Handbook revision will include information on collaborative planning, which will provide additional information on effective public outreach.

**Comment:** One comment urged the BLM to give appropriate consideration to public input on the planning assessment. This comment asserted that public officials should not have an overreaching influence in the planning process.

**Response:** The BLM believes that the planning assessment provides opportunities for all those interested in the resource management of a planning area to share relevant views, as well as data and information, for the BLM's consideration. All data and information, regardless of the source, must meet the high quality information standard to be used in the planning assessment, as § 1610.4(c) of the final rule requires. The final rule does not assign weight to the input of groups, other governmental agencies, or individuals, but the BLM recognizes the importance of public input in its resource management planning efforts.

**Comment:** One comment asserted that before the BLM asks the public to “envision” the use of a planning area, the BLM should communicate to the public the discretion it has and lacks to make land use decisions in a planning area.

**Response:** The final rule adopts § 1610.4(a)(4) of the proposed rule, without revisions, as § 1610.4(b)(4). This section requires the responsible official to “identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area” during the planning assessment, which the BLM intends to accomplish through a public “envisioning process.” The final rule does not include a requirement that the BLM provide the public with a list of actions within or outside its discretion before it identifies relevant public views.

General Comments on Information Gathering (§ 1610.4(b)(1))

**Comment:** One comment was opposed to the use of the word “ecological” in the list of types of data and information that the BLM will gather, because, the comment asserted, this word is understood to be part of the included term “environmental.” The comment asserted that using both terms makes the NEPA-required balance of human and natural environments difficult to achieve.

**Response:** The final rule adopts the entire list of types of data and information in proposed § 1610.4(a)(1), including ecological data and information; this paragraph is redesignated as § 1610.4(b)(1) in the final rule. The planning assessment will inform later NEPA analysis, but it is not itself a NEPA analysis. The planning assessment does not change the BLM’s obligations under NEPA. The final rule is not revised to remove the term “ecological.” The list of conditions the BLM should gather is based on the definition of goals found in final § 1610.1-2(a)(1), which includes ecological. While ecological data is a subset of environmental data, it is important to the development of resource management plans and plan amendments, and therefore, appropriate to specifically list in this section.

**Comment:** One comment expressed concern that the provision to avoid unnecessary data gathering was subjective, and further asserted that the BLM cannot identify unnecessary from necessary information at an early stage in planning.

**Response:** The BLM intends to avoid data gathering when it is not necessary (for example, when such efforts would result in duplicative datasets) in order to conduct planning assessments within reasonable budgets and time frames.

At this early stage in the planning process, the BLM recognizes that all significant issues may not yet be known and without conducting a broad assessment, the BLM may not be able to

reasonably identify all of the significant issues. At the same time, the BLM must make every effort to conduct a planning assessment relevant to the issues and concerns associated with the incipient planning process recognizing existing budgets and timeframes. The BLM intends that “relevant” data and information will include inventory of the land and resources (see 43 U.S.C. 1711(a)) and any other available high quality information, including the best available scientific information, relevant to the planning process and necessary to address the applicable factors described in final § 1610.4(d).

**Comment:** One comment asserted that the BLM should identify planning issues before it begins gathering information in the planning assessment. The comment asserted that issues help to identify necessary data, and the proposed rule, which provides for information gathering before issue identification, encourages the gathering of unnecessary data.

**Response:** The final rule does not require the BLM to identify planning issues before conducting the planning assessment. The planning assessment is intended to help the BLM identify significant planning issues in the planning area. At this early stage in the planning process, the BLM recognizes that all significant issues may not yet be known and without conducting a broad assessment, the BLM may not be able to reasonably identify all of the significant issues. Paragraph 1610.4(b)(1) of the final rule includes a provision that the responsible official is to avoid unnecessary data gathering.

**Comment:** One comment expressed concern that under the final rule, the BLM will only accept additional data, no matter the quality or manner in which it was collected, during the planning assessment phase, and asserted that this practice is inappropriate.

**Response:** The BLM will consider data and information that meets information quality standards throughout the planning process; indeed, the BLM may identify data gaps during the

planning assessment itself that will need to be filled before the completion of a draft EIS. The ideal time for the public to submit data and information to the BLM is during the planning assessment, but if new information becomes available after the planning assessment is completed, the BLM will consider this new information to the best of its ability.

**Comment:** One comment noted that the BLM has an unequalled opportunity to gather useful data to add to the scientific resources used to justify mitigation and regulatory requirements and recommended that the BLM coordinate with other Federal and State agencies, tribes, and stakeholders in conducting assessments of existing and projected resource conditions, forming mitigation strategies, and developing compensatory mitigation programs.

**Response:** The final rule adopts the proposed planning assessment phase, which involves assessing resource conditions, extensive public involvement, and coordination with other Federal agencies, State and local government, and Indian tribes. During the planning assessment the BLM will coordinate the gathering or assembly of inventory data and information with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located (see § 1610.4(b)(1)). The BLM will also provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans for BLM's consideration in the planning assessment (see § 1610.4(b)(1)). The planning assessment may be used to inform future mitigation strategies and compensatory mitigation programs; however mitigation strategies and compensatory mitigation are outside the scope of this final rule.

Inventory (§ 1610.4(b)(1))

**Comment:** Many comments expressed concern that the planning assessment would be used in lieu of the BLM's existing requirements to develop planning criteria, to collect information and inventory data, and particularly, to conduct an analysis of the management situation. The comments asserted that the planning assessment, as proposed, diverts from the multiple use and other existing principles of the analysis of the management situation.

**Response:** Neither the proposed nor final rule requires development of planning criteria; the BLM will instead describe the rationale for the differences between alternatives and the basis for analysis. For more information on these steps, please see the preamble discussion of §§ 1610.5-2(b) and 1610.5-3(a).

The BLM combines its current information and inventory data collection and analysis of the management situation steps (§§ 1610.4-3 and 1610.4-4 of the existing rule, respectively) into the one planning assessment step. The BLM will arrange for the gathering or assembling of inventory data and information pursuant to § 1610.4(b)(1) of the final rule, which encompasses the BLM's statutory obligation under FLPMA (see 43 U.S.C. 1711(a)) for inventory of "public lands and their resource and other values." This paragraph is revised from the proposed rule to require the responsible official to arrange for inventory data and information to be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes to the extent consistent with the laws governing the administration of the public lands and as appropriate. These revisions align with FLPMA (see 43 U.S.C. 1712(c)(9)) and reflect the importance of early coordination with other governmental agencies on inventory and information gathering.

As in the analysis of the management situation, the BLM will use the information it has gathered under § 1610.4(b) of the final rule to assess, in collaboration with any cooperating agencies, the current conditions in the planning area. In response to public comments, the final rule revises § 1610.4(c)(1) of the proposed rule, designated as final § 1610.4(d)(1), to include resource “use” in addition to the “management” of the proposed rule. The BLM also adds “uses” to § 1610.4(d)(7) of the final rule (§ 1610.4(c)(7) in the proposed rule), to clarify that the responsible official will consider and evaluate in the planning assessment the goods, services, and uses that people obtain from the planning area. To § 1610.4(d)(5) of the final rule (proposed § 1610.4(c)(5)), which directs the responsible official to assess a number of areas of potential importance within the planning area, the BLM adds two new areas: those with known mineral potential (see § 1610.4(d)(5)(ix) of the final rule) and those with known potential for producing forest products, including timber (see § 1610.4(d)(5)(x) of the final rule). The final rule includes these areas because minerals and forest products are among the resources that BLM manages under FLPMA’s multiple use standard and other statutory mandates and as such, they are important. However, the responsible official is not limited to the factors identified in § 1610.4(d) of the final rule.

FLPMA directs the BLM to manage on the basis of multiple use and sustained yield, the importance of which the BLM recognizes. The planning assessment promotes such management by considering and evaluating a range of information, resulting in a comprehensive analysis of the current resource, environmental, ecological, social, and economic conditions in a planning area. The responsible official will, in the planning assessment, project demand for the resources and evaluate how those demands can be met consistent with the principles of multiple use and sustained yield.

**Comment:** Several comments asserted that § 1610.4(a) of the proposed rule appears to assign to the public the BLM’s FLPMA-mandated obligation of preparing and maintaining an inventory of all public lands and their resource and other values.

**Response:** The planning assessment combines and revises the existing rule’s § 1610.4-3, the inventory data and information collection step, with existing § 1610.4-4, the analysis of the management situation step. Paragraph 1610.4(b)(1) of the final rule encompasses the BLM’s obligation under FLPMA (see 43 U.S.C. 1711(a)) for inventory of “public lands and their resource values.” FLPMA requires that the BLM “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...” (See 43 U.S.C. 1712(c)(9).) The BLM will coordinate with other Federal agencies, State and local governments, and Indian tribes on data and information collection in the planning assessment, and will provide these entities and the public with opportunities to submit data and information to the BLM. The proposed and final rules are consistent with all Federal laws, including FLPMA.

**Comment:** Several comments asserted that early coordination on the BLM’s inventory should occur in order to ensure the inventory’s accuracy and consistency with State and local government’s planning data. They assert that § 1610.4-4 of the existing rule requires that the Field Manager analyze the inventory data and other information in collaboration with cooperating agencies, but this provision was removed in the proposed rule. They further assert that State and local governments often have superior information on local resource conditions and can effectively critique inventories done on a broader, landscape scale. One comment

requested that the BLM revise proposed § 1610.4(a)(1) to specifically incorporate data from State and local governments when conducting the inventory.

**Response:** In response to public comments, the final rule revises § 1610.4(a)(1) of the proposed rule and redesignates it as final § 1610.4(b)(1). The revised language provides for the coordination on inventory data and information gathering with other Federal agencies, State and local governments, and Indian tribes, “to the extent consistent with the laws governing the administration of the public lands and as appropriate.” The BLM intends this revision to acknowledge that early coordination with other Federal agencies, State and local governments, and Indian tribes on inventory and information gathering is important. Additionally, this language aligns with FLPMA (see 43 U.S.C. 1712(c)(9)).

*Additional Items for Consideration (§ 1610.4(b)(2))*

**Comment:** One comment urged the BLM to identify international agreements, treaties, compacts, conventions, and laws and international plans relevant to BLM activities in the planning assessment. The comment asserted that international agreements, like the 2015 Paris climate agreement, may be relevant, particularly in areas where BLM-administered lands border Canada and Mexico. The comment further asserted that a landscape-level approach to planning supports the consideration of and consistency with the resource management plans of other countries within the landscape.

**Response:** It is not appropriate for these planning regulations to require a planning effort to consider international agreements when conducting a planning assessment. The BLM does follow Federal policies that enact international agreements. If the Federal government enacts policy that is based on an international agreement, the BLM will consider it in the planning assessment.

**Comment:** Several comments urged the BLM to identify laws and regulations, not just plans and policies, for consideration in the planning assessment. These comments also asserted that the BLM should identify relevant State and tribal laws, regulations, policies, guidance, strategies, and plans, not just those that are national, regional, or local in origin, and to include local and tribal plans among the examples listed in proposed § 1610.4(b)(2).

**Response:** In response to public comments, § 1610.4(b)(2) of the final rule includes “State” and “tribal” and relevant “laws” and “regulations” in the list of items the BLM will consider in the planning assessment.

**Comment:** One comment urged the BLM to identify in the planning assessment conservation commitments that the BLM has made, such as conservation agreements and Memoranda of Understanding to recover native trout and salmon species.

**Response:** The BLM acknowledges that such agreements and commitments would be considered in the planning assessment, when they are relevant, under § 1610.4(b)(2) of the final rule.

**Comment:** One comment recommended that the BLM add “resource conflicts,” “recreational activities,” and “multiple use conflicts” to the list of items that the responsible official shall identify in § 1610.4(a)(2) of the proposed rule (final § 1610.4(b)(2)).

**Response:** The BLM did not revise the proposed rule to incorporate these suggestions because they are inherent in other elements of the planning assessment. Paragraph 1610.4(d) of the final rule directs the responsible official to consider a number of factors and areas of potential importance, including, for example: resource use and management authorized by FLPMA and other relevant authorities in final § 1610.4(d)(1); land status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid

existing rights in final § 1610.4(d)(2); current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions in final § 1610.4(d)(3); known resource constraints, or limitations in final § 1610.4(d)(4); and areas of importance for recreation activities or access in final § 1610.4(d)(5)(xi).

**Comment:** One comment suggested that the BLM undertake a complete review of all science available on particular management issues to identify possible gaps in research before determining any next steps in management. The comment asserted that this review would be highly effective in developing targeted research on particular issues.

**Response:** The comment’s suggestion would be an implementation-level action and thus, is not included in the final rule. However, the BLM recognizes the importance of using sound science in its resource management, and expects to address the use of science in planning in future guidance, such as the Land Use Planning Handbook or other manuals or internal policy.

*Policies, Guidance, Strategies, and Plans (§ 1610.4(b)(2))*

**Comment:** One comment asserted that it is inappropriate for the Director and/or the deciding official to provide guidance on resource management priorities before the planning process begins, as, according to the comment, the proposed rule provides for in § 1610.4(a)(2). The comment asserted that such guidance provides indication of desired outcomes to BLM planners, is destructive to local planning, and does not comply with FLPMA.

**Response:** The final rule adopts the language, in proposed § 1610.4(a)(2), that lists Director or deciding official guidance as one of the types of guidance the BLM may consider in the planning assessment, among many other considerations; this paragraph is § 1610.4(b)(2) in the final rule. Section 1610.4-4(b) of the existing regulations lists “Opportunities to meet goals and objectives defined in national and State Director guidance” as a factor for the Field Manager

to consider when completing the analysis of the management situation. The proposed and final rules are consistent with all federal laws, including FLPMA. It is important for the BLM to understand relevant policy and guidance, however, any plan components influenced by that guidance will be developed in conformance with this planning rule and FLPMA. Additionally, any BLM policy or guidance must also comply with relevant Federal law. Identification of guidance does not constitute a final agency decision. This is consistent with current BLM practice to consider existing policy and guidance.

For further information on Director or deciding official guidance, please see the preamble discussion of § 1610.1-1(a).

**Comment:** Many comments supported the identification of relevant policies, guidance, strategies, or plans for the BLM's consideration in the planning assessment, as § 1610.4(a)(2) of the proposed rule would require. These comments asserted that early identification of state and local plans, such as state wildlife action plans, would be an avenue for involving state and local governments early in the planning process.

**Response:** The BLM agrees that this paragraph, redesignated as § 1610.4(b)(2) in the final rule, is one of several provisions that promote coordination with other governmental entities in the planning assessment. In response to public comments, the BLM adds "State" and "tribal" as well as "laws" and "regulations" to the lists of items that the responsible official will identify. The BLM also includes "tribal" and "local" resource plans among the examples provided in final § 1610.4(b)(2).

**Comment:** One comment expressed support for the BLM to provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide data or information or to suggest policies, strategies, guidance or plans to the BLM during the

planning assessment. The comment further stated that when it comes time to utilize this data and information, the final rule should require the BLM to include keeping to the intent of FLPMA where the State and local government, Indian tribes shall be a part of the interdisciplinary team review process and equally involved in identifying public views and resource needs in relation to resources, social, or economic conditions and effects, keeping ecological and environmental reviews to a separate evaluation process.

**Response:** The final rule adopts the proposed step for the BLM to provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide data or information or to suggest policies, strategies, guidance or plans to the BLM during the planning assessment. The final rule also provides for the BLM to collaborate with cooperating agencies (see § 1610.3-2(b)(3)) during the planning assessment, identification of planning issues, and estimation of effects of alternatives. As cooperating agencies, State and local government, and Indian tribes may participate in the interdisciplinary team review process; however the specific details for this participation will vary based on their jurisdiction by law and special expertise and will also depend on the specific details of the memorandum of understanding developed between the BLM and the cooperating agency. The BLM will collaborate with cooperating agencies to the fullest extent possible on issues relating to their jurisdiction and special expertise but cannot commit to “equal” involvement because the BLM retains decision-making authority in resource management planning.

*Data Sources (§ 1610.4(b))*

**Comment:** One comment asserted that most data collection efforts are limited to a single time and location, and thus are only a general, not particularly comprehensive, indicator of conditions.

**Response:** Paragraph 1610.4(c) of the final rule requires that the responsible official evaluate all data and information the BLM gathers in the planning assessment to ensure that it is high quality information. The final rule does not address how the BLM will evaluate data sets from a single collection effort, as the BLM believes this topic is better addressed in guidance. The BLM expects to address methods for data evaluation in future guidance such as handbooks, manuals, instructional memoranda, or other internal policy. Additionally, regulatory requirements, policies, and strategies relating to information, such as the BLM's March 2015 publication, "Advancing Science in the BLM: An Implementation Strategy," will guide the responsible official as he or she evaluates information for use in the planning assessment.

For more information on the high quality information standard, please see the preamble discussion of § 1610.1-1(c).

*Information Gathering and Mitigation (§ 1610.4(b))*

**Comment:** One comment suggested that the BLM revise § 1610.4(a) of the proposed rule to provide for the submission of information related to the President's November 3, 2015 memorandum on mitigation. This comment noted that the President's memo directs that "Large-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable," and "To improve the implementation of effective and durable mitigation projects on Federal land, agencies should identify, and make public, locations on Federal land of authorized impacts and their associated mitigation projects. . . ." The comment requested that the responsible official explicitly request information from the public that the BLM can use to help identify: areas where development may be most appropriate; the best locations for protection and for restoration; and the presence in

the planning area of irreplaceable natural resources. The comment further suggested that the BLM include a provision in the planning assessment to request information from other governmental agencies and the public related to the location of “authorized impacts and their associated mitigation projects” in the planning area.

**Response:** The BLM believes that the final rule assists in effectively implementing directives on mitigation, including the November 2015 Presidential Memorandum, “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.” The final rule does not include the comment’s suggested revisions because the BLM believes the planning assessment as written will adequately capture such information. The BLM will gather in the planning assessment phase the information necessary to inform resource use determinations later in the planning process, or will identify where more information is needed before the BLM can make resource use determinations. Additionally, § 1610.4(b)(1) includes “relevant resource, environmental, ecological, social, economic, and institutional data and information,” and § 1610.4(b)(2) of the final rule includes “mitigation strategies” among the laws, regulations, policies, guidance, strategies, or plans that the responsible official will identify for consideration in the planning assessment. Taken together, these will provide information in the planning assessment that will contribute to the development of alternatives that will meet the intent of Presidential Memorandum.

*Coordination and Consistency (§ 1610.4(b)(2))*

**Comment:** Several comments expressed concern that the planning assessment, as proposed, would not effectively address resource management plans’ consistency with other land use plans in a planning area. Some suggested that the BLM identify all existing land use plans or programs in a planning area, as well as land use plans of areas adjacent to the planning area if

such plans may affect resources in the planning area. A few comments requested the addition of “State” to the list of policies, guidance, strategies, or plans for consideration in the planning assessment in proposed § 1610.4(a)(2). Some comments also requested that the BLM include local resource plans as one of the types of plans the responsible official might identify per proposed § 1610.4(a)(2). A few comments requested that the BLM incorporate into the final rule existing § 1610.4-4(e), which allows that the Field Manager may consider in the analysis of the management situation “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes.”

**Response:** The final rule adopts the requirement in § 1610.4(a)(2) of the proposed rule, designated as § 1610.4(b)(2) in the final rule, that the responsible official identify relevant land use plans in the planning area. In response to public comments, the BLM adds “State” and “tribal,” as well as “laws” and “regulations,” to the list in proposed § 1610.4(a)(2) of relevant policies, guidance, strategies, or plans that the responsible official will identify for consideration in the planning assessment. Information that the BLM gathers in the planning assessment, such as the “dominant ecological processes, disturbance regimes, and stressors” of the final rule’s § 1610.4(d)(6), will help to identify situations where cross-boundary collaboration with adjacent or other land managers will be necessary.

The identification of the planning area itself also includes consideration of officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian tribes, per § 1610.4(a)(1)(iv) of the final rule. The BLM will take into consideration, for example, a management area for an important species that is identified in a State wildlife action plan.

The planning assessment does not include the “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes” language of § 1610.4-4(e) of the existing rule. The BLM will identify these plans in the planning assessment, but at that early stage in planning the BLM will not have sufficient information to identify “requirements and constraints” related to consistency. Section § 1610.4(d)(3) of the final rule allows other Federal agencies, State and local governments, Indian tribes, and the public to suggest other laws, regulations, policies, plans, guidance, or strategies for the BLM to consider in the planning assessment.

In general, the BLM will identify the relevant laws, regulations, plans, guidance, policies, and strategies of other governmental agencies during the planning assessment step so that it can address consistency later, when it is preparing the resource management plan. For more information on consistency requirements, please see the preamble discussion of § 1610.3-3.

**Comment:** Many comments encouraged the BLM to incorporate consistency reviews into the planning assessment. These comments noted that FLPMA directs the BLM to “keep apprised” of State and local land use plans on an ongoing basis, and asserted that the BLM should strengthen its relationships with State and local governments by giving greater deference to State and local plans. Some of the comments urged the BLM to consider the goals and objectives of State and local land use plans. One comment asserted that if the BLM can evaluate consistency of its own plans during the planning assessment, it should evaluate State and local plans for consistency at the same time. That comment also suggested that if identifying Areas of Critical Environmental Concern is appropriate at the planning assessment stage, identifying potential consistency issues should also be appropriate then.

**Response:** Paragraph 1610.4(b)(2) of the final rule helps the BLM to meet the requirement that it keep apprised of the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The BLM will identify plans in the planning assessment that it will evaluate for consistency (see §§ 1610.4(b)(2) and 1610.4(b)(3) of the final rule), but at this early, information-gathering stage in the planning process it will not yet be appropriate to consider consistency with the plans of other governmental entities, including State and local governments. The planning assessment does not represent a decision on a proposed action, therefore there is nothing to compare other Federal agency, State and local government, or Indian tribe plans to in order to review for consistency. The BLM will consider consistency in later stages, when it is developing the resource management plan. There is nothing in the planning assessment section of the proposed (or final) rule to indicate that the BLM would be conducting consistency reviews of its own plans at this stage.

The BLM will identify potential Areas of Critical Environmental Concern in the planning assessment (see § 1610.4(b)(1) of the final rule) because FLPMA directs the BLM to do so through the inventory of public lands. FLPMA direction on consistency has no such attachment to the inventory.

For more information on consistency requirements, please see the preamble discussion of § 1610.3-3. For more information on identifying potential Areas of Critical Environmental Concern, please see the preamble discussion of § 1610.8-2.

**Comment:** One comment suggested that, in order to be consistent with FLPMA, the BLM add a new paragraph to proposed § 1610.4(a) that would require the responsible official to identify State and local plans with which the BLM's resource management plans must be consistent to the maximum extent consistent with Federal law.

**Response:** FLPMA requires that resource management plans “shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.” (See 43 U.S.C. 1712(c)(9).) During the planning assessment, the BLM will identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration. The final rule does not separately require the BLM to use the planning assessment to identify State and local plans with which it must address consistency. The BLM believes these will be captured in the information gathered under § 1610.4(b)(2), which includes “relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans....” For more information on consistency requirements, please see the preamble discussion of § 1610.3-3.

**Comment:** One comment suggested that the BLM add a new factor to § 1610.4(c) of the proposed rule, requiring that the BLM consider resource-related policies, plans, and programs of other Federal agencies, State and local government agencies, and Indian tribes. The comment asserted that the BLM’s current regulations require consideration of these policies, plans, and programs as part of its analysis of the management situation, and early consideration of other governmental agencies’ policies, plans, and programs will avoid potential inconsistencies later in planning.

**Response:** The final rule does not include the comment’s suggestion as a separate factor in § 1610.4(d) (§ 1610.4(c) of the proposed rule). Paragraph 1610.4(b)(2) of the final rule requires the responsible official to identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for the BLM to consider in the planning assessment. The BLM will consider information gathered under § 1610.4(b)(2) in identifying the factors included in the assessment. For example, if a State park plan emphasizes recreation

in a specific area, the planning assessment would identify that under § 1610.4(d)(5)(xi) (“[a]reas of importance for recreation activities or access); and if a county plan identifies important areas for saleable mineral development to provide for road maintenance, the planning assessment would identify that under § 1610.4(d)(7) (“various goods, services, and uses that people obtain from the planning area, such as...mineral exploration and production”). For more information on addressing consistency in the planning assessment, please see the preamble discussion of § 1610.4(b).

For more information on consistency requirements in resource management plans in general, please see the preamble discussion of § 1610.3-3.

*Evaluation (§ 1610.4(c))*

**Comment:** Many comments asserted that it is not clear in the proposed rule who sets the standard for accurate, reliable, and unbiased information in the planning assessment, and some expressed further concern about the responsible official’s role in evaluating data. Some of the comments asserted that the BLM has not explained the relationship between citizen science and the statutorily required use of best available science. One comment noted that the planning assessment is to occur before the NEPA review process, so presumably there would be no decision-maker assigned to the planning process. Some of these comments asserted that allowing the responsible official to determine the standard could invite bias, and that the BLM should institute Bureau-wide standards instead. A comment noted that collection and analysis of data is usually evaluated in terms of how the data will be used to address a stated purpose. One comment asserted that most Field Managers are not qualified to evaluate scientific information. Another comment urged the BLM to recognize that often, the local community has the best and highest quality information regarding the planning area and its resources and issues.

**Response:** The information and data that the responsible official evaluates under § 1610.4(c) of the final rule must be high quality information for the “stated purpose” of use in the planning assessment. The planning assessment will provide a baseline report of current conditions in the planning area. High quality information includes the best available scientific information. It also allows for the use of other data and information that is accurate, reliable, unbiased, and not compromised through corruption or falsification, and is useful to its intended users. If the responsible official determines that citizen science, including citizen science submitted by the local public, meets that standard, he or she may use it in the planning assessment. The BLM will use the best available information during the NEPA process, regardless of the source. The BLM acknowledges that State and local government data and information are often the best available information, but this is not always the case.

Regulatory requirements, policies, and strategies relating to information, including scientific information, will guide responsible officials as they ensure the information used is high quality. These regulatory requirements, policies, and strategies, including the BLM’s own guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information, are discussed in detail in § 1610.1-1(c) of the preamble. The BLM expects to develop the process for evaluating information received during the planning assessment through manuals, handbooks, and policies, including the Land Use Planning Handbook. This process may vary depending on the discipline, and therefore it is more appropriate to address through guidance.

**Comment:** A few comments urged the BLM to collaborate with cooperating agencies when it evaluates data under § 1610.4(b) of the proposed rule (final § 1610.4(c)). The comments asserted that the provision for collaborating with cooperating agencies on data evaluation in the

current rule helps to ensure appropriate management decisions. According to these comments, State agency staff has the comprehensive expertise that is necessary to analyze complex data, such as water quality data. One of these comments suggested that the BLM add a new paragraph to the planning assessment section of the final rule, requiring that cooperating agencies review data before the BLM releases the planning assessment report.

**Response:** Section 1610.4-3 of the existing rule requires the Field Manager to arrange for the collection of inventory data and information in collaboration with any cooperating agencies. The final rule revises § 1610.4(a)(1) of the proposed rule (redesignated as final § 1610.4(b)(1)) to require the responsible official to gather or assemble inventory data in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes as appropriate and to the extent consistent with the laws governing the administration of public lands. As § 1610.4(c) of the final rule requires, the responsible official will evaluate the information and data gathered under final § 1610.4(b) to identify the data and information and ensure that it is high quality information. After the responsible official has made this identification, he or she, in collaboration with any cooperating agencies, will use the information to complete the planning assessment. The BLM recognizes the expertise of the employees of other governmental agencies with which it coordinates, and the BLM will conduct coordination throughout the planning assessment.

**Comment:** Many comments urged the BLM to establish requirements for transparency in its data evaluation in § 1610.4(b) of the proposed rule. These comments asserted that the quality of the data the BLM is seeking with § 1610.4(a)(3) of the proposed rule is unclear and may not meet the requirements of the Data Quality Act. Several of these comments suggested that, if submitted data does not meet quality standards, the BLM either individually contact the

contributor to explain why it is sub-standard or publicly post an evaluation of all the data the responsible official receives with rationale for including it in or excluding it from the planning assessment. One comment suggested adding a sentence to this effect to § 1610.4(b) of the proposed rule, requiring the responsible official to make his or her evaluation available to the public before it is used to inform the planning assessment. Some of these comments suggested that the BLM hold its own data to the same standard to which it holds publicly-submitted data, or that the BLM specifically make its own data public (provided confidentiality is not an issue). One comment suggested that the BLM review specific Office of Management and Budget, Department of Interior, and BLM guidance on data quality in order to determine a suitable quality standard.

**Response:** The BLM will hold all data it gathers, receives, or uses in the planning assessment, including its own, to the high quality information standard (see § 1610.4(c) of the final rule). Section 1601.0-5 of the final rule provides the definition of high quality information as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.” The BLM recognizes the importance of data quality standards and transparency. The responsible official will document his or her determination of high quality information in the administrative file for the planning effort and will summarize it in the planning assessment report. Section 1610.1-1(c) of the preamble discusses in detail the regulatory requirements, policies, and strategies under which the BLM currently does and, in the future, will evaluate data and information. The BLM has reviewed relevant laws and guidance on data quality. That review is discussed in detail in the preamble discussion of final § 1610.1-1(c).

**Comment:** One comment asserted that when the planning assessment identifies gaps in data due to uncertainty or lack of information, the BLM should commit to monitoring and/or inventorying the identified items. The comment further asserted that NEPA bestows three duties on the BLM in situations of scientific uncertainty: to disclose the uncertainty; to complete independent research and gather information if no adequate information exists unless the costs or exorbitant or the means of obtaining the information are not known; and to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information.

**Response:** The purpose of the planning assessment is to provide a comprehensive understanding of current conditions in the planning area to inform later stages of planning, including preparation of an EIS. If the BLM identifies gaps in data due to uncertainty or lack of information in its evaluation of data and information under § 1610.4(c) of the final rule, it will note these gaps in the planning assessment report (see § 1610.4(e) of the final rule). Thus, the planning assessment identifies areas where data is lacking or further information is needed so that the BLM can generate or locate that data or information before drafting an EIS under NEPA. The final rule is not revised to include this recommendation because it is unnecessary, as the BLM will follow the CEQ NEPA regulations in the preparation of the resource management plan or plan amendment. The planning assessment will help inform the environmental review under NEPA, but does not replace the required steps in NEPA analysis.

*Evaluation for High Quality Information (§§ 1610.4(b)(4) and 1610.4(c))*

**Comment:** Several comments expressed concern about the proposed rule's use of a high quality information standard, rather than a best available science standard, especially as far as the public is concerned. The comments asserted that one opportunity in particular for unreliable data to enter the planning process is § 1610.4(a)(4) of the proposed rule, where the BLM intends to

identify “relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.” One of the comments asserted that the BLM is not qualified to assess public values at a public meeting, since such an event is not a scientific process that results in high quality data; this comment asserted that it is more appropriate and in accordance with FLPMA for the BLM to seek local public views from local governments.

**Response:** Final § 1610.4(c) of the final rule (proposed § 1610.4(b)) provides that the responsible official shall evaluate all the data and information it has gathered, including that which the public submitted, to ensure it meets the high quality information standard for use in the planning assessment. Section 1601.0-5 defines “high quality information” as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.” Public views in the planning area, which the BLM will gather under final § 1610.4(b)(4), can be relevant even if they are not scientific information. For example, the BLM may learn which areas are important to the local public for recreation when it identifies local public views under final § 1610.4(b)(4). The evaluation of information and data per § 1610.4(c) of the final rule may reveal data gaps or a need for more information on a resource that is important to the public.

The BLM expects that it will receive input from other governmental agencies regarding public views during its coordination with other Federal agencies, State and local governments, and Indian tribes throughout the planning assessment. Any scientific data gathered from the public, such as information collected through citizen science, will also be evaluated to determine whether it is high quality information. The BLM expects the forthcoming revision to the Land

Use Planning Handbook will include additional guidance on collaborative planning and effective methods for gathering public views.

**Comment:** A couple of comments requested that the BLM include or at least consider anecdotal local knowledge when it is evaluating information under a best available science standard.

**Response:** The public will have opportunities to submit information to the BLM in the planning assessment and to share their views concerning resource, environmental, social, or economic conditions in the planning area, as provided in §§ 1610.4(b)(3) and (b)(4) of the final rule. The BLM will evaluate the information to determine whether it meets the high quality information standard (see § 1610.4(c) of the final rule) for use in the planning assessment. Paragraph § 1601.0-5 of the final rule defines high quality information as follows: “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, unbiased, and is not compromised through corruption or falsification, and is useful to its intended users.” This standard does not preclude the inclusion of any specific category of information.

For more information on high quality information, please see the preamble discussion of § 1610.1-1(c).

*Local Impact (§§ 1610.4(d) and 1610.4(d)(7))*

**Comment:** Several comments urged the BLM to recognize and emphasize, in the planning assessment and in implementation, the impact of resource management plans on local communities. The comments asserted that a greater emphasis early in planning would lead to a better estimation of effect of alternatives on local economies. One comment asserted that, during planning, the BLM frequently ignores or does not take seriously the impacts to local

communities. Some comments urged the BLM to conduct economic and social impact analyses, and some urged the BLM to conduct consistency reviews and otherwise listen to the concerns of local government in all phases of planning. One comment suggested changing § 1610.4(d)(7)(i) of the final rule to read “The socioeconomic impacts and contributions of these goods and services.”

**Response:** The planning assessment is intended to identify baseline conditions in the planning area early in planning, even before the BLM develops planning issues. The BLM believes that this new step will result in more informed planning from the very start of resource management plan preparation. Paragraph 1610.4(d)(7)(i) of the final rule provides for the consideration of the degree of importance of the various goods, services, and uses that people obtain from the planning area, including on the local level. The BLM also believes that the provisions in §§ 1610.4(b)(3) and 1610.4(b)(4), giving the public opportunities to share data, information, and their views, will draw out local concerns, including those regarding the local economy.

The planning assessment does not include economic and social impact analyses, because it would be premature to determine the impacts of actions that the BLM will not actually consider until later in the planning process. The BLM will conduct coordination with other governmental agencies, including local governments, throughout the planning assessment and the rest of the planning process. The BLM will consider consistency with officially approved or adopted plans of other governmental agencies, including local governments, according to the requirements of § 1610.3-3 of the final rule. During the planning assessment step, the responsible official will identify such plans and will also provide opportunities for other agencies and the public to suggest them, as §§ 1610.4(b)(2) and 1610.4(b)(3) of the final rule require.

For more information on the preparation of a resource management plan after the planning assessment is complete, please see the preamble discussion of § 1610.5.

**Comment:** A few comments were opposed to the provision in § 1610.4(c)(7)(i) of the proposed rule for the responsible official to consider the “degree of local, regional, national, or international importance of” the goods and services identified in proposed § 1610.4(c)(7). The comments noted that the existing rule requires the evaluation of the “degree of local dependence on resources from public lands” and that the corresponding section of the proposed rule represents a shift away from local considerations. These comments further asserted that those living and working in the communities that consist of predominantly public lands have a greater stake in the planning process and its outcomes than others do, and that consideration of dependence on levels other than the local level is outside the direction of FLPMA and the intent of Congress.

**Response:** The BLM recognizes the unique importance that resources in a planning area have to local communities. Under § 1610.4(d)(7)(i) of the final rule, the responsible official will document the degree of importance of the various goods, services, and uses that people obtain from the planning area, which means that the responsible official will document, for example, the extremely high importance of a resource to a given community. This also means that the responsible official will record whether a resource is of low importance to people on a local, regional, national, or international scale. The proposed and final rules are consistent with all applicable laws, including FLPMA. Although the BLM will evaluate this information at multiple scales, it is not anticipated that this will diminish the assessment of the degree of local importance of these goods, services, and uses.

**Comment:** Many comments were supportive of the planning assessment’s consideration of current resource, environmental, ecological, and especially social and economic conditions in the planning area, and any trends related to these conditions. The comments noted that this information is necessary to develop resource management plans. A few comments asserted that, in the past, the BLM evaluated social and economic conditions at the regional level, which obscures the social and economic impact on the local level.

**Response:** The BLM agrees that the development of an effective resource management plan depends on a comprehensive understanding of the current resource, environmental, ecological, social, and economic conditions in the planning area, and the responsible official will consider and document these conditions and any known trends under § 1610.4(d)(3) of the final rule. The BLM typically includes this information in the analysis of the management situation under current practice, but it is not identified in the existing regulations. The report of current conditions will provide the basis for the affected environment and will help the BLM identify planning issues and formulate a reasonable range of alternatives for analysis. The planning assessment will include various goods, services, and uses that people obtain from the planning area, and the degree of local, regional, national, or international importance of these goods, services, and uses. Considering the importance at multiple scales will help capture local concerns.

**Comment:** One comment requested that the BLM add a new factor, “impacts on the local economy, including, when a plan or project contemplates an action on forested land, impacts to the local forest products manufacturing infrastructure” to § 1610.4(c) of the proposed rule. The comment asserted that impacts on local economies are frequently ignored or inadequately addressed in planning, and that requiring the BLM to specifically assess it would

help to cure the problem and lead to a better estimation of the effects of alternatives on local economies.

**Response:** The final rule does not include the comment's suggestion. The planning assessment is an information-gathering step that reports the baseline conditions of the planning area, and it would be premature to determine the impacts of actions that the BLM will not actually consider until later in the planning process. The responsible official will consider and document the various goods, services, and uses that people obtain from the planning area, and the degree of importance of these goods, services, and uses on several scales, including the local scale, as § 1610.4(d)(7) in the final rule requires. The BLM intends this paragraph to include forest products when applicable.

For further discussion on considering impacts to local economies, please see the preamble discussion of § 1601.0-8.

*Conservation, Wilderness, Wildlife (§ 1610.4(d))*

**Comment:** Many comments urged the BLM to identify lands, watersheds, or habitats in need of protection and impaired habitats in need of restoration and enhancement. The comments recommended that the BLM locate these lands or habitats in the planning assessment and set goals and objectives for them in resource management plans. Some of the comments asserted that many BLM habitats suffer from a lack of active restoration, such as habitats that are threatened by noxious weeds. The comments also noted areas where mining pressures wild trout populations, or where fire suppression has resulted in the expansion of mature juniper stands, impacting habitat conditions for mule deer, pronghorn, sage-grouse, and other wildlife.

**Response:** The planning assessment section of the final rule does not contain added language that specifically refers to lands, watersheds, or habitats in need or protection or of

restoration. The responsible official will consider and document, among other areas of potential importance: habitats for special status species (final § 1610.4(d)(5)(ii)); other areas of key fish and wildlife habitat (final § 1610.4(d)(5)(iii); and areas of ecological importance (final § 1610.4(d)(5)(iv)). The responsible official will also consider and document “dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change,” as § 1610.4(d)(6) of the final rule provides. Paragraph 1610.4(d)(4) of the final rule requires the responsible official to consider and document known resource constraints, or limitations, which could, for example, include a minimum viable population number for an endangered species. These factors will inform the BLM’s development of planning issues, plan components, and resource management alternatives. The final rule is not further revised as a result of this comment, as this section adequately captures the comments’ concerns.

**Comment:** One comment urged the BLM to identify opportunities to reestablish populations of native salmonids, consistent with conservation agreements and recovery plans.

**Response:** The comment’s suggestion is for an implementation-level action, and as such it is not discussed in the final rule. The BLM recognizes the importance of its conservation agreements and recovery plans and expects to address their role in the planning assessment in future guidance, such as handbooks, manuals, or other internal policy.

**Comment:** One comment urged the BLM to add “disease” to the list of stressors that the responsible official will identify under § 1610.4(c)(6) of the proposed rule, which would capture stressors such as chronic wasting disease in elk and mule deer herds.

**Response:** The responsible official will not be limited to identifying only the stressors listed in § 1610.4(c)(6), which is adopted without revisions as § 1610.4(d)(6) in the final rule.

Though the final rule cannot include every example of a dominant ecological process, disturbance regime, or stressor, if disease is a dominant stressor that is applicable to the planning effort, the BLM expects that the responsible official will capture it in the planning assessment.

**Comment:** Several comments expressed support for inclusion of § 1610.4(c)(5) in the proposed rule, which requires the BLM to consider areas of potential importance within the planning area. The comments were especially supportive of the provisions in §§ 1610.4(c)(5)(ii) and (iii) to consider wildlife migration corridors, key fish and wildlife habitat, and stopover habitat as factors in the assessment process, because, these comments assert, such consideration will support responsible management of big game animals and other wildlife and help the BLM support state wildlife agency population objectives.

**Response:** The BLM agrees that documenting key fish and wildlife habitat, including migration corridors, bird stopover habitats, and big game wintering and summering areas will inform its resource management plans and support appropriate management of these habitats. The final rule adopts §§ 1610.4(c)(5)(ii) and 1610.4(c)(5)(iii) of the proposed rule as final §§ 1610.4(d)(5)(ii) and (d)(5)(iii), respectively.

**Comment:** Several comments requested clarification of how the BLM would address wildlife corridors identified in the planning assessment. Other comments suggested including strong language to ensure the conservation of wildlife corridors in the resource management plan. These comments suggested that language in the U.S. Forest Service’s 2012 planning rule may be an instructive model; that document specifically states that ecosystem connectivity must be addressed in that agency’s plans “to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan areas, including plan components to maintain or restore structure, function, composition and connectivity. . . .”

**Response:** The BLM believes that conducting an upfront planning assessment will provide useful baseline information for the planning process. For example, consideration of the factors under § 1610.4(d) of the final rule enables the responsible official to appropriately address migration corridors in subsequent steps, such as the identification of planning issues and the formulation of resource management alternatives. While identifying wildlife corridors in the planning assessment is necessary for their proper management, the specifics of how those corridors would be managed will be determined during the preparation of the resource management plan during the development of alternatives (§ 1610.5-2) and the development of the draft resource management plan (§ 1610.5-4), not during this early stage in the planning process. Final §§ 1610.5-2 and 1610.5-4 are also not revised in response to these comments. Final §§ 1610.5-2 and 1610.5-4 are procedural steps, and do not dictate a specific outcome for specific resources such as wildlife corridors.

**Comment:** Several comments recommended that the BLM take steps to prioritize and better accommodate active management on the landscape to improve, restore, and enhance key habitats.

**Response:** The BLM intends for the planning assessment to support landscape-scale planning and facilitate appropriate and adaptive management of key habitats by reporting current conditions in the planning area, including the conditions of key fish and wildlife habitats (see § 1610.4(d)(5)(iii) of the final rule). This assessment will inform later stages of the planning process, including the development of resource management alternatives and, as appropriate, the implementation of a resource management plan.

Existing Conservation Guidance or Agreements (§ 1610.4(d))

**Comment:** Several comments asked the BLM to define “crucial habitat,” which would include the highest priority habitats for conservation, or to explicitly state in the rule that during the planning assessment the BLM will define these habitats according to the guidance of State wildlife agencies.

**Response:** The final rule does not include a definition of the term “crucial habitat” or a requirement to identify “crucial habitats” according to the guidance of State wildlife agencies. The final rule already includes several opportunities during which the BLM would consider and document important habitats, such as habitats for special status species under § 1610.4(d)(5)(i). The planning assessment is intended to inform later stages of planning, during which certain habitats may be prioritized for conservation.

**Comment:** A few comments expressed concern that the special status species in states without official endangered species lists may not be evaluated under the proposed language of § 1610.4(c)(5)(ii). For example, Arizona does not have an official endangered species list; they have Species of Greatest Conservation Need and Species of Economic and Recreational Importance. Arizona's management efforts are tiered to these lists.

**Response:** Paragraph 1610.4(d)(5)(ii) of the final rule, which is § 1610.4(c)(5)(ii) in the proposed rule, requires the responsible official to consider and document, when applicable, “[h]abitat for special status species, including State and/or federally listed threatened and endangered species[.]” If a state has a list of special status species that would be relevant to the planning effort and the responsible official is aware of the list, the responsible official will consider and document the habitats for those species. Opportunities for the responsible official

to become aware of the special status species include the information gathering efforts under §§ 1610.4(b)(2) and (b)(3).

**Comment:** One comment requested that the BLM revise § 1610.4(c)(2) of the proposed rule to include the identification of recorded conservation easements in the planning area. The comment asserted that identifying conservation easements would avoid or minimize future conflicts between mineral development and land preservation efforts.

**Response:** The BLM intends for conservation easements to be considered as part of the “existing resource management” the responsible official identifies in § 1610.4(d)(2) of the final rule.

*Future Conditions, Sustained Yield, Forecasts (§§ 1610.4(d) and 1610.4(d)(7))*

**Comment:** One comment urged the BLM to ensure that the responsible official considers potential, rather than only existing, resource uses in the planning assessment by adding the phrase “and potential” to § 1610.4(c)(2) of the proposed rule. The comment’s suggested § 1610.4(c)(2) would thus read “Land status and ownership, existing and potential resource uses, infrastructure, and access patterns in the planning area[.]” The comment noted that this suggestion is consistent with Section 202(c)(5) of FLPMA.

**Response:** The BLM did not revise proposed § 1610.4(c)(2), which is designated as § 1610.4(d)(2) in the final rule, to include this suggestion. Other paragraphs of final § 1610.4(d) require the responsible official to identify areas for potential resource use and development, including areas with potential for renewable or non-renewable energy development or energy transmission in § 1610.4(d)(5)(viii), areas with known mineral potential in § 1610.4(d)(5)(ix), and areas with known potential for producing forest products in § 1610.4(d)(5)(x). The BLM

conducts its land use planning consistent with FLPMA, and will continue to consider the present and potential uses of the public lands, as FLPMA requires (see 43 U.S.C. 1712(c)(9)).

**Comment:** One comment urged the BLM to consider changes in resource conditions that are reasonably foreseeable during the planning assessment, in addition to current conditions. This comment suggested adding the phrase “or reasonably foreseeable changes” after “any known trends” in § 1610.4(c)(3) of the proposed rule. In the example this comment provided, a major commercial or industrial development may be planned for an area but not yet constructed. The facility is not “current” according to the rule because it is not yet built, but it also is not a trend because it is a one-time event. The comment asserted that the suggested revision would ensure the BLM considers the new facility and its effects.

**Response:** The final rule does not incorporate the comment’s suggestion because it is too open-ended. The planning assessment is meant to report the existing conditions in a planning area, and the consideration of all reasonably foreseeable changes could shift the focus of the report to the prediction of potential future events. Nevertheless, the responsible official is not limited to the list of factors in § 1610.4(d), so if such a project were relevant to a given planning effort, the responsible official could still consider it in the planning assessment.

**Comment:** A few comments did not support the inclusion of “sustained yield” in § 1610.4(c)(7)(iii) of the proposed rule and suggested removing the reference to sustained yield there. The comments asserted that fluid and hardrock minerals are produced on boom-bust cycles. According to these comments, the BLM would be out of compliance with its regulations if, for example, a plan required a sustained yield of copper ore output and then, due to an abundance of copper, the market crashed.

**Response:** The final rule adopts § 1610.4(c)(7)(iii), without revisions, as final § 1610.4(d)(7)(iii). The planning assessment will reflect the baseline resource, environmental, ecological, social, and economic conditions of the planning area. This requirement is based on existing § 1610.4-4(d), which requires an Analysis of Management Situation to include “[t]he estimated sustained levels of the various goods, services, and uses that may be attained under existing biological and physical conditions....” The rule defines “sustained yield” as “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.”

Also, the planning assessment does not represent a binding decision. Any decisions impacting the development of mineral resources will be based on the processes outlined in final §§ 1610.5-1 to 1610.5-5, and approved consistent with § 1610.6-1. The planning assessment will not preclude the BLM from approving future projects, such as fluid and hardrock minerals. The BLM has allowed and will continue to allow these types of developments on the public lands, as appropriate.

For more information on sustained yield, please see the preamble discussion of the definition of this term in § 1601.0-5.

**Comment:** A few comments objected to the elimination of the concept of “sustainability” in the planning assessment, compared to the existing analysis of the management situation. The comment asserted that sustainability is a fundamental FLPMA principle.

**Response:** Paragraph 1610.4-4(d) of the existing rule requires that “[t]he estimated sustained levels of the various goods, services and uses that may be attained. . . .” Paragraph 1610.4(d)(7)(iii) of the final rule requires the responsible official to consider and document in the planning assessment the estimated levels of the goods, services, and uses referenced in §

1610.4(d)(7) that may be produced on a sustained yield basis. The BLM recognizes the importance of its multiple use and sustained yield mandate, and the final rule is consistent with FLPMA.

**Comment:** One comment urged the BLM to remove the word “available” from § 1610.4(c)(7)(ii) of the final rule.

**Response:** The BLM did not revise the final rule to incorporate this suggestion. The BLM intends for the planning assessment to provide a baseline report of the current conditions in a planning area. If information or data is needed and lacking, the responsible official will identify the need under § 1610.4(c) of the final rule in order to address it later in the planning process.

*Resource Health (§ 1610.4(d))*

**Comment:** One comment asserted that under the BLM should be required to include in the planning assessment report: the results of rangeland health assessments, field data on forage productivity in grazing allotments, and a history of grazing use for each allotment. The comment asserted that existing regulations regarding the analysis of the management situation present minimal information on habitat conditions and the results of BLM rangeland health analysis. In the past, this comment continued, the BLM has been hesitant to include in the analysis of the management situation information on allotments that fail to meet rangeland health standards or the actions taken in such allotments. The comment asserted that without this information, it is not possible to spatially relate problem allotments with various habitat values and plan a remedy to restore productivity and meet standards. The comment urged the BLM to report renewable resources with impaired productivity in the planning assessment, and to include a remedy or specific action needed to insure recovery of productivity and restoration of the environmental

quality required in multiple use. This comment suggested that if rangeland areas are ecologically impaired and have reduced productivity, the problem must be identified in the plan, and remedies recommended, including changing grazing numbers accordingly.

**Response:** Under § 1610.4(d) of the final rule (which is § 1610.4(c) in the proposed rule), the responsible official shall assess the resource, environmental, ecological, social, and economic conditions in the planning area. Paragraph 1610.4(d)(3) mentions current conditions and known trends. Paragraph 1610.4(d)(4) specifies known resource constraints, or limitations. Paragraph 1610.4(d)(6) mentions dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change. The planning assessment does not advise remedies or specific actions to improve productivity; rather, the information from the planning assessment will provide useful baseline information to inform these considerations in subsequent steps, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives (see § 1610.5 of the final rule). The BLM recognizes the importance of rangeland health, and intends for this to be captured within the factors listed in § 1610.4(d), but maintains flexibility to consider monitoring data collected at different scales. The BLM expects to address it in future guidance related to implementing this rule, including handbooks, manuals, or other internal policy.

For more information regarding the differences between the planning assessment and existing requirements for the analysis of the management situation, see the discussion regarding § 1610.4(b)(1) in the preamble.

**Comment:** One comment urged the BLM to address irreparable damage in the planning assessment, and particularly to identify irreparable damage or hazards found in proposed Areas

of Critical Environmental Concern, noting the specific historic, cultural, scenic, or ecological value that needs to be protected to prevent irreparable damage, in the planning assessment. The comment suggested that the BLM also identify threats that might lead to such damage.

**Response:** The BLM will identify potential Areas of Critical Environmental Concern in the planning assessment. As described in § 1610.8-2, the BLM will analyze the inventory data gathered under § 1610.4(b)(1) and elsewhere in the planning assessment to determine whether there are areas containing resources, values, systems or processes, or natural hazards eligible for further consideration for designation as an Areas of Critical Environmental Concern, which means they are areas containing resources, values, systems or processes, or natural hazards that may require special management attention to protect and prevent irreparable damage. The final rule does not require the responsible official to note the specific values of potential Areas of Critical Environmental Concern that would qualify them as such; the BLM believes that this is better addressed in guidance, such as the Land Use Planning Handbook.

For more information on the designation and protection of Areas of Critical Environmental Concern, please see the preamble discussion of § 1610.8-2.

**Comment:** One comment suggested that information on herbaceous plant productivity should be gathered in each grazing allotment for the planning assessment.

**Response:** The planning assessment is to be consistent with the nature, scope, scale, and timing of the planning effort. The BLM must conduct a planning assessment based on reasonable budgets and timeframes, and therefore must limit the scope of its data and information gathering to that which is “relevant” to the planning process. The relevance and applicability of any grazing allotment’s herbaceous plant productivity may vary based on the

planning effort. However, the BLM expects to address data collection in the planning assessment in more detail in future guidance, such as the Land Use Planning Handbook.

**Comment:** One comment asserted that if the BLM identifies a location with impaired productivity during the planning assessment and proposes management promises to perpetuate this impairment, this represents a permanent impairment. The comment urged the BLM to determine, when it is analyzing resource management alternatives, if an alternative would lead to permanent impairment of productivity or environmental values.

**Response:** Impaired productivity, even over the lifespan of a resource management plan, does not inherently imply permanent impairment under FLPMA, especially if the ability for a change in management can result in the reduction or removal of the impairment at a future time. The BLM recognizes the importance of considering the relative values of the resources managed, and for that reason incorporates a definition of mitigation in the final rule under § 1601.0-5 and discusses mitigation as part of information gathering in the planning assessment under § 1610.4(b)(2). There may be times where reduced or impaired productivity of a resource over a long period of time will occur as part of balancing the relative values of resources, as FLPMA requires of the BLM. The final rule does not commit to specific management – resource management plans will be developed under the procedures identified in §§ 1610.5-1 to 1610.5-5, including development of alternatives and evaluation of the impacts of those alternatives. This will include an evaluation of whether specific areas have impaired productivity, and alternatives for addressing that impairment. However, the planning assessment’s purpose is to identify resource conditions, and it does not constitute an agency decision. Therefore, final § 1610.4 is not revised in response to this comment.

**Comment:** One comment suggested adding new areas of potential importance: “Areas that have become fire prone, have succumbed to invasive vegetative species and insect kill, areas with decreased water yield, and areas that have otherwise been degraded due to a lack of proactive vegetative management...”

**Response:** The BLM did not incorporate the comment’s suggestion into the final rule because the identified concerns are included in other factors that the responsible official considers in the planning assessment. Section 1610.4(d)(3) of the final rule requires the responsible official to consider and document current conditions, including environmental and ecological conditions, and § 1610.4(d)(4) of the final rule requires the responsible official to consider and document known resource constraints, or limitations. The responsible official will also identify dominant ecological processes, disturbance regimes, and stressors, including wildland fire and invasive species, under § 1610.4(d)(6) of the final rule. The BLM will also monitor and evaluate its resource management plans to determine whether the plan’s objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan. For more information on monitoring and evaluation, please see the preamble discussion of § 1610.6-4.

*Social and Economic Conditions (§ 1610.4(d))*

**Comment:** Several comments asserted that the BLM should assess the value of the outdoor recreation economy and analyze it against other economic aspects of multiple use management (like oil and gas, wind, and grazing). These comments asserted that in the past, the BLM has underestimated the value of recreation and overestimated the value of agriculture. The comment noted that since the Grand Staircase-Escalante National Monument was designated in 1996, surrounding counties' populations, jobs, and income have increased.

**Response:** The planning assessment will capture the value of recreation in several ways. In the planning assessment, the BLM will identify relevant public views, per § 1610.4(b)(4) of the final rule, which provides an opportunity for the public to share their thoughts regarding areas or resources that are important to them, including areas important for recreation. Additionally, under § 1610.4(d)(7) of the final rule, the responsible official will consider and document the various goods, services, and uses that people obtain from the planning area. Section 1610.4(d)(7)(i) of the final rule requires the responsible official to assess the degree of local, regional, national, or international importance of the goods, services, and uses. Recreation would be included as a “use” in this assessment. For these reasons, the final rule is not revised in response to these recommendations because the concepts in the comment are adequately captured.

**Comment:** One comment asserted that when evaluating socioeconomic conditions in the planning area, the BLM should fully consider the effects of restricting of oil and gas development in terms of jobs not created, and the resulting effects to the community as a whole.

**Response:** During the planning assessment, described in § 1610.4 of the final rule, the responsible official shall consider and document, among other things: the social and economic conditions and known trends; goods, services, and uses that people obtain from the planning area, including mineral exploration and production; the degree of importance of these goods, services, and uses on all scales (local to international); and available forecasts and analyses related to the supply and demand for these goods, services, and uses. This information will establish the baseline for the planning area. The BLM expects to address the evaluation of socioeconomic conditions in the planning assessment in future guidance, such as handbooks, manuals, or other internal policy. The BLM expects that this will include oil and gas

development when that is a use in the planning area. However, the final rule is not revised in response to this comment, as the BLM believes it is more appropriate to include guidance on the assessment of specific resource uses in policy, rather than regulation, to provide flexibility to adapt to the current methodologies and techniques.

**Comment:** A few comments asserted that economic or “commodity” resources should be included in the list of items considered in the assessment. The comments asserted that this section includes an extensive list of environmental and cultural resources considered in the assessment, but does not mention minerals, forest products, grazing, or other resource uses. One of these comments proposed adding a new area of potential importance: “Areas of grazing, timber, mineral, and other commodity resource availability.”

**Response:** Under § 1610.4(b)(1) of the final rule, the responsible official shall arrange for the gathering or assembling of relevant data and information regarding conditions in the planning area, including economic conditions. Paragraph 1610.4(b)(4) of the final rule requires the responsible official to identify relevant public views concerning a variety of conditions in the planning area, including economic conditions. Paragraph 1610.4(d) of the final rule requires the responsible official to consider and document a number of factors related to economic conditions. For example, under § 1610.4(d)(3), the responsible official will identify current resource, environmental, ecological, social, and economic conditions and trends. Paragraph 1610.4(d)(5) in the final rule requires the responsible official to identify areas of importance for the planning assessment. In response to public comment, the BLM final rule includes two additional areas of potential importance: areas with known mineral potential in § 1610.4(d)(5)(ix) and areas with known potential for producing forest products, including timber, in § 1610.4(d)(5)(x). The final rule also revises § 1610.4(c)(7) of the proposed rule, designated

as final § 1610.4(d)(7), to clarify that the responsible official will assess “uses” along with the goods and services that people obtain from the planning area, “such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.” Paragraphs (i), (ii), and (iii) of the final rule’s § 1610.4(d)(7) further address goods, services, and uses; specifically, their degrees of importance, available forecasts and analyses, and estimated levels that can be produced on a sustained yield basis.

**Comment:** Several comments expressed concern about how much influence economic conditions will have on a plan and its priorities. The comments asserted that the rule is not clear how much weight consideration of economic conditions will receive, and this will lead to controversy. These comments requested that the BLM provide assurance that planning assessments will use the best available science (particularly pertaining to flora and fauna and the effects of energy development) and will not be outweighed by political pressure or economic conditions.

**Response:** The final rule does not assign weight or influence to economic conditions because such weight or influence will depend on the planning area and the scope of the plan. The BLM will develop and amend its resource management plans consistent with the principles of multiple use and sustained yield in FLPMA. Multiple use means managing the public lands and resource values so they are used in the combination that will be meet the present and future needs of the American people. To do this, the BLM must determine the combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources. The planning assessment is an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area. It will

describe the current status of lands and resources in the planning area, project demand for those resources, and assess how these demands can be met consistent with the BLM's multiple use and sustained yield mandate. When gathering information for the planning assessment, the responsible official shall identify relevant public views concerning economic (as well as resource, environmental, ecological, and social) conditions, per § 1610.4(b)(4) of the final rule.

Baseline information from the planning assessment will inform subsequent steps in the planning process, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives. The principles of multiple use, the public involvement opportunities, and the steps of the planning process will determine the influence of economic conditions.

**Comment:** One comment suggested the BLM answer these questions when assigning value to grazing: what portion of the economic values from livestock is associated with feed used?; what portion of this feed comes from grazing on public lands?; what portion of the total agricultural activity involves raising livestock that use public lands?; and what part of the total economy involves agriculture?

**Response:** Paragraph 1610.4(d)(7) of the final rule provides for the comprehensive consideration of the various goods, resources, and uses that people obtain from the planning area, such as livestock grazing. The final rule does not list all potential goods, resource, and uses, as the BLM expects to address pointed questions like these in further guidance regarding conducting planning assessments, such as in the Land Use Planning Handbook or other internal policy.

**Comment:** Several comments requested clarity regarding how the BLM will consider social conditions in planning or how social conditions will affect planning. These comments

urged the BLM to remove references in the planning assessment to social conditions, or to describe what constitutes “social” conditions, sciences, characteristics, factors, information, trends, and effects and how the BLM will use them in planning.

**Response:** As § 1610.1-1(b) of the final rule identifies, the BLM will use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. This language is consistent with Section FLPMA (see 43 U.S.C. 1712(c)(2)), including the broader inclusion of “other sciences.” The BLM identifies social sciences in the final rule for consistency with the CEQ NEPA implementation regulations (see 40 CFR 1502.6). Social conditions and factors are relevant to resource management planning in describing communities and values; for analyzing goods, services, and choices; and clarifying the interaction of human and natural systems. The baseline information that the BLM identifies in the planning assessment will inform subsequent steps, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives. All references to social conditions in § 1610.4 of the proposed rule remain in the final rule. The specific strategies for considering social conditions will vary depending on the planning area and scope of the planning effort, as will the weight they receive; these strategies are thus better addressed in internal guidance, such as the Land Use Planning Handbook.

**Comment:** Many comments objected to the consideration of social conditions in the planning assessment. Some comments asserted that there is no statutory authority for evaluating or including social conditions. These comments asserted that FLPMA does not mention social conditions or direct consideration of social issues, and that Congress, not agencies or the public,

has plenary authority to manage public lands. The comments requested that the BLM explain its authority to assess social conditions, and to limit such assessments to the specific social conditions named in that authority.

**Response:** FLPMA requires the Secretary to use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences (see 43 U.S.C. 1712(c)(2)). Paragraph 1610.1-1(b) requires the BLM to use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. Social science is one of the “other sciences.” It is included in the final rule for consistency with the CEQ NEPA implementation regulations in 40 CFR 1502.6, which state that “environmental impact statements shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts.” Executive Order 12898 on Environmental Justice requires each Federal agency to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.” Federal agencies also have obligations to Indian tribes regarding subsistence resource rights. The BLM expects the Land Use Planning Handbook to provide guidance on how to integrate socioeconomics into the planning process. The proposed and final rules are consistent with all applicable laws, including FLPMA. Likewise, all BLM plans are developed consistent with FLPMA.

**Comment:** Several comments expressed support for the provision to consider the degree of regional, national, and international dependence on resources from public lands in § 1610.4(c)(7)(i) of the proposed rule.

**Response:** The final rule adopts § 1610.4(c)(7)(i) of the proposed rule, redesignated as final § 1610.4(c)(7)(i), with one revision: the addition of the word “uses.” Thus, the responsible official will consider and document the degree of local, regional, national, or international importance of the goods, services, and uses identified in § 1610.4(d)(7) of the final rule.

*Thresholds, Constraints, Limitations (§ 1610.4(d)(4))*

**Comment:** Several comments expressed support for the planning assessment’s consideration of known resource constraints, or limitation in § 1610.4(d)(4) of the proposed rule, believing that this factor is particularly important in the context of decisions relating to the designation of Areas of Critical Environmental Concern. One comment, however, expressed concern over the use of the word “known” in this paragraph, and suggested changing the language in order to convey that the BLM will eliminate uses if they have been scientifically shown to be incompatible.

**Response:** The final rule adopts § 1610.4(c)(4), without revisions, as § 1610.4(d)(4). This paragraph modifies and expands on existing § 1610.4-4(i), which refers to “critical threshold levels which should be considered in the formulation of planned alternatives.” The BLM believes this concept is important to the planning process because it will inform the development of plan components in the resource management plan, such as disturbance limits or mitigation standards. At this early stage in planning, it will not yet be appropriate to eliminate certain uses from consideration.

**Comment:** One comment objected to the inclusion of “thresholds” in § 1610.4(c)(4) of the proposed rule because this term is not in the current regulations.

**Response:** The final rule adopts § 1610.4(c)(4) of the proposed rule, without revisions, as § 1610.4(d)(4). The BLM believes that it is important to assess resource constraints and

limitations because this information will inform the development of plan components in the resource management plan, including disturbance limits, mitigation standards, or decision points for applying adaptive management.

Ecology (§§ 1610.4(d)(5) and 1610.4(d)(6))

**Comment:** One comment urged the BLM to identify in the planning assessment areas that are underrepresented ecosystem types. The comment suggested that such areas would be good candidates for potential restoration or conservation designations.

**Response:** The BLM did not incorporate this suggestion into the final rule because it is included in other requirements. The final rule adopts proposed § 1610.4(c)(5)(iv), designated as final § 1610.4(d)(5)(iv), which identifies areas of ecological importance as areas of potential importance within the planning area. The final rule revises § 1610.4(c)(5)(v) of the proposed rule, designated as final § 1610.4(d)(v), to include areas of significant scientific value among the areas of potential importance within the planning area. The BLM expects to address how information from the planning assessment will inform a resource management plan in the Land Use Planning Handbook or other future guidance.

**Comment:** One comment suggested the BLM move the term “areas of ecological importance” from § 1610.4(c)(iv) to a section called Development of Potential Areas of Critical Environmental Concern, or that it makes this term more clear.

**Response:** The final rule adopts proposed § 1610.4(c)(iv), as § 1610.4(d)(iv), without revisions. The paragraph reads “Areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change[.]” Areas of ecological importance may overlap with Areas of Critical Environmental Concern, but they are not synonymous. An example of an area of ecological

importance might include a wetland that serves as a buffer against weather fluctuations, storing floodwater during storms and maintaining surface water flow during dry periods.

For more information on the designation and protection of Areas of Critical Environmental Concern, please see the preamble discussion of § 1610.8-2.

**Comment:** One comment requested that the BLM add references to air, atmospheric, and water resource values in the planning assessment to be consistent with Section 102(a)(8) of FLPMA. The comment suggested revising § 1610.4(c)(5)(iv) of the proposed rule to read: “Areas of ecological importance, including those that span jurisdictional boundaries, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change or contribute to improved air or water quality[.]”

**Response:** The BLM did not include the suggested revision in the final rule because it is not necessary. The BLM develops its resource management plans in accordance with FLPMA, regardless of whether or not specific items mentioned in FLPMA are included in the BLM’s planning regulations. FLPMA requires the BLM to “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans.” (See 43 U.S.C. 1701(a)(8).) The final rule does incorporate this language FLPMA into the objectives of resource management planning at § 1601.0-2.

**Comment:** One comment asserted that the consideration of dominant ecological processes in § 1610.4(c)(6) of the proposed rule is vague as well as redundant, since § 1610.4(c)(3) of the proposed rule requires the consideration of ecological trends.

**Response:** The final rule adopts § 1610.4(c)(6), without revisions, as § 1610.4(d)(6). Including ecological conditions and trends as well as dominant ecological conditions in the final

rule ensures that the BLM will capture the local as well as landscape-level ecology of an area in the planning assessment.

**Comment:** One comment urged the BLM to include “appropriate ecological site descriptions” as an additional factor for the responsible official to consider and document in § 1610.4(c) of the proposed rule. The comment asserted that many ecological site descriptions are of unknown or questionable origin and would not meet a high quality information standard, yet ecological site descriptions are essential for determining baseline conditions and rangeland health.

**Response:** The suggested revision is unnecessary. The final rule requires that all data and information the responsible official considers in the planning assessment be high quality information, so the responsible official will evaluate ecological site descriptions to ensure they meet this standard.

**Comment:** One comment suggested re-working the term “areas of ecological importance” by removing the phrase, moving it to “development of potential ACECs,” or clarifying its use.

**Response:** This term will be retained in the final rule at § 1610.4(d)(5)(iv). The preamble to the final rule provides further clarification for the term and states that “areas of ecological importance” might include refugia identified to help sensitive species respond to the effects of climate change or wetlands that help to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods.

*Climate Change (§ 1610.4(d)(5))*

**Comment:** A few comments urged the BLM to add “including climate change” at the end of § 1610.4(c)(5)(iv) of the proposed rule. The comments asserted that this revision would

ensure that the BLM considers climate change as a form of change when identifying areas of ecological importance in the planning assessment.

**Response:** The final rule adopts proposed § 1610.4(c)(5)(iv), without revisions, as § 1610.4(d)(5)(iv). Climate change is one of many types of change that the responsible official will consider in this section, so no change is necessary. The responsible official will consider areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from climate change when these areas are applicable. Further, the final rule adopts § 1610.4(c)(6) of the proposed rule, redesignated as final § 1610.4(d)(6), which instructs the responsible official to consider and document “Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change[.]”

**Comment:** A few comments urged the BLM to consider weather, but not climate change, in resource management planning. These comments asserted that climate change is unquantifiable, and any projection of climate change that may be reflected in annual weather and storm events is questionable science. These comments further asserted that BLM planners do not have the expertise to address climate change or this questionable science. The comments suggested that the BLM collect data on weather and plant phenology in a planning area, rather than buying into the politically driven but scientifically defective climate change agenda.

**Response:** The BLM will consider climate change in the planning assessment and throughout the planning process. Climate change is a known phenomenon and two of the three goals of Planning 2.0 incorporate a response to climate change: the goal to improve the BLM’s ability to respond to change in a timely manner and the goal to improve the BLM’s ability to apply landscape-scale approaches to resource management. Please see the “Related Executive

and Secretarial Direction” section of the preamble for a list of the multiple directives related to climate change.

As required by § 1610.4(c), the responsible official shall evaluate the data and information gathered as part of the planning assessment to ensure the use of high quality information in the planning assessment. This will include information on climate change. As required by § 1610.1-1(b), the BLM shall use a systematic interdisciplinary approach in the preparation and amendment of resource management plans, and the expertise of the preparers shall be appropriate to the resource values involved. This would include expertise in climate change, if appropriate.

**Comment:** A few comments asserted that the planning assessment gives too much discretion to the responsible official regarding the consideration of climate change under § 1610.4(c)(6) of the proposed rule. According to these comments, the phrase “when they are applicable” in § 1610.4(c) of the proposed rule does not require the responsible official to consider and document all the factors in that paragraph and could result in responsible officials avoiding consideration of climate change effects in planning assessments. The comments urged the BLM to require the responsible official to evaluate climate change in the planning assessment. One of the comments suggested that the BLM replace “such as” in proposed § 1610.4(c)(6) with “including.”

**Response:** The BLM intends for the responsible official to consider and document any and all of the factors in proposed § 1610.4(c), designated as § 1610.4(d) in the final rule, whenever they are applicable. The BLM recognizes climate change as a known phenomenon and the responsible official will document it in a planning area when it is applicable or relevant

to a planning effort. It is thus unnecessary to revise § 1610.4(d)(6) of the final rule as the comment suggested.

*Other Suggestions for Assessment Factors (§ 1610.4(d))*

**Comment:** One comment suggested that the BLM incorporate new factors for the responsible official's consideration and documentation regarding oil and gas leases and activity. The comment urges the BLM to include valid existing rights within the planning area (such as existing oil and gas leases), and also the amount of existing oil and gas activity (such as the number of oil and gas leases and wells).

**Response:** In response to public comments, the final rule revises § 1610.4(c)(2) of the proposed rule, designated as final § 1610.4(d)(2), to specifically include "valid existing rights" as part of the land status and ownership, existing resource management, infrastructure, and access patterns in the planning area for the responsible official to consider and document. Paragraph 1610.4(d)(7) of the final rule also includes "mineral exploration and production" among the various goods, services, and uses that people may obtain from the planning area.

**Comment:** One comment urged the BLM to consider any history of safety issues on the public land within a planning area. The comment asserted that safety issues are rarely addressed in planning and pointed to a number of deaths and injuries related to All-Terrain Vehicles on BLM land. The comment encouraged BLM to gather data in the planning assessment regarding the BLM's history regarding Off-Road Vehicle use and its compliance with past travel plan requirements, and to report this data. The comment further urged the BLM to provide in the planning assessment a history of law enforcement actions regarding non-compliance with BLM's travel requirements.

**Response:** The final rule adopts § 1610.4(c)(5)(x) of the proposed rule, designated as final § 1610.4(d)(5)(xii), without revisions. This paragraph directs the responsible official to consider and document “Areas of importance for public health and safety, such as abandoned mine lands or natural hazards.” The BLM intends that areas where Off-Road Vehicle use has proven dangerous would be identified under this paragraph. The planning assessment is intended to report current conditions in the planning area, so the final rule does not further incorporate the history of ORV use or law enforcement actions into this step.

**Comment:** A few comments urged the BLM to include specific consideration of areas of scientific value in the planning assessment. The comments asserted that though this value is listed in Section 102(8) of FLPMA, the proposed rule does not account for it. One of these comments suggested that the BLM revise § 1610.4(c)(5)(vi) of the proposed rule to replace “paleontological” with “archaeological.” The comment further suggested that the BLM add a new paragraph § 1610.4(c)(5)(vii), requiring the responsible official to assess “Areas of significant interest to other scientific disciplines, such as geological and paleontological sites, or unique or fragile soils.”

**Response:** The BLM conducts all of its resource management planning in accordance with FLPMA, whether or not individual items mentioned in FLPMA are specifically identified in the planning assessment. The BLM intends for archeological sites to be considered as potential areas of tribal, traditional, or cultural importance under § 1610.4(d)(5)(i) or areas of significant historical value under § 1610.4(d)(5)(vi) of the final rule. The BLM will adopt the suggestion to include scientific value as a factor for the responsible official to consider in the planning assessment. The final rule revises § 1610.4(c)(5)(v) of the proposed rule, which is redesignated

as final § 1610.4(d)(5)(v), to read “Lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value.”

*Other Comments Related to Assessment Factors (§ 1610.4(d))*

**Comment:** One comment urged the BLM to integrate the factors in § 1610.4(c) of the proposed rule, specifically adding a sentence to that section stating that “[t]he responsible official is encouraged to integrate these factors together in the assessment report.” The comment asserted that the factors for the responsible official’s consideration and documentation in the planning assessment are quite interrelated, and the suggested statement would help to avoid situations in which the BLM assesses each factor in isolation.

**Response:** The BLM did not add the suggested sentence to § 1610.4(d) of the final rule. Section 1610.1-1(b) of the final rule requires the BLM to use “a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences.” This provides sufficient guidance to achieve the goal of this comment. Additional instruction on the format and content of the planning assessment is more appropriate for, and expected in, the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment urged the BLM to ensure that all factors in § 1610.4(c) of the proposed rule, particularly paragraphs (c)(3) and (c)(7), align with the planning criteria identified in FLPMA (see 43 U.S.C. 1712(c)(5), (c)(6), and (c)(7), respectively) “consider present and potential uses of the public lands,” “consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values,” and “weigh long-term benefits to the public against short-term benefits....” The comment asserts that the proposed rule fails to address these criteria.

**Response:** The factors that the responsible official considers and documents in the planning assessment will be used later in the planning process, when the BLM is developing the resource management plan, to complete the requirements of FLPMA sections 202(c)(5), (6), and (7). The factors listed in final § 1610.4(d) will inform the responsible official as he or she develops a resource management plan or plan amendment that complies with the planning criteria identified in FLPMA, including the paragraphs listed by the comment (see 43 U.S.C. 1712(c)). Paragraph 1610.4(c) of the proposed rule will be designated as § 1610.4(d) in the final rule. In the planning assessment, the responsible official will consider and document the present uses of land, including under §§ 1610.4(d)(1) and (d)(2) of the final rule. The responsible official will also consider and document potential uses, when applicable, including areas with potential for renewable or non-renewable energy development or energy transmission (see § 1610.4(d)(5)(viii) and areas with known mineral potential and known potential for producing forest products (see §§ 1610.4(d)(5)(ix) and (d)(5)(x) of the final rule). The final rule revises § 1610.4(c)(7) of the proposed rule, designated as final § 1610.4(d)(7), to include “uses” with the “goods” and “services” that people obtain from the planning area. This section requires the responsible official to consider and document the degree of importance of these goods, services, and uses, available forecasts related to the supply of and demand for these goods, services, and uses, and the estimated levels of the goods, services, and uses that may be produced on a sustained yield basis. The final rule adopts §§ 1610.4(c)(3) and (c)(4) of the proposed rule, designated as §§ 1610.4(d)(3) and (d)(4) in the final rule, without revisions; these paragraphs require the responsible official to consider and document resource, environmental, social, and economic conditions and any known trends related to them, as well as to consider and document known resource constraints, or limitations. At this early stage in the planning process, it is not

yet appropriate to, for example, weigh long-term benefits to the public against short-term benefits, but the BLM believes the planning assessment section of the final rule prepares the responsible official to make such considerations during the development of the resource management plan. Both the proposed and final rules are consistent with FLPMA.

**Comment:** One comment urged the BLM to revise § 1610.4(c)(1) of the proposed rule to ensure management actions required, not just authorized, by FLPMA are considered.

**Response:** The final rule adopts § 1610.4(c)(1) of the proposed rule, designated as § 1610.4(d)(1) in the final rule, with one revision: the addition of the phrase “use and,” to clarify that the responsible official considers resource use and management authorized by FLPMA and other relevant authorities. The planning assessment is meant to provide a baseline understanding of current conditions in a planning area. If management required by FLPMA is present in the planning area, the responsible official will capture such management under final § 1610.4(d)(1). Any lack of FLPMA-required resource management would be identified through monitoring and evaluation, under § 1610.6-4 of the final rule. All of BLM’s resource management plans, as well as the proposed and final rules, are consistent with FLPMA.

*Areas of Potential Importance and Energy (§ 1610.4(d)(5))*

**Comment:** A couple of comments urged the BLM to require the responsible official to consider and document in the planning assessment potential areas for advanced energy development planning. These comments suggested adding such areas as a new paragraph in final § 1610.4(c)(5). The comments asserted that the proposed rule’s allowance for identification of areas with potential for renewable or non-renewable energy development or energy transmission misrepresents the range of energy development planning possibilities. The comments asserted that Solar Energy Zones, master leasing plans, and designated utility

corridors are examples of the advanced energy tools that the BLM is currently using to better address the environmental and socioeconomic impacts associated with energy development. The comments emphasized the power of these tools to limit conflicts, controversy, and impacts while also facilitating efficiency and a timely permitting process.

The comments suggest that the BLM allow the public to respond to the planning-assessment-identified potential areas for advanced energy development planning and to nominate new areas for the purpose throughout the planning process, culminating in the inclusion of advanced energy development planning in the resource management alternatives.

**Response:** The final rule does not include areas for potential advanced energy development planning as a separate area of potential importance in § 1610.4(d)(5). This is adequately captured in § 1610.4(d)(5)(viii), which states that the assessment will include “[a]reas with potential for renewable or non-renewable energy development or energy transmission.”

The BLM agrees that there is a wide range of energy planning opportunities. These opportunities will be considered during the development of alternatives, as designations, which are defined in § 1610.1-2(b)(1). Please see the preamble discussion of § 1610.1-2(b)(1) for more information about how the BLM will address those areas where it may direct management toward one or more priority resource values or resource uses. The information developed as part of the planning assessment under § 1610.4(d)(5)(viii) will inform that process.

**Comment:** A couple of comments urged the BLM to identify areas where renewable energy development is detrimental to wildlife and its habitat, and to revise proposed § 1610.4(c)(5)(viii) to require the responsible official to only identify areas with potential for renewable or non-renewable energy development or energy transmission when the development or transmission would be low-conflict. The comments asserted that planning assessments should

collect and evaluate information necessary for effective, directed renewable energy development within the planning area.

**Response:** The BLM did not revise the planning assessment of the final rule to require the comment's suggestion because the primary purpose of the planning assessment is to report on the current conditions in the planning area that will inform later stages of the planning process. At this stage, the BLM is documenting where renewable or non-renewable energy development could occur, not whether or not it should there occur based on any given factor. The planning assessment's consideration of "known resource constraints, or limitations" in § 1610.4(d)(4) of the final rule would likely capture a conflict between wildlife habitat and renewable energy development. The information evaluated during the planning assessment will be used later by the responsible official when developing alternatives to consider both goals and objectives, as well as planning designations and resource use determinations.

**Comment:** A couple of comments urged the BLM to consider areas with mineral potential or areas with high extraction possibilities as additional areas with potential importance in § 1610.4(c) of the proposed rule. The comment emphasized the importance of identifying areas of mineral potential at the onset of the planning process to ensure that when the BLM is developing resource management alternatives, it adequately considers the effect that potential plan components may have on mineral exploration and development in the planning area.

**Response:** The final rule adopts the suggestion to include "Areas with known mineral potential" as an additional area of potential importance within the planning area by adding § 1610.4(d)(5)(ix) to the final rule.

**Comment:** One comment urged the BLM to provide details regarding the information that the BLM will use to determine whether an area has the potential for energy development and

how the BLM will use it. The comment asserted that future leasing, exploration, and development must not be limited to the areas identified for potential oil and gas development.

**Response:** The planning assessment will inform the preparation of resource management plans, but it will not establish resource use determinations. The information the BLM might use and how it would evaluate the information are implementation-level questions and are not included in the final rule. For more information on resource use determinations, please see the preamble discussion of § 1610.1-2(b).

*Other Suggestions for Areas of Potential Importance (§ 1610.4(d)(5))*

**Comment:** One comment urged the BLM to add the following areas or resources to the list of areas of potential importance within the planning area: cave resources; archeological sites; sole source aquifers (and other aquifer and wellhead protection designations); municipal watersheds; underground sources of drinking water; Clean Water Act "outstanding national resource waters" (surface waters where no further degradation of water quality is permitted); Clean Air Act PSD Class 1 areas as well as areas (airsheds) declared impaired; scientific sites such as Research Natural Areas; and unique or important features or attractions such as hot springs, thermal features, waterfalls, cliffs, canyons, rock towers, badlands, hoodoos and other unique rock formations.

**Response:** The final rule revises § 1610.4(c)(5)(v) of the proposed rule, redesignated as § 1610.4(d)(v), to include not only areas of scenic value, but also of scientific value. The final rule does not name any of the other items that the comment suggested as areas of potential importance in the final rule. The responsible official may nevertheless identify some of them when conducting a planning assessment; for example, he or she may identify canyons as areas of

significant scenic value, under final § 1610.4(d)(5)(v), or archeological sites as areas of significant historic value under final § 1610.4(d)(5)(vi) in the final rule.

**Comment:** One comment urged the BLM to identify potential areas for experimental adaptive management in the planning assessment. The comment asserted that, if the BLM were to conduct a variety of experimental approaches that would allow for diverse strategies and adaptive, dynamic planning, the BLM would quickly learn which adaptive management actions would yield the greatest reductions in risk.

**Response:** The final rule does not incorporate the comment's suggestion because it is not appropriate for consideration in all planning efforts. The responsible official is not limited to the factors or areas identified in § 1610.4(d), so if conducting experimental adaptive management were appropriate to a particular planning effort, the responsible official could locate relevant areas for the task.

**Comment:** A couple of comments requested that the BLM require the responsible official to consider soundscapes in the planning assessment by revising § 1610.4(c)(5)(v) of the proposed rule to include "areas where natural soundscapes are dominant in the landscape." The comments asserted that consideration of soundscapes is similar to the BLM's identification of areas of significant scenic value, and to consider natural soundscapes especially on lands to be managed in their "natural condition," including Wilderness Study Areas and lands with wilderness characteristics. The comments also urged the BLM to require that the responsible official consider the soundscapes of National Parks adjacent to the planning area in the planning assessment. These comments asserted that various directives instruct the BLM to consider noise when locating areas and trails, and that BLM's Air Resource Management Manual states that the BLM will consider noise and its potential impacts on the public and the environment. The

comments further asserted that courts have upheld the responsibility of Federal land management agencies to evaluate noise impacts on the natural soundscape.

**Response:** The final rule does not incorporate the consideration of soundscapes into the planning assessment, but the BLM intends for areas with significantly valuable soundscapes to fall under § 1610.4(c)(5)(v), which is redesignated as § 1610.4(d)(5)(v) in the final rule. The planning assessment is meant to provide a baseline of the current conditions in the planning area to inform the later stages of planning, so while the BLM may note a valuable soundscape in the planning area adjacent to a National Park, it will not make determinations regarding management of that soundscape in the planning assessment. The effects of noise on various resources in the planning area are implementation-level evaluations and thus, are better addressed in future guidance.

**Comment:** A couple of comments urged the BLM to explicitly require the responsible official to consider night sky resources in the planning assessment by revising § 1610.4(5)(v) of the proposed rule to read, in part: “. . . areas of significant scenic value, including night sky resources. . . .” The comments asserted that visual resource management is not restricted to land-based resources, and individual BLM field offices have begun to consider the value of a dark night sky in their resource management plans.

**Response:** The BLM did not include the comment’s suggested revision in the final rule; however, the BLM recognizes the importance of night sky resources and intends that areas with significant value in this regard will be identified under § 1610.4(c)(5)(v) of the proposed rule, which is redesignated as § 1610.4(c)(d)(v) in the final rule.

**Comment:** One comment asserted that the BLM should identify livestock grazing preferences in the planning assessment. The comment suggested the BLM consider historic

ranching enterprises which utilize public lands as areas of significant historical value per § 1610.4(c)(5)(vi) of the proposed rule.

**Response:** The final rule adopts § 1610.4(c)(5)(vi) of the proposed rule, without revisions, as § 1610.4(d)(5)(vi). The final rule does, however, revise § 1610.4(c)(7) of the proposed rule (final § 1610.4(d)(7)) to include “domestic livestock grazing” as one of the various goods, services, and uses that people obtain from the planning area.

**Comment:** One comment expressed concern that § 1610.4(c)(5)(ix) of the proposed rule does not sufficiently reflect the range or importance of recreational activities on or access to BLM lands. The comment suggested revising this section to read: “Areas of importance for recreation activities or access. These might include high use recreation sites, areas with limited access points, recognition of existing or needed routes/areas for recreation use, or other issues important to consideration and recognition of a diverse range of recreation opportunities in the project area.”

**Response:** The final rule adopts § 1610.4(c)(5)(ix) of the proposed rule, as § 1610.4(d)(5)(xi), without revisions. The BLM recognizes the importance of recreation uses on public lands and believes that this provision, as well as the opportunity for the public to provide information and opinions (see §§ 1610.4(b)(3) and (b)(4)) in the planning assessment will accurately reflect the current recreational conditions in a planning area. The BLM intends for the planning assessment to provide a baseline that informs later stages of planning, so as planning progresses, the BLM may identify recreation needs that are not captured in the planning assessment.

*New Designations (§ 1610.4(d)(5))*

**Comment:** Several comments urged the BLM to identify, expand, restore, and conserve large, intact, and undeveloped tracts of BLM land by designating such lands as backcountry conservation areas. The comments encouraged the BLM to inventory all roadless lands in the planning area, explaining that “roadless” refers to the absence of roads that have been improved and maintained by mechanical means; a way maintained solely by the passage of vehicles does not constitute a road. The comments asserted that such areas have values different or greater than those of lands with wilderness characteristics, because roadless areas emphasize ecological values over aesthetics and recreation. For example, these comments assert, roadless areas provide habitat to species sensitive to disturbance and fragmentation. Some of the comments further elaborated that areas designated as backcountry conservation areas would provide walk-in hunting and fishing opportunities.

**Response:** The planning assessment section of the final rule does not specifically require that the responsible official document undeveloped tracts of land or roadless areas. Final § 1610.4(d)(5)(iii) requires the responsible official to document and consider “areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat,” and as final § 1610.4(d)(5)(v) requires the responsible official to document “lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value.” This will adequately capture the information recommended by the comment, and inform the development of plan components, including designations. It is at this step in the process that the BLM would consider backcountry conservation areas. This is discussed in greater detail in § 1610.1-2(b)(1) of the preamble.

**Comment:** Several comments did not support § 1610.4(c)(5) of the proposed rule, which names ten types of areas of potential importance for the responsible official to include in the planning assessment. Some of these comments asked why the BLM chose these ten types of resources, and under what authority does the BLM prioritize the listed resources over other resources on Federal land. Other comments asserted that the list of areas of potential importance effectively creates new types of administrative special designations. These comments asserted that the only administrative special designation authorized by FLPMA is an Areas of Critical Environmental Concern, which must meet relevance and importance criteria in addition to requiring special management attention. These comments asked whether these areas of potential importance will be subject to the requirements for area of critical concern designation, and if not, what the BLM's authority to create new designations is.

**Response:** The final rule adopts § 1610.4(c)(5) of the proposed rule, with revisions, as § 1610.4(d)(5). This information is typically included in the AMS under current practice, but is not identified in the current regulations. The identification of these areas will inform the identification of planning issues and the formulation of alternatives. The following paragraphs describe the different types of "areas of importance" that are included.

This paragraph is revised from the proposed rule to include two new areas of potential importance: areas with known mineral potential (see § 1610.4(d)(5)(ix) of the final rule) and areas with known potential for producing forest products, including timber (see § 1610.4(d)(5)(x) of the final rule). Paragraph 1610.4(d)(5)(v) of the final rule is also revised from the proposed rule to include areas of significant scientific, in addition to scenic, value. The types of areas of potential importance listed in § 1610.4(d)(5) are typically considered in the analysis of the management situation under current practice, but they are not identified in the current

regulations. The BLM will identify these areas in the planning assessment, when they are applicable, to inform the identification of planning issues and formulation of alternatives. The BLM intends for this list of types of areas of potential importance to be comprehensive, but the responsible official is not limited to considering only areas in this list.

The planning assessment, including the consideration of areas of potential importance under § 1610.4(d)(5), is meant to provide a comprehensive picture of current conditions in the planning area. Per § 1610.1-2(b)(1) of the final rule, a designation “identifies areas of public land where management is directed toward one or more priority resource values or resource uses.” The types of areas of potential importance listed in § 1610.4(d)(5) are not designations. The BLM will use the data and information related to these areas later in the planning process, including to inform the development of alternatives that include planning designations. The final rule is consistent with all Federal laws, including FLPMA.

For more information on designations, please see the preamble discussion of § 1610.1-2(b)(1).

**Comment:** A couple of comments urged the BLM to identify in the planning assessment additional areas that it could recommend to Congress or the President for designation. The comments suggested that the BLM accomplish this by requiring the responsible official to assess “potential need and opportunity for additional designated areas” in § 1610.4(c)(5)(vii) of the proposed rule. One comment urged the BLM to allow the public to submit nominations for designations.

**Response:** The final rule does not include the comment’s suggested language. When the BLM is completing the planning assessment and considering and documenting the areas of potential importance under § 1610.4(d) of the final rule, it may indeed identify areas that would

be suitable to recommend for non-discretionary designation. For example, § 1610.4(d)(v) of the final rule requires the responsible official to consider and document wild and scenic study rivers, or areas of significant scientific or scenic value when they are applicable. However, the BLM would make such a determination of suitability later, after the planning assessment has been completed and it is preparing the resource management plan. The public is welcome to suggest areas for which a designation may be appropriate during public involvement opportunities, including during the planning assessment, and these will be considered.

For more information on non-discretionary designations, please see the preamble discussion of § 1610.1-2(b).

For more information on public involvement, please see the preamble discussion of § 1610.2.

*Areas of Critical Environmental Concern (§ 1610.4(b)(1), § 1610.4(d)(5))*

**Comment:** Several comments expressed concern that Areas of Critical Environmental Concern might be identified only in the planning assessment, and not at any other time of the planning process. One comment urged the BLM to specifically allow the public to nominate Areas of Critical Environmental Concern during scoping and EIS drafting. These comments noted that the existing rule requires the consideration of Areas of Critical Environmental Concern “throughout the planning process.” Some comments asserted that the relevance and importance criteria for an Areas of Critical Environmental Concern cannot be meaningfully or objectively addressed until after the planning assessment, consultation with Alaska Native Corporations and Indian tribes, and review and comment by interested governmental entities. One comment urged the BLM to give special management attention to potential Areas of Critical Environmental Concern until the final resource management plan is approved. One comment

requested that the BLM revise § 1610.4(d) of the proposed rule to require a 30-day comment period on the proposed Areas of Critical Environmental Concern to allow the public to nominate additional Areas of Critical Environmental Concern for consideration in the preliminary alternatives. A few comments requested that the BLM revise §§ 1610.4(a)(1) and 1610.4(c) of the proposed rule to add specific language giving priority to the identification of Areas of Critical Environmental Concern.

**Response:** The final rule does not limit the identification of potential Areas of Critical Environmental Concern to the planning assessment. As planning proceeds, the BLM may identify a need for additional information or new information may become available, resulting in the identification of a potential Areas of Critical Environmental Concern. The BLM will consider this new information to the best of its ability. The final rule does not, however, include specific language allowing the public to nominate potential Areas of Critical Environmental Concern during the preparation of the resource management plan (see §§ 1610.5-1 to 1610.5-5 of the preamble). Similarly, the final rule does not allow a 30-day comment period for nominations of additional Areas of Critical Environmental Concern. As described in paragraph § 1610.4(e) of the final rule, the BLM will make the planning assessment report available for public review before the publishing of the NOI. The public is welcome to suggest potential Areas of Critical Environmental Concern during public involvement opportunities, including during the public review of the planning assessment report (see final § 1610.4(e) and during the comment period on the draft plan or amendment (see final § 1610.2(d)). The BLM will conduct coordination with other Federal agencies, State and local governments, and Indian tribes during the planning assessment, which would provide a forum for discussing potential Areas of Critical

Environmental Concern with these entities before the BLM releases planning assessment report for public review.

The final rule adopts the provision that the identification of a potential Areas of Critical Environmental Concern does not, in and of itself, change or prevent change of the management or use of public lands. The final rule does not revise §§ 1610.4(a)(1) and 1610.4(c) of the proposed rule (designated as final §§ 1610.4(b)(1) and 1610.4(d), respectively) to specifically give priority to the identification of Areas of Critical Environmental Concern. In response to public comments, however, the final rule revises § 1610.8-2(b) of the proposed rule, requiring that the BLM consider potential Areas of Critical Environmental Concern for designation during the preparation or amendment of a resource management plan “consistent with the priority established in FLPMA.”

For more information on the designation and protection of Areas of Critical Environmental Concern, please see the preamble discussion of § 1610.8-2.

For more information on public involvement opportunities, please see the preamble discussion of § 1610.2.

**Comment:** Several comments did not support the special treatment of Areas of Critical Environmental Concern in the proposed rule. They asserted that early identification of potential Areas of Critical Environmental Concern is only appropriate if other resources receive the same early attention, consistent with FLPMA’s multiple use principle. One comment suggested that an increased emphasis on Areas of Critical Environmental Concern may lead to misuse, perhaps allowing potential Areas of Critical Environmental Concern to delay or deter oil and gas activities on Federal lands. Other comments questioned how the BLM could know which areas are appropriate for designation as Areas of Critical Environmental Concern at the planning

assessment stage, and asserted that such a determination is logically an outcome of the resource management plan. One of these comments further asserted that it is inappropriate to analyze the effectiveness of management of existing Areas of Critical Environmental Concern during the planning assessment, while another comment suggested the opposite: that the BLM analyze such effectiveness of its management during the planning assessment instead of identifying potential Areas of Critical Environmental Concern.

**Response:** FLPMA provides that the BLM give priority to Areas of Critical Environmental Concern during its inventory, which the BLM will conduct in the planning assessment (see § 1610.4(b)(1) of the final rule). In the planning assessment, the BLM will evaluate a number of areas of potential importance within the planning area besides potential Areas of Critical Environmental Concern, under § 1610.4(d)(5) of the final rule. The BLM will identify potential Areas of Critical Environmental Concern in the planning assessment, but the actual, formal designation of Areas of Critical Environmental Concern will occur later, when the BLM releases the approved resource management plan (see § 1610.8-2(b)(2) of the final rule). Under § 1610.8-2(b) of the final rule, identification of a potential Areas of Critical Environmental Concern does not, in and of itself, change or prevent change of the management or use of public lands. The responsible official will consider and document existing management of Areas of Critical Environmental Concern in the planning assessment, as §§ 1610.4(d)(1), 1610.4(d)(2), and 1610.4(d)(5)(vii) of the final rule provide. Through monitoring and evaluation under § 1610.6-4 of the final rule, the BLM may identify needs or new information related to Areas of Critical Environmental Concern, which would also inform the planning assessment.

Lands with Wilderness Characteristics (§ 1610.4(d)(5)(v))

**Comment:** A couple of comments objected to inclusion of lands with wilderness characteristics as areas of potential importance unless such lands were identified by 2006. The comments asserted that FLPMA amendments in 1991 required the completion of all wilderness inventories within 15 years of the amendment. Thus, these comments asserted, an inventory of lands with wilderness characteristics would be inconsistent with FLPMA (see 43 U.S.C. 1782).

**Response:** Paragraph 1610.4(d)(5)(v) of the final rule adopts the proposal to identify lands with wilderness characteristics. Consistent with FLPMA the BLM must maintain an inventory of lands with wilderness characteristics. Including lands with wilderness characteristics in the planning assessment for a particular planning effort will ensure that the BLM understands the conditions of the planning area. An inventory of lands with wilderness characteristics does not represent a decision to manage those areas in a specific way. Plan components that apply to areas that are inventoried as lands with wilderness characteristics will be developed through the process described in §§ 1610.5-1 to 1610.5-5. The proposed and final rules are consistent with FLPMA and other applicable laws, and land use plans developed and amended under these regulations will also be consistent with FLPMA and other applicable laws.

**Comment:** One comment objected to inclusion of lands with wilderness characteristics as areas of potential importance because there is no consistent Department of the Interior or BLM guidance on them. The comment asserted that the BLM's attempts to create wild lands or other administrative wilderness have not resulted in consistent policy or guidance and it is therefore premature to include the phrase in the proposed rule.

**Response:** The final rule includes lands with wilderness characteristics as areas of potential importance in § 1610.4(d)(5)(v). The BLM's guidance on lands with wilderness

characteristics includes its Manuals No. 6310, “Conducting Wilderness Characteristics Inventory on BLM Lands,” and No. 6320, “Considering Lands with Wilderness Characteristics in Land Use Plans,” both issued in March 2012. The identification of these lands with these characteristics during the planning assessment does not constitute a designation or plan decision; instead it identifies these areas for consideration later in the planning process.

**Comment:** One comment expressed support for including lands with wilderness characteristics as an area of potential importance because it is required in FLPMA and supported by a 2008 9th Circuit ruling.

**Response:** The final rule adopts the requirement to consider and document lands with wilderness characteristics, when applicable, under § 1610.4(d)(5)(v).

**Comment:** One comment requested that the BLM add language regarding inventory of lands with wilderness characteristics to final § 1610.4(d)(5)(v). The comment noted that it may not be feasible to complete an inventory of lands with wilderness characteristics by the start of the planning assessment, so it suggested that the BLM notify the public of the status of the inventory. The comment asserted that this will ensure accurate documentation of lands with wilderness characteristics in the final plan and allow the public and the BLM to better understand the potential for new information to be produced throughout the planning process.

**Response:** Paragraph 1610.4(d) of the final rule provides that “[a]t a minimum, the responsible official shall consider and document” several factors in the planning assessment, including lands with wilderness characteristics. The final rule does not require the BLM to complete an inventory of lands with wilderness characteristics by the start of the planning assessment. Currently, the BLM conducts an inventory of lands with wilderness characteristics under the policy guidance of BLM Manual 6310, “Conducting Wilderness Characteristics

Inventory on BLM Lands.” The BLM expects to address the interaction between the planning assessment and inventory of lands with wilderness characteristics in future guidance, such as a handbook, instructional memoranda, or other internal policy. This information will inform development of the resource management plan. The BLM believes that by requiring this information early in the planning process, this will prevent delays and potential supplementation later in the process.

**Comment:** A few comments asserted that if new lands qualifying as lands with wilderness characteristics are identified in the planning assessment, the BLM should consider managing the lands to preserve their wilderness characteristics. These comments asserted that the BLM should explicitly consider designating lands with wilderness characteristics that it identifies in the planning assessment as new Wilderness Study Areas.

**Response:** The identification of lands with wilderness characteristics does not automatically convey protections. Any determinations to protect wilderness areas will occur later, when the BLM is preparing the resource management plan. The BLM’s current guidance for considering areas with wilderness characteristics in resource management plans can be found in BLM Manual No. 6320. The BLM expects to address the consideration of lands with wilderness characteristics as it relates to the planning assessment in future guidance, such as the Land Use Planning Handbook or other internal policy.

**Comment:** One comment urged the BLM to list Wilderness Study Areas as a resource and to conduct inventories of them, asserting that the BLM has taken an invalid policy position that it does not designate new Wilderness Study Areas.

**Response:** The final rule adopts § 1610.4(c)(5)(vii) of the proposed rule without revisions, as final § 1610.4(d)(5)(vii), which provides that the responsible official shall identify

existing designations located in the planning area, including wilderness study areas, in the planning assessment. The BLM's policy regarding Wilderness Study Areas is outside the scope of this rulemaking.

*Wild and Scenic Rivers (§ 1610.4(d)(5)(v))*

**Comment:** One comment asserted that the term “candidate wild and scenic rivers” in § 1610.4(c)(5)(v) of the proposed rule is unclear. The comment suggested using the term “eligible” instead of “candidate,” or that the BLM define “candidate wild and scenic rivers.” The comment further suggested that the BLM adopt the Department of Interior’s definition for eligible wild and scenic rivers as its definition for candidate wild and scenic rivers.

**Response:** In response to public comments, the BLM uses the term “wild and scenic study rivers” instead of “candidate wild and scenic rivers” in the referenced paragraph, which is redesignated as § 1610.4(d)(5)(v) in the final rule. “Wild and scenic study rivers” is the term that the BLM uses in its manual regarding wild and scenic rivers, BLM Manual 6400.

*Resource Uses and Goods and Service (§ 1610.4(d)(1), § 1610.4(d)(7))*

**Comment:** Many comments opposed the absence of “uses” in “the various goods and services that people obtain from the planning area” in § 1610.4(c)(7) of the proposed rule. These comments asserted that the exclusion of “uses” in this paragraph eliminates the multiple use and “major uses” principles of FLPMA and implies an effort to avoid or minimize these uses in future resource management plans. One of the comments asserted that the planning assessment as proposed would exclude the consideration of uses like timber, fish and wildlife, and mineral resources because these are not related to obtaining goods or services from the land. One comment urged the BLM to consider resources used for their economic values as important as

environmental and ecological factors. One comment asserted that the BLM is deliberately confusing the public by using “goods and services” instead of “uses.”

**Response:** In response to public comments, the final rule revises § 1610.4(c)(7) of the proposed rule, redesignated as final § 1610.4(d)(7), to clarify that the responsible official will consider and document “[t]he various goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.” The BLM also adds the term “uses” to § 1610.4(d)(1) of the final rule, to clarify that the responsible official will consider “[r]esource use and management authorized by FLPMA and other relevant authorities.” The proposed and final rules are consistent with all applicable Federal laws, including FLPMA.

**Comment:** A few comments urged the BLM to expressly address the sustained yield of the principal or major uses in the planning assessment and throughout the planning process.

**Response:** In response to public comments, the final rule revises § 1610.4(c)(7) of the proposed rule, redesignated as final § 1610.4(d)(7). The revised language requires the BLM to consider and document “[t]he goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.” This list of examples includes all the principal and major uses identified in FLPMA. Section 1610.4(d)(7)(iii) of the final rule requires the responsible official to consider and document the estimated levels of these goods, services, and uses that may be produced on a sustained yield basis. Further, the responsible official must consider and document available

forecasts and analyses related to the supply and demand for the goods, services, and uses (see § 1610.4(d)(7)(ii)).

**Comment:** One comment urged the BLM to properly undertake coal suitability analysis in the planning assessment. This comment asserted that the planning process is the chief process by which public land is reviewed to assess suitability of areas for all or certain types of surface coal mining.

**Response:** The planning assessment section of the final rule does not specifically mention coal suitability analysis. Section 1610.8-1 of the final rule discusses the designation of areas unsuitable for surface mining. Final § 1610.4(d)(5) is revised to include paragraph (ix), “Areas with known mineral potential.” Additionally, final § 1610.4(d)(7) is revised to state that the assessment will include “[t]he various goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production...” Although final § 1610.4(d) does not reference coal suitability analysis, the planning assessment will consider mineral development, including coal, where applicable.

*Ecological Services (§ 1610.4(d)(7))*

**Comment:** Many comments opposed the consideration of ecological services along with goods and resources in § 1610.4(c)(7) of the proposed rule. One comment noted that FLPMA limits “principal and major uses” to livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production, and asserted that this limitation precludes the addition of “ecological services” as a new principal and major use. Some of the comments asserted that ecological services are not

objectively quantifiable and unlike “principal or major uses,” it is not possible to assign a dollar value to ecological services. One comment further asserted that NEPA separates environmental consequences from impacts to the human environment because ecological services cannot be quantified or objectively analyzed. Some comments expressed concern that consideration of ecological services will shift the focus of the BLM’s planning decisions from multiple use and sustained yield to resource protection, which may in turn negatively affect local economies. Some of the comments requested that the BLM remove all references to ecosystem services, or if they were to remain in the rule, that the BLM not heavily rely on the subjective value of such services.

**Response:** The planning assessment section of the final rule adopts all references to ecological services in the proposed rule, including the reference in proposed § 1610.4(c) (final § 1610.4(d)). In response to public comments, final § 1610.4(d)(7) includes “uses” among the “goods” and “services” that people obtain from the planning area. The final rule also provides examples of the goods, services, and uses in this paragraph: “ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.” With this revision, the BLM intends to clarify that it will consider and document all the principal and major uses identified in FLPMA (see 43 U.S.C. 1702(1)), in addition to ecological services and other multiple uses. The proposed and final rules are consistent with all applicable laws, including FLPMA. The strategies and techniques for assigning values to various ecosystem services are too specific and complex to include in this rule, but the BLM expects to address this topic in future guidance, such as handbooks, manuals, instructional memoranda, or other internal

policies. Paragraph 1610.4(d)(7)(i) of the final rule ensures that the responsible official will consider and document the degree of importance of the various goods, services, and uses.

The BLM does not intend ecological services to be adopted as a principal and major use. However, it does acknowledge that ecological services can be an important contribution at a local, regional, national, or international scale, and those should be considered while developing the resource management plan or plan amendment. For example, ecosystem services would include flood control from intact wetlands. It would be important for the BLM to understand how that flood control impacts neighboring landowners while developing plan components that may impact the wetlands. The specific methodologies for analyzing ecosystem services will depend on the scope of the planning assessment. Therefore, the final rule does not provide guidance on the quantification of ecosystem services.

**Comment:** One comment encouraged the BLM not to over-value ecological services and to provide full disclosure to the public of the use and application of ecological services concepts. This comment noted that the BLM surely included ecological services in the proposed rule to align with the Office of Management and Budget circular requiring agencies to consider ecosystem services, but urged caution when valuing ecosystem services against a planning area's economic values. The comment continued that reducing or excluding uses could affect local economies and existing investment in a planning area.

**Response:** The final rule does not discuss how the BLM will value ecological services, as this issue is too complex for this rule. The final rule does not prescribe any particular weight of value to ecological services when compared to economic values. There are too many variables in each planning effort to effectively place requirements in the regulations. The final rule leaves this determination at the discretion of the responsible official, based on available high

quality information. Paragraph 1610.4(d)(7)(i) of the final rule instructs the responsible official to consider and document in the planning assessment the degree of local, regional, national, or international importance of the goods, services, and uses, including ecological services, that people obtain from the planning area. Under § 1610.4(e) of the final rule, the BLM will make the planning assessment report available for public review before the publication of the NOI. The BLM expects to address ecological services in future guidance, such as manuals, the Land Use Planning Handbook, or other internal policies.

*Planning Assessment Report (§ 1610.4(e))*

**Comment:** One comment asserted that the details related to the planning assessment report in § 1610.4(d) of the proposed rule are not clear. The comment requested more information about whether the report is a formal document, who prepares it, and to what extent cooperating agencies and the public will be involved in the report preparation.

**Response:** The planning assessment report is to be an official document that the responsible official prepares. The public will have opportunities to share data, information, and views with, as well as suggest laws, regulations, guidance, policies, plans, or strategies to, the BLM for consideration in the planning assessment (see §§ 1610.4(b)(3) and (b)(4) of the final rule), which also means for consideration when the responsible official is preparing the planning assessment report. The information that the BLM gathers or is provided under § 1610.4(b) of the final rule must meet the high quality information standard in the planning assessment (see § 1610.4(c) of the final rule) in order for the responsible official to use it in the planning assessment report. The BLM will assess the resource, environmental, economic, social, and ecological conditions in the planning area along with any cooperating agencies. The final rule does not further detail the mechanics of the report preparation because each planning assessment

will be unique to the planning area and may require different types and numbers of BLM employees. The BLM believes including such internal practices in the regulations would unnecessarily limit the BLM's ability to prepare planning assessments, but the BLM expects to address this topic in future guidance, such as the Land Use Planning Handbook, manuals, or other internal policy. Final § 1610.3-2(b)(3)(i) includes a commitment that the responsible official shall collaborate with cooperating agencies on the planning assessment. However, the specific mechanics of this collaboration will be based on the unique factors considered in each assessment, as well as the cooperating agency relationship.

**Comment:** One comment urged the BLM to ensure that the requirements of FLPMA are included in the planning assessment report. This comment suggested that the BLM revise § 1610.4(d) of the proposed rule to require the report to include “a discussion of the land use planning and management programs of the other Federal agencies, States, local governments, and Indian tribes within the planning area, including any officially approved and adopted land use plans, policies, and programs, and the manner in which the responsible official intends to address the coordination and consistency requirements in section 202(c)(9) of FLPMA in developing the resource management plan.”

**Response:** The final rule does not include the suggested revision to proposed § 1610.4(d), which is designated as final § 1610.4(e). The purpose of the planning assessment is to provide a comprehensive understanding of current conditions in the planning area to inform later stages of planning. Sections 1610.3-1 and 1610.3-3 of the final rule address consultation with Indian tribes and coordination efforts throughout the BLM's planning efforts. Section 1610.3-3 addresses consistency requirements. The proposed and final rules are consistent with all applicable Federal laws, including FLPMA.

**Comment:** One comment asserted that the description of conditions in the planning assessment report should include comparisons to that habitat or resource's potential for a given area. For example, the comment continued, the report could include field data that shows the annual production of forage plants compared to the forage plants' potential production. In general, this comment asserted, data provided on current conditions should be related to measurable goals.

**Response:** The final rule does not include revisions to incorporate the comment's suggestion. This information will be captured in § 1610.4(d)(3), "[c]urrent resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions." The BLM expects to address in more detail the contents of the planning assessment report in future guidance, such as handbooks, manuals, instructional memoranda, or other internal policy.

**Comment:** Several comments urged the BLM to allow more or stronger public involvement opportunities on the planning assessment report. Most of these comments requested that the BLM allow a formal public comment period upon the report's release. Other comments requested that the BLM make a draft planning assessment report available for public review so that the public can provide input before the BLM releases a final planning assessment report. The comments asserted that the planning assessment report is clearly a valuable document that will inform resource management development, so the public should have an opportunity to ensure accuracy and inclusion of all appropriate information and issues. Several comments requested that the BLM publish a notice in the *Federal Register* when the planning assessment report is available for public review. A few comments recommended that the final rule require the BLM to incorporate a response to planning assessment comments in the draft resource

management plan. Many other comments asserted that it is unclear whether the BLM will provide an official public comment period for planning assessments and requested that the BLM describe how it will receive and respond to comments at this stage.

**Response:** The final rule does not require the responsible official to release a draft planning assessment report, and it adopts the proposal to release the planning assessment report for public review, not for public comment. The BLM must conduct planning assessments within reasonable budgets and timeframes. As discussed in § 1610.2 of the preamble, when the BLM makes a document “available for public review,” the BLM will not be required to provide a formal opportunity for public comment; however, the public is welcome to bring questions or concerns to the responsible official’s attention based on public review. To the extent that it is practical, the responsible official will consider and document that input. It is generally practical for the responsible official to consider and document input provided directly to him or her in writing. It may not be practical, on the other hand, for the BLM to consider and document input provided verbally to the responsible official or to a BLM employee that is not the responsible official. Making a document available for public review will not preclude the BLM or the responsible official from providing additional or enhanced opportunities for public involvement. Because there is no formal public comment period for the planning assessment, the final rule does not require that the BLM incorporate such comments into the draft resource management plan. The final rule does not require the BLM to publish a notice in the *Federal Register* when it makes the planning assessment report available for public review, due to the previously mentioned need to prepare a plan or amendment within reasonable budgets and timeframes, but the BLM will post the report on the BLM Website and make copies of it available at BLM offices within the planning area and at other locations, as appropriate.

For more information on the difference between public review and public comment, please see the preamble discussion of § 1610.2.

*Geospatial Information (§ 1610.4(e))*

**Comment:** One comment requested that the BLM add specific language to § 1610.4(d) of the proposed rule to require that geospatial information regarding historic properties that hold traditional religious and cultural importance for a tribe be regarded as sensitive. This comment noted that section 304 of the National Historic Preservation Act authorizes Federal agencies to withhold such information from disclosure if disclosure may: cause significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.

**Response:** Section 1610.4(e) of the final rule (proposed § 1610.4(d)) provides that, to the extent practical, the responsible official should make available to the public on the BLM's website any non-sensitive geospatial information used in the planning assessment. This section is in keeping with section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3), and the BLM intends that the term "sensitive" encompasses historic properties holding traditional religious and cultural importance. The final rule does not include the additional language that the comment requests because it is not necessary, given that the BLM will continue to comply with the National Historic Preservation Act, and the BLM believes that further determination of what constitutes "non-sensitive" information is better addressed in guidance.

**Comment:** One comment supported the provision in § 1610.4(d) of the proposed rule for the responsible official to make any non-sensitive geospatial information used in the planning assessment available on the BLM's website, to the extent practical. The comment asserted that it can be difficult to obtaining geospatial information from the BLM, and requested that the BLM

include a timeframe in the final rule during which the responsible official must post the geospatial information to the BLM's website. The comment also urged the BLM to replace the word "should" in this paragraph with the word "will," to connote a mandatory action.

**Response:** Paragraph 1610.4(e) of the final rule, which is § 1610.4(d) of the proposed rule, includes a revision specifying that the responsible official shall make the planning assessment report available for public review before the publication of the NOI. The BLM recognizes the importance of sharing its data, including geospatial data, with the public. The BLM intends for the responsible official to post non-sensitive geospatial information that he or she uses to prepare the planning assessment when he or she releases the planning assessment report, before the publication of the NOI. However, the BLM acknowledges that technological requirements may delay this information. The final rule provides the BLM flexibility to adapt to technological changes if the ability to share geospatial data changes in ways not currently anticipated.

*Waiver of Planning Assessment Requirement (§ 1610.4(f))*

**Comment:** Many comments urged the BLM to complete planning assessments for all EIS-level amendments. Some of the comments asserted that it would be inconsistent with NEPA and common sense to consider an EIS-level amendment "minor." A few comments noted that EIS-level amendments may have considerable impacts on a planning area. Other comments emphasized the benefit of conducting a planning assessment when the BLM is considering actions that may significantly impact the environment, asserting that these benefits would outweigh any perceived inefficiencies of spending time gathering information. Some comments asserted that the BLM may not be able to determine whether a planning assessment is necessary without the information that the public would submit during a planning assessment. A few

comments further asserted that, if the planning assessment is not mandatory in all cases, the BLM would be eliminating opportunities for public involvement while also reducing public comment periods. A few of these comments urged the BLM to provide examples of situations in which a planning assessment would not be needed, or to explain how the BLM would determine that an existing planning assessment was “adequate.” Some comments suggested that the BLM allow the public to provide input regarding whether the planning assessment for an EIS-level amendment should be waived. Additionally, a couple of comments asserted that all EIS-level amendments should be subject to the entire planning process, including the planning assessment and alternatives development, in the interest of transparency.

**Response:** The final rule allows the deciding official to waive the requirement to conduct a planning assessment for an EIS-level amendment. In response to public comments, however, the final rule revises § 1610.4(e) of the proposed rule, redesignated as final § 1610.4(f), to specify that the deciding official may waive the planning assessment requirement for “project-specific or other minor amendments,” which may include EIS-level amendments. The BLM does not want to unnecessarily delay the process for preparing a plan amendment in cases where a project-specific amendment may not benefit from a planning assessment. The full, comprehensive planning assessment may not be applicable when there is a narrow, project-specific change to a plan component.

In further response to public comments, the final rule omits the language of proposed § 1610.4(e) allowing the deciding official to waive the planning assessments for EIS-level amendments “if an existing planning assessment is determined to be adequate.” The final rule does not incorporate the suggestion, in some public comments, that the BLM allow for public input on whether the deciding official should waive the planning assessment for an EIS-level

amendment. The BLM believes that other public involvement opportunities, such as scoping, will provide the public an opportunity to provide input on this decision. The final rule acknowledges that plan amendments do not need to be prepared exactly as it prepares resource management plans.

The final rule does adopt the term “minor amendments.” In this context, this term is intended to address amendments that are either small in scope or scale and the BLM prepares an EIS to inform the amendment. The most common type of minor amendments for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In these situations, a planning assessment may not add value to the amendment process and could unnecessarily delay the amendment process; the responsible official will have the discretion to assess whether the preparation of a planning assessment is necessary in these situations. Although less common, the BLM recognizes that there are other types of EIS-level plan amendments that are also small in scope or scale, and therefore the planning rule provides the discretion to identify these situations on a case-by-case basis.

For further information on plan amendments, please see the preamble discussion of § 1610.6-6.

**Comment:** A few comments expressed confusion over the description of “minor” EIS-level plan amendments. These comments noted that an EIS is initiated when the proposed action is a major federal action that may have a significant impact on the human environment and that it is confusing to call such amendments major and minor at the same time. The comments recommend defining a “minor” EIS-level plan amendment.

**Response:** In response to public comments that the language of proposed § 1610.4(e), allowing the deciding official to waive a planning assessment for “minor amendments,” is too open-ended, the final rule clarifies that the deciding official may waive a planning assessment for “project-specific or other minor amendments.” A “minor amendment” is an amendment that is small in either scope or scale. Minor EIS-level amendments are often project-specific. This means that the amendment is associated with a project, such as a solar energy development project, that requires the BLM to prepare an EIS, but it addresses only a small portion of a resource management plan or a single plan component. A planning assessment may not add value in this situation. The BLM recognizes that EIS-level plan amendments may otherwise vary in complexity and scope, so the final rule allows the deciding official to identify other minor amendments for which the required planning assessment could be waived on a case-by-case basis.

**Comment:** One comment urged the BLM to complete planning assessments for all EA-level amendments, asserting that the public should have an opportunity to provide input on all amendments.

**Response:** The BLM will not conduct a planning assessment for EA-level amendments. EA-level amendments will not have significant impacts on the human environment, and therefore the BLM believes it is appropriate to provide a more streamlined process, while still providing for appropriate public involvement. The BLM will provide opportunities for public involvement on EA-level amendments during the identification of planning issues and at other stages in the planning process as appropriate. For further information regarding public involvement in EA-level amendments, please see the preamble discussion of § 1610.2-1(b), as well as the preamble’s Table 2. EA-level amendments will not have a significant effect on the

human environment, and do not require the same level of analysis as resource management plans or major EIS-level amendments.

**Comment:** A few comments expressed no objections to allowing the deciding official to waive the planning assessment for an EIS-level amendment on a case-by-case basis. A couple of these comments suggested that the BLM should only waive a planning assessment if State and local governments were invited to participate or cooperate in the evaluation of the necessity for a planning assessment because these entities would want to ensure that the deciding official is not abusing his or her discretion.

**Response:** The final rule does not require the deciding official to confer with State and local governments before deciding to waive a planning assessment for an EIS-level amendment. The coordination and public involvement opportunities afforded to state and local governments will provide them with the opportunity to provide input on the merits of waiving a planning assessment. Paragraph 1610.4(f) of the final rule allows that the deciding official may waive the requirement to complete a planning assessment on an EIS-level amendment for project-specific or other minor amendments.

**Comment:** One comment recommended that the BLM should complete planning assessments for all EIS-level amendments with regards to the relevant issues and resources to be addressed through the amendment. If a plan amendment meets the threshold of significance for the preparation of an EIS under NEPA, it is of sufficient public concern or complexity to warrant gathering more information and providing more public participation opportunities than an amendment not triggering an EIS.

**Response:** The BLM will not accept the recommendation to require a planning assessment for all EIS-level amendments. Some amendments, such as those related to a

particular project, may not benefit from a planning assessment as provided for in § 1610.4 of the final rule. Even if the deciding official were to waive the planning assessment, the public would still have opportunities for public input as provided for in § 1610.2 of the final rule. For instance, § 1610.2-1(f) of the final rule provides for publishing a NOI, which also serves as a scoping notice as required under FLPMA, in the *Federal Register* for all plan amendments. The BLM considers the other opportunities for public involvement to be sufficient for EIS-level amendments that do not have a planning assessment.

### **Section 1610.5 Preparation of a Resource Management Plan**

#### *Coordination with Cooperating Agencies*

**Comment:** One comment suggested adding “... the BLM, ‘in coordination with any cooperating agencies’ will follow the process...” to the first paragraph in § 1610.5.

**Response:** Final § 1610.3-2 includes the process for coordination of planning effort, including establishing cooperating agency relationships. This section consolidates references to cooperating agencies include throughout existing § 1610.4 and to identify additional steps where cooperating agencies will be involved. Because these references have been consolidated, it is unnecessary to specifically reference cooperating agencies in this section. Please see the preamble discussion of final § 1610.3-2(b)(3) for more information.

#### *Removal of § 1610.4-2 “Development of Planning Criteria”*

**Comment:** One comment suggested that the BLM cannot analyze alternatives without planning criteria.

**Response:** The final rule removes existing § 1610.4-2 “Development of Planning Criteria,” consistent with the proposed rule. This section is no longer necessary under the final rule. The final rule replaces “planning criteria” with the “basis for analysis.” The rationale for

alternatives § 1610.5-2(b) and the basis for analysis § 1610.5-3(a) in the final rule provides the appropriate information to guide the effects analysis, previously required in planning criteria. Preliminary versions of the rationale and basis for analysis will be made available for public review prior to the publication of the draft resource management plan and as appropriate for an EIS-level plan amendment.

**Comment:** One comment states that existing regulations require planning criteria to be coordinated with local governments. The proposed rule does not require planning criteria, which eliminates another early opportunity for the BLM to resolve conflicts with local governments and ensure consistent planning goals and objectives across all governing bodies with planning authority in the planning area.

**Response:** Existing § 1610.4-2 required the development of planning criteria. The final rule removes this section and no longer requires planning criteria, as it is no longer necessary. As explained in the preamble discussion of final § 1610.5, the planning criteria requirement has been incorporated into other sections, many of which require coordination and public involvement. For example, requirements of the planning criteria will be incorporated into the planning assessment and preliminary alternatives. See the preamble discussion of final §§ 1610.2, 1610.3, 1610.4 and 1610.5-2(b) for more information on opportunities for public involvement and coordination with State and local governments for these steps.

### **Section 1610.5-1 Identification of Planning Issues**

#### *Efficiency of Identification of Planning Issues*

**Comment:** One comment suggests that changes to § 1610.5-1 of the proposed rule will result in less efficient planning. Several new steps were added, which will add time. Many of these steps duplicate NEPA requirements, so are redundant. The changes are fundamentally

inconsistent with the BLM's goal of an "efficient planning process" that allows the BLM to implement "timely and responsive" changes.

**Response:** As discussed in the preamble for §§ 1610.2 and 1610.3, the BLM believes that early opportunities for public involvement and coordination will increase efficiency by identifying information and issues early in the planning process, which helps avoid costly changes later in the process. In accordance with CEQ's NEPA implementing regulations at 40 CFR 1500.2(c), the BLM will integrate the planning process and the NEPA process "to the fullest extent possible." This will avoid duplication of NEPA requirements and the requirements under this section. The requirement to identify planning issues and prepare a preliminary statement of purpose and need can be combined with the scoping period already required under the NEPA implementing regulations.

*Public Comment on the Preliminary Statement of Purpose and Need (§ 1610.5-1(a))*

**Comment:** Several comments suggested that the BLM should make the purpose and need available for formal comments.

**Response:** The final rule is not revised in response to these comments. The final rule adopts the proposed requirement to make the preliminary statement of purpose and need available for public review (§ 1610.5-1(a)). This will provide transparency to the public and support the Planning 2.0 goal to provide earlier opportunities for public involvement. Although the BLM will not formally request public comment on the preliminary statement of purpose and need, public comments on it will be accepted. The BLM expects that the preliminary statement of purpose and need could be updated based on the issues identified during the scoping process. Similar language was also added to § 1610.2-1(a)(2) of the proposed rule for consistency with § 1610.5-1(a).

**Comment:** A few comments noted that applicants and permit or license holders are not addressed or considered in the list of factors to inform the decision in § 1610.5-1(a) of the proposed rule and suggested that they should be added.

**Response:** Final § 1610.5-1(a) states that the preliminary purpose and need shall be informed by a numbers of factors, including public views and the planning assessment. Public views and information from the planning assessment both encompass applicants and permit or license holders, so both groups are represented. Specifically, final § 1610.4(d)(2) requires the BLM to consider “[l]and status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights” as part of the planning assessment. Please see the preamble discussion of final §§ 1610.2 and 1610.4 for more information on opportunities for public involvement and the planning assessment during the early planning stages.

**Comment:** One comment expressed that the proposed rule requires opportunities for the public to provide information, but it is unclear what form those opportunities will take.

**Response:** Final § 1610.5-1(a)(1) states that the BLM will notify the public and make the preliminary statement of purpose and need available for public review. Further, as discussed in the preamble for final § 1610.2, the BLM intends to at a minimum post a document on its website when making it available for public review. The BLM may provide additional opportunities in these situations, as appropriate to each resource management plan or amendment. Final § 1610.2-1(a) includes the requirement that the BLM provide public notice at specific steps in the planning process, including identification of planning issues and review of the preliminary statement of purpose and need; and final § 1610.2-1(b) states that the BLM must provide opportunities for public involvement appropriate to the areas and people involved during

the identification of planning issues. If the BLM “requests written comments,” the BLM will provide a minimum of 30 days for response, as required in final § 1610.2-2(a). Please see the preamble discussion for final §§ 1610.2-1 and 1610.2-2 for additional information. In addition, the BLM expects to provide guidance in the forthcoming Land Use Planning Handbook revision on public involvement opportunities.

*Coordination with other Federal Agencies, State and Local Governments, and Indian Tribes (§ 1610.5-1(b))*

**Comment:** One comment suggested adding “and with the coordination and consistency review process required by section 202(c)(9) of FLPMA” to the end of § 1610.5-1(b). This clarifies that the “opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management” is not a substitute for meaningful government-to-government coordination required under FLPMA. It also ensures that the coordination and consistency requirements of FLPMA are integrated with identification of planning issues and the NEPA scoping process. Thus, issues and concerns raised by State and local governments during coordination, including any constraints imposed by, and potential conflicts with, the policies, plans and programs of other Federal agencies, State and local governments, and Indian tribes will be identified before the alternatives are developed and the draft resource management plan is prepared.

**Response:** Coordination is addressed in final § 1610.3-2. As explained in the preamble discussion of final § 1610.3-2, the BLM is consolidating the references to cooperating agencies and coordination into this section. Consistency is addressed in final § 1610.3-3. These sections affirm the BLM’s commitment to coordination and consistency. Please see the preamble

discussion of final §§ 1610.3-2 and 1610.3-3 for additional information on coordination and consistency.

**Comment:** One comment suggested adding “including State and Tribal Historic Preservation Officers” to § 1610.5-1(b) to ensure they are given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management, along with the public, other Federal agencies, State and local governments, and Indian tribes.

**Response:** Final § 1610.5-1(b) specifies that other Federal agencies, State and local governments, and Indian tribes shall have an opportunity to participate during the identification of issues. This includes State and Tribal Historic Preservation Officers. Therefore, the suggested change will not be made, as it would be redundant.

**Comment:** One comment suggested adding “and the identification phase required by section 106 of the National Historic Preservation Act (36 CFR 800.4)” at the end of § 1610.5-1(b).

**Response:** The BLM’s planning process is integrated and consistent with the requirements of NEPA. NEPA’s implementing regulations requires agencies to prepare NEPA documents concurrently and integrated with environmental impact analyses and related surveys and studies required by the National Historic Preservation Act of 1966 and other environmental review laws and executive orders (see 40 CFR 1502.25). Development of a resource management plan or plan amendment must be consistent with Federal law and regulations, as stated in final § 1610.1-1(a)(1). Therefore, compliance with the National Historic Preservation Act is already addressed, so the suggested change will not be made. For more information, see the preamble for final §§ 1610.1-1 and 1610.3-2.

**Comment:** Several comments asserted that the BLM should specify the timing, nature, and extent of State and local governments' opportunity to suggest concerns, needs, opportunities, conflicts or constraints related to resource management for consideration in the preparation of the resource management plan.

**Response:** Section 1610.5-1(b) in the final rule provides for State and local governments, among others to suggest concerns, needs, opportunities, conflicts or constraints. The final rule does not specify the timing, nature and extent of State and local government involvement, as these timeframes will vary based on factors such as complexity, geographic scale, and budget, as well as discussions with State and local governments. For example, final § 1610.3-2(c)(1) states that deciding officials should seek input from the Governor(s) on the timing, scope, and coordination of planning efforts with state governments.

*Public Outreach on Planning Issues (§ 1610.5-1(b))*

**Comment:** One comment asked the BLM to conduct outreach to inventory planning issues as identified in adopted plans, policies, processes and programs of State and local governments.

**Response:** Relevant national, regional, State, tribal, and local laws, regulations, policies, guidance, strategies, and plans will be identified during the information gathering phase of the planning assessment, as stated in final § 1610.4(b)(2). During the next phase, identification of planning issues, § 1610.5-1(b) of the final rule gives State and local governments, along with the public, other Federal agencies, and Indian tribes an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints (also known as “planning issues”) related to resource management for consideration in the preparation of the resource management plan.

**Comment:** Several comments stated that the public should be able to comment on planning issues during resource management plan development, they should not have to worry about pre-determined alternatives.

**Response:** The BLM will adopt the public involvement opportunities at several points in the planning process, as described in § 1610.2-1 of the final rule. This will include an opportunity to participate during the planning assessment stage and notification to the public that the BLM is initiating the identification of planning issues. There will be an opportunity for public review of the preliminary alternatives (see final § 1610.2-1(a)(3)). These alternatives will not be pre-determined. Please see the preamble discussion of final § 1610.2-1 for more information on public notification and opportunities for public involvement.

*Role of Cooperating Agencies (§ 1610.5-1(b))*

**Comment:** Several comments suggested modifying § 1610.5-1(b) of the proposed rule to allow cooperating agencies (especially local ones) to coordinate with the BLM on the planning issues early, rather than merely being involved concurrent to the public input process. Cooperating agencies should not be treated or discussed the same as the public; they should have a specific, separate process.

**Response:** Cooperating agency requirements are addressed in § 1610.3-2(b) of the final planning rule. Cooperating agencies are provided a special role during the preparation of resource management plans. They work closely with the BLM at every stage of the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives, and review preliminary documents. For example, there are several opportunities for cooperating agencies to work with the BLM during the planning assessment phase, described in §§ 1610.4(a)(1)(iv), 1610.4(b), and 1610.4(c), which comes before identification of planning

issues. The opportunities for other Federal agencies, State and local governments, and Indian tribes to participate in the process described in this final rule do not preclude the responsible official from offering additional opportunities for participation to cooperating agencies, as appropriate.

## **Section 1610.5-2 Formulation of Resource Management Alternatives**

### *Range of Alternatives (§ 1610.5-2(a))*

**Comment:** One comment stated that allowing the public to be involved earlier in the planning process is not a substitute for having the BLM thoroughly analyze the public's reasonable alternatives and integrate them into the range of alternatives. Another comment requested that the BLM follow NEPA guidelines and consider alternatives "outside of the jurisdiction of the lead agency."

**Response:** Providing several opportunities for public involvement early and throughout the planning process does not change the requirements for developing and analyzing all reasonable resource management alternatives, as described in § 1610.5-2 of the final rule. The planning process will be integrated with the NEPA process, which requires a reasonable range of alternatives. The specific alternatives considered will depend on the specific circumstances of a resource management plan.

### *Planning Assessment and Alternatives Development (§ 1610.5-2(a)(1))*

**Comment:** One comment suggested the BLM clarify that it will rely on the planning assessment when developing alternatives.

**Response:** The alternatives will be informed by the planning assessment, among other sources of information, as stated in final § 1610.5-2(a)(1).

Citizen-proposed Alternatives (§ 1610.5-2(a)(1))

**Comment:** Several comments expressed that the BLM should accept citizen-proposed alternatives. Specifically, one comment included concerns that the BLM is proposing to formulate preliminary alternatives before the public has an opportunity to weigh in and suggest alternatives. This comment includes the viewpoint that the BLM did not explain how this would make the planning process easier for the public and has a suggestion that such an action narrows the scope of public involvement and would allow BLM to dismiss public suggestions, particularly in a shorter public comment period. The comment recommends removing preliminary alternatives from the final rule. Another comment expressed similar concerns, but recommended that the BLM speak to the public before putting out alternatives. One comment disagreed with the proposed rule, asserting that it incorrectly suggests the BLM does not need to analyze a reasonable, citizen-submitted alternative or provide a substantive, supported explanation of the decision not to do so. Another comment suggested that the BLM accept public-submitted alternatives during scoping, during the preliminary alternative stage, and during the draft EIS comment period.

**Response:** The final rule does not change the BLM's requirements under the CEQ NEPA regulations to analyze a range of alternatives (40 CFR 1502.14). The BLM must consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. If a citizen-submitted alternative meets the criteria in § 1610.5-2(a)(1), which is that they shall be informed by guidance from the Director and deciding official, the planning assessment, the statement of purpose and need, and the planning issues, then it could be developed as an alternative or sub-alternative.

Although the final rule does not have a specific step in the planning process to solicit citizen-proposed alternatives, we believe that the public involvement opportunities as part of the planning assessment (§ 1610.4(b)), the preliminary statement of purpose and need (§ 1610.5-1(a)), and the planning issues (§ 1610.5-1(b)) will provide the public opportunities to provide input on the range of alternatives that they believe should be considered. The public will also have an opportunity to review how the BLM has incorporated that input in the range of alternatives, and the BLM's rationale for doing so, during the review of the preliminary range of alternatives (§ 1610.5-2(c)).

The BLM will identify alternatives considered but eliminated from detailed study, and shall briefly discuss the reasons for their elimination in the resource management plan, as required by final § 1610.5-2(a)(4). This would include rationale for not carrying a citizen-proposed alternative forward for detailed analysis.

The BLM intends that the public review of the preliminary alternatives, described in § 1610.5-2(c) will serve as a "check," so that the public can provide input on the range of alternatives. It will afford the public an opportunity to bring to the BLM's attention any possible alternatives that may have been overlooked before the BLM conducts the environmental impact analysis and prepares a draft resource management plan and draft EIS. Nothing in the rule would preclude the public from submitting alternatives at any time during the planning process; however, the BLM hopes that the opportunities for early public involvement will provide the public opportunities to submit proposed alternatives early in the process.

**Comment:** One comment included a recommendation for the BLM to be more open to public proposal of alternatives further along in the planning process. For instance, if a member

of the public requests an alternative that is not preliminary, the BLM should extend the comment period for a Draft EIS and consider preparing more or supplemental EIS documents.

**Response:** The final rule does not preclude the BLM from supplementing the EIS if needed. The BLM hopes that by providing the preliminary alternatives to the public, the need to supplement will be reduced, as it will provide an opportunity for the public to identify additional, reasonable alternatives. Additionally, responsible officials will have the discretion to extend public comment periods beyond the minimum lengths described in § 1610.2-2 if necessary.

*Coordination and Cooperation (§ 1610.5-2(a)(1))*

**Comment:** Two comments suggested adding “in coordination with any cooperating agencies” to the beginning of § 1610.5-2(a) and to § 1610.5-2(a)(1).

**Response:** The final rule aligns with FLPMA by requiring the BLM to coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, management programs, and inventory that are relevant to resource management plan development during the planning process (see 43 U.S.C. 1712(c)(9)). Cooperating agencies are included in those groups. Final § 1610.3-2(b) consolidates the existing rule’s requirements of coordination of planning efforts with cooperating agencies. Final §§ 1610.5-2(a) and 1610.5-2(a)(1) do not adopt the recommended edits, as they would be redundant with final § 1610.3-2(b).

**Comment:** One comment suggested adding the following to the end of § 1610.5-2(a)(1) of the proposed rule: “...and coordination with other Federal agencies, States, local governments, and Indian tribes that may be affected by the resource management plan pursuant to § 202(c)(9) of FLPMA.” This change is intended to ensure that, in developing alternatives, the BLM considers any issues and concerns raised during coordination under FLPMA, including

any constraints imposed by, and potential conflicts with, the policies, plans and programs of other Federal agencies, State and local governments, and Indian tribes.

**Response:** Final § 1610.3-2 includes direction on coordination with other Federal agencies, State and local governments, and Indian tribes, in accordance with FLMPA. We believe that the opportunities for public involvement and coordination as part of the planning assessment (§ 1610.4(b)), the preliminary statement of purpose and need (§ 1610.5-1(a)), and the planning issues (§ 1610.5-1(b)) will provide other Federal agencies, State and local governments, and Indian tribes sufficient opportunities to provide input on the range of alternatives. Furthermore, other Federal agencies, State and local governments, and Indian tribes will have an opportunity to review the preliminary range of alternatives. See final § 1610.5-2(b) for more information. Therefore, it is not necessary to add the language to § 1610.5-2(a)(1), as it is stated elsewhere.

**Comment:** One comment recommended that cooperating agencies have an official part of the formulation of resource management alternatives step. The comment noted that Planning 2.0's introduction of a more iterative planning process requires consistent engagement with eligible governmental agencies. The comment recommended amending the proposed § 1610.5-2(a)(1) to read: "The alternatives developed will be informed by the Director and deciding official guidance (see § 1610.1(a)), the planning assessment (see § 1610.4), the planning issues (see § 1610.5-1), and input provided by eligible cooperating agencies (see § 1610.3-1(b))."

**Response:** The suggested language is not adopted in final § 1610.5-2(a)(1). The BLM will coordinate its planning efforts in accordance with § 1610.3-2 of the final rule. Final § 1610.3-2(b)(3) requires that the responsible official collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special

expertise, which includes the formulation of resource management alternatives. Therefore, it is unnecessary to specifically reference cooperating agencies in § 1610.5-2(a)(1).

Internal Review (§ 1610.5(a)(1))

**Comment:** One comment indicated that the BLM State Directors, District Managers, and Field Managers should review preliminary alternatives prior to public release.

**Response:** It is not appropriate to include internal review processes in this final rule. Final § 1610.5(a)(1) requires alternatives developed to be informed by Director and deciding official guidance. The BLM will develop appropriate quality control procedures for preliminary alternatives.

No Action Alternative (§ 1610.5-2(a)(3))

**Comment:** Several comments expressed that the No Action alternative should accurately reflect baseline conditions to be consistent with NEPA.

**Response:** Final § 1610.5-2(a)(3) requires one alternative to be a no action alternative, which means continuation of present level or systems of resource management. This is consistent with current practice and complies with NEPA requirements.

Alternatives eliminated from detailed study (§ 1610.5-2(a)(4))

**Comment:** Several comments responded to § 1610.5-2(a) of the proposed rule, which states that it is exclusively the BLM's responsibility to designate alternatives for further development and analysis; however, NEPA requires the BLM to "explain" and "briefly discuss the reasons" an alternative is eliminated from detailed study. The BLM should have to disclose to the public the changes that were made to preliminary alternatives in response to public review. Otherwise the BLM can change alternatives or reject public-submitted alternatives without public knowledge, which reduces transparency.

**Response:** Section 1610.5-2(a)(4) requires the BLM to note any alternatives identified and eliminated from detailed study and to briefly discuss the reasons for their elimination. This is consistent with the CEQ NEPA regulations at 40 CFR 1502.14. Additionally, in addition the requirements in proposed § 1610.5-2(d), final § 1610.5-2(d) includes a requirement that the BLM include a description of any changes to the preliminary alternatives in the draft resource management plan.

*Rationale for Alternatives (§ 1610.5-2(b))*

**Comment:** Several comments suggested adding a new paragraph to § 1610.5-2(b) requiring the BLM to include a description of the land use planning and management programs of the other Federal agencies, States, local governments, and Indian tribes within the planning area, including any officially approved and adopted land use plans, policies, and programs, and the manner in which the responsible official intends to resolve these inconsistencies in accordance with FLPMA (43 U.S.C. 1712(c)(9)). This addition ensures that the responsible official considers management constraints and potential conflicts in connection with formulating reasonable resource management alternatives. And if any inconsistencies exist, how they will be avoided or minimized before the final resource management plan is approved. This subpart also ensures broader public disclosure of management constraints and potential conflicts that may limit or otherwise affect the BLM’s resource management plan.

**Response:** Final § 1610.3-2 contains the provisions of existing and proposed § 1610.3-1, with revisions to incorporate direction provided by FLPMA stating that the objectives of coordination are for the BLM to “[k]eep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes” and to “[a]ssure that the BLM considers those plans, policies, and management programs that are

germane in the development of resource management plans for public lands” and to “assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans.”

Information about relevant national, regional, State, tribal or local laws, regulations, policies, guidance, strategies or plans will be included in the planning assessment. Please see the preamble discussion of final § 1610.4(b)(2) for more information. In response to public comments, we have added “State” and “tribal” to final § 1610.4(b)(2), as well as “laws” and “regulations.” The BLM believes this identification effort is more appropriate at the planning assessment stage. Therefore, the language would not be added to § 1610.5-2(b).

*General Comments on the Public Review of Preliminary Alternatives (§ 1610.5-2(c))*

**Comment:** One comment expressed support for the development of preliminary alternatives, allowing the public to provide feedback early, which could lead to new or modified alternatives that more appropriately addresses concerns. The provisions expand the plan preparation process to provide more opportunity for public engagement at an earlier stage in the process, and generally seem aimed at reducing conflict and litigation later in the process. In theory, these new procedural steps will make substantial, favorable changes in terms of transparency and public access, but may lengthen the period for plan creation.

**Response:** The final rule adopts the requirement to make preliminary alternatives available to the public. Please see the preamble discussion of §§ 1610.2-1(a)(3) and 1610.5-2(c) for more information.

**Comment:** A few comments suggested the final rule include timeframes for the BLM to complete adjustments to preliminary alternatives, as well as its procedures, assumptions, and

indicators. One comment suggested allowing the public to review preliminary alternatives has the potential to create further delays in the process.

**Response:** The BLM will not adopt the recommendation to include specific timeframes for adjustments to preliminary alternatives, procedures, assumptions, or indicators. These timeframes will vary based on factors such as complexity, geographic scale, and budgets. Although allowing public review of preliminary alternatives is a new step that is not required in the existing regulations, the BLM believes that early involvement will reduce delays and increase efficiency by raising public concerns about the range of alternatives early in the process, which may avoid the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. Please see the preamble discussion of §§ 1610.2-1(a)(3) and 1610.5-2(c) for more information.

**Comment:** One comment noted that outreach on alternatives already occurs before scoping in some instances, so there is no need to change the rule.

**Response:** The BLM based this rule on best practices learned through past planning processes, including outreach on alternatives. The final rule adopts this practice at § 1610.5-2(c) to apply the practice consistently across the BLM.

**Comment:** A few comments expressed that providing public review on preliminary alternatives would complicate the process, create more work, result in delays or failure, and add more time to the planning process. The BLM needs to establish clear limitations so this potentially open process will not create unbounded delays in the schedule.

**Response:** Public review of the preliminary alternatives will serve as a “check” and will afford the public an opportunity to bring to the BLM’s attention any alternatives that may have been overlooked before the BLM conducts the environmental impact analysis and prepares a

draft resource management plan and draft EIS. The BLM anticipates that this review will increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. The timeframe allowed for review of preliminary alternatives is up to the discretion of the responsible official, subject to the requirements of final §§ 1610.2-1 and 1610.2-2. The BLM believes that it is important to leave this discretion to the responsible official. For example, the BLM undertakes a variety of planning efforts ranging in scope and scale. Requiring a certain timeframe for reviewing alternatives for a plan amendment limited in scope could unnecessarily delay the project. In other circumstances, a longer review period may be more appropriate.

**Comment:** Several comments suggested that the BLM did not adequately explain how the preliminary alternatives would make the planning process easier for the public, or how the public would be sure their concerns were noted, or if the inclusion of preliminary alternatives in the process narrows the scope of public input.

**Response:** Public review of the preliminary alternatives prior to issuance of the draft resource management plan and draft EIS will enable the public to raise any concerns with the BLM before the BLM conducts the impacts analysis of the management plan alternatives. The BLM anticipates that this review will increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. Language was added to § 1610.5-2(d) in the final rule to ensure the changes to the preliminary alternatives will be made available to the public in the draft resource management plan. The inclusion of preliminary alternatives does not narrow the scope of public input, but rather provides the public with an opportunity to review

alternatives prior to seeing them in the draft resource management plan and bring to the BLM's attention any possible alternatives that may have been overlooked.

*Preliminary Alternatives, Cooperation and Coordination (§ 1610.5-2(c))*

**Comment:** One comment suggested changing the heading for § 1610.5-2(c) from “Public review of preliminary alternatives” to “Cooperating agency review of preliminary alternatives,” and to change the text in the paragraph from making the preliminary alternatives and preliminary rationale for alternatives available for “cooperating agency” review, not just for “public” review, as it is in the proposed rule.

**Response:** Public involvement is an essential part of the BLM planning process and the BLM believes that the public review of preliminary alternatives (final § 1610.5-2(c)) provides a key opportunity for this involvement. Final § 1610.3-2(b)(3)(iii) recognizes the role of cooperating agencies in the formulation of resource management alternatives, and cooperating agencies will be afforded the opportunity to review preliminary alternatives before they are made final. However, the BLM believes it is also beneficial to provide this opportunity to the public in addition to cooperating agencies.

**Comment:** Several comments expressed that the review of preliminary alternatives should be a two-step process: first, government agencies, local government, and tribes should have an opportunity to review the preliminary alternatives and compare them with local, regional, or State plans. The BLM should show the degree to which the alternatives are coordinated with those plans and why they may be inconsistent. Then, the public can review the preliminary alternatives. Some comments suggested this was especially important when mineral development was involved.

**Response:** Coordination with Federal agencies, State and local governments, and Indian tribes is required during the planning process, as described in § 1610.3-2(c) of the final rule. Section 1610.3-3 of the final rule requires resource management plans to be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes. The first step occurs during the planning assessment phase, when relevant national, regional, State, tribal, and local laws, regulations, policies, guidance, strategies and plans are identified per § 1610.4(b)(2). The second step would occur during the public review of preliminary alternatives, when potential inconsistencies would be identified. For other Federal agencies, State and local governments, and Indian tribes that elect to become cooperating agencies, the BLM will collaborate on the formulation of resource management alternatives, as outlined in final § 1610.3-2(b)(3). Thus, eligible governmental entities that choose to participate as cooperating agencies will have the opportunity to review preliminary alternatives before they are made available to the public. The BLM believes that the provisions for coordination and consistency in final §§ 1610.3-2 and 1610.3-3 will allow the BLM to identify and remedy any inconsistencies, to the maximum extent practical, prior to releasing information publicly. If any inconsistencies remain after the publication of the draft resource management plan, Federal agencies, State and local governments, and Indian tribes may notify the responsible official of such inconsistencies, and the proposed resource management plan shall show how these inconsistencies were addressed, and if possible, resolved. The process is also appropriate when mineral development is identified as a planning issue.

*Preliminary Alternatives and Plan Amendments (§ 1610.5-2(c))*

**Comment:** Many comments requested that the BLM allow the same level of public involvement for EIS-level amendments as it does for resource management plans because EIS-

level amendments can have substantial impacts in an area. These comments noted that EIS-level amendments are not always smaller in scope than RMPs; there are large-scale amendments, like for the Greater Sage-Grouse plans, in which the scope of the amendment process may actually be greater than for a resource management plan. One comment asserted that, in particular, the public must be allowed to review the preliminary alternatives and rationale so that they can be adequately informed and participating. One comment included a concern about the proposal, in the preamble, to further amend proposed § 1610.5-2(c) by only allowing public review of preliminary alternatives for plan amendments “to the extent practical,” arguing that the edit would undermine the BLM’s goal to include the public more frequently and be more transparent. These comments recommended retaining current language regarding EIS-level amendments.

**Response:** The BLM recognizes that EIS-level plan amendments may vary in complexity and scope and that some, such as the amendments for the Greater Sage-Grouse, may affect multiple plans. Based on public comments, the final rule revises § 1610.5-2(c) to provide for public review of the preliminary alternatives and preliminary rationale for EIS-level plan amendments as appropriate. In situations where, for example, the BLM must address time-sensitive issues with a resource management plan amendment, it may not be practical to arrange for the public review of preliminary alternatives and preliminary rationale. Further, the deciding official will have the discretion to determine the amount of public involvement beyond the minimum requirement identified in the discussion of public review in § 1610.2, based on factors such as complexity and scope.

**Comment:** One comment asked for examples of when preliminary alternatives will not be used in the planning process.

**Response:** The final rule requires the BLM to make the preliminary alternatives and preliminary rationale publicly available for all draft resource management plans and amendments when an EIS is prepared to inform the amendment. The final rule does not require the BLM to make preliminary alternatives for an EA-level plan amendment public available. While a responsible official may decide to release preliminary alternatives for a plan amendment where an EA is prepared, doing so would not always be necessary. For example, it may be unnecessary to release preliminary alternatives for an EA-level plan amendment that is very narrow in scope and subsequently limited in reasonable alternatives. The BLM expects the forthcoming Land Use Planning Handbook revision will include additional guidance on this topic.

*Preliminary Alternatives and Public Involvement (§ 1610.5-2(c))*

**Comment:** One comment includes the view that the BLM's proposed ability to change preliminary alternatives without requiring an opportunity for additional public input undermines transparency and BLM's goal of greater public involvement. According to this comment, this section gives BLM the power to reject public suggestions and new information.

**Response:** The BLM is adopting a revised § 1610.5-2(d) that will require a description of changes to preliminary alternatives be made available to the public in the draft resource management plan. The public will be able to comment on any such changes during the public comment period on the draft resource management plan. The BLM considers this process to be transparent and allows for the public to submit comments, suggestions, and new information. For more information, please see the preamble discussion of § 1610.5-2(d).

**Comment:** Several comments stated that the public should be allowed to formally comment on, not just review, the preliminary alternatives.

**Response:** The public may submit information or comments for the BLM's consideration when the BLM makes documents available for public review. This allows the public an opportunity to review BLM actions without delaying the planning process unnecessarily.

Under the existing regulations, the formulation of alternatives does not include any public involvement (see existing § 1610.4-2). The requirement in the final rule to provide this public review of alternatives enhances the existing planning process and the BLM believes that public review is a sufficient opportunity at this point. The public will have an opportunity to formally comment on draft plan or amendment and associated EIS.

The requirements to make a document "available for public review," as described in § 1610.2-1(a)(3), represent a minimum requirement and do not preclude the BLM from providing additional or enhanced opportunities for public involvement during any given planning effort. For example, a responsible official may choose to request written comments and provide a time-period for submission of comments when making the preliminary alternatives available for public review, should the responsible official believe that it would add value to that particular planning effort.

**Comment:** One comment stated that the final rule should specify the process for review, response to comments, and appeal of BLM decisions associated with preliminary alternatives.

**Response:** Final § 1610.5-2(c) requires the responsible official to make the preliminary alternatives and the preliminary rationale for alternatives "available for public review" before the draft resource management plan is published. When documents are made available for public review, the BLM believes it is important for the public to have an opportunity to see the BLM's progress. The public is welcome to bring any questions or concerns to the responsible official's

attention based on public review and, to the extent that it is practical, the responsible official will consider their input and document it in the project file. This is different than specifically requesting public comments, which is possible, but not required for preliminary alternatives. Please see the preamble discussion of final § 1610.2-1 for more information on providing information for public review. There is no appeal associated with preliminary alternatives, as that is an interim product and not an appealable decision. Please see the preamble discussion of § 1610.6-2 for information on the protest procedure for proposed resource management plan decisions.

*Preliminary Alternatives and Public Notification (§ 1610.5-2(c))*

**Comment:** A few comments stated that the resource management plan alternatives should be made public on BLM websites and at the BLM offices in the planning area, but they should not be given a formal notice and comment process. A few comments suggested that the BLM should notify the public of opportunities to comment on or review preliminary alternatives in more than one forum (web, paper mailings).

**Response:** Section 1610.2-1(a) of the final rule states that when the BLM prepares a resource management plan or EIS-level amendment, the BLM shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved during several points of the planning process, including review of the preliminary resource management alternatives, preliminary rationale for alternatives, and the basis for analysis, as appropriate. At a minimum, final § 1610.2-1(c) requires the BLM to announce opportunities for public involvement by posting a notice on the BLM's Website, at all BLM offices within the planning area, and at other public locations, as appropriate. The BLM added language to this final

paragraph requiring the responsible official to “identify additional forms of notification to reach local communities within the planning area, as appropriate.”

*Changes to Preliminary Alternatives (§ 1610.5-2(d))*

**Comment:** Several comments expressed support for the preliminary alternatives and the rationale in the proposed rule because it creates greater transparency. For transparency, some comments stated that the public should have input on any changes made to the preliminary alternatives. Other comments requested formal notice when changing preliminary alternatives after public input.

**Response:** The BLM is adopting final § 1610.5-2(c), which allows for the public review of preliminary alternatives. The BLM has added a requirement to final § 1610.5-2(d) requiring the BLM to include a description of changes made to the preliminary alternatives in the draft resource management plan. The public will have an opportunity to comment on these changes as part of the comment period on the draft resource management plan. Please see the preamble discussion of § 1610.2-2 for more information on public comment periods for draft resource management plans and plan amendments.

**Comment:** Several comments requested the BLM provide a record showing they reviewed public input on the preliminary alternatives and what changes were made.

**Response:** Final § 1610.5-2(d) recognizes that the BLM may make changes to the preliminary alternatives and preliminary rationale as planning proceeds if it determines that the public suggestions or other new information make such changes necessary. In this instance, a description of the changes to the preliminary alternatives will be made available to the public in the draft resource management plan.

*Changes to Preliminary Alternatives and Cooperating Agencies (§ 1610.5-2(d))*

**Comment:** One comment suggested changing from “public suggestions” to “cooperating agency suggestions” in § 1610.5-2(d), regarding when the BLM might change the preliminary alternatives and preliminary rationale for alternatives.

**Response:** The purpose of final § 1610.5-2(c) is to provide public review of preliminary alternatives and preliminary rationale for alternatives prior to the publication of the draft resource management plan and draft EIS. For consistency with § 1610.5-2(c) and the purpose of this section, final § 1610.5-2(d) will adopt the language that the BLM may change the preliminary alternatives and preliminary rationale if it determines that public suggestions or other new information make such changes necessary. Per final § 1610.3-2(b)(3)(iii), cooperating agencies will have the opportunity to collaborate with the BLM in the formulation of resource management alternatives. Therefore, cooperating agencies will have the opportunity to provide input on resource management alternatives separate from the public review process in final § 1610.5-2. Further, cooperating agencies may submit comments to the BLM through the same processes offered to the public.

*Changes to Preliminary Alternatives and New Information (§ 1610.5-2(d))*

**Comment:** One comment suggested that the BLM should be able to make changes to the preliminary alternatives in response to circumstances other than public suggestions or other new information, such as if it determines that another alternative better meets the purpose and need. The comment suggested that the BLM revise § 1610.5-2(d) to clarify that “the BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds.”

**Response:** Final § 1610.5-2(d) states that the BLM ‘may’ make changes to the preliminary alternatives and preliminary rationale for alternatives if it determines that public

suggestions make such changes necessary. While this language supports the intent of the final rule to consider public input and make changes accordingly, the BLM is not limited to revising alternatives based on public suggestion alone. As stated in the comment, the BLM could make changes to preliminary alternatives if it determines that other alternatives better meet the purpose and need. The BLM believes that this concept is captured in final § 1610.5-2(d). For example, “other information” could mean the identification of other alternatives, or modifications to the preliminary alternatives that better meet the purpose and need.

### **Section 1610.5-3 Estimation of Effects of Alternatives**

#### ***General Comments on the Basis for Analysis (§ 1610.5-3(a))***

**Comment:** A few comments expressed support the basis for analysis as a positive step, stating that it establishes further accountability and emphasizes transparency in the planning process. The comments suggested retaining the provision currently in proposed § 1610.5-3(a).

**Response:** The BLM will adopt the concept of basis for analysis in final § 1610.5-3(a), with clarifications on public involvement and EIS-level plan amendments.

**Comment:** One comment asserted that the assumptions, estimates, and indicators should be based solely on scientific information, traditional knowledge, and input from local stakeholders.

**Response:** Final § 1610.1-1(c) requires the BLM to use high quality information to inform the preparation, amendment, and maintenance of resource management plans. High quality information means any representation of knowledge such as facts or data, including the best scientific information (final § 1601.0-5). This may include traditional ecological knowledge and other information submitted by the public as long as the responsible official determines it to

be high quality information. The procedures, assumptions, and indicators used to estimate effects of alternatives, as referenced in final § 1610.5-3(a), are subject to this requirement.

**Comment:** One comment suggested adding “effects on resources” in § 1610.5-3(a) to the statement about estimating the environmental, ecological, social, and economic effects.

**Response:** Section 1610.5-3(a) does not include the suggestion to add the phrase “effects on resources.” The reference to estimating “environmental, ecological, social, and economic effects” is based on existing § 1610.4-6, and generally represents the range of effects that the BLM will analyze through the planning process. For this reason, including “effects on resources” would be redundant.

**Comment:** A few comments stated that making the basis for analysis available for public review provides little benefit and duplicates NEPA. The comments asserted that the BLM incorrectly assumes that plan amendments will be narrower focus than resource management plans; however, the national effort to revise resource management plans to conserve the Greater Sage-Grouse demonstrates that plan amendments can be larger in scope than resource management plans. The comments suggest that the BLM eliminate section 1610.5-3(a) entirely or add a requirement that the BLM disclose the basis for analysis “to the extent practical.” Another comment asserted that the BLM should be required to disclose the basis for analysis for all plan amendments, regardless of the situation.

**Response:** The BLM’s planning process is integrated and consistent with the requirements of NEPA. The planning and NEPA processes run concurrently and are not duplicative. Public review of the basis of analysis will serve as a “check” and will afford the public an opportunity to bring to the BLM’s attention any alternative basis for analysis that may have been overlooked before the BLM conducts the environmental impact analysis and prepares

a draft resource management plan and draft EIS. The BLM anticipates that this review will increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. The timeframe allowed for review of the basis of analysis is up to the discretion of the responsible official, subject to the requirements of final §§ 1610.2-1 and 1610.2-2.

The BLM believes that this step will always be appropriate when developing a resource management plan. For plan amendments, the BLM intends that in general this step will occur during these amendments. In some situations, such as when the BLM is under an accelerated schedule to address time-sensitive resource management concerns, the public review of the basis for analysis may not be appropriate. For example, a resource management plan amendment might require an accelerated schedule to address the rapid proliferation of a new use in an area that contains sensitive resources.

**Comment:** One comment recommended including a timeframe in which the BLM needs to complete any adjustments to the procedures, assumptions and indicators in proposed § 1610.5-3(a), in the hopes of limiting possible delays in the process.

**Response:** The BLM will not adopt the recommendation to include specific timeframes for adjustments to preliminary alternatives, procedures, assumptions, or indicators. These timeframes will vary based on factors such as complexity, geographic scale, and budgets.

*Basis for Analysis and Public Involvement (§ 1610.5-3(a))*

**Comment:** Several comments asserted that the basis for analysis and the effects analysis should be made available for formal public involvement, such as public comment, and not just review. One comment suggested there should always be a public review of the basis for analysis, for both a resource management plan and plan amendment. This comment stated that

the BLM should consider a time limit for these reviews, such as 15 and 30 days, respectively, with the ability request an extension of time.

**Response:** The public may submit information or comments for the BLM's consideration when the BLM makes documents available for public review. This allows the public an opportunity to review BLM actions without delaying the planning process unnecessarily. Under the existing regulations, the BLM does not provide any public involvement at this stage. The requirement in the final rule to provide this public review of the basis for analysis enhances the existing planning process and the BLM believes that public review is a sufficient opportunity at this point. The public will have an opportunity to formally comment on draft plan or amendment and associated EIS.

The requirements to make a document "available for public review," as described in § 1610.2-1(a)(3), represent a minimum requirement and do not preclude the BLM from providing additional or enhanced opportunities for public involvement during any given planning effort. For example, a responsible official may choose to request written comments and provide a time-period for submission of comments when making the preliminary alternatives available for public review, should the responsible official believe that it would add value to that particular planning effort.

The final rule adds the requirement that the responsible official shall make the preliminary alternatives and preliminary rationale for alternatives available for public review, as appropriate, for draft EIS-level plan amendments. The BLM expects this step to occur in most instances; however, in some situations such as project-specific or minor amendments, the public review of the basis for alternatives may not be appropriate. Further, the BLM believes that it is necessary to not apply a specific timeframe for this review. For example, a project-specific

amendment that is narrow in scope may necessitate less time for review. Conversely, more time for review may be needed for a full resource management plan revision.

**Comment:** One comment stated that opportunities for public review and input in the proposed rule are appropriate, but that early steps in the planning process should not be expanded into more formal public notice and comment processes. Doing so would risk making the planning process longer than it is now.

**Response:** The final rule adopts the proposed public notification (see final § 1610.2-1(a)(3)) and review of the basis of analysis (see final § 1610.5-3(a)(1)). The BLM believes that while this will add time to the early steps of the planning process, it anticipates increased efficiency by avoiding the need to re-do or supplement NEPA. The BLM does not intend to expand the proposed notification and public review points early on in the process into formal notice and comment procedures in the final rule. Please see the preamble discussion of § 1610.2-1 for more information on public notification requirements.

*Basis for Analysis and Plan Amendments (§ 1610.5-3(a))*

**Comment:** A few comments opposed the BLM's proposal (discussed in the preamble for proposed § 1610.5-3(a)) to make its basis for analysis decisions publicly available "to the extent practical" for plan amendments, because the BLM should always make this information available in the interest of transparency. Comments explained that maintaining the phrase would remove transparency and give the BLM full discretion whether to share its basis for analysis with the public. Another comment expressed support for the phrase "to the extent practical."

**Response:** In response to public comment, the BLM will adopt a revised § 1610.5-3(a) that includes a mandatory public review of the basis for analysis for resource management plans, and the discretionary review of the basis of analysis for an EIS-level plan amendment, as

appropriate. The BLM recognizes the importance of including this review for all resource management plans, but believes discretion is appropriate for EIS-level plan amendments. The determination as to whether to include this step will be on a case-by-case basis because certain targeted EIS-level amendments may not necessitate public review of this point. Please see the preamble discussion of § 1610.5-3(a) for more information.

*Relationship between Basis for Analysis and Preliminary Alternatives (§ 1610.5-3(a))*

**Comment:** One comment asked for clarification on how preliminary alternatives are in line with economic and cultural analysis required by NEPA.

**Response:** The BLM’s planning process is integrated and consistent with the requirements of NEPA, as defined by the CEQ NEPA regulations (40 CFR 1500.2(c)). After making the preliminary alternatives and basis for analysis available to the public (see final §§ 1610.5-2(c) and 1610.5-3(a)), the BLM will “estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail” (see final § 1610.5-3(b)) and will prepare a draft EIS (see § 1610.5-4).

*Basis for Analysis and Cooperating Agencies (§ 1610.5-3(a))*

**Comment:** One comment suggested adding “in coordination with any cooperating agencies” to §§ 1610.5-3(a) and (b) ensuring that the responsible official will coordinate with cooperating agencies when identifying the procedures, assumptions, and indicators (basis for analysis) to estimate the effects of each alternative.

**Response:** Coordination of planning efforts is addressed under final § 1610.3-2. Final § 1610.3-2(b)(3) requires the responsible official to collaborate to the fullest extent possible with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise during the planning process, including during the estimation of effects of alternatives.

Therefore, the change requested is addressed in § 1610.3-2(b)(3)(iv) of the final rule, and §§ 1610.5-3(a) and 1610.5-3(b) will not be changed.

Changes to the Basis for Analysis (§ 1610.5-3(a))

**Comment:** A few comments asserted that the rule does not explain how the BLM will notify the public when the basis for analysis changes during planning process.

**Response:** The BLM has modified proposed § 1610.5-3(a)(2), and is adopting new language requiring a description of changes to the basis of analysis to be made available to the public in the draft resource management plan. Similar language was also added to § 1610.5-4(a)(1) of the proposed rule on preparation of the draft resource management plans.

Public review of the basis for analysis is subject to the public notice provisions of final § 1610.2-1. Final § 1610.2-1(c) states that the BLM shall announce opportunities for public involvement by posting a notice on the BLM's Website, at all BLM offices within the planning area, and at other public locations as appropriate. Section 1610.5-3(a)(1) provides that, if any changes to the basis for analysis occur, a description of these changes shall be made available to the public in the draft resource management plan.

Planning Criteria (§ 1610.5-3(a))

**Comment:** One comment asked how the BLM will know how to analyze alternatives if planning criteria are no longer required.

**Response:** Planning criteria, defined in existing § 1610.4-2 is replaced in the final rule, in part, with the rationale for alternatives § 1610.5-2(b), which shall include a description of how each alternatives addresses the planning issues, and the basis for analysis § 1610.5-3(a), which includes procedures, assumptions, and indicators that will be used to estimate the effects of each alternative. These concepts will provide the appropriate information to guide the effects

analysis, previously required in planning criteria. In addition, the requirement to avoid unnecessary data collection and analyses from the existing regulations has been carried forward to § 1610.4(b)(1) of the final rule. For more information on the removal of planning criteria, see the preamble discussion of § 1610.5.

*General Comments on the Effects Analysis (§ 1610.5-3(b))*

**Comment:** One comment suggested that land use plans note items that impact nearby districts that share a border with the RMP, as well as where plants and wildlife move freely between the two or are found in both areas. Another comment asserted that impacts on neighboring landowners and local areas must be considered.

**Response:** Final § 1610.5-3(b) state that the estimate of effects shall be guided by the basis for analysis, the planning assessment, and the procedures implementing NEPA. This includes analysis of indirect effects, defined in 40 CFR 1508.8 and cumulative impacts, defined in 40 CFR 1508.7.

**Comment:** One comment suggested that the effects analysis should disclose if an alternative would permanently impair productivity or environmental values.

**Response:** These are called irreversible or irretrievable commitment of resources in NEPA. Section 1610.5-3(b) in the final rule requires the estimation of effects to be guided by the basis for analysis, the planning assessment, and procedures implementing NEPA, including disclosing irreversible or irretrievable commitments of resources.

**Comment:** A comment suggested that the reasonably foreseeable development scenario should present an absolute limit for how much development is allowable under a plan. The comment stated that effects considered under the NEPA analysis for a land use plan should be limited to the amount considered under the scenario, and that development beyond that level

exceeds effects considered. The comment recommended revising the final rule to state that the resource management plan or plan amendment must specifically identify the level considered and that a plan amendment would be required to consider development beyond that level. The comment also recommends the final rule specify that additional project-level approvals must be suspended until new analysis is completed.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM has provided the appropriate level of detail to this framework for development of a resource management plan or plan amendment.

The BLM's NEPA Handbook (H-1790-1) describes reasonably foreseeable development scenarios (RFD) as a baseline projection for activity for a defined area and a period of time.

While RFDs are developed to support the resource management plan, actual development is an activity-level decision, and exceedance of the RFD is a matter of plan conformance (see § 1610.6-3). As stated in the existing Land Use Planning Handbook, if the proposal (such as for oil and gas development) exceeds the reasonably foreseeable development analyzed in the current RMP/EIS, a new reasonably foreseeable development scenario and NEPA analysis supplementing the RMP/EIS would be warranted. If the proposal exceeds and is substantially different from the reasonably foreseeable development analyzed in the RMP/EIS, and the new NEPA analysis could reasonably be expected to result in changes to RMP decisions, a plan amendment may also be warranted (BLM Handbook H-1601-1, p. 40). The BLM expects the forthcoming Land Use Planning Handbook revision to include further guidance.

*Effects Analysis and Climate Change (§ 1610.5-3(b))*

**Comment:** A few comments asserted that the BLM must analyze for climate change for all resource management plans and amendments, and suggested that methods be outlined and

further specified in the Land Use Planning Handbook. One comment recommends the BLM address social cost of carbon in every alternative, because the BLM must account for carbon costs of its land and mineral management actions and fulfill its NEPA obligations.

**Response:** It is inappropriate to require a specific type of analysis in an EIS, as the analysis will be driven by the planning issues identified pursuant to final § 1610.5-1. However, the public will have an opportunity to provide input on the basis for analysis, including the procedures, assumptions, and indicators used to estimate the environmental, ecological, social, and economic effects of each alternative considered in detail pursuant to final § 1610.5-3(a). This is the point at which the public can provide any concerns on the proposed procedures, such as analysis of climate change and the social cost of carbon. The BLM expects the forthcoming Land Use Planning Handbook revision will provide resource-specific guidance on developing plan components and conducting effects analysis for resource management plans, as described in the final rule.

*Effects Analysis and Socioeconomics (§ 1610.5-3(b))*

**Comment:** One comment asserted that environmental justice sections should include the negative impacts that large development projects such as renewable energy have on small communities, property values, public health and quality of life. Similarly, the socioeconomic sections should include the negative impacts that large development projects would have on local real estate, tourism economies, property values and quality of life. Several comments stated that it is critical to address economic changes and impacts on local economies and landscapes. One comment asserted that impacts on state trusts must be a priority, since the BLM's land use planning activities greatly impact a state's ability to generate income from their trust assets. Recreational, agricultural and mining activities are the financial lifeblood of many remote areas.

A thorough economic analysis involving the affected local government and business entities is needed before implementing any actions. One comment insisted that the term “social” be excluded from the list of effects to be considered in final § 1610.5-3.

**Response:** It is inappropriate to require a specific type of analysis in an EIS, as the analysis will be driven by the planning issues identified pursuant to final § 1610.5-1. However, the public will have an opportunity to provide input on the basis for analysis, including the procedures, assumptions, and indicators used to estimate the environmental, ecological, social, and economic effects of each alternative considered in detail pursuant to final § 1610.5-3(a). This is the point at which the public can provide any concerns on the proposed procedures, such as analysis of economic and environmental justice issues. The BLM expects the forthcoming Land Use Planning Handbook revision to provide resource-specific guidance on developing plan components and conducting effects analysis for resource management plans, as described in the final rule. Under NEPA, the BLM is required to consider the effects of actions on the human environment. NEPA regulations (at 40 CFR 1508.8) define “effects” to include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Therefore, the final rule does remove “social” from the list of effects considered.

*Effects Analysis and Cultural Resources (§ 1610.5-3(b))*

**Comment:** One comment asked for “cultural” to be added to the list of environmental, ecological, economic, and social effects in §§ 1610.5-3(a) and (b).

**Response:** Cultural resources fall under the umbrella of environmental, ecological, economic, and social effects, so cultural resources are already incorporated. This language was adopted to provide a consistent use of terminology in the final rule. The suggested change will not be made in the final rule.

**Comment:** One comment suggested adding section 106 of the National Historic Preservation Act (36 CFR 800.5) to § 1610.5-3(b) as one of the factors that will guide the estimation of effects.

**Response:** Section 1610.5-3(b) of the final rule requires the estimation of effects to be guided by the basis for analysis, the planning assessment, and procedures implementing NEPA. Section 1502.25 of NEPA's implementing regulations requires agencies to prepare NEPA documents concurrently and integrated with environmental impact analyses and related surveys and studies required by the National Historic Preservation Act of 1966 and other environmental review laws and executive orders. Therefore, since the NHPA is already addressed, the suggested change will not be made.

*Effects Analysis and High quality information*

**Comment:** One comment suggested that the BLM use GIS data in the effects analysis to determine which areas would meet measurable goals (e.g. required standards) and which areas are predicted not to meet goals.

**Response:** Final § 1610.1-1(c) requires the BLM to use high quality information to inform the preparation, amendment, and maintenance of resource management plans. This term is defined in final § 1601.0-5. Please see the preamble discussion of this term at § 1601.0-5 for more information. The BLM will use GIS data that meets these standards to inform the preparation and amendment of resource management plans.

**Comment:** One comment asserted that BLM should prove that their proposed remedies will fix the identified planning issues. Where the public and the BLM disagree over the remedies, an independent review process should be available early in the planning process to resolve the differences. The review process should be based on the best scientific information

and involve testing where needed to validate remedies. Some examples include two years of rest from grazing is inadequate for recovery, current responses to drought are too little too late, 50% grazing utilization is inappropriate for the arid west, etc.

**Response:** The final rule provides for several opportunities for public involvement to address this type of concern early in the planning process. Please see the preamble discussion of §§ 1610.2, 1610.2-1, and 1610.2-2 for more information. For example, the public will have an opportunity to provide information on resource, environmental, ecological, social, and economic conditions of the planning area during the planning assessment (§ 1610.4(b)(4)). Other public involvement opportunities is to provide input on the identification of planning issues (§ 1610.5-1(b)), preliminary alternatives (§ 1610.5-2(c)), and the basis for analysis (§ 1610.5-3(a)).

The BLM will use high quality information to inform the revision, amendment, and maintenance of resource management plans, as required by final § 1610.1-1(c). Please see the discussion of the term “high quality information” in the preamble discussion of § 1601.0-5 for more information. However, the BLM retains the final decision-making authority for the content of the EISs and draft, proposed, and approved resource management plans. Therefore, the BLM is not adopting the recommendation for an independent review process. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance on collaborative planning.

#### **Section 1610.5-4 Preparation of the Draft Resource Management Plan and Selection of Preferred Alternatives**

##### **Preparation of a Draft Resource Management Plan (§ 1610.5-4)**

**Comment:** One comment requested clarification of the process of concurrently writing the Draft Resource Management Plan and EIS, and how process will work. Since both are

expected to evaluate alternatives, the comment seeks clarity as to whether these concurrent processes will evaluate and select the same alternative(s) or if there is potential for disagreement between the resource management plan and the supporting EIS.

**Response:** The BLM’s planning process (required by FLPMA (see 43 U.S.C. 1712(a)) is fully integrated with the requirements of NEPA, as defined by the CEQ’s NEPA implementing regulations, which require Federal agencies, “to the fullest extent possible,” to “[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively” (see 40 CFR 1500.2(c)). Because the processes are fully integrated, there is no potential for disagreement between the EIS and resource management plan. This is current BLM practice and is not expected to change as a result of the final rule.

*Preparation of a Draft Resource Management Plan and Implementation Strategies (§ 1610.5-4)*

**Comment:** A few comments suggested including implementation strategies in § 1610.5-4, instead of § 1610.5-5. Specifically, several comments proposed adding “and preparation of implementation strategies” to the section heading for § 1610.5-4 “Preparation of the draft resource management plan and selection of preferred alternatives” in the proposed rule; and deleting those same words from the section heading for § 1610.5-5 “Selection of the proposed resource management plan and preparation of implementation strategies.” Two other comments suggested adding a new paragraph (b) to § 1610.5-4 to discuss implementation strategies.

**Response:** The BLM is not adopting proposed § 1610.1-3, Implementation strategies, and has removed this term from the heading for final § 1610.5-5. Therefore, the BLM is not adopting the recommendation to include implementation strategies in final § 1610.5-4. Please see the discussion of proposed § 1610.1-3 in the preamble to the final rule for more information.

*Preparation of a Draft Resource Management Plan and Cooperation and Coordination (§ 1610.5-4)*

**Comment:** A few comments expressed support of the provisions of Section 1610.5-4, particularly the expectation of the responsible official to allow review and a comment period for local governments. The Handbook should provide a detailed process to ensure sufficient time for review is provided.

**Response:** Final § 1610.5-4(c) adopts the requirement that the draft resource management plan and draft EIS be required to the Governor(s) of the State(s) involved, and to the officials of other Federal agencies, State and local governments, and Indian tribes. This final paragraph adds language clarifying that these will be agencies and governments that have requested to be notified of opportunities for public involvement, as well as those that the deciding official has reason to believe would be interested. The BLM expects the forthcoming Land Use Planning Handbook revision to include additional guidance on collaborative planning.

**Comment:** Several comments stated that § 1610.5-4(a) should be revised to state that the responsible official would prepare a draft resource management plan in coordination with any cooperating agencies; and that the draft resource management plan would be based on cooperating agency input and coordination with affected Federal agencies, states, local governments, and Indian tribes, in addition to the other factors listed in the proposed rule.

**Response:** Coordination of planning efforts, including the cooperating agency role, is addressed under final § 1610.3-2. Final § 1610.3-2(b)(3) is strengthened to require the responsible official to collaborate to the fullest extent possible with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise during the planning process, including during the development of a draft resource management plan. Therefore, the

change requested is addressed in § 1610.3-2(b)(3)(iv) of the final rule, and §§ 1610.5-3(a) and 1610.5-3(b) will not be changed. In addition, the BLM will coordinate on early planning steps, and anticipates that cooperating agency input will be reflected in the planning assessment, planning issues, and estimation of the effects of alternatives, as the final rule includes additional steps to gather input on those pieces.

*Preparation of a Draft Resource Management Plan and Consistency Requirements (§ 1610.5-4(a))*

**Comment:** Two comments suggested that the second sentence of § 1610.5-4(a) in the final rule be revised to ensure that the BLM will give full consideration to the local government plans and programs with which the BLM has an obligation to coordinate its plan.

Inconsistencies between preferred alternatives and the land use plans, policies and programs of agencies should be identified and disclosed in the draft resource management plan/EIS. One comment suggested adding the following language: “identify any inconsistencies between the preferred alternative(s) and any officially approved and adopted land use plans, and the policies, and programs contained therein, of other Federal agencies, States, local governments, and Indian tribes.”

**Response:** Final § 1610.3-2(a) paragraphs (1) and (2) provide that the BLM keep apprised of, and give consideration to the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes. Further, § 1610.3-3(a) of the final rule requires that resource management plans be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The BLM will comply with the coordination and consistency requirements of the final rule throughout the planning process, especially in the preparation of the draft resource management

plan as described in § 1610.5-4(a). Therefore, it is unnecessary to include additional language for coordination and consistency in this section. The BLM expects that through early coordination, many of the inconsistencies will be identified and addressed. If any inconsistencies remain after publication of the draft resource management plan and draft EIS, Federal agencies, State and local governments, and Indian tribes may notify the responsible official of such inconsistencies, and the proposed resource management plan shall show how those inconsistencies were addressed, and if possible, resolved.

*Selection of the Preferred Alternative (§ 1610.5-4(a)(3))*

**Comment:** Comment objected to the deletion of the direction to select a preferred alternative that “best meets Director and State Director guidance.” The BLM has become more centralized, allowing local offices to favor resource extraction over maintenance of healthy lands and wildlife. The planning rule needs to codify reforming the BLM to take a more holistic approach that includes maintenance of healthy ecosystems as a central principle of land use planning.

**Response:** The requirement, in existing § 1610.4-7, to select a preferred alternative that best meets Director and State Director guidance, was replaced with a requirement to explain the rationale for the preference in proposed § 1610.5-4(a). Based on public comment, this is further modified in final § 1610.5-4(a)(3) of the final rule to “identify one or more preferred alternatives, if one or more exist, and explain the rationale for the preference or absence of a preference.” The changes were made because the criteria for selecting one or more preferred alternatives are typically broader than just Director and State Director guidance; for example, assessment findings, public involvement, local planning priorities, planning issues, and consistency with Federal law, policy, and guidance. The BLM believes that the language contained in final §

1610.5-4(a) does take a more holistic approach by reflecting the variety of factors that influence the selection of a preferred alternative, in addition to Director or deciding official guidance.

*Multiple Preferred Alternatives (§ 1610.5-4(a)(3))*

**Comment:** Several comments expressed concerns with the BLM's ability to identify multiple preferred alternatives. Comments expressed that the ability to identify multiple preferred alternatives is a departure from longstanding practice. They state that it would create confusion and uncertainty. A few comments stated that it would increase the time needed for critical evaluation of the preferred alternative, and be time consuming and burdensome for the public. It would mask the BLM's intentions (or lack thereof) in the early planning stages. It would make it more likely that a final resource management plan would diverge from stakeholders' expectations and would make it more difficult for the public to provide meaningful comments. The final rule should provide an example of what multiple preferred scenarios would look like and provide guidance on how the public can effectively comment on them. Several other comments asserted that identifying multiple preferred alternatives will polarize competing interests, increasing the potential for litigation.

**Response:** The change to acknowledge "one or more" preferred alternatives is being made to make the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)). The BLM anticipates that selecting more than one preferred alternative will not be the norm for resource management plans. The BLM will have the discretion to extend public comment periods on a case-by-case basis, and having more than one preferred alternative may merit additional time for public comments; however, this will not be the case in all situations and will not be a requirement. As explained in the preamble to the proposed rule for proposed § 1610.5-4, an instance where multiple preferred alternatives could be selected is when a plan

amendment is being initiated in conjunction with decision-making regarding a site-specific proposal. In this case, it could be unclear which of possibly several alternatives, each designed to reduce adverse environmental consequences, might be preferred. The BLM expects the forthcoming Land Use Planning Handbook revision to provide more detailed guidance on the identification of the preferred alternatives. It is not clear how identifying multiple preferred alternatives would polarize competing interests, or increase litigation risk, especially considering increased opportunities for public involvement. The BLM is currently permitted to identify more than one preferred alternative in EISs not including a plan amendment.

**Comment:** A few comments stated that identifying more than one preferred alternative is inconsistent with NEPA and is contrary to 43 CFR 46.425(a). A couple of comments stated that the final rule should clearly indicate that NEPA regulations allow the identification of one or more preferred alternative, if one or more exist.

**Response:** The BLM's planning process is integrated and consistent with the requirements of NEPA. Final § 1610.5-4 requires that the BLM "shall... identify one or more preferred alternatives, if one or more exists..." This is consistent with CEQ's NEPA implementing regulations (43 CFR 46.425(a)), which require that "[u]nless another law prohibits the expression of a preference, the draft environmental impact statement should identify the bureau's preferred alternative or alternatives, if one or more exists." The BLM is adopting changes to final § 1610.5-4 to align the planning regulations with the DOI NEPA regulations and the CEQ's NEPA implementing regulations, specifically 40 CFR 1502.14(e), including changes made to the proposed § 1610.5-4, based on public comments.

**Comment:** Several comments expressed support to incorporate BLM's proposed alternative language of "identify the preferred alternative or alternatives, if one or more exist." in

§ 1610.5-4(a). There may be instances where it is not possible to select one preferred alternative or it may not be appropriate to select any alternative as preferred, and as such, it is appropriate to provide regulatory provisions addressing those instances. The BLM should have the flexibility to identify no preferred alternative under circumstances such as those described in the preamble, where the specifics of a site proposal might be unclear at the time the draft is being prepared. One comment requested that the BLM to reaffirm that it will be rare to not specify a preferred alternative. Another comment suggested that the Land Use Planning Handbook should clarify that choosing multiple preferred alternatives or deferring identification should be employed only where absolutely necessary. One comment stated that § 1610.5-4(a) should be revised to allow for deferred identification if a preferred alternative genuinely does not exist, and should include language limiting both deferred identification and identification of more than one alternative in order to preserve the integrity of the public comment period.

**Response:** The final rule adopts the proposed changes with some additional clarification in final § 1610.5-4(a)(3) to include more flexibility to allow the responsible official to identify one or more preferred alternatives, if one or more exists, and explain the rationale for a preference or lack of a preference. This change is consistent with the DOI's NEPA regulations (43 CFR 46.425(a)). The BLM is not adopting further limitations in order to maintain this consistency. The BLM expects that in most situations a single preferred alternative will be selected, consistent with current practice; however, there may be rare instances in which more than one may be identified or where none of the alternatives are preferred. Additional guidance is expected to be developed as part of the forthcoming Land Use Planning Handbook revision.

Analysis of Alternatives (§ 1610.5-4(a)(3))

**Comment:** A few comments expressed that experience shows that when only one preferred alternative is selected, other alternatives do not have sufficient environmental documentation developed to allow for a secondary alternative. Assurances should be included in the final rule that all alternatives will go through the same level of analysis so that they can be weighed equally by partners and the public.

**Response:** The BLM's planning process is integrated and consistent with the requirements of NEPA. NEPA's implementing regulations require the environmental impacts of all alternatives to be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.

BLM Responsibility for Preferred Alternative (§ 1610.5-4(a)(3))

**Comment:** One comment suggested that the sentence, "the decision to select a preferred alternative remains the exclusive responsibility of the BLM," is poorly worded and invokes the questions of whether it is a decision to select an alternative or the selection of a preferred alternative.

**Response:** Section 1610.5-4(a)(3) in the final rule was changed to clarify that the identification of one or more preferred alternatives remains the exclusive responsibility of the BLM.

Federal Register Notification (§ 1610.5-4(b))

**Comment:** Two comments suggested adding "for publication in the *Federal Register*." at the end of § 1610.5-4(a), stating that this language should be retained from the existing regulations.

**Response:** Final § 1610.5-4(b) states that the draft resource management plan and draft EIS shall be forwarded to the deciding official for publication and filing with the Environmental Protection Agency. Pursuant to 40 CFR 1506.9 and 1506.10, the BLM is required to file EISs with the Environmental Protection Agency, and the Environmental Protection Agency will publish a notice in the *Federal Register* each week of the EISs filed during the preceding week. Consistent with 40 CFR 1506.10, final § 1610.2-2 uses the Environmental Protection Agency's *Federal Register* notice as the notification of the start of the comment period on the draft resource management plan and draft EIS.

*Draft Resource Management Plans and Cooperating Agencies (§ 1610.5-4(c))*

**Comment:** A few comments expressed that the final rule should provide opportunities for cooperating agencies to review and comment during this stage in the process. One comment suggested local governments that have participated in the process should be given at least 60 days to comment on the draft documents. Address the timeframe and process for consultation and review in the Land Use Planning Handbook.

**Response:** The deciding official will provide agencies and governments that have requested to be notified of public involvement opportunities or are deemed to be interested, such as cooperating agencies, an opportunity to comment on the draft resource management plan and draft EIS. The specifics can be found in § 1610.5-4(c) in the final rule. Based on public comment, final §§ 1610.2-2(b) and 1610.2-2(c) increase the comment period from the proposed rule to 60 days for EIS-level plan amendments, and 100 days for draft resource management plans. Please see the preamble discussion of § 1610.2-2 for more information. Please see the preamble discussion of § 1610.3-2 for more information on opportunities for cooperation and

coordination. The BLM expects the forthcoming Land Use Planning Handbook to include additional guidance on collaborative planning.

*Draft Resource Management Plans and Notification (§ 1610.5-4(c))*

**Comment:** A few comments expressed that proposed § 1610.5-4(b) (final § 1610.5-4(c)) allows for exclusion if the deciding official has reason to believe an agency or unit may lack interest, and should be revised to state that the draft resource management plan will be sent to all agencies (see § 1610.3-1(c)), units and tribes with which the responsible official has coordinated with in the planning process, and to all others which are believed to have interest, regardless of previous participation. The deciding and responsible officials have joint responsibility to assure that no agency or tribe is overlooked or omitted. This change would also show that in the event there are inconsistencies between the preferred alternative(s) and the land use plans, policies, and programs of other agencies, they will be addressed and resolved to the maximum extent practical, in accordance with FLPMA (43 U.S.C. 1712(c)(9)).

**Response:** In response to public comments, final § 1610.5-4(c) (proposed § 1610.5-4(b)) has been modified consistent with the changes to final § 1610.3-2(c)(3). This change requires the BLM to notify other Federal agencies, State and local governments, and Indian tribes that have requested to be notified of opportunities for public involvement, in addition to those that the deciding official has reason to believe would be interested. Please see the preamble discussion of § 1610.3-2(c) for more information on notification and coordination with other Federal agencies, State and local governments, and Indian tribes. The BLM will assist in resolving inconsistencies between Federal and non-Federal government plans, including during this review, in accordance with final §§ 1610.3-2(a)(3) and 1610.3-3(a).

**Comment:** The use of the phrase “for comment” in proposed § 1610.5-4(b) (final § 1610.5-4(c)) erroneously suggests that the roles of cooperating agencies are limited to commenting on the draft resource management plan.

**Response:** Final § 1610.5-4(c) (proposed § 1610.5-4(b)) discusses the draft resource management plan and draft EIS, and is specific to the public comment period on that document. The BLM does not intend to limit the role of cooperating agencies to comment. Please see the preamble discussion of § 1610.3-2(b) for more information about the role of cooperating agencies under the final rule.

**Comment:** One comment suggested adding “including State and Tribal Historic Preservation Offices” to the list of entities in § 1610.5-4(b) that the deciding official would provide opportunity to comment on the draft resource management plan and EIS.

**Response:** Final § 1610.5-4(c) (proposed § 1610.5-4(b)) specifies “officials of ...State governments, and Indian tribes...” which encompasses State and Tribal Historic Preservation Offices fall under that umbrella. Therefore, the suggested change will not be made to § 1610.5-4(c) as it would be redundant. Please see the preamble discussion regarding the definitions of “Indian tribe” and “State and local government” in § 1601.0-5 for more information.

### **Section 1610.5-5 Selection of the Proposed Resource Management Plan**

#### *ACECs (§ 1610.5-5(a))*

**Comment:** One comment suggested revising § 1610.5-5(a) by adding “giving priority to the identification, designation, and protection of ACECs” to the end of the first sentence in this section.

**Response:** ACECs are addressed in final § 1610.8-2. Final § 1610.8-2(b) states that “[p]otential ACECs shall be considered for designation during the preparation or amendment of

a resource management plan consistent with the priority established by FLPMA (43 U.S.C. 1712(c)(3)).” Final § 1610.5-5(a) does not adopt this recommendation, as it is redundant with final § 1610.8-2. Please see the preamble discussion of § 1610.8-2 for more information.

*Public Comments on the Draft Resource Management Plan (§ 1610.5-5(a))*

**Comment:** One comment asserted that BLM should provide a written substantive reply to the commenter if their comment on a resource management plan was or was not accepted, and where the comment is reflected in the draft resource management plan. This builds a more favorable attitude toward federal planning, and could reduce litigation.

**Response:** The BLM will respond to comments on the draft resource management plan and EIS as required by the CEQ NEPA regulations at 40 CFR 1503.4. The responses may occur as a change in the resource management plan final EIS, such as modifying alternatives, developing new alternatives, modifying the analyses, making factual corrections, or explaining why the comments do not warrant a response. Comments, when voluminous, may be summarized and attached to the final EIS.

*Integration with Other Laws (§ 1610.5-5(a))*

**Comment:** One comment suggested adding this to § 1610.5-5(a): “Simultaneously, the responsible official will ensure compliance with section 106 of the National Historic Preservation Act by consulting to resolve diverse effects of the resource management plan on historic and cultural resources, and coordinating as required by 36 CFR 800.6 and 800.8.”

**Response:** The BLM’s planning process is integrated and consistent with the requirements of NEPA. Section 1502.25 of NEPA’s implementing regulations requires agencies to prepare NEPA documents concurrently and integrated with environmental impact analyses and related surveys and studies required by the National Historic Preservation Act of 1966 and

other environmental review laws and executive orders. Development of a resource management plan or plan amendment will be required to be consistent with Federal law and regulations, as stated in § 1610.1-1(a)(1) in the final rule. The BLM must always comply with the National Historic Preservation Act. The final rule requires the BLM to consult (final § 1610.3-1), coordinate (final § 1610.3-2), and strive for consistency (final § 1610.3-3) with Indian tribes. Therefore, compliance with the National Historic Preservation Act is addressed, so the suggested change will not be made. For more information, see the preamble for §§ 1610.1-1, 1610.3-1, 1610.3-2, and 1610.3-3.

*Preparation of Proposed Resource Management Plans: Cooperation and Coordination (§ 1610.5-5(a))*

**Comment:** Two comments suggested adding the following to § 1610.5-5(a): “...the responsible official will, ‘in coordination with any cooperating agencies,’ evaluate the comments received ...”

**Response:** Coordination of planning efforts is addressed under § 1610.3-2 in the final rule. Final § 1610.3-2(b)(3) in the final rule requires the responsible official to collaborate to the fullest extent possible with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise during the planning process, including during preparation of the proposed resource management plan and final EIS. Therefore, because the change requested is addressed in § 1610.3-2(b)(3)(iv) of the final rule, the suggested change in § 1610.5-5(a) will not be made.

*Implementation Strategies (Proposed § 1610.5-5(b))*

**Comment:** Many comments expressed concerns and opposition to the preparation of implementation strategies as part of the proposed resource management plan. Some comments

suggested removing from the final rule all provisions addressing implementation strategies in the proposed rule. One comment suggested deleting or revising § 1610.5-5(b) on implementation strategies or moving it to § 1610.5-4.

**Response:** The term “implementation strategies,” its definition, and its discussion in §§ 1610.1-3 and 1610.5-5 of the proposed rule have been removed from the final rule in response to public comments. For more information, please see the discussion of proposed § 1610.1-3 in the preamble to the final rule.

*Public Notice (§ 1610.5-5(b))*

**Comment:** One comment stated that the BLM deciding official should be required to provide the local governments that participated in the resource management plan process with a formal notice of the agency's publication of the decision documents related to the resource management plan and EIS. The comment suggested the BLM provide a Website so the local governments can download the RMP and EIS.

**Response:** Final § 1610.2-1 describes the requirements for public notification at all steps of the planning process. Specifically, paragraph (c) specifies where to post the notification (BLM’s Website, BLM offices, other public locations, and use other ways to reach local communities). Paragraph (d) talks about notifying individuals or groups who request to be notified, through written or electronic means. Section 1610.2-3(a) of the final rule requires the BLM, at a minimum, to make copies of the resource management plan or amendment available electronically and at all BLM offices in the planning area. BLM offices typically maintain a website for each resource management plan, where updates and documents are posted. Notification of other Federal agencies, State and local governments, and Indian tribes is addressed in final § 1610.3-2(c)(3). The BLM believes that these sections adequately address

notification of local governments, and it would be redundant to also include it here. Please see the preamble discussion of these sections for additional information.

**Section 1610.6-1 Resource Management Plan Approval and Implementation.**

Coordination

**Comment:** One comment suggested that additional language be added to proposed § 1610.6-1(b) to address the selection of an alternative included within the range of alternatives in the FEIS but substantially different than the proposed resource management plan or plan amendment, because a new alternative not previously considered in detail must comply with coordination and consistency requirements of FLPMA prior to approval of the record of decision. The comment recommended that language be added at the end of § 1610.6-1(b) in the final rule, and should state the following: “In addition, the BLM will coordinate with affected Federal agencies, States, local governments, and Indian tribes as may be required, and will ensure that any inconsistencies between the alternative selected and any officially approved and adopted land use plans, and the policies and programs contained therein, of other Federal agencies, states, local governments, and Indian tribes, are resolved to the maximum extent practical before the resource management plan is approved, in accordance with Section 202(c)(9) of FLPMA.”

**Response:** The final planning rule at § 1610.6-1(b) is based on existing § 1610.5-1(b), with some clarifying edits. The final rule clarifies the existing requirement to provide public notice and opportunity for public comment if the BLM intends to select a different alternative, or portion of an alternative, than the proposed resource management plan or plan amendment. Because the selection of a different alternative or portion of an alternative would initiate an opportunity for public involvement, all government entities (local, State and Tribal included) that

participated as cooperative agencies, would be notified, coordinated with (as required under § 1610.3-2 in the final planning rule), and provided an opportunity to comment. The final rule does not adopt the recommended language. The coordination and consistency requirements of final §§ 1610.3-2 and 1610.3-3(a) apply throughout the planning process; therefore, it is unnecessary to repeat this requirement throughout the regulations. Lastly, final § 1610.3-3(b) provides for the Governor's consistency review process as a final "check" for consistency with State and local governments.

**Comment:** One comment recommended that additional provisions be made in the final rule for local government entities who have formally participated in the planning process to keep them apprised of resource management plan and/or plan amendment implementation and approval, including the status of formal protests filed and approval of the record of decision.

**Response:** Final § 1610.6-2(a)(4) states that upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws and regulations. Additionally, final § 1610.6-1(c) states that the approval of a resource management plan or plan amendment for which an EIS is prepared shall be documented in a concise public record of the decision. The requirements of § 1610.3-2 apply throughout the planning process; therefore, repeating the coordination requirements in each section of the final planning rule would be redundant. The final rule does not include additional provisions for engaging with other governmental agencies, as recommended in the comment; however, this does not prevent the BLM from engaging with governmental partners or providing additional notification. For example, the BLM typically maintains a mailing list of organizations and individuals that have participated in a particular planning process, and will send newsletters, postcards, and other notifications throughout the planning effort. Further, implementation-level decisions requiring additional analysis may include public and cooperating agency involvement.

**Comment:** One comment recommended that additional language be added to the final planning rule at § 1610.6-1(c) to read, "...meeting the requirements of regulations for the National Environmental Policy Act of 1969."

**Response:** At the end of this sentence, the BLM cites "40 CFR 1501.2." Due to the fact that this is in reference to the CEQ's NEPA Implementing regulations, it is not necessary to add this language because it would be redundant to state what is already being referenced.

### **Section 1610.6-2 Protest Procedures.**

#### Judicial Review

**Comment:** Some comments stated that the protest procedures in the proposed rule should not be included in the final rule and that the BLM should clarify that there is "no attendant requirement to exhaust administrative remedies before pursuing judicial review under the Administrative Procedures Act" in the final rule, while other comments favored the proposed protest procedures being retained in the final rule.

**Response:** The protest process is carried forward from the existing rule, with some modifications. The administrative review process is an important step that allows the BLM to correct deficiencies in a resource management plan or plan amendment, and helps to avoid costly and time-consuming litigation by resolving issues before a resource management plan or plan amendment is approved. Standing to pursue judicial review under the Administrative Procedure Act is beyond the scope of this rule; therefore, the final rule does not adopt the recommended language.

#### Standing and Opportunity for Participation (§ 1610.6-2(a))

**Comment:** One comment suggested that the BLM replace the words "any person" with "U. S. Citizen" in § 1610.6-2(a) of the final rule, clarifying that only U.S. citizens who

participated in the preparation of the resource management plan or plan amendment will be eligible to submit a protest, and ensuring regulatory conformance with the definition of public involvement in FLPMA.

**Response:** The final rule is not revised based on this comment. The definition of “public involvement” does not preclude non-citizens from participating in public involvement activities; rather, it guarantees citizens the right to do so. Public involvement activities provided by the BLM are available to any affected individual, regardless of citizenship. For example, non-citizens that reside near public lands are welcome to attend public meetings or submit written comments for BLM’s consideration. The BLM believes it would be inappropriate to preclude affected non-citizens from participation in the planning process. Non-citizens may comprise environmental justice communities that could potentially be impacted by BLM decisions, and BLM decisions could impact federally-recognized Tribes that exist across borders.

“Public” is defined in final § 1601.0-5 as “affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of Federal, State, local, and Indian tribal governments.” Non-citizens who meet this definition are welcome to participate in the BLM’s planning process, including the protest process, as appropriate.

**Comment:** The proposed protest procedures provide special interest groups with additional opportunities that result in further delays of the process.

**Response:** The BLM believes that the protest process is an important administrative review process prior to the approval of a resource management plan. The revisions to § 1610.6-2 are intended to improve the protest process, but it would be inappropriate to eliminate this

process, or to narrow the types of individuals or groups that are included in the definition of “public.” See the preamble discussion of “public” at § 1601.0-5 for more information.

**Comment:** A few comments stated that the protest procedures at § 1610.6-2 in the proposed rule do not provide equal participation opportunities to stakeholders or those in rural communities who cannot afford, nor have the capacity, to participate in the planning process. These comments suggest that the protest procedures in the final planning rule ensure that the process is fair and equitable to all members of the public.

**Response:** Final § 1610.6-2(a) states that any member of the public who participated in the preparation of the resource management plan or plan amendments and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. The BLM will offer multiple opportunities for public participation, as outlined in final §§ 1610.2, 1610.2-1, and 1610.2-2. The BLM actively collaborates with all members of the public, including local communities, during the preparation of the resource management plan or plan amendment using a variety of methods tailored to each decision area, and will continue to do so. These may include hosting public meetings in local communities and making information available using the format most accessible to specific communities.

The requirement that an individual participate in the planning process to have standing to protest is carried forward from the existing rule. Under current practice, the BLM defines “participation” broadly in the existing Land Use Planning Handbook (BLM Handbook H-1610-1) to include attending public meetings, providing written public comments via mail or electronically, or discussing the project with the BLM on the phone or in the field. The BLM is not eliminating any current opportunities for public involvement.

Please see the preamble discussion of final §§ 1610.2, 1610.2-1, and 1610.2-2 for more information regarding public involvement opportunities.

**Comment:** A few of comments suggested that the BLM must discourage the existing “sue and settle” approach that has become a frequent occurrence under the Endangered Species Act. One comment asserted that the final rule should strengthen the protest process to discourage the existing “sue and settle” trend. In addition, if the BLM is not willing to do this, the comment indicated the agency should at the very least ask Congress to enact legislation that would require plaintiffs of legal actions over resource management plans to bear all costs of litigation and all other costs incurred.

**Response:** The BLM believes that increasing early opportunities for public involvement and transparency will allow issues to be raised early in the process, which will reduce challenges to approved resource management plans. For example, the OMB and President’s CEQ Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012) has found that upfront investments in collaborative processes and conflict resolution can lead to possible cost savings through improved outcomes, fewer appeals, and less litigation. However, as defined in § 1601.0-1, the purpose of this rule is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans. The legislative issues raised in this comment are outside the scope of this rule and more appropriately addressed to Congress.

**Comment:** A few comments supported the provisions in § 1610.6-2(a)(3)(i-v) of the proposed planning rule that provide clarification on standing requirements for filing a protest as well as additional details of what constitutes a valid protest.

**Response:** Final § 1610.6-2(a) is revised to replace “individual” with “member of the public.” “Public” is defined in final § 1601.0-5 as “affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of Federal, State, local, and Indian tribal governments.” Final § 1610.6-2(a) further states that “[a]ny member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affect by the approve of a proposed resource management plan or plan amendment may protest such approval.” The BLM believes that this provides sufficient detail on who has standing to protest a proposed resource management plan or plan amendment, and thus, further revisions to § 1610.6-2(a)(3) are unnecessary.

Final § 1610.6-2(a)(3) specifies the content requirements of a valid protest. This final paragraph adopts the proposed paragraph, with clarifications that issues that arise after the close of the opportunity for public comment on the draft resource management plan may be protested if not raised during the preparation of the resource management plan. The BLM believes this provides sufficient guidance on the contents of a valid protest.

**Comment:** A few comments requested that the proposed protest procedures be revised to expand the eligibility requirements for protest submissions by accepting protests from members of the public who may not have participated previously in the planning process due to the fact that several years may pass between the release of a Draft Resource Management Plan and Proposed Resource Management Plan and oil and gas operators may acquire new leases during this time.

**Response:** The standing requirements in the proposed rule at § 1610.6-2(a) are written to ensure that individuals do not use the protest process as a means to obstruct, delay, or simply comment on issues. The protest process is not an additional comment period; rather, its purpose is to allow members of the public who have taken the time to participate in the development of the resource management plan or plan amendment a chance to protest and provide input as to how the BLM may have violated regulation or policy.

The BLM recognizes that changes occur between the draft resource management plan comment period and the development of the proposed resource management plan, and because of this, it will add language to the final rule at § 1610.6-2(a) that states “unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.”

**Comment:** Many comments requested clarification on what would constitute a valid protest, and who had standing to protest. These comments asserted that:

- The final planning rule should clearly define what constitutes a valid protest issue and how standing is determined, as the lack of definition does not decrease the number of frivolous protests that BLM will receive;
- The term “participated” is not defined in the proposed rule, making it unclear whether or not implementation strategies can be protested or appealed;
- The final rule should clarify the distinction between “earlier stages” of the planning process and “preparation of a resource management plan” for protest status;

- The final rule should define the phrase “any person who has an interest which ‘may be’ adversely affected by the approval of a proposed Resource Management Plan or plan amendment;”
- In the proposed rule, § 1610.6-2(a), the phrase “any person” should be changed to “any cooperating agency or person who by formal comment;”
- A final EIS should be required to include a clear, concise, and detailed list of all the components of a resource management plan that are subject to protest; and
- The final rule should require the Director to briefly explain why a protest does not meet the requirements of this section.

**Response:** Final § 1610.6-2(a) is revised in response to some of these comments, and is not revised in response to others, for the following reasons:

- Final § 1610.6-2(a) explains what constitutes a valid protest, stating that “[a]ny member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see § 1610.5), unless the protest concerns an issues that arose after the close of the opportunity for public comment on the draft resource management plan.” Paragraphs (a)(1) to (a)(3) further explain the timing and content requirements to meet these standards. This provides sufficient definition for what constitutes a valid protest.

- Under the existing regulations, the BLM has interpreted “participated” broadly, to include activities such as submission of written comments; attendance at public meetings, workshops, or field trips, and calling or meeting with BLM staff to discuss a resource management plan and plan amendment. The BLM expects to maintain this interpretation, as this requirement is carried forward from existing § 1610.5-2(a). The final rule does not adopt proposed § 1610.1-3, “Implementation Strategies.” Please see the discussion of proposed § 1610.1-3 in the preamble to the final rule for more information.
- A member of the public may only submit a protest, however, if they participated in the preparation of the resource management plan or plan amendment. This change is consistent with current practice and policy. Final § 1610.6-2(a) is revised to remove reference to § 1610.4, which is not considered a step in the preparation of a resource management plan; rather, it precedes the initiation of the preparation of a resource management plan. Final § 1610.6-2(a) specifies that “preparation of the resource management plan or plan amendment” refers to the steps outlined in final §§ 1610.5 through 1610.5-5.
- Final § 1610.6-2(a) replaces “any person” with the term “any member of the public....” “Public” is defined in final § 1601.0-5 as “affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of Federal, State, local, and Indian tribal governments.” The BLM believes the phrase “an interest which may be adversely affected by the approval of a proposed resource management plan or plan

amendment” is sufficiently clear, and the BLM has been able to apply similar language from existing § 1610.5-2(a). Therefore, the final rule does not adopt a definition for this phrase.

- The final rule is not revised to adopt the recommendation that “any person” be changed to “any cooperating agency or person who by formal comment....” As explained previously, “any person” has been changed to “any member of the public.” It is not necessary to specify that the member of the public participated as a cooperating agency or by formal comment. Under the existing rule, the BLM has interpreted “participated” broadly, and expects to continue this interpretation under the final rule.
- The contents of the proposed resource management plan or plan amendment is specified in final § 1610.5-5, and will be based on the draft resource management plan or plan amendment, as outlined in final § 1610.5-4. Plan components are defined in final § 1610.1-2. The BLM believes these three sections provide sufficient guidance for plan components. The recommended language “clear, concise, and detailed list” is vague and confusing, as requiring a list to be both “concise” and “detailed” is contradictory. Therefore, final § 1610.6-2(a) is not revised in response to this comment.
- Final § 1610.6-2(b) requires the Director to render a written decision on all protests and notify protesting parties of the decision, and to make the decision on the protest and reasons for the decision available to the public.

Submission Procedures (§ 1610.6-2(a)(1))

**Comment:** One comment indicated that § 1610.6-2(a)(1), which states that the “responsible official will specify protest filing procedures for each resource management plan or plan amendment,” is not clear because the procedures may be different for each resource management plan or plan amendment and the BLM needs to incorporate standardized procedure for the filing process.

**Response:** Final § 1610.6-2(a)(1) states that the protest may be filed as a hard-copy or electronically and the responsible official will specify protest filing procedures for a resource management plan or plan amendment (beyond these general requirements in the planning regulations). Under the existing regulations, a protest must be filed as a hard copy. Although the BLM will continue to accept hard-copy protest submissions, providing an additional option for electronic submission will reduce a burden on the public by reducing the expense associated with mailing a hard copy. An electronic format will also streamline the processing of protests, since the protest will already be digitized, thereby eliminating a step from the process. In accepting electronic format; however, the BLM believes it needs the flexibility of having the deciding official determine with each resource management plan or plan amendment how submissions will be accepted. The purpose of this flexibility is to make use of emerging technologies, such as online submission options, and the fact that each area hosting a resource management plan or plan amendment has its own landscapes and resources. The BLM also believes this flexibility will benefit members of the public who plan to submit a protest, as it will be announced upon publishing of the proposed resource management plan and will provide clear, concise, detailed instructions, dependent on what the deciding official deems appropriate for each protest process.

**Comment:** A number of commenters expressed support for the BLM accepting protests via electronic submission and recommend that an electronic mail submission option be included in the final planning rule.

**Response:** The final rule at § 1610.6-2(a)(1) adopts the electronic protest submission process from the proposed rule. The BLM does not provide a specific electronic format for the submission of protest to allow the BLM to have flexibility to make use of emerging technologies.

**Comment:** One commenter asserted that allowing the public to submit protests electronically is beyond the BLM's or Department of the Interior's scope of authority and, thereby, has the power to adjudicate it, which is wrong.

**Response:** The protest resolution process to the BLM Director, which is part of the planning process, is an administrative review process prior to issuance of a final decision for a particular planning effort. The protest process and the means available to the public to submit a protest, as outlined in the final rule, is within the BLM's authority.

Timing (§ 1610.6-2(a)(2))

**Comment:** One comment stated that the existing planning rule includes a 30-day protest period and asserted that the proposed planning rule does not include a time frame for the protest period. The comment requested that the BLM include a set time frame for the protest period or state where this information can be found.

**Response:** Final § 1610.6-2(a)(2) adopts the existing 30-day protest period, stating that for resource management plans or plan amendments for which an EIS was prepared, the protest must be filed within 30 days after the date the Environmental Protection Agency published the notice of availability of the final EIS in the *Federal Register*; or for plan amendments for which an EA was prepared, within 30 days after the date that the BLM notifies the public of the availability of the amendment. The BLM provides a protest period timeframe in the proposed and final rules

at § 1610.6-2(a)(2), under “Timing,” maintaining the existing time periods for submitting a protest.

*Extension of Protest Period (§ 1610.6-2(a)(2))*

**Comment:** A few comments indicated that § 1610.6-2(a) of the proposed rule be revised to extend the protest period from 30 to 60 days, or that the final rule provide the BLM with the flexibility to extend the protest period beyond 30 days, due to an increasing number of planning efforts spanning large areas or crossing state or resource area boundaries, which may warrant the need for additional time to review and assess resource management plans or plan amendments and prepare protests. These comments also noted that protesting parties waiting for documents pursuant to a FOIA request could wait 30 or more days for a substantive response; therefore, it makes sense to revise the final rule to state that a protest must be filed “within 30 days after the date the Environmental Protection Agency published the Notice of Availability of the Final EIS or EA in the *Federal Register*, unless BLM extends the 30-day period.”

**Response:** The BLM will maintain the existing and proposed 30-day protest period in final § 1610.6-2(a)(2). The BLM is retaining this portion of the regulation, as the protest process is not to be confused with the comment period; rather, it has very specific requirements for who can participate (only those members of the public who participated in the preparation of the resource management plan). The final rule at § 1610.6-2(a)(3)(iv) requires protests include more specific grounds for protesting a plan component, which the BLM believes will provide a more clear distinction between the protest process and the comment period. Section 1610.6-2 does not represent a change from existing practice or policy and the BLM believes this will more effectively communicate to the public what the BLM considers when addressing protests, and ultimately, the 30-day protest period requirement.

Content Requirements (§ 1610.6-2(a)(3))

**Comment:** A comment agreed with BLM’s regulation that the focus of a protest is to identify and remedy inconsistencies with Federal laws and regulations or the purposes, policies, and programs of such laws and regulations.

**Response:** Final § 1610.6-2(a)(3)(iv) adopts this proposal with edits, and requires protests to “[c]oncisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of implementing such laws and regulations and, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan, identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment....”

**Comment:** Many comments asserted that the proposed planning rule limits the ability to challenge issues regarding the development of land use plans by imposing tedious formatting requirements and narrowing protest criteria to “component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations.” Specifically, these comments stated that these restrictions eliminate the ability to protest issues on the following: the planning area boundary; factors and information deemed relevant to the planning assessment; the BLM’s compliance with procedural rules; compliance with FLPMA and other laws; and implementation strategies. These same comments also stated that decisions that are arbitrary and capricious have adverse impacts at the State, local and tribal levels and should be revised by a higher official, with discretion being afforded to the responsible official in regards to high quality information, assumptions, methodologies, interpretations, and procedures.

**Response:** Final § 1610.6-2(a)(3) is based on existing § 1610.5-2(a). The requirements in final § 1610.6-2(a)(3)(i) to include the name, mailing address, telephone number, and interest of the person filing the protest are carried forward from the existing regulation. The final rule does state that the protest should include the email address (if available), but if an email address is not available, it will not be required for a protest to be considered valid. The requirement in final § 1610.6-2(a)(ii) to state how the protestor participated in the preparation of the resource management plan or plan amendment, and the requirement in final § 1610.6-2(a)(v) to include a copy of all documents addressing the issue or issues that were submitted during the planning process, or an indication of the date the issue or issues were discussed for the record, is based on the existing § 1610.5-2(a)(iv) requirement that a protest contain a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record. Including a statement of how the protestor participated in the preparation of the resource management plan or plan amendment will create a more efficient protest resolution process because the BLM will not have to follow up with protestors to confirm their standing, as is current process, which will reduce delays in the planning process.

The requirement in final § 1610.6-2(a)(iii) and (iv) state that the protestor must identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations; and concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of implementing such laws and regulations and, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan, identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment. These

paragraphs are based on existing § 1610.5-2(a)(ii), (iii), and (v), which require that protests include: a statement of the issue or issues being protested, a statement of the part or parts of the plan or amendment being protested, and a concise statement explaining why the State Director's decision is believed to be wrong. These changes are to create consistency with other changes to the regulations (see, for example, plan components at final § 1610.1-2), and to clarify existing practice and tie protests to the proposed decisions.

It is not the BLM's intent to narrow the issues that may be protested, rather, the final rule requires this content in protests to ensure that protests are focused on the BLM's proposed decision on plan components. The BLM is not eliminating the ability to protest the planning area boundary; factors or information deemed relevant to the planning assessment; the BLM's compliance with procedural rules; or compliance with FLPMA and other laws if those issues relate to the development of plan components. The information, assumptions, methodologies, and interpretations used to develop plan components could be protested if a protester can identify the specific plan components that these relate to. For example, if a protestor believes that the planning assessment did not use high quality information, and the lack of high quality information caused a defect in the proposed plan components, this would be a valid protest. Similarly, if the protestor believed that the BLM did not follow the proper process to identify a plan area, he or she may protest the application of plan components to that area.

Please note that proposed § 1610.1-3, "Implementation Strategies," is not adopted in the final rule, and thus is not included in protest procedures. Please see the preamble discussion of proposed § 1610.1-3 for more information. Implementation strategies developed as part of the existing planning process under the existing Land Use Planning Handbook are not currently subject to protest, so this does not represent a change in policy or practice.

Final § 1610.6-2(a) is revised to replace the term “individual” with “member of the public.” “Public” is defined in final § 1601.0-5 as “affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of Federal, State, local, and Indian tribal governments.” Therefore, affected State, local, and Indian tribal governments have standing to file a protest if they meet the requirements of final § 1610.6-2(a).

**Comment:** Many comments stated that protest procedures should not prevent a party from protesting a potential violation of federal or state law or policy discovered for the first time in a proposed resource management plan, nor prevent a party from protesting aspects of significant new information or new alternatives present for the first time in a FEIS.

**Response:** Final §§ 1610.6-2(a)(3)(iv) and (a)(3)(v) are revised based on this comment, and allows protests to raise an issue not raised previously if “the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.”

**Comment:** Many comments indicated that the language in the proposed rule excludes protests based on poor judgement in decision-making and will increase the likelihood of dismissal, and that the proposed protest standards are inconsistent with the statement in FLPMA that the Secretary must “structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision-making.”

**Response:** Final paragraph (a)(3)(iv) of this section requires the protest to include a concise explanation of why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations, and identification of the associated issue(s) raised

during the planning process. This provision replaces existing paragraph (a)(1)(ii) and the final sentence of existing paragraph (a)(1)(iv) of this section. The final rule requires that protests include more specific grounds for challenging a plan component than the existing regulations, which require only “(a) concise statement explaining why the State Director’s decision is believed to be wrong.” The identification of more specific grounds for protests will help the BLM to identify, understand, and respond thoughtfully to valid protest issues, such as inconsistencies with Federal laws or regulations.

This final change also provides a more clear distinction between the protest process and the earlier public comment period on a draft resource management plan and draft EIS. The earlier public comment period offers an opportunity to comment on a wide variety of matters relating to a draft plan. The protest procedures, in contrast, are intended to focus the BLM Director’s attention on aspects of a proposed resource management plan that may be inconsistent with legal requirements or policies. These changes are not a change from existing practice or policy; rather they provide clarification to the public on how the BLM interprets and implements the existing regulations. The BLM believes that the change will more effectively communicate to the public what the BLM considers when addressing protests.

This change is in compliance with FLMPA, which states that “in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision-making....” (43 U.S.C. 1701(a)(5)).

**Comment:** Many comments asserted that the proposed planning rule conflicts with the BLM's objective to ensure public involvement by creating a more stringent process; and that challenges to non-plan component issues in protests could lead directly to litigation.

**Response:** The final rule provides multiple opportunities for public involvement. Please see the preamble discussion of §§ 1610.2, 1610.2-1, and 1610.2-2 for more information on public involvement. However, final § 1610.6-2(a)(3) adopts changes that provide a more clear distinction between the protest process and the earlier public comment period on a draft resource management plan and draft EIS. The earlier public comment period offers an opportunity to comment on a wide variety of matters relating to a draft plan. The protest procedures, in contrast, are intended to focus the BLM Director's attention on aspects of a proposed resource management plan that may be inconsistent with legal requirements or policies. These changes are not a change from existing practice or policy; rather they provide clarification to the public on how the BLM interprets and implements the existing regulations. The BLM believes that the change will more effectively communicate to the public what the BLM considers when addressing protests.

**Comment:** Several comments included the following assertions relating to protest procedures:

- Protests must also be allowed in the planning assessment report, as it is a foundational document for the resource management plan;
- State and local governments should be provided an opportunity to protest proposed plans or amendments that contradict State and local land use plans properly submitted in the planning assessment phase of the resource management plan;

- Discussion of protests on inconsistencies with State and local plans should be added to the final planning rule;
- The language in the final rule should be revised to clarify that protests addressing compliance with State wildlife laws, zoning ordinances, and pollution control programs administered under delegated Federal programs, may be submitted, and that language be added to the final rule recognizing other “plans, policies, and management programs of State agencies, local governments, and tribes;”
- The final rule should include a formal mechanism for protesting data quality beyond opportunities for public comment; and
- Language should be added to the final rule recognizing other “plans, policies, and management programs of state agencies, local governments, and tribes.”

**Response:**

- Planning assessments are not decision documents. However, if a plan component is based on a planning assessment that does not follow the requirements of final § 1610.4, or is otherwise inconsistent with Federal law or regulation, a member of the public may protest that plan component. Therefore, the final rule is not revised in response to this comment.
- Final § 1610.6-2(a) replaces the term “individuals” with the term “members of the public.” The definition of “public” in final § 1601.0-5 includes “officials of Federal, State, local, and Indian tribal governments.” If a State or local government felt that a plan component was in violation of the consistency requirements of final § 1610.3-3, and otherwise met the requirements of this section, government officials would have standing to protest that component.

Please see the preamble discussion of § 1610.3-3 for more information on consistency requirements. In addition to the protest process outlined in final § 1610.6-2, the final rule identifies opportunities for Governor(s) to participate in the Governor's consistency review to identify and resolve inconsistencies with State and local plans. Please see § 1610.3-3(b) for information on the Governor's consistency review.

- Consistency requirements are discussed in final § 1610.3-3. It is not necessary or practical to discuss all possible grounds for protest in final § 1610.6-2, therefore, the final rule is not revised in response to this comment.
- The final rule does not include a specific mechanism to protest data quality outside of public involvement opportunities. However, the information, assumptions, methodologies, and interpretations used to develop plan components could be protested if a protester can explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations, or the purpose, policies, and programs implementing such laws and regulations.

**Comment:** A comment supported the new requirement that the protester specify how it participated in the planning assessment or preparation of the resource management plan (paragraph (a)(3)(ii)). The comment mentioned that it is worth noting that the contents of a protest are not limited to those made by a protester at an earlier stage in the process, but may include any issue raised by a valid protester, as indicated paragraph (a).

**Response:** Final § 1610.6-2(a)(3)(ii) is adopted with no changes, requiring that the protesting party specify how it participated in the preparation of the resource management plan or plan amendment. The BLM affirms that the contents of a protest are not limited to those

made by a specific protester at an earlier stage in the process, and may include any issue previously raised by anyone.

**Comment:** Some comments supported the proposed changes that require protesters to identify that a plan component is inconsistent with law, regulation, or BLM policy to be considered, as they are the appropriate focus of the protest of a resource management plan.

**Response:** Final § 1610.6-2(a)(3)(iii) adopts this requirement.

**Comment:** One comment expressed support for the requirement in the proposed rule at § 1610.6-2(a)(3)(i), to include the email address (if available), because streamlining BLM's ability to respond directly to protesters is sensible. Another comment stated that providing an email address should not be a requirement for protest submittal, and absence of an email address should not be grounds for dismissal of a protest.

**Response:** Final § 1610.6-2(a)(3)(i) adopts this requirement, noting that, in many circumstances, it is easier to communicate by email than by telephone and this requirement will correspond with the BLM's acceptance of protests electronically under proposed § 1610.6-2(a)(1).

However, this requirement in final § 1610.6-2(a)(3)(i) includes a statement that protesting parties include their email address "if available," in addition to other identifying information in the protest letter to facilitate BLM communications with protesting parties in the event of a question regarding the protest or filing. The use of email, if available, will facilitate communication, providing another means of communication other than telephone number and mailing address, and will be in line with the BLM's acceptance of protests via electronic means under § 1610.6-2(a)(1). The BLM cannot and will not dismiss a protest if the email address is not available; rather, it is included as an optional content requirement to facilitate the process.

**Comment:** One comment expressed support for the clarification that is provided by requiring specific grounds for a protester’s position for why the resource management plan is believed to be inconsistent with laws, rules or policies.

**Response:** Final § 1610.6-2(a)(3)(iv) adopts this requirement to include a concise explanation of why plan components are believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations, and identification of the associated issue(s) raised during the planning process.

**Comment:** A few comments recommended that proposed §§ 1610.6-2(a)(3)(iii) and (a)(3)(iv) be revised to remove the phrase “applicable to public lands,” as the BLM should not limit the basis of a protest to inconsistencies between resource management plans and laws or regulations “applicable to public lands.” These comments indicated that resource management plans can be inconsistent with laws or regulations that are not specific to public lands, such as the Administrative Procedures Act.

**Response:** The term “applicable to public lands” includes not only laws that are specific to public lands, but also laws that may apply to the BLM’s management of public lands. This would include the Administrative Procedure Act, as the BLM must comply with the Administrative Procedures Act when managing public lands. Therefore, the final rule is not revised in response to this comment.

**Comment:** One comment recommended that proposed §§ 1610.6-2(a)(3)(iii) through (a)(3)(iv) be revised to add a phrase in each paragraph that identifies and explains plan components to consider “land use and resource related planning and management programs of State agencies, Indian tribes, and local governments” in addition to the proposed language that

considers “Federal laws or regulations applicable to public lands or the purposes, policies and programs of such laws and regulations.”

**Response:** The final rule does not make the suggested edits. Coordination and consistency requirements are discussed in final §§ 1610.3-2 and 1610.3-3. Section 1610.3-3 of the final rule requires resource management plans to be consistent, to the maximum extent consistent with FLPMA and Federal laws, with the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. Further, the protest provisions in § 1610.6-2 of the final rule does not prevent other governmental entities from raising consistency issues, as long as the requirements of this section are met. In addition to the protest process, Governors have the opportunity to participate in the Governor’s consistency review, as described in § 1610.3-3(b). Please see the preamble discussion of §§ 1610.3-2 and 1610.3-3 for more information on coordination and consistency.

*Availability of Protests (§ 1610.6-2(a)(4))*

**Comment:** A few comments said that § 1610.6-2(a)(4) in the proposed planning rule should be revised to allow the BLM to withhold, and not release, certain private, commercial, or financial information included in submitted protests that is or could be exempt from disclosure under Freedom of Information Act (FOIA) or other laws such as the Trade Secrets Act. The BLM should not be mandated to release all protests without regard to whether disclosure is prohibited by federal law or protected by FOIA.

**Response:** Final § 1610.6-2(a)(4) is revised to read, “Upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws or regulations.” This is independent of existing requirements under the Freedom of Information Act. This commitment demonstrates the value the BLM

places on public involvement in resource management planning. The BLM intends for this commitment to ensure transparency and consistency in practice.

**Comment:** A few comments supported the proposed planning rule’s provisions to make protests and responses available to the public, and suggested that the BLM promptly post all protests and related responses, whether requested or not, on its external Website for public access.

**Response:** Final § 1610.6-2(a)(4) is not revised in response to this comment. Section 1610.6-2(a)(4) provides a minimum standard that requires the BLM to release protests upon request, subject to the requirement to withhold any protected information. However, the BLM does not believe it is necessary to require a specific format for release. The final rule does not prevent the BLM from posting this information to the BLM Website. Further, the BLM is exploring how to make protests available in a timely and efficient manner, including by posting all protest submissions to the BLM Website. The BLM expects to continue its current practice of posting its decision on protests to the BLM Website, and otherwise making the protests and decisions on the protests available to the public.

*Timeframe (§ 1610.6-2(b))*

**Comment:** One comment disagreed with the removal of the word “promptly” from § 1610.6-2(b) because the deletion of this word signals that the BLM is not committed to the prompt resolution of protests. The comment recommended that the final rule include a specific deadline for responses to protest, similar to the 90-day time limit found in the Forest Service’s objection rule.

**Response:** The final rule removes the term “promptly” from existing § 1610.5-2(a)(3) (final § 1610.6-2(b)) because the term is vague. The BLM will act in good faith to resolve

protests as quickly as possible, but this may not always be prompt. Neither the term “promptly” nor a specific time limit, like the 90-day time limit in the Forest Service’s objection rule, account for the many variables that affect timelines for protest resolution, including the magnitude and complexity of protest issues, as well as available budgets and competing workloads.

*Decision on Protests and Coordination (§ 1610.6-2(b))*

**Comment:** Two comments suggested that the BLM contact cooperating agencies by mail or electronic mail if a protest is filed against a decision in which the cooperating agency has participated.

**Response:** The Director’s decision on the protest is an internal BLM review of whether the BLM’s proposed decision is consistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations. Although the BLM will make protest letters available upon request, the preparation of the protest report is a unique step in the planning process, and remains the BLM’s responsibility. This is consistent with existing § 1610.5-2 which does not reference cooperating agencies.

Final § 1610.6-1(b) requires the BLM to notify the public and request written comments if the BLM intends to select an alternative that is within the spectrum of alternatives in the final EIS or EA, but is substantially different than the proposed resource management plan or plan amendment. This would include changes made in response to protests. Final § 1610.3-2(b)(3) requires notification of Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement. This includes notification of cooperating agencies if the BLM seeks further public

comment between issuance of a proposed resource management plan or plan amendment and a decision.

*Protest Report (§ 1610.6-2(b))*

**Comment:** One comment expressed support for the BLM's intention to continue summarizing and combining responses to similar comments, such as those found in form letters submitted by multiple protesters. Another comment requested that the appropriate BLM office directly respond to each substantive protest item offered on a proposed resource management plan, rather than its current practice of summarizing protest issues and providing a single response to each issue, regardless of how many times the issue was raised.

**Response:** Under current practice, the BLM summarizes protest issues and provides a single response to each issue regardless of how many times an issue was raised. The BLM has found this practice helpful and intends to continue it under § 1610.6-2(b) of the final rule. This method allows the BLM to respond to all substantive issues in the most timely and efficient manner. However, the final rule does not require this methodology, as the format of the protest report is more appropriately developed through policy.

*Notification of Decision on Protests (§ 1610.6-2(b))*

**Comment:** A few comments stated that Section 1610.6-2(b) of the proposed rule should be revised to incorporate the requirement that BLM send all decisions on protests to each protester by mail. They added that, because a decision on a protest is a final agency decision that is subject to judicial review, statutes of limitations begin to run from the date the protesting party received notice of the decision, it should be clear when the statutes of limitations begin, and receipt of the decision is a method to inform them. These comments asked that the BLM retain the requirement in existing the existing planning rule, Section 1610.5-2(a)(3) that BLM send a

decision on a protest by certified mail, return receipt requested, also recommending that decisions also be sent to protesters by electronic mail or U.S. mail.

**Response:** Final § 1610.6-2(b) provides that the BLM notify protesting parties of the decision and will make both the decision and the reasons for the decision on the protest available to the public in a protest resolution report with all issues identified and addressed. The BLM expects to post these on the BLM Website, and share with those individuals and groups that have requested email notification.

In existing regulations at § 1610.5-2(a)(3), the BLM indicates decisions on protests are mailed to the protesting parties via certified mail; however, the final rule adopts the proposal to remove the requirement that the BLM send its decision on a protest to the protesting parties by certified mail, return receipt requested. The BLM believes that the wide availability and ease of use of the Internet and electronic communications make these means of notifying the public well suited for sharing protest decisions with the public, and will ensure that all protesting parties, including cooperating agencies, receive an expedient response. Electronic communications allow the BLM flexibility to make protest decisions available to a potentially large number of protesting parties or members of the public without an overly burdensome workload. Electronic notification will also be consistent with the BLM's policy promoting the use of electronic communications in the land use planning process (See BLM Instruction Memorandum 2013-144, "Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats" (June 21, 2013), [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instrumentation/2013/IM\\_2013-144.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instrumentation/2013/IM_2013-144.html)). Nonetheless, where Internet access is limited or protesting

parties or members of the public express concerns about electronic communications, the BLM will ensure it provides notice by other means.

In the planning process, the record of decision and approved resource management plan is the final agency action.

*Protest and Approval of the Resource Management Plan (§ 1610.6-2(b))*

**Comment:** One comment stated that the explicit authority of the Director to approve portions of a resource management plan that are not subject to a protest during resolution should be made more clear in the final planning rule, disagreeing with the explanation that § 1610.6-1(b) makes this authority clear. Because of this, the comment suggested the following modification of § 1610.6-1(b) in the final planning rule, “Approval will be withheld on only those portions of a resource management plan or plan amendment being protested (see § 1610.6-2) until final action has been completed on such protest.”

**Response:** The final rule does not adopt the recommended language in final § 1610.6-1(b), but is revised to address the concerns raised by the comment. Final § 1610.6-2(b) is revised to include the statement that “[a]pproval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest.”

*Informal Protest Resolution (§ 1610.6-2(c))*

**Comment:** A few comments stated that the final rule should address the opportunity for the BLM to seek to resolve protests informally, noting that, historically, the BLM’s Land Use Planning Handbook provided for a State Director to seek resolution. The comments added that this policy has changed with no explanation, and they believe that the BLM is missing opportunities to informally discuss and resolve protests. The comments state that the U.S. Forest Service provides for an objection process that “gives an individual an opportunity for an

independent Forest Service review and resolution of issues,” and that the BLM’s current process amplifies rather than minimizes disagreements among stakeholders and the BLM, and allows protests to go unresolved. Comments suggested that because the proposed rule retains current protest resolution procedures without modification, the final rule should commit the BLM to work with protesters directly to constructively resolve the more precise state protests.

**Response:** The existing BLM Land Use Planning Handbook states that the State Director, in consultation with the Washington Office, may determine that discussion and negotiation with protesting parties are appropriate if these discussions may lead to resolution of one or more issues. Nothing in final § 1610.6-2 prevents the deciding official from following the policy outlined in the Land Use Planning Handbook for a particular planning effort. The BLM believes it is appropriate to continue to address this topic in policy, rather than regulation, and no revision to final § 1610.6-2 is needed.

*Dismissal of Protests (§ 1610.6-2(c))*

**Comment:** One comment expressed support for the BLM’s inclusion in the proposed planning rule of the explicit authority of the Director to dismiss non-conforming protests, as this will streamline and strengthen the protest process.

**Response:** Final § 1610.6-2(c) makes it clear the Director may dismiss protests that do not meet the requirements of this section. The final section also adds to proposed § 1610.6-2(c), and requires the Director to notify protesting parties of the dismissal and provide the reasons for the dismissal.

**Section 1610.6-3 Conformity and Implementation**

### Implementation Strategies

**Comment:** A few comments suggested that § 1610.6-3 explicitly state that the requirement that implementation strategies conform to plan components. One comment stated that implementing strategies must conform to plan components in § 1610.6–3 of the proposed rule.

**Response:** The final rule does not adopt proposed § 1610.1-3 and the term “implementation strategy” has been removed from the final rule in response to public comment. However, future resource management authorizations and actions, and subsequent more detailed or specific planning, shall conform to the plan components of the approved resource management plan.

### Valid Existing Rights (§ 1610.6-3(b))

**Comment:** One comment supports the requirement to bring existing contracts, leases, and rights-of-way into conformity with a plan adoption or change, subject to valid existing rights.

**Response:** Final § 1610.6-3(b) adopts this requirement, which is based on existing § 1610.5-3(b) with minor modifications to improve readability and for consistency with the rest of this rule.

**Comment:** A few comments supported the recognition of valid existing rights in the proposed planning rule, because according to law and policy, the BLM does not have the authority to impose new stipulations or mitigation measures (*e.g.*, conditions of approval) that exceed the existing terms and conditions of a lease. As such, some of these comments suggested that § 1610.6-3 of the final rule clearly state that new restrictions in resource management plans and plan amendments will apply only to new leases and will not apply to lands already under

lease, and that the BLM has no authority to impose these new restrictions on existing leases if they would abrogate valid existing rights. These comments also urged the BLM to retain provisions from the existing regulation at § 1610.5-3(b), and included in the proposed rule at § 1610.6-3(b), which recognize the requirement that existing land uses conform to new provisions, subject to valid existing rights.

**Response:** The BLM will continue to comply with valid existing rights. Final § 1610.6-3(b) instructs the BLM to take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements, or other instruments for occupancy and use, conform to the plan components of the approved resource management plan or plan amendment within a reasonable period of time. These changes must be otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use.

The final rule does not adopt the suggested language to state that new restrictions in resource management plans or plan amendments only apply to new leases, and not apply to lands already under lease. Applicability of resource management plans and plan amendments to existing instruments will be based on applicable laws, regulations, contracts, permits, cooperative agreements, and other instruments of occupancy and use. The requirements of final § 1610.6-3(b) adequately address valid existing rights in the procedures for developing and amending land use plans and appropriately provide the BLM flexibility to apply the appropriate standards based on individual circumstances.

#### **Section 1610.6-4 Monitoring and Evaluation**

### Adaptive Management

**Comment:** Several comments requested that the final rule include language that requires the BLM to adopt a monitoring and evaluation approach that ensures an adaptive management structure and is integrated into all monitoring and evaluation processes. One comment specifically stated that the planning rule should commit the BLM to adaptive management indicators that trigger an agency response if thresholds were exceeded.

**Response:** The final rule requires the BLM to establish measurable objectives, which include indicators, as appropriate, for evaluating progress towards achieving the objective. The BLM believes these requirements will support the use of adaptive management, as a measurable objective could identify a threshold that triggers a response, such as a plan amendment. If such a threshold is identified as part of an objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met. The preamble discussion for final § 1610.1-2 references the DOI Adaptive Management Technical Guide, which describes the process for applying adaptive management. Adaptive management is a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Adaptive management requires explicit and measurable objectives so that progress toward their achievement can be assessed, and performance that deviates from objectives may trigger a change in management. Adaptive management also requires flexibility to change management actions when necessary. The final rule supports the use of these types of adaptive approaches, while still providing direction in resource management plans regarding the areas of public lands available for use, and the goals and objectives to be achieved, as directed by FLPMA.

For example, the final § 1610.1-2(b)(3) adds a provision that monitoring and evaluation standards be established in the resource management plan that identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant an amendment or revision to the plan. If the indicators show that objectives of the plan are not being met, management approaches will be changed accordingly. These management approaches may involve management actions, which are not plan components (see preamble discussion of proposed § 1610.1-3), in which case the BLM would conduct appropriate environmental review under NEPA, but would not undertake a plan revision or plan amendment. Alternatively, the BLM may determine as part of its evaluation under final § 1610.6-4(a)(2) that this constitutes relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

**Comment:** Several comments asserted that the proposed rule fails to improve monitoring, evaluation, and adaptation by lacking specificity in how monitoring and adaptive management will be conducted. The proposed rule – unlike the Greater Sage-Grouse amendments, which made good strides in describing monitoring and adaptive management – essentially reiterates the current requirements for monitoring and evaluation, and fails to offer more detailed guidance on how monitoring and evaluation at the implementation level should be used to trigger revisions. In addition, the proposed language lacks a definition of “indicators.” The final rule, therefore, should reflect the BLM’s commitment to promote landscape-level planning, adaptive management and give priority to Areas of Critical Environmental Concern by explicitly requiring the development of an adaptive management strategy for resource management plans. Further, the BLM needs to ensure that all subsequent plan monitoring and

evaluation formulas articulate a detailed strategy for using monitoring data and analyses. Finally, the following definition of “indicator” was provided: “[a] measurable entity related to a specific information need such as the status of a target/factor, change in a threat, or progress toward an objective. A good indicator meets the criteria of being: measurable, precise, consistent, and sensitive” (Conservation Measures Partnership 2013).

**Response:** The final rule does not establish specific guidance for monitoring and evaluation. The specificity for monitoring and evaluation for the purposes of adaptive management should be determined at the planning stage for a resource management plan when information specific to the planning area is available. As discussed in the preamble for § 1610.1-2, the final rule requires the BLM to establish measurable objectives and use monitoring and evaluation to guide adaptive management strategies to help manage for uncertainty. The final rule includes plan components that will help guide management actions within the planning area.

Final § 1610.1-2(a)(2)(iii) establishes a requirement that objectives identify indicators for evaluating progress toward achievement of an objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives, which will be defined in each resource management plan, should align with the indicators as described in the monitoring and evaluation standards. The final rule supports an adaptive management approach, and allows the BLM to determine if the plan objective is being met through monitoring and evaluation.

The final rule does not adopt the recommended definition of “indicator.” Final § 1610.1-2 provides sufficient guidance on the required contents of an indicator. The BLM expects to develop further, resource-specific guidance on how to develop indicators as part of the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment asserted that the planning rule must provide sideboards governing the circumstances under which departure from resource management plan provisions through adaptive management is allowable. Further, monitoring should be undertaken in a systematic, repeatable, and scientifically rigorous fashion, which should be required in the planning rule.

**Response:** As discussed in the preamble for § 1610.1-2, the final rule requires the BLM to establish measurable objectives and use monitoring and evaluation to guide adaptive management strategies to help manage for uncertainty. Adaptive management requires explicit and measurable objectives so that progress toward their achievement can be assessed, and performance that deviates from objectives may trigger a change in management. Among other things, resource management plans, per final § 1610.1-2(b), shall include monitoring and evaluation standards that identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met. The final rule does not adopt the recommendation to specifically state that monitoring should be undertaken in a systematic, repeatable, and scientifically rigorous fashion; however, the final rule requires that the BLM use high quality information, which is defined as being accurate, reliable, and unbiased. Lastly, the BLM will comply with any monitoring requirements established by program-specific policy and guidance.

The final rule provides sufficient sideboards governing the circumstances under which the BLM may use adaptive management. Final § 1610.6-3(a) requires that all resource management authorizations and actions, and subsequent more detailed or specific planning, shall conform to the plan components of the approved resource management plan. Final §§ 1610.6-5, 1610.6-6, and 1610.6-7 present the criteria and procedures for maintenance, amendment, and

revision. These represent the three ways to change resource management plans. Maintenance shall not change a plan component of the approved resource management plan, except to correct typographical or mapping errors or to reflect minor changes in mapping or data. Changes to plan components, beyond corrections of typographical or mapping errors or to reflect minor changes in mapping or data, must be completed through a resource management plan revision or plan amendment. This provides adequate sideboards. The final rule supports the use of adaptive management approaches, while still providing firm direction in resource management plans regarding the areas of public lands available for use, and the goals and objectives to be achieved.

**Comment:** One comment suggested that § 1610.6-4 contain additional information, such as requiring review of (1) objectives, (2) indicators relative to indicator thresholds within a certain period of time (for example, every 5 years), and (3) describing what will be done if indicator thresholds are crossed. Further, the BLM should be monitoring what they can change and be clear about how these thresholds will link to adaptive management actions.

**Response:** Final § 1610.6-4 is revised to include paragraph (a)(1), which requires monitoring and evaluation to consider whether resource management plan objectives are being met. Monitoring will be based on the plan components developed under final § 1610.1-2, specifically objectives, which include indicators for evaluating progress toward achievement of the objective (§ 1610.1-2(a)(2)(iii)); and monitoring and evaluation standards, which identify indicators and intervals for monitoring and evaluation (§ 1610.1-2(b)(3)). Because these are included in final § 1610.1-2, it would be redundant to include them in § 1610.6-4 as well.

The final rule does not adopt the recommendation to describe what will be done if indicator thresholds are crossed. The proper course of action will depend on site- or resource-specific contexts, as well as available resources and priorities. The final rule does not require the

use of thresholds when establishing objectives, but, if determined appropriate as part of the planning process, the BLM could establish thresholds as part of the objectives. A measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold is identified as part of a measurable objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met. Please see the preamble discussion of § 1610.1-2(a)(2) for more information.

**Comment:** One comment suggested that § 1610.6-4 address the following: (1) achievement of objectives, (2) required intervals for publishing monitoring results, (3) location for publishing monitoring results, and (4) how the BLM will respond to monitoring and evaluation.

Another comment suggested the following language to address some of these points: “(a) The BLM will monitor and evaluate the resource management plan to determine whether the goals and objectives set out in the plan as provided under § 1610.1-2(a)(1) and (2) are being achieved. (b) The BLM will publish the results of its monitoring program for each resource management plan not less than every two years. These results will be made available to the public promptly on the BLM website in a format that will allow interested parties to readily ascertain whether the plan’s goals and objectives are being achieved. (c) If the BLM finds, based upon the information provided by its monitoring and evaluation program, that the goals and objectives are not being achieved as intended under any resource management plan, the agency will promptly take appropriate action to mitigate any unintended adverse impacts that occurred. In addition, the BLM will take one of the following actions within 180 days from publication of its findings: (1) Propose amendments to the resource management plan, including the designation of new ACECs, including restrictions on activities previously authorized under the

plan, as may be necessary to achieve the goals and objectives set out in the plan. (2) Propose amendments to the resource management plan to change the goals and objectives in the plan that the BLM believes can be realistically achieved, but only after the BLM determines that different goals and objectives are appropriate for the planning area and that the goals and objectives for the plan are not being revised to accommodate activities that are harmful to public land resources and that could have been restricted to achieve the goals and objectives outlined in the original plan. (d) If the BLM fails to promptly mitigate any unintended adverse impacts or fails within 180 days from the publication of its findings to take action under subsection (c) of this section, any interested party may petition the BLM to take appropriate action. The BLM will respond in writing to any such petition within 90 days and shall either: (1) Promptly commence a process for carrying out mitigation and/or amending the plan as provided under subsection (c) of this section, or (2) Explain why no further action is warranted. (e) Any proposal to amend the resource management plan as provided under this section will be carried out in compliance with NEPA and will include an opportunity for meaningful public participation.”

**Response:** Final § 1610.6-4 is revised to include paragraph (a)(1), which requires the BLM to monitor and evaluate the resource management plan to determine whether the resource management plan objectives are being met. Although the final rule does not adopt the exact language proposed, it meets the intent of the comment.

Final § 1610.6-4(b) requires the BLM to document the evaluation of the resource management plan in a report made available for public review on the BLM’s Website. The final rule does not adopt the recommendation to set a timeframe for publication of this evaluation, as the monitoring and evaluation will be based on the monitoring and evaluation standards

developed as part of the plan components. Please see the preamble discussion of § 1610.1-2(b)(3) for more information.

The final rule does not adopt the recommendation to describe what will be done if indicator thresholds are crossed. The proper course of action will depend on site- or resource-specific contexts, as well as available resources and priorities. The final rule does not require the use of thresholds when establishing objectives, but, if determined appropriate as part of the planning process, the BLM could establish thresholds as part of the objectives. A measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold is identified as part of a measurable objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met. Please see the preamble discussion of § 1610.1-2(a)(2) for more information.

Final § 1610.6-4(b) is revised to specify that evaluation reports shall be available to the public on the BLM Website.

#### *Amendment and Revision*

**Comment:** One comment expressed that the final rule should clarify when monitoring and evaluation information requires an amendment or revision.

**Response:** Final § 1610.6-6 states that an amendment may be initiated when, among other things, the BLM determines that monitoring and evaluation findings warrant a change to one or more of the plan components of an approved resource management plan. Final § 1610.6-7 states that the BLM may revise a resource management plan when, among other things, monitoring and evaluation findings affect the entire resource management plan or major portions of the resource management plan. However, the rule does not make amendment or revision mandatory based on monitoring and evaluation. The proper response to monitoring and

evaluation results will depend on site- or resource-specific contexts, including the plan components in the approved resource management plan, as well as available resources and priorities.

Planning Assessment

**Comment:** One comment stated that § 1610.6-4 should reflect that the monitoring of resources be conducted in a manner consistent with, and reflecting coordination with, the data that was used to input and develop the plan. Further, the database for the plan must become the baseline for the plan going forward.

**Response:** Through the planning assessment process, the BLM will, among other things, arrange for relevant data and information to be gathered concerning resource, environmental, ecological, social, or economic conditions of the planning area (§ 1610.4(b)(1)). As part of the planning assessment, the BLM will evaluate the data and information gathered to assess conditions of the planning area. This information will be summarized in a report and made available for public review. The resource management plan will be informed by the planning assessment (§ 1610.5-4(a)). This will include the plan components, such as objectives and indicators towards the achievement of those objectives (§ 1610.1-2(a)(2)(iii)) and monitoring and evaluation standards (§ 1610.1-2(b)(3)).

However, the BLM understands that additional information may become available through scoping, feedback on preliminary alternatives, and comments on the draft resource management plan, and it would not be appropriate to limit indicators or monitoring and evaluation standards to information gathered through the planning assessment. Similarly, while the planning assessment will inform the affected environment for the NEPA analysis, it is not appropriate to limit it to the assessment.

The BLM expects the forthcoming Land Use Planning Handbook revision to develop guidance to use the same indicators in the planning assessment as in monitoring, however, it is possible through the development of a resource management plan that the BLM may discover a different indicator is more appropriate. In this situation, we would not want to limit the BLM's ability to use the most appropriate indicator. This type of guidance is more appropriate for the revised Land Use Planning Handbook, rather than regulation.

#### Coordination and Consistency

**Comment:** Several comments proposed that final § 1610.6-4 include components of existing § 1610.4-9 requiring BLM to determine “whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes...” to warrant amendment or revision.

**Response:** The final rule is not revised to adopt this language. There are many different circumstances to warrant an amendment (see § 1610.6-6) or revision (see § 1610.6-7) to a resource management plan. Significant changes to related plans would be considered as relevant new information under § 1610.6-4(a)(2). Moreover, an objective of coordination is for the BLM to keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes. Please see the preamble discussion of § 1610.3-2(a)(1) for more information.

#### Evaluations

**Comment:** One comment expressed that the BLM can improve their ability to respond to social and environmental changes in a timely manner by frequently updating their land use plan evaluations and ensure evaluations are completed within the prescribed timeframes.

**Response:** Monitoring and evaluation of resource management plans will occur at intervals established in the resource management plan. Per § 1610.1-2(b)(3) of the final rule, resource management plans are required to establish monitoring and evaluation standards that identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan. Final § 1610.6-4 requires the BLM to monitor and evaluate the resource management plan in accordance with these monitoring and evaluation standards and document the evaluation in a report made available for public review on the BLM's Website.

#### Grazing

**Comment:** One comment asserted that eliminating grazing allotment specific monitoring is not helpful in the long run.

**Response:** The final rule does not eliminate grazing allotment specific monitoring. §§ 1610.1-2(b)(3) and 1610.6-4 concern monitoring and evaluation based on plan components. Monitoring and evaluation standards will be developed through the planning process. Additionally, the final rule does not prevent the BLM from instituting more specific monitoring programs to support implementation-level decisions, such as livestock grazing permits, or monitoring associated with a right-of-way.

#### Public review

**Comment:** One comment expressed support of the proposed changes to allow public review after the resource management plan is completed at the monitoring and evaluation stage and also at the plan maintenance stage.

**Response:** The final rule adopts these requirements at final §§ 1610.6-4 and 1610.6-5.

**Comment:** Several comments expressed concern that new reporting requirements could lead to further litigation and increase existing delays to leases, project-level NEPA, permits to drill and other revenue generating activities. Similar issues have arisen for the Forest Service over the issuance of “management indicator species” monitoring reports. Therefore, the BLM should reconsider this requirement by making the issuance of a monitoring report more flexible and not mandatory.

**Response:** The final rule retains the requirement under § 1610.6-4 that the responsible official document the evaluation of the resource management plan in a report made available for public review on the BLM’s Website. The BLM believes that sharing this information with the public is an important component of transparent implementation of a resource management plan and should not result in undue delays.

#### *Monitoring and Evaluation Standards*

**Comment:** One comment suggested that monitoring and evaluation be an annual activity to assure the public that progress is being made. Doing so also helps prioritize funding and staffing allocations. For example, the Casper field office uses an implementation matrix in their annual review that seems suitable. Therefore, the BLM should create annual reports based on monitoring information.

**Response:** Annual monitoring is not necessary for all resources. Some resources have minimal impacts and/or the dynamics of the resource are well understood. Annual monitoring for these resources would not be an appropriate use of funding. For other resources, greater than annual monitoring may be necessary. The final rule provides flexibility to make the determination on the appropriate interval for monitoring during the planning process. Under final § 1610.1-2(b)(3), monitoring and evaluation standards must be established in a resource

management plan that identify indicators and intervals for monitoring and evaluation to determine whether the plan objectives are being met or there is relevant new information that may warrant amendment or revision of the plan. Generally, the BLM conducts a comprehensive plan evaluation every 5 years under current practice.

**Comment:** Several comments stated that the BLM must clarify that monitoring and evaluation standards are subject to agency funding and priorities and are not obligations enforceable under 5 U.S.C. 706(1). Under *Norton v. Southern Utah Wilderness Alliance*, the Supreme Court held that monitoring commitments in a Utah resource management plan could not be compelled of the BLM. Funding must be appropriated to accommodate successful monitoring and adaptive management and the BLM cannot commit to monitoring and evaluation obligations over the 10-20 year life of a resource management plan without congressionally appropriated funds. Comments suggested the following additions to § 1610.1-2(b)(3):

“Monitoring and evaluation standards. Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to ‘assist the BLM to assess and’ determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan. ‘Implementation of monitoring and evaluation standards are subject to appropriation of necessary funds and agency priorities and are not intended to be enforced by third parties.’”

**Response:** The final rule does not adopt the recommended language. The BLM recognizes that the implementation of monitoring and evaluation may depend on factors outside of the BLM’s control, including available staffing and budgets. The intent of this plan component is to guide the BLM in prioritizing available staffing and budgets in order to achieve the goals and objectives of the plan most effectively. As discussed in the preamble, the BLM

does not intend that monitoring and evaluation standards or other plan components be discrete agency actions that the BLM is required to take.

**Comment:** One comment asserted that the final rule should provide standards for monitoring programs to be included in all planning documents that would require past, current and future trends measured relative to goals and objectives and implementation strategies, particularly with respect to fish and wildlife. Monitoring and evaluation standards should include assurances that failure to conduct requisite activities will have enforceable consequences for the agency.

A few comments expressed that the final rule should provide examples of monitoring standards that could be applied at the land use management plan level, as well as stepped-down requirements for monitoring on the management or implementation level.

**Response:** The final rule is not revised to include examples monitoring and evaluation standards. Under § 1610.1-2(b)(3) of the final rule, monitoring and evaluation standards will include “indicators and intervals for monitoring and evaluation to determine whether the objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.” Indicators and intervals for monitoring will be tied directly to the measurable objectives to clearly indicate how each objective will be measured and how often it will be measured. Monitoring and evaluation standards are unique to each area and resource and will be established in a resource management plan available for public review and comment. The BLM expects the revised Land Use Planning Handbook to contain additional guidance and examples of monitoring standards, including indicators and intervals for specific resources.

The final rule does not adopt the recommended language. The BLM recognizes that the implementation of monitoring and evaluation may depend on some factors outside of the BLM's control, including available staffing and budgets. The intent of this plan component is to guide the BLM in prioritizing available staffing and budgets in order to achieve the goals and objectives of the plan most effectively.

**Comment:** One comment agreed that the agency need only consider “key” attributes and indicators for monitoring and evaluation, and that monitoring and evaluation standards focus on specific resources that have unique or special value or status. In addition, the BLM needs to recognize where opportunities already exist to utilize existing monitoring or evaluation data provided to or collected by the BLM, in addition to similar monitoring or evaluation data collected by other Federal, State, and local agencies. Unnecessary and inappropriate costs, conflicts, or delays can be avoided if the BLM's framework for resource monitoring and evaluation utilizes standards, data systems, and methods that have already been established and are managed by other Federal, State, and local agencies.

**Response:** Final § 1610.1-2(b)(3) requires monitoring and evaluation standards to include “indicators and intervals for monitoring and evaluation to determine whether the objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.” Indicators and intervals for monitoring will be tied directly to the measurable objectives to clearly indicate how each objective will be measured and how often it will be measured. Monitoring and evaluation standards are unique to each area and resource and will be established in a resource management plan available for public review and comment. As will be described in §§ 1610.2 and 1610.3 of the final rule, the BLM agrees that providing meaningful opportunities for other Federal agencies, State and local governments,

tribes, and stakeholders to be involved in the development of resource management plans is important for efficient and effective monitoring, evaluation, and data sharing.

### **Section 1610.6-5 Maintenance.**

#### Limits

**Comment:** A few comments expressed that the following language from § 1610.5-4 in the existing regulation should not be removed by the final rule in order to make it clear the limits of a plan maintenance action: “Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan.” This existing language would replace the proposed “except to correct typographical or mapping errors or to reflect minor changes in mapping or data.”

**Response:** Final § 1610.6-5 adopts the language from proposed § 1610.6-5, and not the existing language from existing § 1610.5-4. The final rule states that maintenance must not change a plan component of the approved resource management plan except to correct typographical or mapping errors or to reflect minor changes in mapping or data. This change makes the maintenance provisions consistent with other changes to the regulations. The plan components encompass the “scope of resource uses or restrictions” and the “terms, conditions, and decisions” of the approved resource management plan (see § 1610.1-2). This does not represent a substantive change in policy, but is necessary to create consistency with other sections of the final rule.

#### Maintenance

**Comment:** One comment recommended the BLM define “minor changes” for the purposes of clarity and consistency. A few comments suggested changing the language in the

first sentence to read: “Resource management plans may be maintained as necessary to reflect minor changes,” and then suggested that “minor change” be defined in the definitions section of the rule. The following was provided as the suggested definition for “minor change”: “means a technical, editorial, or non-substantial factual correction that does not result in any change in the scope of resource uses or restrictions, or change terms, conditions, or decisions of the approved plan.”

**Response:** Final § 1610.6-5 does not adopt this recommendation. A minor change is a non-substantive change to the plan component as established in an approved resource management plan. The term “minor change” is contained in existing § 1610.5-4 and did not include a definition. This term is carried forward in final § 1610.6-5, stating that resource management plans may be maintained as necessary to correct typographical or mapping errors or to reflect minor changes in mapping or data. A definition will not be provided in the final rule; however, the BLM believes that final § 1610.6-5 adequately describes the applicability of maintenance actions. Please see the definition of “plan maintenance” in the preamble discussion of § 1601.0-5 for more information.

The final rule makes clear what types of changes will constitute maintenance— changes to correct for typographical or mapping errors or to reflect minor changes in mapping or data. A minor change is a non-substantive change to the plan component as established in an approved resource management plan.

**Comment:** One comment suggested that the language in this section should be clarified to confirm that any changes to the plan will not result in substantive changes. The comment expresses an understanding regarding the need to maintain current data and information, but there needs to be clarity in terms of the extent the plan can be changed. Therefore, the final rule

should clarify the language in this section to confirm that any changes to the plan will not result in substantive changes.

**Response:** This section of the final rule clearly states that “maintenance shall not change a plan component of the approved resource management plan, except to correct typographical or mapping errors or to reflect minor changes in mapping or data.” Such changes are not considered substantive in nature. The final rule does not adopt the recommended language because the final rule is more precise and provides clearer guidance on what constitutes plan maintenance, and what requires a plan amendment under final § 1610.6-6.

**Comment:** One comment expressed support for the plan maintenance section as proposed.

**Response:** Final § 1610.6-5 adopts the proposed language with minor edits.

#### *Documentation of Maintenance*

**Comment:** A few comments expressed that the following language from § 1610.5-4 in the existing regulation should not be removed from the final rule: “Maintenance shall be documented in plans and supporting records.”

**Response:** The language will not be included in the final rule at this section. Instead, a new requirement will be added for the BLM to notify the public when changes are made to an approved resource management plan through plan maintenance and make those changes available to the public at least 30 days prior to implementation. The BLM anticipates that changes will be posted on the BLM Website and made available at BLM offices within the planning area, with direct notice sent to those individuals and groups that have requested such notice. The BLM expects the forthcoming revision of the BLM Land Use Planning Handbook

will provide more detailed guidance on how the BLM will make different types of plan maintenance available to the public.

*Public Review and Coordination*

**Comment:** A few comments expressed that, for maintenance, the BLM should be required to consider and respond to the comments or disclose the comments received. Not responding or disclosing comments received for resource management plan maintenance actions may result in one sided comments outside of public review and also does not recognize the BLM's coordination requirements with State and local governments. One comment suggested adding additional language in the sections on plan maintenance and revision to provide greater clarity on timelines, review, and public engagement throughout the life of the plan.

One comment expressed support for notifying interested parties of plan maintenance (for those who requested notice) in addition to posting it on the BLM Website and through other conventional notification methods. However, the comment suggested that the BLM Land Use Planning Handbook should specify procedures for notifying the public of plain maintenance actions.

**Response:** Maintenance shall not require formal public involvement and interagency coordination, as is required for a plan amendment or plan revision. However, when changes are made to an approved resource management plan through maintenance, the BLM shall provide advanced notice of the changes by notifying the public and making the changes available for public review at least 30 days prior to their implementation. Advanced public notice and review of maintenance was not required in the existing regulation at § 1610.5-4, and through the proposed rule, the BLM is committed to sharing with the public these changes for increased transparency. However, responding to comments for every typographical or minor mapping or

data change would place an undue burden on the agency. Because plan maintenance will not change a plan component, except to correct typographical or mapping errors or to reflect minor changes in mapping or data, it is not necessary to create additional procedures and timelines for review and public engagement.

### **Section 1610.6-6 Amendment**

#### General Comments

**Comment:** One comment expressed that the rule should inform the public about the process for amending a plan's components once it has been adopted.

**Response:** The plan amendment process is generally described in final § 1610.6-6. As § 1610.6-6 specifies, when amending the plan components of a resource management plan, the BLM shall provide for public involvement (see § 1610.2), interagency coordination, tribal consultation, consistency review (see § 1610.3), and protest (see § 1610.6-2).

#### Adaptive Management

**Comment:** One comment expressed support for identifying and utilizing known resource thresholds and acknowledging that the agency can trigger a plan amendment if a threshold is exceeded; however, the BLM needs contingency plans given limited resources. The BLM should, therefore, develop contingency plans. For example, the plans should specify something like 'once X trigger is reached, Y shall take effect until Z provision is met'. Also, this comment noted that the planning assessment would set up a very extensive, transparent baseline of data prior to plan development but included concerns that the proposed process seems time consuming and that the BLM's often limited resources may affect its ability to complete this task well.

**Response:** The final rule does not adopt the recommendation to describe what will be done if indicator thresholds are crossed. The course of action will depend on site- or resource-specific contexts, as well as available resources and priorities. The final rule does not require the use of thresholds when establishing objectives, but, if determined appropriate as part of the planning process, the BLM could establish thresholds as part of the objectives. A measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold is identified as part of a measurable objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met. However, the BLM believes that these measures are best developed as part of the planning process due to the variability in geographic scope, public concern, resource conditions, and planning issues. Therefore, the recommended change is not appropriate in the final rule. Please see the preamble discussion of § 1610.1-2(a)(2) for more information.

The BLM believes that the planning assessment, including the opportunities for public involvement, will create a more efficient planning process by providing an opportunity to identify information before initiating the planning process. Please see the preamble discussion of final § 1610.4 for more information.

#### Planning Area

**Comment:** One comment included concerns about plan amendments having different planning areas from the original resource management plan. This could result in one piece of land having overlapping plans resulting in multiple land management efforts encompassing a single piece of land. Therefore, further explanation is needed in the rule to address the noted issues

**Response:** It is already a common practice for resource management plans and amendments to have overlapping planning areas. The BLM may amend multiple plans with one amendment in response to an issue that crosses traditional administrative boundaries. Planning at multiple scales, and thus across planning areas, may be necessary to resolve issues for a geographic area that are different from the planning area for a resource management plan. For example, if broad-scale (*i.e.*, regional) analysis identifies issues such as invasive weeds that cross BLM field office boundaries (which normally correspond with planning areas) or other jurisdictional boundaries, desired outcomes and management actions in a planning area may be described and addressed in the context of the broader landscape, which may cross other planning areas. This helps the BLM to understand priority resource issues, tailor decisions to specific needs and circumstances, and analyze cumulative impacts. The BLM expects the overlap of planning areas will be described in more detail in the revised BLM Land Use Planning Handbook.

#### Public Involvement

**Comment:** One comment expressed opposition to any changes to the resource management plan after its adoption without public participation. The public should have an opportunity to influence changes to a resource management plan through public involvement.

**Response:** Changes to a resource management plan may be made through maintenance (§ 1610.6-5), amendments (§ 1610.6-6), or revisions (§ 1610.6-7). Each process shall provide for public notification and shall be consistent with the principles described in FLPMA. In the case of an amendment, as described in this section, the BLM shall provide for public involvement (see § 1610.2); interagency coordination, tribal consultation, consistency review (see § 1610.3); and protest (see § 1610.6-2).

### Relationship to Revisions

**Comment:** One comment included a request that the BLM should clarify the difference between amendment and revision. There is a subtle difference and some clarification would be beneficial.

**Response:** Final § 1601.0-5 contains definitions for the terms “plan amendment” and “plan revision.” The definition of “plan amendment” is modified to clarify that a plan amendment means when there is a change to one or more plan components within a resource management plan. A plan revision means when there is a change to an entire resource management plan or to major portions of a resource management plan (see § 1610.6-7). Preparation or development of a resource management plan includes plan revisions.

### Initiating an Amendment (§ 1610.6-6(a))

**Comment:** One comment expressed concern about the language in the rule stating that an amendment may be initiated when “relevant changes in circumstances...[warrant] a substantive change in management direction.” This language is worrisome for those in areas where conditions of the landscapes are tumultuous and change frequently. This could greatly impact the access to grazing from public scrutiny.

**Response:** The language in proposed § 1610.6-6(a) states: “An amendment may be initiated when the BLM determines monitoring and evaluation findings, new information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan.” This language is adopted in the final rule. If changes to conditions prevent the BLM from meeting its objectives as established in the resource management plan, an amendment may be necessary.

**Comment:** One comment recommended that the BLM not be able to decide whether to initiate an amendment based on available money and resources, particularly if there is resource deterioration. If one or more of the factors determining the necessity of an amendment is present, then the amendment process must be initiated for the purpose of limiting ongoing damage to the resource, the community, and the local economy. If this type of decision has to be made on a frequent basis, it is a reflection upon the Director's ability to develop and adequately support the Bureau's budgetary requests before Congress.

One comment expressed support for the BLM establishing rules requiring the BLM to supplement the resource management plan when significant new information is presented.

**Response:** Changes in resource, environmental, ecological, social, economic and other conditions across all BLM lands for the purposes of implementing resource management plans are taken into account when formulating budget requests for Congress. However, the BLM cannot reasonably predict future budgets. Funding in any given year is allocated based on the most pressing resource needs. An amendment in an area where the need is not immediately pressing may be postponed if there are other higher priority amendments that need to be accomplished.

Final § 1610.6-6(a) sets out the standards the BLM will use to determine whether to consider initiating an amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. In these situations, an amendment (not a supplement) will be considered, but not required.

**Comment:** One comment suggested that “cultural” be added to the second sentence for the changes that would be considered (in addition to “resource, environmental, ecological, social, or economic conditions”) that would warrant a change to one or more of the plan components of an approved resource management plan. The comment also suggested that an amendment should be made in conjunction with “review and consultation under section 106 of the National Historic Preservation Act.”

**Response:** Final § 1610.6-6(a) is not revised to include the term “cultural.” Cultural resources are encompassed by the inclusion of resource characteristics and therefore the inclusion of this term, or other specific resources, is not necessary. The list of items presented in the rule at this section are not meant to be inclusive but only provide an example of other relevant changes or circumstances that may warrant a change to one or more of the plan components of the approved resource management plan. The suggested language to include review and consultation under section 106 of the National Historic Preservation Act will not be included in the final rule at this section. Such action would be taken through interagency coordination, tribal consultation, consistency review (see § 1610.3) as will be discussed in this section of the final rule.

*National Environmental Policy Act Review (§ 1610.6-6(b))*

**Comment:** One comment expressed support for plan amendments developed under this rule following NEPA procedures with additional steps on a case-by-case basis. It includes the view that resource management plans developed through this rule will have gone through a rigorous process so that minor changes to those plans should not require a NEPA assessment or additional steps on a case-by-case basis; however, for those plans not developed under the rule, then the process should be followed. The planning process described in the proposed rule is

rigorous; therefore plans developed under this rule and requiring amendments may not require planning assessments. Therefore, the BLM should develop more formal guidance for practitioners to decide when amendments would require a more formal review such as when monitoring indicates that a resource threshold has been crossed.

**Response:** Plan amendments are Federal actions, which require evaluation under NEPA. That requirement is established by NEPA, and cannot be changed by this regulation. If the BLM prepares an EA and that EA does not disclose significant impacts, the responsible official may make a finding of no significant impact and then make a recommendation on the amendment to the deciding official for approval. If the BLM cannot make a finding of no significant impact, it will evaluate a plan amendment through an EIS. The BLM expects the forthcoming Land Use Planning Handbook revision to include further guidance for implementing the final rule.

**Comment:** One comment included a concern that the BLM can conduct a plan amendment with only an EA, and worried that even overarching plan goals will be “adapted” with little public notice or input in order to accommodate a single project. This comment suggested that all resource management plan amendments and revisions require the preparation of an EIS.

**Response:** The BLM may only amend a resource management plan evaluated with an EA if the responsible official reaches a finding of no significant impact. If a plan amendment will have a significant impact, it must be evaluated with an EIS. This is consistent with existing §§ 1610.5-5(a) and 1610.5-5(b). When amending a resource management plan, the BLM shall provide for public involvement (see § 1610.2), interagency coordination, tribal consultation, consistency review (see § 1610.3), and protest (see § 1610.6-2) regardless of the level of NEPA compliance. The BLM must follow all of the requirements for preparing an approving a resource

management plan when revising a resource management plan (§ 1610.6-7). This includes the requirement that the BLM prepare an EIS for a resource management plan, as specified in § 1601.0-6.

**Comment:** One comment opposed deleting language in current § 1610.5-5 that provides that the scope of an EIS for an amendment “shall be limited to that portion of the plan being considered for amendment.” The comment asserted that deleting the language is not consistent with current practices and NEPA requirements. Therefore, the BLM should clarify that EISs for plan amendments will be limited to evaluating the effects of the proposed amendment.

**Response:** Final § 1610.6-6 does not include this language from the existing regulations. This statement contradicts the requirement from final § 1610.6-6(a), that “[i]n all cases, the effect of the amendment on other plan components shall be evaluated.” For example, if an amendment precludes the BLM from achieving other goals and objectives of the approved resource management plan that are not explicitly addressed in the amendment, this is important information for the BLM to be aware of. In addition, the scope of an EIS may not be limited to the area being considered for amendment, such as a cumulative effects analysis, which would consider a larger area. The BLM will base the scope of its NEPA review on the purpose and need and planning issues identified, consistent with NEPA regulations and policy.

*Programmatic Plan Amendments (§ 1610.6-6(c))*

**Comment:** One comment expressed that large programmatic plans such as the Wind Energy Development Programmatic EIS, Vegetation Treatments Programmatic EIS, Solar Energy Development Programmatic EIS, among others, can sometimes essentially amend the original resource management plan and that they are often not well announced to stakeholders

and have little public involvement. These top-down plans amend local plans and disrupt the harmonious and coordinated management required.

**Response:** Final § 1610.6-6(c) acknowledges that the BLM may amend several resource management plans simultaneously, and prepare a single programmatic EIS or EA. This provision is also contained in existing § 1610.5-5(b). As stated in § 1610.6-6(a), those amendments would still be required to provide for public involvement (see § 1610.2), intergovernmental coordination, tribal consultation, consistency review (see § 1610.3), and protest (see § 1610.6-2). Amendments would also be required to evaluate the effect of the amendment on other plan components. As a goal of Planning 2.0, the BLM is committed to increasing public involvement in its planning processes. Final § 1610.2-1(c) requires the BLM to announce opportunities for public involvement by posting a notice on the BLM's Website, at all BLM offices within the planning area, and at other public locations, as appropriate. Further, the responsible official is required to identify additional forms of notification to reach local communities within the planning area. These requirements apply to large programmatic planning amendments.

### **Section 1610.6-7 Revision**

#### *Initiating a Revision*

**Comment:** A few comments opposed the BLM's discretion in deciding whether to revise a resource management plan based on budgets and resources. This could lead to increased environmental degradation, or increased harm to local economies. Making planning revisions discretionary based on things like workload priorities and budgets will create an incentive to not update resource management plans or to allow for stalling of resource management plan revisions until the plan is woefully out of date. The comments recommended that the BLM

should keep the language as currently written for revisions, which states that resource management plans shall be revised as necessary. Furthermore, the BLM should add a requirement that resource management plans must be revised every 10-15 years. Finally, the BLM should keep the existing timeframe for updating plans as an aspirational goal at least.

One comment included the view that the BLM is currently deciding whether to revise a resource management plan based on budget and resources, without authority. This significant change in rule is a catching-up exercise. This is an unacceptable approach to doing business. The BLM needs authority to change a practice before actually changing the practice.

**Response:** FLPMA provides the BLM with the authority to revise resource management plans and the discretion to determine when revisions are necessary and appropriate. Final § 1610.6-7 is consistent with existing § 1610.5-6, which both leave the decision to revise a resource management plan to the BLM's discretion. Although the final rule adopts the proposal to change the mandatory term "shall" to the discretionary term "may" in both the existing regulations and this final rule, revisions occur "as necessary." The change from "shall" to "may" reflects the fact that the BLM must consider many factors including available budgets, competing workload priorities, and development of new policy when making the determination to revise a resource management plan. The BLM currently must take these factors into account when determining when to revise a resource management plan, so there is no change in practice or policy. The BLM does not currently require that resource management plans be revised after a specific period of time.

In addition to revision, the BLM can employ other tools to ensure that a resource management plan is up-to-date and meeting its objectives, such as maintenance and amendment, as discussed in §§ 1610.6-5 and 1610.6-6, respectively. To require that a plan be revised every

15 years is not feasible given the unpredictability of future budgets and competing resource issues.

### Public Involvement

**Comment:** One comment expressed support for the section on revisions with the requirement for a full and robust analysis with appropriate stakeholder engagement.

**Response:** As stated in § 1610.6-7, plan revisions shall comply with all of the requirements for preparing and approving a new resource management plan, including robust public notice and comment as discussed in §§ 1610.2-1 and 1610.2-2 of the final rule.

**Comment:** One comment suggested adding additional language in the sections on plan maintenance and revision to provide greater clarity on timelines, review, and public engagement throughout the life of the plan.

**Response:** Plan revisions require the same steps for public notice and comment as for preparation and approval of a new resource management plan. The final rule at §§ 1610.2-1 and 1610.2-2 includes information on the timeframes and procedures for public comments and publishing of notices of intent in the *Federal Register*.

### Corrections

**Comment:** A few comments suggested changing “§ 1610.4-9” in the first sentence to “§ 1610.6-4” in reference to monitoring and evaluation.

**Response:** Final § 1610.6-7 is modified to incorporate this change.

## **Section 1610.6-8 Situations Where Action Can Be Taken Based on Another Agency’s Planning Documents**

*Situations When the BLM May Rely on Other Plans*

**Comment:** One comment included the view that the language regarding when the BLM may rely on other resource plans was ambiguous and that it was unclear what circumstances it applied in. The comment stated that clarity would be improved with the addition of a sentence to this section that states that in no event should the language in this section be interpreted to apply to the coordination requirements of BLM plans with those of other agencies and units as set forth in §§ 1610.2 and 1610.3-1 of these regulations, and does not add requirements on the plans of other agencies for the purpose of meeting the coordination requirements of FLPMA.

**Response:** The final rule is not revised based on this comment. Final § 1601.0-1 states that the purpose of this rule “is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management.” This makes clear that the requirements in this rule do not apply to lands not administered by the BLM. As provided in final § 1610.6-8(a), another agency’s plan may be relied on as a basis for an action only if it is comprehensive and has considered the public the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, which includes opportunities for public involvement.

**Comment:** One comment suggested that a definition of the word "comprehensive," as used in final § 1610.6-8(a), be included for the purpose of guidance to responsible official.

**Response:** Comprehensive is a commonly used term and the BLM does not believe it is necessary to define in the rule. In addition, § 1610.6-8(c) is added to the final rule, which provides additional information on what the BLM would consider “comprehensive,” stating that “[a]nother agency’s resource assessment may be relied on only if it is comprehensive and has

considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment (see § 1610.4), including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations.”

#### Public Involvement

**Comment:** One comment stated that the final rule should clarify the standard that the BLM will only take actions based on another government agency’s plan if that plan takes into account the public interest in the same way the BLM would, and asked if a formally adopted plan that is presented for adoption at a public meeting would qualify.

**Response:** As specified in § 1610.6-8(a), the BLM may rely on another agency’s plan if the plan is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement. This would include the notice and comment periods specified in final §§ 1610.2-1 and 1610.2-2. It is unlikely that a public meeting with no associated comment periods would meet this standard.

**Comment:** One comment noted that the phrases “participation of the public” and “public participation” are both used.

**Response:** Final § 1610.6-8(d) (proposed § 1610.6-8(c)) replaces “public participation” with “public involvement” for consistency with other sections of the final rule.

#### Consistency with State, Local, and Tribal Plans

**Comment:** One comment stated that the rule should include provisions which specifically authorize and require the BLM to consider and rely upon a local government's plans,

land use analysis, as well as its lawfully adopted zoning, subdivision, and land use regulations, when split or shared estate conditions exist, and the local government has land use jurisdictional authority over any privately owned surface estate interests.

One comment indicated opposition to a perceived broad discretion to the BLM to ignore other State, local, or tribal plans.

**Response:** Final § 1610.6-8 recognizes that resource management plans may take place in situations where there is mixed ownership where the subsurface public land estate is under non-Federal surface ownership. However, resource management planning must follow the requirements of FLPMA, and the BLM believes that procedures followed to adopt resource management plans should be consistent, including procedures for public involvement (§ 1610.2) and consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes (§ 1610.3). Therefore, final § 1610.6-8(a) states that the BLM may only reply upon another agency's plan if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement, and is consistent with Federal laws and regulation applicable to public lands, and the purposes, policies and programs implementing such laws. This includes State, local, and tribal governments' plans if they meet those criteria.

Even if the BLM does not adopt a government's plan, the planning regulations still provide for coordination and consistency with State, local, and tribal governments, as explained in final § 1610.3. Throughout the planning process, the BLM coordinates with other Federal agencies, Indian tribes, and State and local governments to assure that the BLM considers non-Federal government plans that are germane in the development of resource management plans,

and assists in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. Although split estates are not specifically provided for in the rule, the BLM addresses situation where action can be taken based on another agencies planning documents in § 1610.6-8 of the final rule. Therefore, the final rule is not revised, but is consistent with the comment's recommendation, and the final rule does not allow the BLM to ignore State, local, or tribal plans.

#### National Forest System Lands

**Comment:** For the specific context of National Forest System lands, one comment included a recommendation that plan Amendments should provide that the BLM “will” rely on any applicable US Forest Service land management plan, consistent with Section 103 of FLPMA. The comment also recommends stating that the BLM may rely on a Forest Service planning assessment.

**Response:** It is not clear what provision in FLMPA the comment is referring to. Section 103 includes definitions, and does not require that the BLM adopt US Forest Service plans. The BLM may rely upon a Forest Service plan if it meets the criteria in this section.

#### **Section 1610.7 Management Decision Review by Congress**

**Comment:** Many comments included an observation that the proposed rule removes the requirement that the BLM report to Congress prior to implementation of any resource management plan, which would eliminate “one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more.” These comments asserted that the proposed rule’s language is a clear violation of FLPMA’s pre-implementation reporting requirement. The removal of this reporting requirement, combined with the softened language on multiple use, implies that the BLM plans to adopt a management approach similar to zoning

ordinances, where certain resource uses are limited to specific acreage within a planning area. The use of “designations” and “resource use determinations” further implies such an approach is the intent of the proposed rule. Therefore, the BLM should report such planning designations to Congress once a record of decision is signed. The BLM should include a provision in any final rule requiring that the BLM report a planning designation that excludes one or more principal or major uses of the public lands on a tract of land one hundred thousand acres or more once the record of decision is signed.

**Response:** The provision for Congressional notification from FLPMA (see 43 U.S.C. 1712(e)(2)) is retained in final § 1610.7. The provision states that “any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented.” This requirement is carried over from the existing regulation at § 1610.6 with minor revisions for readability.

**Comment:** One comment recommended that the BLM include the words “...or makes the use unviable...” after the word “eliminates,” so that the first sentence of § 1610.7 would read “FLPMA requires that any BLM management decision or action pursuant to a management decision which totally eliminates or makes the use unviable one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, will be reported by the Secretary to Congress before it can be implemented.” The agency can authorize a level of use for two or more years, which technically does not eliminate the use, but it makes the activity unviable.

**Response:** The language that will be included in the final rule at § 1610.7 is carried over from the existing regulation at § 1610.6 and is consistent with FLPMA (43 U.S.C. 1712(e)(2)). The final rule does not adopt this recommendation.

## **Section 1610.8 Designation of Areas**

### **Section 1610.8-1 Designation of Areas Unsuitable for Surface Mining**

**Comment:** One comment urged the BLM to advise the public and State and local governments in a timely manner when considering designating areas as suitable or unsuitable for surface mining. The comment further urged the BLM to allow the public and State and local governments to provide input on such determinations.

**Response:** The final rule does not include a requirement for the BLM to provide notice specifically regarding the designation of areas as suitable or unsuitable for surface mining because the public involvement and coordination provisions of the planning rule will provide adequate notification and opportunities for input by the public and State and local governments as those decisions are considered through resource management plans and plan amendments. The BLM shall notify the public (including State and local governments) and provide opportunities for input at several steps during the planning process, including review of preliminary resource management alternatives (see § 1610.2-1(a)(3) of the final rule) for resource management plans and EIS-level amendments. For more information on public involvement, please see the preamble discussion of § 1610.2.

### **Section 1610.8-2 Designation and Protection of ACECs**

#### *Identification of Potential ACECs (§ 1610.8-2(a))*

**Comment:** A few comments were unsupportive of identifying potential ACECs during the planning assessment because this would afford ACECs special treatment over other

resources. Other comments objected to identifying potential ACECs during the planning assessment because, according to the comments, the identification of ACECs should be an outcome of the plan. Several other comments expressed support for the identification of potential ACECs during the planning assessment, stating that this clarification assures that ACECs are fully considered at the appropriate phase in the planning process, avoiding confusion on the part of the public and potential litigation risks.

**Response:** In response to public comment, the heading for this section is revised to include designation “and protection” of ACECs. This new language is consistent with the statutory requirement to “give priority to the designation and protection of Areas of Critical Environmental Concern” (see 43 U.S.C. 1712(c)(3)) and provides improved clarity and understanding that the BLM gives priority to the designation and protection of ACECs as required by FLPMA through the procedures outlined in this section.

The final rule retains the requirement to identify potential ACECs through inventory of public lands and during the planning process (see § 1610.8-2(a)). The identification of potential ACECs is an inventory process consistent with FLPMA direction, which states that an inventory of all public lands and their resources and other values shall be prepared and maintained on a continuing basis, giving priority to ACECs (43 U.S.C. 1711(a)). The final rule establishes procedures for inventory of the public lands during the planning assessment at §§ 1610.4(b)(1) and 1610.4(d)(5)(vii); therefore, it is appropriate that an inventory of potential ACECs occur during the planning assessment. It is important to note that the identification of a potential ACEC does not constitute formal designation of an ACEC. Designation of an ACEC occurs through the approval of a resource management plan (§ 1610.8-2(b)(1)). Under the final rule, an

ACEC is not designated during the planning assessment. Potential ACECs will be considered during the preparation or amendment of a resource management plan (§ 1610.8-2(a)).

**Comment:** A few comments expressed concern that language in the proposed rule would not allow identification of potential ACECs later in the process as new resources are identified. Comments stated that, in order to comply with FLPMA's mandate to "give priority to the designation and protection" of ACECs, the planning rule should encourage the designation of ACECs whenever new information or changed conditions warrant, and not simply during the BLM's planning cycles. Comments requested that the final rule retain existing language providing for the identification of potential ACECs "throughout the planning process."

**Response:** The existing regulations at § 1610.7-2 state that potential ACECs "shall be identified and considered throughout the resource management planning process." This language is replaced in final § 1610.8-2 with the following: "[a]reas having potential for ACEC designation and protection shall be identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan." This change reflects FLPMA direction to identify potential ACECs through the inventory of public lands (43 U.S.C. 1711(a)) and consider them for designation through land use planning (43 U.S.C. 1712(c)(3)). When the BLM prepares a resource management plan, potential ACECs will be identified during the planning assessment, along with other inventories relevant to the resource management plan. The BLM believes that this step, at the beginning of the planning process, is the appropriate time to conduct an inventory to inform resource management planning. This will provide a consistent approach across the BLM. However, the BLM also conducts inventory at times not associated with the preparation or amendment of a resource management plan, and potential ACECs may be identified at those times as well, as

appropriate. The final rule does not preclude the inventory of potential ACECs at any point in time. Through plan evaluations, the BLM will evaluate whether a plan amendment is warranted to consider designation of any potential ACECs identified through the inventory process. Please see § 1610.6-4 for more information on plan evaluations.

**Comment:** Several comments requested that the planning rule include language clarifying that the public has an opportunity to nominate new ACECs when the BLM is not preparing a resource management plan or plan amendment, and describe how new stand-alone ACEC designations can be incorporated into a resource management plan via amendment. According to these comments, FLPMA's requirement that the BLM maintain an ongoing inventory of lands, resources, and values suggests that the BLM has a duty to consider such nominations. Comments further stated that, with accelerating climate change, new information may indicate an immediate need for special management attention and not simply during the BLM's planning cycles, in order to comply with FLPMA's mandate to "give priority to the designation and protection" of ACECs.

**Response:** The final rule does not include revisions to specifically clarify that the public can nominate new ACECs outside the planning process because it already provides a framework for the identification of potential ACECs, including the consideration of public nominations, and the designation of ACECs at the appropriate level of detail for these regulations. The final rule provides that "[a]reas having potential for ACEC designation and protection shall be identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan" (see § 1610.8-2(a)). This language reflects the fact that FLPMA directs the BLM to identify potential ACECs through the inventory of public lands (43 U.S.C. 1711(a)) and consider them for designation through land use planning

(43 U.S.C. 1712(c)(3)). When the BLM prepares a resource management plan, potential ACECs will be identified during the planning assessment and the BLM will request information be submitted by the public regarding potential ACECs (*i.e.*, public nominations) during the planning assessment. Under the final rule, the BLM may also conduct inventory at times not associated with the preparation or amendment of a resource management plan, and potential ACECs may be identified at those times as well, including through public nominations. Through monitoring and evaluation, the BLM will assess the need to amend or revise the resource management plan in order to consider any potential ACECs for designation, such as when new information indicates an immediate need for special management attention. Further detail on the consideration of public nominations for potential ACECs is more appropriately addressed through subsequent guidance, such as a revision to the BLM's ACEC Manual (MS-1613).

**Comment:** A comment expressed concern that the preamble discussion for proposed § 1610.8-2 suggested that the BLM may identify potential ACECs at times not associated with a plan amendment or resource management plan. The comment stated that the proposed rule does not appear to allow the BLM to identify ACECs outside of a planning project, and more significantly, FLPMA does not authorize the BLM to designate ACECs except as part of the planning process. The comment suggested that the section-by-section analysis inappropriately provides policy guidance not found in the rule itself.

**Response:** Final § 1610.8-2 provides that areas having potential for ACEC designation and protection (*i.e.*, potential ACECs) shall be identified through inventory of public lands and during the planning assessment. The identification of potential ACECs is an inventory process, and therefore can be conducted at any point of time, and not just at times associated with a plan amendment or resource management plan, as FLMPA directs the BLM to keep inventories

current so as to reflect changes in conditions and to identify new and emerging resource and other values (43 U.S.C. 1711(a)). Identification of a potential ACEC does not constitute designation of an ACEC. Rather, identification of a potential ACEC means that an area has been found to meet the “relevance and importance” criteria and is appropriate for consideration of designation during the preparation or amendment of a resource management plan. This reflects the fact that FLPMA directs the BLM to identify potential ACECs through the inventory of public lands and consider them for designation through the land use planning process (43 U.S.C. 1711(a) and 43 U.S.C. 1712(c)(3)). The section-by-section analysis to the rule does not establish policy, as suggested by the comment.

**Comment:** One comment suggested that the BLM conduct planning assessments at the landscape or regional level to identify potential ACECs that cross jurisdictional boundaries. The comment questioned how cross-jurisdictional ACECs would be identified without taking this approach.

**Response:** Under the final rule, the preliminary planning area is the basis for the planning assessment. In identifying the preliminary planning area, the BLM will take such factors as management concerns identified through monitoring and evaluation and relevant landscapes based on these management concerns into consideration, among other things (see § 1610.4(a)). The description and rationale for the preliminary planning area will be made available for public review prior to publication of the NOI in the *Federal Register* (see § 1610.4(a)(2)). It is also important to note that the final rule does not preclude the BLM from assessing the full geographic extent of resources that cross planning area boundaries in a planning assessment, including in regards to the identification of potential ACECs. To the contrary, this information would provide useful context to inform the preparation of a resource

management plan. The need to assess resources beyond preliminary planning area boundary will be evaluated on a case-by-case basis and is not address in the final rule.

**Comment:** A comment requested the BLM make the planning assessment report available for public review, including the identification and rationale for potential ACECs with associated geospatial data, and provide a 30-day comment period and opportunity to identify additional ACECs for consideration in preliminary alternatives. According to the comment, failure to give the public a special opportunity to assess potential ACECs once identified undermines not only their early integration into the planning process, but also diminishes their status as special designation areas to be prioritized since they will only be subject to public review and comment when the draft plans and other land use designations are published.

**Response:** The final rule requires that the responsible official “document the planning assessment in a report made available for public review prior to the publication of the notice of intent, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM’s website” (see § 1610.4(e)). The final rule does not include an additional “30-day comment period and opportunity to identify additional ACECs for consideration in preliminary alternatives” as suggested by the comment. The public will be provided an opportunity to submit information regarding potential ACECs during the planning assessment (see § 1610.4(b)(3)). The public may also provide input to the BLM on additional ACECs following the release of the planning assessment report and the BLM will consider this input and revise the list of potential ACECs as necessary.

**Comment:** A few comments suggested that the planning assessment identify threats that could lead to “irreparable damage” for ACECs.

**Response:** The final rule defines an ACEC as an area within public lands where special management attention is needed 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 (see § 1601.0-5). This definition is consistent with FLPMA (43 U.S.C. 1702(a)). The need for special management attention to protect and prevent irreparable damage is assessed through the formulation of alternatives (see § 1610.5-2) and the estimation of effects of alternatives (§ 1610.5-3). Threats that could lead to “irreparable damage” will therefore be identified during these steps of the planning process and disclosed in the draft resource management plan and draft EIS.

**Comment:** One comment suggested that the BLM determine the condition and trend of existing ACECs, whether management has accomplished objectives, and whether boundaries are appropriate.

**Response:** Following approval of a resource management plan, the BLM shall monitor and evaluate the plan, including any designated ACECs, in accordance with the monitoring and evaluation standards (see § 1610.6-4). Monitoring and evaluation will be conducted to determine whether the plan objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan. For example, should the location of relevant and important values change over time, the BLM will evaluate this new information to determine if there is sufficient cause to warrant amendment or revision of the resource management plan to change the boundaries of the ACEC designation. Additionally, the BLM will assess current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions, as part of the planning assessment (§ 1610.4(d)(3)). This will include the

conditions and trends within existing ACECs. The final rule is not revised to include these suggestions as they are already adequately addressed through the monitoring and evaluation procedures and the planning assessment.

**Comment:** One comment stated that cooperating agencies should be involved in identification of ACECs during the planning assessment.

**Response:** Final § 1610.3-2(b)(3) addresses the steps when the responsible official collaborates with cooperating agencies concerning those issues relating to their jurisdiction and special expertise, which includes the preparation of the planning assessment. The specific roles and responsibilities regarding how this will occur will vary between planning efforts and will normally be outlined in a memorandum of understanding (MOU) between the BLM and the cooperating agency (see final § 1610.3-2(b)(2)). This may include the identification of potential ACECs, depending on the jurisdiction and special expertise of the cooperating agency. The final rule is not revised to include this suggested change as the final rule already addresses the process for collaboration with cooperating agencies, including during the planning assessment.

**Comment:** A few comments requested that the BLM require ACEC nominations to be evaluated by groups from outside the BLM, including a critical scientific evaluation of nominations by independent scientific groups. Comments also stated that reviews should include expertise outside of biology.

**Response:** The identification of potential ACECs is considered an inventory of the public lands. The final rule does not require an evaluation of BLM inventories by independent scientific groups. Such an evaluation is unnecessary as the BLM employs professionals with the appropriate skillset to conduct such inventories. Section 1610.1-1(b) of the final rule provides that the “expertise of the preparers shall be appropriate to the resource values involved, the issues

identified during the issue identification and EIS scoping stage of the planning process, and the principles of multiple use and sustained yield unless otherwise specified by law” and that “[t]he responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.” These provisions apply to the identification of potential ACECs and ensure that ACEC nominations will be evaluated by professionals with the appropriate expertise. The final rule is not revised to include the suggested requirement for external evaluation of ACEC nominations.

**Comment:** A comment requested that the BLM establish minimum requirements for nomination or identification of potential ACECs, and stated there should be some required minimum level of evidence supporting the identification of a potential ACEC.

**Response:** For an area to be considered an ACEC, it must meet the criteria of relevance and importance under § 1610.8-2(a) of the final rule. Information submitted as part of the planning assessment, including information regarding potential ACECs, will be evaluated to ensure the use of high quality information. The final rule does not establish additional requirements for the contents of a nomination or identification of a potential ACEC, as the specific information required for ACEC evaluations will depend on the values under consideration.

*Relevance and Importance Criteria (§§ 1610.8-2(a)(1) and (a)(2))*

**Comment:** One comment requested that the final rule clearly describe the necessary elements of an ACEC and the process by which they will be designated. The comment asserted that the proposed rule promotes the proposal of new ACECs and the expansion of existing ACECs and expressed concern that this increased emphasis on ACECs may lead to misuse as a way to delay or deter oil and gas activities on Federal lands.

**Response:** The final rule at § 1610.8-2 provides a framework for identifying potential ACECs and considering the designation of ACECs during the preparation or amendment of resource management plans. This includes criteria for the identification of potential ACECs (see §§ 1610.8-2(a)(1) and (a)(2)). The identification of a potential ACEC does not, in of itself, change or prevent change of the management or use of public lands. The final rule does not promote the designation or expansion of ACECs; rather, it describes the process through which ACECs will be identified and considered during the planning process in accordance with FLPMA. The final rule does not significantly change the existing process for designating ACECs apart from the new requirement that they are identified during the planning assessment and changes to the length of the public comment period for consideration of ACECs during EA-level amendments.

**Comment:** A few comments expressed support for the proposed change to allow for local significance when considering the importance criteria. Comments agreed with the statement in the preamble to the proposed rule “that there are many existing examples where an area of local significance has been determined to meet the ‘importance’ criteria.” Other comments requested that the final rule retain existing language related to an area having “more than local significance,” and a few comments requested that potential irreparable damage be documented. Comments asserted that the proposed change would make it easier for the BLM to designate an ACEC with only local significance, leading to a potential proliferation of “special areas” of limited importance, but potentially off-limits to other resource uses. A couple of these comments asserted that ACECs have been consistently required to have value of more than local significance since the BLM’s planning regulations were first promulgated in 1979. One comment noted that the BLM’s existing ACEC manual explains that “importance” is generally

characterized by “more than locally significant qualities” or recognized where protection is warranted to “satisfy national priority concerns.” One comment asserted that the BLM may not substantively modify provisions in the planning regulations related to ACEC identification and designation without modifying the existing ACEC guidelines through a separate notice and comment proceeding. Another comment asserted that allowing lands with local significance to be designated as ACECs could have a negative impact on local economies.

**Response:** The final rule adopts the proposed change to remove the phrase “more than local significance” from the description of the “importance” criteria (see § 1610.8-2(a)(2)). The BLM believes that this existing language is not appropriate in the regulations because it does not accurately describe the existing criteria for importance that an area “must have substantial significance and values.” There are many examples where an area of local significance would meet the importance criteria for substantial significance and values, including a cultural site of substantial significance to local tribes; a wetland that provides critical water filtration services to a local community; or key habitat for an endemic wildlife species. The removal of this language does not represent a substantive change in these regulations, as this language does not represent a requirement under the existing regulations; rather it provided an example of what generally meets the “importance” criteria. The presence of this language in the existing guidance for ACECs (MS-1613) does not preclude the BLM from making this change in the final rule; rather, the BLM will update existing guidance in the future for consistency with this final rule. The BLM has followed all applicable requirements for public notice and comment for this rulemaking. Please see the discussion of public involvement in the “Background” section of the preamble.

**Comment:** A comment suggested making the relevance and importance findings available to the public for comment.

**Response:** In order for an area to be considered a potential ACEC, it must meet the criteria of “relevance” and “importance.” Once an ACEC has been identified as a potential ACEC during the planning assessment, the responsible official will document this in a report made available for public review prior to the publication of the NOI (see § 1610.4(e)). Members of the public may provide input to the BLM regarding the accuracy of this inventory finding on potential ACECs, and the BLM will consider this input. The final rule is not revised to provide a comment period specifically on relevance and importance findings because this information will be disclosed to the public through the planning assessment report.

**Comment:** A few comments stated that although identification of ACECs would occur during the planning assessment, the determination of relevance and importance should occur later after there is more information. According to these comments, relevance and importance criteria cannot be meaningfully or objectively addressed until after the BLM has gathered and considered information relevant to these criteria. This includes through the planning assessment, consultation with Alaska Native Corporations and tribes, and review and comment by interested governmental entities. At the early planning assessment stage in the process, BLM would not have sufficient information to determine whether a particular area meets the criteria required for designation of an ACEC. The final rule should be clear that consideration of whether a potential ACEC meets the required criteria, and whether a proposed ACEC should be designated, should not be presupposed during the planning assessment.

**Response:** Under the final rule the identification of potential ACECs will occur through inventory of public lands and during the planning assessment (see § 1610.8-2(a)). During the

planning assessment, the BLM will gather and consider information relevant to the “relevance and importance” criteria. This may occur through consultation with Alaska Native Corporations and tribes, coordination with governmental entities, or through public nominations. Following this information gathering, the relevance and importance criteria for an ACEC are applied during the planning assessment phase to determine if an area is eligible to be included as a potential ACEC and considered for designation. The final rule does not allow for the consideration of whether a potential ACEC should be designated during the planning assessment. Such consideration may only occur during the preparation or amendment of a resource management plan, as is clarified in a revision to § 1610.78-2(a), and designation of an ACEC may only occur through the approval of a resource management plan or plan amendment. The final rule is not revised in response to this comment because the planning assessment is an appropriate step to identify potential ACECs through the application of the relevance and importance criteria.

**Comment:** A few comments asserted that the BLM does not take advantage of the “natural systems or processes” provision in FLPMA to protect landscapes or ecosystems from drought, climate change, or other threats.

**Response:** The planning rule allows for the identification of potential ACECs to protect natural systems or processes, consistent with FLPMA (43 U.S.C. 1702(a)). The criteria for “relevance” states that there must be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard (see § 1610.8-2(a)(1)). These natural systems or processes may relate to the protection of landscapes or ecosystems from drought, climate change or other threats, so long as the criteria for “importance” is also met (see § 1610.8-2(a)(2)).

Designation of ACECs (§ 1610.8-2(b))

**Comment:** A few comments requested that BLM provide written notification to, and solicit written comments on any proposed ACEC from, cooperating agencies within or having any jurisdiction over any portion of the planning area where a proposed ACEC would be located, and allow 60 days for response. Comments stated that allowing cooperating agencies to provide data, information, and input on the designation of ACECs, and any management within ACECs, will better comply with FLPMA and more fully consider and allow for multiple use and sustained yield within ACECs.

**Response:** Final § 1610.3-2(b)(3) addresses the steps when the responsible official will collaborate with cooperating agencies concerning those issues relating to their jurisdiction and special expertise, which may include the identification and consideration of potential ACECs. The specific roles and responsibilities regarding how this will occur will vary between planning efforts and will normally be outlined in a MOU between the BLM and the cooperating agency (see final § 1610.3-2(b)(2)). In addition to the roles and responsibilities outlined in this MOU, the final rule is revised to add a requirement at § 1610.8-2(b)(1) that when a draft resource management plan or plan amendment involves the possible designation of one or more potential ACECs, the BLM shall publish a notice in the *Federal Register* and request written public comments on the designations under consideration. Cooperating agencies may provide written comments during this formal public comment period. The final rule is not revised to include a special comment period for cooperating agencies regarding ACECs, as the final rule adequately provides commenting opportunity.

**Comment:** A comment stated that the BLM should consult and coordinate with State Land Use Planning Advisory Councils on potential ACEC designations.

**Response:** The final rule addresses coordination with governmental entities at § 1610.3-2 and requires that the responsible official “provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs” which may include potential ACEC designations. Further, the final rule revises § 1610.4(b)(1) to require that during the planning assessment, the responsible official arrange for relevant information to be gathered or assembled, including the identification of potential ACECs, “in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located.” These requirements apply to State Land Use Planning Advisory Councils, as appropriate.

**Comment:** A few comments asserted that the proposed rule would make it easier for the BLM to designate ACECs, and have independence in their management, which is not acceptable. Some comments asserted that revisions to the ACEC provisions attempt to change the process and intent of FLPMA under the guise of trying to make it more readable. Comments stated that the final rule needs to ensure the use of the ACEC designation is in accordance with FLPMA and the intent of Congress. Some comments stated that even if a threatened negative effect on a relevant value rises to the level of outright damage, ACEC designation is still inappropriate when the threatened damage is temporary or reclaimable. The threatened negative effect on a resource value must rise to the level of irreparable damage.

**Response:** The final rule does not significantly change the process for designating ACECs or change the intent of ACECs from the existing regulations. Where changes are made to the existing regulations, the changes are disclosed and a rationale provided in the discussion for § 1610.8-2 of the preamble to the final rule. The definition of an ACEC and the process for

designating ACECs, as described in the final rule, is consistent with FLPMA. FLPMA defines an ACEC as “areas within the public lands where special management attention is required (when such areas are developed or used or where no development 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” (43 U.S.C. 1702(a)). The final rule applies this same definition in § 1601.0-5. The need for special management attention to protect and prevent irreparable damage is assessed through the resource management planning process and informs the decision regarding the designation of a potential ACEC. This is consistent with FLPMA’s direction to “give priority to the designation and protection of Areas of Critical Environmental Concern” in the development and revision of land use plans (43 U.S.C. 1712(c)(3)). The final rule does not modify how ACECs will be managed once designated and approved. The specific special management applied to an ACEC is determined through the resource management planning process, and not in these regulations.

**Comment:** One comment asserted that the decision to designate ACECs needs to be based on high quality factual information, which includes providing for the meaningful consideration of land status and ownership, resource uses, infrastructure, access patterns and needs.

**Response:** Potential ACECs are identified through inventory of public lands and during the planning assessment, considered during the preparation or amendment of a resource management plan (see § 1610.8-2(a)), and designated through the approval of a resource management plan or plan amendment (see § 1610.8-2(b)(2)). The final rule requires the BLM to “use high quality information to inform the preparation, amendment, and maintenance of

resource management plans.” This requirement applies to the consideration and designation of ACECs as well. Further, during the planning assessment, the BLM must consider and document, when applicable, “[1]and status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights” (see § 1610.4(d)(2)). This information, along with any other relevant information, will inform the consideration and designation of ACECs.

**Comment:** One comment stated that designating an ACEC does not imply it should be withdrawn from public use.

**Response:** The designation of an ACEC in a particular plan is not considered a withdrawal. Rather, when designating an ACEC, the BLM must identify special management attention in order to protect and prevent irreparable damage to the “relevant and important” values associated with the ACEC. The special management attention is specific to each ACEC, and may include restrictions or exclusions to use, as necessary and appropriate. The planning rule does not prescribe any specific restrictions or exclusions to use; rather, these will be identified during each future resource management planning process.

**Comment:** A few comments suggested that the rule could allow ACECs to be updated at any time, and that ACECs could have multiple landscape-scale plans imposed over them. According to comments, this would compound and extend the permitting process for right-of-way applications.

**Response:** Under the final rule, ACECs are a planning designation, which is a plan component. Plan components may only be changed through a plan amendment or a plan revision (see § 1610.1-2(c)), except to correct typographical or mapping errors or to reflect minor changes in mapping or data through plan maintenance (see § 1610.6-5). The final rule does not allow

ACECs to be changed or updated “at any time” without undergoing a plan amendment or a plan revision. The final rule does not provide for “multiple landscape-scale plans.” Under the final rule, a single resource management plan (including any subsequent amendments to that resource management plan) will apply to a geographic area. The final rule does not “compound and extend” the permitting process for right-of-way applications. As under the existing rule, a right-of-way application must be in conformance with the resource management plan.

**Comment:** A few comments suggested that the last sentence in proposed § 1610.8-2(b) should be deleted, as it suggests that the existence of a potential ACEC requires the BLM to provide special management to the area. FLPMA defines ACECs “as areas within the public lands where special management is required...” but contains no language regarding “potential” ACECs or their management. Comments stated that the prior sentence correctly states that the identification of an ACEC does not change the management or use of ACECs, and any special management measures will not be effective until an ACEC is formally designated through the planning process. A separate comment requested the final rule remove the word “potential” from the last sentence in § 1610.8-2(b) because a potential ACEC cannot require a change in management policy.

**Response:** In response to these comments, the word “potential” is removed from the last sentence of § 1610.8-2(b) to clarify that only designated ACECs (not “potential” ACECs) require special management attention.

*Special Management Attention (§ 1610.8-2(b))*

**Comment:** Several comments suggested that the BLM limit potential ACECs to the minimum geographic size necessary and limit special management to the minimum necessary to prevent irreparable damage to the values. Some comments stated that the BLM should ensure

that any special management attention minimize adverse impacts on other resource uses and does not create an administrative withdrawal of lands from multiple use, noting that there is little consideration given to other resource values, such as minerals, within proposed ACECs. A few comments stated that ACEC designations should not be used for every area that requires special management attention.

**Response:** Under the final rule, ACECs are identified and considered for designation through the resource management planning process. This includes development of the appropriate geographic size of an ACEC and the appropriate special management attention in order to protect and prevent irreparable damage to the relevant and important values. The planning rule establishes the procedural framework for designating ACECs, including identifying the appropriate size and special management attention for the ACEC. The planning rule does not prescribe designation of any specific ACEC, nor does it prescribe any specific size requirements or special management attention. The final rule is not revised to include the suggested revisions.

**Comment:** Several comments requested that draft and approved plans or amendments identify protective measures to ensure that each ACEC receives special management attention. Comments noted that FLPMA requires the BLM to give priority to the designation and protection of ACECs and designation alone offers no protection. According to comments, the general lack of direction in resource management plans leads to problems when conflicting uses are proposed for an ACEC. Some comments suggested that the final rule require the resource management plan to state how an ACEC will be protected. Other comments suggested the final rule include language requiring the BLM to set specific resource use determinations for each ACEC in order to protect ACECs from irreparable harm and provide special management

attention for the ACEC. Several comments requested the final rule include language to ensure management and all authorized activities are consistent with the purposes of designated ACECs and that the design of special management attention reflects the priority protection that FLPMA requires.

**Response:** The final rule provides that “ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards” (*i.e.*, the relevant and important values) (see § 1610.8-2(b)). The special management attention, therefore, must be consistent with the purpose of the designated ACEC, which is to protect and prevent irreparable damage to the relevant and important values. The final rule is revised to also state that potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan “consistent with the priority established by FLPMA (43 U.S.C. 1712 (c)(3)).” The final rule is also revised to identify that resource use determinations are a type of special management attention (see § 1610.8-2(b)(2)). The BLM believes that the requirement for special management attention will provide the adequate explanation for how the resources will be protected. Special management attention is not limited to resource use determinations, however. For example, special management attention could be identified through a plan objective, such as an objective to manage for a certain vegetation composition. Therefore the final rule is not revised to require that the BLM set specific resource use determinations. Actions within the ACEC must be in conformance with the resource management plan, including any plan components developed to provide special management attention.

**Comment:** A comment expressed support for replacing “resource use limitations” with “special management attention.” The comment stated that resource use limitations are not the only means of providing special management attention to protect and prevent irreparable damage to the values or processes for which an ACEC is designated and the proposed language better reflects FLPMA’s definition of an ACEC.

**Response:** The final rule adopts the proposed change to replace “resource use limitations” with “special management attention” (see § 1610.8-2(b)(2)). The term “special management attention” aligns with the definition of an ACEC in FLPMA (43 U.S.C. 1702(a)) and the final rule at § 1601.0-5.

**Comment:** A comment expressed support for inclusion of the statement that resource management plans include special management attention in the resource management plan. According to the comment, this is important, as too often, ACEC management plans have been deferred to the implementation phase. Other comments expressed concern that a resource management plan “decision” would not identify special management for an ACEC, and only implementation strategies would be identified. These comments requested that special management attention be included in a resource management plan or amendment so that there are no future surprises with ACEC management and the public has an opportunity to comment on any limitations or special management attention ACECs will require. Some comments stated that more detailed guidance for ACECs is necessary for the designation to have meaning and for the BLM to meet its requirements under FLPMA to prioritize the designation and protection of ACECs.

**Response:** Under the final rule, the final approved plan must include a list of all designated ACECs and any special management attention, such as resource use determinations,

identified to protect the designated ACEC (see § 1610.8-2(b)(2)). The public will have the ability to provide comment when a draft resource management plan or plan amendment involves the possible designation of one or more potential ACECs. In such cases, the BLM will publish a notice in the *Federal Register* and request written comments on any ACEC designations and any special management attention that would occur if it formally designated. This step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see § 1610.8-2(b)(1)). The final rule does not preclude the development of more specific, activity-level plans for ACECs, as it is not always feasible or appropriate to develop these as part of a resource management plan or plan amendment. However, activity-level plans must be in conformance with the plan components of a resource management plan. The final rule does not adopt the proposal for implementation strategies (see the discussion for proposed § 1610.1-3 in the preamble to the final rule). Further guidance regarding ACECs is expected through revisions to BLM guidance documents such as the Land Use Planning Handbook (H-1601-1) and the ACEC Manual (1613).

**Comment:** One comment suggested that for each potential ACEC the BLM should analyze how existing laws, policy, and guidelines are failing to provide adequate protection to the resources, and only provide special management needed.

**Response:** The identification and consideration of potential ACECs, as well as their designation, will occur during the planning process as described in §§ 1610.4 and 1610.8-2 of the final rule in context with the high quality information gathered or assembled for the planning area, including other land designations, existing laws, policy, and guidelines. This process will include an estimation of the effects of alternatives (see § 1610.5-3) which involves analyzing and assessing the need for special management attention. An approved resource management plan or

amendment shall not only include a list of all designated ACECs but will also include any special management attention needed 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. ACECs require special management attention (§ 1610.8-2(b)). The BLM will consider the results of the planning assessment, including existing laws, policy, and guidelines, in determining if special management attention is required.

*Federal Register Notice Requirements (§ 1610.8-2(b)(1))*

**Comment:** A few comments expressed support for the proposal to remove the requirement to publish a notice in the *Federal Register* that lists ACECs, stating that an announcement of ACECs within a resource management plan is sufficient. Several comments requested the final rule retain the requirement to publish a *Federal Register* notice, which identifies each of the potential ACECs and their special management prescriptions. Comments explained that existing regulations recognize the importance of resource use limitations or special management attention that is required for ACECs. One comment requested that the rule explain why ACEC designations will no longer require a *Federal Register* notice. Another comment suggested that designation of ACECs should be included in the specific notice provisions of § 1610.2-1(f).

**Response:** In response to public comment, the final rule is revised to include a requirement that when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the *Federal Register* and request written comments on the designations under consideration. This step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see §§ 1610.2-2(d) and 1610.8-2(b)(1)). The final rule does not, however, retain the

existing requirement that the notice list each ACEC proposed and specify the resource use limitations, if any, which would occur if it were formally designated. The BLM believes that it is not necessary to include this information in a *Federal Register* notice because any draft resource management plan or plan amendment involving a potential ACEC will include not only a list of each potential ACEC but also any special management attention necessary if it were formally designated, and this information will be made available to the public.

Public Comment on ACECs (§ 1610.8-2(b)(1))

**Comment:** Several comments requested that the final rule retain or extend the current 60-day comment period on proposed ACEC designations. These comments asserted that the public must have an opportunity to comment on new and expanded ACECs as has been the longstanding requirement under BLM's planning rules. Some comments noted that ACECs are a major change in management, with restricted uses and resulting impacts to public access within ACECs and that the potential for the removal of the public comment period for areas with special designations presents a major issue of transparency. Some comments noted that ACECs are a potentially significant withdrawal of land from multiple use and sustained yield and can effect economic development. Other comments stated that whether or not an area should be designated an ACEC involves a separate analysis and set of comments than those related to a resource management plan or plan amendment and therefore comment periods should not be integrated. One comment stated that that if an ACEC withdraws land from multiple use and sustained yield, then State, local and tribal governments should be able to comment.

Some comments expressed support for eliminating the 60-day comment period for proposed ACECs. A few comments supported the proposal to incorporate notice of an ACEC into the regular comment process; however, these comments requested a 90-day comment period

be provided when ACECs are involved to enable adequate information sharing and evaluation by the public.

**Response:** The 60-day comment period for the proposed designation of ACECs, as specified at § 1610.7-2(b) of the existing regulation, is not retained in the final rule. In response to public comment, however, § 1610.8-2(b)(1) is revised to state that “[w]hen a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the *Federal Register* and request written comments on the designations under consideration. This step may be integrated with the notice and comment period for the draft resource management plan or plan amendment.” During this comment period, Federal agencies, State and local governments, Indian tribes, and the public will be provided an opportunity to comment on the ACEC designations under consideration. The final rule does not specify a length to this comment period, which means that at a minimum the BLM will provide 30 days for response as directed by § 1610.2-2(a). In most situations, this comment period will be integrated with the comment period for the draft resource management plan or plan amendment, as is current practice under the existing regulations. This means that the minimum comment period for ACECs will normally be longer for resource management plans and EIS-level plan amendments (30 days for EA-level amendments, 60 days for EIS-level amendments and 100 days for resource management plans). These comment periods are minimums and can be extended if necessary. The BLM believes that this approach is appropriate as it ensures that the public is provided notice and has an opportunity to comment on possible ACEC designations, regardless of the level of NEPA. This approach also integrates the ACEC review process with the planning process, which promotes efficiency in planning.

**Comment:** A few comments expressed concern that an ACEC can be designated with an EA-level plan amendment, which may not need public input or review. Some comments requested that ACECs be proposed only in a resource management plan and not in a plan amendment and that the BLM require a minimum 90-day public comment period for all proposed ACECs. These comments stated that ACECs are a major change in management, with restricted uses and resulting impacts to public access within ACECs.

**Response:** Under the final rule, ACECs may be designated through a plan amendment, including an EA-level amendment. This does not represent a change from existing policy. In response to public comment, the final rule is revised to include a requirement for a public comment period when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs (see § 1610.8-2(b)(1)), therefore the public will always be provided an opportunity for input and review of possible ACEC designations. The final rule does not require a minimum 90-day public comment period for all proposed ACECs, as suggested in the comment. Such an approach would create unnecessary delays for ACEC designations that are small in both scope and scale, and will not have any significant impacts, as disclosed through an EA document.

**Comment:** One comment requested that the public be provided a 30-day comment period to assess potential ACECs identified during the planning assessment and to identify additional ACECs to be considered in the preliminary alternatives, in addition to the proposed opportunities for public review and public comment.

**Response:** The final rule is not revised to include an additional public comment period on potential ACECs identified during the planning assessment because the final rule already provides an opportunity for public review of potential ACECs in the planning assessment

summary report (see § 1610.4(e)). Although this does not represent a formal public comment period, the public may provide input to the BLM regarding the inventory of potential ACECs, including information on additional areas that might be eligible to be a potential ACEC and considered in the preliminary alternatives, and the BLM will consider this input and revise the inventory of potential ACECs as appropriate. The public will also be provided a formal comment period on potential ACECs under consideration for designation which will normally be concurrent with the comment period for the draft resource management plan or plan amendment (see § 1610.8-2(b)(1)). This comment period must be at least 30 days long in accordance with § 1610.2-2(a) of the final rule.

**Comment:** A comment suggested that designation of ACECs should require a local public hearing.

**Response:** The final rule is not revised to require a local public hearing regarding designation of ACECs. The final rule requires that the BLM provide an opportunity for public comment on the designation of ACECs and the responsible official may provide a local public hearing if he or she determines that a hearing is appropriate and would provide useful information to inform the decision regarding the ACEC designation; however, there are situations where a hearing is not appropriate because, for example, there is no public interest in the proposed ACEC designation. In these situations requiring a public hearing would be inefficient and would not provide useful information to inform the decision.

#### General Comments Regarding ACECs

**Comment:** One comment stated the high priority Alaska Native Claims Settlement Act lands or State-selected lands are unlikely to be retained in Federal land status and are therefore inappropriate for designation as ACECs. Designation of such areas as ACECs could limit access

to and use of Alaska Native Claims Settlement Act lands, depriving them of the ability to realize the economic and historic and cultural values of their lands and resources. A few comments stated that any ACEC that closes more than 5,000 acres of land to multiple use in Alaska will require a congressionally approved withdrawal that must comply with the Alaska National Interests Lands Conservation Act.

**Response:** The final rule does not affect implementation of the Alaska Native Claims Settlement Act or the Alaska National Interests Lands Conservation Act. The final rule describes the procedures for identifying and designating ACECs but does not prescribe any future decision regarding ACEC designation.

**Comment:** Several comments stated that the identification of ACECs should be left to individual resource management plans rather than being called-out specifically in the regulations and requested the final rule remove § 1610.8-2 .

**Response:** Section 1610.8-2 is retained in the final rule. FLPMA provides that the BLM give priority to the inventory, designation, and protection of ACECs (43 U.S.C. 1711(a) and 1712(c)(3)) and these regulations describe the procedures for implementing this statutory requirement. This section revises existing regulatory provisions regarding the designation of ACECs (see existing § 1610.7-2) and therefore does not represent a new regulatory requirement. Decisions on individual ACECs will be made through resource management plans or plan amendments. However, it is important for the final regulation to provide a procedure that the BLM will follow to designate ACECs.

**Comment:** One comment stated that the economic analysis for a planning process must assess impacts of ACECs designation on state-trust assets. According to the comment, an ACEC that contains state-trust assets may render the trust assets worthless.

**Response:** The final rule requires at § 1601.0-8 that the BLM consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales and on adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests. The consideration of the “impacts of resource management plans” includes the consideration of impacts from ACEC designation on adjacent or nearby state-trust designation.

**Comment:** A few comments asserted that § 1610.8-2 details the need to designate ACECs, yet other resources are not provided a similar level of detail in the rule. One comment expressed concern that the specific identification of ACECs in the planning rule mirrors the closing remark by a BLM official at the public meeting in Denver that Planning 2.0 “is 21st Century conservation,” which implies that BLM intends to manage the public lands for conservation foremost, rather than for multiple use of all congressionally mandated resources. Comments requested that the final rule clarify that multiple use and sustained yield continues to be the basis of any resource management plan.

**Response:** Multiple use and sustained yield provides the basis for the management of the public lands and any associated resource management planning, unless otherwise specified by law, consistent with FLPMA (43 U.S.C. 1701(a)(7)). The final rule is revised to clarify this point in several sections. Section 1601.0-1 is revised to state that a purpose of these regulations is to establish a planning process “consistent with the principles of multiple use and sustained yield unless otherwise specified by law.” Section 1601.0-2 is revised to clarify that an objective of resource management planning by the BLM is to manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law. FLPMA also directs, however, that in the development and revision of land use plans, the BLM “give priority to the designation and

protection of ACECs” (43 U.S.C. 1712(c)(3)). The process of identifying and designating ACECs described in § 1610.8-2 implements this statutory direction from FLPMA, which is why this process is specifically spelled out in the final rule. Further, the final rule does not significantly change this process from the existing regulations.

**Comment:** Several comments stated that the final rule should include language to give priority to ACECs in the final rule. Comments noted that FLPMA directs the BLM to give priority to ACECs, and pointed out that ACECs are the only conservation designation other than wilderness expressly named and given priority in FLPMA. Comments also noted that the preamble to the proposed rule acknowledges the priority provided to ACECs through FLPMA, but the rule itself does not have similar language. Comments stated that this priority is a unique directive in multiple use land management law, which requires the BLM to do more than simply “consider” potential ACECs. According to comments, the law makes both the designation and protection of ACECs a priority in the land use planning process. Finally, comments stated that without this statement of principle, the planning rule has the potential to undermine the BLM's authority with regard to ACECs.

**Response:** The BLM must comply with FLPMA, regardless of these regulations; therefore, a restatement of FLPMA is not necessary in the regulations. However, the BLM recognizes the value in restating statutory direction in the planning regulations to provide context on the relationship between the regulations and overarching statutory direction. In response to public comment, the heading for § 1610.8-2 is revised to include designation “and protection” of ACECs. This new language is consistent with the statutory requirement to “give priority to the designation and protection of Areas of Critical Environmental Concern” (see 43 U.S.C. 1712(c)(3)) and provides improved clarity and understanding that the BLM gives priority to the

designation and protection of ACECs as required by FLPMA through the procedures outlined in this section. In further response to public comment, final § 1610.8-2(b) is revised to state that potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan “consistent with the priority established by FLPMA.” This does not represent a substantive change in BLM policy; rather, it provides context that the BLM must consider ACECs for designation consistent with the statutory direction provided in FLPMA.

**Comment:** Several comments requested the final rule state the value of ACECs in landscape-scale planning and expand the applicability of ACECs to include landscape conservation.

**Response:** The final rule is not revised to include the suggested changes from these comments. These changes are not necessary. ACECs are defined in FLPMA and this final rule as “areas within the public lands where special management attention is required (when such areas are developed or used or where no development 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” (43 U.S.C. 1702(a)). Under the final rule, the identification of a potential ACEC or designation of an ACEC may involve the consideration of relevant landscapes. For example, providing special management attention to protect a natural process, such as a wetland that provides important water filtration, requires the consideration of the wetland landscape.

**Comment:** Some comments requested that the BLM issue modernized guidance to increase the consistency of ACEC management and improve monitoring of ACECs. One comment noted that the current ACEC manual is 31 years old and stated that this manual is not consistently applied across the BLM.

**Response:** Revision of the ACEC Manual (MS-1613) is outside the scope of this rulemaking. The BLM expects to revise the Land Use Planning Handbook (H-1601-1) and the ACEC Manual following the publication of this final rule.

**Comment:** A few comments requested the final rule include language requiring that all National Landscape Conservation System units are designated as ACECs and that the extent of the area of an ACEC designation for a National Landscape Conservation System 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.

**Response:** National Landscape Conservation System lands are afforded protections under the 2009 National Landscape Conservation System Act (16 U.S.C. 7202) and include many different conservation designations, such as National Monument, National Conservation Area, Wilderness Area, National Wild and Scenic River, and Forest Reserve, among others. These designations include special management actions that protect the values of these areas. Typically, these areas do not require additional “special management attention” to protect relevant and important values and therefore are not eligible for designation as an ACEC. Should an area meet the relevance and importance criteria, the BLM would assess the need for special management attention and consider the area for designation through the resource management planning process. The final rule is not revised to require designation of National Landscape Conservation System lands as ACECs.

**Comment:** A few comments stated that the BLM should not designate ACECs in a geographic area already protected by other protective designations, which would further limit multiple use.

**Response:** The final rule does not preclude the designation of ACECs in a geographic area already protected by other protective designations; however, in order to be designated as an ACEC these areas must require special management attention in order to protect and prevent irreparable damage to the relevant and important values. Typically, areas that are already protected by other protective designations, such as a national monument, do not require additional special management attention through ACEC designation.

**Comment:** A comment suggested that the final rule require input from local stakeholders and consideration of the local perspective, traditional knowledge, and scientific research throughout the ACEC designation process.

**Response:** The final rule provides opportunity for input from local stakeholders throughout the planning process, including input on possible ACEC designations. For example, the rule requires the BLM to provide opportunities for the public to submit information for BLM's consideration during the planning assessment, and this information may include information on potential ACECs, local perspective, traditional knowledge, and scientific research (see final § 1610.4(b)(3)). Other opportunities for public involvement, such as review of the planning assessment report, the identification of planning issues, the review of the preliminary alternatives, and comment on the draft resource management plan or plan amendment, are described in §§ 1610.2, 1610.4, and 1610.5.

**Comment:** A comment suggested that the final rule include a requirement for the BLM to maintain a searchable record of every ACEC within the BLM system on its website presented in a user-friendly format established by the Director. This record would include information about the location, protected resources, public access, restrictions on use, and the rationale for designating the ACEC. The comment also suggested that the State Director of each BLM State

office be required to report information to the Director for inclusion in the ACEC databank, and suggested specific time requirements for reporting information and publishing information on the BLM website.

**Response:** The final rule does not adopt a requirement to maintain a searchable record of every ACEC on the BLM's website. This suggestion is not practical as the BLM does not currently have the capacity to maintain such a database. The final rule includes several requirements for reporting information about ACECs to the public, including a requirement to make a planning assessment report available for public review which includes the identification an rationale of potential ACECs (see § 1610.4(e)); a requirement to include a list of each potential ACEC and any special management attention which would occur if it were formally designated in any draft resource management plan or plan amendment involving a potential ACEC (see § 1610.8-2(b)(1)); and the requirement to include a list of all designated ACECs and any special management attention, such as resource use determinations, identified to protect the designated ACECs in the approved resource management plan (see § 1610.8-2(b)(2)). It is important to note that the final rule does not preclude the BLM from developing a searchable record of ACECs on the BLM website in the future, and the BLM may implement such a tool if and when resources and capacity are available.

**Comment:** Several comments requested that the BLM ensure that ACECs are not managed as a substitute for wilderness, or used as a substitute for wilderness suitability recommendations. Comments noted that the BLM's ACEC Manual (MS-1613) states that "an ACEC designation will not be used as a substitute for wilderness suitability recommendations."

**Response:** ACECs will be identified, designated, and managed in accordance with FLPMA and applicable policy, including the final rule. Such areas will not be used as a substitute for wilderness areas or wilderness suitability recommendations.

**Comment:** A comment stated that the final rule should recognize that an approved resource management plan is the first step to identify a withdrawal from mineral location and entry within an ACEC. The comment further noted that any BLM management decision that eliminates a principal use on a tract of 100,000 acres or more must be reported to Congress before it can be implemented and that there are further congressional notification requirements and other restrictions under the Alaska National Interest Lands Conservation Act and FLPMA.

**Response:** ACECs will be identified, designated, and managed in accordance with FLPMA and other applicable laws, such as the Alaska National Interest Lands Conservation Act, including in regards to any recommendations for withdrawal of a particular area, which is identified as special management attention in a specific resource management plan. Section 1610.7 retains the existing requirement “that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented.”

**Comment:** One comment asserted that ACECs are the only administrative designation authorized by FLPMA.

**Response:** Administrative designations other than ACECs are important planning tools, as they allow the BLM to identify important resources and uses. For example, under existing regulations, the BLM may designate a Special Recreation Management Area in an area with high recreation values. Although the BLM must give priority to the designation of ACECs under

FLMPPA, this does not prohibit the BLM from developing other administrative designations to aid in the land use planning process. Please see the preamble discussion of § 1610.1-2 for more information.

### **Section 1610.9 Transition Period**

#### Existing Programmatic Plans

**Comment:** The BLM received a comment requesting the BLM provide additional guidance and detail in the final rule on how existing planning efforts, such as the Western Solar Plan, will be treated and fully incorporated into the revised planning rule's land use planning process.

**Response:** Final § 1610.9(c)(1) states that when considering whether a proposed action is in conformance with a resource management plan, the BLM shall use the existing resource management plan approved prior to this rule until it is superseded by a resource management plan or plan amendment prepared under this rule. Resource management plans that were amended by programmatic plan amendments, such as the Western Solar Plan, will remain in effect until they are amended or revised. When an individual resource management plan is revised or amended, these programmatic efforts will be considered as part of the planning assessment under § 1610.4(b)(2). This is consistent with current policy and practice.

#### Pilot Projects

**Comment:** One comment suggested that the BLM continue incorporating the concepts identified in the proposed rule in resource management plans now and identify specific future planning efforts that can act as the BLM's pilot plans for the rule, ensuring there will be models available to follow once the final rule is implemented. Additionally, the comment suggested that:

- The BLM require compliance with the new rule to the maximum extent possible;
- In instances where a BLM office has initiated a planning effort prior to the publication of this rule, but has not yet issued a draft resource management plan or draft plan amendment by the time this rule becomes effective, that office should complete a planning assessment and issue draft alternatives for public comment prior to issuing a the draft plan or plan amendment; and
- The BLM identify specific planning efforts on the horizon that will act as pilot plans for Planning 2.0 once the final rule is implemented.

**Response:** The BLM has begun to incorporate the concepts in the final rule, where appropriate and consistent with existing regulations or guidance. All resource management plans initiated after the effective date of this final rule will be prepared in accordance with this rule. For those plans that were initiated prior to the effective date of this final rule, the BLM expects to continue to incorporate concepts from the final rule as appropriate but may not require full planning assessments or preliminary alternatives if their development is not feasible or such steps would be duplicative of work the planning effort has already completed. As required by final § 1610.2(c), the BLM shall post the status of each resource management plan in process of preparation or scheduled to be started to the BLM’s Website before the close of the fiscal year. This will provide the public notification of which plans will be prepared using these regulations, which will meet the comment’s intent of providing a list of “pilot plans” on the horizon.

*Management Framework Plans (§ 1610.9(a))*

**Comment:** A comment has recommended adding the phrase “...and section 106 of the National Historic Preservation Act” onto the last sentence of proposed § 1610.9(a)(2)(i) into the final rule.

**Response:** The final rule is not revised in response to this comment. It is not practical or required to list all applicable laws in these regulations that the BLM will consider when considering a proposed action under a management framework plan.

*Conformity with Existing Plans (§ 1610.9(c))*

**Comment:** One comment stated that the new language in proposed § 1610.9 appears to be adopted from the definition of “conformity or conformance” in § 1601.0-5(b) of the current planning regulations, (i.e. proposed actions must be either “specifically provided for” in the existing resource management plan or “clearly consistent” with the terms, conditions and decisions of the approved plan). The comment claims there is no basis for the BLM to adopt a new and heightened standard to determine conformity with current resource management plans that were prepared under existing or prior versions of the BLM's planning rules, and asked for clarification in the final rule that the BLM is not attempting to create a new or more stringent standard for determining whether proposed actions are in conformity or conformance with current resource management plans.

One comment suggested that the BLM clarify § 1610.9(c)(2), confirming that a new, more stringent standard is not being imposed for determining whether proposed actions are in conformance with current resource management plans. The comment suggested that the BLM clarify in paragraph (c)(2) of the final rule that when a resource management plan is amended only in part, determining whether a proposed action is in conformance with the unaffected provisions of the plan should be done in accordance with currently applicable standards, and that the proposed rule is not intended to alter the standard for determining whether proposed actions are in conformance with existing plans.

**Response:** The BLM is not creating a new or heightened standard to determine conformity. The comment is correct that this language is based on existing § 1601.0-5. Because resource management plans prepared under the existing regulations do not identify plan components, an evaluation for whether a proposed action is in conformance with the plan must use the terminology that was in place when the plan was approved. The BLM intends to use the same standard as is currently used under the existing rule, and is not adopting a new standard for resource management plans prepared under the existing rule. The BLM believes this standard is clear in the final rule, and does not adopt further revisions based on this comment.

Based on these comments, final § 1610.9(c)(2) is revised to clarify that future proposed action must be clearly consistent with the provisions of the resource management plan amended under the final rule, which will have plan components, as well as the provisions of the resource management plan not amended under the final rule, which will still have terms, conditions, and decisions, consistent with the existing regulations, and which were effective at the time the plan was developed.

**Comment:** A few comments suggest that language in § 1610.9(c)(2) of the proposed rule be revised to be less confusing, as the verbiage placement seems incorrect. For example, comments indicate that where the paragraph (c)(2) in the proposed rule states, “If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must be either consistent with the plan components of the approved resource management plan or the terms, conditions, and decisions of the approved resource management plan,” wording should be changed to read “...a future proposed action must be consistent with either the plan components of the approved resource management plan or the terms, conditions, and decisions of the approved resource management plan.”

One comment suggested that the BLM clarify in the final rule when an existing plan amendment is only in part, and how to determine whether a proposed action is in conformance with the unaffected provisions of the resource management plan, as well as if the determination should be in accordance with currently applicable standards. The comment also suggested that the BLM should clarify that the proposed rule is not intended to alter the standard for determining whether proposed actions are in conformity with existing Resource Management Plans.

**Response:** In response to this comment, final § 1610.9(c)(2) is revised to clarify that the provisions of the resource management plan amended under the final rule will have plan components, as well as, terms, conditions, and decisions developed under the existing rule. This clarifies that a proposed action must therefore be consistent with the plan components (proposed new terminology) of the provisions of the resource management plan amended under the final rule and the terms, conditions, and decisions of the provisions of the resource management plan not amended under the final rule ( terminology in the existing rule ).

**Comment:** One comment noted that the definition of “conformance or conformity” in § 1610.9(c)(2) of the proposed rule appears to conflict with the definition in proposed § 1601.0-5, because “conformance or conformity” in proposed § 1601.0-5 requires that a management action be “clearly consistent” with plan components, while proposed § 1610.9(c)(2) only require a proposed action be “consistent” with plan components. Because of this, the comment requested a revision in the language in § 1610.9(c)(2) of the final rule.

**Response:** Final § 1610.9(c)(2) is revised in response to this comment, to add the word “clearly” to read, “...a future proposed action must be clearly consistent with the plan components of the provisions of the approved resource management plan amended under the

regulations in this part and the terms, conditions, and decisions of the provisions of the approved resource management plan that have not been amended under the regulations in this part.”

### **General Comments**

The BLM received the following comments not specifically tied to a particular section of the proposed rule.

### **Style and Plain Language**

Many comments expressed concern about specific terminology, language, or phrasing in the preamble. A comment supported the use of active voice and clarification of language in the proposed rule.

**Comment:** Several comments expressed concern regarding the proposed change from “shall” to “will” and stated that the change has legal implications. The Federal Plain Writing Act of 2010 directs that “must” is the only word to use to impose a legal obligation and “must not” is the only phrase that says an act is prohibited. The term “will” does not convey a mandatory action. Court decisions have consistently held “shall” to mean an action is mandatory, while “will” has been seen by some courts as denoting a mandatory action and by others as requiring context to determine its meaning. Other comments stated that there is no readability issue with “shall,” and that this language change jeopardizes the rights granted to State and local governments under FLPMA (43 U.S.C. 1712(c)(9)) and § 1610.3 of the existing regulations. According to several comments, the term “will” is ambiguous; it can convey obligation or simple future action. FLPMA and other regulations use “shall,” and the planning rule should use the same terminology.

One comment asserted that using “must” in proposed § 1610.6-2 and “will” in other proposed sections is confusing and will lead to litigation. If “must” is used in certain places and

“will” in others, it is unclear what is required and what is discretionary. Therefore, the BLM should clarify what is mandatory in the proposed rule.

**Response:** The BLM recognizes that proposed changes of “shall” to “will” or “must” caused confusion to readers. Although the Federal Plain Language Guidelines (<http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>) direct agencies to use “must” instead of “shall,” the BLM will retain existing uses of “shall” in the final rule in response to public comments supporting use of this term.

The final rule retains the word “shall” throughout the document, unless specifically noted. In some instances the word “will” occurs in existing regulations, and in these instances the final rule replaces “will” with “shall,” unless specifically noted, for consistent use of terminology throughout both subparts. The final rule uses the word “shall” wherever there is a requirement for the BLM to take an action (*e.g.*, the Director shall make protests available to the public). The final rule uses the word “must” for other types of requirements, such as those related to the content of a document, an action required of an entity other than the BLM, or a criteria to be met (*e.g.*, a protest must be in writing and must be filed with the Director).

**Comment:** One comment supported the modernization of language in the rule and the use of active voice, as well as the changes made to clarify terminology. According to the comment, these measures improve readability and eliminate confusion, which will also help increase public involvement.

**Response:** Unless otherwise noted in the preamble, proposed revisions to clarify existing text and improve readability of the planning regulation will be adopted in the final rule.

**Comment:** Several comments asserted that the preamble is disingenuous because it claims to enhance working relationships, but uses the word “affirm” rather than “enhance.”

**Response:** With this rule, the BLM is affirming the importance of public involvement and collaboration with partners by enhancing opportunities for involvement and collaboration. The preamble does not say that the rule enhances working relationships; the rule cannot do that automatically. It can and does, however, provide the means to enhance working relationships by providing new and earlier opportunities for public involvement and collaboration with other governmental entities and stakeholders.

**Comment:** One comment asserted that the term “certain lands,” used to identify possible lands to be “protected and preserved” in the first paragraph under the Statutory and Regulatory Authority section in the preamble, should clearly identify what type of lands are being referenced, because it seems vague.

**Response:** The Statutory and Regulatory Authority section of the preamble states: “[t]hrough FLPMA, the BLM is directed to manage the public lands in a manner which. . . preserves and protects certain public lands in their natural condition. . . .” This language comes directly from FLPMA’s declaration of policy, which directs that “the public lands be managed in a manner that. . . will preserve and protect certain public lands in their natural condition” (43 U.S.C. 1701(a)(8)). The BLM does not think it is necessary to elaborate on the term “certain public lands.”

**Comment:** Several comments expressed concern regarding language in the preamble describing certain sections of the existing rule as exceeding the requirements of FLPMA.

**Response:** The preamble for the final rule notes that two sections of the existing rule, §§ 1610.3-2(b) and 1610.3-1(d), exceed the statutory requirements of FLPMA. This means that the existing regulations require something that FLPMA does not require. FLPMA limits consistency requirements to State and local plans; it does not require that, in the absence of such plans, the

BLM's resource management plans be consistent with "resource related policies and programs" as in existing § 1610.3-2(b). Accordingly, § 1610.3-3 of the final rule limits consistency requirements to officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes. Section 1610.3-1(d) of the existing regulations discusses guidance that the State Director develops for the Field Manager, which FLPMA does not require.

**Comment:** One comment asserts that the use of the term "resource" in the proposed rule is confusing. There are sentences in the rule where "resource" is separate from ecological and other conditions - *e.g.*, "Planning assessment means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area." Therefore, the BLM should clarify and define "resource."

**Response:** The term "resource" will not be defined in the final rule but it generally refers to the natural wealth of a country in the form of a feature or phenomenon, consisting of land, forests, mineral deposits, water, etc. and that enhances the quality of human life.

#### **Requests to Extend the Public Comment Period on the Proposed Rule**

Many comments requested that the BLM extend the comment period for the proposed rule.

**Comment:** Nearly 50 comments requested that the BLM extend the public comment period on the proposed rule from the original 60 days up to 240 days. Several comments also requested that the BLM hold additional public hearings across the western United States. Comments asserted that the original 60-day period was not long enough for the public to review and meaningfully comment on a rule that may significantly change the planning process. They further asserted that local government entities may only hold meetings once or twice a month, giving them limited opportunities to prepare for and discuss the proposed rule. Some comments

asserted that local governments have limited resources to dedicate toward analyzing such an action within the given time period. Further, they noted that the proposed rule was released in the spring, which is calving and lambing season, a busy time for some affected stakeholders. A few comments asserted that courts could view a 60-day comment period as an attempt to bypass the intent of the “notice and comment” requirement of Federal rulemaking because the proposed rule could impact many governments.

**Response:** In response to these comments, the BLM extended the close of the public comment period from April 13, 2016, to May 24, 2016. The BLM held a webinar and a public meeting, which it broadcast live over the Internet for remote participants, on March 21, 2016 and March 25, 2016, respectively. In response to public interest in the rule, the BLM held a second webinar on April 13, 2016.

**Comment:** Many comments requested that the BLM further extend the comment period from 90 days to 150, 180, or 270 days. Some comments specified that the potential impact of the proposed rule on local governments was too great for a 90-day comment period to be sufficient.

**Response:** The BLM did not further extend the comment period, as requested by these comments. “Executive Order 13563 - Improving Regulation and Regulatory Review,” issued on January 21, 2011, directs Federal agencies to “afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days” and the BLM has provided such opportunity. The BLM has produced and disseminated numerous announcements, notices, and fact sheets regarding Planning 2.0 and opportunities for public involvement since May of 2014, when it launched the Planning 2.0 initiative and began seeking public input on how to improve the land use planning process. The BLM hosted two public listening sessions, which were a forum for the public to

provide input, ideas, and concerns, in October of 2014, a year and a half prior to the comment period of the proposed rule. The BLM held the listening sessions in Sacramento, California and Denver, California, and they were led by a third-party facilitator.

The BLM also conducted two webinars on the proposed rule, both during the public comment period. The first was on March 21, 2016 and the second was on April 13, 2016, and both were led by third-party facilitators. The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend.

Additionally, the BLM conducted outreach to BLM partners. This outreach included a webinar for interested local government representatives that was coordinated through the National Association of Counties, several briefings for the Federal Advisory Committee Act chartered RACs, and a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies. The BLM also met with other interested parties upon request.

### **New Ideas, General Opinions, or Beyond the Scope of the Proposed Rule**

#### **Public Lands Management**

Many comments expressed general opinions about the concept of public lands and public lands management or offered suggestions about the management of public lands that were beyond the scope of this planning rule or the BLM's authority.

**Comment:** One comment suggested that any proposals on public lands should be subject to a vote in the county where the proposal would occur. One comment requested that the BLM provide funding so that local governments can consult on planning efforts. One comment asserted that there is often a close relationship between private industry and local elected

officials, and urged the BLM to note this. One comment suggested that granting local government's access to preliminary data provides an advantage that the local governments use to facilitate increased resource extraction. One comment suggested that the BLM develop a “uniform” public land use code, similar to the Uniform Traffic Code and other social contracts. One comment asserted that designations of National Conservation Lands units should be of sufficient size to protect identified values. One comment urged the BLM to strengthen its authority to implement closures and restrictions. One comment suggested that the BLM cease completing road surveys until it involves the local government. One comment urged the BLM to phase out or minimize livestock and motorized vehicle uses. Several comments concerned off-highway vehicle management or mountain bike management. One comment asserted that the BLM must better control and mitigate the effects caused by feral burros. Another comment asserted that the BLM should increase protections for wild horses and burros. One comment stated that the rule specify that significant impacts to sensitive species constitute undue or unnecessary degradation under FLPMA. Other comments concerned mitigation policy, the social cost of carbon, Rapid Ecoregional Assessments, the Landscape Conservation Cooperative process, sage grouse conservation, the BLM's annual revenue report, the need for renewable energy, the combination of onshore and offshore petroleum operations, re-wilding bison, and budget and staffing concerns.

**Response:** These comments are beyond the scope of this rule or the BLM’s authority.

**Comment:** Several comments requested that the final rule include an additional step that would allow local governments to review decisions prior to the release of the approved resource management plan or plan amendment. These comments asserted that such a step would provide

a meaningful bookend for counties, as well as an opportunity to mitigate additional concerns without significantly altering the final decisions.

**Response:** Under the obligations of FLPMA, the BLM must coordinate with state and local governments (including counties) throughout the planning process. Additionally, state and local entities such as counties can participate as cooperating agencies on individual planning efforts. Section 1610.3-2(b)(3) of the final rule describes the steps of the planning process in which the responsible official is obligated to collaborate, to the fullest extent possible, with all cooperating agencies. The BLM does not accept the suggestion to incorporate review of approved resource management plans and plan amendments as a required step for cooperating agency collaboration. However, as part of the memorandum of understanding required for all non-Federal agency cooperating agencies (§ 1610.3-2(b)(2)), the deciding official has the discretion of providing additional document review opportunities for cooperating agencies. This could include cooperating agency review of the approved resource management plan or plan amendment.

**Comment:** A few comments suggested that the final regulations establish rules to: ensure restoration and conservation of habitat for species of conservation concern and their long-term viability; ensure no net loss of public lands in regards to proposed BLM land sales or trades; and identify species of conservation concern or sensitive species on BLM lands in coordination with the U.S. Forest Service.

**Response:** Restoration and conservation of habitat for species of conservation concern and their long-term viability are implementation-level actions and thus outside the scope of this rule. Priorities for BLM land sales or trades also are outside the scope of this rule. However, the final rule provides for the collection and analysis of information and data on special status

species, important habitats, and other potential conservation issues, which will inform the BLM's preparation of resource management plans. For more information on the planning assessment, please see § 1610.4 of the final rule and the related discussion in the preamble.

**Comment:** One comment asserted that local governments should have voting or veto authority as cooperating agencies in planning processes. The comment asserted that local governments and citizens should have the most say in planning efforts.

**Response:** FLPMA requires the BLM to develop, maintain, and, when appropriate, revise land use plans. Under the final rule, however, the BLM will rely on input from local governments and communities to help shape the planning process as described in the final rule.

#### Public Participation

Many comments expressed general opinions about public involvement in planning or provided suggestions regarding public involvement that were beyond the scope of the final rule, particularly because they relate to implementation-level actions or decisions.

**Comment:** One comment asserted that public engagement for site-specific proposals must be a priority, and another comment stated that the BLM should consider the public a full participant in the planning process. One comment asserted that plans are so large and complex that the public feels their comments will not make a difference. One comment suggested the failure to develop meaningful public input in the Rapid Ecoregional Assessments will create barriers to management in the field. One comment noted that last-minute changes can disrupt collaboration efforts, and asserted that Planning 2.0 must address last minute changes in basic direction, such as significantly changing conclusions. One comment suggested that collaborative processes should be established as early as possible in the planning process when significant disagreement is present; this comment asserted that the BLM Collaboration Desk Guide is rarely

used to resolve planning controversies. One comment states that the final rule should include a requirement that BLM provide the public with anticipated timelines for planning efforts, which include milestones for public engagement, prior to the initiation of a planning process.

**Response:** The final rule provides several opportunities for meaningful public involvement, starting at the planning assessment phase, which occurs before scoping. The final rule continues to regard the public at large as a major partner in the planning process. Although use of the BLM's Collaborative Desk Guide and public involvement on the Rapid Ecoregional Assessments are not within the scope of this rule, the final rule has more and earlier opportunities for public involvement. See § 1610.2 of the preamble, and, specifically, § 1610.2-1(a), which lists the opportunities for which the BLM shall notify the public. The BLM typically provides an anticipated timeline for the planning effort with milestones. It is updated as the planning process progresses. With multiple engagement opportunities, the public can keep apprised of the process and any changes.

**Comment:** One comment expressed concern that the proposed rule did not adequately consider motorized access and motorized recreation. This comment asserted that the final rule must include mechanisms to contact Off-Highway Vehicle recreationists. The comment asserted that: the proposed rule has significant cumulative effect on motorized recreationists; the effectiveness of public participation should not be a deciding factor; networks of influence groups have a significant advantage over individuals; environmental groups manipulate the NEPA process; recreational opportunities should be based on public need, not level of citizen involvement; the number of NEPA actions is overwhelming, and it is impossible to comment on them all; the current process (of automatic closures) discriminates against the working class; and agency teams must include Off-Highway Vehicle enthusiasts.

**Response:** These comments are outside the scope of this rule. Nonetheless, the BLM partners with several Off-Highway Vehicle and recreation groups with which it communicates and collaborates on a regular basis on issues of mutual interest. The off-road and recreational communities are therefore included in the land use planning process. The BLM receives comments from individual recreationists – motorized and non-motorized – and treats all members of the public with equal regard during the planning process.

### Specific Decisions

Many comments expressed concern or provided suggestions regarding decisions that the BLM makes during or in individual planning efforts. Some of these comments cited specific plans or areas while others concerned specific resources or resource management determinations. A few comments requested that the BLM make national policy regarding resources and decisions that are managed or determined at the plan level.

**Comment:** One comment provided an example of a solar development that severely impacted local residents. One comment asserted that the BLM failed to consider local plans and to reconcile the Colorado sage-grouse plan amendment with them. One comment asserted that the proposed Western Oregon resource management plan would cause unacceptable degradation, was inconsistent with the O&C Lands Act, and failed to support local economies. One comment asserted that the BLM must consider safety issues when making off-highway vehicle use decisions. Some comments concerned forest-related issues in western Oregon. One comment asserted that the BLM should adapt land use planning for livestock grazing based on land conditions. One comment urged the BLM to establish and monitor at least one large-scale control area that is free of major impacts, including livestock. Another comment urged the BLM to use non-genetically altered seed when it conducts ecological restoration.

**Response:** These comments are beyond the scope of this rule.

### Implementation Planning

Several comments expressed concerns or offered suggestions that were related to implementation either of the final rule or of resource management plans themselves.

**Comment:** Several comments suggested that master leasing plans (MLPs) are the best tool to ensure both balanced development of public lands and fish and wildlife habitat. These comments urged the BLM to: identify MLPs in the final rule to ensure responsible, balanced development of public lands; explain how MLPs will be integrated into planning efforts in the preamble or rule and in the Land Use Planning Handbook; and emphasize in the final rule that MLPs are the preferred tool for addressing future oil and gas leasing and development and potential conflicts, including in cross-boundary landscapes.

**Response:** While MLPs are not explicitly discussed in the proposed rule, the BLM may address MLPs in the planning process for a particular area promulgated consistent with the procedures outlined in this final rule if the BLM determines a plan revision or amendment is necessary.

**Comment:** One comment suggested that the BLM create implementation teams after it finalizes resource management plans to focus on a plan's suggested remedies; the team could help with adaptive management, keeping the public involved in implementation.

**Response:** The final rule does not incorporate this suggestion because it is implementation-level and thus outside the scope of the rule. However, both the BLM's existing authority and the final rule allow for the accomplishment of the comment's suggestion.

**Comment:** One comment suggests that the BLM allow public review and comment on implementation plans, such as route decisions or recreation management plans.

**Response:** This comment addresses implementation-level processes and is therefore outside the scope of this rule.

**Comment:** One comment requested that the final planning rule and associated materials include visual aids and detailed explanations of the procedural steps that the BLM will implement.

**Response:** The BLM expects to develop visual materials and aids in forthcoming guidance, including the Land Use Planning Handbook.

**Comment:** One comment asserted that the BLM must consider the cumulative impact of all issues in a single, coordinated effort, to avoid a fragmented development of the land use plan.

**Response:** The BLM believes the final rule allows planning efforts to meaningfully address cumulative impacts.

**Comment:** One comment asserted that the final rule should indicate how the new regulations allow for flexibility and change under future administrations.

**Response:** This comment concerns implementation and is thus beyond the scope of this rule.

**Comment:** A couple of comments asserted that the final rule should only be issued after the BLM has completed its work on supporting policies, guidance documents, and other tools that will describe how key concepts and approaches will be integrated into the planning process.

**Response:** After the final rule is published, the BLM expects to release additional guidance in the forthcoming revision of the Land Use Planning Handbook. The Land Use Planning Handbook and other guidance will be used to implement the BLM's regulations. The BLM cannot finalize this guidance until after the final rule is published.

**Comment:** One comment suggested that the final rule include the opportunity for feedback, flexibility, and adaptation to ensure that the proposed regulatory changes (e.g. modification of the comment period) work as the BLM intends and maximize participation.

**Response:** The BLM developed the rule so that it would provide for appropriate flexibility, such as allowing the responsible official to provide additional opportunities for public involvement during a planning effort when he or she believes such opportunities would add value (see § 1610.2 of the preamble). However, the BLM cannot modify the code of Federal regulations without subsequent rulemaking.

*Coordination, Joint Planning, and Rule Implementation*

A few comments expressed concerns or provided suggestions regarding coordinating agencies and joint planning efforts that the BLM either did not incorporate into the final rule or are beyond the scope of the planning rule.

**Comment:** One commenter suggested that the planning rule establish a cooperating agency Website for each planning process where all consistency agreement communications are posted within a reasonable time frame (e.g. 30 days).

**Response:** Cooperating agency agreements established in memoranda of understanding require the parties to commit to maintaining the confidentiality of documents and deliberations during the period prior to the BLM's public release of any documents, including drafts (see § 1610.3-2(b)(2) of the final rule). This is consistent with the regulations at 43 CFR 46.220.

**Comment:** One comment urged the BLM to state in the final rule that the BLM and any other Federal agencies must adhere to FLPMA's requirements when they undertake joint planning efforts, such as the sage-grouse amendments.

**Response:** It is implicit in the final rule that FLPMA principles govern BLM land use planning.

**Comment:** One comment stated that coordination of planning consistent with Federal law and State planning activities requires that the effects of land use planning on State trust lands be proactively addressed through the full range of authorized mechanisms.

**Response:** The NEPA process that accompanies BLM land use planning under the existing and final planning regulations generally provides a mechanism to assess effects on some state trust lands.

### Conflicts

A few comments expressed concern regarding how the final rule handles conflicts between plans, between the BLM and stakeholders, or between the final rule itself and other sources of law.

**Comment:** One comment suggested that the final rule eliminate conflicts by suspending conflicting planning efforts, or proposing NEPA-compliant ways in which defects can be remedied after the fact through post-enactment public involvement.

**Response:** One of the objectives of this new rule is to use the planning assessment and landscape approaches to reduce conflicts and improve transparency, both of which rely on the NEPA process and heavily involve the public.

**Comment:** One comment asserted that the BLM should use the final rule to strengthen the protest process in order to slow the “sue and settle” trend.

**Response:** The BLM believes that the final rule, with its increased opportunities for public involvement and clarification of protest procedures, will help to resolve conflicts.

**Comment:** One comment urged the BLM to prepare a table that identifies: (1) those existing laws and regulations that it is not currently following; (2) the practice and/or policy that is being implemented in its stead, and for how long that practice or policy has been in place; and (3) the proposed change that seeks to codify that practice or policy into law. The comment asserts that such a table, in accordance with the President's 2009 Open Government Directive, would provide the public with a true and accurate representation of the current and anticipated effects of the proposed rule.

**Response:** The suggestion is outside the scope of this rule. When the BLM states in the preamble that it performs an action in practice that is not included in the existing regulations, this does not mean that the BLM is not complying with its existing regulations; rather, the BLM is performing an action in practice that is in addition to its requirements under the existing regulations.

#### *Information and Data Sharing*

A few comments provided suggestions about the sharing of information and data between the BLM and other agencies and the public.

**Comment:** One comment urged the BLM to follow the model of the U.S. Fish and Wildlife Service in order to emphasize coordination with State and local agencies throughout the planning process. The comment asserted that doing so will help the BLM to ensure that resource management plans are based on the best scientific and commercial data available.

**Response:** The final rule improves the BLM's ability to utilize high quality information, including best available science and geospatial data, when it develops plans and implements future actions. The final rule affirms the importance of using high quality data as a foundation

for BLM planning and management. Please see the preamble discussion of § 1610.1-1(c) for more information on the BLM's high quality information standard.

**Comment:** One comment requested that the BLM and the U.S. Fish and Wildlife Service assess how they will coordinate the Landscape Conservation Cooperative program with BLM planning efforts. The comment suggested that Landscape Conservation Cooperatives might contribute to the data and information available for planning, and asserted that the final rule should be modified if the systems are integrated. Another commenter suggested that the final rule incorporate the Intergovernmental Platform of Biodiversity and Ecosystem Services (IPBES) global ecosystem assessment.

**Response:** The BLM may use any data and information in the planning process as long as it is high quality information, so it is unnecessary to address any particular source in the rule.

*Other Suggestions that the BLM Did Not Incorporate*

Several comments suggested that the BLM include in the final rule new ideas, language, or tools that the BLM did not incorporate when revising the proposed rule.

**Comment:** One comment suggested that the BLM create a cultural data inventory tool for planning and require its use in the final rule.

**Response:** The BLM believes that methods for gathering cultural resources data are more appropriately addressed in guidance, such as the Land Use Planning Handbook or other internal policy.

**Comment:** One comment suggested that the BLM add a new section to the final rule that allows the Director to authorize the development of pilot projects that meet the general requirements of the final planning rules but allow for testing different strategies that might improve the planning process.

**Response:** The BLM is not precluded from conducting pilot projects under the final rule as written.

**Comment:** One comment suggested that the BLM consider a layered approach to planning, with the different layers including landscape, management unit, resource, and project. The comment asserted that this would streamline the planning process by narrowing the BLM's focus and making identification of Areas of Critical Environmental Concern easier.

**Response:** The rule provides sufficient flexibility for planning at different levels.

#### Species Management

**Comment:** A few comments recommended that the final rule include language specifically addressing BLM sensitive species and species' viability. These comments recommended the final rule mirror the U.S. Forest Service's planning rule and that sensitive species management be required to be informed by and consistent with the best available scientific information. The comments also recommended the final rule include a requirement to maintain or expand populations of sensitive species.

**Response:** The BLM will not revise the final rule to require specific consideration of sensitive species and species viability. The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not prescribe specific outcomes. The BLM, through the land use planning process, will develop plan components as appropriate to address the resources and values within the planning area. Habitat for special status species must be considered in the planning assessment. The BLM expects to provide any additional appropriate guidance through the revision of the BLM Land Use Planning Handbook.

#### **Basis for the Proposed Rule (Preamble Discussion)**

### Authorities

A few of comments expressed concerns regarding the authorities that the BLM did or did not cite in the preamble.

**Comment:** One comment recommended that the BLM mention more authorities (such as the Clean Air Act and the Wilderness Act) in the preamble, similar to the Forest Service planning rule.

**Response:** The authorities section (§ 1601.0-3) provides the relevant authorities for establishing procedures to develop, amend, and maintain resource management plans. The BLM has appropriately identified all authorities relevant to establishing these procedures. Also, the BLM must comply with all applicable Federal laws, including the Clean Air Act of 1963, the Wilderness Act of 1964, and many others during land use planning.

**Comment:** One comment asserted that Congress retains jurisdiction over withdrawal of lands and authority to designate or dedicate Federal lands. The comment asserted that the BLM's citing of executive branch directives on mitigation and climate change as authorities in the preamble subverts FLPMA and is not legal.

**Response:** The existing, proposed, and final rules are consistent with applicable Federal laws, which include FLPMA. Executive direction provides guidance to the BLM to assist in the implementation of FLPMA and that executive direction is consistent with the direction provided by Congress in FLPMA. Executive directives regarding mitigation and climate change, for example, are consistent with FLPMA's mandate to manage the public lands on the basis of multiple use and sustained yield. Revisions to §§ 1601.0-1, 1601.0-5, 1601.0-8, 1610.1-2, and 1610.5-2 of the final rule add the phrase "...consistent with the principles of multiple use and

sustained yield unless otherwise specified by law” in response to public comments that the proposed rule would not adequately promote the principles of multiple use and sustained yield.

**Comment:** One comment suggested that the preamble include all relevant Executive and Secretarial Orders, as well as all other relevant guidance from the CEQ that covers planning in accordance with NEPA.

**Response:** The preamble discusses a number of significant Executive and Secretarial Orders and relevant CEQ guidance that is most significant to the planning process and the BLM’s revisions to it. Including all relevant Executive and Secretarial Orders is unnecessary.

**Comment:** One comment urged the BLM to reaffirm in the Executive and Secretarial Direction section of the preamble that FLPMA requires coordination with state and local governments during all phases of the planning process.

**Response:** FLPMA is not an executive or secretarial direction. The Statutory and Regulatory Authority section of the preamble, in addition to many other sections of the preamble, explains that FLPMA requires coordination with other Federal departments and agencies, Indian tribes, and the States and local governments.

### Planning Process

Several comments expressed concern that rule would make the planning process more complex and less transparent, and otherwise would not improve the current planning process. One comment was supportive of the BLM’s decision to change its planning process.

**Comment:** A few comments asserted that the proposed rule fails to fully articulate the problems with the current planning process, particularly the incorporation of larger planning areas with varying land ownership patterns, and that the rule does nothing to resolve these problems. These comments added that resource management plans would become more

complex, requiring more time for review, and suggested that the BLM explain how the final rule improves the planning process.

**Response:** The identified challenges facing the current planning process, as discussed in the preamble, include: population growth and urbanization in the western states near public lands; diversifying use activities; demand for renewable and non-renewable energy sources; increased conflicts between resources and conservation; and larger-scale resource issues such as climate change and wildfire. The BLM is revising its resource management planning process to respond to these challenges and to make the planning process more efficient and adaptive. Inherent in this is an understanding that the current planning process is not as efficient, adaptive, or responsive to the identified challenges as it could be.

The BLM does not identify larger planning areas or varying ownership patterns across a planning area as problems with the current planning process. Two of the BLM's goals for the Planning 2.0 initiative are to improve the BLM's ability to apply landscape-scale approaches to management and to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of resource management plans. The final rule helps the BLM to achieve these goals by facilitating planning across traditional field office boundaries and providing enhanced opportunities for public involvement, including coordination with other governmental entities. Planning on a landscape scale does not necessarily mean that a planning area is large (see the definition of "landscape" at § 1601.0-5), but nevertheless, the rule's focus on collaboration, transparency, and a comprehensive consideration of the planning area (see § 1610.4) will help the BLM to successfully plan over larger areas. Additionally, the rule includes consideration of varying landownership in the planning assessment, requiring the responsible official to consider and

document “[l]and status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights” (see § 1610.4(d)(2)).

The BLM will use the information gathered in the planning assessment to inform later stages of planning, such as the development of planning issues and preliminary alternatives.

The BLM does not believe that the rule will make planning documents more complex or increase the time required to review them. Section 1610.2-2 of the final rule does provide a longer public comment period for draft resource management plans and draft EISs: at least 100 days, which is longer than the 90 days provided under the current regulations. This revision from the proposed rule, which would have provided a 60-day public comment period for draft resource management plans and draft EISs, was made in response to public comments requesting a longer period for review of these items.

The BLM believes that the final rule improves the planning process by enhancing the BLM’s ability to respond to change in a timely manner, expanding public involvement opportunities, and increasing transparency and communication to the public. Please see the preamble, particularly the sections “Why the BLM is Revising the Land Use Planning Process” and “How the Final Rule Achieves the Goals of Planning 2.0,” for further discussion.

**Comment:** A few comments asserted that the changes the BLM has made to the rule to reflect current practice unnecessarily invites litigation, because changes in terminology will result in lawsuits over interpretation of the terminology. The comments asserted that courts usually find a change in policy represents a change in practice, so changing policy only for the reason of reflecting current practice will result in years of litigation. The comments urged the BLM to factor litigation costs into its analysis of the costs of the proposed rule. One comment

asserted that, if landscape-scale planning is permitted under the current regulations, there is no need to revise the regulations.

**Response:** Until the final rule is effective, the BLM continues to follow its current regulations; where the BLM notes in the preamble that it makes a change to reflect current practices, this means that the current practice is in addition to, not instead of, what the existing regulations require. There are a number of reasons for the BLM to update its planning regulations to align with current practices, including transparency, ensuring consistency across resource management plans, and affirming commitments to certain practices, like the use of high quality information. The BLM cannot reasonably predict the amount, length, or cost of litigation that might arise from the final rule.

Though the current regulations permit landscape-scale planning, the final rule more clearly provides for it, by, for example, using the terms “deciding official” and “responsible official,” which are comparable to but not synonymous with the existing regulations’ “State Director” and “Field Manager.” The final rule recognizes that the deciding official may not always be the State Director, and the responsible official may not always be the Field Manager. Including provisions for planning across traditional boundaries in the rule will help the BLM to achieve its goal of improving its ability to apply landscape-scale approaches to management and to ensure consistency across planning efforts. The BLM also intends that the final rule provide transparency to the public regarding how the development of resource management plans.

**Comment:** One comment expressed support of the acknowledgement that the planning process is in need of modernization and overhaul.

**Response:** The BLM believes that the final rule improves its ability to address landscape-scale issues and to respond to change, will increase collaboration in resource management planning, and will result in a more efficient and dynamic planning process.

*Public Comment and Preamble's Rationale*

One comment expressed concern regarding the rationale provided for changing public comment periods.

**Comment:** One comment asserted that the preamble's rationale for reducing the public comment period on draft resource management plans and draft EIS-level amendments — that new, earlier opportunities for public involvement would balance the reductions and allow for efficiency — assumes that the notification of those earlier opportunities will be adequate. The comment asserted that in fact, the notification of earlier public involvement opportunities is lacking because § 1610.2-1(d) of the proposed rule seems to require Indian tribes to request to be notified of opportunities for public involvement in order to be notified unless, as in proposed § 1610.3-1(c)(3), the responsible official has “reason to believe” a tribe would be interested in the plan or plan amendment.

**Response:** In response to public comments, the final rule revises the public comment periods for draft resource management plans and draft EIS-level plan amendments. The BLM will provide at least 60 days for public comment on draft EIS-level amendments and 100 days for draft resource management plans (see §§ 1610.2-2(b) and 1610.2-2(c)). The BLM will continue its current practice to conduct outreach to all individuals or groups known to be interested in or affected by a resource management plan. The changes from existing § 1610.2(d) to final § 1610.2-1(d) reflect the fact that the BLM cannot guarantee that interested individuals or groups and their correct contact information will be added to the mailing list unless they request

to be added and provide the BLM with current contact information. The final rule adopts the “reason to believe” language of 1610.3-1(c)(3), redesignated in the final rule as 1610.3-2(c)(3); this is a requirement that the BLM conduct outreach to Federal agencies, State and local governments, and Indian tribes who may not have requested to be notified but whom the responsible official has reason to believe may be interested in the resource management plan. This section requires the BLM to issue these notices of opportunity for involvement simultaneously with the public notices under § 1610.2-1. The notices listed in § 1610.2-1 include the preparation of the planning assessment (see § 1610.2-1(a)(1)), which is the start of the planning process. The final rule also includes a new § 1610.3-1, which requires the BLM to initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans.

#### *Special Status Species*

One comment urged the BLM to explain in the preamble how the rule will help conserve special status species.

**Comment:** One comment suggested that the preamble to the final rule describe how the proposed planning assessment, purpose and need statements, and plan components will support special status species conservation and how the BLM will ensure that planning assessments inform those plan components that conserve and contribute to the recovery of special status species.

**Response:** In the planning assessment, the responsible official will consider and document, when applicable: habitat for special status species, including State or federally-listed threatened and endangered species, under final § 1610.4(d)(5)(ii); dominant ecological processes, disturbance regimes, and stressors, under final § 1610.4(d)(6); and known resource

constraints or limitations, under final § 1610.4(d)(4). These are some examples of the information gathered in the planning assessment that might inform later stages of planning, including the development of plan components, which could be related to special status species. The planning rule establishes the procedural framework for preparing resource management plans but does not prescribe specific outcomes, such as how the planning assessment will specifically inform plan components, or how various elements of the planning process or a resource management plan address special status species. As an example, though, the responsible official might document in the planning assessment a special status species habitat under § 1610.4(d)(5)(ii) and a minimum viable population for that species under § 1610.4(d)(4). The BLM could note the protection of special status species in the plan's purpose and need statement, and establish an objective, which is a plan component (see § 1610.1-2(a)(2)), in the plan to support viable populations for the special status species by protecting the species' habitat. Monitoring and evaluation standards, another plan component (see § 1610.1-2(b)(3)), would indicate how that objective would be measured and how frequently it would be measured. As required by § 1610.6-4(a), the BLM would use the monitoring and evaluation standards to determine whether (1) the special status species objective is being met and (2) there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the plan. In the interest of transparency, § 1610.6-4(b) requires the responsible official to make a report of the evaluation available for public review.

### Mitigation

A few comments requested the inclusion of specific mitigation language into the final rule. Other comments expressed concern regarding the discussion of mitigation in the preamble or its incorporation into the rule.

**Comment:** One comment urged the BLM to include in the preamble and revised Land Use Planning Handbook a commitment to the development of regional mitigation plans and the use of designations to protect mitigation sites.

**Response:** The planning rule establishes the procedural framework for preparing resource management plans but does not prescribe specific outcomes, such as the development of regional mitigation plans or the use of designations to protect mitigation sites. However, the BLM's interim mitigation policy (Instruction Memorandum No. 2013-142, Interim Policy, Draft - Regional Mitigation Manual Section – 1794 (June 13, 2013)) promotes a regional approach to mitigation, and this aligns with the Planning 2.0 goal of applying landscape-scale approaches to resource management. Further, the BLM must comply with other directives, such as the Presidential memorandum on mitigation and Secretarial Order 3330. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance for incorporating mitigation in the planning process. The BLM also expects to address this topic through additional policy and guidance.

**Comment:** A few comments expressed support for the mitigation hierarchy contained in Secretarial Order 3330 and referenced in the preamble to the proposed rule. They recommended that the final rule incorporate requirements that resource management plan revisions and amendments meet a no net loss objective, as well as incorporate the principle of avoidance into the planning rule itself.

**Response:** The BLM will not adopt a provision in the final rule to include a no net loss policy for resources identified in resource management plans. The policy cited in the comment includes a more particular mitigation policy for the DOI that references a no net loss policy for a certain set of resources and their values, services, and functions and not for any and all resources

as recommended in the comment. The BLM does not believe that it is necessary or appropriate to include that level of detail regarding mitigation in the final rule because more specific policy on mitigation is developed and defined elsewhere. Further, while the BLM does apply the principle of avoidance by identifying impacts and developing alternatives to avoid those impacts, the planning rule does not prescribe specific outcomes, like the development of alternatives to avoid undesirable impacts. The BLM believes that the application of the mitigation hierarchy in planning is better addressed through guidance, such as the Land Use Planning Handbook (H-1601-1) or the BLM's NEPA Handbook (H-1790-1). However, the BLM believes that the planning rule will help facilitate the implementation of Secretarial Order 3330 and other applicable mitigation policies.

**Comment:** A few comments asserted that there is not sufficient legal justification to incorporate compensatory mitigation into the final rule.

**Response:** The rule defines "mitigation" as a sequence which generally culminates in compensation for remaining unavoidable impacts (also known as residual impacts) (see § 1601-0.5). Section 1610.1-2(a)(2)(i) states that, as appropriate, objectives should identify standards to mitigate undesirable resource conditions. These standards are intended to provide guidelines to link mitigation to resource management plan objectives. Mitigation standards will be developed as appropriate, and will identify standards for resource conditions. They will not prescribe specific mitigation practices. The rule thus does not require compensatory mitigation; it provides for the use of appropriate mitigation, including compensatory mitigation, when the resource management plan is implemented. The proposed and final rules are consistent with all applicable Federal laws.

**Comment:** One comment asserted that the BLM’s mitigation policy is not final, so the final rule should not reference or incorporate it.

**Response:** While the BLM continues to finalize its mitigation policy, it has indeed been implementing an interim policy (Instruction Memorandum No. 2013-142, Interim Policy, Draft - Regional Mitigation Manual Section – 1794 (June 13, 2013)). But the BLM has referenced its interim policy and other applicable mitigation policies only in the in the preamble, not in the rule itself. Further, the only mention of mitigation in the rule that is an interpretation of policy is the definition of “mitigation” in § 1601.0-5, which states that mitigation means “the sequence of avoiding, impacts, minimizing impacts, and compensating for remaining unavoidable impacts.” This definition is consistent with the Departmental Manual chapter on “Implementing Mitigation at the Landscape-scale” (600 DM 6), as well as the BLM’s interim guidance.

*Roadmap for Success in 2016*

A comment expressed concern that the BLM should make information used in the “Roadmap for Success in 2016” available to the public.

**Comment:** One comment asserted that the BLM has failed to make available the information it used in the development of the “Roadmap for Success in 2016,” and asserted that this could be viewed as a violation of the Information Quality Act.

**Response:** The development of the BLM’s “Winning the Challenges of the Future: A Roadmap for Success in 2016” is outside the scope of this planning rule.

**Level of NEPA Review for the Planning Rule**

### Use of Categorical Exclusion

Many comments expressed concern regarding the BLM's determination that the rule is categorically excluded from further documentation under NEPA.

**Comment:** A few comments suggested that a NEPA analysis should be conducted on the planning rule. Some comments suggest this should include an extended comment period and additional public meetings, allowing more participation at a local level. Other comments asserted that the proposed rule could have significant environmental impacts, and that it is an extraordinary circumstance disqualifying it to receive a categorical exclusion under NEPA. To be more transparent, an EA should be prepared, the public comment period extended, and public meetings granted. Local governments have not had time to write their own original comments.

A few comments noted that the BLM has expressly stated that “[t]he proposed rule would improve the BLM's ability to address landscape-scale resource issues and to respond more effectively to environmental and social changes” (see Preliminary Categorical Exclusion, p. 1). The comments asserted that the BLM has identified a number of potentially significant effects that may result from implementation of the proposed planning rule, including effects on invasive species, vegetation and habitat, and site-specific plans. The comments asserted that the BLM has been arbitrary and capricious in giving these potentially significant impacts no serious consideration.

Many comments noted that, under CEQ's regulations for implementing NEPA, Federal actions subject to NEPA include “new or revised agency rules, regulations, plans, policies, or procedures” and “formal documents establishing an agency's policies which will result in or substantially alter agency programs.” One comment asserted that agencies are required to integrate NEPA review into their planning processes as early as possible. These comments

asserted that the appropriate level of NEPA analysis is an EA or an EIS, and further asserted that the BLM should complete such an analysis for the rule. Other comments asserted that the use of a categorical exclusion violates Department of the Interior regulations. These comments asserted that departmental regulations require conducting proper NEPA analysis and that the BLM must complete an EA or an EIS.

Several comments also asserted that the BLM's level of NEPA analysis is in conflict with Planning 2.0's goals of implementing landscape-scale management approaches and active coordination and collaboration with partners and stakeholders. The comments asserted that the BLM needs to complete an EIS to resolve this conflict.

**Response:** The BLM has complied with NEPA on this final rule. The BLM appropriately determined this action is categorically excluded from further documentation under NEPA in accordance with 43 CFR § 46.210. Specifically, the BLM determined the amendment of the BLM's planning regulations is entirely procedural and no extraordinary circumstances exist. The BLM made the preliminary categorical exclusion documentation available to the public for review with the proposed rule. The BLM considered comments it received on the preliminary documentation, and incorporated them as appropriate in developing the categorical exclusion documentation for the final rule. This final documentation is available to the public with the final rule; please see that documentation for more information.

The BLM does not believe it is in conflict with any of the Planning 2.0 goals by relying on a categorical exclusion review for compliance with NEPA. The BLM has extensively engaged the public, met with governments, and made information available during meetings and online throughout the rulemaking process (see the description of public involvement in the

“Background” section of the preamble and comment responses at “Public Involvement for Rulemaking”).

**Comment:** Several comments asserted that the BLM’s use of a categorical exclusion review to comply with NEPA is a departure from prior agency practice. The comments noted that the BLM prepared EAs for two of its three prior rulemaking efforts (1979 and 1983, but not 2005). The comments asserted that the BLM completed EAs for the 1979 and 1983 revisions because they contained “major amendments,” and further asserted that since the proposed revisions represent a dramatic overhaul of the BLM’s land use planning process, the BLM must prepare an EA, if not an EIS.

**Response:** The Department of the Interior did not establish the categorical exclusion on which the BLM relied for this amendment to its planning regulations (43 CFR § 46.210) until 1984, therefore, it was not available to the BLM for reliance when BLM revised its planning regulations in 1979 and 1983. In 1984, the Department of the Interior published NEPA procedures in the *Federal Register* which included the following categorical exclusion:

“[p]olicies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which 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” (49 FR 21437 (May 21, 1984)).

**Comment:** A couple of comments asserted that the BLM’s application of a categorical exclusion to a procedural action like this rule warrants the application of a categorical exclusion to similar procedural actions, like permit renewals or updated management practices. Several other comments stated that the BLM must complete at least an EA for the proposed rule. These

comments asserted that other actions with similar or less significant effects than the proposed rule, such as grazing allotment renewals or one-acre communication sites, require EAs.

**Response:** It is outside of the scope of this rulemaking to consider relying on a categorical exclusion for other actions.

**Comment:** Several comments expressed concern that the inclusion of implementation strategies in the proposed rule (§ 1610.1-3), which the BLM could update at any time to incorporate new information without a plan amendment, creates an opportunity for decision-making that skirts the NEPA compliance requirements. The comments asserted that this nullifies the BLM's ability to apply a categorical exclusion to the rule.

**Response:** In response to public comments and described in detail in the preamble at § 1610.1-3, the final rule does not adopt the implementation strategies section.

**Comment:** One comment asserted that the preliminary categorical exclusion's claim that the proposed rule would result in "no significant burden" is false because shortening the public comment period on draft resource management plans and draft EISs would result in a significant burden. The comment asserted that this burden makes the use of a categorical exclusion inappropriate, and urged the BLM to complete an EA or EIS.

**Response:** The BLM disagrees with these comments, and the assertions in these comments are incorrect. Although the BLM disagrees with the comments that the length of the public comment periods in the final rule impacts the BLM's reliance on the DOI categorical exclusion, the final rule requires at least 60 days for public comment on draft resource management plan amendments/draft EISs. This is greater than the 45 calendar days included in the proposed rule, but less than the 90 days under current regulations. For draft resource management plans/draft EISs, the final rule requires at least 100 days, which is longer than the

90 days required by the existing regulations. Additionally, the final rule includes new opportunities for public involvement in the planning process not currently provided under the existing regulations. For more information, see the preamble at § 1610.2-2 and the responses to comments at that section of this document.

*Review of Extraordinary Circumstances: Health and Safety*

A few comments asserted that the rule would have significant impacts on health and safety, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(a).

**Comment:** A few comments asserted that the proposed rule would result in significant impacts on public health and safety, requiring an EIS. One comment asserted that the removal of the language from existing § 1610.3-2 requiring the BLM to develop land use plans consistent with Federal and State pollution control laws would result in significant impacts to public health and safety. Another comment asserted that the rule decreases the amount of coordination and involvement of elected officials, which would impact roads, ranges, natural gas and oil wells, and other resources, resulting in an effect on public health and safety.

**Response:** The extraordinary circumstances review determined that the final rule does not have any impacts on public health and safety because it is purely procedural. The review also specifically clarifies that the implementation of this rule (developing, revising, or amending a resource management plan) is subject to NEPA analysis under an EA or EIS, and that any planning-area-specific potential impacts to public health and safety will be analyzed and considered during that analysis, as appropriate.

The final rule removes text from the existing rule that specifically identifies the BLM's consideration of officially approved or adopted Federal and State plans that incorporate

components of pollution control laws. It is unnecessary to specifically identify pollution control laws here because the BLM is required to comply with all applicable laws and regulations, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. As previously noted, the final rule does not have any impacts on public health and safety because it is purely procedural. The changes to the final rule the comment noted does not change this determination.

*Review of Extraordinary Circumstances: Significant Impacts to Resources and Unique Characteristics*

Several comments asserted that the rule would have significant impacts on natural resources and unique geographic characteristics, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(b).

**Comment:** Several comments asserted that the proposed rule would have significant impacts on natural resources and unique geographic characteristics under 43 CFR 46.215(b), qualifying the rule as an extraordinary and necessitating an EA or EIS under the Department of Interior’s NEPA regulations. The comments asserted that the inclusion of designations in the rule (see § 1610.1-2(b)(1)) contemplates that significant impacts to natural resources or unique geographic characteristics will occur, and this makes a categorical exclusion inappropriate. The comment asserted that the potential impacts to natural resources include social and economic harm, loss of multiple uses for local communities, and impacts to the custom and culture of the planning area.

**Response:** The BLM has determined in the review of extraordinary circumstances that because the proposed action is procedural in nature, the final does not have significant impacts “on such natural resource and unique geographic characteristics as historic or cultural resources;

park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands []; floodplains []; national monuments; migratory birds; and other ecologically significant or critical areas” and therefore, this extraordinary circumstance is not present and the use of a categorical exclusion is appropriate. Preparation of a resource management plan or plan amendment under the rule requires NEPA analysis under an EA or EIS, and the BLM will analyze and consider any planning-area-specific potential impacts during that analysis. The inclusion of designations as a plan component in the final rule does not itself significantly impact natural resources, and the BLM has appropriately applied a categorical exclusion to this rulemaking. The rule itself does not change any existing designations or establish new designations in a particular land use plan. Changes to existing designations or establishment of new designations will be done through the planning process consistent with the procedures in this rule, and will be subject to appropriate NEPA review. Moreover, the plan components applied to designations, including goals and objectives and resource use determinations will be determined through the planning process and subject to appropriate NEPA review. The BLM will consider socioeconomic impacts, including impacts on local communities, as part of the NEPA review of planning decisions that may include new designations.

*Review of Extraordinary Circumstances: Highly Controversial and Unresolved Conflicts*

Many comments asserted that the rule has highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(c).

**Comment:** Many comments asserted that the proposed rule is highly controversial and involves unresolved conflicts, making the rule an extraordinary circumstance under which a

categorical exclusion is inappropriate. The comments cited the statement in the preamble that the BLM faces “increasing conflicts between resource uses and conservation objectives” as evidence of this conflict. The comments further cited court rulings stating that “[a] federal action is controversial if a substantial dispute exists as to its size, nature, or effect” (*Greenpeace Action v. Franklin*, 14 F.3d 1324 (9 Cir. 1992)). The comments added that “[a] substantial dispute exists when evidence... casts serious doubt upon the reasonableness of an agency’s conclusions,” citing *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722 (9th Cir. 2001). The comments asserted that the controversial nature of the rule is evidenced by the numerous comments requesting additional time to analyze it and the fact that over 6,000 individuals and organizations commented on the proposed rule. The comments asserted that these comments show the controversial nature of implementing the rule, casting doubt on its reasonableness. The comments asserted that the BLM has been arbitrary and capricious in presuming the proposed rule does not have any extraordinary circumstances, and needs to prepare a comprehensive EIS to address these issues.

**Response:** The BLM has conducted a review of the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis under NEPA (43 CFR 46.205(c)(1) and 46.215). As part of this review, the BLM evaluated whether or not “the proposed action [would] have highly controversial environmental effects or unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(E)).” The extraordinary circumstances review determined that the final rule does not have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources because it is purely procedural.

The BLM's statement in the preamble to the proposed rule that it faces increasing conflicts between resource uses and conservation objectives is not evidence that the rule itself involves or presents unresolved conflicts; these conflicts exist independent of the rule, and the rule helps to address them. Regarding the assertion that the rule is highly controversial, the BLM clarifies that "controversy" under 40 CFR 1508.27(b)(4) means disagreement about the nature of the effects, not expressions of opposition to the proposed action. The BLM disagrees with comments that assert that the fact that the BLM received a large number of comments on the proposed rule and on Planning 2.0 initiative in and of itself represents the necessary controversy to present extraordinary circumstances.

This final rule establishes the procedural framework by which the BLM develops, revises, or amends resource management plans, but the rule itself is entirely procedural in nature and does not establish specific goals, standards, or methods for how the BLM manages public lands. The BLM's extraordinary circumstances review specifically clarifies that the implementation of this rule (the developing, revising, or amending of a resource management plan) requires NEPA analysis under an EA or EIS, and that the BLM will analyze and consider any planning-area-specific potentially uncertain and significant environmental effects of unknown environmental risks during the development or amendment of individual resource management plans.

*Review of Extraordinary Circumstances: Highly Uncertain and Potentially Significant*

Some comments asserted that the rule will have highly uncertain and potentially significant environmental effects, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(d).

**Comment:** Some comments asserted that the proposed rule contains highly uncertain and potentially significant environmental effects. One comment cited the BLM’s “Preliminary Determination: Economic and Threshold Analysis” conclusion that “impacts cannot be quantified as they depend on the specific context of individual plans, and, more importantly, the specific character of any action proposed for implementation after a plan is approved.” This comment asserted that the BLM’s conclusion in the extraordinary circumstances review that there are no highly uncertain and potentially significant environmental effects conflicts with the economic threshold analysis statement, and that the use of a categorical exclusion in light of this contradiction is inappropriate. The other comment asserted that the BLM’s proposal to include climate change and landscape-scale resource issues and landscape-scale management approaches will result in highly uncertain and potentially significant environmental effects, which precludes the use of a categorical exclusion.

**Response:** The BLM has conducted a review of the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis (43 CFR 46.205(c)(1) and 46.215). The BLM evaluated whether or the proposed action would have highly uncertain and potentially significant environmental effects or involve unknown environmental risks and appropriately determined that, because the rule is purely procedural, it would not have such effects or involve such risks. The BLM disagrees with the comments’ characterizations of the final rule and disagrees with the comments’ conclusions that the changes in the final rule result in highly uncertain and potentially significant environmental effects.

Although the final rule requires the planning assessment to include an analysis of “[d]ominant ecological processes, disturbance regimes, and stressors, such as drought, wildland

fire, invasive species, and climate change” (§ 1610.4(d)(6)), it does not require a specific outcome for a particular planning effort based on that analysis. Rather, this information will be considered during the development of a resource management plan or plan amendment, which will be subject to appropriate NEPA review.

Similarly, the final rule’s accommodation of landscape-scale planning does not have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. The inclusion of landscape-scale planning in the final rule does not require a specific outcome, but rather provides the process the BLM will use to develop or amend a specific resource management plan. Any impacts that may result from the approval of a resource management plan or plan amendment following this process will be subject to the appropriate level of analysis under NEPA.

BLM’s economic and threshold analysis and categorical exclusion documentation for NEPA compliance are consistent, and not in conflict. They both determine that the rule is procedural in nature, and any impacts resulting from the implementation of the rule will be appropriately analyzed on a case-by-case, project-specific basis. The final rule establishes the procedural framework by which the BLM develops, revises, or amends resource management plans, including on a landscape-scale, but the rule itself does not establish specific goals, standards, or methods for how the BLM manages public lands and does not establish specific landscape scales. The implementation of this rule (developing, revising, or amending a resource management plan) requires NEPA analysis under an EA or EIS, and the BLM will analyze and consider any planning-area-specific potentially uncertain and significant environmental effects of unknown environmental risks during the analysis for the development or amendment of a specific resource management plan.

**Comment:** One comment asserted that the proposed rule contains highly uncertain and potentially significant environmental effects because, like that in *Citizens for Better Forestry v. U.S. Department of Agriculture*, 341 F.3d at 973 (9th Cir. 2003), the proposed rule will have myriad impacts that touch every future public land project and resource management plan, the extent and nature of which are highly uncertain. The comment asserted that such uncertainty precludes the use of a categorical exclusion, and urged the BLM to fully analyze the likely impacts to energy, livestock grazing, recreation, and other multiple uses.

**Response:** The BLM has conducted a review of the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis (43 CFR 46.205(c)(1) and 46.215). The BLM appropriately determined that the rule will not have any highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks because the rule is purely procedural. The planning decisions made under this rule must be compliant with NEPA; the BLM will conduct NEPA analysis, as appropriate, during the implementation of this rule (developing, revising, or amending a resource management plan) on a project-specific, case-by-case basis.

*Review of Extraordinary Circumstances: Precedent*

Many comments asserted that the rule would establish a precedent for future action or represents a decision in principle about future actions with potentially significant environmental effects, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(e).

**Comment:** Many comments asserted that the proposed rule would establish a precedent for future action with potentially significant effects. The comments cited the establishment of “plan components” that guide future management actions on all public lands, as well as the

inclusion of a definition of “sustained yield,” as examples of the rule’s establishment of precedent. The comments asserted that these examples may have a significant environmental effect, making the application of a categorical exclusion inappropriate.

**Response:** The BLM disagrees with the assertions in these comments. The BLM has reviewed the extraordinary circumstances for determining if an otherwise categorically excluded action requires additional analysis under NEPA (43 CFR 46.205(c)(1) and 46.215), including the extraordinary circumstance of actions that “[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.” The BLM has appropriately determined that the final rule presents no extraordinary circumstances because it is purely procedural. When considering future actions, the BLM must limit this consideration to those that are reasonably foreseeable, not all those that may be merely possible.

Although the final rule creates a procedure for developing plan components, the contents of individual plan components will be based on plan-specific analysis. Similarly, the incorporation of a definition of “sustained yield” into § 1601.0-5 of the final rule, which is the definition in FLPMA (43 U.S.C. 1702(h)) and which is applicable to the BLM even if it were not included in this rule, does not set a precedent for future actions with potentially significant effects.

**Comment:** Several comments asserted that the proposed rule presents a paradigm shift that would reshape public land planning through the use of a landscape-scale model, shifting from resource-based decision-making to large-scale, preservation-focused decision-making. The comments asserted that the rule changes the way resource management plans and projects are developed on a massive scale, representing a fundamental change to the BLM’s resource

management planning procedures and impacting how the BLM addresses issues and manages on the basis of multiple use and sustained yield. Some of the comments asserted that the proposed rule would preclude the deciding and responsible officials from considering the impacts of landscape-scale planning on local communities and economies. The comments asserted that this establishes a precedent or represents a decision in principle about future actions with potentially significant impacts that makes a categorical exclusion inappropriate.

**Response:** The BLM conducted a review of the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis, including the extraordinary circumstance for actions that establish a precedent or represent a decision in principle about future actions with potentially significant effects (43 CFR 46.205(c)(1) and 46.215). The BLM appropriately determined that the final rule presents no extraordinary circumstances because it is purely procedural.

The rule establishes the procedural framework for preparing resource management plans but does not prescribe specific outcomes; the rule, including its accommodation of landscape-scale approaches to planning and resource management, does not establish a precedent or represent a decision in principle about future actions with potentially significant effects. It also does not represent a fundamental change to procedures or impact how the BLM addresses issues in resource management planning, including impacts to local economies and communities.

The BLM will continue to analyze socioeconomic impacts, including impacts on local communities, as part of the NEPA analysis for individual resource management plans and plan amendments developed under the procedures outlined in this rule. The final rule does not preclude that analysis, or require a specific outcome based on the scale of the resource management plan or plan amendment.

**Comment:** Several comments asserted that the proposed rule would establish a precedent for future action with potentially significant effects because it represents a major shift from ensuring that State and local issues are considered during the planning process to implementing national policies and dictates. The comments asserted that a shift away from a local focus will dilute the BLM's ability to coordinate with State and local governments because many other people and groups will be fighting for the BLM to acknowledge and address their own issues.

**Response:** The BLM disagrees with the assumptions and conclusions made in these comments. The BLM reviewed the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis, including whether "the proposed action [would] establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects" (43 CFR 46.215(e)). The BLM determined that the final rule has no extraordinary circumstances because it is purely procedural.

The BLM recognizes the importance and values the input of public involvement on the State and local levels, and the rule does not represent a fundamental shift away from State or local consideration of issues to national issues. The BLM will continue to consider the impacts of actions on the local and State levels for individual resource management plans and plan amendments developed under the procedures established in this rule.

Regardless of the scale of the individual planning effort, the BLM will continue to collaborate with other governmental entities, including State and local governments, and the BLM will continue to afford these entities the opportunity to participate as cooperating agencies in the development and amendment of individual resource management plans (see § 1610.3-2). The opportunities for public involvement described in § 1610.2 will exist for the public,

including stakeholders, interested individuals, and local and State governments, no matter the scale of the planning effort.

*Review of Extraordinary Circumstances: Cumulatively Significant Effects*

Many comments asserted that the rule has a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects, which is an extraordinary circumstance applicable to categorical exclusions under 43 CFR 46.215(f).

**Comment:** Many comments asserted that the proposed rule would have serious cumulative effects that the BLM has failed to assess, such as effects on local communities and other adverse effects on public lands. Some of the comments asserted that the proposed rule would have significant cumulative effects when considered in conjunction with the other initiatives and Secretarial policies mentioned in the preamble, noting that none of these policies have undergone NEPA analysis. The comments asserted that the use of a categorical exclusion is inappropriate in light of these cumulative effects or other effects.

Many comments asserted that the BLM must complete an EIS for the proposed rule because the cumulative effects of the rule, when evaluated in consideration with all other separate planning efforts, including renewable energy, special status species, and recreation, would have a significant effect on the human environment.

One comment asserted that the BLM must take a hard look at the cumulative effects of the rule on State and local governments, local communities, private lands, and State lands. One comment specifically urged the BLM to assess the rule in concert with all other new Department of the Interior regulations, as well as recent reinterpretations of various laws by the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Forest Service.

**Response:** The BLM conducted a review of the extraordinary circumstances established under NEPA for determining if an otherwise categorically excluded action requires additional analysis, including the extraordinary circumstance of a proposed action that would “have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects” (43 CFR 46.215(f)). The BLM appropriately determined that the rule does not have significant effects because it is purely procedural in nature.

Because the rule is purely procedural, it has no significant environmental effects even when viewed cumulatively with the Executive and Secretarial policies and directives with which it aligns, or past or ongoing planning efforts. The rule establishes the procedural framework by which the BLM develops and amends resource management plans, but the rule itself does not establish specific goals, standards, or methods for how the BLM manages public land. All resource management plans developed under the procedures outlined in this rule require NEPA analysis in the form of an EA or EIS, and the BLM will analyze any planning-area-specific direct, indirect, and cumulative effects during that analysis.

Moreover, cumulative effects need only be analyzed if a proposed action identifies direct or indirect effects. For the reasons outlined in the categorical exclusion documentation, the BLM did not identify any direct or indirect effects because the final rule is procedural. Therefore, there would be no cumulative effects to analyze. Additionally, although the comments raise regulatory actions recently taken by other Federal agencies, these comments do not identify what specific actions these agencies have taken, and how the impacts of the proposed rule would be added to those actions in a way that could create potentially significant cumulative effects. Further, regulatory actions taken by other Federal agencies are outside the scope of this rulemaking.

### Range of Alternatives Considered for Rule

A few comments asserted that the BLM must consider a range of alternatives to the proposed rule under NEPA.

**Comment:** A few comments asserted that the BLM violated NEPA by failing to consider alternatives to the proposed rule. These comments recommended that the BLM conduct analysis on a reasonable range of planning process alternatives prior to enacting a final rule, and urged the BLM specifically to consider alternatives to the landscape-scale approach by considering the current field office planning area boundaries, or even smaller planning areas. These comments asserted that not every plan needs a landscape-scale approach.

**Response:** The BLM has appropriately relied on the DOI categorical exclusion at 43 CFR 46.210 for NEPA compliance for this rule, which is documented in the BLM's categorical exclusion documentation available to the public with this final rule. Reliance on a categorical exclusion does not require any additional NEPA analysis, and does not require the BLM to evaluate a range of alternatives. A categorical exclusion is not required to include the same level of analysis as EAs or EISs because the agency has already determined that the category of action does not have a significant effect on the quality of the human environment. Though not required, the BLM could elect to prepare additional NEPA analysis (EA or EIS) for actions otherwise excluded when the decision-maker believes such level of analysis would be helpful in planning or decision-making (see 40 CFR 1501.3 and 516 DM 3.2(b)). However, the BLM does not believe such additional analysis is necessary in making an informed decision for this final rule, and, as such, applied the categorical exclusion to this final rule.

It is also important to note that the final rule, consistent with the proposed rule, does not prescribe any specific planning area boundary or geographic scale for such a boundary. Rather,

the final rule provides flexibility for an individual planning effort to determine the appropriate planning area boundary based on relevant landscapes and management concerns. This does not represent a substantive change from the existing regulations, as the BLM currently has the authority to determine the planning area boundary for a specific planning effort. The final rule provides increased transparency to the public by adding criteria for consideration when determining a preliminary planning area boundary, and an opportunity for public review of the preliminary planning area.

The BLM will determine the appropriate scale and planning area for a resource management plan or plan amendment on a case-by-case basis, and the BLM will comply with NEPA when it develops or amends individual resource management plans under the procedures outlined in these regulations.

*Incomplete or Inadequate Analysis of Rule*

Several comments asserted that the BLM's analysis of the effects of the rule was inadequate.

**Comment:** A few comments asserted that the BLM improperly segments implementation of Planning 2.0 by revising the rule and Land Use Planning Handbook separately, and that the BLM should analyze these revisions together to determine their cumulative effects.

**Response:** Comments about the Land Use Planning Handbook are outside the scope of this rule. The BLM appropriately relied on a categorical exclusion for NEPA compliance for this rulemaking.

**Comment:** A few comments asserted that the BLM violated NEPA by failing to conduct a full socioeconomic impact analysis on a reasonable range of planning process alternatives

before finalizing the rule. These comments asserted that the BLM failed to complete a required quantitative assessment of anticipated costs and benefits of the proposed rule.

**Response:** The BLM's level of socioeconomic analysis complies with all appropriate laws, regulations, and policies, including NEPA and Executive Order 12866. The BLM appropriately relied on the DOI categorical exclusion for NEPA compliance for this rule and no further NEPA analysis was required.

Separate from NEPA, but as part of the rulemaking, the BLM completed a qualitative and quantitative assessment of the anticipated costs and benefits of the final rule titled "Economic and Threshold Analysis For Planning 2.0 Final Rule" which is available on the Planning 2.0 website ([www.blm.gov/plan2](http://www.blm.gov/plan2)). This analysis was completed in compliance with Executive Order 12866, and determined that the final rule does not constitute a significant regulatory action by Office of Management and Budget standards. The analysis further concluded that any burden to individuals was not expected to be significant, and that any costs to the public related to its implementation could not be estimated because those costs would vary greatly between planning efforts. Regardless, most of the costs to the public of implementing the rule should be at least partially offset by the benefits, and none of the costs are likely to unduly burden any specific group or individual. The BLM will conduct socioeconomic analysis specific to any resource management plan or plan amendment as part of that land use planning process for that individual plan or amendment.

**Comment:** One comment asserted that the BLM's NEPA analysis is required to adequately assess the impacts of the proposed rule on oil and gas development.

**Response:** This rule, like the existing rule, establishes the procedural framework by which the BLM develops, revises, or amends resource management plans. The rule itself does

not establish specific goals, standards, or methods for how the BLM manages public land, including energy development. The BLM has applied a categorical exclusion to this rulemaking because it is purely procedural, and categorically excluded actions are not required to undergo the same level of analysis as EAs or EISs. The implementation of this rule (the developing, revising, or amending of a resource management plan), including developing oil and gas decisions in individual plan or amendment, will vary based on planning area and planning issues, and will require NEPA analysis under an EA or EIS. The BLM will evaluate and consider planning-area-specific potential impacts to oil and gas during that analysis.

*Procedural Nature of the Rule*

Several comments disagreed with the BLM's determination that the rule is entirely procedural in nature.

**Comment:** Several comments agreed with the BLM that the revision of the resource management planning process is procedural in nature, but asserted that incorporating global resources into planning and requiring mitigation are not simply procedural. The comments further asserted that these provisions would significantly alter the manner in which BLM lands are used and managed and would alter FLPMA's multiple use mandate, necessitating the preparation of an EA or an EIS before finalizing the rule.

**Response:** The rule does not "incorporate global resources" and does not require mitigation actions. The rule is entirely procedural in nature. The BLM is required to comply with FLPMA, and changes to the planning regulations do not change the BLM's obligations under FLPMA or the BLM's recognition of its multiple use and sustained yield mandate. The BLM has appropriately relied on a categorical exclusion for this rulemaking.

The rule does not establish a requirement to identify any specific scale, including a global scale, for analysis but instead establishes the procedural framework for consideration of all relevant scales when the BLM develops and amends individual land use plans. The BLM has included in the rule consideration of resources at relevant scales, whether they are local scales, state-wide scales, or other scales, because the BLM believes it is appropriate for a deciding official to consider all relevant scales and information before rendering a decision.

The rule does not require mitigation, because it does not determine specific outcomes of resource management plans. The final rule includes a definition of “mitigation” and a provision addressing mitigation in the objectives component of a resource management plan. The BLM’s proposal to revise the planning rule to include identification of standards for mitigation as part of objective development is entirely procedural; the rule does not prescribe specific mitigation standards. In response to public comments, the final rule revises § 1610.1-2(a)(2) to replace “to the extent practical” with “as appropriate” to clarify that there may be situations in which it is not appropriate to identify a mitigation standard in an individual resource management plan. As previously discussed, and as documented in the final categorical exclusion documentation, the BLM has appropriately relied on a categorical exclusion for this rulemaking.

**Comment:** Several comments expressed disagreement with the BLM’s conclusion that the rule is entirely procedural in nature. These comments asserted that there are intended environmental effects of the rule as evidenced by the BLM’s own statements that the rule results in the agency’s ability to more readily address landscape-scale resource issues and to respond more effectively to environmental or social changes.

**Response:** The BLM disagrees with these comments. The rule establishes the procedural framework by which the BLM develops, revises, or amends resource management plans, but the

rule itself does not establish specific goals, standards, or methods for how the BLM manages public land. The rule does not require or prescribe any specific outcomes, but only establishes the process by which an individual land use plan determines the appropriate outcomes and associated necessary management.

The documentation of categorical exclusion and extraordinary circumstances review specifically clarifies that the implementation of this rule (the developing, revising, or amending of a resource management plan) requires NEPA analysis under an EA or EIS, and that the BLM will evaluate and consider any planning-area-specific potentially significant effects that may result from implementation of the rule, including management needs for and effects on wildfire, habitat connectivity, or energy demands, during that analysis. Revising the planning regulations to allow the BLM to more readily address specific issues and changes is a procedural action, while actually addressing those issues, in a specific resource management plan or plan amendment process requires an EA or EIS. The BLM has determined that this rule is appropriately considered under a categorical exclusion.

#### *Public Involvement for Rulemaking*

Many comments asserted that the BLM did not adequately communicate with or involve the public during this rulemaking, in violation of NEPA.

**Comment:** One comment asserted that the BLM has failed to thoroughly review with or disclose to the public the potential impacts of landscape-scale planning.

**Response:** The BLM has met the requirements for public involvement for this rulemaking. The BLM has conducted extensive outreach and public engagement in order to inform the Planning 2.0 process since May 2014. This public outreach has included two nationally-broadcast public listening sessions during the early stages of the rulemaking process,

two nationally-available webinars, and a nationally-broadcast public meeting during the proposed rule's comment period. The BLM has made reports on public engagement, materials from public meetings and webinars, and notes from public meetings and webinars available to the public through the BLM's Planning 2.0 website ([www.blm.gov/plan2](http://www.blm.gov/plan2)).

The BLM specifically discussed the "landscape-scale" approach at these meetings and webinars. For example, the BLM's summary of the second webinar, available on the Planning 2.0 website, provides the BLM's rationale for a landscape approach to land use planning. As noted on page 2 of this document, the BLM defines a landscape as "an area encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. 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." The BLM specifically identifies that landscapes could be small or large, as long as they include interacting ecosystems and human systems with common management concerns. Pages 3 and 4 of these notes further describe the principles of landscape-scale planning, and these principles include public and governmental involvement, identifying tradeoffs when there are resource conflicts, and managing for resilience, among others.

Additionally, the BLM's preliminary economic analysis ("Preliminary Determination: Economic and Threshold Analysis For Planning 2.0 Proposed Rule," available on the Planning 2.0 website) explains that removing the default planning area may result in a burden to some individuals or groups if public involvement activities relevant to them are held farther from their location, but that this burden would be partially mitigated by more electronic means of involvement. The preliminary economic analysis concludes that the burdens imposed on any one

individual or group by changes to the planning area boundaries are unknowable, and likely negligible.

**Comment:** Many comments asserted that the BLM failed to comply with NEPA's requirements for public involvement in this rulemaking. The comments asserted that the limited public involvement for which the BLM provided was substantially less than NEPA requires. One comment expressed concern that the BLM did not hold public meetings in Alaska, asserting that that failure precluded the concerns of that State from consideration in the development of the rule. These comments asserted that two meetings in Denver and two in Sacramento do not meet the intent of NEPA's public involvement requirements for a major Federal action and urged the BLM to use a process that complies with NEPA, such as an EIS or EA, and which provides more public involvement opportunities.

**Response:** NEPA has no public involvement requirements when a categorical exclusion is relied on for NEPA compliance, as is the case with this rulemaking. Though the BLM is not subject to any public involvement requirements under NEPA, the BLM has provided public involvement opportunities for this rulemaking. Additionally, the BLM has complied with the public involvement requirements under the Administrative Procedure Act and acted consistent with all Executive direction.

The BLM has conducted extensive outreach and public engagement on Planning 2.0 since May 2014. This public outreach has included two nationally-broadcast public listening sessions during the early stages of the rulemaking process, and two nationally-accessible webinars and a nationally-broadcast public meeting during the proposed rule's comment period. Unfortunately, the BLM does not have the resources to hold public meetings in every State. While public meetings were only held in Denver and Sacramento, all public meetings were

available to remote participants through a live broadcast of the event over the internet. The BLM has additionally made reports on public engagement, materials from public meetings and webinars, and notes from public meetings and webinars available to the public on the BLM's website ([www.blm.gov/plan2](http://www.blm.gov/plan2)).

The BLM provided a 60-day period for public comments on the proposed rule, and extended that comment period by 30 days in response to requests from the public. "Executive Order 13563 - Improving Regulation and Regulatory Review," issued on January 21, 2011, directs Federal agencies to "afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days" and the BLM has provided such opportunity. The BLM has reviewed all comments it received on the proposed rule, and made many changes to the rule based on those comments; in this way, even if members of the public were unable to attend any of the meetings or webinars, they nevertheless had an opportunity to influence the final rule.

**Comment:** One comment asserted that the BLM violated FLPMA's requirements for coordination in the development of the proposed rule. The comment asserted that the BLM has not conducted an open public process because it completed the rule quickly and used a categorical exclusion instead of further NEPA analysis, such as an EIS.

**Response:** FLPMA's coordination requirements (43 U.S.C. 1712(c)(9)) apply "[i]n the development and revision of land use plans," not in this rulemaking process. The BLM has nevertheless conducted outreach to its partners, however. This outreach included a webinar for interested local government representatives that was coordinated through the National Association of Counties, several briefings for the Federal Advisory Committee Act chartered Resource Advisory Councils, and a briefing for State Fish and Wildlife Agency representatives

coordinated through the Association of Fish and Wildlife Agencies. The BLM also met with other interested parties upon request.

In addition to partner outreach, the BLM has provided adequate opportunities for public involvement in developing this rule. Early in the rule development, the BLM held two listening sessions in order to understand the issues important to the public with regard to the resource management planning process. During the proposed rule's public comment period, the BLM held two nationally accessible webinars and a public meeting that was accessible over the internet to remote participants. The BLM made notes and summaries from these listening sessions, webinars, and meeting available on the BLM's website. The BLM also extended the initial 60-day public comment period on the proposed rule to 90 days, in response to public comments.

**Comment:** One comment asserted that the BLM should have prepared an EIS so that cooperating agencies could have been engaged in the rulemaking process.

**Response:** Cooperating agencies are defined as “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal... for legislation or other major Federal action significantly affecting the quality of the human environment....A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency” (40 CFR § 1508.5). This rulemaking does not consider any major Federal actions that might significantly affect the human environment, and the BLM has appropriately relied on a categorical exclusion for NEPA compliance.

Though there are no requirements for external involvement on decisions categorically excluded from further documentation under NEPA, the BLM has engaged State and local

governments and Indian tribes during the rule development process. Beginning in May 2014, the BLM conducted extensive outreach to State, local, and tribal governments, along with various Federal Advisory Committee Act-chartered Resource Advisory Councils in order to inform the rule. The BLM's outreach to its partners included multiple briefings for Resource Advisory Councils, a briefing for State fish and wildlife agency representatives coordinated through the Association of Fish and Wildlife Agencies, a webinar for interested local government representatives coordinated through the National Association of Counties, and meetings with other interested parties upon request. In addition, the BLM conducted government-to-government consultation with all federally recognized Indian tribes with which the Bureau normally consults regarding land use planning. The BLM held a webinar for Indian tribes on May 4, 2016, and in-person meetings with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting with the BLM.

**Comment:** Several comments asserted that the proposed rule's changes to public comment periods are changes that are not purely administrative or procedural. The comments asserted that courts have found that regulations to "increase barriers to public involvement" in agency management are not purely administrative or procedural, and that the BLM's proposal to shorten public comment periods would increase barriers to public involvement. The comments recommended that the BLM prepare an EA or EIS before approving the final rule.

**Response:** In response to public comments, the public comment period for draft EIS-level amendments is 60 days in the final rule (see § 1610.2-2(b)). This is a shorter period than the 90 days of the existing regulations, but longer than the 45 days that the BLM initially proposed. Also in response to public comments, the final rule increases the length of the public comment period for draft resource management plans and draft EISs to 100 days (§ 1610.2-2(c)).

This is longer than the 90 days of the existing regulations. Neither these changes to the lengths of public comment periods nor the changes of the proposed rule represent a barrier to public involvement. The final rule increases public involvement opportunities and removes barriers to public involvement by requiring, for example, that the BLM post a notice on the BLM's website when it announces opportunities for public involvement (see § 1610.2-1(c)). The BLM has complied with NEPA for this rulemaking.

Additionally, whether the change in public review periods will result in environmental impacts is speculative and does not lend itself to meaningful analysis.

#### Rule Promulgation and NEPA

A couple of comments compared this rulemaking to the development of the Forest Service's planning rule.

**Comment:** Two comments observed that the Forest Service's planning rule constituted promulgation of regulation, requiring that agency to prepare an EIS for that rulemaking. The comments asserted that the BLM's revision of the planning rule also constitutes promulgation of regulation and so it also requires the preparation of an EIS.

**Response:** NEPA compliance for the USFS rule is outside the scope of this rulemaking. The BLM appropriately relied on the DOI categorical exclusion at 43 CFR 46.210 for NEPA compliance for this rulemaking.

#### **Economic Analysis for the Planning Rule**

##### Small Business Regulatory Enforcement Fairness Act and Regulatory Flexibility Act

Many comments felt the BLM's economic analysis did not adhere to some aspects of the Regulatory Flexibility Act or Small Business Regulatory Enforcement Fairness Act. These

included comments that expressed concern over the analysis of impacts to small entities, the threshold of impacts, and the burdens on local governments and communities.

**Comment:** A few comments asserted that the BLM has not meaningfully addressed potential economic impacts to State and local partners and expressed concern that the Economic and Threshold Analysis for the proposed rule determined that the annual effect on the economy would be less than \$100 million. These comments assert that “less than \$100 million” is an underestimate and the analysis does not consider major cost increases to State and local agencies. One comment provided an example, noting that the BLM does not provide hard copies of planning documents and maps to partners, so partners must print copies of these documents at their own expense; this is the type of cost, the comment asserted, that the BLM must address in the planning rule. The comments asserted that the BLM’s economic analysis is mere conjecture.

**Response:** The BLM has adequately estimated the costs of the rule, which is entirely procedural in nature. A rule is considered economically significant under Executive Order 12866 if it results in an annual increase in costs of \$ 100 million or more. The final rule affects the BLM’s resource management planning process but will not directly affect the decisions made in resource management plans, so there are no resulting direct monetary impacts on any individual or group, including to State and local governments. If the BLM currently does not provide hard copies of planning documents and maps to its partners, the rule will not result in increased costs for the printing of documents and maps by partners. Provisions for coordination, cooperation, and consultation exist in the current regulations and thus are not new, so they do not result in new costs for these governments. Additionally, public involvement and coordination are voluntary; the BLM does not require other Federal agencies, State and local governments, or

Indian tribes to coordinate, cooperate, or consult, and so the BLM is not imposing costs upon those entities.

**Comment:** Many comments asserted that the BLM has not sufficiently analyzed the potential impacts on local governments and small businesses, violating the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. The comments asserted that there is no reliable science behind the BLM's claim that the rule will not have a significant impact on the operations of small local governments and small businesses. One comment expressed concern regarding a lack of evidence that the BLM made any effort to contact or consider the impacts of the rule on specific counties or specific small businesses.

**Response:** The BLM has sufficiently analyzed the potential economic impacts of the rule and used sound data in its analysis. In its economic and threshold analysis ("Preliminary Determination: Economic and Threshold Analysis for Planning 2.0 Proposed Rule") the BLM determined that the rule does not meet the criteria of a major rule under the Small Business Regulatory Enforcement Act (5 U.S.C. 804(2)). As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the BLM described, in the economic and threshold analysis, the affected entities, the impacts, and the justification for its determination that the rule would have no significant economic impact on a substantial number of small entities. The magnitude of the impact on any individual or group, including small entities, is expected to be negligible. It is not necessary for the BLM to contact individual entities in order to estimate the economic impact of the revisions to its planning rule.

**Comment:** One comment asserted that data analysis will be more burdensome for counties under the rule, because the rule allows biased special interest groups to submit data, but the BLM has not recognized or disclosed this burden.

**Response:** Under § 1610.4(c) of the final rule, the BLM is responsible for evaluating the data that the public, including special interest groups, submits and ensuring it is high quality information. Allowing special interest groups to submit data places no burden on local governments.

**Comment:** One comment asserted that it was unclear whether the BLM had completed an economic analysis and whether the BLM had considered regulatory alternatives to minimize economic burdens.

**Response:** The BLM did conduct an economic analysis (“Preliminary Determination: Economic and Threshold Analysis for Planning 2.0 Proposed Rule”). This analysis determined that the rule would not have a significant economic impact on a substantial number of small entities. No additional analysis is necessary.

**Comment:** A few comments asserted that the proposed rule will have an annual effect on the economy that exceeds \$100 million because implementation of the rule will restrict supply, increasing costs and prices and creating significant effects on competition, employment, investment, productivity, and the ability to compete with foreign businesses.

**Response:** The final rule makes changes to the planning process; however, the rule does not change management decisions or land use decisions for a particular area, nor does it prescribe certain outcomes, such as ones that might restrict supply of a hypothetical resource, in resource management plans. As noted above, the rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

**Comment:** A few comments suggested the extent of the proposed rule directly impacts local communities’ and small businesses’ ability to provide other important services. The

Regulatory Flexibility Act requires Federal agencies to consider if new regulations will place a greater burden on local communities with regard to community obligations.

**Response:** The BLM has analyzed the impact of the rule on small entities, including local jurisdictions as required by the Regulatory Flexibility Act, and determined that it does not place a significant burden on these entities. As the BLM noted in the economic analysis for the final rule, “[a]lthough the final rule has the potential to affect most, if not all, entities that elect to become involved in the BLM’s planning process, and most of those individual, companies and other organizations are small entities as defined by the Small Business Act, we do not expect the impact to be significant.”

**Comment:** A few comments suggested that the BLM has not fully reviewed the goals of the Regulatory Flexibility Act.

**Response:** In completing its Economic and Threshold Analysis for Planning 2.0, the BLM has fully reviewed the goals of the Regulatory Flexibility Act.

#### Impacts on Economy

Comments expressed concerns about the impacts of the final rule on the economy beyond concerns of small entities and the Regulatory Flexibility Act.

**Comment:** Comments expressed concern that the BLM has underestimated impacts to the economy, asserting specifically that the BLM dismisses \$100 million in economic impact as immaterial and insignificant. The comment asserted that the rule would have adverse impacts to local governments and industries.

**Response:** The proposed rule suggested, and the final rule adopts, changes that are largely procedural in nature and which would not have direct monetary impacts. The BLM found the impacts to the economy would not exceed \$100 million.

**Comment:** A comment stated that by failing to quantify potential, the BLM is not meeting the requirements to analyze and disclose the economic impacts of the regulations. Too many factors have been deemed unquantifiable.

**Response:** The Economic and Threshold Analysis evaluated changes that may affect individuals and groups indirectly; these impacts depend on the context of individual plans and actions that are not determined by the final rule. Since it would be purely speculative to consider those effects, these impacts cannot be quantified based on solely the content of the rule.

**Comment:** A comment suggested that the BLM has not addressed and should consider the direct costs of the proposed rule.

**Response:** The BLM addressed this concern, but found that none of the changes would have direct monetary impacts.

#### General Economic Analysis

Comments broadly expressed concern with the BLMs economic analysis and the impacts of the proposed rule on various resources and stakeholders.

**Comment:** One comment asserted that the BLM violated other Federal requirements by not completing a statement of energy effects, which is required.

**Response:** The BLM has not violated any Federal requirements by not completing a statement of energy effects. Federal agencies are required to complete a statement of energy effects (Executive Order 13211) when making a rule that significantly affects energy supply, distribution, or use. The Executive Order identifies a significant energy action as one that promulgates, or is expected to lead to the promulgation of, a final rule that is both: 1) a significant regulatory action under Executive Order 12866, and 2) likely to have a significant adverse effect on the supply, distribution, or use of energy or is designated by the Administer of

the Office of Management and Budget or Office of Information and Regulatory Affairs as a significant action. The BLM's final rule does not meet the criteria of a "significant energy action" as defined in Executive Order 13211 and, as such, the BLM is not required to complete a statement of energy effects.

**Comment:** A few comments suggested that involvement in multiple landscape-scale planning efforts (e.g. sage grouse plans and the Desert Renewable Energy Conservation Plan) cannot be economically supported by State and local partners. Counties and other partners undertook massive mapping efforts supporting the Greater Sage-Grouse plans.

**Response:** The BLM recognizes that addressing some resources and uses at a landscape scale may result in initial workloads to create consistent data sets; however, in the long term the overall efforts and impacts are not increased. Partially, because there will be fewer individual planning efforts for those resources and uses; and also because the BLM and other managers will benefit from the ability to share information that is being developed more consistently.

**Comment:** A comment expressed concern over the statement that "the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social and economic conditions at appropriate scales. The BLM will also consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands and nonpublic land surface over federally owned mineral interests," is contrary to the Economic Threshold Analysis, where individuals and groups are affected by BLM land management decisions.

**Response:** There is no contradiction between the Economic Threshold Analysis and the final rule. The final rule describes the information that is gathered as part of the planning

process for each resource management plan or amendment; while the economic threshold analysis applies to the impacts of the final rule.

### **Public Involvement in the Development of the Planning Rule**

#### *Comprehensive Public Involvement in Planning 2.0*

One comment asserted that the BLM did not provide reasonable access to a printed copy of the proposed rule. Other comments expressed concern about the BLM's revising the Land Use Planning Handbook separately from the rule and about public involvement on the Land Use Planning Handbook revisions. Many comments asserted that the BLM did not provide conduct enough outreach when developing the proposed rule, and others requested additional outreach on implementation of the final rule.

**Comment:** One comment asserted that there are members of the public that have difficulty viewing documents electronically, and the BLM (specifically, the commenter's local field office) should have but did not provide reasonable access to a printed copy of the proposed rule. The comment expressed further concerns regarding the availability of printed copies of planning documents.

**Response:** The BLM made every effort to ensure that the proposed rule was readily available to the public as required by law. The BLM also conducted two webinars on the proposed rule, both during the public comment period. The first was on March 21, 2016 and the second was on April 13, 2016, and both were led by third-party facilitators. The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend.

Regarding availability of resource management plans, final § 1610.2-3(a) contains revised language from existing § 1610.2(g) that will require the BLM to make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available for public review. The final rule requires, at a minimum, that the BLM make copies available electronically and at all BLM offices within the planning area. The new requirements to make resource management plans available electronically reflect that digital technology and Internet access are far more widely available than when these regulations were last updated. These changes also ensure consistency in how the BLM makes documents available to the public, increase transparency, and help to ensure that the public has access to current versions of plans without missing amendments that only appear in paper copies. Electronic posting of planning documents also may help to reduce high printing costs. The BLM recognizes, however, that there are many communities with limited technological and Internet availability, such as, but not limited to, isolated rural communities. The BLM will continue to work to involve these communities in the development of resource management plans and to make associated materials available in the most appropriate formats. For example, resource management plans could be made available at public libraries, community centers, or other central locations frequented in local communities.

**Comment:** Many comments asserted that the opportunities for public participation and coordination with affected governments in the development of the proposed rule were limited. Some comments expressed concern that: only one public meeting was held on the proposed rule; audio for a webinar repeatedly cut out due to a poor connection; listening sessions were held in urban centers, far from the areas and stakeholders that the rule will impact; and the BLM held the public meeting on a Wednesday afternoon, which was not convenient for many members of the

public. Some of the comments asserted that the BLM has done little to educate the members of the public who may not understand agency jargon, making them unable to offer significant advice, and this inaction is in contrast to the U.S. Forest Service planning rule's many forums and roundtables. Other comments asserted that a lack of public participation in the development of the rule violates FLPMA, and some asserted that public notice and comment does not achieve "meaningful public involvement." These comments urged the BLM to hold public meetings at varying times in all states with public lands managed by the BLM and to conduct additional meetings with stakeholders. One comment expressed concern that the BLM did not consult with Resource Advisory Councils when developing the rule and urged the BLM to collaborate with Resource Advisory Councils on the final rule and on revisions to the Land Use Planning Handbook.

**Response:** Despite these comments, the BLM did not and does not believe that additional public meetings on the proposed rule were necessary. The BLM has produced and disseminated numerous announcements, notices, and fact sheets regarding Planning 2.0 and opportunities for public involvement since May 2014, when it launched the Planning 2.0 initiative and began seeking public input on how to improve the land use planning process. The BLM hosted two public listening sessions, which were a forum for the public to provide input, ideas, and concerns, in October 2014, a year and a half prior to the comment period. The BLM held the listening sessions in Sacramento, California and Denver, Colorado, and they were led by a third-party facilitator.

The BLM also conducted two webinars on the proposed rule, both during the public comment period. The first was on March 21, 2016 and the second was on April 13, 2016, and both were led by third-party facilitators. The BLM posted recordings of the webinars and their

notes, including the questions asked by attendees, on the BLM Website for those who were not able to attend. The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video and a summary of the meeting available on the BLM website for individuals who were not able to attend. Unfortunately, it is not feasible for the BLM to hold public events that all interested parties are able to attend. As noted by the comment, interested stakeholders are often spread out and unable to gather in a central location. In this document, the BLM has considered and responded to every comment and request for clarification that it received via the formal public comment period.

Additionally, the BLM conducted outreach to BLM partners. This outreach included a webinar for interested local government representatives that was coordinated through the National Association of Counties, several briefings for the Federal Advisory Committee Act-chartered Resource Advisory Councils, and a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies. The BLM also met with other interested parties upon request.

**Comment:** One comment asserted that the BLM should enhance educational and outreach efforts to rural communities and provide teleconference access for oral comments, allowing these comments to become part of the official record.

**Response:** The BLM will continue to work with communities who may not have sufficient technological access, such as rural communities, in the development of resource management plans and to make associated materials available in the most appropriate formats. Section 1610.2-1(c) requires the BLM to announce opportunities for public involvement in the preparation of resource management plans by posting a notice on the BLM's Website, at all

BLM offices within the planning area, and at other public locations, as appropriate. It also requires the responsible official to identify additional forms of notification to reach local communities within the planning area, as appropriate.

It is not feasible or necessary for the BLM to establish a telephone commenting system for those phases of its resource management process in which a public comment is requested, and it would not have been feasible or necessary for the BLM to have established such a system during the period for public comment on the proposed rule. In addition to methods for comment submission by email, fax, and the Federal eRulemaking Portal, the BLM provided a mailing address for comments on the proposed rule. When the BLM requests written comments during the preparation or amendment of a resource management plan, it typically allows for the submission of comments by email, fax, and mail.

**Comment:** A few comments asserted that the scheduling of revisions to the Land Use Planning Handbook will not allow adequate time for their review before the adoption of the rule. The comments expressed concern that the disconnected releases of the proposed rule and Handbook frustrate the ability of affected stakeholders to understand key points of the proposed rule, such as implementation, planning designations, and selection of preferred alternatives. The comments asserted that the BLM should allow opportunities for public review and comment on the Land Use Planning Handbook before the finalization of the rule. The comments further asserted that the BLM should release the proposed rule for public comment again, after making the draft Handbook available for review. One comment asserted that the BLM should allow public review and comment on all items related to the BLM's new planning process, such as supporting policies and guidance for implementation.

**Response:** Comments about public review for the Land Use Planning Handbook are outside the scope of this rulemaking. However, the BLM expects to make the draft Land Use Planning Handbook available for public review before finalizing it.

**Comment:** One comment expresses concern that the BLM Land Use Planning Handbook appears to be driving the development of the proposed rule, rather than the proposed rule driving the revisions to the Land Use Planning Handbook. This comment asserted that because of this, the BLM has already determined the final rule regardless of the input received.

**Response:** This comment is outside the scope of this rulemaking.

**Comment:** One comment expressed appreciation for the BLM's outreach efforts and noted an expectation that the BLM would be conducting outreach sessions on implementation of the rule, involving stakeholder groups at local venues.

**Response:** The BLM will conduct outreach with stakeholders on the final rule at multiple scales, including at the national, state office, and field offices levels. Local BLM office staff will also continue to engage local stakeholders during their planning processes.

**Comment:** One comment expressed appreciation for the opportunity to provide comments, and asserted that the BLM should give meaningful consideration to comments from partnering groups and agencies.

**Response:** The BLM gave all comments received on the proposed rule meaningful consideration.

#### *Comment Period for the Proposed Rule*

A few comments requested that the BLM allow a second public comment period on revisions to the proposed rule. A few other comments stated that the BLM has provided plenty of time for public comment.

**Comment:** Several comments urged the BLM to release a second draft of the proposed rule for a public comment period. One of these comments requested that the BLM provide a written response to comments explaining how the BLM will or will not amend the rule.

**Response:** The BLM has considered the public comments it received and responded to them in this document and in the final rule and preamble. The BLM has complied with the Administrative Procedure Act for this rulemaking. The BLM is not required to provide a second public comment period on this rule and will not provide another comment opportunity.

**Comment:** One comment expressed opposition to any additional extension of the public comment period, asserting that all stakeholders were appropriately informed and given adequate time to comment. The comment asserted that requests for extension appear to be a political delay tactic that would threaten the completion of the rule, and the rule should be finalized by the end of the year.

**Response:** The BLM granted a 30-day extension to the public comment period on April 22, 2016, extending it to May 25, 2016, for a total of 90 days. At the time this document is written, the BLM anticipates that the final rule will publish by the end of 2016.

**Comment:** One comment asserted that the BLM should require a planning assessment and the public review of preliminary alternatives for all amendments. Alternatively, the comment suggested that the BLM provide examples of situations in which the planning assessment and preliminary alternatives would be unnecessary, and provide an opportunity for public comment on these situations before the implementing the rule.

**Response:** The BLM believes that there are situations in which a planning assessment would not add value to the planning process, so the final rule does not require a planning assessment for all amendments; § 1610.4(f) allows the deciding official to waive the requirement

for project-specific or other minor amendments for which the BLM prepares an EIS. An example of a minor, project-specific EIS-level amendment is a solar energy development project in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires an EIS. The final rule removes the deciding official's option, proposed in § 1610.4(e), to waive the planning assessment if an existing assessment is determined to be adequate. Instead, when the BLM conducts a planning assessment for an EIS-level amendment, the responsible official will incorporate parts of the existing assessment that are relevant into the amendment's planning assessment.

In response to public comments, § 1610.5-2(c) of the final rule requires the responsible official to make the preliminary alternatives and preliminary rationale for alternatives available for public review before the publication of a draft EIS-level plan amendment, as appropriate. The BLM intends that, in general, this step will occur for EIS-level plan amendments; however, it may not be appropriate or necessary to require public review of preliminary alternatives and preliminary rationale for alternatives in all situations, such as for project-specific or other minor amendments. For example, a common type of minor amendment for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In this case, it may be inappropriate to make preliminary alternatives and rationale for alternatives available to the public.

### *New Concepts and Policies*

A few comments asserted that certain concepts introduced in the proposed rule were unclear. One comment expressed concern that the BLM had not provided public involvement opportunities for agency and departmental policies.

**Comment:** A few comments asserted that during the public outreach process, the presenter attempted to define landscape-scale planning; however, the term remains undefined in the proposed rule and the BLM has not thoroughly disclosed potential impacts of the approach to the public.

**Response:** In response to public comments, § 1601.0-5 of the final rule includes a definition for the term “landscape.” The definition aligns with the definition adopted by DOI in the Departmental Manual on implementing mitigation at the landscape-scale. The BLM discusses landscape-scale planning throughout the preamble (see § 1601.0-4, the discussion of the definition of “landscape” at § 1601.0-5, and §§ 1601.0-8 and 1610.4(a)) and throughout these responses to comments. The existing planning regulations do not preclude the BLM from planning at a landscape-scale. Further, the final rule does not require the BLM to do so, but only facilitates the landscapes scale approach. It would be speculative to predict potential impacts of an approach that may or may not be used, at the discretion of the BLM. The BLM expects to provide further guidance regarding landscape-scale planning in the revised Land Use Planning Handbook.

**Comment:** One comment asserted that the BLM could better communicate the proposed rule with the use of visual aids and graphic representation of key processes and concepts; for example, it could clarify the terms “landscape-scale” and “adaptive management” with graphics.

**Response:** The BLM made every effort to ensure that the proposed rule was clear and concise. Text is most appropriate for the definition of terms to avoid misinterpretation. The BLM provided graphics and other illustrations during webinars and public meetings, and the subsequent videos of these meetings were made available on the BLM website. The forthcoming revised BLM Land Use Planning Handbook and other documents, such as manuals and instruction memoranda, will provide further guidance for interpreting and applying the final rule, and it may include visual aids.

**Comment:** One comment asserted that the rule codifies agency and departmental policies, such as mitigation requirements, without subjecting those policies to public review and comment. The comment further noted that the preamble to the proposed rule states that the proposed changes would make planning regulations consistent with current BLM practice. By codifying current practices and policies, this comment asserted that the BLM has already decided on the proposed rule without proper public involvement.

**Response:** NEPA compliance for DOI policies is outside the scope of this rulemaking. As previously discussed, the BLM complied with all public comment requirements for this rulemaking.

### **State, Local, and Tribal Government Involvement in the Planning Rule**

Many comments asserted that the BLM provided inadequate or only limited opportunities for State and local governments and Indian tribes to be involved in the development of the proposed rule.

**Comment:** Many comments asserted that the BLM provided limited opportunities for the involvement of State and local governments, conservation districts, and Indian tribes in developing the proposed rule. A couple of the comments asserted that these entities have the

most local knowledge and experience with natural resources. Some of these comments asserted that FLPMA authorizes State and local governments to advise the Secretary on the development of rules and regulations for public lands, and that meaningful collaboration with partner agencies should have led the development of the proposed rule, per FLPMA (43 U.S.C. 1712). Some of the comments asserted that the BLM should have afforded State and local governments and Indian tribes an early review of the proposed rule. A few comments suggested that a lack of substantive comments affirms that the BLM has not provided adequate notice or opportunity for input on the rule to local governments. A couple of comments urged the BLM to restart the rule development process and to work with partners to develop a rule that ensures and benefits from local governmental input and guarantees consistency with local plans.

**Response:** The BLM has produced and disseminated numerous announcements, notices, and fact sheets regarding Planning 2.0 and opportunities for public involvement since May of 2014, when it launched the Planning 2.0 initiative and began engaging with stakeholders, including intergovernmental partners, on how to improve the land use planning process. The BLM hosted two public listening sessions, which were a forum for the public to provide input, ideas, and concerns, in October of 2014, a year and a half prior to the comment period. The BLM held the listening sessions in Sacramento, California and Denver, Colorado, and they were led by a third-party facilitator.

The BLM did not have the resources to hold public meetings in every state with BLM land, let alone in various locations of each state, but two webinars on the proposed rule were conducted, both during the public comment period. The first was on March 21, 2016 and the second was on April 13, 2016, and both were led by third-party facilitators. The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this

meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend.

Additionally, the BLM conducted outreach to BLM partners. This outreach included a webinar for interested local government representatives that was coordinated through the National Association of Counties, several briefings for Federal Advisory Committee Act chartered Resource Advisory Councils, and a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies. The BLM also met with other interested parties upon request.

Furthermore, per Instruction Memorandum No. 2016-056, the BLM provided guidance to its State Directors regarding government-to-government consultation with Indian tribes in the development of the proposed rule. The guidance instructed BLM State Directors to coordinate government-to-government consultation of the proposed planning rule with all Indian tribes with which the BLM normally consults regarding land use planning and authorizations. Specifically, BLM State Directors were responsible for ensuring the following: establishing contact with tribes residing within their state boundaries to offer formal consultation; inviting each tribe to engage in government-to-government consultation on the proposed rule; facilitating and documenting any in-person meetings or other forms of communication with tribes regarding the proposed rule; documenting all relevant issues, concerns, or requests for additional information communicated by the tribes during consultation; and providing follow-up communication with tribes explaining how substantive issues were addressed in the final planning rule.

In addition to the above opportunities for public involvement, the BLM provided a 90-day period for the submission of public comments. “Executive Order 13563 - Improving Regulation and Regulatory Review,” issued on January 21, 2011, directs Federal agencies to

“afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days,” which the BLM has done with the proposed rule. FLPMA does not require collaboration with other agencies to “lead” the BLM’s development of its planning regulations. This rule is procedural in nature; it does not make decisions or determinations regarding land use or natural resources and does not have a significant impact on non-Federal lands, so FLPMA’s (43 U.S.C. 1712(c)(9)) requirements to provide for meaningful public involvement and early notice to State and local government officials do not apply, though the BLM has provided for significant public involvement in any case. The provision authorizing officials in each State to advise the Secretary thus also does not apply, though the BLM has welcomed input from State and local governments and Indian tribes in its outreach activities.

It is incorrect to say that there was a lack of substantive comments on the proposed rule; the BLM received many substantive, valuable comments. The final rule has benefitted from the involvement of State and local governments and Indian tribes via the opportunities discussed above, and the BLM will not restart the rule development process. The final rule ensures the involvement of other Federal agencies, State and local governments, and Indian tribes, and provides for consistency with their land use plans. For more information on public involvement in resource management planning under the final rule, please see the preamble discussion of § 1610.2. For more information on coordination of planning efforts, please see the preamble discussion of § 1610.3-2. For more information on consistency requirements, please see the preamble discussion of § 1610.3-3.

**Comment:** One comment asserted that the BLM sought only minimal input from resource advisory councils, with no outreach specifically to the Arizona Resource Advisory

Council. Another comment expressed concern that the BLM did not seek the input of Resource Advisory Councils when developing the rule, and asserted that Resource Advisory Councils represent the voice of local communities and can provide good advice and information when given the opportunity to participate.

**Response:** In addition to the webinars, public meeting, and 90-day public comment period described in the previous response, the BLM held several briefings for the Federal Advisory Committee Act chartered Resource Advisory Councils and met with other interested parties upon request.

**Comment:** One comment asserted that, because FLPMA requires the BLM to coordinate its land use inventory, planning, and management activities pertaining to public lands with State and local governments and to assure that consideration is given to relevant State and local government plans and programs, the BLM should have provided more opportunities for the involvement of State and local governments in the development of the proposed rule.

**Response:** The cited requirements of FLPMA cited in this comment (43 U.S.C. 1712(c)(9)) apply to the development and revision of land use plans, not to the development and revision of these planning regulations.

**Comment:** A few comments asserted that the webinars and listening sessions lacked dialogue and incompletely addressed the changes from the existing to the proposed planning rule.

**Response:** The BLM believes that the webinars were successful, though it was not possible, nor was it the BLM's intention, to address every individual change to the existing regulations in the time available. The preamble to the proposed rule clearly explained which provisions existed under the current regulations and which were alterations or additions.

**Comment:** A few comments urged the BLM to conduct additional outreach, particularly to local governments, after the BLM has reviewed and synthesized comments on the proposed rule.

**Response:** In this response to comments, in the preamble, and in changes between the proposed and final rules, the BLM addresses the concerns raised by the public, including local governments. The BLM will conduct additional outreach on the final rule.

**Comment:** One comment urged the BLM to enhance federalism consultations, conducting robust consultations early in the regulatory process. The comment asserted that these consultations should provide meaningful input into the regulatory process and include participation of a wide range of State regulatory agencies.

**Response:** This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, so it does not have federalism implications. Because this rule does not have federalism implications, federalism consultations are not required.

**Comment:** One comment asserted that the BLM should exercise its authority to improve public participation and increase transparency of the regulatory process.

**Response:** The BLM believes that its regulatory process in developing this rule has been sufficiently transparent, with significant public involvement.

### **Tribal Consultation on the Planning Rule**

A few comments expressed concern regarding the BLM's outreach to and involvement of Indian tribes in developing the proposed and final rules. One comment expressed appreciation for the BLM's consultation with Indian tribes in developing the rule.

**Comment:** One comment expressed concern that the BLM afforded varying opportunities for the involvement of Indian tribes in the development of the proposed rule. For example, this comment noted, the BLM's Arizona state office sent the Colorado River Indian Tribes a letter regarding the proposed rule and webinar; however, the BLM's California state office did not make similar outreach efforts to the tribes.

**Response:** The BLM made every effort to consult with the Indian tribes during the development of the planning rule. Through its Instruction Memorandum No. 2016-056, the BLM directed its state offices to coordinate consultation with all Indian tribes with which the BLM normally consults regarding land use planning and authorizations, or programs of mutual interest and importance within their state office boundaries. The memorandum required that state offices: contact tribes residing within their state office boundaries to offer formal consultation; invite each tribe to engage in government-to-government consultation on the proposed rule; facilitate and document any in-person meetings or other forms of communication with the tribes on this proposed rule; and document all relevant issues, concerns, or requests for additional information communicated by the tribes during consultation. All BLM state offices complied with this direction, including BLM California. Each state office will also follow up with these tribes to explain how the BLM addressed substantive issues in the final rule. The BLM cannot require the involvement of tribes; it can only provide for their involvement, which it has done adequately through each state office.

**Comment:** One comment expressed dismay that the BLM had scheduled the webinar for tribes for May 4, 2016, after the comment period deadline. The comment asserted that the webinar would provide understanding of the proposed rule and aid in drafting comments on the

rule, and thus the BLM deprived tribes of an opportunity to utilize and comment on this additional information.

**Response:** The BLM initiated government-to-government consultation with Indian tribes independent of the public comment period on the proposed rule. Through the consultation process, tribes could provide input to the BLM following the close of the formal public comment period.

Indian tribes were also welcome to submit comments through the formal public comment period. On April 22, 2016, the BLM extended the comment period on the proposed rule for 30 days, so that it closed on May 25, 2016. Additionally, the May 4, 2016 informational webinar, conducted as part of the BLM's consultation with Indian tribes on the proposed rule, was not the only webinar that the BLM conducted. The BLM held two webinars on the proposed rule during the comment period: one on March 21, 2016 (in advance of the end of the 60-day comment period) and one on April 13, 2016 (in advance of the end of the extended 90-day comment period). The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend. The BLM values its relationships with tribes and the input they provided on the proposed rule in the May 4 webinar and through other public involvement as well as through government-to-government consultation.

**Comment:** A few comments asserted that tribal participation is a vital part of finalizing the proposed regulations and urged the BLM to engage in government-to-government consultation on the proposed rule. The comment urged the BLM to engage in consultation with tribes when finalizing the rule.

**Response:** The BLM recognizes that tribal participation is essential to the development of the proposed rule and included tribes throughout its development. The BLM's state offices sent letters requesting government-to-government consultation on the proposed rule to all the tribes with which the BLM normally consults on resource management plans. The BLM has facilitated and documented any in-person meetings or other forms of communication with the tribes on the proposed rule and documented all relevant issues, concerns, or requests for additional information communicated by the tribes during consultation. Each state office will also follow up with these tribes to explain how the BLM addressed substantive issues in the final rule.

**Comment:** One comment expressed appreciation for the inclusion of Indian tribes in the regulations development process.

**Response:** The BLM appreciates its relationships with Indian tribes and recognizes the value that its consultation with Indian tribes has afforded this rule.

### **OMB Requirements**

#### *Office of Management and Budget Review*

A few comments expressed concern regarding the determination that the Office of Management and Budget's Office of Information and Regulatory Affairs need not review the proposed rule.

**Comment:** A few comments expressed concern with the determination that the planning rule is not significant and does not need review by OIRA, asserting the proposed rule is significant because it guides the BLM in all decisions on management of public lands throughout the United States.

**Response:** OIRA, not the BLM, determined that the rule is not a significant regulatory action under Executive Order 12866. The rule is largely administrative in nature. It does not “guide the BLM in all decisions on management of public lands throughout the United States;” rather, it establishes the procedural framework for preparing resource management plans.

### **General Comments Related to the Development of the Planning Rule**

#### *Relationship to Other BLM Efforts*

A comment stated the Planning 2.0 revision could result in conflicting standards, which will create plans that are not legally sufficient and effective on the ground.

**Comment:** A comment stated that the BLM’s compartmenting of the Planning 2.0 revision from other BLM efforts, such as the new BLM recreational planning initiatives, could result in conflicting standards, which will create plans that are not legally sufficient and effective on the ground. The comment recommended that the BLM integrate these efforts so that multiple-use issues are clearly resolved.

**Response:** The BLM will not integrate Planning 2.0 with all other efforts the BLM is pursuing. The revision of the planning regulations occurring simultaneously with other BLM planning initiatives, such as the recreational planning initiatives, is a common practice in BLM management. The BLM has review, oversight, and coordination processes in place to ensure program policies do not result in conflicting requirements or guidance. All planning guidance will be consistent with the requirements of the final rule.

#### *Clear Language*

One comment suggested that the BLM write the planning rule with clear, precise language.

**Comment:** One comment asserted that crucial terms in the proposed rule are vague, undefined, and/or subjective, which will make implementation of the rule and collaboration with the public difficult.

**Response:** The final rule updates some of the existing rule's text to reflect current style guidelines and to use plain language, consistent with the "Presidential Memorandum on Plain Language in Government Writing" (63 FR 31885), which directs Federal Agencies to consider rewriting existing regulations in plain language if the opportunity is available. The final rule also revises proposed § 1601.0-5 to include the following new terms: "consistent with officially approved and adopted plans;" "landscape;" "public involvement;" and "State and local government." The BLM believes that the language of the final rule is clear and will not hinder collaboration with the public or implementation of the rule. The BLM attempted to clarify some of the new terms in the preamble to the final rule, that were specifically identified by comments as needing further explanation.

#### *Effects on Threatened and Endangered Species*

Several comments expressed concern regarding the rule's effects on threatened and endangered species.

**Comment:** A couple of comments asserted that § 1610.1-2 of the final rule should explicitly require that plans comply with all applicable laws, including the Endangered Species Act, Clean Air Act, Clean Water Act, Wilderness Act, Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, and the Antiquities Act.

**Response:** The BLM must comply with all Federal laws and regulations applicable to public lands. It is unnecessary for the BLM to name them all in the rule.

**Comment:** A couple of comments asserted that the proposed rule and plans developed under it “may affect” threatened or endangered species and their critical habitat, thus triggering the need for Endangered Species Act consultation. The comments recommended the BLM complete consultation and a biological assessment as part of the rulemaking.

**Response:** As described in the preamble for this rule, the BLM concluded that this rule does not affect threatened or endangered species because it is purely procedural. It does not approve any land use plans or plan amendments or authorize any particular projects or other actions that could have such effects. Therefore, the BLM is not required to initiate consultation under the Endangered Species Act.

#### *Coordination of Planning Efforts*

A few comments suggested that participating in rulemaking and land use planning processes are expensive, time-consuming, and limiting. One comment asked the BLM to analyze the cost of participating. Other comments asserted that State and local governments do not have the resources to participate in these efforts or to address conflicts between Federal and local plans.

**Comment:** One comment stated that the time and effort required to participate in this rulemaking process is the type of major cost that would be addressed in an expanded NEPA process and under the Small Business Regulatory Enforcement Fairness Act.

**Response:** The costs of participating in a rulemaking itself are not impacts of that rule’s application. It is the application of a rule that requires impacts analysis under laws such as NEPA or the Small Business Regulatory Enforcement Fairness Act. The BLM has analyzed the impacts of the application of this rule and determined that it is not a major rule under the Small Business Regulatory Enforcement Fairness Act and that it is entirely procedural in nature,

making NEPA analysis beyond a categorical exclusion review unnecessary. For more information, please see the Development of the Proposed Rule — Economic Analysis and Development of the Proposed Rule — Level of NEPA Review sections of this document.

### Effects of Planning Rule

One comment asserted that the planning rule will harm local government and it is misleading to state that proposed changes represent no change in current practice. A few comments expressed concern regarding statements in the preamble that several changes were made to the regulations that reflect no changes in practice and that these practices have not been congruent with the existing regulation.

**Comment:** One comment asserts that it is misleading for the BLM to state throughout the rule that proposed changes represent no change in practice; the proposed rule is a major action that will harm local government.

**Response:** The areas where the BLM states there is no change in practice are areas where the language is clarified or modified to reflect current practice. The final rule includes new terms, definitions, and processes, such as providing new opportunities for meaningful public involvement, establishing an assessment of baseline conditions in the planning area before the BLM initiates the preparation of a resource management plan and EIS-level amendments, and updating the provisions for designating ACECs, among other things. For more information see the Summary of Changes section in the preamble of the final rule.

**Comment:** A few comments expressed concern regarding statements in the preamble that several changes were made to the regulations, which reflect no change in practice. If the BLM has been taking actions that are not in line with the regulations, then the BLM has been violating its own laws and regulations for years. The comments asserted that these statements

give the impression that the BLM is codifying its current practices and policies into law and has already effectively finalized the rule, making public comment irrelevant.

**Response:** The BLM is revising its regulations, in part, to clarify elements of the existing regulations, and more clearly articulate the BLM's interpretation of existing requirements and regulations. These clarifications reflect no change in practice but they make certain requirements easier to understand. Additionally, the DOI and BLM have authority to develop manuals, guidance, handbooks, and other related directives to help in the interpretation and consistent implementation of laws and regulations. Such directives also help ensure that the best available information is utilized and that best practices are being followed in the implementation and administration of rules and regulations. The BLM is updating the planning rule by incorporating some of these directives and lessons learned over the last ten to fifteen years of resource management planning.

The BLM has carefully considered the public comments it received on the proposed rule, which is evident in the changes to the proposed rule that the BLM made in response to those comments.

#### *Legality of Planning Rule*

One comment suggested the BLM should wait until pending lawsuits on resource management plans that were developed under the existing planning regulations are completed before releasing the final rule.

**Comment:** One comment asserted that the BLM should wait for judicial guidance prior to adoption of the proposed regulations. Several states are involved in lawsuits calling into question the BLM's current practices regarding land use planning for protection of Greater Sage-

Grouse. At least one of the lawsuits was filed to ensure compliance with existing planning regulations, including several regulations that are omitted from the proposed rule.

**Response:** Existing lawsuits challenging specific resource management plans and plan amendments are outside the scope of this rulemaking.

### *Efficiency of Planning Process*

Several comments agreed that the existing planning process is not efficient. One comment suggested that landscape-level planning will not make the process more efficient. Another comment suggested that the planning rule streamline current inefficiencies but retain the integrity of the public comment process.

**Comment:** One comment expressed agreement that the land use planning process needs improvement with regard to efficiency. However, the comment asserted, the proposed rule is not designed to achieve this goal, particularly with its focus on landscape-level planning.

**Response:** The BLM has developed strategies and tools to support the landscape approach by advancing the role of science in public lands management, standardizing data gathering, developing landscape assessments, requiring monitoring and evaluation to guide adaptive management strategies, and advancing the use of geospatial data and technology. The BLM believes that these strategies and tools, in concert with enhanced public involvement, will promote a more efficient planning process and improved outcomes. For more discussion on landscape-level planning, see the Related Executive and Secretarial Direction section in the preamble.

**Comment:** One comment asserted that the BLM should withdraw the proposed planning rule and refocus its efforts on streamlining current inefficiencies in the planning process while

retaining the integrity of the public notice and comment process for resource planning required by statute.

**Response:** The final rule adds new opportunities for meaningful public involvement in the land use planning process, emphasizing the importance of early public involvement to engage different perspectives and ensure planning is responsive to public needs and values. The BLM believes that enhanced public involvement will promote a more efficient planning process and improved outcomes by ensuring that diverse viewpoints are considered early and often. The final rule restructures public involvement provisions in § 1610.2 to indicate more clearly where in the land use planning process the BLM will provide for public notice, public review, or public comment. The responsible official shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved.

*Administrative Procedures Act*

Many comments asserted that several of the DOI policies and directives being adopted by the BLM in the planning rule did not follow the procedures required under the Administrative Procedure Act and are therefore unlawful.

**Comment:** Many comments asserted that several of the DOI and BLM policies and directives mentioned in the preamble with which Planning 2.0 aligns appear to have been adopted without observance of the rulemaking procedures required by the Administrative Procedures Act. If that is true, the policies and directives are unlawful, and the BLM cannot make regulatory requirements out of them. Under the Administrative Procedures Act, a “rule” is defined as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy...”

**Response:** APA compliance for DOI policies is outside the scope of this rule. The DOI and BLM also have authority to develop manuals, guidance, handbooks, and other related directives to help in the interpretation and consistent implementation of laws and regulations. Such directives also help ensure that the best available information is utilized and that best practices are being followed in the implementation and administration of rules and regulations.

*Too Long*

A few comments stated that the proposed rule is too long and complex, and therefore difficult to comprehend in a short time frame.

**Comment:** A few comments stated that the proposed rule is lengthy and complex, and therefore difficult to comprehend in a short time frame. The proposed rule is over 60 pages in the *Federal Register*, and the section-by-section analysis is over 200 pages. The language of the proposed rule and analysis is complex and full of jargon. The BLM should provide a redline version to the public and make documents that are short, focused, and easily understood by the general public.

**Response:** The BLM has provided several opportunities during the development of the rule to help the public understand the proposed changes. For example, during the public comment period, the BLM held two webinars on the proposed rule. The first was on March 21, 2016 and the second was on April 13, 2016, and both were led by third-party facilitators. The BLM also held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend. The BLM responds to substantive comments to show how they are addressed in the final rule, including further explanation on specific terms and topics.

### Requests for the BLM to Withdraw the Proposed Rule

Several comments stated that the planning rule should be withdrawn for different reasons.

**Comment:** A few comments asserted that the current planning rule already provides the BLM with the authority to plan at various scales and it should be withdrawn. It is unnecessary to develop a new, time-consuming planning rule. The BLM already has the flexibility it needs to achieve its Planning 2.0 goals. Instead, the BLM should adopt further guidance (for example, in handbooks) to address threats to landscape connectivity and use the flexibility that the BLM already has to plan for wildlife migration and corridors. Therefore, the BLM should withdraw the proposed rule.

**Response:** The BLM is not withdrawing the final rule. The BLM recognizes that it has the authority to implement many of the concepts of Planning 2.0 through its existing regulations. However, the BLM believes that the changes to the planning rule contained in the final rule helps respond to the needs identified by the BLM and related Presidential and Secretarial direction. For example, the BLM identified three goals to achieve through the Planning 2.0 initiative; to improve the ability to respond to social and environmental change, to provide meaningful opportunities for public and intergovernmental involvement, and to improve the ability to plan at a landscape scale. While these goals could be achieved under existing regulations, the final rule further facilitates the use of these concepts and improves the BLM's ability to implement them.

**Comment:** One comment asserted that if the proposed rule is not withdrawn entirely, Alaska should be exempted from the final rule and a new planning rule should be developed for that State. There is a basis for exempting Alaska as there are other statutory, administrative, and judicially created exemptions from national initiatives. Exempting Alaska is warranted because a one-size-fits-all approach to planning does not work. Planning 2.0 was developed for other

areas with other problems. The BLM should adopt regional planning regulations, instead of national ones, and make Alaska its own region. When developing the Alaska-specific rule, test many of the Planning 2.0 elements on the ground there first. BLM should collaborate with commenter to amend the rule for Alaska specifically.

**Response:** The planning rule revises already existing regulations for developing resource management plans for all BLM lands, and does not exempt Alaska from these revisions. However, the planning rule provides flexibility to accommodate regional, State, and local conditions and already established policies for land use planning in these areas. For example, § 1610.3-2(a) of the existing regulations required new or revised resource management plans and amendments ensure that decisions or guidance shall be consistent with officially approved or adopted resource related plans of the agency and other Federal agencies, as well as State and local governments and Indian tribes, so long as the purposes, policies, and programs of Federal laws and regulations for public lands are followed. In § 1610.3-2, the proposed and final planning rule affirms that legal requirements for consistency with other Federal land use plans, State and local governments, and Indian tribes with respect to FLPMA.

### **Planning 2.0 Project Goals**

#### *Socioeconomics*

Many comments expressed concern regarding the first goal of Planning 2.0, to improve the BLM's ability to respond to change in a timely manner, especially with regard to the consideration of changing social, environmental, and economic conditions. Some comments asserted that the rule does not give enough consideration to local economies. Other comments expressed concern regarding the consideration of changing social, environmental, and economic conditions on a landscape scale.

**Comment:** A few comments asserted that references to “social” considerations should be removed in the final rule.

**Response:** The final rule does not use the term “social considerations,” but does refer to social conditions in several places (See, *e.g.*, § 1601.0-8, which states, “Additionally, the BLM shall consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales.”). FLPMA requires that the BLM “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” when developing and revising land use plans (43 U.S.C. 1712(c)(2)). The BLM includes “social sciences,” which falls under the “other sciences” in FLPMA, for consistency with the CEQ NEPA regulations. Additionally, it is important for the BLM to understand how resource management plans impact communities, and in order to do that, it must consider social considerations.

**Comment:** One comment stated that it is unclear how BLM will evaluate social conditions for use in planning. It is unclear how RMP impacts will be analyzed at the “appropriate scale,” and what impacts on local stakeholders will be analyzed.

**Response:** Section 1610.4(b)(4) of the final rule requires the responsible official to identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area, and § 1610.4(d)(3) of the final rule requires the responsible official to assess the resource, environmental, ecological, social, and economic conditions of the planning area, including current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions. The final rule adopts § 1610.5-3(a), which requires the responsible official to identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social,

and economic effects of implementing each alternative considered in detail, and § 1610.5-3(a)(1) of the final rule requires the responsible official to make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft EIS. The final rule adopts § 1610.5-3(b) which requires the responsible official to estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. Section 1610.1-1(2)(b) of the final rule requires the BLM to use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. Final § 1601.0-8 directs the BLM to consider impacts, including on social and economic conditions, “at relevant scales.” The relevant scale for analysis of a resource management plan or plan amendment will depend on a variety of factors, including the size of the planning area, the scope of impacts, and the planning issues.

**Comment:** Many comments expressed concern that the proposed rule removes reference to the assessment of impacts on “local economies” and directs consideration of impacts on “resource, environmental, ecological, social and economic conditions at appropriate scales,” eliminating the need to account for local economic impacts.

**Response:** The consideration of an interdisciplinary approach including physical, biological, ecological, social, economic, and other sciences is consistent with the multiple use and sustained yield principles of FLPMA. Taking this interdisciplinary approach does not eliminate consideration of local economic impacts. For more discussion of consideration of local impacts and the importance of goods, services, and uses to local areas, please see the preamble discussion of § 1610.4(d)(7).

**Comment:** A few comments asserted that the proposed rule fails to define “social” in the context of the goal to “respond to social and environmental change.” These comments asserted that “social change” is not dependent on science and that responding to social change will hinder science-based management. Other comments asserted that the meaning of “social” is unclear and unquantifiable.

**Response:** An element of the first goal of Planning 2.0 is to improve the BLM’s ability to respond to changing conditions, including social conditions, in a timely manner. This is a broad goal, and it does not mean that the BLM would respond to any given change in social conditions or that the BLM would assume a change in social conditions in one area necessitated a response in a different area. An example of a change in social conditions might be a documented shift in recreational preferences, perhaps from one activity to another or from one location to another within a planning area. Changes in social conditions can be supported with science: such changes fall under the umbrella of the social sciences. The BLM currently considers the social sciences when it prepares resource management plans, so the inclusion of social conditions as a consideration in the final rule and the preamble represents no change in practice will not hinder science-based management. The social science disciplines have widely accepted research methods for understanding and quantifying social conditions.

**Comment:** One comment asserted that local economies can be affected by social trends that are not in the best interests of the environment or local residents.

**Response:** There is one reference to trends in social conditions in the proposed rule, which the final rule adopts as § 1610.4(d)(3) without revisions. The BLM recognizes that its resource management plans can strongly impact local economies, and it does not give social considerations more weight than economic ones, local or otherwise. The BLM does not intend

for trends in social conditions to dominate its resource management planning decisions; rather, such trends are considerations for the BLM to balance with other considerations and demands on public lands. Through documenting trends in social conditions, the BLM might identify increased traffic in a sensitive habitat, leading to a designation or resource use determination that protects the habitat.

**Comment:** One comment urged the BLM to prioritize local economic change in the land use planning process. A few comments asserted that planning for social change and at a landscape scale provides the public at large, rather than local residents, more influence in the planning process, and one comment urged the BLM to weigh local values against social trends.

**Response:** The BLM does not consider one value to be more important than another value; the weight and priority that it gives these considerations will depend on the specific planning area and planning effort. In response to public comments, the final rule revises § 1601.0-8 to require the BLM to consider the impacts of resource management plans on conditions, including economic and social conditions, at “relevant,” rather than “appropriate,” scales. This change is to reflect that the BLM will consider conditions at scales that are relevant to the planning decision, which includes economic conditions and impacts at the local scale. Social conditions also exist at a local scale. The BLM includes this provision to consider conditions at relevant scales in the final rule to support its goal of addressing landscape-scale resource issues, which may occur at a range of different geographic scales. Further, when the BLM is completing the planning assessment, which results in a baseline report of current conditions in the planning area, it will consider and document the “degree of local, regional, national, or international importance” of the goods, services, and uses that people obtain from the

planning area (see § 1610.4(d)(7)(i)). This provision will help ensure that the BLM assigns appropriate weight to these goods, services, and uses throughout the planning process.

**Comment:** Several comments expressed a concern that managing at a landscape scale and for social change places higher importance on managing lands for social conditions than on multiple use. The comments asserted that prioritizing responding to social and environmental changes does not take into consideration the history, customs, and culture of the area.

**Response:** The BLM's goals of improving its ability to apply landscape-scale planning to resource management and to respond effectively to, among many other variables, changes in social conditions do not reinterpret the BLM's multiple use and sustained yield mandate. The BLM is not prioritizing responding to social and environmental change; it is setting a goal to effectively develop land use plans that are responsive, in part, to changing resource, environmental, ecological, social, or economic conditions. Neither the preamble nor the rule assigns a priority or weight to any one of these types of conditions. Responding to changes in social and environmental conditions does not preclude the consideration of history, customs, and culture in the planning area. Social and environmental changes may impact local communities to varying degrees; in order to effectively manage public lands, the BLM needs to understand these potential conflicts and impacts. For example, increased demand for recreation could have effects on local communities. In order to plan appropriately, the BLM needs to understand these potential impacts.

**Comment:** One comment asserted that the BLM should incorporate into the BLM's first goal for Planning 2.0 the need to respond quickly to geopolitical situations that impact the demand on domestic supply of minerals and metals.

**Response:** The referenced goal for the Planning 2.0 initiative is to “improve the BLM’s ability to respond to change in a timely manner.” This goal includes improving the BLM’s ability to respond to changes in resource, social, environmental, ecological, and economic conditions, and encompasses changes in the demand on or for domestic supply of minerals and metals.

Efficiency

Many comments expressed concern that the rule does not reflect the first goal of Planning 2.0, to improve the BLM’s ability to respond to change in a timely manner. Other comments asserted that landscape-scale planning and an efficient planning process were incompatible.

**Comment:** One comment asserted that the proposed changes will increase the duration of the resource management planning process and could increase costs and delays to right-of-way holders and applicants. The comment urged the BLM to ensure that the rule would not negatively impact the timing and conditioning of right-of-way permits, which could be delayed due to the extension of planning boundaries.

**Response:** The BLM believes that new opportunities for public involvement have the potential to decrease the overall amount of time spent on plan development and analysis. The final rule provides a framework for developing and amending all resource management plans, but does not provide a specific commitment to processing rights-of-way applications. The BLM processes rights-of-way under the regulations of parts 43 CFR 2800 and 2880. If a right-of-way requires the amendment of a resource management plan, the BLM believes that this final rule provides for a more efficient process than the existing planning regulations. For example, the BLM may prepare an EA for a project specific amendment, which could improve the overall timing of the amendment.

**Comment:** Several comments asserted that the proposed rule fails to meet its stated intent to simplify and shorten the planning process and further asserted that additional steps increase the duration of the resource management plan or plan amendment process.

**Response:** While the BLM is adding additional steps to the planning process, particularly the planning assessment (§ 1610.4) and the public review of preliminary alternatives (§ 1610.5-2(c)), the BLM believes that the inclusion of these steps will result in a more efficient process. Conducting coordination and providing opportunities for public involvement in the planning assessment, which occurs early in the planning process and before the BLM has identified planning issues, will help the responsible official to comprehensively consider diverse viewpoints and conditions in the planning area when he or she prepares a preliminary statement of purpose and need. Starting the planning process with an understanding of the baseline conditions and public views in the planning area will help make the planning process more efficient by decreasing the possibility of major surprises later, when considerable work has been done. Section 1610.4(c) requires the responsible official to identify any data gaps or further information needs in the planning assessment, so the BLM will know what additional information it needs to complete an EIS later. The BLM anticipates that the public review of preliminary alternatives will also increase efficiency by giving the public an opportunity to bring to the BLM's attention any alternatives that the BLM may have overlooked before it conducts the environmental impact analysis. The public review of preliminary alternatives can help the BLM avoid a need to re-do or supplement NEPA analyses, which decreases efficiency.

**Comment:** One comment recommended that land use plans be flexible and accommodating to reflect environmental, economic, and societal changes through a transparent

process instead of establishing policies with resource management plans that are unalterable for 10 or more years.

**Response:** The BLM agrees that it must improve its ability to respond to changing conditions in a timely manner, and the final rule includes a few provisions to help achieve that goal. The final rule's monitoring and evaluation provisions (see § 1610.6-4) provide the BLM will determine whether a resource management plan's objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of a resource management plan. Section 1610.6-4(b) requires the responsible official to document this evaluation in a report that he or she makes available for public review on the BLM's Website. Regular monitoring and evaluation will allow the BLM to more readily respond to changing conditions whether or not those changes warrant a revision or amendment. Section 1610.1-2 introduces the concept of plan components, which guide future management decisions but do not prescribe future management actions. Plan components, which include designations and resource use determinations, describe the parameters for a future management action, but they do not determine how the BLM will implement an action that requires further plans, steps, or decisions. Specifically separating plan components from implementation-level actions provides the BLM flexibility in applying management approaches that are consistent with resource-specific plan components and the plan's goals and objectives. The BLM may only change plan components with an amendment (see § 1610.6-6(a)).

**Comment:** A few comments asserted that incorporating landscape-scale planning or making the planning area too large dilutes the effectiveness of plans and will further delay the planning process.

**Response:** The BLM does not believe that landscape-scale planning will undermine the effectiveness of its plans. Final § 1610.4(a)(1) outlines the criteria the BLM will use to identify preliminary planning areas, including management concerns identified through monitoring and evaluation; relevant landscapes based on these management concerns; director and deciding official guidance; officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes; and other relevant information, as appropriate. Under the current planning rule, planning areas have been both smaller and larger than field offices, including for example, the Greater Sage-Grouse Resource Management Plan Amendments (2015), West Eugene Wetlands Resource Management Plan (2015), and Resource Management Plans for Western Oregon (2016). Although not a substantive change in the regulations, the BLM believes that the final rule provides increased transparency to the public that the BLM intends to develop future planning area boundaries based on the relevant management concerns rather than historical administrative boundaries. The BLM believes that consideration of the factors in § 1610.4(a) will lead to the appropriate boundaries. Where the planning area is larger than traditional boundaries, the BLM anticipates that it will be based on factors that will lead to a more efficient planning process. The BLM anticipates that the final rule's emphasis on collaboration with other governmental entities, stakeholders, and the public, combined with a practical application of landscape-scale planning, will result in a more efficient planning no matter the scale of the plan.

**Comment:** Several comments expressed concern that landscape-scale planning will add to the complexity and duration of planning and implementation processes by encumbering planning documents and creating areas with multiple overlapping plans.

**Response:** The BLM does not anticipate multiple overlapping plans, more complexity in planning, or a lengthier planning process as a result of planning on a landscape scale. The BLM will give consideration to, among other things, management concerns identified through monitoring and evaluation and relevant landscapes based on those management concerns, when determining the preliminary planning area for a given resource management plan (see § 1610.4(a)). This does not mean that the planning area will default to a landscape level, but that the BLM must consider whether it is appropriate to conduct planning on a landscape scale for a particular planning effort. The final rule, and the Planning 2.0 initiative in general, support planning across traditional field office boundaries, and this collaboration will help to make landscape-scale planning efforts efficient and plans accessible. The provisions for determining the preliminary planning area and expanding a planning area beyond the traditional field office boundaries do not mean that two planning teams will capture the same area within their planning area boundaries, resulting in two different plans for the same area; the rule will not result in overlapping resource management plans. However, plan amendments can impact more than one resource management plans, since an amendment modifies a decision in the original plan or plans.

It is important to note that consideration of relevant landscapes does not inherently mean that all planning areas will increase in size. As stated in § 1601.0-5, “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.” For more information on the preliminary planning area, please see the preamble discussion of § 1610.4(a).

### Goals and Public Involvement

Many comments expressed concern or requested clarification regarding public involvement opportunities and collaboration with stakeholders in light of the second goal of Planning 2.0, to provide meaningful opportunities for public involvement, and in relationship to the other two goals. Other comments expressed a belief that the proposed rule would help the BLM to meet that goal.

**Comment:** A few comments asserted that the proposed rule affirms the important role of other Federal agencies, State and local governments, Indian tribes, and the public, and would enhance opportunities for public involvement and transparency.

**Response:** The BLM agrees with this assertion, and believes that the final rule further emphasizes these important roles and opportunities.

**Comment:** One comment asserted that Planning 2.0 is an attempt to suppress stakeholders and their ability to protect or restore the land while public lands degrade due to the lack of reason-based proactive management.

**Response:** The BLM believes that the final rule allows for more nimble, adaptive management. The final rule includes many opportunities for public involvement and improved coordination across other Federal agencies, State and local governments, and Indian tribes; please see §§ 1610.2 and 1610.3 for more information.

**Comment:** Many comments asserted that the proposed rule would diminish, not emphasize, the role of other Federal agencies, State and local governments, and Indian tribes.

**Response:** The BLM believes that the final rule emphasizes the role and importance of other governmental entities, providing for meaningful involvement and coordination opportunities throughout the planning process. For example, the final rule includes a new

section regarding consultation with Indian tribes, § 1610.3-1, which reflects that the BLM is required to initiate consultation with Indian tribes regardless of a tribe's status as a cooperating agency or involvement in ongoing coordination. In response to public comments, the final rule incorporates many revisions to the coordination section (§ 1610.3-2 of the final rule), including instructions that the BLM keep apprised of and consider the policies and management programs, not only the plans, of “other Federal agencies, State and local governments, and Indian tribes[.]” While no change in practice was intended by the language in the proposed rule, the revisions affirm that coordination on relevant programs and policies is required by FLPMA and crucial to a successful planning effort. Other examples of opportunities for involvement by other governmental entities in the final rule include a requirement that the BLM collaborate with cooperating agencies at the new planning assessment step (see § 1610.3-2(b)(3)(i)) and revisions to the section regarding the gathering of inventory data to explicitly include other Federal agencies, State and local governments, and Indian tribes (see § 1610.4(b)(1)).

**Comment:** One comment asserted that the final rule should use a rigorous standard of terminology in regards to “collaboration,” and avoid using the term to include cooperation, stakeholder outreach, communication, compromise, or other processes not linked to collaborative decision-making. The comment asserted that this clarification will help BLM officials who will be implementing the rule.

**Response:** Section 1601.0-5 of the final rule uses more precise terms to describe public involvement, notification, cooperating agencies, and coordination. The rule only uses the terms “collaborate” or “collaboratively” once each and in each context it is to explicitly describe the relationship with cooperating agencies.

**Comment:** One comment asserted that multiple opportunities for comment may discourage stakeholders from participating in protests because they have provided comments at many points in the planning process before arriving at the protest period.

**Response:** The BLM believes that allowing additional public involvement opportunities will help to resolve conflicts before they become protest issues, giving the BLM several opportunities to understand potential conflicts and giving the public several opportunities to understand the BLM's rationale for its decisions.

**Comment:** Some comments asserted that increasing opportunities for public involvement is inconsistent with the rule's goal of responding to change in a timely matter and encourages special interest groups to obstruct the planning process.

**Response:** Although increasing opportunities for collaboration may involve an upfront investment of time, resources, and expertise, past experience and studies demonstrate the potential of this approach to reduce costs and decrease the amount of time for developing plans and analyzing impacts. The BLM expects that more public involvement opportunities early in the planning process, including for special interest groups, will help to diminish conflicts and surprises in later stages, when considerable work has been completed.

**Comment:** One comment asked whether increased transparency in the planning process allows for greater public input or instead only keeps the public informed of the process.

**Response:** The BLM intends for both results to be true: the final rule allows for greater public input on a given planning process and it also helps the public to stay informed throughout the process. By providing multiple opportunities for public involvement in the planning process, the rule improves the ability of the public, States, local governments, Indian tribes, and other Federal agencies to collaborate on resource management plans. The addition of the "public

review” level of involvement, under which the BLM will make certain documents at a number of stages in the planning process available for review online and at BLM offices, is a particularly useful tool for keeping the public informed of the BLM’s planning activities. Public review does not have an associated official public comment period, but if members of the public have questions or concerns, they are welcome to direct those questions or concerns to the responsible official. The responsible official will document and consider the input to the extent that it is practical. For more information on public involvement, please see the preamble discussion of § 1610.2.

**Comment:** A few comments asserted that shortened comment periods are incompatible with the increased complexity of landscape-scale planning.

**Response:** The final rule expands the minimum requirement for the length of public comment periods for draft resource management plans to 100 days to reflect the value placed on this step by members of the public. The final rule shortens the minimum requirement for the length of public comment periods for draft EIS-level amendments from the current rule’s 90 days to 60 days, which is an expanded length from the proposed rule, which was 45 days. The change in the public comment period for amendments reflects the fact that targeted amendments may be narrow in scope and scale and allow for a more efficient process in these situations. For plan amendments that are broad in scope or scale, such as multi-State programmatic plan amendments, the BLM expects to offer a 90-day comment period, commensurate with the complexity of the draft plan amendment. For further discussion of public comment periods, please see the preamble discussion of § 1610.2-2.

**Comment:** Many comments asserted that collaboration is important, and that it is most effective when people on the ground can work together and adapt to local and regional

circumstances. The comments asserted that rules that exclude stakeholders are counterproductive, and that. Scientifically-informed stewardship of public lands, including addressing adverse impacts, must be a collaborative effort between BLM, local governments and conservation districts, landowners, NGOs, and the general public.

**Response:** The final rule emphasizes the importance of collaboration between the BLM and stakeholders. By providing multiple opportunities for public involvement in the planning process, the rule will improve the ability of the BLM and the public – which includes other governmental entities, stakeholders, and interested individuals, among other groups -- to collaborate on resource management plans.

#### Goals and Coordination

Many comments expressed concern regarding the rule's provisions for coordination with other Federal agencies, State and local governments, and Indian tribes.

**Comment:** A few comments asserted that the current planning regulations allow for more coordination and cooperation than the proposed rule. These comments asserted that the proposal reduces opportunities for meaningful participation by removing the option for agencies to coordinate rather than petition for cooperating agency status. They asserted that the proposed rule will diminish the roles of cooperating agencies and dissolve relationships between local governments and the BLM.

**Response:** The final rule does not diminish the ability of State and local governments or Indian tribes to participate in planning, and the BLM values its relationships with cooperating agencies. The final rule includes provisions for participation by other governmental entities through both cooperating agency status and coordination requirements (see § 1610.3-2 of the preamble). In response to public comments, the final rule revises § 1610.3-2(b)(1) to include the

requirement, identified in 43 CFR 46.225, that the responsible official consider any request by an eligible governmental entity to participate as a cooperating agency. Further, the final rule revises § 1610.3-2(b)(3) to clarify that the responsible official will collaborate with cooperating agencies “to the fullest extent possible . . . concerning those issues relating to their jurisdiction and special expertise. . . .”

**Comment:** One comment asserted that the proposed rule changes the word “coordination,” which is found in FLPMA, to “collaboration,” which allows special interest groups and individuals to advocate for their positions.

**Response:** The rule does not diminish or eliminate coordination that FLPMA requires, and the term “coordination” exists throughout the final rule (see, for example, § 1610.3-2, “Coordination of planning efforts”). The use of the term “collaboration” does not in any way diminish the BLM’s direction under FLPMA to coordinate with the land use planning and management programs of other Federal agencies, state and local governments, and Indian tribes, nor does it devalue coordination. The BLM believes that collaboration with all partners and stakeholders is crucial to a successful planning process, but use of the word “collaboration” in the text of the final rule is limited to references in the cooperating agency provisions (see §§ 1610.3-2(a)(5) and 1610.3-2(b)(3)). The final rule does provide for increased public involvement (public involvement being another FLPMA requirement, per 43 U.S.C. 1712(a)), but such involvement is not limited to individuals or non-governmental organizations.

**Comment:** One comment included the view that the objective of Planning 2.0 should be to ensure participation by the public and coordination with State and local governments, Indian tribes and Federal agencies in the development of resource management plans. The comment noted that FLPMA requires coordination.

**Response:** One of the goals of Planning 2.0 is to “provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans.” Section 1610.3-2 of the final rule includes provisions for coordination that align with FLPMA.

**Comment:** A few comments asserted that the rule offers more occasions for public involvement but reduces meaningful opportunities for state and local governments, contrary to the second goal of Planning 2.0.

**Response:** The rule does not diminish the ability of State and local governments and Indian tribes to participate in planning. Other Federal agencies, State and local governments, and Indian tribes are included in the rule’s definition of the term “public” (see § 1601.0-5), but the rule provides further involvement opportunities for these other governmental entities. The rule includes provisions for participation by agencies through both cooperating agency status and coordination requirements (§ 1610.3-2). Revisions to this section include a requirement that the BLM keep apprised of and consider the policies and management programs, in addition to the plans, of other governmental entities (see §§ 1610.3-2(a)(1) and (a)(2)) and a provision that the responsible official shall notify relevant State agencies consistent with State procedures for coordination of Federal activities (see § 1610.3-2(c)(4)). As another example, the final rule revises the planning assessment section to specify that the BLM will gathering inventory data in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes (see § 1610.4(b)(1)).

### Accessibility

A few comments asserted that the planning process and planning documents are too complex and not accessible to the general public, diminishing the BLM's ability to meet its goals for Planning 2.0.

**Comment:** A few comments asserted that the proposed rule would not achieve the desired goals because it would make planning documents more cumbersome. Another comment asserted that the proposed rule lessens the influence of the public due to the increasing complexity of planning documents.

**Response:** The BLM recognizes that many resource management plans can be large documents containing a significant amount of information, but does not expect that the rule will make them longer or more complex. The final rule expands the minimum public comment period for draft resource management plans to provide more time for their review. The BLM also hopes that requiring the electronic availability of resource management plans, in § 1610.2-3(a), will make these documents more accessible and easier to review.

### Deciding Official

Many comments expressed concerns regarding the determination of a deciding official, especially as it relates to landscape-scale plans that may cross State boundaries.

**Comment:** A few comments asserted that broadening the geographic scope of planning efforts will remove the cooperative relationship between local field offices. These comments expressed concern that allowing decisions to be made by the BLM Director or a deciding official in another state would make the objective of "timeliness" more difficult, as it removes the decision-making authority from local management.

**Response:** Involving multiple field offices for the purpose of landscape-scale planning will, if anything, encourage and enhance cooperation and coordination among local BLM offices. Under the existing regulations, the relevant BLM State Director generally has the responsibilities of the deciding official; the proposed rule would have given the BLM Director the responsibility of determining the deciding official and planning area for the preparation of each resource management plan. In response to public comments, the final rule revises § 1601.0-4(a), providing that the deciding official shall be the BLM State Director for resource management plans and plan amendments that do not cross State boundaries, unless otherwise determined by the Director. For resource management plans and plan amendments that do cross State boundaries, the BLM Director will determine the deciding official and the planning area.

**Comment:** A few comments asserted that the proposed rule isolates decision-makers from cooperators and prohibits a collaborative working environment.

**Response:** Nothing in the final rule lessens the role of cooperating agencies or diminished their role as collaborative partners with BLM in the planning process. In response to public comments, § 1601.0-4 of the final rule specifies that the Director determines the deciding official and planning area for the preparation of resource management plans and plan amendments that cross state boundaries; for all other resource management plans, the deciding official will be the BLM State Director unless otherwise determined by the Director.

**Comment:** Several comments expressed concern that landscape-scale planning could extend across state lines and remove authority from State Directors and Field Managers, leading to a Washington Office-based planning team. Some comments suggested that the BLM should retain existing boundaries in the planning process, while others suggested that the BLM coordinate landscape-scale efforts between offices instead of expanding planning area

boundaries, and still others suggested that local BLM officials with the most relevant knowledge of the planning area lead planning efforts. Another comment expressed concern that the importance of resources in one state will be lost if decisions are being made by a State Director in another state.

**Response:** Planning area boundaries for all plans will not necessarily cross state lines, and the final rule does not diminish the authority of State Directors and Field Managers. In response to public comments, the final rule revises § 1601.0-4, so that the BLM Director determines the deciding official and the planning area only when resource management plans and plan amendments cross State boundaries. When resource management plans or plan amendments do not cross State boundaries the deciding official will be the BLM State Director, unless otherwise determined by the Director. The final rule does not incorporate the suggestion to coordinate landscape-scale efforts between offices instead of developing one plan that crosses field office boundaries because this would be impractical in practice. Field offices will coordinate on plans that cross traditional administrative boundaries when the lands they manage are included in the planning area. The BLM does not anticipate that, when planning area boundaries cross state lines, resource management plans will devalue certain resources due to a lack of proximity to or understanding of those resources. The BLM will determine the appropriate staff to be involved in planning efforts when these efforts cross traditional administrative boundaries.

The final rule does not automatically expand planning area boundaries. Rather, the final rule requires the BLM to consider “relevant landscapes” when identifying a preliminary planning area (see § 1610.4(a)(1)(ii) for a specific planning effort. 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. Some planning efforts will be driven by management issues that cross traditional boundaries, and part of the third goal of Planning 2.0 is to address resource issues that occur at a range of spatial scales.

### Goals and Existing Plans and Initiatives

Several comments expressed concerns and one comment expressed support regarding the BLM's existing landscape-scale initiatives and resource management plans.

**Comment:** One comment asserted that the Desert Renewable Energy Conservation Plan provides a framework for achieving the goals of the proposed rule and must be used as a benchmark for comparison.

**Response:** The Desert Renewable Energy Conservation Plan (DRECP), developed by the BLM, the U.S. Fish and Wildlife Service, the California Energy Commission, and the California Department of Fish and Wildlife, is a landscape-level plan that identifies focus areas for renewable energy development, areas that are potentially available for renewable energy development, and areas under conservation designations, among other allocations. The BLM agrees that the DRECP advances the goals of Planning 2.0. While it will not be appropriate or feasible to conduct planning in every instance on the scale of the DRECP, the DRECP is nevertheless an example of a landscape-scale plan, prepared in coordination with other governmental entities that allows the BLM to be more responsive to change and in a timely fashion. The BLM will not use the DRECP as a "benchmark," but will learn from its experience creating this plan when undergoing future landscape-scale planning efforts.

**Comment:** Several comments expressed concern that the examples of successful landscape-scale planning efforts that the BLM described in public outreach do not exemplify the goal of the proposed rule to provide meaningful collaboration opportunities, and asserted that the

BLM must resolve them prior to the finalizing the rule. These comments asserted that the sage-grouse planning efforts and Rapid Ecoregional Assessments are examples of landscape-scale planning that included poor collaboration with partners, and that the sage-grouse amendment process highlights the costs incurred by State and local partners when the BLM plans on a landscape scale.

**Response:** This rule cannot resolve perceived problems with specific resource management plans or with Rapid Ecoregional Assessments, which are not resource management plans. The final rule builds upon and reflects lessons learned from past BLM initiatives and programs. The examples used in public outreach may reflect some of the goals or objectives of the final rule but are not necessarily examples of how it will be implemented in practice. The final rule includes many opportunities for public involvement and improved coordination across agencies.

#### *Collaboration and Landscape-Scale Planning*

Many comments expressed concerns regarding or suggestions for handling the relationship between the second goal for Planning 2.0, emphasizing collaboration, and the third goal, improving the BLM's ability to apply landscape-scale approaches to resource management.

**Comment:** One comment urged the BLM to directly reference master leasing plans (MLPs) in the preamble to the rule and in the Land Use Planning Handbook. The comment asserted that MLPs provide an example of collaboration and named specific complete or near-complete MLPs that, the comment asserted, fulfill their promise of being inclusive processes that rely upon input from multiple federal agencies.

**Response:** The proposed and final rules include many opportunities for public involvement and improved coordination across agencies. The final rule builds upon lessons

learned from several other BLM initiatives and programs, although these are not all cited in the preamble as examples. An MLP is a specific, implementation-level type of plan, so the final rule does not specifically discuss MLPs.

**Comment:** One comment asserted that the BLM should use National Conservation Lands policies as a model for landscape-level planning in the final rule and Land Use Planning Handbook because Secretarial Order 3308, regarding management for National Conservation Lands, states that National Conservation Lands units “shall be managed as an integral part of the larger landscape in collaboration with the neighboring land owners and surrounding communities to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change.”

**Response:** The BLM recognizes the importance of National Conservation Lands but these are only a part of the land that the BLM manages under its multiple use and sustained yield mandate, and it would be inappropriate to adopt National Conservation Lands policies for the BLM as a whole.

**Comment:** One comment expressed concern that coordination across field offices may not effectively to accomplish the Planning 2.0 goal of responding to social and environmental change. The comment suggested that the BLM adjust field office boundaries rather than involve multiple offices in a planning effort.

**Response:** Adjusting BLM field office boundaries is beyond the scope of this rule. In addition, BLM field offices do much more than develop resource management plans, and this rule cannot adjust field office boundaries, and it represents a logistical and financial cost to the BLM to change field office boundaries. Further, changing the field office boundaries in order to better respond to social and environmental change could be shortsighted; new field office

boundaries that might be responsive to recent changes could be outdated and unresponsive to new changes in ten years. Under the existing regulations, the BLM has conducted plans that include multiple field office staffs. For example, the Desert Renewable Energy Conservation Plan in Southern California included public land in seven field offices in two districts. The BLM believes that Planning 2.0's emphasis on planning and coordinating across boundaries will encourage communication between adjacent BLM jurisdictions, as well as between BLM State offices.

**Comment:** A few comments asserted that development of landscape-scale plans and the related coordination with partners will require significant efforts in order to result in high quality decisions. These comments asserted that collaboration will help to prevent protests and future litigation. One comment urged the BLM to reference the Bureau's Collaboration Desk Guide in the final rule.

**Response:** The BLM agrees that successful landscape-scale planning is dependent on effective collaboration with partners and stakeholders, and believes that the final rule reflects the importance of these relationships. The final rule's additional public involvement opportunities will increase collaboration and its frequency, which the BLM expects will help to diminish conflicts in the late planning stages. The final rule does not specifically mention the Collaboration Desk Guide, but the BLM expects to address the application of collaboration strategies in future guidance related to the implementation of the final rule.

**Comment:** Several comments expressed concern that expanding planning areas beyond traditional boundaries could dilute local voice by giving the public far removed from the planning area the same level of involvement as State and local governments. The comments further asserted that this landscape-scale planning could result in reduced stakeholder and public

involvement and a de-emphasis of impacts to local communities. Other comments pointed out that local governments have established collaborative working relationships with their respective offices.

**Response:** Regardless of the scale of the planning effort, the BLM will continue to coordinate with other governmental entities, including State and local governments, and the BLM will continue to afford these entities the opportunity to participate as cooperating agencies (see § 1610.3-2). The BLM does not anticipate that landscape-scale planning efforts will reduce stakeholder or public involvement. The opportunities for public involvement described in § 1610.2 will exist for the public, including stakeholders and interested individuals, no matter the scale of the planning effort. Regarding local impacts, the final rule revises § 1601.0-8 so that the BLM shall consider the impacts of resource management plans on conditions at “relevant” scales, rather than the “appropriate scales” of the proposed rule. The local scale is a relevant scale. When the BLM documents the baseline conditions in a planning area at the planning assessment stage, it will consider the degree of importance of goods, services, and uses obtained from the planning area on several scales, including the local scale (see § 1610.4(d)(7)(i)). This means that the BLM will consider and document how important a good, service, or use is on a local (or larger) level. If that good, service, or use is extremely important to the local community, the BLM will document that level of importance in the planning assessment, which informs the later stages of the planning process.

Local offices will remain involved in a planning effort that involves multiple offices or that crosses State boundaries. Established working relationships between field offices and their collaborators can continue; the BLM values these relationships and recognizes their importance in successful land use planning.

**Comment:** A comment expressed concern that landscape-level planning will require additional full-time employees and increased resources from counties, resulting in increased economic impact to local governments. Another comment suggested the BLM will not have the resources it needs to evaluate consistency with dozens of county land use plans.

**Response:** The BLM will conduct landscape-scale planning when it is appropriate, and the BLM does not anticipate that expanding a planning area boundary beyond the traditional field office boundary would result in additional costs for local governments. Further, the BLM does not require local governments or any other agency to coordinate with it during resource management planning. The report “Economic and Threshold Analysis for Final Resource Management Planning Rule” concluded there is no reason to expect the rule’s changes would place undue burden on any specific individual or group, and would not adversely affect in a material way the economy, a sector of the economy, or State, local, or tribal governments or communities. The BLM believes it will have the necessary resources to keep apprised of and to evaluate consistency with the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, as directed in § 1610.3-3. As stated in § 1610.3-3(a)(2), the BLM is not required to address the consistency requirements of § 1610.3-3 if Federal agencies, State and local governments, or Indian tribes have not notified the responsible official in writing of an apparent inconsistency.

**Comment:** Several comments expressed concern that landscape-scale planning will only be effective with proper NEPA analysis and collaboration with stakeholders and partnering agencies. Comments suggested that the final rule should establish an opportunity for coordination with State and local governments in advance of land use plan development.

**Response:** All land use plans developed under the final rule complies with the National Environmental Policy Act. Resource management plans will have a related EIS. Plan amendments will have either an EIS or EA (§ 1610.6-6), whichever is determined to be appropriate. The BLM will collaborate with partners and stakeholders throughout the planning process. The rule establishes an opportunity for coordination with other governmental entities, including State and local governments, before the development of a resource management plan: the planning assessment (§ 1610.4). The BLM will conduct coordination throughout the planning assessment, and this stage provides opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information to the BLM (see § 1610.4(b)(3)).

#### Planning Area

Many comments expressed concern or requested clarification regarding how the BLM will determine the boundaries of a planning area in light of the Planning 2.0 goal to improve the BLM's ability to apply landscape-scale approaches to resource management, as well as how landscape-scale planning will work in general.

**Comment:** One comment asserted that to include non-BLM or non-Federal lands in planning efforts would be inappropriate, as other landowners have differing goals and mandates, and that the rule should define landscape-scale planning in a way that ensures that non-BLM lands within or near the planning area are not affected by the BLM plan.

**Response:** While non-Federal land may exist within a planning area boundary, BLM resource management plans do not make determinations regarding those lands, with the exception of certain determinations regarding BLM subsurface estate below non-BLM lands since the BLM manages the Federal mineral estate. The rule does not prescribe specific

decisions for managing the Federal mineral estate; rather, it provides a framework to help guide the BLM in making future land and mineral estate decisions in keeping with other Federal laws and regulations. This is not a change from the existing regulations. As established in § 1601.0-8 of the final rule, the BLM shall consider the impacts of resource management plans on, and the uses of, adjacent or nearby non-Federal lands and non-public land surface over federally-owned mineral interest. In situations where the planning area encompasses lands that are not managed by the BLM, the BLM will coordinate closely with the entities with ownership or jurisdiction over those lands.

**Comment:** Several comments expressed concern that Rapid Ecoregional Assessment areas will become the new land use planning areas, which is inconsistent with the inventory requirements of FLPMA and would further restrict the ability for land use plans to address local needs.

**Response:** Although Rapid Ecoregional Assessments, which synthesize existing data and information at the larger, ecoregional level, may support planning efforts, they are not the default planning area in this rule and the BLM does not expect these areas to become default planning areas. Ecoregions are large landscapes defined by their ecological characteristics. When the BLM identifies a preliminary planning area for use in the planning assessment, it will consider management concerns, relevant landscapes based on those management concerns, Director and deciding official guidance, officially approved and adopted plans of other governmental entities, and other relevant information as appropriate (see § 1610.4(a)(1)). The BLM Director will ultimately determine the planning area for resource management plans and plan amendments that cross State boundaries, while the deciding official will make this determination if the plan or plan amendment does not cross State boundaries. Rapid Ecoregional Assessments could,

potentially, inform the identification of relevant landscapes, but this certainly does not mean that an ecoregion would be the default planning area, nor does it mean that a smaller landscape would be a default planning area. Rather, it requires the BLM to determine planning areas that are feasible and appropriate for every planning effort without defaulting to the field office boundary.

Regarding inventory, FLPMA directs the BLM to coordinate the land use inventory with the land use planning and management programs of other Federal departments and agencies of the States and local governments within which the lands are located, to the extent consistent with the laws governing the administration of the public lands (see 43 U.S.C. 1712(c)(9)). Even if the BLM were to conduct planning on an ecoregional scale, it could still coordinate the inventory with the identified entities in compliance with FLPMA. Section 1610.4(b)(1) of the final rule includes revisions to clarify that the BLM will continue to coordinate the inventory in accordance with FLPMA.

**Comment:** Several comments requested that the final rule clarify the scale of planning efforts, and further requested that planning areas be the smallest scale possible and not encompass vast landscapes without reason. Other comments expressed concern that the planning rule does not mandate the use of landscape-level planning, and that planning areas could continue to use existing boundaries. One comment noted that the term “landscape-scale” did not appear in the text of the proposed rule, only in the preamble. Several comments requested the final rule define “landscape-scale” and clarify how the BLM will implement it in planning efforts, and also suggested that the final rule update the definition of “planning area” to include landscape-scale planning.

**Response:** In response to public comments, § 1601.0-5 of the final rule defines “landscape” as “an area of land encompassing an interacting mosaic of ecosystems and human

systems characterized by a set of common management concerns. 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.” Section 1610.4(a) of the preamble to the final rule clarifies that consideration of a landscape does not mean that the planning area must encompass the full extent of the landscape; rather, it means that the BLM must consider whether it is feasible and appropriate for the planning area to encompass the full extent of the landscape. The goal is not to require all planning efforts to cross administrative boundaries, but rather to have the ability to address resource issues that occur at a range of spatial scales, which may or may not cross traditional administrative boundaries, in one plan or amendment. Section 1610.4(a) of the final rule addresses the determination of a preliminary planning area. The considerations identified in that section — management concerns identified through monitoring and evaluation, relevant landscapes based on those management concerns, Director and deciding official guidance, officially approved and adopted plans of other governmental entities, and other relevant information as appropriate — require the BLM to establish a relevant, appropriate planning area, rather than defaulting to the field office boundary.

The BLM expects to address further, specific details regarding implementation of the rule’s provisions supporting landscape-scale planning in the Land Use Planning Handbook (H-1601-1). These details will vary depending on the planning effort and area, and thus are better addressed in guidance.

**Comment:** A few comments requested the final rule clarify the criteria that the BLM will use to identify planning areas, and that the rule provides the public an opportunity to comment on the factors used to determine the planning area.

**Response:** In response to public comments, § 1610.4(a) of the final rule includes a provision for the BLM to identify a preliminary planning area for use in the planning assessment, and requires the responsible official to make the description and rationale for the preliminary planning area available for public review prior to the publication of the NOI in the *Federal Register*. The BLM will use feedback on the preliminary planning area that it receives from the public and from coordination with other Federal agencies, State and local governments, and Indian tribes during the planning assessment to inform the determination of the final planning area. The BLM will include the final determination of the planning area in the NOI. The criteria that the BLM will consider in identifying the preliminary planning area are listed in § 1610.4(a)(1) and are as follows: management concerns identified through monitoring and evaluation; relevant landscapes based on those management concerns; Director and deciding official guidance; officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes; and other relevant information, as appropriate.

**Comment:** A few comments asserted that existing planning boundaries fail to provide opportunities to address issues at appropriate scales.

**Response:** The BLM is changing its planning process in order to better address issues at a variety of scales.

#### Goals and Multiple Use and Sustained Yield

Many comments expressed concern regarding the relationship between the goals of Planning 2.0 and FLPMA's requirement that the BLM manage public lands on the basis of multiple use and sustained yield.

**Comment:** Several comments asserted that the proposed rule met the goals identified in the preamble, but expressed concern that the rule represented a policy shift away from the

emphasis of multiple use and sustained yield, and principal and major uses. Some of these comments asserted that “dynamism” means dilution of agency responsibilities and its accountability to the public. A few of these comments expressed concern that the final rule would make it lawful or appropriate to allow elements of resource management plans to be changed without a plan amendment or public involvement.

**Response:** The BLM recognizes its multiple use and sustained yield mandate under FLPMA, and acknowledges its importance. The proposed and final rules are consistent with FLPMA. In response to public comments, the final rule revises § 1601.0-1, the Purpose section, to include the principles of multiple use and sustained yield. Further, the final rule revises § 1610.4(c)(7) of the proposed rule, redesignated as § 1610.4(d)(7), to include “uses” and examples of uses among the “goods and services” that the BLM will consider in the planning assessment. Plan amendments require public involvement under the final rule; please see the preamble discussion of § 1610.2 for more information. Maintenance of plans, which includes a limited number of actions outlined in § 1610.6-5, requires public notification and review.

For more discussion of the sections of the final rule noted above, please see the discussion of those sections in the preamble.

**Comment:** One comment asserted that the proposed rule changes the congressionally-stated purpose of the planning process and inserts a new purpose to make “future land use planning more collaborative, transparent and effective.”

**Response:** Making the land use planning process more collaborative, transparent, and effective, language used in an announcement of a public meeting and webinar on Planning 2.0, does not change the original intent of the planning process as provided by FLPMA. Rather, this goal and the provisions of the final rule represent improvements to the process, keeping in line

with the law and intent of FLPMA. Additionally, the need to make the planning process more collaborative, transparent and effective was identified during outreach to BLM partners and the public regarding improving the land use planning process.

**Comment:** A few comments asserted that the proposed rule fails to recognize the impact of the rule on traditional programs, such as livestock grazing.

**Response:** The BLM does recognize the importance of livestock grazing and other multiple uses on public lands and believes that the final rule reflects that importance. The consideration of an interdisciplinary approach including physical, biological, ecological, social, economic, and other sciences is consistent with the multiple use and sustained yield principles of FLPMA. Taking this interdisciplinary approach does not eliminate consideration of impacts to local economic interests, including to livestock grazing, to the final rule includes revisions that identify livestock grazing among the goods, services, and uses that the BLM will consider in the planning assessment(see § 1610.4(d)(7) of the final rule).

**Comment:** Several comments expressed concern that the intent of the proposed rule is to manage public lands for landscape-scale conservation, or non-use, rather than for multiple use and sustained yield, and that designations could limit or prohibit uses. Another comment asserted that landscape-scale planning will decrease protections and allow increased activity by industry and other land users. Some comments urged the BLM to address all multiple uses in the rule.

**Response:** The intent of the rule is not to manage all public lands for preservation purposes, nor does the rule reflect an intention to decrease protections across the public lands. The BLM manages public lands on the basis of multiple use and sustained yield unless otherwise specified by law, as FLPMA requires. Although the rule does not name each multiple use

(except as examples in § 1610.4(d)(7), where the rule names the “principal or major uses” described in FLPMA), § 1601.0-2 of the final rule clearly states that part of the objective of resource management planning by the BLM is to manage public lands on the basis of multiple use and sustained yield. The principles of multiple use and sustained yield are also mentioned throughout the final rule. The rule does identify opportunities for protection. For example, § 1610.4, “Planning Assessment,” requires when applicable the identification of potential Areas of Critical Environmental Concern, lands with wilderness characteristics, wild and scenic study rivers, and areas of key fish and wildlife habitat, among other areas that may require protection. The BLM will use these identifications to inform the later stages of planning, like the development of resource management alternatives. Just as in the existing rule, designations may limit uses, as they direct management toward one or more priority resource values or resource uses. For more information on designations, see the discussion of § 1610.1-2(b)(1) in the preamble to the final rule.

#### Goals and Data and Information

Many comments expressed concerns regarding the BLM’s use and analysis of data and information and the goals of Planning 2.0, especially landscape-scale planning.

**Comment:** One comment asserted that the proposed rule fails to comply with Data Quality Act standards for scientific information by relying on executive directives.

**Response:** The BLM acknowledges its obligations under the Data Quality Act or Information Quality Act and the rule reflects these obligations. The Information Quality Act required the Office of Management and Budget (OMB) to issue guidance to agencies regarding information quality and required individual agencies to issue their own information quality guidelines. The preamble names these guidelines, including the BLM’s own information quality

guidelines, which provide instructions for implementing the Information Quality Act; they are therefore consistent with the Information Quality Act, not alternative directives. Thus, where the BLM discusses in the preamble its guidelines' descriptions of information objectivity, integrity, and utility, it is encompassing the standards that the Information Quality Act required OMB to disseminate. The rule's high quality information standard is consistent with the Information Quality Act and includes the best available information.

**Comment:** One comment asserted that individuals and groups advocating for conservation and restoration of public lands are often at odds with the perspectives of local governments, and are disadvantaged by lack of access to data and information that FLPMA affords to local governments.

**Response:** While FLPMA directs coordination with other Federal agencies, State and local governments, and Indian tribes, the BLM intends to make its data and information more easily accessible to the public with this rule and the Planning 2.0 initiative. The rule itself requires the BLM to make draft, proposed, and final resource management plans, as well as any scientific or technical reports the responsible official uses in the preparation of the plan, available electronically and at all BLM offices within the planning area (see § 1610.2-3(a)). The BLM will also make the planning assessment report available for public review electronically and at all BLM offices in the planning area (see § 1610.4(e)).

**Comment:** A couple of comments asserted that because of the difficulty of revising resource management plans, planning documents often do not reflect changing conditions on the ground and fail to incorporate better data and science as they become available.

**Response:** The final rule requires monitoring and evaluation standards to better understand changing conditions and whether the objectives of the resource management plan are

being met. This will enable easier and more transparent updates, including revisions, of plans in response to changing conditions.

**Comment:** Several comments asserted that landscape-scale planning dilutes good science and is highly inaccurate because it does not consider site-specific differences and inconsistencies. The comment cited the sage-grouse amendments as an example.

**Response:** Resource management plans are not meant to be site-specific. Resource management plan decisions are generally broad and will guide future site-specific implementation decisions and analysis. The information and data used in resource management plans and amendments, including plans that address landscape-scale resource issues such as wildfire, habitat connectivity, or the demand for renewable and non-renewable energy sources, must meet the high quality information standard, meaning that it must be accurate, reliable, unbiased, uncompromised through corruption or falsification, and useful to its intended users (see § 1601.0-5).

For more information on high quality information, please see the discussion of § 1610.1-1(c) in the preamble to the final rule.

**Comment:** A few comments expressed concern that landscape-scale planning will not fulfill the purpose of the planning rule because analyzing fire safety, impacts of climate change, and impacts of noxious weeds requires having on-the-ground information.

**Response:** Although resource management plans are not meant to be site-specific, the BLM will gather data and information on landscape-scale issues such as fire safety, climate change, and noxious weeds as appropriate during the planning assessment. The BLM will gather and analyze more site-specific information as required under NEPA during implementation of an approved resource management plan.

### General Comments Regarding Planning 2.0 Initiative Goals

Some comments expressed support for the goals or parts of goals for the proposed rule, such as early public and stakeholder involvement, planning assessments, high quality information, landscape-scale management, and adaptive management. Others expressed concern about the goals.

**Comment:** Many comments expressed appreciation for the goal regarding collaboration, asserting that dialogue is valuable because it ensures the concerns of those that a final decision affects the most are sufficiently considered in that decision, which establishes and maintains trust that intergovernmental partners require.

**Response:** Increasing transparency and providing opportunities for public involvement and review are major aspects of the final rule. The BLM expects the revised Land Use Planning Handbook to provide information on how the BLM will implement the final rule.

**Comment:** One comment asserted that the BLM did not make clear the purpose of the changes to the planning regulations.

**Response:** The BLM is changing its planning regulations to respond to the increasing complexity the BLM faces in managing for multiple use and sustained yield on public lands, as well as to opportunities to make land use planning more dynamic and efficient, including using the internet for communication and document distribution. For more information on the reasons for revising the planning regulations, please see “Why the BLM is Revising the Land Use Planning Process” in the preamble.

**Comment:** One comment asserted that the proposed rule is arbitrary and capricious because it fails to “articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made’” per *Motor Vehicle Mfrs. Ass’n v. State*

*Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). Because the terms of the rule are inconsistent with the goals, BLM has not articulated the rational connection between the proposed rule and its goals.

**Response:** The BLM has identified three goals of the Planning 2.0 initiative, as outlined in the Background section of the preamble: to improve the BLM's ability to respond to change in a timely manner; to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans; and to improve the BLM's ability to apply landscape-scale approaches to resource management.

Regarding the first goal, the final rule helps the BLM to conduct planning in a more efficient manner and to respond to change. For example, the final rule introduces the concept and definition of "resource management plan components," which provide the planning-level management direction to guide all future management decisions without specifically prescribing future decisions. The use of plan components, which are described in § 1610.1-2 of the final rule, will provide flexibility for the BLM to adjust management based on changing circumstances, new information, or site-specific information, while also providing for the use of public lands and establishing firm goals and objectives.

To accomplish the second goal of the Planning 2.0 initiative, the final rule includes new and enhanced opportunities for meaningful public involvement in the land use planning process and emphasizes the importance of early public involvement. This early involvement includes the addition of the planning assessment phase, which will occur before the BLM conducts scoping and identifies planning issues. In the planning assessment, the BLM will identify public views concerning the planning area and allow local and State governments, Indian tribes, other Federal

agencies, and the public to provide data and information or suggest laws, regulations, policies, guidance, strategies, or plans for the BLM to consider. The BLM believes that this early public involvement and identification of diverse viewpoints will help to reduce frustration and conflict later in planning, when a considerable amount of work has been completed. Another example of the final rule's provision of meaningful public involvement opportunities is the extension of the public comment period for draft resource management plans, which the public has identified as a particularly valuable opportunity for involvement.

As stated in the preamble, "a landscape-scale approach is a structured and analytical process that guides resource management decisions at multiple geographic scales in order to consider multiple overlapping landscapes and to achieve multiple social, environmental, and economic goals." The final rule incorporates measures that will improve the BLM's ability to apply landscape-scale approaches to resource management, particularly in the planning assessment; this step requires the responsible official to consider relevant landscapes when determining the preliminary planning area (see § 1610.4(a)(ii) of the final rule) and to consider information and document conditions at multiple geographic scales. The BLM will use the baseline information documented in the planning assessment to consider overlapping landscapes and achieving multiple goals in later stages of the planning process, such as the development of resource management alternatives.

For more discussion of how the amended regulations relate to the goals of Planning 2.0, please see "How the Final Rule Achieves the Goals of Planning 2.0" in the preamble.

**Comment:** One comment asserted that the second goal of Planning 2.0 should include a statement that involvement, coordination, and collaboration with stakeholders will be in compliance with the Federal Advisory Committee Act.

**Response:** The BLM is committed to complying with all relevant Federal policies and statutes, including the Federal Advisory Committee Act. It is unnecessary to include such a statement in the BLM's goals for the Planning 2.0 initiative.

### **Landscape and Ecological Concepts**

#### *Support for Mitigation and Science-based and Landscape-scale Planning*

Several comments expressed support for the use of mitigation and for science-based and landscape-scale planning and management.

**Comment:** Several comments expressed support for the proposed integration of landscape-scale planning. They noted that the BLM needs to be able to manage across administrative boundaries for resources and programs and that a landscape-level approach would allow the BLM to adapt more quickly to climate change as well as changes in recreation and industry use. Some comments suggested defining the landscape at the appropriate scale, and suggested that the planning rule explain that the scale of planning areas could be larger or smaller depending on the issues involved. One comment suggested adding text encouraging landscape-level planning with other agencies, such as the U.S. Forest Service.

**Response:** In response to public comments, § 1601.0-5 of the final rule includes a definition of "landscape," which is as follows: "an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. 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." The planning area could be larger or smaller depending on the elements and management concerns that help define the landscape. In some cases, such as plans to address a broad issue or resource concern, the planning area may be larger than an administrative boundary, and in other cases it could be the

same or smaller than an administrative boundary. It is not appropriate for the BLM to identify one specific agency in the final rule with which it might collaborate on landscape-level plans, but § 1610.3-2(a)(5) provides that the BLM will develop resource management plans collaboratively with cooperating agencies where possible and appropriate.

**Comment:** A few comments supported an improved emphasis on science in land use planning, including encouraging science-based decision-making. Another comment expressed support for using the mitigation hierarchy.

**Response:** The BLM believes that the final rule supports the use of sound science in land-use planning and decision-making, as well as the use of the mitigation hierarchy in the development and implementation of resource management plans.

#### Managing for Change

A few comments supported the use of adaptive management approaches, including in response to climate change, while one opposed such management. A few comments provided specific recommendations for addressing adaptive management and climate change in the rule. Some comments opposed including climate change policies in planning documents.

**Comment:** A few comments supported addressing and responding to climate change with an adaptive management approach. One comment opposed building adaptive management into a resource management plan, asserting that allowing for changes in management in a plan decreases resource protections.

**Response:** The BLM believes that using adaptive management approaches will help it respond to change, including climate change, in a timely manner, and this will help the BLM to achieve the first goal of the Planning 2.0 initiative. The final rule sets a foundation for the application of adaptive management approaches by, for example, introducing the concept of plan

components (see § 1610.1-2), or recording known resource constraints, or limitations during the planning assessment (see § 1610.4(d)(3)). Section 1610.4(d)(6) of the rule also requires the responsible official to consider and document the dominant ecological processes, disturbance regimes, and stressors, such as climate change, in the planning assessment. Recording baseline information like resource thresholds and dominant ecological stressors early in the planning process helps the BLM to develop resource management plans that adequately respond to those issues. Plan components provide requirements for future management decisions toward the achievement of a plan's goals and objectives without prescribing management measures that require further specific plans, process steps, or decisions. This allows the BLM to adjust its management of the public lands, in keeping with the direction of the resource management plan, in order to meet the objectives of the plan. The BLM does not believe that adaptive management harms the protection of resource values. Adaptive management decisions will comply with the requirements set out in the resource management plan, which includes protections identified in the plan, like those that are part of a designation. Adaptive management should therefore help the BLM to protect the resources it sets out to protect because it allows the BLM to change management techniques in order to meet identified, measureable objectives.

**Comment:** One comment suggested that the final rule make any adaptive management available for the public to review.

**Response:** Final § 1610.1-2(a)(2) requires the BLM to develop specific, measurable plan objectives with established time-frames for achievement. The BLM could incorporate adaptive management into resource management plans by establishing an objective with associated thresholds that when exceeded trigger a specific response, such as a plan amendment. Plan

amendments are subject to the public involvement requirements of final § 1610.2; therefore, adaptive management will be implemented with public review.

**Comment:** One comment suggested that the BLM add an ecological basis to the definition of adaptive management, asserting that the rule should explicitly require an ecological approach to adaptive management.

**Response:** Neither the proposed nor final rule includes a definition of adaptive management. The final rule does not require an ecological approach to adaptive management. The BLM believes that final rule provides the appropriate framework for adaptive management through resource management planning and that individual planning efforts should determine the specifics on a case-by-case basis, as appropriate. While the BLM could include more specific information in rule, it is unnecessary to do so and could potentially limit future use of the concept. The final rule supports the BLM's intention to use science-based, adaptive management approaches to resource management, which would include consideration of the ecology, or the interactions between a resource at issue and its environment.

**Comment:** A few comments urged the BLM to work to limit climate change, and asserted that land use plans must respond to the impacts of climate change. A comment recommended applying the mitigation hierarchy to climate change.

**Response:** Two of the three goals of Planning 2.0 are to respond to change in a timely manner and to apply landscape-scale approaches to address resource issues that occur at a range of spatial scales, which includes climate change. As mentioned above, the final rule includes several opportunities for the BLM to address changing conditions, including the impacts of climate change. Additionally, while developing resource management plans, the BLM must comply with all relevant Federal policies, including those related to climate change that are cited

in the preamble of the rule. The final rule does not explicitly require that the BLM apply the mitigation hierarchy (avoidance, minimization, compensation) to climate change because the planning rule establishes the procedural framework for preparing resource management plans but does not prescribe specific outcomes, like how the mitigation hierarchy should be applied. However, the BLM does apply the principle of avoidance during its preparation of resource management plans, by, for example, identifying impacts and developing alternatives to avoid those impacts. Section 1610.1-2(a)(2)(i) of the final rule provides that, as appropriate, objectives of resource management plans should identify standards to mitigate undesirable impacts to resource conditions. This measure will guide future management decisions in avoiding, minimizing, and/or compensating for undesirable impacts, and will help the BLM to implement its mitigation policy.

**Comment:** A few comments opposed including climate change-related goals and policies within BLM planning documents. These comments expressed concern that emphasis on climate change could potentially impose Federal control over the use of western lands that could limit a landowner's use of their property.

**Response:** BLM resource management plans do not make decisions for private lands. The rule does not prescribe specific decisions for managing the Federal mineral estate; rather, it provides a framework to help guide the BLM in making future decisions for BLM lands, including mineral estate, in keeping with other Federal laws and regulations. This is not a change from the existing regulations. As established in § 1601.0-8 of the final rule, the BLM shall consider the impacts of resource management plans on, and the uses of, adjacent or nearby non-Federal lands and non-public land surface over federally-owned mineral interest. However, an emphasis on considering or responding to climate change does not directly impact private

landowners. Lastly, the BLM must comply with Federal guidance on climate change, such as the CEQ's guidance on greenhouse gases and climate change.

**Comment:** A few comments asserted that the BLM should not address climate change, because resource management plans should only address conditions on the ground.

**Response:** Climate change has on-the-ground impacts. The objective of resource management planning, as noted in § 1601.0-2, includes ensuring that the public lands be managed in a manner that will protect the quality of a number of values, including ecological, environmental, air and atmospheric, and water resource values. This objective alone, required by FLPMA (43 U.S.C. 1701(a)(8)), justifies the consideration of climate change impacts.

**Comment:** A couple of comments expressed concern that climate change is discussed in the preamble but not the proposed rule, and suggested incorporating climate change into the final rule. One of these comments suggested that the rule require each resource management plan and plan amendment to build in climate adaptation through the zoning and habitat protections prescribed in the plans.

**Response:** The BLM will not prescribe specific requirements related to climate change in the final rule. The planning rule establishes the procedural framework for preparing and amending resource management plans, and it is not appropriate to require specific considerations for zoning and habitats in this high-level rule. The planning rule provides the BLM adequate flexibility to address climate changes through land use planning.

#### *Landscape-scale Management and Resource Protection*

Several comments urged the BLM to apply landscape-scale approaches to the protection of certain resources or lands in the final rule. One comment asserted that the proposed rule will result in regulatory uncertainty, cross-border conflicts and uncertainty for public lands users by

implementing landscape-level planning beyond the existing Public Rangelands Improvement Act framework.

**Comment:** One comment asserted that landscape-level planning beyond the existing Public Rangelands Improvement Act framework will blur existing State and local geopolitical boundaries, resulting in regulatory uncertainty, cross-border conflicts, and uncertainty for public lands users. The proposed rule does not anticipate interstate conflicts that will result, nor does it contemplate possible assessments to address foreseeable conflicts with valid existing rights.

**Response:** The Public Rangelands Improvement Act (43 U.S.C. 1901-1908) does not address planning area boundaries. Further, the BLM revises, amends, and maintains its resource management plans in accordance with FLPMA and these accompanying regulations at § 43 CFR 1600. The provisions of the Public Rangeland Improvement Act are subject to determinations and other decisions made in the BLM's land use planning process.

The final rule does not require that the BLM implement landscape-scale approaches to land use planning efforts, but rather facilitates the use of the concept should the BLM determine that such an approach is warranted. The BLM believes that the use of this approach will increase efficiencies in the planning process by combining planning efforts, and will promote consistency across traditional BLM planning boundaries. Lastly, a variety of statutes direct that planning and other BLM decisions are made subject to valid existing rights.

**Comment:** One comment suggested that the final rule allow the BLM to consider the impacts of leasing lands near or adjacent to current and future National Conservation Lands.

**Response:** The BLM analyzes impacts of leasing, including in areas near National Conservation Lands, in accordance with NEPA as part of its resource management planning

process. This practice will continue under the final rule and including such language in the rule itself is unnecessary.

**Comment:** Several comments supported the consideration, including in the proposed rule, of ecosystem connectivity. Several comments requested that the final rule provide direction for resource management plans to evaluate and protect ecological connectivity between National Conservation Lands units, U.S. Forest Service lands, and other significant areas of naturalness.

**Response:** Section 1610.4(d)(5) of the final rule refers to areas of potential importance within the planning area, including areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat. The identification of these areas is important at the onset of planning, as fish and wildlife habitat often crosses jurisdictional boundaries and conservation of such habitat may require landscape-scale management approaches. When applicable, the planning assessment will gather information about habitat connectivity, which will include between National Conservation Lands and other significant areas of naturalness. The planning assessment will inform the later stages of the planning process, like the formulation of resource management alternatives.

**Comment:** One comment suggested that, although the landscape approach is designed primarily with ecological management issues in mind, the basic intent and method of the approach should apply equally well to cultural resource management issues.

**Response:** The planning rule will not specify the types of resources that comprise a landscape, which is defined by the interacting elements that are relevant and meaningful in a management context. The interacting mosaic of ecosystems, human systems, and common

management concerns that characterize a landscape is not limited to ecological issues and could include cultural resources issues.

### Mitigation

Several comments expressed concern about mitigation standards and policies, particularly with respect to landscape-scale planning and the BLM's own mitigation policy.

**Comment:** A few comments expressed concern that planning at a landscape-scale will increase the difficulty of assessing impacts and of tailoring mitigation requirements to specific impacts, increase the scope of mitigation efforts, and move mitigation opportunities away from the location of the impact. The comments asserted that this would make decisions highly controversial and would not support the interests of local communities. One comment suggested that the final rule detail how new requirements for mitigation work in connection with landscape-scale planning, and another suggested that the BLM apply the mitigation hierarchy at the landscape level.

**Response:** The mitigation strategies under which the BLM currently operates provide for a landscape-scale approach to mitigation. The BLM does not believe that landscape-scale planning will necessarily make assessing impacts more difficult, nor will it increase the difficulty of tailoring mitigation requirements to impacts. The BLM will continue to assess impacts using sound science, no matter the scale of the planning effort. The BLM uses the mitigation hierarchy in developing resource management plans by generally first applying the principle of avoidance of adverse impacts in alternative development; the final rule helps to ensure the hierarchy is wholly and consistently applied in plan implementation by stating that objectives of plans should identify standards to mitigate undesirable impacts to resource conditions, as appropriate (see § 1610.1-2(a)(2)(i)). This requirement is independent of the scale of the resource management

plan. If anything, landscape-scale planning enables the BLM to apply the mitigation hierarchy to identified impacts more effectively, because it allows the BLM to comprehensively assess the landscape as it considers how to avoid and then how to minimize impacts, and where to locate sites for compensatory mitigation.

It is true that regional or landscape-scale mitigation allows the location of mitigation sites away from the impact site, perhaps expanding the geographic scope of a mitigation effort. The rule includes provisions to allow for landscape-scale planning when appropriate, which aligns with goals and directives for regional mitigation outlined in Department of Interior and BLM policies.

Except for the provision that resource management objectives should identify standards to mitigate undesirable impacts to resource conditions, the rule does not introduce new mitigation requirements. The rule does not describe how mitigation will work in connection with landscape-scale plans; this is an implementation-level consideration that is outside the scope of this rule and, because such a connection will vary greatly based on the planning area and effort, is better addressed in guidance.

**Comment:** A few comments urged the BLM to base mitigation standards on the relevant statutes and regulations, rather than policy statements or documents advocating the imposition of compensatory mitigation of all activities on public land resulting in a “net resource benefit” or a “no net loss” of resources. The comments asserted that the mitigation hierarchy standard is not consistent with the unnecessary or undue degradation standard established in FLPMA or in BLM’s existing 3809 Surface Management regulations.

**Response:** The mitigation hierarchy is not a mitigation standard but is instead a sequenced process for the consideration and implementation of mitigation, and it is fully

consistent with the BLM's obligation under FLPMA to prevent unnecessary or undue degradation. The mitigation hierarchy generally calls for the BLM to first seek to avoid impacts, then minimize impacts, and finally to seek to compensate for unavoidable impacts that warrant additional mitigation. This approach to pursuing mitigation does not result in unnecessary or undue degradation. Finally, the BLM incorporates its mitigation policies as appropriate into this rule regarding the development of resource management plans; the rule cannot change those policies.

**Comment:** One comment urged the BLM to use land use authorizations, such as rights-of-way, to ensure mitigation actions are durable, and to discuss this approach in the rule and Land Use Planning Handbook.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not develop comprehensive policy related to mitigation. The final rule addresses mitigation in regards to developing plan objectives, stating that as appropriate the plan objectives should “[i]dentify standards to mitigate undesirable impacts to resource conditions” (see § 1610.1-2(a)(2)(i)). These standards are intended to provide guidelines to link mitigation to resource management plan objectives. Comprehensive mitigation policy, including in regards to the development of durable mitigation actions, is outside the scope of this rulemaking and is more appropriately addressed through guidance, such as manuals and handbooks.

#### Data Collection

One comment urged the BLM to consider placing limits on data collection and analysis.

**Comment:** One comment urged the BLM to place reasonable and tangible limits on data collection and analysis associated with landscape-level resources and climate change in the final

rule, because the BLM's attempt to avoid "unnecessary data collection and analyses" may not be strong enough to prevent a limitless analysis of broad issues like climate change and landscape-level resources.

**Response:** Though the "unnecessary data collection and analyses" phrase is from the section of the preamble regarding the BLM's existing planning criteria development process, the BLM nevertheless believes that the revised rule, as written, will help to avoid unnecessary data collection and analysis. The major data gathering stage of the planning process under the final rule, the planning assessment, must be completed consistent with the nature, scope, scale, and timing of the planning effort (see § 1610.4). The word "relevant" appears throughout this section, repeatedly noting that information and other items gathered in the planning assessment must be relevant to the planning effort at hand. Section 1610.4(b)(1) requires the responsible official to arrange for the gathering or assembling of inventory data and information "in a manner that aids the planning process and avoids unnecessary data gathering." Other provisions, like the requirement that the responsible official determine if information gathered in the planning assessment is high quality information in the planning assessment, will help to ensure that unnecessary analyses are not conducted. As another example, § 1610.5-3(a) requires the responsible official to identify the procedures, assumptions, and indicators that the BLM will use to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail. This requirement, that the responsible official plot out the basis for analysis, and the additional requirement that he or she release it for public review, will help the BLM avoid unnecessary analysis. Neither the analysis of climate change nor the analysis of resources on a landscape scale is so complex as to be unwieldy or limitless.

The BLM expects to further address approaches for data gathering and analysis in future guidance, such as the Land Use Planning Handbook. Because the scopes of planning effort are highly variable, this subject is better addressed in guidance.

FLPMA

One comment suggested that the BLM clearly state in the final rule how climate change and landscape-level resources are in line with FLPMA.

**Comment:** One comment urged the BLM to clarify in the final rule how considering resources on a landscape level and climate change are in keeping with FLPMA.

**Response:** Nothing in FLPMA prohibits planning on a landscape level or addressing the impacts of climate change. The preamble of the rule does explain that “this planning-level management direction is intended to guide future management activities towards the achievement of goals and objectives across the landscape, while also providing for use of the public lands by tracts or areas as required by FLPMA (43 U.S.C. 1712(a)).” FLPMA directs public lands be managed in a manner with will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archaeological values (43 U.S.C. 1701(a)(8)). FLPMA further requires that the development of resource management plans “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” and “weigh long-term benefits to the public against short-term benefits” (43 U.S.C. 1712(a)(2) and (a)(7)). These are examples of FLPMA provisions that support addressing climate change impacts. Additionally, FLPMA does not require that planning areas or the resources addressed in them be of a certain size or extent.

### Data Quality

A few comments stated that the proposed rule generally does not comply with BLM guidelines associated with the Data Quality Act, claiming that the data collected by special interest groups is biased. Comments also stated that the proposed rule does not disclose uncertainties and inaccuracies associated with landscape-scale management, and that there is no peer reviewed science for the stated improvements to the process.

**Comment:** A few comments asserted that the proposed rule fails to disclose uncertainties and inaccuracies associated with landscape-scale management and does not comply with BLM guidelines associated with the Data Quality Act. Comments stated that data collected by special interest groups is biased and aimed at reaching predetermined conclusions. Additionally, there is no peer reviewed science for the stated improvements to the process.

**Response:** The final rule does not require the BLM to implement a landscape-scale approach to planning processes; rather, the rule will facilitate the use of this concept. Further, the final rule complies with Federal laws and regulations, including the Data Quality Act. All information submitted by the public, as well as other Federal agencies, State and local governments, and tribes will be considered in the planning process. However, § 1610.1-1(c) will require the BLM to use high quality information to inform the preparation, amendment, and maintenance of resource management plans, as defined in § 1601.0-5. The preamble to the rule provides rationale for the changes made to the existing and proposed regulations, which includes anticipated benefits to the process.

### **Information Sharing**

### Public Access and Review

Several comments requested that the BLM make information and data, supporting documentation, the evaluation of data, and reports and planning documents, available to the public. One comment requested that the BLM allow the public to review and respond to data collected during the planning assessment.

**Comment:** One comment requested that the BLM include a formal public response to data gathered during the planning assessment. The comment asserted that the BLM should allow public review, comments, and protests on the data.

**Response:** The planning assessment step establishes a new opportunity for public involvement that is not present in the existing regulations, but the final rule does not include formal comment and protest periods because they would prevent completion of planning assessments within reasonable time frames and create unnecessary delays in the planning process. As in § 1610.4(d) of the proposed rule, § 1610.4(e) of the final rule provides for public review of the planning assessment report. In this section of the final rule, the BLM will add language requiring the report to be made available to the public prior to the publication of the NOI. Section 1610.2 of the preamble clarifies that making a document “available for public review” does not require the BLM to provide a formal opportunity to comment. However, where the BLM makes a document “available for public review,” the public is welcome to bring questions or concerns to the responsible official’s attention.

For further information regarding public involvement, please see the preamble discussion of § 1610.2.

**Comment:** One comment requested consistent procedures for public notification of opportunities to submit data and information before the planning or scoping processes begin.

The comment asserted that the responsible official has significant discretion regarding the types of information sessions that the BLM holds during a given planning process. The comment requested that the final rule standardize public notification of the BLM's information-gathering process and require the use of the BLM Website, ePlanning, and other outlets.

**Response:** Section 1610.2-1(c) of the final rule provides that the BLM will announce opportunities for public involvement in the planning assessment (which includes the information-gathering process), by posting a notice on the BLM Website and at all BLM offices in the planning area. In response to public comments, § 1610.2-1(c) of the final rule also includes a requirement for the responsible official to identify additional forms of notification to reach local communities within the planning area, as appropriate. The use of these additional forms of notification are at the responsible official's discretion because the possible additional forms of notice will vary from planning area to planning area and because it may not always be necessary to provide notice in additional outlets.

Section 1610.2-1(e) of the final rule requires the BLM to notify the public at least 15 days before any public involvement activity where the public is invited to attend (for example, a public meeting).

For further information on public notice, please see the preamble discussion of § 1610.2-1.

For further information on information gathering in the planning assessment, please see the preamble discussion of § 1610.4(b).

**Comment:** One comment requested increased accessibility to the data the BLM uses. The comment suggested that the BLM build an accessible, up-to-date, easy-to-use information portal for the public. Another comment requested that BLM make its documents and products,

including data, reports, and planning documents, available to the public on the ePlanning platform as soon as they become available.

**Response:** The final rule does not require an information portal for planning; however, the final rule does require that the BLM make copies of the draft, proposed, and approved resource management plan or plan amendment available, at a minimum, electronically and at all BLM offices within a planning area. The BLM will also, to the extent practical and consistent with Federal law, make scientific or technical reports that the responsible official uses in the preparation of a resource management plan preparation plan amendment reasonably available to the public. These types of documents will be made reasonably available to the public, to the extent practical and consistent with Federal law. Further, the BLM is transitioning to using the ePlanning platform, an online national register for all land use planning and NEPA documents, and expects that it will be fully deployed BLM-wide in 2017.

For more information on the availability of a resource management plan and related documents, please see the preamble discussion of § 1610.2-3(a).

**Comment:** One comment stated that ePlanning can effectively disseminate information to the public but that the BLM inconsistently posts information there, particularly with regard to geospatial information and maps. The comment asserted that it is important that BLM provide geospatial information and maps for all plans and projects to the public, because these materials are crucial to the public's ability to thoroughly participate in the planning process.

**Response:** The final rule does not require the use of ePlanning, particularly since the BLM does not expect to deploy it BLM-wide until 2017. If the maps in question are part of a draft, proposed, or final resource management plan or plan amendment, the BLM makes them available under § 1610.2-3(a) of the final rule, which requires BLM to make copies of the draft,

proposed, and approved resource management plan or plan amendment reasonably available to the public. The BLM will, at a minimum, make copies of draft, proposed, or final resource management plans or plan amendments available electronically (for example, on the BLM Website or on ePlanning) and at all BLM offices within the planning area. If the maps or geospatial data in question are part of the planning assessment, the responsible official will make this information available to the public on the BLM's Website to the extent practical, provided the geospatial information is non-sensitive, per § 1610.4(e) of the final rule. This planning rule does not address sharing geospatial information and maps that are not used in the planning assessment or are not part of a draft, proposed, or final resource management plan or plan amendment, but interested persons can obtain such materials by other available means.

**Comment:** One comment requested making data available to the public not only in a summary report, but also in the form that it was submitted.

**Response:** The BLM does adopt the provision, at § 1610.4(d) of the proposed rule and § 1610.4(e) in the final rule, for the responsible official to make the planning assessment report available for public review. The final rule does not include a requirement that the responsible official make the original data available to the public. For example, some data may be sensitive, and releasing it in its original form would be inappropriate. Additionally, data may be in a format that is not entirely meaningful to the public, in which case it would be more appropriate to summarize the data in a report. The BLM recognizes the importance of sharing the data it uses in resource management planning, and expects to address data sharing in future guidance, such as handbooks, manuals, or other internal policy.

**Comment:** A few comments requested that the BLM add language to the final rule, requiring that the BLM make its evaluation of data gathered during the planning assessment

available to the public before the planning assessment report is completed. They asserted that the BLM's explanation and rationale regarding why data does or does not meet the "high quality information" standard, and thus why it will or will not be used in the planning process, will foster communication and improve transparency.

**Response:** The BLM will not make the responsible official's evaluation of data submitted as part of the planning assessment available to the public before he or she completes the planning assessment report. All data the BLM uses in in the planning assessment must meet a high quality information standard. The definition of high quality information, in § 1601.0-5 of the final rule, is "any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users." The BLM recognizes the importance of data quality standards and transparency. Section 1610.1-1(c) of the preamble discusses in detail the regulatory requirements, policies, and strategies under which the BLM currently does and, in the future, will evaluate data and information.

**Comment:** One comment requested that the BLM make protests available to the public, because such information helps the public become better informed about the issues in a planning area. The comment notes that currently, members of the public interested in reviewing protest materials must submit a FOIA request, and suggests that the BLM post all protest submissions on a relevant planning project's Website.

**Response:** Section 1610.6-2(a)(4) of the final rule adopts the requirement that "upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws or regulations." This availability will be separate from requirements under the Freedom of Information Act. The final

rule does not specify the mode of availability, as this may vary depending on the protest. The BLM expects to address the availability of protests, including the possibility of posting all protest submissions to the BLM Website, in future guidance, such as an instructional memorandum or other internal policy.

*Level of Public Involvement*

Several comments were supportive of the proposed rule's information-sharing measures, and some of these comments had further suggestions for improving information sharing.

**Comment:** A few comments expressed support for early information sharing between the BLM and other agencies, jurisdictions, organizations, and the public. The comments asserted that early information sharing will help to ensure that the BLM uses the most current data and resource information in planning. Some of the comments further asserted that the proposed rule's information sharing measures support transparency, consistency, and efficiency in planning. The comments requested that the BLM ensure that there is ongoing communication between the BLM and stakeholders and that the BLM try to develop consistency of terminology and definitions with other Federal agencies.

**Response:** The BLM sought to be consistent with terminology from applicable Federal laws and regulations, and BLM policies regarding information terminology and quality. Additionally, the establishment of an MOU with cooperating agencies in the planning process provides for additional consistency between agencies. The BLM recognizes the importance of communication with stakeholders and the public, and the final rule promotes increased communication by providing for the use of electronic communications and information technology. The BLM is committed to coordinating with other Federal agencies, and the BLM

expects to more specifically address strategies for information sharing in more detail in future guidance, such as handbooks, manuals, or other internal policy.

**Comment:** One comment urged the BLM to consider that, while it is advantageous to collect information early in planning, typically only a small number of people are aware of and participate in planning efforts. The comment urged the BLM to further consider the possibility that suggestions from the public may require the BLM to gather even more data and information.

**Response:** The final rule does not specifically address the impact that public concerns and values may have on the information gathering. However, the BLM intends for the planning assessment to provide new, early opportunities for public and stakeholder involvement, including opportunity for the public to submit data for use in planning. The final rule also promotes increased communication and outreach. Section 1610.2-1(c) requires the BLM to announce opportunities for public involvement on the BLM's Website, at all BLM offices within the planning area, and at other public locations, as appropriate. Additionally, § 1610.2-1(d) of the final rule provides the BLM will maintain a list of individuals or groups who have requested notification of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM will provide electronic or written notice to those individuals or groups and believes these measures will increase early public involvement.

The purpose of the planning assessment is to evaluate relevant conditions in the planning area for informing the preparation and, as appropriate, the implementation of a resource management plan. The BLM expects to address strategies for efficient gathering of information and public views in future guidance, such as the Land Use Planning Handbook or other internal policy.

**Comment:** One comment expressed support for the BLM’s use of in-person workshops, webinars, collaborative websites, and other innovative information-gathering techniques. The comment asserted that these types of opportunities have been very useful in helping people understand planning issues and how to best engage in the BLM’s planning efforts.

**Response:** The final rule adopts measures that provide opportunities for greater public understanding of and involvement in planning. For example, § 1610.4(b)(4) of the final rule requires that the BLM provide opportunities during the planning assessment for the public to share relevant views concerning resource, environmental, ecological, social, or economic conditions in the planning area. These opportunities would generally include public meetings, though the BLM may use other techniques. Additionally, § 1610.4(b)(3) of the final rule provides the public with opportunities to give data and information to the BLM and to suggest other laws, regulations, policies, guidance, strategies, or plans for the BLM to consider in the planning assessment. These opportunities may include not only written communication, but also webinars, in-person meetings and workshops, collaborative websites, or other methods of communication.

For more information on public involvement in land use planning, please see the preamble discussion of § 1610.2.

#### *Data Management*

A few comments stated that the BLM should publicly post its evaluation of the information it receives from the public, as well as make the BLM’s own data publicly available. Another comment stated that the BLM’s failure to make information available that was used in the development of the “Roadmap for Success in 2016” could be viewed as a violation of the Information Quality Act.

**Comment:** One comment stated that the BLM should publicly post its evaluation of all the information it receives and its rationale for including or excluding such information. Also, the BLM should make its information publicly available, as the BLM's own data should be held to the same standard as the public. The comment referenced "Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information," BLM's 2015 publication on advancing science in the BLM, the Data Quality Act, and the DOI's scientific integrity policy in Departmental Manual 305 DM 3.

**Response:** The BLM makes data and information used in the land use planning processes publicly available under current practice. Typically, this information is cited throughout the associated NEPA document and references are provided as a separate chapter or appendix to the document.

Under final § 1610.4, the BLM will gather relevant data and information to inform the planning assessment. Section 1610.4(e) will require that the responsible official document the planning assessment in a report made available for public review prior to the publication of the NOI. The final rule does not require that information submitted to the BLM during this phase be made publicly available, or that the BLM will provide rationale for including or excluding such information; however, the planning assessment will summarize public views in relation to the planning area and will reflect the information that is received during this step in the process. Additionally, the final rule encourages that any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM's Website.

**Comment:** One comment stated that the BLM failed to make information available that was used in the development of the "Roadmap to Success in 2016," which could be viewed as a violation of the Information Quality Act. The comment referred to the BLM's statement that the

Roadmap highlights the increasing complexity it faces in managing for multiple use and sustained yield on public lands, and identifies population growth, urbanization of the West and growing use activities. The comment further asserted that it is necessary to analyze both the analysis the document makes and the demographic information before it can be used as a strategic plan.

**Response:** The 2011 BLM publication “Winning the Challenges of the Future: a Roadmap for Success in 2016” (Roadmap) identified various challenges for the BLM in managing the public lands consistent with FLPMA’s multiple use and sustained yield mandate. The Roadmap also outlined possible strategies for achieving identified goals by 2016. Appendix 1 of the Roadmap provides the methodology that was used in developing the plan. This appendix discloses that the core team involved in developing the plan consisted of primarily BLM employees. Further, many of the surveys conducted as part of this effort focused on employees from around the Bureau. The BLM also consulted with partner agencies, such as the Environmental Protection Agency, National Park service, Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Forest Service, and the U.S. Geological Survey. The BLM also met with representatives from universities, think tanks, and other organizations relevant to resource use, land management, and conservation issues. In addition, Appendix 2 of the Roadmap provides a summary of the input received from employee surveys. The identified challenges of increasing population growth and urbanization in the West, diversifying use activities on the public lands, demand for renewable and non-renewable energy sources, increasing conflicts between resource uses and conservation objectives, and landscape-scale resource issues such as climate change or wildfire are matters of fact, as identified by

experienced land managers. The Roadmap highlights these challenges and provides strategies for addressing them.

### Data Quality

Several comments expressed concerns or thoughts about the implementation of a science-based approach to planning, and how the BLM will evaluate and ensure the quality of the data it uses or receives from the public. Several comments asserted that the proposed rule modifies current data criteria to allow unsubstantiated and subjective information to inform planning, which will make land use plans inconsistent with quality standards established in other laws, such as the Endangered Species Act, the Information Quality Act, and NEPA.

**Comment:** One comment was concerned that the new, science-based approach of the planning rule would result in previous data being ignored in exchange for “new” data, which could take years to gather.

**Response:** The final rule does not provide that the BLM will disregard any information, including previous information, solely because additional information is available. The BLM would only replace information being used when the BLM determines more accurate or higher quality information is available to inform a decision. Under the final rule, the BLM will evaluate all data it considers using in a resource management plan, plan amendment, or plan maintenance to ensure that it meets the high quality information standard. Section 1610.1-1(c) of the final rule requires the BLM to use high quality information to inform the preparation, amendment, and maintenance of resource management plans. It is the BLM’s current policy and practice to use high quality information in its resource management planning, under the Information the Information Quality Act, section 515 of the Treasury and General Government Appropriations

Act for Fiscal Year 2001 (Public Law 106-554, H.R. 5658), and the implementing guidelines of OMB, DOI, and the BLM.

For more information on high quality information, please see the preamble discussion of § 1610.1-1(c).

**Comment:** One comment requested that the BLM form a scientific working group that could review data to ensure it meets BLM standards. The comment suggested that such a working group could help to resolve disagreements about data and identify areas where more data is needed.

**Response:** The final rule does not require the BLM to create a working group to evaluate data quality and needs. The final rule provides that the responsible official will determine whether information meets the high quality information standard and whether more data or information is needed in a particular situation. The BLM expects to further address data evaluation methods and strategies in future guidance, such as the Land Use Planning Handbook or other internal policy.

For more information on the evaluation of data submitted during the planning assessment, please see the preamble discussion of § 1610.4(c).

For more information on data quality, please see the preamble discussion of § 1610.1-1(c).

**Comment:** One comment urged the BLM to exercise caution when using data from outside sources. The comment asserted that data from outside the BLM (for example, from special interest groups) could be biased.

**Response:** Final § 1610.1-1(c) directs the BLM to evaluate the data and information it receives and uses to ensure and maximize its quality, objectivity, utility, and integrity. The standards for data quality will apply to all data used in planning..

**Comment:** One comment requested that the data submitted to the BLM by the public meet the requirements of the Data Quality Act.

**Response:** The final rule requires the BLM to evaluate all data and information it receives and uses to ensure that it meets the high quality information standard, which is informed by and consistent with the Information Quality Act (or Data Quality Act).

For more information on data quality, please see the preamble discussion of § 1610.1-1(c).

**Comment:** One comment urged the BLM to acknowledge in the final rule that the resource management plan process takes years to complete, and new information will become available that needs to be taken into consideration; the comment asserts that the BLM needs to supplement and refine information during the process.

**Response:** The final rule identifies plan components, designations, and other planning-level management tools to help in guiding future decisions, without specifically prescribing future decisions. This process allows the BLM to incorporate firm goals and objectives with the flexibility to incorporate site-specific and new information as part of an adaptive management framework. The final rule allows the BLM to respond to changing circumstances, and incorporate new information where appropriate, during planning and the implementation of planning decisions.

**Comment:** A few comments asserted that the proposed rule modifies current data quality criteria to allow unsubstantiated and subjective information to inform planning, which

will make land use plans inconsistent with quality standards established in other laws, such as the Endangered Species Act, the Information Quality Act, and NEPA. Comments stated that placing information such as traditional ecological knowledge at the same level as best available science is contrary to established legal standards and invites litigation. Also, while the BLM states that it is mindful of its obligations under the Information Quality Act, the addition of traditional ecological knowledge and other vague information in the planning process indicates otherwise. Comments also said that the definition of high quality information does not meet the standards of the Office of Management and Budget's guidelines for "Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies."

Comments asserted that the final rule must ensure that planning procedures will not improperly inject opinion rather than data in the planning process, and that the BLM should adopt science integrity standards similar to those adopted by the National Research Council. Others stated that the term "high quality information" should include the words "verifiable" to further clarify what qualifies as high quality information. The final rule should also include a clear explanation of high quality information, including the required standards of such information. One comment stated that the final rule should not codify an information standard.

**Response:** Final § 1610.1-1(c) adopts the requirement that the BLM shall use high quality information to inform the preparation, amendment, and maintenance of resource management plans. Final § 1601.0-5 includes an explanation of the term. The inclusion of this requirement does not preclude any specific category of information, such as "traditional ecological knowledge." Under the final rule, traditional ecological knowledge will be considered a type of information that could inform the preparation, amendment, and maintenance of resource management plans, so long as this information is documented in such a way that

ensures and maximizes its quality, objectivity, utility, and integrity. The BLM will continue to use best available science, where applicable.

The final rule requires that the information used in the planning process is of high quality, and that the data and information, including best available scientific information, is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users. The use of high quality information does not eliminate the BLM's obligation to comply with Federal law and regulations applicable to public lands.

Additionally, final § 1610.4(c) requires the BLM to evaluate the data and information gathered under § 1610.4(b) to determine if it is high quality information appropriate for use in the planning assessment. It is unnecessary to specifically include the word "verifiable" in this term, as any data and information gathered under § 1610.4(b) must be verified by the responsible official.

#### **Comments Related to Resources and Resource Uses**

**Comment:** One comment suggested that the proposed rule does not provide necessary assurances that important values and attributes of public lands will be protected. In particular, the information provided is not adequate for: climate, cultural resources, noise, travel, oil and gas footprint reduction, energy footprint reduction, grazing disturbance and ecological damage, cultural values, native vegetation communities, withdrawal, utility corridor, rights-of-ways, Areas of Critical Environmental Concern, National Landscape Conservation System, climate, water quality, water quantity, sensitive, rare and endangered species, wildlife, aquatic and terrestrial systems and species, visual resources management, wilderness study areas, lands with wilderness characteristics, wilderness areas, and National Monuments.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not specifically prescribe future decisions. The final rule provides that BLM planning will be consistent with federal laws and regulations, as well as BLM policies. However, there are also BLM policies specific to each of these resource values and attributes that have been and will be developed separate from the planning rule, and will further guide and inform decisions made by the BLM.

### Cultural Resources

A few comments stated that the planning rule provides the BLM an opportunity to improve the inventory, management and protection of cultural resources; however, other comments expressed concern with the lack of references to cultural resources in the proposed rule. Several comments provided suggestions on the management of cultural resources.

**Comment:** A few comments stated the planning rule provides the BLM an opportunity to improve the inventory, management and protection of cultural resources on the lands it administers. A few other comments asserted that traditional cultural properties are embedded in the greater landscape therefore cultural resource sites should be identified and mitigated at a landscape level and not only at the area of disturbance. The comments also asserted that most of the cultural resource data is generated by National Historic Preservation Act Section 106 mandated compliance surveys for specific projects, leaving the vast majority of heritage resources on public lands at risk of being lost or damaged due to lack of baseline data.

Comments suggested requiring Section 106 reviews for any planning activity that has the potential to result in effects to historic properties, using block surveys instead of project surveys, undertake comprehensive cultural landscape-scale inventories of all of public lands, and within the Planning 2.0 rule identify appropriate areas for conducting further inventory.

**Response:** The BLM recognizes the importance of data and inventories for cultural resources. While the final rule does not specify how or when cultural resource surveys are completed, the planning assessment phase will collect and inventory data, as appropriate, for the planning effort. Further, the BLM expects to issue additional guidance in the Land Use Planning Handbook and BLM's 8100 manual series, *The Foundations for Managing Cultural Resources*.

**Comment:** One comment supported the BLM's efforts to carry out National Historic Preservation Act Section 106 reviews for individual undertakings and the agency's dedication to its historic preservation program in working to balance multiple federal land uses with broader preservation goals.

**Response:** The BLM appreciates the support, and recognizes historic preservation as a vital part of balanced multiple use management of federal lands.

**Comment:** One comment expressed concern with the rule being silent on the BLM's statutory responsibility to identify, manage and protect cultural resources. The comment suggested BLM specifically reference cultural resources as a statutory priority for inventory, planning, and management. A few comments suggested the final rule provide a definition for cultural resources, identify cultural management as a data set to inform management decisions at the landscape scale, and have early and inclusive tribal consultation and coordination to preserve and protect tribal cultural resources.

**Response:** The final rule does not include additional statutes specifically related to cultural resources. The BLM must comply with all applicable Federal laws, including the National Historic Preservation Act of 1966, during BLM planning and management and reference to Federal laws in the planning regulations does not change this requirement. The BLM will not include the term "cultural resource" as a specific definition in the final rule.

Section 1610.4(d)(5)(i) in the final rule lists areas of tribal, traditional, or cultural importance as areas of potential importance to document in the planning assessment. Involving Tribes begins during the planning assessment data gathering which the final rule describes in § 1610.4(b)(2), to include identification of relevant tribal laws, regulations, policies, guidance strategies or plans.

**Comment:** One comment asserted that the BLM should consider surface cultural resource values on split-estate lands.

**Response:** The final rule does not specifically require consideration of cultural resource values on split-estate lands. The National Historic Preservation Act section 106 requires the BLM to consider the effects of Federal actions on cultural resources. This generally includes identification and consideration of the effects to cultural resources on private land that result from a Federal action. Under current law and BLM policy, and under the final rule, the BLM will generally consider surface cultural resource values on split-estate lands when a project is analyzed.

**Comment:** One comment encouraged BLM to manage cultural resources according to the BLM 8110 manual, *Identifying and Evaluating Cultural Resources*, and to roll 8110 procedures and guidelines into resource management planning. The comment asserted current BLM policy states that resources will be managed according to resource management plans, and under this framework, cultural resources are managed per the record of decision for a given RMP and not to agency policy as stated in the 8110 manual.

**Response:** The BLM will follow standards set forth in BLM's 8100 manual series, *The Foundations for Managing Cultural Resources*, which includes procedures and guidelines from the 8110 manual, *Identifying and Evaluating Cultural Resources*. While resources are managed

in compliance with the resource management plan, the BLM must also comply with laws and program-specific regulation and policy when managing resources.

**Comment:** One comment stated that cultural resource management has been disproportionately focused on compliance with Section 106 of the National Historic Preservation Act, and the planning process should use predictive modeling, significance modeling and priority area planning. Another comment recommended the BLM continue to expand innovative cultural resource programs such as the Cultural Resource Predictive and Sensitivity Model for the West Mojave.

**Response:** While important, inclusion of specific procedures such as predictive modeling, significance modeling and priority area planning is outside the scope for the planning rule and the BLM does not incorporate them into the final rule. However, cultural resource program regulations do not discourage innovative methods and tools, and the BLM will follow standards set forth in BLM's 8100 manual series, *The Foundations for Managing Cultural Resources* as well as applicable statutes, regulations and other policy guidance.

**Comment:** One comment suggested that the proposed rule prioritize the incorporation of a systematic and sustained cultural resource identification, evaluation, and management program to provide the BLM with a mechanism for meeting its responsibilities under both the National Historic Preservation Act of 1966 and FLPMA. The comments also urged the BLM to upgrade and integrate its current geospatial data systems for cultural resources.

**Response:** The BLM recognizes the importance of cultural resource identification, evaluation and management, as well as the use of geospatial systems for all resources. The final rule does not specifically incorporate this suggestion, as the BLM believes it is better addressed

through policy or guidance. Cultural resources will continue to be managed in accordance with existing program regulations, which do not discourage the use of innovative tools and methods.

*Livestock Grazing and Wild Horse and Burro*

One comment requested the planning rule permanently retire grazing allotments that are voluntarily relinquished. Another comment asserted that the rule will result in less emphasis on traditional programs, and requested language regarding the rights of BLM land usage for private livestock grazing. A few comments asserted that land use plans merely maintain the status quo with regard to existing grazing practices, and NEPA alternatives in land use plans present grazing management proposals that are too similar. One comment asserted that implementation strategies would be carried out with only 30-day notice, which could reduce or eliminate the protections and assurances provided in Federal grazing permits and leases. One comment expressed concern with the allowable management levels set for wild horse and burro.

**Comment:** One comment requested the planning rule direct that grazing allotments that are voluntarily relinquished may be permanently retired. Land trusts and conservation organizations are interested in acquiring grazing permits from willing sellers for the purpose of retiring livestock grazing to eliminate conflicts between livestock and native carnivores, or to improve rangeland health and wildlife habitat effectiveness. However, these efforts require the BLM to formalize the authorization of permanent permit retirement to provide certainty that the allotment will not be returned to active use.

**Response:** The final rule does not incorporate these suggestions because the administration and management of grazing allotments is directed by the Grazing Administration regulations in 43 CFR part 4100. This final rule does not change the Grazing Administration regulations.

**Comment:** One comment asserted that focusing on landscape-scale resource issues will result in less emphasis on traditional programs, which are important to state and local interests throughout the West. The comment said FLPMA still emphasizes livestock grazing as a key element of use for the public lands, yet livestock grazing is not mentioned in any of BLM's priorities and goals. Another comment requested that language be added to the rule regarding the rights of BLM land usage for private livestock grazing. A few other comments asserted Planning 2.0 would create greater uncertainty to livestock grazing, expressed concern about how the planning rule will affect individual ranches, whether the change will result in an ever-growing horse population, and stated that continued livestock grazing on Federal lands is necessary in order to maintain the economic viability of working ranches which contribute to the economy of rural and local communities and which provide benefits to wildlife and maintain open space.

**Response:** Section 1610.4(d)(7) of the final rule describes domestic livestock grazing as a component of goods and services that people obtain from a planning area, and the planning assessment will consider the degree of local, regional, national, or international importance of the goods and services. Further, traditional programs will remain a large part of the planning process, and each planning effort will need to identify the programs, resources, uses and issues within the planning area. The final rule adopts proposed § 1601.0-2, which describes the objective of resource management planning, and includes managing the public lands to provide for human use and which recognizes the Nation's need for domestic sources of food from the public lands. FLPMA § 103(l) shows domestic livestock grazing as a "principal or major use." Sections 401 and 402 of FLPMA established policy for range management, including livestock grazing permits and leases on public lands. Wild horses are administered and managed as

directed by the Protection, Management, and Control of Wild Free-Roaming Horses and Burros regulations in 43 CFR Part 4700, and this final rule does not change those regulations.

**Comment:** A few comments asserted that land use plans merely maintain the status quo with regard to existing grazing practices where NEPA alternatives in land use plans present grazing management proposals that are too similar. Comments said land use plans should assess land conditions, report conditions including rangeland health standards and the degree of ecological potential, plant productivity on allotments, identifying ecological problems and recommended remedies, and recommend changes to grazing numbers needed to restore identified problem areas.

**Response:** The final rule does not go into detail on how to manage specific programs and resources; however, the BLM expects to revise the Land Use Planning Handbook to provide program and resource-specific guidance for resource management plans. The BLM's Information Memorandum number 2012-169 addresses the range of alternatives to consider for livestock grazing in a resource management plan, including what constitutes a reasonable range of alternatives.

**Comment:** One comment asserted that implementation strategies would be carried out with only 30-day notice, and no stakeholder review or input. The lack of oversight and notification requirements relating to "implementation strategies" could reduce or eliminate the protections and assurances provided in Federal grazing permits and leases.

**Response:** The term "implementation strategies," its definition, and its discussion in §§ 1610.1-3 and 1610.5-5 of the proposed rule have been removed from the final rule in response to public comments. For more information, please see the preamble discussion of proposed § 1610.1-3.

**Comment:** One comment requested that equal consideration be provided to allotment management lands and forage allocations for wild horses and burros in federally designated habitats. The comment specifies that decisions on wild horses and burros should be based on sound science.

**Response:** The BLM will not revise the final rule at § 1610.1-2 to include specific requirements for considerations of wild horses and burros. The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM, through the land use planning process, would develop plan components as appropriate to address the resources and values within the planning area, including wild horses and burros. The proposed rule states at § 1610.1-1(c) that “the BLM shall ensure and maximize the quality, objectivity, utility, and integrity of information” when conducting land use planning.

**Comment:** One comment expressed concern with the low allowable management levels set for wild horse and burro, and suggested they could seriously threaten the genetic viability of the majority of herds still roaming our public lands in the west.

**Response:** The final rule does not address the wild horse and burro allowable management level. Wild horses are administered and managed as directed by the Protection, Management, and Control of Wild Free-Roaming Horses and Burros regulations in 43 CFR Part 4700, and this final rule does not change those regulations.

### Mineral Development

Comments stated that the proposed rule failed to acknowledge the importance of mineral exploration and mining activities as part of the multiple-use mission and will have a detrimental impact on domestic mining operations, and recommended the final rule maintain legitimate, legal

access to public lands for mining activities. One comment stated that the final rule should include provisions to clarify known mineral potential will be evaluated as part of the planning assessment, and the list of examples of “areas of potential importance” should include areas with known mineral potential, and another suggested the proposed rule would dilute the value mineral exploration and production by placing them into the term goods and services. One comment requested the BLM be very conservative and judicious in approving any oil and gas development. Comments suggested that objectives should limit natural resource extraction and should charge a lease fee to any entities profiting from BLM land use, and stated the proposed rule fails to explain how the BLM will incorporate master leasing plans into planning efforts.

**Comment:** One comment stated that the proposed rule failed to acknowledge the importance of mineral exploration and mining activities as part of the multiple-use mission. Another comment suggested that the proposed rule will have a detrimental impact on domestic mining operations, and recommended the final rule maintain legitimate, legal access to public lands for mining activities.

**Response:** The final rule adopts proposed § 1601.0-2, which describes the objective of resource management planning, and includes managing public lands on the basis of multiple use and sustained yield, managing the public lands to provide for human use, and which recognizes the Nation’s need for domestic sources of minerals from the public lands. Section 1610.4(d)(7) of the final rule describes mineral exploration and production as a component of goods and services that people obtain from a planning area, and the planning assessment will consider the degree of local, regional, national, or international importance of the goods and services. Also, the definition of multiple use in final § 1601.0-5 includes minerals.

**Comment:** One comment stated that the final rule should include provisions to clarify that mineral potential will be evaluated as part of the planning assessment. Areas of mineral potential that should be considered include not only areas where mineral development has been proposed or is occurring, but also all areas where available geologic information indicates that there is a potential for economic mineralization. The list of examples of “areas of potential importance” should include areas with mineral potential. One comment requested that the phrase “goods and services” reference areas with potential for both non-energy and energy minerals.

**Response:** Section 1610.4(d)(5)(ix) of the final rule includes consideration and documentation of areas with known mineral potential as part of “areas of potential importance” in the planning assessment. The final rule adds language to § 1610.4(d)(7) to explain that goods and services will include mineral exploration and production. Also, minerals include non-energy and energy minerals.

**Comment:** One comment suggested the proposed rule would dilute the value of congressionally designated uses of mineral exploration and production by placing them into a newly concocted basket of goods and services including such vague terms as “ecosystem services.” Specific programs like oil and gas development, which are facilitated by FLPMA, must not be excluded, delayed, or obstructed in favor of vague objectives.

**Response:** Section 1610.4(d)(7) in the final rule refers to identifying the “various goods and services” in the planning area. Goods and services include mineral exploration and production, as well as ecological services. Oil and gas development, or development of other minerals, is not excluded. The “principal or major uses,” as defined by FLPMA (see 43 U.S.C. 1703(l)), includes mineral exploration and production.

**Comment:** One comment suggested that objectives should limit natural resource extraction and should charge a lease fee to any entities profiting from BLM land use.

**Response:** Part of the objective of the final rule is to manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law. The final rule does not impose limits to resource extraction. Resource management plans will identify issues and management concerns, and could identify reasonable restrictions to accomplish a resource objective. The final rule does not address lease fees.

**Comment:** One comment stated the proposed rule fails to explain how the BLM will incorporate master leasing plans into planning efforts. The comment requested that the BLM include a statement in the final rule that goals and objectives in RMPs must be consistent with existing laws and congressional policies and cannot prevent the exercise of valid existing rights, which include existing oil and gas leases. The BLM's planning regulations must ensure that the public lands are managed for multiple-use, including oil and gas development.

**Response:** The final rule does not specify how master leasing plans are to be included in resource management plans because the final rule does not provide specific program guidance on mineral development. The final rule incorporates language that provides the BLM will comply with all applicable Federal laws; this includes the Mineral Leasing Act, and FLPMA and other statutes that provide decisions are made subject to valid existing rights. The final rule includes language in § 1610.1-2(b)(2) to clarify that a resource use determination is “subject to valid existing rights.”

#### Coal Suitability

**Comment:** One comment suggested that a resource management plan is not the appropriate vehicle to review the desirability of coal versus other sources of energy.

**Response:** A resource management plan will not assess the importance or desirability of one form of energy source over another. The resource management plan will include resource use determinations to identify areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan.

### Recreation

A few comments stated that recreation is not meaningfully discussed in the proposed rule and that BLM lands need to remain accessible to the public for many uses including hunting, fishing, boating, and other outdoor activities. One comment requested the BLM to not limit access for rock hounding.

**Comment:** A few comments stated that recreation is not meaningfully discussed in the proposed rule, does not support recreation as much as current BLM guidance, and that BLM lands need to remain accessible to the public for many uses including hunting, fishing, boating, and other outdoor activities that do not conflict with land management objectives.

**Response:** The final rule adopts the objective of resource management planning part of which provides for outdoor recreation and human use (see final § 1601.0-2). Section 1610.4(d) of the final rule requires a planning assessment which will document areas of importance which includes areas of importance for recreation activities or access ((d)(5)(xi)) and (d)(7) which will document goods and services including outdoor recreation.

**Comment:** One comment expressed that access to public lands is essential for the ability to collect, preserve, and exhibit rocks, minerals and fossils, and requested the BLM to not limit access for rock hounding.

**Response:** The planning rule does not limit access to public lands, but provides a framework for developing resource management plans. Resource management plans may determine allowable access or restrictions in keeping with applicable Federal laws and regulations.

Multiple use

A few comments expressed concern over the lack of specificity regarding multiple use issues and the rules of multiple-use should be defined as clearly as possible. One comment asserted there should be equity in the use of public lands where the preservation of wildlife, wild places, scenic, cultural and historical values are given equal consideration as commercial interests such as livestock ranching, drilling, or extractive industries.

**Comment:** A few comments expressed concern over the lack of specificity regarding multiple use issues such as recreation. Comments suggested landscape-level planning does not address multiple use requirements and recreational usage, and the rules of multiple-use should be defined as clearly as possible in the planning rule.

**Response:** The final rule discusses recreation in resource management planning in several sections, but does not provide program specific guidance. Section 1601.0-2 of the final rule discusses management of public lands “on the basis of multiple use and sustained yield,” and to provide for outdoor recreation. Section 1601.0-5 of the final rule adopts the definition of multiple use, which includes recreation. Section 1610.4(d) of the final rule requires a planning assessment that documents areas of importance, including for recreation activities or access ((d)(5)(xi)) and to document goods and services including outdoor recreation ((d)(7)). Recreation policy and procedures are discussed in greater detail in BLM Manual 8320, "Planning for Recreation and Visitor Services." The BLM is required to manage on the basis of multiple

use and sustained yield. The BLM will consider all resources, including recreation, in its land use planning processes for specific plans or amendments.

**Comment:** One comment asserted there should be equity in the use of public lands where the preservation of wildlife, wild places, scenic, cultural and historical values are given equal consideration as commercial interests such as livestock ranching, drilling, or extractive industries. Conservation and recreation must also be considered as important multiple uses that deserve equal weight along with any other uses.

**Response:** The BLM considers conservation and recreation important uses of public lands, and values the preservation of wildlife, wild places, scenic, cultural and historical values for future generations. The planning rule does not prescribe specific resource decisions, but provides a framework for resource management plans to make appropriate resource and resource use determinations, and balance the management of resources and resource uses for multiple use and sustained yield. As such, the objective in § 1601.0-2 of the final rule is the management of public lands “on the basis of multiple use and sustained yield,” part of which is to ensure that the public lands be managed in a manner that will protect the quality of scenic, historical, archaeological and ecological values; and that will provide habitat for fish and wildlife and provide for outdoor recreation.

#### Travel and Transportation

A few comments expressed concern that land use plans are not presenting measures that adequately identify and minimize impacts caused by off-road vehicle use. Another comment expressed that safety issues with off-highway vehicle use are rarely considered in planning. One comment asked the BLM to consider changing the status of existing roads and trails from motorized to non-motorized, at least seasonally. Another comment expressed support of BLM

travel management decisions being made to focus on specific areas within the field office, rather than the entire field office.

**Comment:** A few comments expressed concern that land use plans are not presenting measures that adequately identify and minimize impacts caused by off-road vehicle use. Another comment expressed that safety issues with off-highway vehicle use on public lands are significant but rarely considered in planning. Comment suggested that BLM's planning rule should compile and direct field offices to incorporate best management practices regarding public lands and off road vehicle use, and that planning assessments should report any history of safety issues and provide a history of law enforcement actions. Also, comments suggested the BLM should report the agency's history on off-road vehicle use and compliance with past travel plan direction. The BLM should consider in the plan remedies that ensures safety especially for children.

**Response:** The BLM recognizes the importance of safety issues regarding off-highway vehicles use, including safety for children; however, it would be inappropriate to include this suggestion in the planning rule. The BLM believes this topic is better addressed through policy and guidance rather than this rulemaking. Further, the BLM expects that the forthcoming Land Use Planning Handbook will provide additional program-specific guidance for developing resource management plans. Section 1610.4(3) of the final rule does provide the opportunity to identify relevant public views concerning resource and social conditions of the planning area. Section 1610.4(d)(5)(xii) of the final planning rule does provide for documentation of areas of importance for public health and safety during the planning assessment.

**Comment:** One comment asked the BLM to consider changing the status of existing roads and trails from motorized to non-motorized, at least seasonally, to protect wildlife migration and wintering areas.

**Response:** The final rule does not make any on-the-ground decisions. Travel and transportation planning is typically done at the implementation-level, after a resource management plan is approved. Section 1601.0-1 of the final rule states the purpose of the planning rule is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans. Resource management plans will identify areas that are closed, open, and limited to existing routes, throughout the year or seasonally. Each area the BLM manages provides a unique situation and the BLM does not believe such a blanket restriction on a resource use is appropriate for these regulations. The BLM expects to address aspects of travel management in greater detail in future guidance and the new Land Use Planning Handbook.

**Comment:** One comment expressed support of BLM travel management decisions being made to focus on specific areas within the field office, rather than the entire field office. Too often important areas or routes are lost at the field office level analysis as users are asked to review decisions impacting hundreds thousands of acres. This type of request overwhelms reviewers and omissions from maps can be missed.

**Response:** Resource management plans will identify the process to plan for travel management.

### Wildlife

A few comments asked the BLM to consider providing larger tracts of wildlife habitat that are not fractured by roads, motorized trails, or industrial development and requested the rule

be explicit about the role of wildlife corridors and habitat connectivity. One comment requested that BLM include specific direction to utilize the State's wildlife data, analyses, and expertise to the greatest extent possible. One comment supported the BLM's recognition of the importance of public lands and waters for sustaining the diversity of the nation's birdlife, and another requested that the BLM protect grizzly bears.

**Comment:** A few comments asked the BLM to consider providing larger tracts of wildlife habitat that are not fractured by roads, motorized trails, or industrial development, and stated that protecting critical wildlife habitat is a vital factor of public lands management. Another comment requested that the rule be explicit about the role of wildlife corridors and habitat connectivity in the planning process. A comment recommended the planning rule and Land Use Planning Handbook identify an approach to avoid disturbance to these habitats, which are often narrow in scope, vitally important, and often threatened.

**Response:** The final planning rule adopts section 1610.1-2(b) on plan components, which includes designations for backcountry conservation areas and wildlife corridors, both of which protect wildlife habitat with specific restrictions identified at the planning level. These designations will identify areas of public land where management is directed toward those priority resource values or resource uses and will provide planning-level management direction.

**Comment:** One comment requested that BLM include specific direction, both within the rule and all related implementation documents, to utilize the State's wildlife data, analyses, and expertise to the greatest extent possible to efficiently achieve wildlife conservation and land use planning goals.

**Response:** The BLM recognizes the importance of using the best available information in planning, which may often include State agency wildlife data sets. Section 1610.4(b)(1) of the

final rule provides for gathering inventory data and information in coordination with other Federal agencies, State and local governments and Indian tribes. Section 1610.4(b)(3) of the final rule provides opportunities for Federal agencies, State and local governments, Indian tribes and the public to provide existing data and information for the BLM's consideration.

**Comment:** One comment requested that the BLM protect grizzly bears. Humans have subjected grizzly bears in Yellowstone to a higher human population and caused changes in their natural habitat.

**Response:** The BLM recognizes the importance of wildlife conservation and management. Endangered species are protected under the Endangered Species Act, and the BLM will comply with the Endangered Species Act and other applicable federal wildlife laws and regulations when it develops and amends specific resource management plans.

#### *State and Local Economies*

Comments suggested that restricting Federal land can harm local economies, and that the coordination and planning process must consider State and local economies along with local customs, culture and multiple uses.

**Comment:** One comment asserted that the coordination and planning process must consider State and local economies along with local customs, culture and multiple uses.

**Response:** Section 1610.4(b)(4) of the final rule provides for gathering public views concerning social or economic conditions of the planning area. Section 1610.4(d)(3) of the final rule provides for documentation of current social and economic conditions.

**Comment:** One comment stated that economic development and rural communities depend on local resource uses. The comment notes that these communities are diminished when resource uses on nearby Federal lands are restricted.

**Response:** The planning rule establishes the procedural framework for preparing and amending resource management plans. The BLM evaluates socioeconomic values, trends, and impacts as appropriate for the planning area during the land use planning process. After the approval of the final rule, BLM expects to provide additional guidance on the development of resource use determinations through a revision of the BLM Land Use Planning Handbook H-1601-1.

### Designations

One comment expressed concern with designations and determinations, which could limit or prohibit oil and gas exploration.

**Comment:** One comment expressed concern with “the vague notions” of designations and determinations as components of resource management plans, which could limit or prohibit oil and gas exploration and production activities within very large landscape-scale resource management planning areas.

**Response:** Planning designations are identified through the BLM land use planning process in order to achieve the goals and objectives of the plan or to comply with applicable legal requirements or policies. Section 1610.1-2(b)(1) of the final rule provides that resource management plans include designations as a plan component. The final rule defines the term designation in § 1610.1-2(b)(1)(i). Landscape-level planning does not prescribe any specific resource outcome, such as decreased oil and gas development; rather it allows the BLM to plan at the appropriate scale at which BLM considers multiple uses and sustainable yields and leads to a more informed and balanced approach to the management of all resources.

It is important to note that consideration of relevant landscapes does not inherently mean that all planning areas will increase in size. As stated in § 1601.0-5, “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.” For more information on the preliminary planning area, please see the preamble discussion of § 1610.4(a).

#### Wildland Fire

**Comment:** One comment requested the planning rule include content about the rights of BLM land usage for wildfire suppression.

**Response:** The BLM recognizes the importance of wildfire suppression. The issue is beyond the scope of the planning rule, and is an issue better addressed at the planning level.

#### Definition of Resources

**Comment:** One comment asserted that the concept of resource(s) is fundamental to the BLM’s planning effort; however, the proposed rule provides no definition of the term. The term (both singular and plural) is used in many different ways within the preamble and proposed rule, which makes it difficult to understand how it is meant when the term is used alone.

**Response:** The BLM does not include the definition of “resources” in the final rule. It is a widely used, well-understood, and accepted term, and it is not necessary to define in the regulations.

### **Integration with NEPA or other Policies**

#### Mitigation

A comment asserted that the final rule should not adopt and formalize the BLM’s mitigation policy. Another comment expressed concern over use of the mitigation hierarchy in the proposed rule, stating that it could inject bias into the planning process.

**Comment:** One comment suggested that formalizing the mitigation hierarchy in the proposed rule injects bias into the land use planning process, allowing early decisions to be made

about alternatives that will limit allowable uses or “designations.” The BLM must recognize that they have the statutory obligation to ensure the rights of ingress and egress of locators to mining claims.

**Response:** The final rule will not affect valid existing rights, or unlawfully limit allowable uses. The BLM expects that it will apply mitigation principles during alternatives development to address resource conflicts as appropriate. For example, when identifying planning issues, which can include potential estimable impacts, the BLM might apply the principle of avoidance by formulating alternatives that will seek to avoid potential resource impacts. When developing objectives, described in § 1610.1-2(a)(2)(i) of the final rule, the BLM must, as appropriate, identify standards to mitigate undesirable impacts to resource conditions. This will help guide the BLM to minimize potential impacts and compensate for remaining unavoidable impacts. For more information, see the definition for Mitigation in § 1601.0-5 in the preamble.

#### *Consistency & Integration of NEPA Requirements*

A comment agreed with the fact that consistency between overlapping regulations would be less confusing to the public. Another comment was concerned about the proposed rule in regards to the requirements for analysis in accordance with NEPA.

**Comment:** One comment expressed agreement with the statement that “consistency between overlapping regulatory requirements would help make these requirements less confusing to stakeholders.”

**Response:** The BLM agrees and appreciates the commenter’s support. The BLM will take the recommendations of commenters during early engagement who suggested that the BLM standardize decision language, prohibiting overlapping designations, and work with partners to

avoid duplication of efforts. The BLM expects to address consistency with overlapping regulatory requirements in future guidance such as handbooks, manuals, instruction memorandums, other internal policy, as well as in its communication and collaboration during the resource management planning process.

Comments: One comment stated that it is unclear how the proposed rule intersects with the requirements for environmental, economic, and “custom and culture” analyses pursuant to NEPA, for instance, the proposed rule’s description of the planning process as a two-step sequence. The first step seems to be an understanding of current “baseline in regards to resource, environmental, ecological, social and economic conditions in the planning area, and the second that NEPA requires that baseline information be gathered and additionally, that the status quo management be the “no action alternative.” The comment stated that because of this, it is critical to ensure that the “status quo” or “no action alternative” accurately reflect the current baseline.

**Response:** All resource management plans and plan amendments developed in accordance with the final rule fully complies with NEPA and will continue to provide analysis of the “No Action Alternative,” as required by 40 CFR 1502.14(d), which reflects current management direction in the existing land use plan. Final § 1610.1-1(b), “Guidance and General Requirements,” describes the systematic interdisciplinary to the preparation of resource management plans and plan amendments, and that the expertise of the BLM will be appropriate to the resources involved, the issues identified, and the principles of multiple-use and sustained yield. This language is consistent with FLPMA and will highlight the objective of using an interdisciplinary approach, as described in FLPMA. It also signifies the importance of integrated consideration of sciences in the planning process. For additional details, please see the preamble discussion of § 1610.1-1(b).

### Planning Assessment

**Comment:** One comment stated that language in proposed rule at § 1610.4 indicates that the BLM will perform a “mini-NEPA” analysis before it prepares an EIS, which will burden and delay the planning process. The comment added that much of the information that the BLM must gather and assess duplicates the information that must be evaluated under NEPA, and due to the fact that this same information will be gathered and analyzed as part of the NEPA analysis, it appears there is little benefit in requiring the BLM to gather and analyze this information before it even begins to prepare a resource management plan.

**Response:** The planning assessment phase in § 1610.4 of the final rule does not duplicate the NEPA process. Rather, the information gathered during the planning assessment will inform the preparation of resource management plans and EIS-level plan amendments, and will be an upfront assessment early in the process, intended to assist the BLM and the public in understanding the current baseline regarding resource, environmental, ecological, social, and economic conditions in the planning area. The BLM believes that the planning assessment will create efficiencies in the planning process by ensuring that a wide range of relevant policies, information, and perspectives is considered before formally initiating the NEPA process with a scoping notice. Additionally, final § 1610.4 will combine and revise existing § 1610.4-3 and § 1610.4-4 into one new planning assessment step, taking place before formal initiation of the planning effort, and streamlining the initial process.

### Identification of Planning Issues

**Comment:** One comment stated that since the BLM will occasionally consider a plan amendment in response to an application or permit, the BLM should revise § 1610.5-1 of the final rule to include a statement that the BLM will consider an applicant’s goals and needs when

the BLM undertakes a plan amendment in response to an application or permit and that public views should not outweigh the BLM's consideration of an applicant's goals and needs.

**Response:** An applicant's purpose and need may provide useful background information; however, NEPA requires that the purpose and need statement for an externally generated action must describe the BLM's specific purpose and need (40 CFR 1502.13). The BLM also recognizes that many applications or permits on public lands may require a plan amendment. The final rule specifically allows for a project specific EA level amendment. The BLM will weigh all relevant information when making decisions on project specific amendments for an application or permit; however, the BLM does not include the suggested statement in the final rule. Also, the planning assessment at final § 1610.4 is to gather information from all interested publics, which will in turn, provide useful baseline data and information helpful to proceed with development of the purpose and need and identification of planning issues for the resource management plan or plan amendment.

*Estimation of the Effects of Alternatives*

**Comment:** One comment noted that the BLM's requirement in proposed § 1610.5-3(b) is confusing and duplicates the requirements of NEPA. Proposed § 1610.5-3 does not require that the BLM release an effects analysis to the public; therefore, § 1610.5-3(b) is not clear and could be interpreted as either restating the BLM's obligations under NEPA or incorporating a new preliminary step into the planning process, even though it does not mirror the CEQ's requirements for the discussion of environmental consequences in EISs or definition of "effects."

**Response:** The final rule retains proposed § 1610.5-3(b). This subpart states that "[T]he estimation of effects shall be guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act." These provisions do not

duplicate the requirements of NEPA; rather, they are integrated into the NEPA process a (43 U.S.C. 1711-1712), and are carried forward into the final rule, the steps of the planning process are fully integrated with the requirements of the National Environmental Policy Act (NEPA). Further, § 1610.5-3(b) states that “the responsible official shall estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail.” The display of the effects analysis will be described in the draft resource management plan or plan amendment, as well as the associated draft NEPA document, in accordance with NEPA.

### Data Quality

A few comments expressed concern over the BLM’s data and best available science standards in that they may not be in compliance with NEPA and that they may not be objective and verifiable.

**Comment:** One comment asserted that data quality standards have a similar refrain under NEPA, so to ensure compliance with CEQ regulations and NEPA in conjunction with agency decision-making, the BLM should adopt the following standards: insure the professional integrity, including scientific integrity, of the discussions and analyses in an EIS; identify any methodologies used and make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement; use a “systematic, interdisciplinary approach” to ensure “the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment”; and include that an EIS must “be of high quality” and allow for “[a]ccurate scientific analysis, expert agency comments, and public scrutiny.”

**Response:** The final rule does not adopt the recommended data standard; however, the BLM believes the data and information quality standards in the final rule reflect the suggested language. The final rule adopts the requirement to use “high quality information” in § 1610.1-1(c). The BLM believes that adopting such a requirement in the planning regulations will provide more clarity on existing standards for information quality and the relationship of these standards to resource management planning. The BLM must comply with data standards set forth by Federal law and regulations, and will continue to comply with data standards established through other relevant policy.

**Comment:** One comment asserts that the BLM fails to meet the requirements of the best available science standard under the Endangered Species Act (ESA) by proposing landscape-scale planning as a mechanism to conserve listed and “sensitive” species. In addition, the proposed consideration of information “useful to its intended users” falls well short of the best available science standard of the ESA, and the BLM may not use subjective, unverified, and potentially biased information to develop resource management plans affecting listed species.

**Response:** The BLM is not proposing landscape-scale planning concepts as a mechanism to conserve listed and sensitive species; rather, because many types of species such as migratory birds move across traditional boundaries, this is just one type of resource that will be more efficient to manage on public lands at a landscape scale. The final rule enables the BLM to more readily address the issues of habitat and wildlife, but also other resources such as wildfire and energy sources. Please refer to the summary in the preamble.

Additionally, final § 1610.1-1(c) requires that, “when preparing, amending, or maintaining resource management plans, the BLM shall ensure and maximize the quality, objectivity, utility, and integrity of information.” This includes the use of best available science.

### Cooperating Agency Participation

A comment expressed concern that the role of State and local governments would be at risk as a result of changes in the planning rule.

**Comment:** One comment asserted that the changes in the proposed rule could potentially marginalize the critical role of State and local governments in the planning process because these changes pose the risk of predetermining the level of involvement appropriate for State and local governments in a manner inconsistent with CEQ's regulations implementing NEPA. The comment suggested that to be consistent with CEQ and NEPA, regulations should require that BLM invite all State and local governments with special expertise to participate in the early stages of planning and draft EIS development, without exception.

**Response:** The BLM does not agree that the revised rule will in any way marginalize the critical role of State and local governments and, in response to public comments, will move forward with some additional language in the final rule at § 1610.3-2 (existing and proposed 1610.3-1) regarding the objectives of coordination with state and local governments throughout all steps of the resource management plan and plan amendment processes. Final sections § 1610.3-2 (a)(1) and (a)(2) incorporate this direction provided by FLPMA, stating that objectives of coordination are for the BLM to “[k]eep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes” and to “[a]ssure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands.” The final rule supports these objectives. Please refer to final § 1610.4(b) for requirements that the responsible official “identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment,” and final rule at §

1610.3-2(b), describing the procedures for establishing a cooperating agency with state and state, local and tribal governments.

That said, the BLM will not carry forward the provision that “cooperating agencies will participate in the various steps of the BLM's planning process as feasible and appropriate, given the scope of their expertise and constraints of their resources” in the final rule, as the BLM cannot guarantee that requested cooperating agencies will always participate.

The BLM has taken great strides to ensure that the final rule includes integrated involvement and cooperation with state and local governments to the highest extent possible, through a highly-functioning collaborative process.

#### *Landscape-scale Planning*

**Comment:** One comment asserted that applying a landscape-scale approach to planning will create a slow, cumbersome process due to the probably increased size and scale of the EIS, particularly due to the larger scale of geographic areas and scope of issues involved in creating landscape-level regions.

**Response:** A definition of landscape is added to the final rule (see § 1601.0-5) to clarify how it will be used and adopted under the final rule, providing that 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.” Final § 1610.4 is revised to adopt § 1610.4(a), which provides criteria for the BLM to consider when developing the planning area, and provides that the preliminary planning area will be made available for public review prior to publication of the NOI.

### Plan Implementation

Some comments expressed concern that the final rule would result in on-the-ground projects or implementation level decisions becoming more difficult to complete as a result of landscape-scale planning.

**Comment:** One comment suggested defining broad-scale restoration and enhancement goals through the resource management planning process, and committing funds to achieve those goals immediately upon implementation of resource management plans. The comment also recommended that the BLM identify landscape-scale habitat improvement areas early in the process and complete programmatic NEPA analysis for wildlife habitat work in coordination with development of resource management plans.

**Response:** As part of the resource management planning process, and in accordance with recent Presidential and Secretarial policies and strategic direction, the BLM will emphasize and apply landscape-scale management approaches to address issues such as restoration and enhancement, climate change, wildfire, energy development, habitat conservation, and mitigation of impacts on Federal lands. To accomplish this, the BLM developed strategies and tools that are advancing the role of science in public lands management, standardizing data gathering, developing landscape assessments, requiring monitoring and evaluation to guide adaptive management strategies, and advancing the use of geospatial data and technology. Funding of BLM programs is outside the scope of this rulemaking.

The final rule at § 1610.1-2 requires resource management plans to include broad-scale goals that identify desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within the planning area, as well as objectives of desired resource conditions within the planning area.

Activity-level plans and projects, such as a habitat management plan for instance, are considered implementation strategies, which were addressed in the proposed rule at § 1610.1-3. These are strategies that the BLM proposed could be developed in conjunction with the resource management plan and included as an appendix, but that would not represent components of the plan or plan amendment. After careful consideration of public comment, because implementation strategies are not planning-level decisions, and to be more in line with FLPMA, the BLM has completely removed this subpart and will not carry it forward into the final rule. Implementation strategies such as habitat improvement areas would be developed upon approval of the land use plan in order to achieve the identified goals and objectives.

**Comment:** One comment expressed concern that the final rule would result in on-the-ground conservation projects being more difficult to complete post-planning, due to NEPA requirements. Comments recommended the final rule provide discretion during the planning process to identify programmatic NEPA projects that can be completed after plan implementation using a streamlined NEPA process and prioritize those projects for Greater Sage-Grouse habitat management.

**Response:** The final rule at § 1610.1-2 requires resource management plans to include broad-scale goals that identify desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within the planning area, as well as objectives of desired resource conditions within the planning area, while including the appropriate NEPA document. NEPA requirements are not being changed as part of the new regulation.

Activity-level plans and projects, such as a habitat management plan for instance, are considered implementation strategies, which were addressed in the proposed rule at § 1610.1-3. These are strategies that the BLM proposed could be developed in conjunction with the resource

management plan and included as an appendix, but that would not represent components of the plan or plan amendment. After careful consideration of public comment, because implementation strategies are not planning-level decisions, and to be more in line with FLPMA, the BLM has completely removed this subpart and will not carry it forward into the final rule. Implementation strategies such as habitat improvement areas will be developed upon approval of a resource management plan in order to achieve the identified goals and objectives.

*Compliance with Other Federal Law & Regulation*

**Comment:** One comment pointed out that the BLM should provide additional opportunities for coordination, consistency review, and public involvement above and beyond the cooperating agency status involvement as required by NEPA and the final rule should capture this distinction. The comment asserted that the BLM has not accurately reflected NEPA requirements within the planning regulations, that the BLM may not adopt regulations that contradict FLPMA or NEPA, and if these two overlap in resource management planning, the BLM should integrate other regulations only if it increases efficiency.

**Response:** The final rule complies with both FLPMA and NEPA and will provide full opportunity for coordination, consistency review, and public involvement that are additional to the NEPA requirement (final §§ 1610.3-1 and 1610.3-2). The BLM will remain consistent with NEPA regulations asking Federal agencies to integrate NEPA with other planning processes (see 40 CFR 1500.2(c) and 1500.4(k)). To accentuate once again the importance of coordination in planning, the BLM will add language to § 1610.3-2(a) to clarify that this section describes the “objects of coordination.”

The BLM interprets FLPMA’s “laws governing the administration of the public lands,” to encompass all of the regulations implementing the laws. The BLM is obliged to comply with

Federal laws and regulations, and the new regulation will not change this practice or policy. For example, when developing cooperating agency relationships with governmental entities, as described in final § 1610.3-2(b), in addition to Federal laws, the BLM also must comply with both the CEQ and NEPA implementation regulations, as well as the regulations described in this section. Section 202(c)(9) of FLPMA requires that the BLM “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... by, among other things, considering the policies of approved State and tribal land resource management programs.” As such, the BLM will revise paragraphs (a)(1) and (a)(2) of § 1610.3-2 (proposed § 1610.3-1) to incorporate this direction provided by FLPMA.

#### *Programmatic EIS's*

**Comment:** One comment stated that because programmatic EIS's often overwrite resource management plans and plan amendments and are broad and general in nature, impacts to local areas are not well announced to stakeholders and such planning efforts receive little public involvement. Comments stated that these “top-down” decisions put in place changes to existing land use plans without the comprehensive analysis needed to have a hard look at the consequences of these actions.

The comment referenced six programmatic EIS's, which are broad and general in nature. They are: the Wind Energy Development Programmatic EIS, Vegetation Treatments Programmatic EIS, Solar Energy Development Programmatic EIS, Oil Shale & Tar Sands Programmatic EIS, Geothermal Resources Leasing Programmatic EIS, and the West-wide Energy Corridor Programmatic EIS.

**Response:** The BLM acknowledges the importance in providing adequate lengths of time for the public to review and comment on resource management plans, plan amendments, and programmatic EISs; however, the scope and scale of EISs vary substantially. For those plan amendments that are broad in either scope or scale, such as a multi-State programmatic plan amendment, the BLM intends to offer at least a 90-day public comment period, commensurate with the complexity of the draft plan amendment. The final rule adapts § 1610.6-6(c) from existing provisions at § 1610.5-5(b) that “if several plans are being amended simultaneously, a single [EIS] may be prepared to cover all amendments” for improved readability. Instead, this provision will state that “if the BLM amends several resource management plans simultaneously, a single programmatic [EIS] or [EA] may be prepared to address all amendments.”

The BLM believes that the degree of public participation and level of detail contained in these programmatic EISs fully supports sound decision-making. These, and all, programmatic EISs are prepared in compliance with the requirements of NEPA and they are often program-specific, intended to be tiered to subsequent analyses. Additional analysis occurs at the project-level with further stakeholder involvement and consideration of localized impacts.

### **Relationships to Statutes – General**

#### *Procedural Matters*

Several comments stated that the BLM should consider or reconsider various laws, executive orders, and other policies in the development of the planning rule.

**Comment:** One comment stated that the BLM needs to consider Executive Order 13195 (Trails for America) and add it to the statement of consideration accompanying adoption of the proposed rule.

**Response:** The planning rule updates existing regulations and is administrative in nature. The BLM will consider Executive Order 13195, Trails for America in the 21st Century, as appropriate. The planning rule provides flexibility for such considerations.

**Comment:** A few comments stated that the proposed rule has direct effects on States and local governments, contrary to the claim in the preamble. The BLM fails to honor the distribution of power and responsibility among levels of government within the States. The coordination and consistency sections will have serious effects on states and their political subdivisions. The proposed rule increases the attention that a commenter (a county) must pay to the BLM and its processes, requires more data collection from the county, and increases their planning burden. The BLM should, therefore, prepare a federalism summary impact statement.

**Response:** The BLM prepared a preliminary economic and threshold analysis and found that, because the proposed rule is administrative in nature, it will only affect internal BLM procedures. The revisions made to the consistency and coordination sections are not a substantive change to BLM practice. The final rule revises the coordination and consistency sections to provide greater transparency to the public of how the BLM interprets and implements the existing requirements. The BLM identified the Governor's consistency section as a direct impact on State and local governments in the proposed rule under its federalism assessment. However, the final rule does not alter this impact from the status quo of the existing regulations.

While the comment asserts that counties must pay more attention to the BLM and its processes, the final rule requires the BLM to “notify Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the preparation or amendment of a resource

management plan.” (See final § 1610.3-2(c)(3).) This requirement for notification falls on the BLM, not on affected counties.

The comment also asserted that the final rule requires counties to collect additional data. The additional step of the planning assessment in the final rule requires the BLM to gather relevant data to the planning area, but no section places a direct requirement on the public to collect data. The final rule only increases the potential for interested parties, including counties, to provide additional information to the BLM for consideration in the planning process.

The other direct impact on the public, as identified by the BLM, will be increased opportunities for voluntary public involvement. The magnitude of the impact on any individual or group, including small entities, is expected to be negligible. The actual impacts cannot reasonably be predicted at this stage, as they will depend on the specific context of each planning effort. However, there is no reason to expect that these changes, when implemented across all future planning efforts, will place undue burden on any specific individual or group. Finally, a federalism summary impact statement is not required because this rule does not have sufficient federalism implications per section 1 of Executive Order 13132. The BLM has found that the only provisions that could possibly have an effect on States, is the Governor’s consistency review and increased public involvement activities but these provisions will have only minimal impact, if any.

**Comment:** A couple of comments asserted that BLM fails to comply with Executive Order 13132 because the BLM assumes the authority to determine what qualifies as an officially adopted local government plan and did not consult with State and local officials when developing the rule. The BLM assumes the authority to make other determinations concerning

what are permissible actions for State and local governments. The BLM should, therefore, prepare a federalism summary impact statement.

**Comment:** One comment asserted that the proposed rule violates Executive Order 12866 "Regulatory Planning and Review." There does not appear to have been an interagency review of the proposed changes, as is required by Executive Order 12866. No Federal agencies have contacted the commenter to determine if Planning 2.0 will interfere with their relationship with the federal agency, even though the rule constitutes a significant change to the current process. Commenter asserts that the proposed rule will interfere with their ability to perform their mission and could keep them from mitigating for natural disasters, resulting in death of animals and injury to people. It is inappropriate for the BLM to take actions that could put property and lives in danger and commenter reserves the right to take legal action against the BLM and its leadership.

**Response:** The BLM provided ample opportunities for participation before and during the rulemaking process for the public, along with State, local, and tribal governments. The BLM has produced and disseminated numerous announcements, notices, and fact sheets regarding Planning 2.0 and opportunities for public involvement since May of 2014, when it launched the Planning 2.0 initiative and began seeking public input on how to improve the land use planning process. The BLM hosted two public listening sessions, which were a forum for the public to provide input, ideas, and concerns, in October of 2014, a year and a half prior to the comment period of the proposed rule. The BLM held the listening sessions in Sacramento, California and Denver, California, and they were led by a third-party facilitator.

The BLM also conducted two webinars on the proposed rule, both during the public comment period. The first was on March 21, 2016 and the second was on April 13, 2016, and

both were led by third-party facilitators. The BLM held an in-person public meeting in Denver, Colorado, on March 25, 2016. The BLM broadcast this meeting live over the Internet and made the subsequent video available on the BLM website for individuals who were not able to attend.

Additionally, the BLM conducted outreach to BLM partners. This outreach included a webinar for interested local government representatives that was coordinated through the National Association of Counties, several briefings for the Federal Advisory Committee Act chartered RACs, and a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies. The BLM also met with other interested parties upon request.

#### *Compliance with Federal Laws and Regulations*

Comments suggested that the proposed rule is inconsistent with many Federal statutes, and does not grant lessees or other specific stakeholders the rights granted to them. One comment stated that the landscape-scale approach to planning boundaries, Rapid Ecoregional Assessments, and information collection goes against FLPMA's multiple use mandate, the Information Quality Act, and NEPA.

Some comments noted that the proposed rule fails to discuss the BLM's responsibilities to identify, manage, and protect cultural resources, and urged the BLM to include language in the final rule describing the responsibilities for identifying, managing and protecting cultural resources under the National Historic Preservation Act and FLPMA.

One comment expressed concern that the proposed rule is not enforceable under the Administrative Procedure Act (5 U.S.C. 706(1)), stating that RMPs should guide but not commit BLM to certain actions and are dependent on congressional authorization of funds. A few comments asserted that the proposed rule does not comply with the Regulatory Flexibility Act,

which requires an economic analysis to determine the impact of regulations on small entities and consideration of regulatory alternatives to minimize the burden on such entities, explaining that the proposed rule does not address that local governments constitute as small entities and that the rule will increase costs to local governments.

**Comment:** A few comments suggested that the proposed rule does not grant lessees or other specific stakeholders the rights granted to them, and that permittees are stakeholders with a vested interest. A comment suggested BLM alter proposed rule to ensure compliance to all applicable statutes.

**Response:** The BLM will comply with all applicable Federal laws during the implementation of the final rule, including compliance with a variety of statutes that provide that planning and other decisions are made subject to valid existing rights. The final rule does not remove the rights afforded to grazing permittees and other stakeholders, but the final rule does increase opportunities for public involvement, including by permittees, granting more input throughout the planning process.

**Comment:** Several comments suggested that the proposed rule is inconsistent with many federal statutes, particularly FLPMA, the Taylor Grazing Act, the Multiple Use and Sustained Yield Act, the Mining and Minerals Policy Act, the General Mining Law, and the National Trails System Act, Information Quality Act, the Data Quality Act, and other federal guidelines regarding data and information. A few comments said the proposed definitions and language dilute existing regulations regarding information quality and standards, and the proposed rule fails to address inventory data, reproducibility or other hallmarks of good scientific data.

**Response:** The BLM must comply with all applicable Federal laws, including FLPMA, the Taylor Grazing Act, the Mining and Minerals Policy Act, the General Mining Law, the

National Trails System Act, Information Quality Act, the Data Quality Act and others. The final rule does not adopt the definition of, and references to, high quality information. Section 1610.4(b) of the final rule requires information gathering as part of the planning assessment to include relevant resource, environmental, ecological, social, economic, and institutional data if already available.

**Comment:** One comment stated that the landscape-scale approach to planning boundaries, Rapid Ecoregional Assessments, and information collection goes against FLPMA's multiple use mandate, the Information Quality Act, and NEPA. Landscape-scale approaches may cause boundaries and decisions to reach beyond BLMs administrative boundaries.

**Response:** The BLM will identify the preliminary planning area at the beginning of the planning assessment, which will be available for public review. The BLM considers "relevant landscapes" when identifying a preliminary planning area, which in some cases, may cross BLM administrative boundaries. FLPMA does not specify the size of a planning area. Section 1601.0-1 of the final rule clearly states that the purpose of the rule includes consistency with the principles of multiple use and sustained yield. Also, section 1610.4(c) of the final rule addresses "information quality." Implementation of the final rule, and the BLM planning procedures will be consistent with all federal laws and regulations, including but not limited to the laws mentioned in the above comment.

**Comment:** One comment asserted that the proposed rule gives too much power to BLM and the executive branch to make land use decisions with impunity. Protest submission should be a separate judicial process that allows for judicial oversight of the executive branch. Clarify what constitutes a valid protest and that BLM will not ignore protests. Provide clear and consistent protest submission procedures.

**Response:** The BLM will continue to make land use plan decisions, which are subject to protest. The “Content requirements” in the proposed and final rules, at paragraph § 1610.6-2(a)(3) describe what is required for a protest to be valid. Proposed and final § 1610.6-2(a)(1) state that the protest may be filed as a hard-copy or electronically and the responsible official will specify protest filing procedures for a resource management plan or plan amendment (beyond these general requirements in the planning regulations).

**Comment:** Several comments expressed concern regarding compliance with the National Historic Preservation Act. Comments stated that cultural resource inventories are currently lacking throughout much of the BLM, which could result in a lack of protection of historic places as well as not meeting Federal trust responsibilities to tribes. Comments requested that the BLM shift from surveys conducted in response to Section 106 to landscape-scale assessments for cultural resources. Also, the BLM needs to ensure that important cultural, archaeological, and historic resources under the National Historic Preservation Act and Executive Order 13007 are preserved and managed for future generations. Comments stated that robust implementation of landscape-scale cultural surveys will result in the identification of national significant cultural resources, which may warrant future National Conservation Lands. Comments urged the BLM to include language in final rule describing the responsibilities under the National Historic Preservation Act and FLPMA for identifying, managing, and protecting cultural resources. Comments also asserted that the final rule should directly reference “cultural resources” as the statutory and regulatory obligations that they are.

**Response:** In its land use planning processes, the BLM must consider a wide range of resources within the planning area, including cultural resources. The number of references to cultural resources in the final rule does not affect the BLM’s responsibilities to identify, manage,

and protect cultural resources. Rather, references to all resources, including cultural resources, in the final rule are sufficient in supporting the purposes of land use planning under FLPMA. For example, final § 1610.4(d)(5)(i) directs the BLM to consider and document areas of potential importance within the planning area, including areas of tribal, traditional, or cultural importance. Historic and cultural values are also a primary component of identifying and designating Areas of Critical Environmental Concern. Please see § 1610.8-2 for more information on the designation and protection of Areas of Critical Environmental Concern.

Further, the BLM recognizes its responsibilities under FLPMA to prepare and maintain inventory of public lands, as well as the importance of cultural surveys in this inventory. While this issue is too specific to capture fully in this rule, the BLM expects to address it in future guidance such as handbooks, manuals, instructional memorandum, and other internal policy.

The final rule complies with Federal laws applicable to public lands, including the National Historic Preservation Act. Additionally, the BLM must comply with this Act in revising, amending, and maintaining resource management plans.

**Comment:** One comment insisted that the proposed rule is not enforceable under the Administrative Procedure Act (5 U.S.C. 706(1)), stating that RMPs should guide but not commit BLM to certain actions and are dependent on congressional authorization of funds. The comment said the proposed rule must clarify that implementation of monitoring and evaluation standards are contingent on available funding and agency priorities.

**Response:** Resource management plans provide management direction to guide future management activities on the public lands. Goals, objectives, allowable uses, designations and other management identified in an RMP is not a commitment of funds, and implementation of an RMP is dependent on authorization of funds.

**Comment:** A few comments asserted that the proposed rule does not comply with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Act, which requires an economic analysis to determine the impact of regulations on small entities and consideration of regulatory alternatives to minimize the burden on such entities. Comments stated that the proposed rule fails to address the fact that rural governments also fall within the definition of small entities. Also, operations for ranchers, outfitters and guides, and service industries will be impaired by the proposed rule. Comments stated that the proposed rule will increase costs by requiring local governments to develop approved plans, and will have a significant impact by placing local governments at the same level as the public. Further, expanding designations while omitting multiple uses will increase regulatory burdens. The summary analysis omits the impacts on the tax base and revenues to local governments.

**Response:** The BLM conducted a Preliminary Economic and Threshold Analysis for the Planning 2.0 Proposed Rule, in accordance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Act, and Executive Order 12866. The Regulatory Flexibility Act requires agencies to analyze the economic impact of proposed and final regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. The analysis concluded that, while the proposed rule has the potential to affect most, if not all, entities that elect to become involved in the BLM's planning process, most of which are small entities as defined by the Small Business Act, the BLM does not expect the impact to be significant, as defined by Executive Order 12866. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

The proposed rule and the accompanying economic and threshold analysis recognizes that local governments constitute as small entities, and that the proposed rule has the potential to affect most, if not all, entities involved in the planning process, which encompasses ranchers, outfitters and guides, and the service industries.

The requirement that BLM land use plans be consistent with officially approved and adopted plans is contained in existing regulations. Additionally, the final rule does not include “land use” in the term “officially approved and adopted [land use] plans.” The final rule provides requirements for coordination and consistency with Federal agencies, State and local governments, and Indian tribes. Final § 1610.3-2(b) also provides the opportunity for other governments to participate as cooperating agencies in the planning process, consistent with FLPMA and NEPA. Finally, § 1610.8 of the final rule regarding designations is based on existing § 1610.7. FLPMA requires the BLM to manage on the basis of multiple use and sustained yield; the final rule reflects this mandate.

#### Coordination

**Comment:** One comment stated that the proposed planning rule will harm the conservation district’s ability to fulfill their mission (as defined in Arizona Revised Statutes Title 37, Chapter 6, 37-1001) to provide for restoration and conservation of lands, water and soil resources; preservation of water rights; control and prevention of soil erosion; and public education.

**Response:** Several provisions will enable local governments or agencies to fulfill their mission. Section 1610.3-2(c) of the final rule provides requirements for coordination of planning efforts. Section 1610.4(b)(3) of the final rule requires information gathering during the planning assessment, to include opportunities for other Federal agencies, State and local governments,

Indian tribes, and the public to provide existing data and information. Eligible State agencies and local governments will also be able to become Cooperating Agencies.

### Minerals

A few comments contended that the proposed rule fails to acknowledge Congress' directive to promote and encourage domestic mineral production, as specified by the National Materials and Minerals Policy Act of 1980. Comments stated that the proposed rule fails to properly address and further limits mining, oil and gas, and mineral development. Addressing social and environmental change in the proposed rule violates FLPMA's multiple use and sustained yield mandate. Several comments asserted that the proposed rule deliberately fails to mention the Mining and Minerals Policy Act, and is generally not in compliance with this Act.

**Comment:** A few comments contended that the proposed rule fails to acknowledge Congress' directive to promote and encourage domestic mineral production, as specified by the National Materials and Minerals Policy Act of 1980, explaining that this Act encourages Federal agencies to facilitate availability and development of domestic resources to meet critical materials needs. Comments asserted that the final rule should acknowledge this Act and its provisions applicable to land use planning in § 1601.0-2.

**Response:** The BLM must comply with all Federal laws and regulations applicable to public lands; it would be inappropriate to list all of the laws the BLM must comply with in the land use planning process. Final 1601.0-2 does not reference this Act or laws; however, final § 1601.0-2 provides that public lands be managed in a manner that recognizes the Nation's need for renewable and non-renewable resources including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands, consistent with the Materials and Minerals Policy Act of 1980.

**Comment:** Several comments stated that the proposed rule fails to properly address and further limits mining, oil and gas, and mineral development. Comments asserted that addressing social and environmental change in the proposed rule violates FLPMA's multiple use and sustained yield mandate and ignores Mining and Mineral Policy Act guidance to focus on mineral production. Include Mining and Minerals Policy Act duties in the proposed rule objectives and elsewhere.

**Response:** The BLM is required under FLPMA to manage the public lands on a basis of multiple use and sustained yield. The final rule adopts proposed § 1601.0-2, which is an additional objective of resource management planning that includes managing public lands on the basis of multiple use and sustained yield, managing the public lands to provide for human use, and which recognizes the Nation's need for domestic sources of minerals from the public lands. Multiple use is, in part, the management of the public lands so that they are utilized in the combination that best meets the present and future needs of the American people. Understanding these needs requires an understanding of environmental change and any changes in human behavior patterns, cultural values and cultural norms. The BLM will continue to comply with FLPMA and all applicable laws, including the Mining Minerals Policy Act, during BLM planning and management. The final rule does not revise § 1601.0-2 to include reference to the Mining and Minerals Policy Act. Section 1610.4(d)(7) of the final rule describes mineral exploration and production as a component of goods and services that people obtain from a planning area, and the planning assessment will consider the degree of local, regional, national, or international importance of the goods and services.

**Comment:** Several comments asserted that the proposed rule does not comply with the Mining and Minerals Policy Act, and that the BLM deliberately fails to mention this Act in the

rule, which highlights the BLM's shift from traditional resource uses. Comments stated that the proposed rule fails to explain the rationale for its decisions regarding the management of minerals and is in violation of Section 21(a) of the Mining and Minerals Policy Act. Comments suggested that the final rule include mention of the Mining and Minerals Policy Act of 1970 in proposed § 1601.0-2.

**Response:** The BLM must comply with the requirements of all Federal laws and regulations applicable to public lands. Therefore, it is unnecessary to list in the planning rule all of the laws that the BLM must comply with. Further, it would be inappropriate to include reference to this specific law as an objective for resource management planning in § 1601.0-2. Final § 1601.0-2 includes the statement that public lands are to be managed in a manner that “recognizes the Nation’s need for renewable and non-renewable resources including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands.”

### Resources

**Comment:** One comment stated the proposed rule fails to fully address landscape ecology, wildlife, and resource protections in keeping with executive and secretarial orders, the Endangered Species Act, and other authorities. The comment suggested that the final rule should support statutory requirements for conservation under the Endangered Species Act, and that resource management plans, amendments and revisions should be reviewable under ESA Section 7 consultation.

**Response:** The definition of multiple-use in the proposed and final rule in § 1601.0-5 is derived directly from FLPMA, and it includes, but is not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, and scientific and historical values. Resource management plans, revisions and amendments will be prepared in compliance with

Federal law and applicable regulations and policies, including Section 7 of the Endangered Species Act. Also, the guidance and general requirements for resource management planning at § 1610.1-1(a)(1) includes policy established by the President, Secretary, Director, or deciding official approved documents, and § 1610.4(b)(2) requires the responsible official to identify relevant policy including Executive or Secretarial orders.

#### Freedom of Information Act

One comment expressed concern regarding the rule's compliance with the Freedom of Information Act.

**Comment:** One comment stated that the Freedom of Information Act regulations set forth procedures that the BLM must follow before it may disclose protected information; thus, § 1610.6-2(a)(4) must be rewritten to allow it to withhold information submitted in protests that is exempt from disclosure under the Freedom of Information Act. The comment explained that the BLM cannot release all protests without regard to whether disclosure is prohibited by law or protected by the Freedom of Information Act.

**Response:** In response to public comments, final § 1610.6-2(a)(4) will state that “upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws or regulations.” This change is consistent with current practice and policy.

#### Cost of Planning Rule

**Comment:** One comment insisted that the BLM prepare a written statement pursuant to the Unfunded Mandates Reform Act that includes quantitative and qualitative assessments of the costs of the planning rule if it “may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in one year. The

comment asserted that the proposed rule will exceed this threshold since it impacts every project in the western U.S., referencing the Greater Sage-Grouse planning effort.

**Response:** In its Preliminary Economic and Threshold Analysis for the proposed rule, the BLM recognizes that the rule has the potential to affect most, if not all, entities that elect to become involved in the BLM’s planning process. However, the analysis concluded that the annual effect on the economy would be less than \$100 million and would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments and communities. Therefore, further economic analysis is not required.

### **Relationship to Statutes – NEPA**

#### *Deciding Official*

One comment expressed concern regarding the relationship of the deciding official to the planning area with regard to NEPA requirements.

**Comment:** One comment recommended that the deciding official be accountable to the affected population. The comment noted that, under the proposed rule, the “deciding official” may no longer be in the best position to determine who, and what resources, are affected by a BLM action. According to the comment, this situation is contrary to the intent of both FLPMA and NEPA. The comment cited NEPA’s opening statement at 43 U.S.C. 4331(a), which declares that it is the policy of the Federal government to use all practicable means and measures “...in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

**Response:** The final rule adopts a revised § 1601.0-4 that provides for the determination of the deciding official. The BLM Director will determine the deciding official for resource management plans and plan amendments that cross State boundaries. For other resource management plans and plan amendments, the deciding official will be the BLM State Director, unless otherwise delegated. The deciding official determines the responsible official for the preparation of each resource management plan and plan amendment. These revisions help to ensure that the deciding and responsible officials will be able to determine the resources and populations affected by resource management plans, though other provisions in the rule provide similar assurances (such as the planning assessment). The determination of the deciding official aligns with the intents of both NEPA and FLPMA.

*Identifying and Analyzing Alternatives*

Several comments expressed concerns regarding identifying and analyzing alternatives during resource management plan development.

**Comment:** One comment asserted that § 1610.5-2(a) of the proposed rule suggests that the agency is not obligated to thoroughly analyze all reasonable management plan alternatives, including those submitted by the public. Instead, the BLM is only required to consider – not analyze – all reasonable alternatives before selecting those for more detailed study. This comment cited *Utahns for Better Transp. v. U.S. Dept of Transp.*, 305 F.3d 1152, 1167 (10th Cir. 2002); *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1246 (9th Cir. 2005); *Wilderness Society v. Wisely*, 524 F. Supp. 2d 1285, 1311-12 (D. Colo. 2008) (finding that the BLM failed to explain why it dropped a reasonable alternative).

This comment noted that the BLM is required to “explain” and “briefly discuss the reasons” an alternative is eliminated from detailed study, which includes alternatives submitted

by the public. The comment asserted that, under 40 C.F.R. 1502.14, an agency's reasons for dismissing an alternative from detailed study must be fully articulated, supported by the record, and not contrary to law and cited *Davis v. Mineta*, 302 F.3d 1104, 1122 (10th Cir. 2002); 524 F. Supp. 2d. at 1312 (holding record evidence did not support dropping alternative from detailed study).

**Response:** The final rule revises § 1610.5-2(a)(4). As the comment requested, this paragraph provides that the BLM shall not alternatives identified and eliminated from detailed study and “briefly discuss the reasons for their elimination.” This language aligns with § 1610.4-5 of the existing regulation, which states that “The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.” It also aligns with the language of NEPA at 40 C.F.R. 1502.14(a) which directs that agencies shall, “for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” The provision in the final rule complies with NEPA regulations.

**Comment:** A few comments asserted that the BLM must analyze, in all aspects, the effects of greenhouse gas emissions and analyze for climate change. These comments asserted that the BLM must fully analyze the cumulative and incremental impacts of the proposed decisions in the resource management plan, citing *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1217 (9th Cir. 2008). The comments further asserted that NEPA regulations require that NEPA documents address not only the direct effects of federal proposals, but also “reasonably foreseeable” indirect effects. These are defined as “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”

The comments asserted that Calculating Greenhouse Gas Emissions Secretarial Order No. 3289 unequivocally mandates all agencies within the Department of Interior “analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department’s purview.” These comments urged the BLM to not only analyze greenhouse gas emissions from proposed actions, but to use that information to make better decisions for public lands resources and assess likely impacts to the public lands from climate changes that are already underway.

**Response:** The BLM will comply with NEPA regulations and relevant Secretarial Orders when analyzing effects, including indirect and cumulative effects, of alternatives. Section 1610.5-3(b) of the final rule provides that the estimation of effects for resource management plans shall be “guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act.” This analysis will include implementation of current guidance and policy on greenhouse gas analysis under NEPA, as appropriate.

**Comment:** One comment asserted that the BLM should identify and consider alternatives outside of the lead agency’s jurisdiction during resource management plan development in accordance with NEPA regulations (40 C.F.R. 1502.14).

**Response:** Section 1610.5-2(a) of the final rule provides that the BLM “shall consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study.” NEPA regulations, including the cited 40 C.F.R. 1502.14, include alternatives outside the legal jurisdiction that are still reasonable under the definition of

reasonable alternatives. The BLM will comply with NEPA regulations when developing alternatives under the final rule.

**Comment:** Many comments noted that it is not clear how the proposed rule intersects with the requirements for environmental, economic, and “custom and culture” analysis pursuant to the National Environmental Policy Act. These comments noted that the proposed rule describes the BLM's planning as a two-step process with the first step being for the BLM and public to understand the current “baseline in regards to resource, environmental, ecological, social and economic conditions in the planning area.” These comments noted that the “status quo” or “no action alternative” should accurately reflect the current baseline and not be some departure from analysis that accurately describes exactly the conditions as they exist.

**Response:** The BLM recognizes the importance of analysis under NEPA and will comply with NEPA regulations. The planning assessment phase in § 1610.4 of the final rule provides for collection and assessment of valuable information on the baseline conditions of the planning area. Section 1610.5-2(a)(3) of the final rule provides for a no action alternative in the context of resource management plan development that is the continuation of present level or systems of resource management. This language tracks with the description of the no action alternative in § 1610.4-5 of the existing regulations. The final rule adopts this provision for the no action alternative that aligns with NEPA regulations and current practice.

**Comment:** One comment asserted that is imperative that the BLM be aware of the local and regional economic and socioeconomic impacts of any resource management action of regional and national significance. According to the comment, this consideration is the purpose of the local involvement mandates found in FLPMA and NEPA.

**Response:** Analyzing the socioeconomic impacts is part of resource management plan development. Socioeconomics are discussed throughout the final rule, starting with § 1601.0-8, which states that “the BLM shall consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales.” The public involvement provisions in § 1610.2 of the final rule also include opportunities for local involvement in which the public can identify and provide information about local and regional economic and socioeconomic impacts.

*Preferred Alternatives*

These comments express concern over the selection of one or more preferred alternatives during resource management plan development.

**Comment:** One comment asserted that the BLM must identify a single preferred alternative in its NEPA analysis. The proposed rule would replace the requirement that the BLM identify a single preferred alternative in a draft resource management plan and draft EIS with a new requirement that BLM identify “one or more” preferred alternatives. According to the comment, this approach is inconsistent with NEPA and would create an unacceptable amount of uncertainty.

**Response:** Section 1610.5-4(a)(3) of the final rule includes language regarding identifying “one or more” preferred alternatives, if one or more exist. This language is consistent with Federal laws, including NEPA. NEPA (40 C.F.R. 1502.14(e)) directs that agencies shall “[i]dentify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.”

### EIS Scope

One comment expressed concern regarding the scope of EISs prepared for amendments.

**Comment:** One comment noted that the proposed rule would modify the existing regulation governing plan amendments by deleting language in existing § 1610.5-5, which provides that the scope of an EIS prepared for an amendment “shall be limited to that portion of the plan being considered for amendment.” The comment noted that the BLM’s rationale for proposing to delete this language is because it is inconsistent with the requirement that such an EIS evaluate the impact of a proposed amendment on other plan components. The comment requested that the BLM clarify that EISs for plan amendments will be limited to evaluating the effects of the proposed amendment.

**Response:** The final rule adopts § 1610.6-6 of the proposed rule with minor revisions. This section is based on § 1610.5-5 in the existing regulations. The final rule does not adopt the suggestion to retain the language from the existing regulation on limiting the scope of an EIS or to otherwise state that a plan amendment’s EIS analysis will be limited to evaluating the effects of the proposed amendment. As noted in § 1610.6-6(b) of the preamble, it is important to evaluate effects on other goals or objectives of a resource management plan. This scoping is appropriate and consistent with NEPA regulations.

### Cooperating Agency Status – NEPA

Several comments expressed a few different concerns regarding development of the planning rule as it relates to cooperating agency status under NEPA.

**Comment:** One comment noted that the Council on Environmental Quality regulations for implementing NEPA requires the BLM to develop a memorandum of understanding outlining how to work with cooperating agencies, which “must include a commitment to maintain the

confidentiality of documents and deliberations” prior to the release of any NEPA document. This comment considered that requirement to be problematic because many local governments cannot effectively coordinate with the BLM if their discussions and any documents exchanged are subject to a strict confidentiality requirement.

Further, this comment noted, the regulations also provide that “throughout the development of an environmental document” the BLM will “collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.” The comment asserted that the BLM is attempting to substitute cooperating agency status for meaningful coordination under FLPMA (43 U.S.C. 1712(a)(9)), which places an unfair burden on local governments. Some local governments may be unable to fulfill the obligations of a cooperating agency and decline to become a cooperating agency. In that case, the BLM would be excused from coordinating, which would violate FLPMA (43 U.S.C. 1712(a)(9)). For these reasons, the comment believed that it would be improper to combine coordination under FLPMA (43 U.S.C. 1712 (c)(9)) with the NEPA process. Participation in the NEPA process as a cooperating agency is not a substitute for government-to-government coordination under FLPMA (43 U.S.C. 1712 (c)(9)). The comment recommended eliminating proposed § 1610.3-1(b) from proposed § 1610.3, renumber it, and identify it as a separate section. This would ensure that there is no confusion concerning the BLM’s obligation to coordinate with State and local governments on the BLM’s inventory, planning, and management activities, regardless of whether they elect to participate in the NEPA process as a cooperating agency.

**Response:** Sections 1610.3-2 and 1610.3-3 of the final rule include provisions related to coordination and consistency. Local governments are not required to become cooperating

agencies under § 1610.3-2(b) of the final rule. An eligible government entity may request cooperating agency status, or the responsible official shall follow applicable regulations regarding the invitation of eligible governmental entities. However, local governments may choose to only participate in the planning process through the public involvement provisions of § 1610.2 of the final rule. Whether or not a local government becomes a cooperating agency has no implications on other provisions for coordination § 1610.3-2(c) and consistency in § 1610.3-3 of the final rule.

The BLM does not adopt the recommendation to renumber proposed § 1610.3-1(b), though this section is renumbered as § 1610.3-2(b) in the final rule for unrelated reasons. The BLM believes that the structure of final § 1610.3-2 is sufficiently clear regarding the distinctions between cooperating agencies and coordination requirements. These provisions align with the provisions of both FLPMA and NEPA.

The confidentiality provision for the memorandum of understanding with cooperating agencies is included for consistency with Departmental NEPA regulations at 43 C.F.R. 46.225. The term “government-to-government” only applies to the BLM’s relationship with Indian tribes, and § 1610.3-1 of the final rule provides for government-to-government consultation with Indian tribes.

**Comment:** One comment asserted that local government involvement should always be deemed feasible and appropriate.

**Response:** In response to public comment, the final rule revises § 1610.3-1(b)(2) of the proposed rule and redesignates it as § 1610.3-2(b)(3). This revision removes the phrase “as feasible and appropriate,” and instead references the jurisdiction and special expertise of cooperating agencies.

**Comment:** A few comments urged the BLM to disclose information early in the planning process and to invite cooperating agencies to participate early. These comments noted that CEQ regulations indicate that a cooperating agency is to be afforded early opportunity to participate in the NEPA process, and that Federal agencies “shall integrate the NEPA process with other planning at the earliest possible time” (40 CFR 1501.2). These comments urged the BLM to clarify that cooperating agencies will be invited to participate as early in the process as practical, but at a minimum, this invitation will occur when the BLM has identified a goal that triggers the planning process and long before the BLM is developing alternatives.

**Response:** The final rule adopts § 1610.3-1(b) of the proposed rule, with modifications, as § 1610.3-2(b). This section provides that the responsible official will follow applicable government regulations regarding the invitation of eligible government entities to participate as cooperating agencies and references the DOI NEPA regulations at 43 CFR 46.225. Also, final § 1610.3-2(b)(3) describes at which points in the planning process the responsible official shall collaborate with cooperating agencies, beginning with the preparation of the planning assessment. By encouraging involvement during the planning assessment, which occurs before scoping is officially initiated, the BLM believes that the final rule allows for early participation of cooperating agencies in resource management plan development and in the NEPA process.

#### High Quality Information

A few comments expressed concern regarding the high quality information standard in the rule and how it relates to NEPA regulations about information quality.

**Comment:** One comment asserted that the proposed rule does not include meaningful standards for defining “high quality information,” nor does it adhere to the rigorous approaches required in NEPA. The comment noted that NEPA requires a high standard for data quality,

including a “systematic, interdisciplinary approach” that relies on accurate scientific analyses, expert agency comments, and public scrutiny.

**Response:** The BLM expects that the forthcoming Land Use Planning Handbook will include guidance on high quality information as it is defined in the final rule. The rigorous approaches required by NEPA appear throughout the final rule. For instance, § 1610.2(a) of the final rule notes that public involvement shall conform to the requirements of NEPA and its associated implementing regulations. Also, § 1610.1-1 of the final rule provides for a “systematic interdisciplinary approach” as a general requirement of resource management plan development. Through these and other provisions, resource management plan development will comply with NEPA.

**Comment:** One comment urged the BLM to emphasize the importance of high quality information and to disclose gaps or uncertainty. The comment asserted that courts have upheld these requirements and have stated that the detailed environmental analysis must “utiliz[e] public comment and the best available scientific information,” citing *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1171-72 (10th Cir. 1999) (citing *Robertson v. Methow Valley Citizens’ Council*, 490 U.S. at 350); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1521-22 (10th Cir. 1992). The comment asserted that an agency decision-maker must identify the considerations he or she found persuasive when making a decision.

The comment recommended that, where there are gaps in data due to uncertainty or lack of information as identified in the planning assessment, the BLM commit to specifically monitoring those items that were identified.

**Response:** The BLM will comply with NEPA regulations, including provisions addressing information gaps and uncertainty. Section 1610.1-1(c) of the final rule includes

provisions on the use of high quality information. The BLM will not, however, adopt a recommendation to commit to monitoring for any gaps in data or uncertainty. Section 1610.1-2(b)(3) of the final rule provides for monitoring and evaluation standards as plan components and § 1610.6-4 provides for that monitoring and evaluation during plan implementation. Section 1610.4(b) of the final rule provides for information gathering for the planning assessment. These provisions address data collection and information gathering as well as monitoring and evaluation of the plan. The BLM does not consider a provision to commit to monitoring data gaps to be appropriate or necessary. Such a provision could result in unnecessary data collection and would not reflect the uncertainty over future funding amounts, agency priorities, or changing events on the ground that may affect plan implementation and monitoring.

#### Mitigation

A comment disagreed with how the planning rule defines and uses mitigation and how that definition relates to other regulations and policies.

**Comment:** One comment disagreed with the BLM’s proposed definition of “mitigation” as “the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.” According to the comment, by defining mitigation as compensating for “remaining unavoidable impacts,” the BLM would effectively require that mitigation offset all remaining impacts—a “no net loss” standard. This standard is inconsistent with FLPMA, which directs that the Secretary, in managing the public lands, “take any action necessary to prevent unnecessary or undue degradation.” This standard assumes that some degradation, and thus some impact, may occur to the public lands. The comment cited *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 78 (D.C. Cir. 2011) (“FLPMA prohibits only unnecessary or undue degradation, not all degradation”). Indeed, the comment asserted, neither

the Federal courts nor the Interior Board of Land Appeals has interpreted FLPMA as prohibiting any impacts or requiring mitigation of all impacts.

The comment recommended that, given the inconsistency between the BLM's definition of "mitigation" and both FLPMA's standard of "unnecessary or undue degradation" and CEQ's definition of "mitigation," the BLM revise "mitigation" to remove the phrase "compensating for remaining unavoidable impacts." This comment expressed concern that, in the preamble to the proposed rule, the BLM asserts that the proposed definition of "mitigation" is consistent with the Departmental Manual chapter on "Implementing Mitigation at the Landscape-scale" (600 DM 6). However, the comment asserted, this Departmental Manual is not an agency regulation and was never subject to public notice and comment. Accordingly, the Departmental Manual lacks the force and effect of law, see *W. Radio Servs. Co., Inc. v. Espy*, 79 F.3d 896, 901 (9th Cir. 1996), and the BLM is free to adopt an alternative definition of mitigation.

**Response:** The BLM did not accept this recommendation to remove "compensating for remaining unavoidable impacts" in the definition of "mitigation" in § 1601.0-5 of the final rule. This sequencing, sometimes referred to as the "mitigation hierarchy," aligns with the Departmental Manual chapter on "Implementing Mitigation at the Landscape-scale" (600 DM 6), as noted in the comment, as well as the Presidential Memorandum on "Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment" issued on November 3, 2015. Although the BLM could adopt a different definition in these regulations, the BLM does not believe there is a reason to do so. Contrary to the comment's assertions, the final rule does not require mitigation for all impacts to all resource values on the public lands. While the BLM could through a future land use planning process choose to adopt a "no net loss" or other appropriate standard to address impacts to specific resource values, the final rule does

not itself create a “no net loss” standard. Moreover, the final rule’s definition of mitigation applies only to the procedural steps for land use planning and does not require the BLM to adopt any particular standard when preparing a resource management plan or amendment.

### **Relationship to Statutes - FLPMA**

#### *Areas of Critical Environmental Concern*

Several comments asserted that that the final rule should give priority to the designation and management of Areas of Critical Environmental Concern, as stated in FLPMA, and clarify that the public has the opportunity to nominate new Areas of Critical Environmental Concern between planning cycles. Other comments claimed that proposed § 1610.8-2 makes it easier for the BLM to designate Areas of Critical Environmental Concern, indicating the agency’s intent to manage for conservation rather than multiple use.

**Comment:** Several comments asserted that the final rule should give priority to the designation and management of Areas of Critical Environmental Concern, as required by FLPMA. Comments claimed that the proposed rule recites FLPMA within the definition for “sustained yield,” but does not cite FLPMA language in the definition for Areas of Critical Environmental Concern to show the BLM’s strengthened commitment to Areas of Critical Environmental Concern. Comments suggested that the final rule specifically re-state FLPMA’s priority status for Areas of Critical Environmental Concern by: 1) adopting the statutory language in the rule (i.e. use the word priority); 2) including provisions that demonstrate that both the designation and protection of Areas of Critical Environmental Concern is a priority. The final rule should also clarify the public’s opportunity to nominate new Areas of Critical Environmental Concern between planning cycles if new information indicates an immediate need for special attention to protect resources.

**Response:** Section 1610.8-2 of the final rule describes the process for identifying and designating Areas of Critical Environmental Concern. The final rule reaffirms the BLM’s obligation to give priority to designating Areas of Critical Environmental Concern. Final section 1610.8-2(b) specifically references this obligation, stating that “potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan consistent with the priority established by FLPMA (43 U.S.C. 1712(c)(3).” The definition of Areas of Critical Environmental Concern is taken verbatim from FLPMA. While it is unnecessary to add this language to the definition, § 1610.8-2 includes reference to this priority. The provisions within the final rule for identifying and designating are also consistent with FLPMA and the priority that it provides for Areas of Critical Environmental Concern. The final rule provides a framework for revising and amending resource management plans. Potential Areas of Critical Environmental Concern may be identified at times not associated with the preparation or amendment of a resource management plan; however, potential Areas of Critical Environmental Concern will only be considered for designation during the resource management plan revision or amendment process.

**Comment:** A few comments asserted that the proposed rule attempts to make it easier for the BLM to designate Areas of Critical Environmental Concern, which is inconsistent with the intent of FLPMA. Additionally, § 1610.8-2 goes into detail on the need to designate Areas of Critical Environmental Concern, yet other resources are not similarly spelled out, implying that the intent is to manage public lands for conservation rather than multiple use and sustained yield.

**Response:** FLPMA specifically directs the BLM to “give priority to the designation and protection of Areas of Critical Environmental Concern.” The final rule does not make the designation of Areas of Critical Environmental Concern easier. Rather, the rule describes the

process for identifying and designating Areas of Critical Environmental Concern, as applicable, through the land use planning process. FLPMA's multiple use and sustained yield mandate is foundational to the land use planning process and is supported by the final rule. Please see the section-by-section analysis in the preamble for § 1610.8-2 for more information.

*Consistency with Governments*

Many comments asserted that proposed § 1610.3-2 reduces the BLM's obligations to ensure consistency and limits the input of local and State governments, contrary to FLPMA.

**Comment:** Many comments asserted that the proposed rule reduces the BLM's obligation to ensure consistency and limits the input of State and local governments by eliminating consistency review for "purposes, policies, and programs," and only considering "officially approved and adopted land use plans." In addition, comments stated that BLM is attempting to satisfy consistency review obligations through the Governor's office, which improperly bypasses local governments. Comments said that the Governor is not authorized to act for counties or other units of local government. Some comments said that the proposed rule rewrites FLPMA by regulation, claiming that consistency language of FLPMA can only be changed by Congress.

Comments stated that the proposed term "officially approved and adopted land use plan" is too narrow, and contrary to the intent of FLPMA. FLPMA provides for consistency with local plans, not only "land use plans." Proposed § 1610.3-2 should be modified to clarify that the FLPMA consistency obligation is broader than "land use plans." Also, State and local governments would be barred from providing policies for achieving multiple use in a land use plan deemed inconsistent by the BLM. Comments suggested that proposed § 1610.3-2 should retain existing language allowing for consistency with officially approved and adopted resource

related plans, or in their absence, their policies and programs. Comments further stated that requiring local plans to be consistent with the “purposes, policies and programs” of Federal laws and regulations is not found in FLPMA and is not law; the need to be consistent with the provisions of State and local land use plans does not hinge on whether those plans are consistent with Federal purposes, policies, and programs. Further, comments asserted that FLPMA does not require that plans be consistent to the extent the BLM finds “practical,” and suggested that this section retain existing language.

**Response:** The final rule removes “land use” from the term “officially approved and adopted [land use] plans.” The definition of this term will encompass all resource-related plans that are relevant to the planning process. However, the final rule adopts the proposal to remove consistency requirements for “policies and programs.” FLPMA (43 U.S.C. 1712(c)(9)) limits consistency requirements to “State and local plans” while the broader coordination requirements of FLPMA include the consideration of policies and management programs.

The final rule retains the requirement that consistency will be achieved to the extent consistent with the purposes of Federal laws and regulations applicable to the public lands and the policies and programs implementing such laws and regulations. It would be inappropriate to remove an existing requirement that acknowledges the need for the BLM to comply with and follow the direction provided through regulations, policies, and programs developed to implement public lands statutes.

Final § 1610.3-3 removes the word “practical” from the phrase “. . . maximum extent the BLM finds [practical and] consistent with the purposes of FLPMA...” This language is described in final § 1610.3-2(a)(3) and is therefore unnecessary in this section. The use of the word “practical” is adopted elsewhere in the final rule, consistent with FLPMA.

Additionally, the Governor's consistency review process is not an attempt to bypass local governments. This process is contained in existing regulations and is carried forward in the final rule. The Governor's consistency review provides the Governor, as the elected representative of the State, the opportunity to identify, discuss, and remedy any outlying inconsistencies with State and local plans prior to the approval of a resource management plan or plan amendment.

The final rule reflects changes to existing regulations in certain sections, but it does not rewrite FLPMA and the BLM does not have the authority to revise FLPMA. Rather, many of the changes made in the final rule, including final § 1610.3-3, bring the language in the regulations more closely in line with that of FLPMA. The final rule includes provisions for consistency with the plans of State and local governments, in conformance with FLPMA.

For a detailed discussion of the final rule's requirements for consistency under § 1610.3-3, please see the section-by-section analysis in the preamble for this section.

#### Cooperating Agency Advantage

**Comment:** Comments claimed that counties are preparing to sue on recently released resource management plans, which is indicative of the advantage that local governments hold by obtaining pre-decisional knowledge through cooperating agency status.

**Response:** Ongoing and potential lawsuits on existing resource management plans are outside the scope of this rule. Please see the preamble discussion of § 1610.3-2 for information on cooperating agency status for resource management plans and plan amendments.

#### Coordination with and Involvement of Governments

A few comments stated that FLPMA § 202(c)(9) requirements that the BLM assure consideration is given to relevant local government plans and programs, attempt to resolve conflicts and inconsistencies and provide meaningful involvement in the development of land

use decisions are not addressed in § 1610.3-1(c), which shows the BLM's attempt to marginalize the role of local governments. Comments asserted that the role of stakeholders and local governments should be restored in the final rule, in compliance with FLPMA. Other comments stated that the proposed rule expands opportunities for States and local governments to have meaningful involvement in land use planning processes, and that it provides for coordination with State and local representatives in order to ensure that resource management plans are consistent with State and local plans.

**Comment:** Comments stated that FLPMA (43 U.S.C. 1712(c)(9)) requirements that the BLM assure that consideration is given to relevant local government plans and programs, attempt to resolve conflicts and inconsistencies and provide meaningful involvement in the development of land use decisions are not addressed in § 1610.3-1(c). Comments contended that this is an attempt by BLM to marginalize the role of local governments. Comments suggested that existing language regarding coordination should be retained in the final rule.

**Response:** The final rule does address coordination requirements in accordance with FLPMA (43 U.S.C. 1712(c)(9)). Final § 1610.3-2(a) states that objectives of coordination are to “2) assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands; 3) assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans; [and] 4) provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans. . .” The coordination requirements in the final rule are consistent with FLPMA (43 U.S.C. 1712(c)(9)).

**Comment:** Several comments requested that the BLM revise the proposed rule to comply with FLPMA and restore the role of stakeholders and local governments in land use planning. Comments stated that the proposed rule violates FLPMA by failing to meaningfully involve the public, and Federal, State, local, and tribal governments and is therefore fatally flawed. Additionally, comments asserted that landscape-level planning conflicts with the compensation, taxation and fiscal provisions of FLPMA. Mandates and programs implementing landscape-level planning already exist in FLPMA, rendering the proposed rule redundant and unnecessary. Further, the proposal to manage for environmental or ecological values is contrary to FLPMA and will directly conflict with established and operational BLM programs, policies and practices that respect geopolitical boundaries. The proposed rule also moves the BLM away from its mandate to ensure consistency with State and local plans “to the maximum extent possible.”

**Response:** The final rule provides State and local governments, as well as the public, opportunities to become meaningfully involved in the planning process. For example, final § 1610.4 requires that the BLM gather or assemble inventory data and information during the planning assessment phase in coordination with other Federal agencies, State and local governments, and Indian tribes. Coordinating with other governmental entities as early as possible in the planning process sets the stage for coordination throughout the process. The final rule describes the BLM’s coordination and consistency requirements in §§ 1610.3-2 and 1610.3-3, respectively. Specific to consistency, final § 1610.3-3(a) requires that resource management plans be consistent with official approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations. In comparison, FLPMA (43 U.S.C.

1712(c)(9)) states that “land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.”

The BLM manages the public lands on the basis of multiple use and sustained yield, as directed in FLPMA. Additionally, FLPMA (43 U.S.C. 1701(a)(8)) directs the BLM to manage in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Managing for ecological or environmental values in a particular area in a resource management plan is not contrary to FLPMA.

Lastly, the BLM is aware that current regulations do not prohibit the use of a landscape-scale approach to land use planning; however, the BLM believes that the changes in the final rule facilitate the use of this concept.

**Comment:** One comment stated that the proposed rule compromises three areas that are distinct in FLPMA: coordination, consistency review, and public involvement. The plain language of FLPMA establishes these as separate and distinct responsibilities. Muddling coordination, consistency review, and public involvement removes the discrete and specific nature of the steps for compliance, confuse state and local agencies and the general public, and make unclear whether key requirements will be consistently applied.

**Response:** The concepts of coordination, consistency requirements, and public involvement are carried forward from the existing regulation and are still distinct and clearly stated in the final rule under §§ 1610.3-2, 1610.3-3, and 1610.2, respectively.

**Comment:** Several comments asserted that FLPMA requires meaningful coordination and involvement of State and local governments in the development of plans, citing FLPMA (43

U.S.C. 1712 (c)(9)). Comments stated that the proposed rule would narrow the scope of coordination, eliminate FLPMA coordination requirements, and represent a departure from the BLM's former interpretation of FLPMA. The proposed rule also removes early input in the planning process. Comments state that Congress intended States and local governments to play a key role in public land management. The proposed rule violates FLPMA by not subjecting implementation strategies to coordination and consistency review. Comments explained that coordination and consistency requirements are not limited to the development of land use plans, but to all management actions taken within the confines of these plans.

These comments stated that the proposed rule fails to recognize that the cooperating agency role under NEPA is different than the coordination and consistency roles under FLPMA. Overall, the proposed rule diminishes local governments' authoritative weight, which is provided by FLPMA. Comments asserted that the BLM does not have the authority to decide when it is appropriate to involve governments and stakeholders. Comments suggested that the final rule retain existing language regarding coordination, or that proposed § 1610.3-1 remove the phrase "regulations applicable to public lands, and the purposed, policies, and programs of such laws and regulations," and replace it with "to the extent consistent with the laws governing the administration of public lands."

**Response:** The final rule provides requirements for coordination with other Federal agencies, State and local governments, and Indian tribes in accordance with FLPMA (43 U.S.C. 1712 (c)(9)). The final rule distinguishes the cooperating agency role under NEPA from the "coordination" and "consistency" requirements of FLPMA. These roles are described in §§ 1610.3-2 and 1610.3-3, respectively, of the final rule. Final § 1610.3-2(b) describes the process for entering into cooperating agency relationships. Consistency requirements are contained in §

1610.3-3 of the final rule. The BLM believes that the final rule sufficiently identifies the distinction between these roles under FLPMA.

In response to public comments, final § 1610.3-2(b)(3) removes the phrase that the responsible official shall collaborate “with cooperating agencies, as feasible and appropriate given their interests, scope of expertise and the constraints of their resources” instead specifying that the responsible official collaborate to the fullest extent possible with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. The final rule does not remove the phrase “regulations applicable to public lands” from proposed § 1610.3-1(a), but will not adopt “the purposes, policies and programs of such laws and regulations” in this section.

Implementation strategies, as proposed in § 1610.1-3, will not be adopted in the final rule.

The BLM will coordinate with other governmental entities early in the planning process through the planning assessment phase. Final § 1610.4(b)(1) includes the statement that, “to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located.”

Please see the section-by-section analysis in the preamble for § 1610.3-2 for more information related to coordination.

**Comment:** A few comments stated that the proposed rule expands opportunities for States and local governments to have meaningful involvement in land use planning processes,

and that it provides for coordination with State and local representatives in order to ensure that resource management plans are consistent with State and local plans.

**Response:** A primary goal of the planning rule is to provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans. The final rule provides requirements for coordination and consistency with State and local governments, in accordance with FLPMA.

### Cultural Resources

A few comments stated that Sections 201 and 202 of FLPMA (43 U.S.C. 1711 and 1712) provide clear guidance on the need to assess the presence of cultural resources and that cultural resources should be a priority for BLM planning and management.

**Comment:** A few comments stated that FLPMA provides clear guidance on the need to assess the presence of cultural resources and that cultural resources should be a priority for BLM planning and management. Comments stated that the proposed rule only includes sparse reference to cultural resources and thus diverges from the requirements of FLPMA. The final rule should include more references to cultural resources.

**Response:** The BLM recognizes the importance of cultural resources in the management of public lands; however, the BLM must consider numerous resources when developing resource management plans. It would be inappropriate to address all of these resources in the planning rule. Rather, the consideration of cultural resources in the planning process is better addressed through policy, and the BLM expects the forthcoming Land Use Planning Handbook revision and additional program-specific policy and guidance will provide more information.

### Current Practices

A few comments expressed concern regarding the BLM's statements in the preamble to the proposed rule that certain changes to the rule were consistent with current practice.

**Comment:** A few comments stated that the proposed changes made to make regulations consistent with current practice, but do not represent a change from existing regulations, shows that existing laws and regulations are not being followed, and thus should not be implemented.

**Response:** The changes made in the final rule reflect current practice and do not mean that such practices are not in conformance with existing laws and regulations. For example, existing regulations do not preclude a planning effort from crossing State or other administrative boundaries. However, changes made in the final rule facilitates planning across traditional BLM administrative boundaries, should the need arise.

### Diminishing Existing Rights

One comment asserted that the proposed rule's treatment of existing rights is in conflict with FLPMA and the U.S. Constitution.

**Comment:** One comment stated that the proposed rule will subject existing rights to diminishment or regulatory extinguishment, which conflicts with the principles of FLPMA and the U.S. Constitution. FLPMA requires the Secretary to identify and protect valid private property rights established by Congress for public lands.

**Response:** The BLM must comply with valid existing rights. The final rule does not change this obligation. In response to public comments, the final rule provides clarity in multiple sections that resource management plans are subject to valid existing rights. For example, final § 1610.1-2(b)(2) states that "a resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded,

restrict, or allowed. . .” This is applicable to all plan components and does not represent a change of practice, as the BLM must always comply with valid existing rights.

### Ecological Services

A few comments asserted that the proposed rule contravenes the purposes of FLPMA by including ecological services along with other goods and services that people obtain from the planning area.

**Comment:** A few comments asserted that the proposed rule contravenes the purposes of FLPMA by including ecological services along with other goods and services that people obtain from the planning area. The proposed rule objectively quantifies the value of tangible goods and services that could be lost as a result of land use decisions, yet does nothing to evaluate ecological services, which cannot be quantified for comparison. Comments suggested that references to ecological services should be removed in the final rule.

**Response:** FLPMA (43 U.S.C. 1702 (1)) states that the term “principal or major uses” includes, and is not limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. This section briefly references many of the major uses of public lands, but as stated, does not limit other uses. The phrase “goods and services” in final § 1610.4(d)(7) includes many ecological services, such as ecosystem services, that are provided by the public lands, in addition to the principal or major uses described in FLPMA (43 U.S.C. 1702 (1)). The final rule does not quantify the value of goods and services that could be lost as a result of land use decisions. Final § 1610.4(d) directs that, during the planning assessment phase, the responsible official shall assess the resource, environmental, ecological, social, and economic conditions of the planning area, and at a minimum, consider and document certain factors in the assessment.

### FLPMA Criteria

One comment asserted that specific criteria in FLPMA are not adequately addressed in the rule.

**Comment:** One comment cited Section 202(c) of FLPMA (43 U.S.C. 1712(c)), stating that this part contains nine criteria the Secretary is obligated to consider in development and revision of land use plans. The comment noted that criteria five, six, and seven are not addressed in the proposed rule, and expressed concern that omitting these criteria reflects a lack of commitment by the BLM. The comment also cited a change in language in existing consistency rule and proposed language in § 1610.3-2(a) to show that references to State pollution control laws are omitted from proposed language, stating that this omission is contrary to FLPMA (43 U.S.C. 1712 (c)(8)). The comment suggested that the final rule include reference to parts five, six and seven of Section 202(c) of FLPMA, and specifically include reference to State pollution control laws in § 1610.3-2(a) or explain the preamble why this language is not included.

**Response:** The sections of FLPMA (43 U.S.C. 1712 (c)) cited by these comments direct that, in the development of and revision of land use plans, the Secretary shall consider present and potential uses of the public lands; consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values; and weigh long-term benefits to the public against short-term benefits. These criteria are referenced in the preamble to the rule. While they are not stated specifically in the final rule, their intent is reflected. For example, the foundation of land use planning is FLPMA's mandate to manage on the basis of multiple use and sustained yield. The definition of multiple-use largely accounts for these criteria, particularly the need to consider present and potential uses and weigh the long-term benefits against short-term benefits. Additionally, final § 1601.0-2 directs

the BLM to ensure that public lands be managed in a manner that will protect a variety of values. Such values will be considered during the planning process, and where appropriate, the BLM may take specific action regarding those values, such as by designating an Areas of Critical Environmental Concern. Through the land use planning process, the BLM will consider present and potential uses, weigh long and short-term benefits, and consider the relative scarcity of values and the availability of alternative means and sites for realization of those values. The final rule does not reduce the BLM's commitment to considering these criteria in the planning process, nor does it eliminate the BLM's obligation to comply with FLPMA and other Federal laws and regulations in the preparation of land use plans.

The final rule adopts the proposal to remove existing § 1610.3-2(b), which references Federal and State pollution control laws, as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans. The BLM is required to comply with all Federal laws and regulations, as well as applicable State laws, particularly those related to pollution. While FLPMA (43 U.S.C. 1712(c)(8)) specifically references pollution control laws, the BLM believes that such laws are encompassed by the requirements of final § 1610.3-3(a). The removal of this specific language does not absolve the BLM of its requirement to comply with these laws or associated pollution standards and implementation plans.

#### Identification of Planning Issues

One comment suggested a revision to the section on the identification of planning issues for consistency with FLPMA.

**Comment:** One comment requested that the language in § 1610.5-1 be revised to separate the roles of the public and governmental entities, in accordance with the language in §

1610.4(b). FLPMA (43 U.S.C. 1712 and 1733) provides for specific consideration of the views of other governmental organizations and should be reflected in the final rule.

**Response:** Existing § 1610.4-1 provided that, “at the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan.” Final § 1610.5-1(b) retains similar language, but with additional consideration for “those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes.” The BLM recognizes that FLPMA provides for specific consideration of the views of other governmental organizations; however, the purpose of this section is to ensure that all planning issues are identified, not only those brought forward by other governmental organizations. The final rule reaffirms the roles of other governmental organizations, particularly in §§ 1610.3-2 and 1610.3-3. Please see § 1610.5-1 for more information.

#### Grazing Permittees

**Comment:** One comment stated that grazing permittees and lessees should have a greater voice in decision-making, and should not be grouped into the same category as the general public. Permittees and lessees have a contractual relationship with the BLM and have an obligation to contribute to the management of resources at their own expense, and are therefore fundamentally exclusive under FLPMA and the Taylor Grazing Act.

**Response:** The final rule offers multiple additional steps for public involvement in the planning process. For example, the newly adopted planning assessment phase will engage the public early in the process, and will identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. This first step in

the planning process will be completed prior to initiating the preparation of a resource management plan and will help inform the BLM of public views in relation to the planning area; *i.e.*, what is important to the public, what places are important to the public, and why these places are important.

The BLM recognizes the role that grazing permittees and lessees hold in regards to the management of public lands and that they have contractual relationships with the BLM; however, by law, grazing permittees and lessees are not afforded greater levels of participation in the land use planning and NEPA processes beyond what is offered to the public at large. For example, 43 CFR 46.225(a) describes what constitutes as an “eligible governmental entity” in order to participate as a cooperating agency in the NEPA process. In regards to land use planning, FLPMA (43 U.S.C. 1712 (c)(9)) states that “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 State and local governments within which the lands are located.” Grazing permittees and lessees will be provided opportunities to participate in the development of resource management plans and plan amendments, but not to the same degree as provided for Federal agencies, State and local governments, and Indian tribes.

#### *Interdisciplinary Approach*

**Comment:** One comment asserted that the proposed rule improperly removes the use of an interdisciplinary approach during the scoping process and instead replaces it with the statement that BLM will be responsible for arranging for relevant data and information to be gathered, and that they would identify relevant plans or strategies for consideration. Substituting

the word “consideration” for “consistency” is beyond the scope of the BLM’s authority and is inconsistent with FLPMA.

**Response:** The use of the word “consideration” in the final rule does not replace the word “consistency” nor does it eliminate the BLM’s obligations for consistency. FLPMA (43 U.S.C. 1712 (c)(9)) provides that the Secretary shall assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands. Similarly, final § 1610.4(b)(2) directs the responsible official to identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment. Further, § 1610.4(b)(1) of the final rule includes the provision that “to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located.” Final § 1610.3-3 describes the BLM’s requirements for consistency, in accordance with FLPMA. Final § 1610.1-1(b) acknowledges the direction to use a systematic approach in the preparation and amendment of resource management plans.

#### *Landscape-scale Planning*

**Comment:** One comment stated that the proposed rule fails to provide clarity as to the size of future planning efforts and does not establish processes consistent with FLPMA.

**Response:** The final rule includes a definition for “landscape” which means an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. 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.

The planning rule will not direct that future planning efforts be a particular size, and it would be inappropriate to do so in regulation. Existing regulations do not require a specific size for planning efforts, although they set the “default” planning area for a resource management plan as the field office. A landscape need not necessarily cross State or other existing administrative boundaries, but as previously stated, will take into account the interacting elements that are relevant and meaningful in a management context. The landscape-scale concept is consistent with FLPMA.

**Comment:** One comment claimed that employing a landscape-scale approach contradicts the goal to respond to change in a timely manner, and dilutes the effectiveness of resource management plans and FLPMA’s mandate for multiple use.

**Response:** The BLM believes that the landscape-scale goal is not contradictory to the goal to respond to change in a timely manner. The first goal, to improve the BLM’s ability to respond to social and environmental change in a timely manner, addresses the need for land use plans that support effective management when faced with environmental uncertainty, incomplete information, or changing conditions. The resources that the BLM manages and the issues that resources face do not always adhere to traditional administrative boundaries. Other factors, such as incomplete information and changing conditions further complicate these issues. By looking at landscapes holistically, the BLM can address environmental uncertainty, incomplete information, and changing conditions across administrative boundaries under one planning effort. Also, a landscape-scale approach can create efficiencies by consolidating planning efforts, addressing the need to respond to change in a timely manner.

Lastly, employing a landscape-scale approach to land use planning supports the BLM’s multiple use mandate. The definition of multiple use, in part, means making the most judicious

use of the lands for some or all of the 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 definition of landscape does not require that planning areas be larger; however, the landscape-scale concept is supported by FLPMA and its mandate for multiple use and sustained yield management.

**Comment:** A few comments stated that the landscape-scale approach is counter to the framework of FLPMA and Public Rangelands Improvement Act (PRIA) where the Director is placed in a parallel position to assist in resolving plan inconsistencies, obtain meaningful input, and submit to local governments and grazing boards “through the receiving of advice . . . to the maximum extent possible.” The addition of landscape-scale management in the proposed rule will subordinate State and local plans to BLM policies, placing the Director in the position to decide what constitutes land use requirements, standards and planning criteria. The landscape-scale approach is not supported by FLPMA and PRIA, which focus on Federal coordination and collaboration with State and local governments in the context of their boundaries.

Landscape-scale planning also conflicts with the compensation, taxation, and fiscal provisions of FLPMA (Titles 1 and VII) by complicating reimbursement programs and withdrawals. Further, mandates and programs implementing landscape-scale planning already exist, rendering the proposed rule redundant and unnecessary. Comments assert that the proposed rule represents a fundamental departure from local control, local interests, and local input as being central to Federal land use planning.

**Response:** Final § 1610.3-2(a) requires the BLM to assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans and provide for meaningful involvement of other Federal agencies, State and local governments, and Indian

tribes. Final § 1610.3-2(c) requires the responsible official to provide Federal agencies, State and local governments, and Indian tribes the opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. The scale of a planning effort does not eliminate coordination requirements. The landscape-scale concept does not alter the BLM's requirements for consistency with other plans, which is described in final § 1610.3-3. Finally, the BLM's coordination and consistency requirements under FLPMA do not restrict planning areas to political boundaries. The BLM will continue to coordinate, and strive for consistency with, all affected State and local governments during the planning process.

Planning criteria are no longer required under the final rule.

The BLM is aware that current regulations do not prohibit the use of a landscape-scale approach to land use planning. The BLM believes that the changes in the final rule facilitate the use of this concept. Further, the BLM acknowledges that local considerations are integral to the land use planning process; but, the scale of which the BLM must consider in its land use planning processes may vary. The final rule reflects this variance.

**Comment:** One comment stated that the proposed rule is based on the illegal process used for the sage grouse planning efforts, which are currently being litigated on the basis that the BLM failed to comply with FLPMA (43 U.S.C. 1712).

**Response:** Resource management plans and plan amendments, including the sage grouse planning efforts, were completed prior to adoption of the final rule and were prepared under the existing planning regulations and must comply with those regulations. Existing lawsuits on those plans do not affect the adoption of this final rule.

### Local Decisions

One comment expressed concern regarding whether the selection of the deciding official is consistent with FLPMA.

**Comment:** One comment stated that under the proposed rule, the deciding official may not be in the best position to determine who and what resources are affected, which is contrary to the intent of FLPMA. The comment urged the BLM to keep decisions at the local level.

**Response:** Section 1601.0-4 of the final rule states that the Director determines the deciding official and the planning area for the preparation of resource management plans and plan amendments that cross state boundaries. For other resource management plans or plan amendments, the deciding official shall be the BLM State Director, unless otherwise determined by the Director. The final rule provides clarity as to how the deciding official is selected and who will be selected. The default deciding official will remain the BLM State Director. However, should a resource management plan revision or amendment need to cross State boundaries, the final rule provides flexibility for the BLM Director to select a single deciding official. In most situations, the deciding official would be a State Director with jurisdiction over all, or a portion of the planning area.

### Local Impacts

One comment asserted that the proposed rule's treatment of local governments violates FLPMA and the 10th Amendment.

**Comment:** One comment asserted that the elimination of the local governments' preemption with the planning process, per FLPMA and the 10th Amendment, could violate explicit constitutional protections. The proposed rule does not address the significant impacts that it will have on the State and local governments. Alterations of established State and local

governmental rights within the planning process, the coordination requirement, and the reduction of standing to no more than that of the public area loss of authority that could be viewed as purposely thwarting FLPMA and the U.S. Constitution.

**Response:** The final rule represents a change from current regulations; however, the final rule does not remove the rights of State and local governments in the planning process. Final §§ 1610.3-2 and 1610.3-3 describe the BLM’s requirements for coordination and consistency with other Federal agencies, State and local governments, and tribes in the planning process. The final rule does not remove these requirements. Further, the final rule provides State and local governments the opportunity to participate in the planning process further than what is provided to the public, in accordance with FLPMA and NEPA. Final § 1610.3-2(b) of the final rule also describes the process for entering into cooperating agency relationships under NEPA. The final rule is not in violation of FLPMA or the 10th Amendment.

**Comment:** One comment asserted that the proposed rule broadens the scope of planning and dilutes the impact of local governments by removing language directing consideration of the impacts on “local economies,” in favor of the impacts of plans on “resource, environmental, ecological, social and economic conditions at appropriate scales.” The comment stated that the appropriate scale to evaluate impacts is always on local economies. The comment suggested that proposed § 1601.0-8 be revised to consider impacts to local economies.

**Response:** Section 1601.0-8 adopts the proposal to replace “local economies” with the statement that the BLM will consider the impacts of resource management plans on resource, environmental, ecological, social and economic conditions at “relevant” scales. The BLM believes that this change more accurately describes current practice when considering impacts of resource management plans. It is important that impacts are considered at relevant scales.

Further, the consideration of impacts on local conditions is a “relevant” scale. Please see the preamble’s section-by-section analysis for § 1601.0-8 for more information.

### *Mining and Minerals*

One comment asserted that the BLM must recognize that they have obligations under FLPMA, the General Mining Law and the Mining and Minerals Policy Act to honor valid existing rights and manage public lands in a way that recognizes the Nation’s need for minerals. Several comments claimed that the proposed rule is inconsistent with various laws, including FLPMA, the General Mining Law, the Mining and Minerals Policy Act, the Data Quality Act, and other laws and regulations pertaining to mining. One comment stated that a zoning approach to oil and gas development is in violation of FLPMA’s multiple use requirement.

**Comment:** One comment asserted that the BLM must recognize that they have a statutory obligation under FLPMA and the General Mining Law to ensure the rights of ingress and egress of locators. Further, the proposed rule should be revised to ensure compliance with FLPMA mandate to balance resource values and uses of public lands, including the directive in the Mining and Minerals Policy Act to recognize the nation’s need for domestic sources of minerals.

**Response:** The final rule acknowledges that the BLM must comply with valid existing rights. This term will be included throughout the final rule to reaffirm this requirement. Additionally, the final rule complies with FLPMA requirement to manage the public lands in a manner that recognizes the nation’s need for natural resources from public lands, including minerals. Section 1601.0-2 of the final rule references this requirement by directing the BLM to ensure that the public lands be managed in a manner that recognizes the “[n]ation’s need for

renewable and non-renewable resources including, but not limited to, domestic sources of minerals, food, timber, and fiber from public lands.”

**Comment:** Several comments asserted that the proposed rule ignores important provisions of FLPMA, in particular BLM surface management regulations, and is not consistent with the current regulatory structure for mining. Comments claimed that the BLM cannot impair the rights of locators or mining claimants, or interfere with the ingress and egress rights through the planning process. The BLM does not have the authority to require mitigation that impairs the rights for mineral exploration and development afforded by FLPMA, the Surface Mining Control and Reclamation Act, and the Federal Coal Leasing Amendments Act. Comments also stated that proposed § 1610.8-1 is an effort to circumvent the General Mining Law.

**Response:** The BLM must comply with valid existing rights in its land use planning processes. The final rule reaffirms this requirement. Further, the final rule complies with all Federal laws, including but not limited to, FLPMA, the General Mining Law, the Mining and Minerals Policy Act, the Data Quality Act. The final rule is also consistent with current regulations for mining.

The final rule offers a definition for mitigation, consistent with the definition provided by the Council on Environmental Quality, and identifies the appropriate plan component where mitigation standards could be established in individual resource management plans. The BLM does have the authority to require mitigation. The BLM also must recognize valid existing rights.

Also, the final rule does not unlawfully prioritize through designations. The final rule does, however, acknowledge the priority that FLPMA provides for the identification, designation, and protection of Areas of Critical Environmental Concern.

Proposed § 1610.8-1 contained existing regulations (existing § 1610.7-1), and will be adopted in the final rule. This section does not circumvent law.

**Comment:** One comment stated that the exact locations of all technically recoverable oil and gas reserves cannot be fully mapped out in a planning document, as new reserves are continuously discovered; therefore, a zoning approach to oil and gas development is in violation of FLPMA's multiple use requirement.

**Response:** The final rule does not directly address mapping of oil and gas resources, but the BLM believes that using tools such as GIS and ePlanning will lead to a more transparent planning process. Further, the BLM recognizes the importance of addressing oil and gas development in the planning process. The definition of multiple use, in part, means making the most judicious use of the lands for some or all of the resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use, as well as the use of some lands for less than all of the resources. Multiple use does not mean that all uses are to be allowed everywhere. FLMPA, and the land use planning process it affords, provides the BLM with a mechanism for making these determinations. As stated in the Presidential Memorandum "Mitigation Impacts on Natural Resources from Development and Encouraging Related Private Investment," "[l]arge-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable," (80 FR 68743).

#### Mitigation

Several comments asserted that mitigation is not supported by FLPMA, and therefore, the BLM has no authority to require mitigation.

**Comment:** A few comments asserted that the BLM is using the proposed rule to change its interpretation of FLPMA's special management attention requirement to allow for mitigation. FLPMA does not give BLM authority to require mitigation. The BLM cannot align its rules with DOI's recent policies on mitigation that have not met the requirements of the Administrative Procedures Act - *i.e.*, public input or observance of rulemaking procedures. Therefore, the BLM should take mitigation policies and practices through the formal rulemaking process, remove all references to mitigation before publishing the final rule, and review the proposed rule and ensure it complies with federal law.

**Response:** The term "special management attention" in FLPMA and as will be used in the final rule, applies specifically to Areas of Critical Environmental Concern where areas within the public lands may need special management attention 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. Regarding mitigation, the BLM has the authority under FLPMA to require mitigation. Furthermore, the DOI and BLM have authority to develop manuals, guidance, handbooks, and other policy, including those related to mitigation, to help in the interpretation and consistent implementation of laws and regulations. Such directives also help ensure that the best available information is utilized and that best practices are being followed in the implementation and administration of rules and regulations. The BLM is updating the planning rule by incorporating some of these directives and lessons learned over the last ten to fifteen years of resource management planning. Finally, the Planning 2.0 initiative, including the development of the proposed and final rule was informed by public comment, and conducted in compliance with the Administrative Procedure Act.

**Comment:** Several comments noted that the term “mitigation” is only used once in FLPMA, and that the reference to it is in relation to a specific issue and that the term not defined by FLPMA. Comments contended that mitigation is not supported by FLPMA; therefore, the BLM has no authority to require mitigation. Comments also stated that Department of the Interior Manual 600 DM is policy and guidance and does not grant the BLM authority to define and implement mitigation. One comment noted that mitigation as defined in the proposed rule is less flexible than in BLM 3809 Surface Management regulations and is contrary to the FLPMA standard of “unnecessary and undue degradation.” The proposed rule’s requirement that mitigation compensate for unavoidable impacts conflicts with the prohibition on unnecessary or undue degradation because impacts that are unavoidable are presumably due and necessary, and accordingly, FLPMA does not require that they be avoided or mitigated. Therefore, the proposed definition of mitigation is inconsistent FLPMA and CEQ’s definition of mitigation. Comments further stated that the no net loss standard is inconsistent with FLPMA, which directs the Secretary to prevent unnecessary and undue. Some comments stated that the definition of mitigation should be revised to align with CEQ’s definition. Further, the BLM should clarify that imposition of mitigation measures in land use plans or amendments will not supersede the BLM’s obligation to comply with surface management regulations. Comments suggested that § 1610.1–2 be modified to remove “(i) any standards to mitigate undesirable effects to resource conditions.” Also, § 1601.0-5 should remove the definition of “mitigation,” or revise it to remove the language “compensating for remaining unavoidable impacts.”

**Response:** The BLM has the authority to require mitigation. The final rule does not require mitigation or establish a standard for mitigation, such as a “no net loss” standard. The definition of mitigation is adopted in final § 1601.0-5, which is consistent with the Council on

Environmental Quality's definition of mitigation at 40 CFR 1508.20. The final rule adopts § 1610.1-2(a)(2)(i), which solely identifies the appropriate plan component where such mitigation could be established in a resource management plan.

The comment that mitigation policies and practices must go through the rulemaking process is outside the scope of this rulemaking. Also, the BLM must comply with all Federal laws and regulations; any future application of mitigation would be subject to such laws and regulations.

### *Multiple Use and Sustained Yield*

Several comments asserted that the proposed rule fails to meet the regulatory requirements in FLPMA that public lands be managed for multiple use and sustained yield or otherwise expressed concerns regarding multiple use and sustained yield. Other comments expressed support for the objective to “promote the principles of multiple use and sustained yield on public lands . . . and ensure participation by the public, State and local governments, Indian tribes, and Federal agencies.” A few comments also stated that in presenting the concept of multiple use, the BLM often truncates the full definition of the term from FLPMA § 103(c), and as a result, hides the requirement of “harmonious management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” in its decision processes.

**Comment:** Several comments asserted that the proposed rule fails to meet the regulatory requirements in FLPMA that public lands be managed for multiple use and sustained yield. Various comments cited different portions of the proposed rule where they believe the FLPMA requirements were not met, including § 1601.0-2, 1610.1-2, 1610.4 and generally, the goals of Planning 2.0. Comments also expressed concern that the planning assessment could lead to bias

decisions that promote conservation or ecological and environmental issues over traditional multiple uses. Removing the phrase “maximize resource values for the public” and replacing it with “[to] ensure that the public lands be managed in a manner that will protect the quality” is an embellishment and a departure from FLPMA. Further, the proposed rule promotes a preservation-based policy objective for land use planning. The proposed rule also changes the emphasis of multiple use and sustained yield to ecosystem services, conservation and economies “at scale.” Proposed Section 1610.1-2(b) focuses on empowering BLM to prioritize resource values and uses, and exclude, restrict, and only allow specific uses in the interest of achieving RMP goals and objectives, in contravention of FLPMA. The proposed rule attempts to “zone” public lands according to single-use inventories that directly refute FLPMA’s multiple use mandate.

Comments also suggested the following changes be made to the proposed rule to reflect the BLM’s multiple use mandate: the final rule should change language in § 1601.0–2 from “promote the principles of multiple use...” to “manage for the principles of multiple use...,” should incorporate existing Section 1601.0-5(n)(2) as a required goal in the final rule, and BLM should expand its consideration of land uses in the planning assessment to avoid biased decision-making.

**Response:** The definition of multiple use, in part, directs the management of the public lands and their resource values so that they are utilized in the combination that will best meet the present and future needs of the American people, and provides for the use of some lands for less than all of the resources. The final rule reaffirms the BLM’s multiple use mandate. Final § 1601.0-2 provides that the public lands are managed in a manner which recognizes the Nation’s need for renewable and non-renewable resources including, but not limited to, domestic sources

of minerals, food, timber, and fiber from the public lands. The objective in § 1601.0-2 to manage the public lands in a manner that will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values” and that “where appropriate, will preserve and protect certain lands in their natural condition” is taken verbatim from FLPMA (43 U.S.C. 1702 (a)(8)). Further, designations and resource use determinations described in final § 1610.1-2(b) do not subtract from this mandate. The BLM is required to manage on the basis of multiple use; the inclusion of designations and resource use determinations does not change this. Any designations and resource use determinations proposed in a resource management plan would be fully analyzed and disclosed to the public, in accordance with FLPMA and NEPA.

Final § 1601.0-8 will require the BLM to consider the impacts of resource management plans on resources, environmental, ecological, social, and economic conditions at relevant scales. The consideration of impacts further supports BLM’s multiple use mandate.

Final § 1601.0-2 will state that the objective of resource management planning is to manage public lands on the basis of multiple use and sustained yield. The plan components in final § 1610.1-2 are based on the resource management plan elements contained in existing § 1601.0-5(n). It would be inappropriate to require these as goals, as goals are a broad statement of desired outcomes addressing various characteristics within the planning area. The final rule adopts the proposal to remove the analysis of the management situation and replace it with the planning assessment. Please see § 1610.4 for more information for this change. The planning assessment will consider and document all authorized uses of public lands. Final § 1610.6-3(b) will retain the provision that the BLM shall take appropriate measures, subject to valid existing rights, to make operations and activities. . .conform to plan components of the approved resource

management plan or plan amendment. The final rule reaffirms the BLM's requirement to manage on the basis of multiple use and sustained yield. The preamble to this rule describes the changes made to the existing and proposed regulations, and how these changes meet the multiple use mandate and other requirements of FLPMA.

**Comment:** One comment expressed support of the objective to “promote the principles of multiple use and sustained yield on public lands . . . and ensure participation by the public, state and local governments, Indian tribes, and Federal agencies.”

**Response:** Final § 1601.0-2 replaces the objective to “promote the principles of multiple use and sustained yield” with “the BLM is to manage public lands on the basis of multiple use and sustained yield.” FLPMA directs the BLM to manage on the basis of multiple use and sustained yield. Further, the objective to “ensure participation by the public, State and local governments, Indian tribes, and Federal agencies” are replaced with “provide for meaningful public involvement by the public, State and local governments, Indian tribes and Federal agencies.” The aforementioned edits do not change the original intent of this statement, but rather provide clarity. Please see the preamble's section-by-section analysis for § 1601.0-2 for more information.

**Comment:** A few comments stated that in presenting the concept of multiple use, the BLM often truncates the full definition of the term from FLPMA (43 U.S.C. 1703(c)), and as a result, hides the requirement of “harmonious management of the various resources without permanent impairment of the productivity of the land and the quality of the environment” in its decision processes.

**Response:** The BLM acknowledges that FLPMA defines multiple use as “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” as well as “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.” FLPMA’s definition of multiple use is contained in its entirety in the final rule. In developing resource management plans and plan amendments, the BLM will manage public lands on the basis of multiple use and sustained yield, as defined in FLPMA.

**Comment:** One comment expressed support of the proposed rule, but was uncertain that a shift from multiple use to conservation could be done administratively. The comment explained that it is possible that a court will decide that FLPMA’s mandate for sustained yield allows the BLM the latitude to make this shift administratively, but it is also possible that it will not.

**Response:** The final rule does not eliminate the BLM’s obligation to manage the public lands on the basis of multiple use and sustained yield. The final rule reaffirms this requirement.

#### Objectives of Planning

Multiple comments noted that proposed § 1601.0-2 omits FLPMA’s reference to the Mining and Minerals Policy Act, and suggested that 1601.0-2 be revised to include reference to this Act.

**Comment:** Multiple comments stated that proposed § 1601.0-2 inexplicably omits FLPMA’s reference to the Mining and Minerals Policy Act of 1970 when it cites the Nation’s need for domestic sources of minerals. Comments referenced FLPMA (43 U.S.C. 1702 (12)). Comments suggested that § 1601.0-2 be revised to include reference to this Act.

**Response:** FLPMA (43 U.S.C. 1702 (12)) provides that “public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970.” However, there are numerous other Federal laws and regulations pertaining to public lands that the BLM must implement, especially in when considering domestic sources of minerals, food, timber, and fiber. Final § 1601.0-2 recognizes the Nation’s need for renewable and non-renewable resources, including but not limited to domestic sources of minerals, food, timber, and fiber from the public lands. It would be inappropriate to reference one specific law in this section.

#### Plan Components

Comments asserted that § 1610.1-2, which prioritizes goals and objectives above land use designations and resource use determinations, is inconsistent with FLPMA, stating that FLPMA does not subordinate determinations and designations to goals and objectives.

**Comment:** A few comments stated that the proposal in § 1610.1-2 to set goals and objectives in resource management plans and prioritize them above land use designations and resource use determinations is inconsistent with FLPMA. Additionally, the final rule should clarify that resource use determinations cannot modify or defeat valid existing rights. Some comments stated that proposed § 1610.1-2 should be withdrawn or revised so it requires that BLM designate land uses in a manner consistent with FLPMA. Section 1610.1-2(a)(1) should be revised to clarify that the BLM may only set goals for renewable resources on public lands, consistent with FLPMA. The definition of “objectives” should be revised to remove the reference to “established time-frames” (*Wyoming Outdoor Council et al.*, 176 IBLA 15, 26

(2008)). Also, the BLM should state that “specific, measurable” objectives cannot form the basis of suits under 5 U.S.C. 706(1).

**Response:** The final rule adopts the proposal to require that resource management plans establish goals and objectives. As stated, a goal is a broad statement of desired outcomes within the planning area or a portion of the planning area. Objectives are a more concise statement of desired resource conditions developed to guide progress toward one or more goals. Establishing goals and objectives does not “subordinate” other plan components. Rather, components such as designations work in conjunction with goals and objectives, and designations may be made to achieve certain goals and objectives. FLPMA does not preclude the establishment of goals and objectives. Rather, FLPMA (43 U.S.C. 1702(a)(7)) specifically requires that “goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law.” Goals and objectives are a means of supporting the BLM’s multiple use mandate, which directs the BLM to manage the public lands and their resource values so that they are utilized in a combination that will best meet the present and future needs of the American people.

The BLM must comply with valid existing rights. In response to public comments, final § 1610.1-2(b)(2) states that “a resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements.” Final § 1610.1-2(a)(1) does not specify that goals will only be set for renewable resources. The goals and objectives established for resource management plans should take into consideration the multiple values that the BLM must address under FLPMA. Section 1610.1-2 reflects this. Further, final § 1610.1-2(a)(2) retains the requirement

that objectives have established time frames for achievement. Establishing measurable objectives will improve the BLM's ability to evaluate whether the objectives are being met and track progress towards their achievement. Establishing time frames for achievement provides further accountability for addressing objectives.

### Planning Assessment

A few comments asserted that the planning assessment and various proposed components of data gathering violate FLPMA (43 U.S.C. 1711), claiming that FLPMA requires the BLM to conduct, and rely upon, its own inventory in the planning process. One comment objected to the proposed deletion of the word "uses" from § 1610.4(c)(7), stating that it eliminates multiple use principles and concepts of major uses that are required by FLPMA. Another comment stated that the term "envisioning process" falsely suggests that the management of public lands is guided by the public's visions for these lands, asserting that the BLM cannot let public views override FLPMA's mandates.

**Comment:** Comments contended that the request for data during the planning assessment, as well as the definition of "high quality information" violates FLPMA (43 U.S.C. 1711) language that the BLM "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values." Comments asserted that FLPMA requires the BLM to conduct its own inventory and not rely on other available data. The proposed rule will replace resource-focused decision-making with value-based decision-making. In addition, comments asserted that data from Rapid Ecoregional Assessments also violate FLPMA (43 U.S.C. 1711) language because the data are collected rapidly by both public and private entities that have their own agendas towards public land management. FLPMA does not mention social data as a basis for planning. The BLM should only rely on data that is collected by BLM.

**Response:** FLPMA (43 U.S.C. 1711) directs the BLM to prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values, stating that this inventory shall be kept current as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

The inclusion of the term high quality information and its definition in the final rule is not in violation of FLPMA (43 U.S.C. 1711).

The information gathering portion of the planning assessment does not replace the BLM's obligation to prepare and maintain the inventory of public lands. Rather, this stage aids in the preparation of the planning assessment, which in turn informs the development of the resource management plan. As provided by FLPMA (43 U.S.C. 1712(a)), the Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans. The final rule offers opportunities for public involvement during the planning assessment phase, as provided by FLPMA. Further, the use of Rapid Ecoregional Assessments does not replace BLM's obligations under FLPMA; instead, the information provided by Rapid Ecoregional Assessments is another tool the BLM can use to inform the planning process of baseline resource conditions and trends.

FLPMA does not specify the types of data the BLM is to collect or what types of data the BLM uses in its land use planning. FLPMA also does not preclude the use of social data in the land use planning process.

**Comment:** One comment objected to the proposed deletion of the word “uses” from proposed § 1610.4(c)(7), stating that it eliminates multiple use principles and concepts of major uses that are required by FLPMA.

**Response:** The BLM adopts the proposal to remove the word “uses” from final § 1610.4(c)(7). The BLM believes that “uses” in this context is encompassed by the phrase “goods and services.” The removal of this word does not eliminate the BLM’s requirement to manage on the basis of multiple use and sustained yield. Please see the preamble’s section-by-section analysis of § 1610.4(c)(7) for more information.

**Comment:** One comment stated that the term “envisioning process” falsely suggests that the management of public lands is guided by the public’s visions for these lands, asserting that the BLM cannot let public views override FLPMA’s mandates. The comment provided the following suggestion for the final rule and Land Use Planning Handbook revision; “prior to the envisioning process, the BLM should communicate to the public if there are any known valid existing rights in the planning area, and further, that the BLM cannot exclude principal or major uses of public lands (such as mineral leasing) on a tract of land 100,000 acres or more without notifying Congress.”

**Response:** The “envisioning process” is a term to describe a component of the planning assessment, which will require the BLM to identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. The BLM intends that these views will be identified through the “envisioning process,” which will likely consist of public meetings and other collaborative techniques. The term is not included in the proposed or final rule. The requirement that the BLM identify public views prior to initiating a

land use planning effort does not eliminate the BLM's obligation to manage public lands based on multiple use and sustained yield.

The final rule does not contain the term "envisioning process" and therefore does not adopt the proposed suggestion. However, final § 1610.4(d)(2) requires that the responsible official, in developing the planning assessment, consider and document "land status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including valid existing rights." Because the BLM must publish the planning assessment in a report prior to preparing a resource management plan in most cases, the public will be notified of any known valid existing rights in the planning area. Final § 1610.7 describes congressional review for management decisions which totally eliminate one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more.

#### Public Involvement

One comment stated that the objective to "ensure participation by the public" is an incomplete statement of FLPMA's requirement for public participation, which does not guarantee public participation. A few comments stated that abbreviated comment periods and notification requirements are inconsistent with FLPMA, which directs the BLM to provide "adequate notice and opportunity to comment." One comment claimed that the proposed rule limits the opportunity for local governments to advocate for their positions early in the process and diminishes their ability to inform the BLM of potential conflicts, as mandated by FLPMA. Another comment stated that the proposed rule will create a loss of constitutional planning authority by local governments established by FLPMA and the 10th Amendment by removing the congressional language of "coordination" and "consistency."

**Comment:** One comment claimed that the proposed rule limits the opportunity for local governments to advocate for their positions early in the process and diminishes their ability to inform the BLM of potential conflicts, as mandated by FLPMA.

**Response:** The final rule does not limit opportunities for coordination with local governments early in the planning process or diminish their ability to inform the BLM of potential conflicts. Coordination, as required by final § 1610.3-2, will occur throughout the planning process. For example, final § 1610.4(b) will require that, to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located. In addition, § 1610.3-2 requires the BLM to keep apprised of the plans, policies, and management programs of other governmental agencies, assure that consideration is given to those plans, policies, and management programs, assist in resolving inconsistencies between Federal and non-Federal governmental plans, provide for meaningful involvement of governmental entities, and where possible and appropriate, develop resource management plans collaboratively with cooperating agencies. The coordination in this section is to occur throughout the duration of the process, beginning with the planning assessment phase.

**Comment:** One comment stated that the resource management planning objective to “ensure participation by the public” is an incomplete statement of FLPMA’s requirement for public participation; thus, the current language regarding the objective of resource management planning must be retained in the final rule. FLPMA does not guarantee public participation, rather that there is to be an opportunity. Further, the proposed rule shortchanges opportunities

for public comment afforded by FLPMA with shortened comment periods, limits on consistency reviews and restrictions on protests.

**Response:** In response to public comments, final § 1601.0-2 replaces existing and proposed language which stated that an objective of resource management planning is to “ensure participation by the public” with “provide for meaningful public involvement.” Comments are correct that the BLM cannot ensure that the public participates.

Please see §§ 1610.2-2, 1610.3-3(b) and 1610.6-2 for a more detailed discussion of the final rule for public comment periods, consistency review, and protest procedures.

**Comment:** A few comments stated that abbreviated comment periods and notification requirements are inconsistent with FLPMA, which directs the BLM to provide “adequate notice and opportunity to comment.” Comments urged the BLM to retain existing § 1610.2-1(a), which applies the same public participation requirements to plan revisions and amendments. Comments explained that the reasoning for shortening comment periods is flawed because large-scale amendments, such as the sage grouse planning effort, may be larger in scope than some plan revisions.

**Response:** The final rule extends the comment period for a draft resource management plan and draft EIS to a minimum of 100 calendar days. The BLM acknowledges the importance of providing adequate lengths of time for the public to review and comment on draft plan amendments. However, the scope and scale of draft EIS-level amendments may vary substantially. To account for the variance in scope and scale, the final rule requires a minimum of 60 days for public comment on a draft EIS-level amendment; however, the BLM expects that the forthcoming Land Use Planning Handbook will provide that, in most situations, a minimum

of 90 calendar days should be provided. It is generally only for those amendments that are narrow in both scope and scale that a shorter 60-day comment period may be appropriate.

### Rapid Ecoregional Assessments

One comment stated that the use of Rapid Ecoregional Assessments in the planning process does not comply with FLPMA's requirement that the Secretary "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values."

**Comment:** One comment stated that the use of Rapid Ecoregional Assessments in the land use planning process raises serious questions, such as whether Rapid Ecoregional Assessment comply with FLPMA's direction that the Secretary "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values."

**Response:** Rapid Ecoregional Assessments are a source of information for the planning process, however, the Rapid Ecoregional Assessments themselves are outside the scope of this rulemaking. Rapid Ecoregional Assessments are one source of information, however, their use in the planning process, do not eliminate the BLM's obligation to prepare and maintain an inventory of public lands and their resource and other values. Rapid Ecoregional Assessments synthesize best available information about resource conditions and trends within an ecoregion and establish landscape-scale baseline ecological data to help gauge the effect and effectiveness of future management activities. A Rapid Ecoregional Assessment is not a complete inventory, but is piece of inventory which can inform the BLM of existing conditions. Further, Rapid Ecoregional Assessments are not a replacement for any of the BLM's requirements under FLPMA.

## Social Change

Several comments stated that the goal to respond to social change is not supported by FLPMA, which does not grant the BLM the authority to manage for social change.

**Comment:** Several comments noted that Planning 2.0 Goal 1, which includes the phrase “respond to social change,” is not supported by FLPMA. FLPMA does not grant the BLM the authority to and Congress did not intend the public lands to be managed to respond to “social change.” Comments stated that this goal modifies the existing priority of FLPMA, which lists economics as a priority. Comments asserted that the final rule should remove “social change” from Goal 1.

**Response:** The term social change refers to any alterations over time in behavior patterns, cultural values and cultural norms. FLPMA requires the BLM to manage for multiple use and sustained yield. Multiple use is defined, in part, as the management of the public lands so that they are utilized in the combination that best meets the present and future needs of the American people. Understanding these needs requires an understanding of any changes in human behavior patterns, cultural values and cultural norms.

## Unnecessary and Undue Degradation

One comment provided a suggestion regarding the phrase “unnecessary and undue degradation.”

**Comment:** One comment proposed adding language to § 1601.0-2 to clarify that FLPMA’s requirement to prevent unnecessary or undue degradation of public lands is an objective for resource management planning. The comment cited Section 302(b) of FLPMA as rationale for this addition.

**Response:** Final § 1601.0-2 does not add the requirement to prevent unnecessary and undue degradation of public lands as an objective for resource management planning. FLPMA's authority to prevent unnecessary and undue degradation, as referenced in FLPMA (43 U.S.C. 1732(b)), relates to the management of use, occupancy, and development, in accordance with this section. It would be inappropriate to include this standard in planning regulations. The objectives of resource management planning contained in § 1601.0-2 provide for protection and preservation (where appropriate) of public lands in addition to allowable uses of public lands per FLPMA's multiple use mandate.

#### Wilderness Inventory

One comment expressed concerns regarding the consistency of wilderness inventory with FLPMA.

**Comment:** One comment stated that continued wilderness inventory is not consistent with FLPMA (43 U.S.C. 1782(a)).

**Response:** The final rule does not require the BLM to conduct additional wilderness inventory. Rather, final § 1610.4(d)(5)(v) directs the BLM to consider and document in the planning assessment areas of potential importance, including lands identified as having wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value.

#### Withdrawals

Several comments asserted that the proposed rule ignores FLPMA's pre-implementation reporting procedures regarding withdrawals by removing language regarding the requirement to notify, and provide information to, Congress prior to withdrawing lands from mineral entry. Comments also stated that the proposed rule creates a philosophy of natural resource based land

use planning that diminishes the role of state and local governments, resulting in public values-based withdrawals by imposing increased regulatory burdens.

**Comment:** Several comments asserted that the proposed rule ignores FLPMA's pre-implementation reporting procedures regarding withdrawals by removing language regarding the BLM's requirement to notify, and provide information to, Congress prior to withdrawing land from mineral entry. The proposed rule states that public land will be managed to preserve and protect lands in their natural condition, which appears to be the equivalent of a withdrawal. Comments claimed that changing duties administratively does not allow the BLM to bypass existing laws or policies. Comments suggested that the final rule include the requirement for congressional notice prior to land withdrawals.

**Response:** Final § 1601.0-2 states that the BLM ensure that public lands are managed in a manner that, "where appropriate, will preserve and protect certain public lands in their natural condition." This statement does not eliminate the existing legal requirements for withdrawals. Section 1610.7 of the final rule incorporates aspects of existing § 1610.6, and describes the requirement for congressional review for management decisions which totally eliminate one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more. This section was included in the proposed rule and is retained in the final rule. Please see § 1610.7 for more information on this requirement.

**Comment:** One comment stated that the proposed rule creates a philosophy of natural resource based land use planning that diminishes the role of State and local governments, resulting in public values-based withdrawals by imposing increased regulatory burdens. The comment stated that, because the definition of withdrawal includes imposition of regulatory burdens (e.g. climate change) that will impact land use rights and because executive orders are

subordinate to statutory mandates, any executive branch directive not traceable to FLPMA is supra legal. Comments noted that care and preservation of the environment is to take place within the context of productivity, in particular Title II of FLPMA, where the designation of ACECs does not necessarily mean such lands should be withdrawn from use.

**Response:** The final rule provides a framework for revising and amending resource management plans. The final rule itself does not effectuate any withdrawals on public lands. Furthermore, land use plans developed under the procedures in this rule cannot effectuate withdrawals on public lands. Additionally, neither the proposed nor final rules contain definitions for “withdrawal.” Any future withdrawals of use will be made in compliance with FLPMA (43 U.S.C. 1714). The designation of an Areas of Critical Environmental Concern does not mean that such lands should be withdrawn from use, nor is it considered a withdrawal of use under FLPMA (43 U.S.C. 1714). FLPMA (43 U.S.C. 1712) specifically directs the BLM to give priority to the designation and protection of Areas of Critical Environmental Concern in the land use planning process. In addition, final § 1610.8-2 states that the identification of a potential Areas of Critical Environmental Concern does not, in of itself, change or prevent change of the management or use of public lands. The designation of Areas of Critical Environmental Concern will require special management attention, such as resource use determinations, as described in the final rule.

#### *General Comments Regarding Relationship to FLPMA*

One comment expressed support for the clarification of language in the proposed rule to keep in line with the language and intent of FLPMA. Other comments stated that the proposed rule generally violates FLPMA, and offered suggestions to make the proposed regulations in conformance with FLPMA. Additionally, comments asserted that the proposed rule is

inconsistent with FLPMA because it is simply procedural and not substantive, and the BLM does not have the authority to substantively revise regulations without legislative authorization.

**Comment:** One comment expressed support for the clarification of language in the proposed rule to keep in line with the language and intent of FLPMA.

**Response:** A major component of the planning rule is to make the language of the regulations more consistent with FLPMA.

**Comment:** Several comments stated that the proposed rule violates FLPMA in general terms. Some comments suggested that the BLM review the proposed rule as well as FLPMA to ensure that the final rule reflects the provisions and intent contained in FLPMA. Comments asserted that the proposed rule places greater emphasis on conservation over utilization of natural resources. Comments suggested that the BLM prepare information stating what current BLM practices are not in compliance with FLPMA, whether derived from executive or secretarial direction. Specifically, one comment suggested that proposed § 1610.6-2 should include the phrase “U.S. citizen,” in accordance with FLPMA, in order to clarify who is eligible to protest. The BLM should also coordinate with local governments during the rulemaking process in accordance with FLPMA.

**Response:** The final rule reemphasizes the BLM’s requirement to manage the public lands on the basis of multiple use, which by definition means 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. Final § 1601.0-2 reaffirms this by directing that the BLM manage the public lands in a manner that protects and preserves resources as well as recognizes the Nation’s need for renewable and non-renewable resources, such as minerals, food, timber, and fiber.

The current regulations do conform with existing law, including FLPMA; however, the BLM identified certain instances where current regulations exceeded the statutory requirements of FLPMA; e.g. existing § 1610.3-1(d). In these instances, the BLM revised the regulations so they are more in line with the specific language in FLPMA. Such instances are described throughout the preamble to the final rule, where applicable.

Final § 1610.6-2 does not include the phrase “U.S. citizen.” FLPMA defines “public involvement” as the opportunity for participation by affected citizens. FLPMA does not, however, limit participation to only U.S. citizens. The language contained in final § 1610.6-2 will reflect that of FLPMA and the provisions for public involvement within this rule.

The BLM coordinated with other governmental entities, including local governments, in the development of the rule. Please see the subsection regarding State, local, and tribal government involvement located within the “Background” section of the preamble.

### **Relationship to State-specific Federal Authorities**

#### *Alaska*

Many comments expressed concern that the proposed rule would have negative impacts on resources, issues, and regulations specific to Alaska. One comment expressed support for the proposed rule’s clarifying language.

**Comment:** A few comments asserted that the BLM’s resource management planning process for planning areas in Alaska must be fully consistent with the Alaska National Interest Conservation Act’s unique and specific provisions governing access to lands and resources.

**Response:** Section 1610.3-2(a) of the existing regulations requires that guidance, resource management plans, and amendments be consistent with officially approved or adopted resource-related plans of the agency and of other Federal agencies, as well as of State and local

governments and Indian tribes, so long as they are also consistent with the purposes, policies, and programs of Federal laws and regulations for public lands. In § 1610.3-2, the final planning rule adopts the proposed language which affirms FLPMA's requirements for consistency with other Federal land use plans, State and local governments, and Indian tribes.

For more information on consistency, please refer to the preamble discussion of § 1610.3-2.

**Comment:** A few comments asserted that the BLM must coordinate with Alaskan tribes, Alaska Native Corporations, and other inholders.

**Response:** Section 1610.3-1 of the final rule clarifies that the BLM will coordinate with and will invite government entities, including Indian tribes, to participate in the planning process as cooperating agencies. For more information on coordination, please refer to the preamble discussion of § 1610.3-1.

Additionally, the BLM reaffirms that the final rule does not negatively affect implementation of the "Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act [ANCSA] Corporations" (see § 1610.3). Government-to government consultation between the BLM and federally recognized Indian tribes, including ANCSA corporations, will continue during the preparation and amendment of resource management plans (see § 1610.3).

**Comment:** A few comments asserted that the proposed rule does not adequately ensure that Alaska's unique circumstances and uses are captured in the ANILCA, for example, and that it will diminish or repurpose existing statutory direction. Also, one comment asserted that existing statutory direction is either being seized and repurposed, interpreted to provide additional authorities, or given short shrift.

**Response:** Section 1610.3-1(c) of the existing regulations requires the BLM to provide opportunities to other Federal agencies, State and local governments, and Indian tribes to review, offer advice, and make suggestions on issues and topics of the proposed resource management plan. In § 1610.3-2, the final rule adopts the proposed language which reiterates that coordination on relevant policies and regulations is essential for the success of resource management plans and is in accordance with coordination requirements found in FLPMA.

As noted in the response above, the proposed rule did not and the final rule does not change the government-to-government relationship(s) or consultation methods for a resource management plan (see § 1610.3). Nothing in the proposed or final rule undercuts the consistency and/or coordination concerns that are unique to Alaska.

**Comment:** One commenter expressed support of the BLM for clarifying language and eliminating conflicting issues. This comment particularly appreciated the use of the term “eligible governmental entity,” which is clearly inclusive of Alaska Native corporations.

**Response:** The BLM appreciates this comment; many of the provisions included in the final rule are clarifications of provisions in the existing rule intended to make the rule easier to understand.

**Comment:** One comment asserted that the designation of Areas of Critical Environmental Concern threatens the public role and balance of the Alaska National Interest Conservation Act.

**Response:** The overarching designation and priority of Areas of Critical Environmental Concern (ACEC) is mandated by FLPMA (43 U.S.C. 1712(c)(3)). The final rule revises § 1610.8-2 to further clarify the ACEC provisions. The identification of areas with the potential to be designated as ACECs will occur during the inventory of lands (see § 1610.4(b)(1) and the

BLM will make its rationale for potential ACECs available to the public in the planning assessment report (see § 1610.4(e)). Final § 1610.8-2(b)(1) provides that the BLM shall publish a notice, which may be integrated with the notice and comment period for a draft resource management plan, when the draft plan or plan amendment involves possible designation of one or more potential ACECs.

Nothing in the proposed or final rule undercuts the resource and use concerns that are unique to Alaska.

**Comment:** One comment asserted that Alaska's federally recognized tribes possess government-to-government consultation privileges that the BLM must recognize in the planning process.

**Response:** Sections 1610.3-1(a)(4) and 1610.3-1(c) of the existing regulations require the BLM to coordinate with other Federal agencies, State and local governments, and Indian tribes. In response to public comments, the final rule includes a new § 1610.3-1, which clarifies the BLM's obligation to consult with Indian tribes and commits the BLM to initiating and conducting government-to-government consultation in the planning process.

For more information on tribal consultation, please refer to the preamble discussion of § 1610.3-1.

#### *New Mexico*

One comment asserted that the proposed changes to the planning rule are probably a violation of the terms and conditions under which New Mexico obtained statehood, per enabling legislation.

**Comment:** One comment asserted that the proposed changes to the planning rule are probably a violation of the terms and conditions under which the State of New Mexico obtained statehood, as per the enabling legislation.

**Response:** The final rule does not violate any State's rights under their respective enabling acts.

### California

A comment asserted that both federally recognized and non-federally recognized tribes are to be consulted under California SB18 and NHPA Section 106.

**Comment:** One comment asserted that National Historic Preservation Act Section 106 consultation has been occurring with both federally and non-federally recognized tribes in California, consistent with California's Senate Bill (SB) 18; however, this comment asserted, the proposed rule only includes federally recognized tribes as Indian tribes.

**Response:** The final rule is not revised in response to this comment. "Indian tribe" is defined as "an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130)." Federally recognized Indian tribes have a unique government-to-government role when interacting with the BLM.

California SB 18 is a state law, and the BLM is not subject to it. It requires cities and counties, not Federal agencies, to consult with tribes, including non-federally recognized tribes, for the purpose of protecting traditional tribal cultural places. Non-federally recognized tribes may participate in public involvement activities, including public processes under Section 106 of the National Historic Preservation Act, but are not treated as government entities for the purposes of this rule.

For more information on consultation, please refer to the preamble discussion of § 1610.3-1.

### Oregon

A couple of comments expressed concern regarding Oregon & California Act (O&C Act) land and cooperative relationships.

**Comment:** A couple of comments asserted that the BLM should address O&C Act land in its regulation with respect to cooperative relations.

**Response:** A detailed discussion on cooperative relationships with the O& C Counties is outside the scope of this rulemaking..

Section 1610.3-2 of the final rule does clarify that the BLM will coordinate with and invite government entities, including Indian tribes, to participate in the planning process as cooperating agencies. For more information on coordination, please refer to the preamble discussion of § 1610.3-2.

## **Implementation of the Final Rule – General Comments**

### Designations

The BLM received several comments concerning the implementation of the final rule regarding resource management plan designations. Many of these comments concerned particular types of designations, such as ACECs or Backcountry conservation areas, and others included suggestions for what the Land Use Planning Handbook should include for designations.

**Comment:** One comment asserted that the proposed rule does not require protective management for ACECs to be included in a resource management plan. The comment suggested

that the BLM should detail in the Land Use Planning Handbook that resource management plans must include management direction specific to each ACEC.

**Response:** Section 1610.8-2(b)(2) of the final rule directs that any approved resource management plan or plan amendment that contains an ACEC designation include “any special management attention, such as resource use determinations, identified to protect the designated ACECs.” The BLM expects to address the designation of ACECs, as well as the identification of special management attention, in the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment requested that the BLM clearly identify impacts of all special designations on public recreation and wildlife management during scoping and plan drafting. The comment recommended that the BLM develop guidance instructing planners to identify such impacts during scoping and drafting.

**Response:** The BLM will generally consider impacts, including those on public recreation and wildlife management from special designations, when it conducts the analysis of alternatives for a particular planning effort. Potential designations, such as ACECs, and preliminary issues may be identified during the scoping process; however, the BLM cannot appropriately evaluate those impacts earlier in the NEPA process. The BLM will identify and analyze the impacts of resource management plans and plan amendments in accordance with NEPA and the final rule. For more information on effects analysis, please see the preamble discussion of § 1610.5-3.

**Comment:** A few comments recommended that the BLM create a backcountry conservation area designation. One comment expressed appreciation for the inclusion in the preamble of backcountry conservation areas as a potential designation, stating that the large areas of intact habitats that the proposed rule mentions can be managed as backcountry conservation

areas. Such areas provide high quality fish and wildlife habitat and important recreation opportunities, and conserving these areas is important for multiple-use management. The comments included these specific recommendations:

- Issue formal guidance for backcountry conservation areas through the Land Use Planning Handbook;
- Designate as backcountry conservation areas identifiable tracts of public lands that are generally intact, generally undeveloped, contain priority fish and wildlife habitat, and provide dispersed outdoor recreation opportunities. Desired outcomes for areas designated as backcountry conservation areas should focus on conserving, restoring, and maintaining the intact and undeveloped character of such lands;
- In designated backcountry conservation areas, establish objectives for management activities that conserve, restore, maintain, and enhance fish & wildlife habitat, control and manage noxious weeds, and restore forests and rangelands.
- Make primitive, semi-primitive non-motorized, and semi-primitive motorized recreation opportunity spectrum classes available in backcountry conservation areas;
- Designate backcountry conservation areas as limited or closed to off-highway vehicles;
- Allow backcountry conservation area lands to be open to new leasing (with stipulations);
- Make backcountry conservation areas exclusion areas for new right-of-ways;

- Make backcountry conservation areas exclusion areas for renewable energy development;
- Allow grazing within backcountry conservation areas; and
- Allow existing mineral rights to be exercised in backcountry conservation areas while making reasonable effort to reduce surface disturbances and prevent habitat fragmentation.

**Response:** The final rule does not include a definition for backcountry conservation areas, nor does it include an extensive list of the designations currently used by the BLM. However, this does not preclude the use of such designations in future resource management plans. The BLM will consider these recommendations in developing future guidance for land use planning, such as through Instruction Memoranda and/or within the forthcoming Land Use Planning Handbook revision. Further, the BLM expects that the forthcoming Land Use Planning Handbook will provide additional guidance on designations.

**Comment:** One comment recommended that the BLM include guidance in the Land Use Planning Handbook that allows planners to identify land areas of limited, restricted, or exclusive use and designation, which would include but not be limited to ACECs, backcountry conservation areas, and wildlife migration corridors. The comment noted that these areas would not be suitable for wilderness designation but retain significant hunting, angling, and backcountry recreation values. The comment referenced past resistance from state and field offices to the idea of reserving areas for hunting, fishing, and outdoor recreation.

**Response:** Section 1610.1-2(b) requires that resource management plans include plan components such as resource use determinations and designations in order to achieve goals and objectives or other applicable legal requirements or policies. The BLM has the discretion to

designate areas of public land where management is directed toward one or more priority resource values or uses, such as for wildlife corridors, backcountry conservation areas, or other recreation management areas. The BLM will consider these resource values during the land use planning process. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance on planning designations.

**Comment:** One comment included the observation that the BLM's addressing of migratory birds has been mostly informal and done on the state and local levels. This comment noted that there is no agency-wide management strategy for migratory birds and that there are many key points in the BLM's 2013 Strategic Plan for Migratory Bird Conservation that apply to Planning 2.0. According to the Strategic Plan for Migratory Bird Conservation, within one year of its approval, the Washington Office was to have incorporated consideration of national and regional bird conservation plan goals into every resource management plan document, developed metrics for determining the effectiveness of plan implementation and guidance on outcomes to migratory birds, and completed a draft of the handbook for migratory bird conservation on BLM lands. The Strategic Plan emphasizes that special designations should be considered to conserve bird habitat and expressed a goal to identify at least one focal area for priority migratory bird habitat management per district. The comment recommended continuing to use special designations like Important Bird Areas, ACECs, Watchable Wildlife, Habitat Management Plan Areas, and Habitat Management Areas to conserve bird habitat. It also recommended providing specific guidance that emphasizes designation and protection of ACECs and setting baseline prescriptions for each type of ACEC.

**Response:** While the issue is too specific to be captured in this rule, and while the 2013 Strategic Plan for Migratory Bird Conservation itself is outside the scope of this rule, the BLM

expects to continue to implement the Strategic Plan when developing resource management plans. For example, final § 1610.1-2 requires that resource management plans include goals and objectives for resources and establish designations or resource use determinations to achieve goals and objectives. The BLM will consider the goals and objectives for migratory bird habitats when identifying such designations (*e.g.*, Important Bird Areas, ACECs, and Habitat Management Areas) or resource use determinations in its land use planning processes. Further, the BLM expects that the forthcoming Land Use Planning Handbook revision will include program and resource-specific guidance in addition to guidance for establishing designations.

**Comment:** A few comments expressed concern regarding the flexibility for identifying new special designations and recommended that the BLM should not be tied down to designations listed in the manual or handbook. New challenges facing land managers, as well as landscape-scale planning, should allow for innovation. These comments recommended that the BLM allow planners to design special designations to address specific conservation concerns that may not be explicitly named or addressed in the manual. These designations should include management objectives and exclusion of incompatible uses. The BLM should then update the Land Use Planning Handbook with guidance accordingly.

The comments also recommended that the BLM provide a list of examples of designations and management prescriptions in the Land Use Planning Handbook but explicitly state that the list is not exhaustive; that other designations may be more appropriate for managing priority values and uses and to adapt to changing conditions and resource needs. It also recommended that the BLM clarify in the Land Use Planning Handbook and rule that BLM has the authority to identify new planning designations consistent with its authorities and obligations under the law.

**Response:** Section 1610.1-2(b)(1) of the final rule requires that resource management plans include plan components, such as designations and resource use determinations, in order to achieve the goals and objectives identified in the plan. The BLM will continue to have discretion in creating administrative designations. This discretion provides for the flexibility necessary to address landscape-scale planning and allow for innovation. While the BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance on establishing designations in the planning process and will list examples of designations, the BLM is not precluded from developing other designations to address resource issues.

The BLM may establish future designations consistent with its authorities and obligations under the law and in accordance with the provisions of the final rule. The BLM believes that this issue is better addressed through policy rather than through this rulemaking.

**Comment:** One comment recommended that the BLM layer designations, such as those for recreation, to ensure proper management of the BLM's land.

**Response:** The final rule does not prevent the layering or overlapping of designations when BLM prepares or amends a specific resource management plan. However, when identifying potential designations, the BLM must consider the appropriateness of layering designations. For example, it would be unnecessary to layer multiple designations that would have the same level of protection under one designation. The BLM will consider the goals and objectives identified in the resource management plan when applying specific plan components, such as designations and resource use determinations.

**Comment:** One comment asserted that the Land Use Planning Handbook is not the appropriate place to define additional land conservation designations, as referenced in the preamble, but that these designations should be described in the rule. This comment

recommended that the creation of any new designation should go through the public review process.

**Response:** The BLM retains the discretion to create and apply administrative designations. It would be inappropriate to list all existing designations within the rule. The BLM believes that this topic is better addressed through policy. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance on designations. The BLM also expects that the revised Land Use Planning Handbook will also be made available for public review prior to being finalized. Further, any designation established in a resource management plan will be made through the NEPA process, which includes public involvement.

**Comment:** One comment suggested that the BLM should publish or make available the list of designations in the forthcoming Land Use Planning Handbook before actually publishing the new Land Use Planning Handbook. The comment noted that identifying these in advance would be beneficial to provide input during this rule making.

**Response:** Since the Land Use Planning Handbook will provide guidance for implementing the final rule, the BLM did not make the draft Land Use Planning Handbook available for public review before publishing the rule. However, the BLM expects to make the forthcoming Land Use Planning Handbook revision available to the public prior to it being finalized. The Land Use Planning Handbook revision will include a list of designations as well as guidance for applying them.

**Comment:** One comment suggested that the BLM facilitate responsible energy development by including designations and tools like Solar Energy Zones, master leasing plans, and designated utility corridors in the rule and Land Use Planning Handbook and addressing them early on in planning. The comment noted that these tools help address the environmental

and socioeconomic impacts of energy development and are a smart way to plan. Considering energy-related designations in the planning assessment gives the BLM, developers, and the public the necessary amount of time to analyze site-specific conditions before finalizing a resource management plan. It also increases public engagement. The comment included these recommendations:

- The BLM should incorporate Solar Energy Zones, master leasing plans, designated utility corridors, and similar into the planning assessment guidance of the Land Use Planning Handbook;
- The BLM should include how to identify potential locations for advanced energy development planning including the factors to consider and criteria to be used in the Land Use Planning Handbook, particularly in the planning assessment section;
- The BLM should make the language used in this section of the Land Use Planning Handbook easy for the public to understand. Identify “Study Areas” for potential solar and wind energy areas and “Potential Master Leasing Plans” in the planning assessment. Carry this terminology through to the final RMP, using “Designated Leasing Areas” and “Energy Zones;” and
- The BLM should note that potential areas for energy development identified in the planning assessment would indeed be preliminary. The BLM could identify a need for more information or modify the locations as necessary.

**Response:** The BLM will continue to utilizing existing tools, such as Solar Energy Zones and master leasing plans, and by designating utility corridors. Because terminology changes and new tools are constantly being developed, it would be inappropriate to list the BLM’s various approaches to energy development in the planning rule. However, the comment’s

recommendations will be considered in the revision of the Land Use Planning Handbook. The BLM expects that the forthcoming Land Use Planning Handbook will include guidance on designations in resource management plan development, including those for energy development. Further, the BLM expects to address the application of new and existing approaches in future guidance, such as through program-specific handbooks or manuals and Instruction Memoranda.

**Comment:** A few comments noted that master leasing plans are not mentioned or are only indirectly mentioned in the proposed rule. One comment recommended that master leasing plans be institutionalized in Planning 2.0 so they become widely accepted and used. The comment recommended including master leasing plans in the final rule and Land Use Planning Handbook. These comments noted that master leasing plans provide a more comprehensive and strategic approach to energy leasing and development than resource management plans do and encourage collaboration between agencies and help achieve landscape-level objectives, and that master leasing plans have proven successful at avoiding conflicts, including in sensitive areas.

**Response:** The BLM recognizes the importance of facilitating responsible energy development and agrees that master leasing plans are an effective tool for achieving responsible development. However, while this issue is too specific to include in the planning rule, the BLM expects to address it in future guidance such as the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment recommended that the BLM include guidance in the Land Use Planning Handbook for designating Special Recreation Management Areas and Extensive Recreation Management Areas and managing them as quiet recreation opportunities.

**Response:** When evaluating potential designations for recreation, the BLM will consider the goals and objectives identified in the resource management plan and the existing or proposed recreation opportunities for that area. Certain values such as quietness and solitude may be considered when delineating such areas. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance on designations in resource management plan development, including Special Recreation Management Areas and Extensive Recreation Management Areas.

#### Adaptive Management

The following comments included recommendations on adaptive management, monitoring, plan revisions, and the BLM's ability to respond to change. Some of the comments also included suggestions on public review of these items. The comments related to implementation of plans and development of guidance in the Land Use Planning Handbook.

**Comment:** One comment recommended that the BLM develop monitoring and inventory practices so that these activities are completed more frequently, which would help ensure that plans are dynamic and responsive to change. It noted that if the BLM were to conduct more frequent monitoring and update plans more frequently through amendments then plan revisions would not be so time-consuming.

**Response:** The BLM recognizes that monitoring and evaluation of resource management plans will improve plan amendments and revisions, potentially decreasing the time it takes to complete them. Resource management plans developed under the final rule includes monitoring and evaluation standards in accordance with § 1610.1-2(b)(3) of the final rule. These standards will include indicators and intervals. Section 1610.6-4 of the final rule requires that the BLM monitor and evaluate resource management plans in accordance with the monitoring and

evaluation standards. The BLM expects that additional guidance, such as the forthcoming Land Use Planning Handbook revision, will include recommendations on how to structure and time the monitoring and evaluation of plans.

**Comment:** One comment asserted that the use of adaptive management should be available for the public to review.

**Response:** Section 1610.1-2(b) of the final rule requires that resource management plans include specific, measurable objectives with established timeframes. Section 1610.1-2(b)(iii) also provides that objectives include indicators for evaluating progress toward achievement of the objective. In applying an adaptive management approach, measurable objectives could identify a threshold that triggers a response, such as the initiation of a plan amendment. While adjustments in management may be made in order to achieve objectives, any use of adaptive management that results in changes to a plan component must occur through a plan amendment or revision, and therefore, are subject to the public involvement requires contained in final § 1610.2.

**Comment:** A few comments asserted that adaptive management should be made more effective and based on solid evidence. These comments noted that adaptive management has become a meaningless term in natural resources management. Often, if post-management monitoring is done at all, it does not produce reliable results because the effects of the management action are confounded with other environmental changes. Ambiguous evidence is often selectively used or disregarded to justify management costs.

The comments stated that there is a lot of public money involved in BLM's work, so the BLM should commit to demonstrating and quantifying the public benefits involved. When there is no evidence to clearly justify local management actions, litigation results. These comments

included the view that adaptive management, as it is currently defined by DOI, is not necessarily helpful to the environment and cited the implementation of a travel management plan in a National Monument as an example.

These comments recommended an expanded use of experimental adaptive management in BLM projects and designing local experiments with clearly stated, measureable goals and with a design including controls and replicated random sampling. The comments also recommended using an ecological approach to adaptive management that describes adaptive management as a series of steps: assess the problem; design; implement; monitor; evaluate; adjust; and again assess the problem. This process identifies monitoring conditions to address an ecological problem. The data from monitoring can be evaluated for causal factors and determine management actions. The comments also requested a brief description of the ecological approach to adaptive management in the rule and using the Land Use Planning Handbook to explain how to apply it.

**Response:** One of the goals of Planning 2.0 is to improve the BLM's ability to respond to social and environmental change in a timely manner. The Planning 2.0 initiative and this goal relate to other BLM initiatives, including improved adaptive management. The final rule uses the framework from the DOI Adaptive Management Technical Guide, which uses an operational definition adopted from the National Research Council. This operational definition focuses on "flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood." The final rule, through the provisions for monitoring and evaluation as well as plan amendments and revisions, will include flexibility for change.

Differing definitions of adaptive management, such as the framework outlined in these comments, may place a greater emphasis on experimentation and comparison to control plots. The BLM must comply with NEPA, FLPMA, the Endangered Species Act, and other Federal statutes.

The BLM will manage its lands in accordance with the principles of multiple use and sustained yield of FLPMA. In addition to the planning rule, the BLM will use guidance such as the DOI Adaptive Management Technical Guide, in implementation of resource management plans. The BLM expects that the forthcoming Land Use Planning Handbook revision, currently under development, will also include guidance on adaptive management in resource management plan development.

**Comment:** One comment requested that BLM further develop and explain details for adaptive management in the Land Use Planning Handbook such as by including information regarding thresholds and triggers that would spur a change.

**Response:** Section 1610.1-2(b)(3) of the final rule provides for monitoring and evaluation standards, including indicators and intervals, to be included in resource management plans as plan components. The BLM expects that the forthcoming Land Use Planning Handbook revision will provide further guidance for implementing the final rule, including guidance on monitoring, evaluation and adaptive management.

#### *State-Specific Implementation*

**Comment:** One comment requested that the BLM collaborate with the State of Alaska on a supplement to the Land Use Planning Handbook that addresses the Alaska National Interest Lands Conservation Act and other issues directly related to Alaska's unique circumstances. The

comment noted that the BLM needs to address ANILCA issues, including subsistence use and access, inholding access, access for traditional activities, and transportation and utility systems.

**Response:** The Land Use Planning Handbook revision is currently under development. The BLM recognizes that Alaska's circumstances and the provisions of ANILCA make it unique; however, the BLM believes it is unnecessary to create a supplemental handbook solely for Alaska. The BLM will comply with ANILCA as well as regulations and policies specific to Alaska in when developing resource management plans. Additionally, the BLM will coordinate with State governments through the provisions of § 1610.3 of the final rule.

#### Planning Assessment

**Comment:** One comment expressed concern with assessment tools such as the assessment-inventory-monitoring strategy and Rapid Ecoregional Assessments. The comment asserted that the use of these tools as foundational data makes it difficult to analyze impacts and could restrict acceptable resource uses. Another comment claimed that inaccurate Rapid Ecoregional Assessments will result in ineffective management decisions, directing funding away from real issues and toward less important ones.

**Response:** Assessment tools often represent the best available information about resource conditions. In the case of the Rapid Ecoregional Assessment, it synthesizes the best available information about resource conditions and trends within an ecoregion and highlights areas of high ecological value as well as areas that have high energy development potential and relatively low ecological value, which could be well-suited for siting future energy development. Rapid Ecoregional Assessments establish landscape-scale baseline ecological data to help gauge the impact and effectiveness of future management activities and is an important step in support of adaptive, landscape-scale management approaches. Rapid Ecoregional Assessments will not be

the BLM's sole source of information in the development of resource management plans, but rather a tool to be used in conjunction with other data. The BLM is also implementing its Assessment, Inventory, and Monitoring Strategy, which was developed to standardize data collection and retrieval so that information is comparable over time and can be readily accessed and shared. The Strategy provides a process for the BLM to collect quantitative information on the status, condition, trend, amount, location, and spatial pattern of renewable resources on the nation's public lands.

#### Capacity of BLM

A few comments included concerns about whether or not the BLM will have the capacity to effectively implement the final rule.

**Comment:** One comment expressed concern that the BLM does not have adequate resources to implement resource management plans, and recommended that the BLM commit a meaningful portion of planning resources to implementation, particularly fish and wildlife habitat projects, and to immediately commit funds to wildlife habitat plan implementation upon resource management plan revision completion.

**Response:** While the BLM acknowledges the importance of this issue, it is outside the scope of this rulemaking. Due to uncertainties in future funding, the BLM cannot make any commitments to out-year funding. The final rule cannot make any funding commitments for resource management plan or fish and wildlife habitat project implementation.

**Comment:** One comment stated that the proposed rule does not fix the problem that BLM planners are overloaded with difficult projects and experience shifting priorities. This comment recommended allowing planners adequate time and consistent direction to complete planning efficiently.

**Response:** The final rule provides a framework for future resource management plans and plan amendments. The forthcoming Land Use Planning Handbook will provide further guidance for implementing this rule. The BLM cannot predict future funding, priorities, or on-the-ground needs. Further, the BLM cannot make any commitments to out-year funding that may affect the workload of planners.

*Capacity of Public*

**Comment:** One comment asserted that implementing Planning 2.0 would result in increased costs for stakeholders. The comment specifically noted that the rule would result in excessive assessment and mitigation, over and above what is prescribed in FLPMA and the BLM's guiding principles.

**Response:** The BLM conducted an Economic and Threshold Analysis for Planning 2.0, which was released with the proposed rule. This analysis concluded that although the rule will likely affect most, if not all, entities that elect to become involved in the BLM's planning process, the economic impacts are not expected to be significant.

The BLM does not believe that the assessment requirements in the final rule are excessive. For example, the planning assessment phase is an alteration of the BLM's Analysis of the Management Situation. The BLM expects that the early involvement offered in this phase will help create a more efficient planning process. Additionally, the final rule will not result in excessive mitigation. Section 1610.1-2(a)(2)(i) provides for mitigation standards to be included as part of resource management plan objectives. This approach is consistent with Secretarial Order 3330 and the BLM's interim policy on regional mitigation.

## Collaboration

Several comments related to public involvement, collaboration, and the BLM's relationship with the public during implementation of the proposed rule. A few comments referenced past experiences with the BLM.

**Comment:** A few comments noted that the BLM has a poor track record of engaging and coordinating with stakeholders and that the BLM has harmed its relationships with local governments, Indian tribes, and organizations by not engaging in meaningful discussion on local issues and failing to inform stakeholders of critical changes in resource management plans. These comments indicated that local organizations are tired of trying to coordinate with the BLM when their input does not seem to matter, and one comment expressed the opinion that the BLM does not value planning or planners and does not provide them with the tools for effective collaboration. The comments recommended giving planning jobs to people who have the appropriate skills and training to conduct collaborative planning as well as giving planners formal collaboration training.

**Response:** The hiring of personnel is outside the scope of this rulemaking. The BLM believes that the final rule creates a more efficient planning process, particularly by improving collaboration with the public, State and local governments, and Indian tribes. The BLM will coordinate with other Federal agencies, State and local governments, and Indian tribes in accordance with § 1610.3-2 of the final rule.

**Comment:** One comment suggested that the BLM continue the use of Desk Guide to Cooperating Agency Relationships and the travel management plan process.

**Response:** The BLM will continue to use the concepts of the existing Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners as it

relates to cooperating agencies under NEPA and coordination under FLPMA. However, the BLM expects to revise the Desk Guide to incorporate the new planning regulations. While travel and transportation planning is outside the scope of this rulemaking, the BLM will continue to conduct travel management plans in accordance with program-specific guidance such as BLM Manual 1626.

**Comment:** One comment suggested that the BLM specify in the Land Use Planning Handbook how the BLM will coordinate with other Federal agencies such as the U.S. Forest Service and the National Park Service when their lands are adjacent to BLM's planning area. A truly coordinated planning effort could result in more effective public outreach, better accommodate wildlife migration and habitat, and allow for better human transportation across the landscape.

**Response:** The BLM agrees that coordination with other agencies makes for a more effective planning process. Section 1610.3-2 of the final rule requires the BLM to coordinate its land use planning processes with other Federal agencies, including the U.S. Forest Service and the National Park Service. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance for coordinating with other agencies.

**Comment:** A few comments expressed concern that expanding public participation in resource management planning will cause delays in the process, including litigation. The comments noted that the proposed rule imposes a need for academic input and studies that are not significantly related to the subject matter.

**Response:** One of the goals of Planning 2.0 is to increase public involvement. Past experience and research, including the 2008 General Accounting Office report "Natural Resource Management: Opportunities Exist to Enhance Federal Participation in Collaborative

Efforts to Reduce Conflicts and Improve Natural Resource Conditions,” indicate that an upfront investment of resources in public involvement can reduce delays and litigation in planning for and managing natural resources. Early public involvement and identification of issues plays a role in reducing the amount of delays or litigation. Although the final rule increases the opportunities for public involvement, it does not require any particular public involvement such as through academic input nor does will the BLM request information that is not relevant.

#### Public Review of Effects Analysis

**Comment:** One comment asserted that the proposed rule is silent on how stakeholders can engage during plan implementation and agency decision making, and how to ensure this ties back to the resource management plan. The final rule should address accountability and enforceability of implementation strategies and management actions.

**Response:** In response to public comments the final rule does not adopt the concept of implementation strategies. While BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance on plan implementation, implementation decisions are subject to additional NEPA analysis and BLM program-specific procedural or regulatory requirements. Therefore, it is unnecessary to provide further detail on implementation decisions in this rule. Stakeholders may engage in implementation-level decisions in accordance with the requirements of NEPA and individual BLM programs.

#### Enforceability

**Comment:** A few comments recommended that the BLM clarify in the final rule that monitoring and evaluation standards are subject to agency priorities and are not enforceable under 5 U.S.C. 706(1), citing *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 72. Comments also recommended including a mechanism for public oversight and agency

accountability, particularly because analysis and inventory requirements in plans are unenforceable. The comments cited *Soda Mountain Wilderness Council v. Norton* as an example of a land use plan that was determined to be at least partially enforceable because the Record of Decision included the statement that it “represents BLM’s commitment to these public desires and constitutes a compact with the public.”

**Response:** The BLM recognizes that the implementation of monitoring and evaluation may depend on some factors outside of the BLM’s control, including available staffing and budgets, and that the BLM cannot reasonably predict future budgets and staffing availability. The intent of this plan component is to guide the BLM in prioritizing available staffing and budgets in order to achieve the goals and objectives of the plan most effectively.

#### FLPMA

A few comments pertained to the relationship between the proposed rule and different provisions of FLPMA, including oil and gas leasing and the unnecessary or undue degradation standard.

**Comment:** One comment expressed the opinion that the BLM misleads the public by discussing a “vision” for public lands when the decisions for public land management are not at the sole discretion of the BLM and must comply with FLPMA including regarding oil and gas leasing. The comment noted that the BLM cannot let public views override FLPMA mandates. The comment suggested that the BLM should explain to the public that it must offer land for oil and gas leasing, and before asking the public to “envision” use of an area, the BLM should explain to the public that oil and gas leases must be honored. This comment recommended that the BLM incorporate into the proposed rule and Land Use Planning Handbook requirements to

communicate to the public decisions that the BLM can legally make in planning for a given resource area.

**Response:** FLPMA requires the BLM to manage public lands on the basis of multiple use and sustained yield. FLPMA also provides for public involvement in the BLM's land use planning processes. Identifying public views for a particular planning area during the envisioning process does not conflict with the BLM's other requirements under FLPMA. The final rule does not adopt the suggested provision requiring the BLM to explain oil and gas leasing to the public. The BLM must comply with valid existing rights, and the final rule reflects this obligation. For example, final § 1610.1-2(b)(2) describes that a resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed. Further, final § 1610.4(d)(2) provides for any known valid existing rights to be included in the planning assessment. Because the final rule requires the BLM to make the planning assessment report publicly available, any known valid existing rights in the planning area will be communicated to the public at that time.

**Comment:** One comment recommended that the BLM incorporate the prevention of unnecessary or undue degradation of land into Planning 2.0 in either the rule or Land Use Planning Handbook, or both. The comment noted that FLPMA requires that the Secretary of the Interior take any action necessary to prevent unnecessary or undue degradation of the lands, but this standard has historically been absent from the BLM's planning rule and Land Use Planning Handbook. The BLM is obligated to explain how the standard is being met.

**Response:** The BLM has a statutory requirement under FLPMA (43 U.S.C. 1732(b)) to prevent unnecessary or undue degradation of public lands; however it is not practical or necessary to include all requirements under FLPMA in the planning rule or the Land Use

Planning Handbook. The BLM will comply with all requirements under FLPMA when developing resource management plans. Further, the unnecessary or undue degradation standard is specific to BLM regulations at 43 CFR 3809, and is therefore better addressed through BLM guidance pertaining to those regulations.

*Land Use Planning Handbook*

Many comments related to the development of the Land Use Planning Handbook (H-1601-1), specifically regarding how the BLM will develop the Handbook revisions, the timeframe for revision, and opportunities for public involvement or review.

**Comment:** Several comments questioned how the Land Use Planning Handbook can be updated before the proposed rule is final. These comments requested information on what opportunities stakeholders will have to review and comment on the Handbook. Some comments suggested that if the Handbook is currently being revised, perhaps the BLM does not intend to incorporate issues identified during public comment period for the proposed rule. Many of the details regarding implementation of the proposed rule are not included in the rule itself or the preamble, but are instead said to be included in the Handbook. The public should be able to understand and comment on how the ambitious new measures, like landscape-scale planning and adaptive management, will work.

These comments recommended that the BLM release the draft Handbook for public review and comment before the planning rule is finalized and explain to stakeholders why revisions are needed and how they will work on the ground before the rule is finalized.

**Response:** The BLM is currently developing the Land Use Planning Handbook. Because the Handbook must reflect the final rule, it is necessary to complete and release the Handbook after the rule is final. The BLM is developing the Handbook in consideration of the comments

made on the proposed rule. The BLM expects to release the forthcoming Land Use Planning Handbook for public review before it is finalized.

**Comment:** A few comments expressed concern that their comments on the proposed rule will only be addressed in the Handbook, which unlike the rule, is not mandatory or enforceable. These comments also noted that the preamble is not enforceable, and the rule itself should reflect the BLM's commitment to high quality public land management. One comment identified commitments to landscape-level planning, adaptive management, and ACEC priority as areas that should be highlighted in the final rule.

**Response:** The BLM believes that the final rule reflects the overarching goals of Planning 2.0 and other concepts identified in the preamble, such as landscape-scale planning and adaptive management. While these terms are not used extensively throughout the rule, changes to the BLM's planning regulations presented in the final rule facilitate their use. For example, final § 1610.1-2(a)(2) requires resource management plans to include specific, measurable objectives with established time frames for achievement and indicators for evaluating progress. Such objectives could be used to identify thresholds that trigger a plan amendment when exceeded, therefore facilitating the use of adaptive management. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance on implementing these concepts in the planning process. FLPMA (43 U.S.C. 1712(c)(3)) requires the BLM to give priority to the designation and protection of ACECs in the land use planning process. The BLM acknowledges this requirement and believes that it is adequately reflected in the final rule. For more information on ACECs, please see § 1610.8-2 of the final rule.

**Comment:** One comment requested to be included as a cooperating agency with statutory authority and special expertise when the BLM develops a list of designations to be used in planning for the revised Land Use Planning Handbook.

**Response:** The BLM's NEPA regulations at 43 CFR 46.225 provide for cooperating agency participation in the development of EISs. The BLM is not required to include cooperating agencies in the preparation of policy and guidance, such as Departmental Manuals or handbooks. The BLM expects to make the draft Land Use Planning Handbook revision available for public review prior to finalizing it, and will engage with the public, other Federal agencies, State and local governments, and Indian tribes on the final rule.

**Comment:** A few comments requested that different entities be contacted directly and early on to engage in meaningful, ongoing consultation regarding the Handbook revision. One comment requested that the BLM engage with stakeholders, including resource advisory councils, when revising the Handbook. Comments requested that the BLM include opportunities for meaningful involvement and dialogue with local residents when revising sections of the Handbook.

**Response:** The BLM expects to conduct outreach with the public, other Federal agencies, State and local governments, and Indian tribes during the development of the Handbook; however, the BLM will not formally consult with other entities on the development of the Handbook revision. The BLM expects that it will make the draft Handbook publicly available prior to finalizing it.

**Comment:** One comment asserted that separately revising the regulations and the Land Use Planning Handbook is improperly segmenting the implementation of Planning 2.0. This comment noted that separating the revisions does not provide the full scope of their impact under

NEPA, and recommended conducting NEPA analysis of the revisions to the Land Use Planning Handbook and regulations together.

**Response:** The BLM has complied with NEPA in the preparation of the final rule. The Land Use Planning Handbook revision is currently under development. As it will reflect the final planning rule, it cannot be finished until after the rule is finalized. The BLM expects that the Land Use Planning Handbook will provide guidance for implementing the final rule and will not change the scope of its impact.

**Comment:** One comment noted that collaboration with governments and tribes on the Land Use Planning Handbook will help incorporate traditional environmental knowledge into planning.

**Response:** The BLM expects to release the Land Use Planning Handbook for public review prior to finalizing it. Under the final rule, the BLM will collaborate with governments and tribes in the planning process. The BLM will incorporate traditional ecological knowledge into planning processes through public involvement and coordination with governments and tribes.

**Comment:** One comment requested to be informed when the draft Land Use Planning Handbook is available for public review.

**Response:** The BLM will provide an opportunity for public review of the draft Land Use Planning Handbook. However, the format of that review is beyond the scope of this rule.

**Comment:** A few comments recommended that the BLM consult with affected tribes as the Land Use Planning Handbook is revised. One comment expressed appreciation for the acknowledgement that more work needs to be done early on, but urged the BLM to follow

through by collaborating on the Land Use Planning Handbook with tribes regarding Planning 2.0 implementation.

These comments noted that there are limited funds to manage the enormous amount of cultural resources, many irreplaceable, on BLM lands, including Traditional Cultural Properties currently used by tribes. Early involvement by tribes will ensure proper management and safeguarding of sites, particularly when landscape-scale planning is implemented. Working with tribes earlier is valuable, because there is a limit to the issues that can be addressed with a National Historic Preservation Act Section 106 review. There is no single Federal policy that provides all the protections that tribes desire, so it is essential to work with tribes early.

**Response:** The final rule includes provisions for government-to-government consultation in resource management plan development, including early involvement beginning with the planning assessment phase. By working with Indian tribes, the BLM hopes to address some of the challenges described in these comments. The BLM expects to make the Land Use Planning Handbook available for public review, but will not engage in formal government-to-government consultation on its development.

**Comment:** One comment suggested that the BLM use and refer to National Conservation Lands policies as a model for landscape-scale planning in the rule and Land Use Planning Handbook. The National Conservation Lands 15-year strategy's goals include an emphasis on an ecosystem-based approach; the adoption of a cross-jurisdictional, community based approach to landscape-level planning and management; working with Congress, governments, and the public to identify and protect lands critical to landscape sustainability; and the adoption of a community-based approach to recreation and visitor services delivery. A few comments requested that the revised Land Use Planning Handbook clearly adopt or specifically invoke land

use planning direction found or referenced in National Landscape Conservation System directives MS-6100, MS-6250, and MS-6280. The comments noted that this language is important to integrated resource management planning from a conservation standpoint and is important to planning and management of national trails as ACECs.

**Response:** The final rule and Land Use Planning Handbook revision builds upon lessons learned from BLM projects, programs, planning efforts, and initiatives including the National Landscape Conservation System's 15-year strategy. Further, many of the goals presented in the 15-year strategy are shared by Planning 2.0, such as landscape-scale planning and increased public involvement. The BLM expects that the Land Use Planning Handbook revision will incorporate program-specific guidance, such as for National Scenic and Historic Trails and the National Landscape Conservation System. While it is not appropriate to include all BLM program directives in this rulemaking, the BLM recognizes the importance of integrated resource management planning and will continue to use the agency manuals referenced above where applicable.

**Comment:** A few comments asserted that any required elements of a plan should be named in the regulations, not just in the Land Use Planning Handbook, because of the concern that BLM staff view the Land Use Planning Handbook as optional. For example, a BLM webinar explained that the Land Use Planning Handbook will provide for using key attributes and indicators to measure resource conditions. However, "key attributes and indicators" are not included in the rule. The comment recommended that the BLM name required elements of a plan in the rule and describe them in detail in the Land Use Planning Handbook.

**Response:** In response to public comments, final § 1610.1-2(a)(2)(iii) provides for plan objectives to include indicators for evaluating progress. The final rule provides a framework,

including any required elements, for revising and amending resource management plans. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance for implementing the final rule.

#### Resource Management Plan Implementation

Several comments related to how the BLM will implement resource management plans after developing them.

**Comment:** One comment suggested that follow-through on plans is needed and that resources should not be wasted on developing plans that are never implemented or on plans that will be out of date when eventually adopted.

**Response:** The BLM believes that the final rule makes for a more efficient planning process and improves the ability to monitor and evaluate resource management plans. Doing so will ensure that resource management plans are implemented in a timely fashion, and when appropriate, revised or amended to respond to change.

**Comment:** A few comments included the view that once a resource management plan is final, BLM resource programs act independently of each other and without public oversight. The comment suggested that the BLM should create a team focused on implementation of a resource management plan. The team could help with adaptive management and keeping the public engaged with implementation.

**Response:** Implementation decisions are subject to further NEPA analysis and the public oversight provided by that Act. Further, the BLM uses an interdisciplinary approach in accordance with NEPA when analyzing these actions, incorporating the various BLM programs to collectively implement resource management plans. Public involvement for these decisions will occur as appropriate through the respective BLM office.

**Comment:** One comment expressed concern that implementation actions require varying amounts of time and effort but that there is no distinction between them in the rule. Some implementation actions require NEPA analysis or public participation, while others are not so complex. This comment recommended splitting implementation of resource management plans into two categories: implementation plans, which are more complex or controversial and require NEPA analysis or public input, and implementation strategies, which are less controversial or complex and more streamlined. The comment recommended providing guidance in the Land Use Planning Handbook on these implementation categories.

**Response:** The final rule does not adopt the proposed concept of implementation strategies. Further, the BLM will not adopt the recommendation to create two categories in the final rule for implementation activities because it does not consider this distinction to be meaningful or necessary. NEPA regulations provide a sufficient basis for determining the necessary level of analysis needed for a particular implementation-level action. The distinction on controversy or complexity would be vague and difficult to define or implement, and therefore unnecessary. The BLM expects that the forthcoming Land Use Planning Handbook revision will include guidance on implementation decisions.

*Multiple Preferred Alternatives (Section 1610.5-4)*

**Comment:** One comment recommended that the BLM include information in the Land Use Planning Handbook to indicate that choosing multiple preferred alternatives or deferring identification of alternatives should be done only when absolutely necessary or to allow for cooperation between agencies. These actions should not be taken to reduce negative feedback by appeasing stakeholders.

**Response:** The CEQ regulations at 40 CFR 1502.14(e) requires that an EIS identify the agency's preferred alternative or alternatives, if one or more exists, in the draft EIS. Section 1610.5-4(a)(3) of the final rule is consistent with this requirement under NEPA. The BLM will not select multiple preferred alternatives, or defer the identification of alternatives, for the sake of appeasing stakeholders. Rather, at the draft stage of an EIS and resource management, there may be more than one agency preferred alternative that the BLM chooses to disclose. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for identifying the preferred alternative, or alternatives, in the draft EIS for a resource management plan.

*Ecosystem Services (Section 1610.4(d)(7))*

**Comment:** One comment expressed concern regarding how the requirement to consider ecosystem services in planning will be implemented. According to the comment, ecosystem services have many aspects that cannot be quantified or monetized, and it is possible for the BLM to rely too much on the presumed value of ecosystem services, reducing and excluding uses in a planning area and impacting the local economy or existing investments in that area. The comment recommended that the BLM fully disclose to the public the use and application of ecosystem services concepts in all planning efforts. The BLM should train staff and provide manual guidance regarding application of ecosystem services analysis, should at least attempt to quantify the values of ecosystem services.

**Response:** Section 1610.4(d)(7) references ecological services, among other uses of public lands, as a potential good, service, or use that could be identified in the planning assessment. Section 1610.1-1(b) includes commitments to use a systematic interdisciplinary approach in the preparation and amendment of resource management plans; that the expertise of

the preparers shall be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield unless otherwise specified by law; and that the responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance on incorporating ecological services in the planning process. The BLM also expects to provide additional training to field staff in implementing the final rule, which may include the application of ecosystem services.

#### *Landscape Scale Planning*

These comments relate to elements of planning at a landscape scale, including the BLM's capacity for resource management plan development and implementation at large scales.

**Comment:** A few comments stated that developing landscape-focused resource management plans has a potential to be good for the State and counties as the concept provides for more flexibility in diverse resource planning. However, cross-boundary coordination and "edge matching" between planning areas and State boundaries is essential; therefore, the manner in which this concept is implemented is key.

**Response:** The final rule describes the general procedures and framework for resource management planning. The BLM expects that more detailed guidance on how to implement these procedures, including related to cross-boundary and "edge matching" may be provided through future guidance, such as the revision to the Land Use Planning Handbook.

**Comment:** A few comments expressed concern regarding the BLM's ability to coordinate between States in order to implement landscape-level planning and noted that

resource management plans spanning multiple States will be more difficult for the BLM to implement than those that only affect one State.

**Response:** The BLM recognizes the complexities of developing and implementing resource management plans at a landscape scale, especially plan revisions or amendments that cross jurisdictional boundaries. However, the BLM believes that it does have the ability to coordinate its land use planning processes between States, when appropriate. The BLM will coordinate its planning efforts, regardless of the size of the planning area, with other Federal agencies, State and local governments, and Indian tribes in accordance with § 1610.3-2 of the final rule.

**Comment:** Several comments expressed the concern that the BLM does not have the budget, resources, or staffing capacity to implement landscape-scale planning and associated expanded NEPA analysis. These comments referenced tasks such as determining consistency with various States' land use plans or increasing public involvement. Comments also noted that the U.S. Forest Service had similar goals for expanding collaboration, but are now finding that collaboration is more expensive than they had anticipated. One comment expressed concern about whether the BLM has the staffing capacity to achieve high monitoring and reporting standards, and recommended that the BLM emphasize using standard national monitoring metrics in addition to hiring more staff. One comment cited additional reports, proposed alternative analysis, and public meetings as sources of increased costs.

**Response:** Working at landscape scales will enable the BLM to more appropriately plan for the interconnectedness of ecosystems, economies, and communities. The BLM recognizes the increased complexities of landscape-level planning; however, the BLM believes that it will have the capacity to complete the tasks previously mentioned. Per §§ 1610.3-2 and 1610.3-3 of

the final rule, the BLM will coordinate and strive for consistency with other Federal agencies, State and local governments, and Indian tribes. The BLM will also comply with the requirements for public involvement contained in the final rule. The BLM will comply with relevant Federal laws and regulations, such as NEPA and the provisions of the final rule, in resource management plan development regardless of scale. The BLM cannot predict future funding levels, departmental and agency priorities, or other changes that may affect implementation. As a result, it cannot commit to hiring more staff. The final rule reflects information gained from lessons learned, including the U.S. Forest Service's implementation of its planning rule and the BLM's past experience and research.

The BLM acknowledges the importance of establishing and utilizing national monitoring metrics, and is currently implementing its "Assessment, Inventory, and Monitoring (AIM) Strategy" as well as the BLM strategy "Advancing Science in the BLM: An Implementation Strategy." As stated in the preamble to the proposed rule, both strategies improve the BLM's ability to employ science-based decision-making and apply adaptive management techniques using standardized monitoring data that can be analyzed and applied at multiple scales. The final rule also includes monitoring and evaluation standards as plan components in § 1610.1-2(b)(3).

**Comment:** A few comments expressed concern regarding the BLM's focus on "SMART goals" in the planning process, including the difficulty of creating these at a landscape level for resources like recreation. Recreational targets usually cannot be clearly defined, particularly when disparate recreation organizations do not agree.

**Response:** In response to public comments, the BLM will adopt a new § 1610.1-2(b)(2)(iii) to provide that, as appropriate, resource management plan components should include indicators for evaluating progress toward achievement of the objective. These indicators will

serve as part of the “SMART goals” concept described in the comments. The BLM recognizes that there may be challenges and disagreement over appropriate measurable indicators, such as when working at a landscape scale or for recreation. These will be included as appropriate, and the BLM will exercise discretion in identifying these indicators.

**Comment:** One comment expressed the opinion that shifting to landscape-scale planning without default planning areas will be confusing in practice, as are amendments for different, specific resources. This comment noted that the public will be confused or not know to consult multiple documents for management prescriptions. For instance, an oil and gas operator considering acquisition of Federal mineral leases currently knows to consult the resource management plan governing the resource area where minerals are located. Without a default planning area, the operator will not know which documents to consult. The comment recommended that the BLM proposed rule better explain how landscape-scale planning will proceed.

**Response:** In response to public comments, the final rule includes several revisions to better explain how landscape-scale planning will proceed. These revisions include, but are not limited to, a definition for “landscape” in § 1601.0-5, a revision to § 1601.0-4 regarding designation of the responsible official for resource management plans or plan amendments, and a revision to § 1610.4 to include public input on the planning area as part of the planning assessment. The BLM will not commit to setting default planning areas; however, these revisions allow for improved understanding of planning at a landscape scale. Planning areas will be determined in accordance with final §§ 1601.0-4 and 1610.4(a). Although multiple amendments may apply to a planning area, the BLM will not have multiple overlapping or conflicting resource management plans. Public lands users such as oil and gas operators will still

consult with one resource management plan, subject to amendment, within a particular planning area.

**Comment:** One comment requested that the BLM clarify how landscape-scale planning will work in practice, and recommended that the BLM provide the public with several examples of landscape-level planning areas and how they were identified. The comment also requested that the BLM explain whether landscape-scale planning will obviate issue-specific plans that currently span multiple areas.

**Response:** In response to public comments, the final rule includes several revisions to better explain how landscape-scale planning will proceed. These changes include, but are not limited to, a definition for “landscape” in § 1601.0-5, a revision to § 1601.0-4 regarding designation of the responsible official for resource management plans or plan amendments, and a revision to § 1610.4 to include public input on the planning area as part of the planning assessment. The BLM will provide public outreach on the final rule that will discuss landscape-level planning. Future outreach may include landscape-scale planning successes, lessons learned, or current planning efforts in which the BLM is implementing this concept. Additionally, the BLM expects that the forthcoming Land Use Planning Handbook revision will provide further guidance for implementing landscape-level planning. The final rule provides a framework for revising and amending resource management plans. The final rule does not obviate current issue-specific plans.

**Comment:** One comment expressed concern regarding how the BLM’s planning will interact with the Department of the Interior's Landscape Conservation Cooperatives, including whether or not they will override BLM plans. The comment noted that several Landscape Conservation Cooperatives have developed plans for Landscape Conservation Planning and

Design projects and pilots. The comment asked if these projects override BLM plans and if Landscape Conservation Cooperatives and the BLM will conduct joint planning. The comment recommended that if Landscape Conservation Cooperatives and the BLM's planning efforts are to be integrated then that integration should be explicitly noted in the revised rule. Also, if Landscape Conservation Cooperatives and the BLM's planning efforts are to be integrated and if Landscape Conservation Cooperatives are to be provided a certain amount of authority then the Landscape Conservation Cooperatives' steering committees should include a broader array of interests and governmental entities.

**Response:** The BLM works with Landscape Conservation Cooperatives to develop Rapid Ecoregional Assessments. While these assessments provide information and data at a large scale that the BLM can use in developing resource management plans, they will not override BLM resource management plans. Further, these assessments will not be the only source of information the BLM uses when developing resource management plans. The final rule does not provide Landscape Conservation Cooperatives with any amount of authority. The BLM will consider the data provided by landscape-scale assessments, such as Rapid Ecoregional Assessments, when revising or amending resource management plans.

**Comment:** A few comments recommended that the rule and Land Use Planning Handbook clarify that planning areas are to be identified without any consideration to field office or State boundaries. According to these comments, having no regard for field office or State boundaries will be the most effective way to manage relevant resources. These comments recommended that the BLM allow stakeholders to identify ecosystem boundaries in the Planning Assessment stage. Comments also recommend that the BLM explain in the Land Use Planning Handbook that the scale of landscape-level plans could be larger or smaller, depending on the

common resources and issues addressed, and give examples of different scales and to use the Land Use Planning Handbook to set criteria for choosing planning area boundaries.

**Response:** In response to public comments, the final rule includes several revisions to better explain how landscape-scale planning will proceed. For example, the definition of Landscape in final § 1601.0-5 explains that a 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. The size of a landscape could be confined entirely within the administrative boundary of a field office. Conversely, another identified landscape could cross State borders. Such landscapes will be identified during the planning assessment stage. The final rule does not require that planning areas be designated without consideration of field office or State boundaries. Planning areas will be determined in accordance with §§ 1601.0-4 and 1610.4 of the final rule. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for determining planning areas and implementing landscape level planning.

#### Local Involvement

Several comments related to local involvement in planning, the Land Use Land Use Planning Handbook revision, and the challenge of working with local governments while also working at a landscape scale.

**Comment:** One comment supported statements by the BLM that travel management decisions will be made at a more local level going forward. According to this comment, travel management planning should be done at the local level because pieces of routes get lost at a larger scale and a more local-focused plan and review allows the public to identify omissions more easily.

**Response:** The final rule provides a framework for revising and amending resource management plans. Travel management planning is outside the scope of this rulemaking. The BLM will continue to conduct travel and transportation management planning in accordance with applicable program-specific regulations and policies.

**Comment:** Several comments expressed the concern that State and local voices will be diluted in implementing landscape-scale planning. These comments requested clarity on expectations for engagement of local governments and that the BLM engage local governments before and after the planning assessment, including before any waiver of a planning assessment. A few comments also requested invitations to a proposed cooperating agency to address or specifically ask about the agency's feasibility, interest, scope of expertise, and resource constraints, rather than relying on BLM to determine these elements. One comment claimed that the Federal government colludes with special interest groups without informing its own local staff that it is conducting an assessment until it also notifies the public and local governments.

These comments included the following recommendations:

- The BLM should provide notice as soon as planning assessments are being contemplated.
- The BLM should engage local governments as cooperating agencies and in coordination at the beginning of the planning assessment.
- The BLM should conduct data collection and assessment efforts with local governments as early as possible.
- The BLM should add language to 1610.4(c), replacing the word “thresholds” with “opportunities” in (c)(4) and changing (5) to “Specific requirements and constraints to achieve consistency and avoid possible conflicts with land use and

resource related planning and management programs of other Federal agencies, State and local government agencies, and Indian tribes.”

- The BLM should consult with the local governments potentially affected by a planning effort after the planning assessment and before the BLM formulates conclusions, recommendations, or relevancy of issues.
- The BLM should consider these specifics regarding cooperating agency engagement – such as expectations, resources, and constraints – when updating the Land Use Planning Handbook.

**Response:** The BLM recognizes the importance of providing meaningful local involvement in the planning process and when working across landscapes. The BLM will engage with local governments as early as possible in the planning process, including during and after the planning assessment, and throughout the development of the resource management plan. Sections 1601.0-5 and 1610.3-2 of the final rule remove reference to cooperating agencies participating “as feasible and appropriate, given the scope of their expertise and constraints of their resources.”

Final § 1610.4(b) provides for the information gathering in the planning assessment phase to be coordinated with other Federal agencies, State and local governments, and Indian tribes. The recommended changes to proposed § 1610.4(c) (final § 1610.4(d)) are not adopted. The language in § 1610.4(d)(4) regarding thresholds pertains to any known resource, and no longer references thresholds. Rather it rephrases the language to address “resource constraints, or limitations.” Further, it would be inappropriate to replace this term with “opportunities” because using resource constraints and limitations, and removing of “thresholds” better describes the intent. Further, the suggested § 1610.4(d)(5) is not adopted, as it is inconsistent with the

purposes of this section. Coordination and consistency requirements are addressed in final §§ 1610.3-2 and 1610.3-3.

**Comment:** One comment expressed concern with taking too narrow of an approach to outreach with State and local government agencies and recommended that the Land Use Planning Handbook include information on the types of agencies to reach out to. It recommended that the Land Use Planning Handbook include a requirement to make outreach broad, particularly to State agencies, and to include all agencies, not just the obvious ones such as State fish and wildlife agencies.

**Response:** The BLM will engage with other entities and potential cooperating agencies as appropriate to the scope and scale of an individual planning effort. Section 1610.3-2(b) of the final rule provides for the participation of cooperating agencies, including State and local governments, in the planning process. Final § 1601.0-5 defines State and local governments as the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority. In the planning process, the BLM will not engage only with subdivisions such as State fish and wildlife agencies, but rather all agencies with special expertise or jurisdiction relevant to the process. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for engaging with State and local governments.

**Comment:** A few comments recommended changes and improvements to public involvement to support implementation. One comment suggested that BLM representatives facilitate public involvement, such as by holding meetings, on a local, rather than regional, level. Another comment included a request that if the *Federal Register* is to no longer be used for all public notices that the BLM create a Website for the purpose. One comment mentions driving

hundreds of miles to a regional meeting as the only way for certain members of the public to participate in planning efforts. A website would help avoid confusion and encourage public participation and transparency. These comments included these recommendations:

- The BLM should create a website, perhaps for each BLM state office, that provides an updated Schedule of Proposed Actions, announcements, documents, and plans currently open for public review.
- The BLM should make all materials used at public meetings available online, including maps and PowerPoints.
- The BLM should commit enough resources to ePlanning; critical information, like GIS data and maps, should be made available in a timely fashion.
- The BLM should use email lists to keep the public up to date.
- The BLM should hire more Public Affairs staff to develop methods for meaningful public involvement.
- The BLM should involve Public Affairs staff in resource management plan development to decrease confusion and increase readability.

**Response:** The BLM expects to conduct outreach on the final rule at all levels of the BLM, as appropriate. For example, field office staff will engage with local constituents, such as county commissioners or local non-governmental groups. For individual planning efforts, the BLM will provide for public participation relevant to the scale of the planning effort. Typically, this will be done at the local level.

The final rule describes the planning milestones where a *Federal Register* notice is required. Please see § 1610.2-1 for more information. Individual planning efforts will feature a project specific Website to provide the public with project information, such as schedules,

announcements, documents and maps. GIS data will be made available as appropriate. These sites will most often be made available through the BLM's ePlanning system. Announcements, notices, and general information will also be available on the BLM's external Website.

It is currently common practice to compile mailing lists of interested parties for individual planning efforts. The BLM will continue to do so. Further, while hiring is outside the scope of this rulemaking, it is current practice to involve public affairs in the development of resource management plans and all external outreach associated with the plan.

### Mitigation

Several comments addressed the role of mitigation in the proposed rule. These included a range of concerns, including whether or not the final rule should include provisions regarding mitigation, how mitigation is defined in the rule, and what the BLM's mitigation policies should be.

**Comment:** One comment asserted that mandatory mitigation sequencing and mandatory compensatory mitigation, offsite mitigation, or any sort of advanced mitigation is not consistent with FLPMA. This comment expressed the opinion that the definition of mitigation in 43 CFR 3809 is preferable, because it is flexible by using "may" instead of "shall," does not include sequencing, and is consistent with NEPA. The comment included the view that the proposed rule implies that the BLM is authorized under FLPMA to require mitigation, which it is not. The BLM is trying to use the new planning rule to require mitigation considerations in land use plans, thus forcing mitigation to be performed in the implementation stage.

**Response:** The BLM is authorized to require mitigation by FLPMA, NEPA, and other Federal laws applicable to managing public lands. The definition of mitigation contained in § 1601.0-5 of the final rule is consistent with the CEQ's definition of mitigation as well with the

BLM's regulations at 43 CFR 3809. Further, references to mitigation in 43 CFR 3809 pertain to mining, not the BLM's land use planning process. The mitigation "sequence" referenced in the definition in the final rule, often referred to as the "mitigation hierarchy," does not mean that all of avoiding, minimizing, and compensating for impacts will all be required for mitigation but rather that they will generally be considered in that sequence. This sequencing aligns with other mitigation policies and guidance for the Federal government, the DOI, and the BLM such as Departmental Manual chapter on "Implementing Mitigation at the Landscape-scale," "Improving Mitigation Policies and Practices of the Department of the Interior" (Secretarial Order 3330), and the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment issued on November 3, 2015. Section 1610.1-2(a)(2)(i) of the final rule where an objective of the plan will be provided to be to "Identify standards to mitigate undesirable impacts to resource conditions."

**Comment:** One comment recommended that the BLM clarify either in the proposed rule or in the Land Use Planning Handbook that the avoidance and offsetting steps of mitigation should be first applied at the landscape level, and then at the site level.

**Response:** Final § 1610.1-2(a)(2)(i) provides for mitigation standards to be included, as appropriate, with plan objectives. In the context of resource management plans, mitigation standards will be applied at the landscape level for many resources. Additional application of avoidance and minimization may then take place upon further analysis at the site-specific scale, in accordance with the standards established in the resource management plan. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for identifying mitigation standards when developing resource management plans. Additionally, the BLM expects to address this topic in separate policy and guidance.

**Comment:** One comment recommended that the BLM make clear in the Land Use Planning Handbook that the mitigation hierarchy should be applied to any resource identified in a resource management plan as being significantly impacted by an action and includes a further recommendation that the BLM adopt a no-net-loss policy. This comment cited DOI's Landscape-Scale Mitigation Policy which states that "for resources and their values, services, and functions that are considered by the Department as important, scarce, sensitive, or otherwise suitable to achieve established goals, or that have a protective legal mandate, each bureau and office should seek to achieve, through application of the mitigation hierarchy, a no net loss outcome for impacts resources and their values, services, and functions, or, as required or appropriate, a net benefit in outcomes."

**Response:** The final rule does not include the no-net-loss standard; however, the BLM will comply with any applicable Departmental or BLM policy on mitigation, such as the DOI's Landscape Scale Mitigation Policy. The final rule provides a framework for revising and amending resource management plans, and identifies exactly mitigation standards could be adopted in resource management plans for specific resource values or uses of the public lands. The BLM will apply the mitigation hierarchy as appropriate. The BLM expects that the forthcoming Land Use Planning Handbook revision will provide additional guidance for including mitigation standards in resource management plans.

**Comment:** One comment recommended that the BLM develop robust mitigation guidance in the rule and in the Land Use Planning Handbook or in a separate mitigation handbook and suggested that this guidance should adopt key elements of the Presidential memorandum on mitigation and the DOI's mitigation manual. This comment included the following recommendations:

- The BLM should use a landscape-scale approach to conservation, energy development, other proposed development, and mitigation. It should focus development in low-conflict areas and prioritize conservation in areas with important or sensitive resources and values.
- The BLM should employ the mitigation hierarchy sequentially, placing more emphasis on avoidance.
- The BLM should avoid any planning or management action that would endanger irreplaceable resources.
- The BLM should adopt a “no net loss” approach to mitigation, and a net benefit goal as required or appropriate.
- The BLM should make compensatory mitigation standard that are durable (lasting as long as impacts, and protected against non-conforming uses); additional (having new conservation benefits that would not occur without the mitigation); based on best available science (including for determining equivalency of impacts and mitigation benefits); transparent (including the ability for the public to track locations of impacts and mitigation actions); and include monitoring and adaptive management.
- The BLM should use rights-of-way, easements, and Recreation and extended Public Purposes Act leases, including issuing them in perpetuity, to achieve durable mitigation plans.
- The BLM should identify and promote mitigation measures that address climate change impacts and resilience.

- The BLM should use promote investment in creation of mitigation banks and other such structures by non-profit and private sectors.

**Response:** The final rule does not adopt a comprehensive mitigation policy. The BLM expects to address this topic in separate policy and guidance, and believes it would be inappropriate to instill in this rulemaking. The BLM will continue to comply with applicable policies, such as the Presidential memorandum on mitigation and Secretarial Order 3330.

**Comment:** One comment recommended that the BLM identify resources in resource management plans that should be avoided due to irreplaceability, rarity, or lack of offset opportunities.

**Response:** The BLM may identify resources in resource management plans that should be avoided. The BLM expects that the forthcoming Land Use Planning Handbook revision will include further guidance for including mitigation standards in resource management plans.

**Comment:** One comment suggested that the BLM require that field offices provide information verifying the effectiveness of remedies specified in resource management plans. According to the comment, the BLM currently uses remedies that are controversial, scientifically untested, or outdated. For example, two years of rest from grazing is inadequate for recovery. Grazing stocking numbers do not account for the increased forage by today's larger cattle. Grazing utilization at 50% forage, also known as "take half, leave half," has been shown to be inappropriate for the arid West. Forage utilization monitoring is unreliable.

The comment also noted that the BLM's drought response is late and inadequate and that the BLM's methods for stream condition assessment do not cover all biological aspects of riparian areas. The comment recommended that the BLM allow for an independent review

process of remedies early in the planning process. This process should be based on the best scientific information and may involve testing remedies to validate them.

**Response:** One goal of Planning 2.0 is to improve the BLM's ability to respond to change. Section 1610.1-2 of the final rule covers the plan components in resource management plans. These will include standards to mitigate undesirable impacts to resource conditions in paragraph (a)(2)(i), indicators for evaluating progress in paragraph (a)(2)(iii), resource use determinations in paragraph (b)(2), and monitoring and evaluation standards in paragraph (b)(3). These plan components will be included in resource management plans and will be specific to the circumstances of the different plans. The public will have opportunities for involvement in resource management plan development through the provisions of § 1610.2 of the final rule. Additionally, the BLM will adopt the proposed § 1610.1-1(c) on using high quality information in preparation, amendment, and maintenance of resource management plans. Together, these provisions will provide for public involvement, high quality information, and monitoring in individual resource management plans. The BLM expects that the forthcoming Land Use Planning Handbook will include information and guidance on particular management for particular resources and uses such as grazing, ecological factors, and riparian resources.

**Comment:** One comment recommended that the BLM address methane in its planning and management framework, not just in a separate rule for methane waste. The comment questioned whether the BLM will include in the Land Use Planning Handbook a consideration of reducing methane pollution and waste through landscape-scale or integrated planning. According to this comment, a separate methane rule is not an integrated approach to planning.

**Response:** The BLM is addressing methane through a separate rulemaking process. The BLM considers it appropriate to do so. This rulemaking process is focused on updating the regulations for resource management plan development.

*Resource Management*

A few comments related to the management of particular resources or programs, such as recreation or fluid minerals. Some relate to how the BLM will include these in the Land Use Planning Handbook revision.

**Comment:** One comment recommended that the BLM set standards and procedures for inventory, classification, and management for protection of night sky resources in the Land Use Planning Handbook.

**Response:** The BLM may consider night sky resources in future resource management plans where feasible or appropriate. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for managing particular resources, such as visual resources.

**Comment:** One comment included the opinion that the plan level is not a fine enough scale to make oil and gas development decisions. This comment included these recommendations:

- The BLM should revise fluid minerals guidance in Appendix C of the Land Use Planning Handbook to say that a plan-level decision may be sufficient to determine that development is appropriate. If the land meets criteria for a master leasing plan, more site-specific analysis would be necessary before allowing land to be leased.

- Master leasing plans should be the rule, not the exception, and it should be possible for master leasing plans to be stand-alone plans or part of eco-regional plans. Make oil and gas suitability determinations at a broad scale in an eco-regional plan but allow the offices or plans under the umbrella of the eco-regional plan to make decisions to open or close lands to leasing, along with accompanying details (resource use levels, leasing restrictions).
- The BLM should broaden master leasing plan suitability criteria to allow them to be more easily and readily used across landscapes. The Planning for Fluid Mineral Resources Handbook should include non-producing leases as land that is not currently leased. Also, eliminate the “moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area” criteria for the preparation of a master leasing plan. If the industry has expressed interest in leasing, activities should be guided by master leasing plan regardless of potential or existing production.
- The BLM should designate areas with low or no oil and gas potential as unavailable for leasing. The BLM could be prompted to revisit such a determination if industry expressed an interest in leasing in that area.
- The BLM should change “least restrictive” in the Land Use Planning Handbook Appendix C language “When applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used” to “most effective.”

**Response:** The BLM expects that the Land Use Planning Handbook revision will include program-specific guidance, including for fluid minerals, similar to Appendix C of the existing

Handbook. As referenced in the comment, resource management plans may determine where oil and gas development is and is not appropriate. Resource management plans may also designate areas as unavailable for leasing, as appropriate. Further, additional NEPA analysis will be conducted for site-specific development.

Master leasing plans may be considered in the planning process where feasible and appropriate. Under current practice, master leasing plans may also be developed as standalone plans.

Oil and gas suitability determinations may be made in the land use planning process. The final rule does not commit the BLM to making these determinations at ecoregional scales. The BLM's Fluid Mineral Handbook (H-1624-1), and policies and guidance for master leasing plans, is outside the scope of this rule.

**Comment:** One comment asserted that the traditional analysis of fluid minerals planning historically done in resource management plans is inadequate and included the recommendation that the BLM focus more on likely development scenarios and mitigation levels necessary to attain the desired outcomes for all resources and programs. This comment noted that leases may represent potentially large impacts and commitments, which are not adequately captured under the current analysis. A focus on likely development scenarios and attendant mitigation levels in the planning stage would allow the BLM, industry, and the public to suggest and analyze development scenarios before leases are issued. In turn, the BLM could develop lease terms that conformed to the scenarios approved at the planning stage. The comment recommended incorporating Instruction Memorandum No. 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Review, including Section I – Land Use Planning – Adequacy,

Consistency, and Adaptive Management into planning and implementation decisions for oil and gas leasing.

**Response:** The final rule provides a framework for revising and amending resource management plans. The BLM prepares reasonable foreseeable development scenarios under current practice and will continue to do so for future resource management plans. These reports are used to develop decisions regarding fluid minerals. The BLM will comply with its own policies in the development of resource management plans.

**Comment:** A few comments expressed general concerns about the status of recreational uses within the multiple use mandate and suggested that recreation be addressed in greater depth in the proposed rule. The comment noted that Special Recreation Management Areas and Areas of Critical Environmental Concern often overlap. Implementation strategies then give preference to protection of a species or issue and require restrictive management, resulting in loss of recreation opportunities, even though there is a Special Recreation Management Area designation in place. One comment noted that at public meetings, the BLM responded to questions about recreational usage in Planning 2.0 by saying that separate initiatives would address recreation.

**Response:** The BLM must consider all appropriate uses of public lands when developing resource management plans. It would be inappropriate to go into great depth on all of the allowable uses in the final rule. The BLM expects that the forthcoming Land Use Planning Handbook revision will provide further guidance for programs such as recreation.

When different designations overlap, the BLM may have certain legal or policy reasons for addressing management conflicts. In the case of overlapping Special Recreation Management Areas and ACECs, it is important to note that the BLM must implement the

provisions of FLPMA regarding management of ACECs. Under 43 U.S.C. 1712(c)(3), the BLM is to “give priority to the designation and protection of Areas of Critical Environmental Concern.”

**Comment:** One comment recommended that the BLM manage for sound resources on its land like it does for visual resources. The comment recommended that the BLM set standards and procedures for establishing the baseline condition of the natural soundscapes of a planning area, to be used in the planning assessment and identify criteria for highly valuable soundscapes. The comment also requested that the BLM use the Land Use Planning Handbook to articulate the BLM’s management approach for sound resources and suggested using the visual resources inventory and management process as a model for soundscapes.

**Response:** The final rule does not require the BLM to manage public lands for sound resources. The final rule does not preclude the BLM from managing for soundscapes, and the BLM may do so in the future as it deems necessary or appropriate.

**Comment:** One comment asked the BLM to consider the importance of American energy independence when it plans on the basis of multiple use and sustained yield, when it considers present and potential uses of public lands and the relative scarcity of values, and when it weighs long-term benefits against short-term benefits.

**Response:** FLPMA (43 U.S.C. 1701(a)(12)) requires the BLM to manage the public lands in a manner which recognizes the Nation’s need for domestic sources of minerals. The BLM will comply with this requirement in its land use planning processes. Further, the BLM will comply with all Federal laws and regulations applicable to managing public lands.

### Pilot Projects

**Comment:** A few comments suggested that the BLM undertake pilot projects for implementation of the final rule, stating that undertaking pilot projects would allow the agency to demonstrate and refine practices before solidifying policies in the Land Use Planning Handbook.

**Response:** The BLM expects that the forthcoming Land Use Planning Handbook revision will be finalized after publication of the final rule and will include information based on lessons learned on past experiences from the BLM and elsewhere.

### Protest Procedures

**Comment:** One comment suggested that there should be opportunities for protests to be resolved informally, including the ability to request meetings to discuss issues. According to this comment, the BLM changed its protest policy and is now missing opportunities to resolve protests. In contrast, the U.S. Forest Service provides the option for either party in a protest to request a meeting to discuss the issues. The comment recommended that the BLM detail opportunities and mechanics for informal protest resolution in the Land Use Planning Handbook.

**Response:** Section 1610.6-2 of the final rule provides the procedures for the BLM's formal protest process; however, the final rule does not prevent the BLM from using informal dispute resolution processes. For example, the existing Land Use Planning Handbook states that the State Director, in consultation with the Washington Office, may determine that discussion and negotiation with protesting parties are appropriate if these discussions may lead to resolution of one or more issues. This process is not explicitly mentioned in existing § 1610.5-2. While the BLM believes that it is unnecessary to address this topic through regulation, the BLM expects that the forthcoming Land Use Planning Handbook revision will provide further guidance.

### Public Involvement

A few comments related to public involvement in resource management plan development and implementation. Some related to what the public involvement and outreach will be regarding implementation of the final rule.

**Comment:** One comment included questions as to whether and how BLM field offices will reach out to stakeholders to answer their questions about how Planning 2.0 will be implemented.

**Response:** Members of the public may contact BLM field offices directly with questions about Planning 2.0 implementation. Additionally, the BLM will conduct public outreach and engagement activities as part of the rollout of Planning 2.0. The BLM expects that the forthcoming Land Use Planning Handbook revision will also be made publicly available before it is finalized.

**Comment:** One comment expressed support for the BLM's transition to ePlanning and recommended that the use of ePlanning emphasize involvement opportunities for dispersed public lands stakeholders. The comment noted that using ePlanning will enhance opportunities for information-sharing between BLM and stakeholders and that people who care about public lands may not necessarily live in its vicinity.

**Response:** The BLM agrees, and will continue to use ePlanning to convey planning materials to all stakeholders, regardless of their location.

**Comment:** One comment recommended that the revised Land Use Planning Handbook provide guidance regarding how the BLM will acknowledge public input received during all public involvement opportunities, not just public comment periods, which should ensure the public feels heard but not overburden the BLM.

**Response:** The BLM's NEPA Handbook (H-1790-1) provides guidance for addressing public comments. As stated, "[c]omments on the document and proposed action may be received in response to a scoping notice or in response to a public review of an EA and FONSI or draft EIS. Comment received at other times in the process may not need a formal response. However, all substantive comments received before reaching a decision must be considered to the extent feasible (40 C.F.R. 1503.4)," (BLM Handbook H-1790-1, Section 6.9.2). Under current practice, the BLM makes documents, such as the existing Analysis of the Management Situation, available for public review outside of formal comment periods. While these instances are not tied to particular stages in the NEPA process that require the BLM to make documents available for formal comment, the BLM still accepts and considers these comments in the development of the resource management plan.

The BLM expects that the forthcoming Land Use Planning Handbook provision will provide additional guidance on public participation in the land use planning process.

#### Timeframes

**Comment:** One comment requested information regarding how long the planning process will take for resource management plan development and how long a resource management plan will be in effect once Planning 2.0 is implemented.

**Response:** The BLM believes that the final rule will reduce the amount of time needed to complete resource management plans. However, the BLM cannot speculate on specific timelines because of the varying factors that individual planning efforts face, such as complexity, funding, and unforeseen delays. The final rule does not require that resource management plans that are currently in effect be revised or amended within a certain time period. The BLM will

continue to regularly monitor and evaluate resource management plans, and if necessary, revise or amendment resource management plans in accordance with the final rule.

### Training

**Comment:** One comment noted that training will be necessary in implementing the new planning procedures.

**Response:** The BLM expects to develop training and other guidance, such as the forthcoming Land Use Planning Handbook revision, in order to implement the final rule.

### Wilderness

**Comment:** One comment expressed concern with how the BLM communicates the accuracy of lands with wilderness characteristics inventories and their timelines or completion, and recommended that these inventories be completed during the planning assessment. The comment noted that the BLM may be working with incomplete lands with wilderness characteristics inventories during the planning process, since it may not be feasible to complete a lands with wilderness characteristics inventory before planning begins. Sharing this information with the public will allow them to understand the planning process and the potential for new information to be produced.

The comment recommended that the BLM set a general expectation in the Land Use Planning Handbook that it will have updated lands with wilderness characteristics inventories before the planning assessment is completed. The comment recommended that the BLM specify in the Land Use Planning Handbook what information must be compiled and provided to the public regarding lands with wilderness characteristics during the planning assessment and noted that this information should include the status of lands with wilderness characteristics inventories.

**Response:** Section 1610.4(d)(5)(v) of the final rule includes lands with wilderness characteristics as areas of potential importance to be identified in the planning assessment. The planning assessment will be an opportunity for public involvement as provided for in § 1610.2-1(a) of the final rule. Through planning assessment report, the public will be able to review this inventory.

The BLM recognizes the importance of lands with wilderness characteristics in the planning process. Other BLM policies and guidance relate to the inventory of lands with wilderness characteristics, including BLM manuals 6310 “Conducting Wilderness Characteristics Inventory on BLM Lands” and 6320 “Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process.” The BLM will review and update guidance and policies to reflect the final rule as necessary.

The final rule does not make a commitment to timelines, such as for updating inventories of lands with wilderness characteristics, due to uncertainties over future funding, priorities, and unforeseen events. The responsible official shall arrange for gathering of data and information as provided for in § 1610.4(b)(1) of the final rule. This information may include updating inventories of lands with wilderness characteristics, but the BLM will not include a requirement to do so. The BLM expects that the forthcoming Land Use Planning Handbook will include more information and guidance on lands with wilderness characteristics including how it relates to the planning assessment.

### Wildlife

A few comments included suggestions about the consideration of wildlife in resource management plan development and implementation. These included recommendations for guidance and how to work with States on wildlife management.

**Comment:** One comment requested that the BLM specifically recognize special status species for States that do not have their own threatened or endangered species list. This comment recommended that these species should be considered formally in resource management plan development, even if they are not referred to as “endangered.” The comment noted that some States do not have a State endangered species list but instead use other terms, such as Species of Greatest Conservation Need and Species of Economic and Recreational Importance.

**Response:** Section 1610.3-3 of the final rule provides that resource management plans shall be consistent with the officially approved and adopted plans of State governments, which includes State plans for fish and wildlife. In its resource management plans, the BLM will designate priority species and habitats, including special status species, in coordination with State wildlife agencies. The BLM will consider State-designated special status species when identifying priority species and habitats in resource management plans.

**Comment:** A few comments recommended that the BLM adopt guidance to be used in resource management plans and other planning documents regarding best practices for ensuring wildlife connectivity, particularly across administrative boundaries. The comments included these recommendations:

- The BLM should plan broadly at an eco-regional scale and then scale down to smaller landscapes using field offices or individual basins or riparian areas to specifically address allowable uses and management actions.
- The BLM should develop range-wide guidance for fisheries conservation and recovery that have individual conservation and recovery goals at the field office level.

- The BLM should keep BLM fisheries conservation and recovery plans consistent with State objectives for these fisheries while retaining watershed health and aesthetic values.
- The BLM should designate large ungulate migration corridors and stopover habitats as significant for at least one factor such as density, diversity, size, public interest, remnant character, or age. The BLM should identify desired outcomes for these designations using BLM and State agency strategic plans, or similar sources. The BLM should describe desired habitat conditions based on best available scientific information, acknowledging States' roles in fish and wildlife management and working in close coordination with them. Identify actions and area-wide use restrictions to achieve desired conditions that maintain or enhance landscape permeability and habitat quality.
- The BLM should ensure that other planning documents, like master leasing plans, do not conflict with eco-regional conservation plans.
- The BLM should provide guidance in the Land Use Planning Handbook on considering and designating connectivity areas.

**Response:** The BLM may use Rapid Ecoregional Assessments to inform planning efforts; however, the final rule does not require that resource management plans be conducted at the eco-regional scale. The BLM may consider any relevant landscapes, as defined in final § 1601.0-5, when revising or amending resource management plans. As suggested by the comment, the land use planning process allows for subsequent tiering of implementation-level actions.

Section 1610.3-3 of the final rule provides that resource management plans shall be consistent with officially approved and adopted plans of State governments, which includes State plans for fish and wildlife management.

One of the goals of Planning 2.0 is to improve the BLM's ability to apply landscape-scale approaches to resource management. One way it will accomplish this goal will be through the flexibility of having planning areas at a landscape scale, including planning areas that can cross state boundaries. Wildlife connectivity and other ecological factors will also play into achieving this goal. Several aspects of the final rule address landscape-scale planning for ecological factors. For instance, the planning assessment in § 1610.4 of the final rule includes areas of ecological importance in paragraph (5)(iv) and key fish and wildlife habitat including for habitat connectivity or wildlife migration corridors in paragraph (5)(iii).

The planning process, plan amendments, and individual NEPA analysis of projects will allow for a tiered approach with analysis at different levels of scale as mentioned in the comments. State fish and wildlife agencies will be able to participate in plan development under the public involvement provisions of § 1610.2 of the final rule and the coordination provisions of § 1610.3 of the final rule.

The BLM expects that the Land Use Planning Handbook revision, which is currently under development, will include additional information and guidance on landscape-scale planning including regarding ecological considerations such as habitat connectivity, fisheries management, and managing across scales.

*Cooperating Agencies (Section 1610.3-2(b))*

**Comment:** One comment noted that BLM and State wildlife agencies have a unique relationship and recommended that the final rule mention this relationship. The comment noted

that coordination with State wildlife agencies is necessary for successful implementation of fish and wildlife objectives for a given plan.

**Response:** The BLM recognizes the importance of working with its State partners, including State fish and wildlife agencies. However, the BLM must coordinate with all applicable State agencies in the planning process. It would be inappropriate to list the individual agencies that the BLM coordinates with during planning processes. Section § 1601.0-5 provides a definition for State and local governments that includes any political division of the State, which encompasses State wildlife agencies.

**Comment:** One comment included support for requiring a memorandum of understanding when the BLM is engaging in cooperative arrangements with non-Federal agencies, but had concerns about confidentiality before a memorandum of understanding is in place. This comment recommended that when the BLM is sending an invitation to an agency regarding potential cooperation that it should attach a cooperative agreement or engagement letter that acknowledges confidentiality of materials. The comment recommended including this guidance in the Land Use Planning Handbook.

**Response:** Final § 1610.3-2(b)(2) provides that when a cooperating agency is a non-Federal agency, a memorandum of understanding shall be used and shall include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts. The memorandum of understanding is established early in the planning process and formalizes the cooperating agency relationship. It would be inappropriate to include provisions for confidentiality that are afforded to cooperating agencies prior to the establishment of the cooperating agency relationship. The

BLM's NEPA Handbook (H-1790-1) provides additional guidance for cooperating agencies and establishing memoranda of understanding.

*Geospatial Data (Section 1610.4(e))*

**Comment:** One comment recommended that the BLM continue to enhance its ability to share and accept GIS data. GIS resources are of increasing importance in planning. The comment recommended using ePlanning for exchange of GIS data.

**Response:** The BLM recognizes the importance of geospatial data in the planning process. The final rule includes provisions to enhance the BLM's ability to share and receive data. While information submitted throughout the planning process is considered under current practice, the BLM will specifically request information, including geospatial data, during the planning assessment in accordance with final § 1610.4. Additionally, § 1610.4(e) provides for making non-sensitive geospatial information used in the planning process available to the public on the BLM's Website, including project-specific ePlanning sites.

*Wild and Scenic Rivers (Section 1610.4(c)(v))*

**Comment:** One comment asserted that resource management plans should not conduct suitability determinations of wild and scenic rivers but instead focus on only identifying streams that are eligible. The comment noted that there is no basis in law to address the suitability of streams for recommendation to Congress for designation as wild and scenic rivers in resource management plans. Currently, the BLM regularly uses resource management plans to find streams unsuitable for recommendation, and this undercuts the Wild and Scenic Rivers Act, has no basis in law, and constitutes an unnecessary, time-consuming, detailed analysis that has no place in a resource management plan.

**Response:** The Wild and Scenic Rivers Act of 1968 directs the BLM to study the eligibility and suitability of rivers for addition to the National Wild and Scenic Rivers System and make recommendations to Congress. The BLM has integrated this process with the resource management planning process by policy, however, the BLM’s interpretation of the Wild and Scenic Rivers Act is outside the scope of this rule. For more information, please see BLM Manual 6400 regarding Wild and Scenic Rivers.

*High Quality Information*

A few comments requested the BLM to provide clarity on high quality information and data standards, and provided suggestions for ensuring that data is of high quality.

**Comment:** One comment recommended that the BLM elaborate in the Land Use Planning Handbook on standards for submission of information and data by the public and the procedures for its review.

**Response:** The BLM expects to include information on evaluating high quality information in the forthcoming Land Use Planning Handbook revision.

**Comment:** One comment requested that BLM include clear definitions of “science” in the Land Use Planning Handbook that reference the legal basis of “best available science” as it is defined in the Endangered Species Act as well as Data Quality Act requirements. The comment notes that the current iteration of the Land Use Planning Handbook refers only to “social science” or “science,” but does not define them. Transparency is warranted for those affected by the BLM’s definition of science in “science-based decision-making.”

**Response:** The final rule adopts the definition of “high quality information” in § 1601.0-5 of the proposed rule that includes the term “best available scientific information.” The BLM also adopts § 1610.1-1(b) of the proposed rule, with modifications, that provides for an

interdisciplinary approach to resource management plan development. The BLM expects that the Land Use Planning Handbook, currently under development, will include more information and guidance on these terms and the use of “best available science” in decision-making. The BLM will consider other legal definitions of the term in developing this guidance.

**Comment:** A few comments recommended that the BLM establish an independent, scientific advisory group consisting of wildlife science experts that could make transparent recommendations and resolve issues with data during appropriate stages of planning and implementation. The comments noted that DOI is clearly committed to using the best available scientific information and suggested that that creating an advisory group would promote the BLM’s commitment to it too. Omission of information, which is sometimes intentional, is a common problem in management. For example, the comments claimed that certain field offices failed to conduct surveys despite repeated requests, and that offices ignored information provided to it by outside groups.

The comments recommended that the BLM create an independent scientific advisory committee that has the resources and authority to review and act on questions asked during the planning process. This committee or working group could review the validity and relevance of data submitted and could assess the absence of data for key issues. If requested by the public, the committee or working group could review the BLM’s own data to ensure it meets the agency’s quality requirements.

**Response:** One of the goals of Planning 2.0 is to increase public involvement. Through the provisions of § 1610.2 of the final rule and the addition of the planning assessment phase, there are numerous new opportunities for public involvement including in the submission of data and transparency in providing technical and scientific reports to the public that were used in

resource management plan development. The BLM believes that these actions will allow for the public to submit high quality information for planning and review what information the BLM uses. The BLM, however, will not adopt the recommendation to create an independent scientific advisory committee. The BLM will consider all information submitted to it during the planning process and will decide what meets standards for high quality information and how to use submitted information in planning. The BLM will have flexibility to use external experts in resource management plan development, as necessary and appropriate. Section 1610.1-1(b) of the final rule provides that the “responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.” Under this provision, the BLM could work with scientific advisors to review data. The opportunities to submit data, the review processes, and the flexibility to work with advisors on an interdisciplinary approach will provide for effective review of scientific information in resource management plan development.

#### Public Involvement

A few comments requested that the Land Use Planning Handbook include certain public involvement guidance.

**Comment:** One comment requested that the BLM, in both the rule and the Land Use Planning Handbook, provide meaningful opportunities for public involvement on implementation strategies.

**Response:** In response to public comments the final rule does not adopt the concept of implementation strategies. For further discussion on implementation strategies, see proposed § 1610.1-3 in the preamble.

**Comment:** One comment requested that the revised Land Use Planning Handbook specify procedures for notifying the public of plan maintenance actions and changes to implementation strategies through direct notice to those who have requested it, BLM websites, and any other notification channels.

**Response:** The implementation strategies concept is not carried forward in the final rule; therefore, the final rule does not include proposed § 1610.2-1(j).

Final § 1610.2-1(i) requires that when changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make the changes available for public review at least 30 days prior to their implementation. Per final § 1610.2-1(c), the BLM shall announce opportunities for public involvement by posting a notice on the BLM's Website, at BLM offices within the planning area, and at other public locations, as appropriate. The BLM expects that the forthcoming Land Use Planning Handbook will provide further guidance for providing public notice.