

APPENDIX 12

Using the CX Directed by the Agriculture Improvement Act of 2018

The Agriculture Improvement Act of 2018 (P.L. 115-334) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Section 606. Section 606 directed development of a CX for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer (HFRA, Section 606(b)(1)).

This CX may be used to carry out a “covered vegetation management activity” (defined at HFRA, Section 606(a)(1)(B) below) whose purpose is for the management of greater sage-grouse and mule deer habitat on public lands.

Note: Before this CX is used, the BLM must conduct sufficient review to determine if any extraordinary circumstances apply (see **Appendix 5, *Categorical Exclusions: Extraordinary Circumstances***) (HFRA, Section 606(b)(2); 40 CFR 1508.4, 43 CFR 46.205 and 46.215).

(a) Definitions.—In this section:

(1) COVERED VEGETATION MANAGEMENT ACTIVITY.—

(A) IN GENERAL.—The term ‘covered vegetation management activity’ means any activity described in subparagraph (B) that—

(i) (II) is carried out on public land administered by the Bureau of Land Management;

(ii) with respect to public land, meets the objectives of the order of the Secretary of the Interior numbered 3336 and dated January 5, 2015;

(iii) conforms to an applicable land use plan;

(iv) protects, restores, or improves greater sage-grouse or mule deer habitat in a sagebrush steppe ecosystem as described in—

(I) Circular 1416 of the United States Geological Survey entitled ‘Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat—Part 1. Concepts for Understanding and Applying Restoration’ (2015); or

(II) the habitat guidelines for mule deer published by the Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies;

(v) will not permanently impair—

(I) the natural state of the treated area;

- (II) outstanding opportunities for solitude;
- (III) outstanding opportunities for primitive, unconfined recreation;
- (IV) economic opportunities consistent with multiple-use management; or
- (V) the identified values of a unit of the National Landscape Conservation System;
- (vi) (I) restores native vegetation following a natural disturbance;
- (II) prevents the expansion into greater sage-grouse or mule deer habitat of—
 - (aa) juniper, pinyon pine, or other associated conifers; or
 - (bb) nonnative or invasive vegetation;
- (III) reduces the risk of loss of greater sage-grouse or mule deer habitat from wildfire or any other natural disturbance; or
- (IV) provides emergency stabilization of soil resources after a natural disturbance; and
- (vii) provides for the conduct of restoration treatments that—
 - (I) maximize the retention of old-growth and large trees, as appropriate for the forest type;
 - (II) consider the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity;
 - (III) are developed and implemented through a collaborative process that—
 - (aa) includes multiple interested persons representing diverse interests; and
 - (bb) (AA) is transparent and nonexclusive; or
 - (BB) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125); and

(IV) may include the implementation of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(B) DESCRIPTION OF ACTIVITIES.—An activity referred to in subparagraph (A) is—

(i) manual cutting and removal of juniper trees, pinyon pine trees, other associated conifers, or other nonnative or invasive vegetation;

(ii) mechanical mastication, cutting, or mowing, mechanical piling and burning, chaining, broadcast burning, or yarding;

(iii) removal of cheat grass, medusa head rye, or other nonnative, invasive vegetation;

(iv) collection and seeding or planting of native vegetation using a manual, mechanical, or aerial method;

(v) seeding of nonnative, noninvasive, ruderal vegetation only for the purpose of emergency stabilization;

(vi) targeted use of an herbicide, subject to the condition that the use shall be in accordance with applicable legal requirements, Federal agency procedures, and land use plans;

(vii) targeted livestock grazing to mitigate hazardous fuels and control noxious and invasive weeds;

(viii) temporary removal of wild horses or burros in the area in which the activity is being carried out to ensure treatment objectives are met;

(ix) in coordination with the affected permit holder, modification or adjustment of permissible usage under an annual plan of use of a grazing permit issued by the Secretary concerned to achieve restoration treatment objectives;

(x) installation of new, or modification of existing, fencing or water sources intended to control use or improve wildlife habitat; or

(xi) necessary maintenance of, repairs to, rehabilitation of, or reconstruction of an existing permanent road or construction of temporary roads to accomplish the activities described in this subparagraph.

(C) EXCLUSIONS.—The term ‘covered vegetation management activity’ does not include—

- (i) any activity conducted in a wilderness area or wilderness study area;
- (ii) any activity for the construction of a permanent road or permanent trail;
- (iii) any activity conducted on Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
- (iv) any activity conducted in an area in which activities under subparagraph (B) would be inconsistent with the applicable resource management plan; or

(2) SECRETARY CONCERNED.—The term ‘Secretary concerned’ means—

- (B) the Secretary of the Interior, with respect to public land.

(3) TEMPORARY ROAD.—The term ‘temporary road’ means a road that is—

- (A) authorized—
 - (i) by a contract, permit, lease, other written authorization; or
 - (ii) pursuant to an emergency operation;
- (B) not intended to be part of the permanent transportation system of a Federal department or agency;
- (C) not necessary for long-term resource management;
- (D) designed in accordance with standards appropriate for the intended use of the road, taking into consideration—
 - (i) safety;
 - (ii) the cost of transportation; and
 - (iii) impacts to land and resources; and
- (E) managed to minimize—
 - (i) erosion; and
 - (ii) the introduction or spread of invasive species.

(b) Categorical Exclusion.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary concerned shall develop a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)) for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer.

(2) ADMINISTRATION.—In developing and administering the categorical exclusion under paragraph (1), the Secretary concerned shall—

(A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) with respect to public land, apply the extraordinary circumstances procedures under section 46.215 of title 43, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and

(D) consider—

(i) the relative efficacy of landscape-scale habitat projects;

(ii) the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and

(iii) the need for habitat restoration activities after wildfire or other natural disturbances.

(c) Implementation Of Covered Vegetative Management Activities Within The Range Of Greater Sage-Grouse And Mule Deer.—If the categorical exclusion developed under subsection (b) is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer.

(d) Long-Term Monitoring And Maintenance.—Before commencing any covered vegetation management activity that is covered by the categorical exclusion under subsection (b), the Secretary concerned shall develop a long-term monitoring and maintenance plan, covering at least the 20-year period beginning on the date of commencement, to ensure that management of the treated area does not degrade the habitat gains secured by the covered vegetation management activity.

(e) Disposal Of Vegetative Material.—Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may be—

(1) used for—

(A) fuel wood; or

(B) other products; or

(2) piled or burned, or both.

(f) Treatment For Temporary Roads.—

(1) IN GENERAL.—Notwithstanding subsection (a)(1)(B)(xi), any temporary road constructed in carrying out a covered vegetation management activity that is covered by the categorical exclusion under subsection (b)—

(A) shall be used by the Secretary concerned for the covered vegetation management activity for not more than 2 years; and

(B) shall be decommissioned by the Secretary concerned not later than 3 years after the earlier of the date on which—

(i) the temporary road is no longer needed; and

(ii) the project is completed.

(2) REQUIREMENT.—A treatment under paragraph (1) shall include reestablishing native vegetative cover—

(A) as soon as practicable; but

(B) not later than 10 years after the date of completion of the applicable covered vegetation management activity.

(g) Limitations.—

(1) PROJECT SIZE.—A covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may not exceed 4,500 acres.