



January 22, 2024

Dept of Interior  
Director- BLM (HQ-630)  
Room 5646  
1849 C Street NW  
Washington DC 20240

RE: Proposed Temporary closures and restriction orders  
RIN: 1004-AE89

Dear Sirs:

Please accept this correspondence as the comments of the above Organizations in vigorous opposition to the proposed expansion of authority to issue temporary closures and restriction orders on lands managed by the BLM ("The Proposal"). The Proposal spans a mere five pages of the Federal Register providing a wealth of random unsupported assertions combining wildly disparate situations to support creating new management authority under the guise of streamlining authority managers have had for decades. The Proposal then addresses unusual concerns around existing authority is be applied, such as asserting there are significant appeals of emergency closures currently. This is problematic for many reasons. We simply are not aware of any appeals of closures during the course of the active emergency. We are aware of numerous closure orders being challenged when the order is in place years after the emergency has ended or when emergency conditions were never present. These are different issues and should never be lumped into a single concern or issue.

While the Proposal asserts to be streamlining existing authority, the Proposal attempts to provide new basis for closures, based on undefined concepts such as “implementation of management responsibilities” for unspecified periods of time. No discussion of what these terms mean or how these changes could be applied under existing regulations is provided at all. The open-ended nature of the Proposal creates the possibility that emergency closures could span decades by allowing closure orders to exist until Resource Management Plans can be updated despite the basis being far from an emergency.

In isolation, this is deeply concerning as much of this information is inaccurate, proposed changes are not highlighted for the public to understand and comment meaningfully on. The Proposal is highly frustrating to existing partners as it appears to be merely another step in the opening of BLM to large scale leasing of federal public lands to Natural Asset Companies without public engagement in any phase of this discussion. The Proposal is clearly seeking to allow emergency closure orders to be issued in circumstances where there is little proximate and significant risk to the public simply to avoid NEPA analysis of leasing efforts. It is highly frustrating the Proposal seeks to apply provisions created for effective and efficient manager response to true on the ground emergencies in a manner that was never intended when this authority was created. We believe this effort will ultimately be unsuccessful and could actually result in significant negative impacts to resources. The use of emergency response provisions in this manner will create significant erosion of support for these provisions and expand distrust of the public in any action the agency takes.

#### **1(a) Who we are.**

Prior to addressing the specific input of the Organizations on the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization representing the OHV community seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental

organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. The Trail Preservation Alliance (“TPA”) is an advocacy organization created to be a viable partner to public lands managers, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of motorized trail riding and multiple-use recreation. The TPA acts as an advocate for the sport and takes the necessary action to ensure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multiple-use trail recreational opportunities. Colorado Snowmobile Association (“CSA”) was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport. CORE is a motorized action group dedicated to keeping motorized trails open in Central Colorado and the region. Idaho Recreation Council (“IRC”) is comprised of Idahoans from all parts of the state with a wide spectrum of recreational interests and a love for the future of Idaho and a desire to preserve recreation for future generations. The Idaho State Snowmobile Association (“ISSA”) is an organization dedicated to preserving, protecting, and promoting snowmobiling in the great state of Idaho. Our members may come from every corner of the state, but they all share one thing in common: their love for snowmobiling. Ride with Respect (“RwR”) was founded in 2002 to conserve shared-use trails and their surroundings. RwR has educated visitors and performed over twenty-thousand hours of high-quality trail work on public lands most of which has occurred on BLM lands. Over 750 individuals have contributed money or volunteered time to the organization. Nevada Off Road Association (NVORA) is a non-profit Corporation created for and by offroad riders. NVORA was formed to specifically fill the void between the government managers and the rest of us who actively recreate in the Silver State. NVORA does this by maintaining a consistent, durable, and respected relationship with all stakeholders while facilitating a cooperative environment amongst our community. Collectively, TPA, NORA, CSA, CORE, IRC, RwR, ISSA, and COHVCO will be referred to as “The Organizations” for purposes of these comments.

Nationally, the OHV community provides between \$200-\$300 million dollars into public lands management every year as a result of their voluntarily created OHV/OSV registration programs. As an example, the California OHV grant program provided \$85 million in grants last year, and over the life of the program has funded more than \$750 million in direct funding to public land managers.<sup>1</sup> The benefits of the California OHV program are outlined as follows:

- \* Through our USFS partners, over 18,000 miles and 269,000 acres are available for OHV Recreation.
- \* Through our BLM partners, over 18,000 miles and 478,000 of acres are made available for OHV Recreation.

As another example, Colorado's voluntary registration programs put almost \$9m annually in grants back on public lands, and over the life of this program this has now provided more than \$100m in funding for public lands to maintain and protect all forms of resources.<sup>2</sup> This Program funds more than 60 maintenance crews throughout the state in addition to equipping and often training them to. Clearly efforts at the scale of these voluntarily created programs warrant inclusion in the discussion of possible closures for emergency response and conservation efforts as our involvement has addressed many emergency situations and restoration efforts following an emergency. Most states that BLM owns lands in have similar programs that provide similarly high levels of funding but these programs extend well beyond just federal public lands and many states have OHV/OSV programs but have little to no federal public lands.

The failure to recognize partnerships like this and its benefits for recreation and conservation have resulted in erroneous and damaging statements in the Proposal. This recognition of the benefits of multiple use restoration efforts through partners in protecting the future of multiple

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<sup>1</sup> [Welcome to the Off-Highway Motor Vehicle Recreation \(OHMVR\) Division's Grant Programs \(ca.gov\)](#)

<sup>2</sup> Colorado summer program is outlined here <https://cpw.state.co.us/Documents/Trails/OHVGrantProgramAwards.pdf> Colorado winter program is outlined here.

uses in the area could have been highly valuable. As an example, the Colorado OHV program has contributed more than \$1m over the last several years to repair the impacts of the East Troublesome fire which impacted more than 190k acres largely on BLM's Kremmling FO and Arapahoe/Roosevelt NF. Initial efforts targeted restoring basic access to the area to allow restoration efforts to even start and we anticipate planting many seedlings and monitoring the area to conclude these efforts.<sup>3</sup> This is a type of project that commonly occurs within our OHV/OSV programs. These are the type of projects we would be concerned about slowing down if there misplaced concerns around emergencies. Why would a partnership such as this not be highlighted and targeted for future planning efforts?

The efforts of the motorized community extend well beyond landscape level efforts and often are targeting much smaller scale areas on an on-going basis through permits. Many of our local volunteer clubs work with land managers have executed "adopt a trail" or "adopt a road" type agreement for large portions of routes in planning areas. These clubs often partner with managers on very small acre projects and efforts to address impacts of illegal shooting or dumping in areas with clean up days. Often these events are the basis of a temporary closure order from the BLM Office to allow for this effort to take place and these efforts have been highly effective in mitigating impacts of illegal activities. Why would this need to be changed?

The Organizations and our members obtain hundreds of permits every year from BLM to hold events of all sizes. These include many of the larger races such as King of the Hammers or Best in the Desert races noted in the Proposal but also include many tiny events where exclusive possession of public lands is not sought and in some situations events may not come into contact with BLM managed lands. These small events may include poker runs, educational events, site cleanups and many other efforts. Our experiences have been diverse but we are not aware of any permitted events where there have been claims that the BLM lacked authority to timely close the area if the event posed a possible risk to public safety or resources. We are concerned that

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<sup>3</sup> A summary of video of these efforts to date is provided here: [OHV Final on Vimeo](#)

poor public engagement or expanded closure authority could be used as a tool to stop permitted events by those that may have opposed the event in the NEPA process.

**1(b) The Proposals failure to analyze existing partnerships will result in damage to those relationships.**

In our experiences, the assertions the Proposal is seeking to avoid delay in emergency public lands closures, which are based on situations that are unforeseen and a direct imminent risk to public safety or resources simply lack factual basis. The Proposal asserts delays could result from possible appeals of temporary closure orders under processes put in place to protect due process and public engagement of interests that might be impacted by closures. This simply has not been our experience. The Organizations are aware of objections and challenges to overly broad closure orders that persist for years following an emergency response but this is a different situation than is raised in the Proposal. We are unable to understand how permitted events could be seen as a similar management situation to emergency response.

BLM has a huge number of provisions that allow for temporary closures and restrictions of public lands for a variety of reasons. Understanding the nuisances of these existing authorities and response tools is critical to an effort to reform or streamline any management authority. BLM consistently uses these authorities to respond to proximate and unforeseen risks to public safety or resources, which the issuance of closures in response to wildfires or floods. Avoiding impacts to the existing authority to issue this type of Order and the issue specific remedies that are provided for subsequent to the issuance of the emergency order would seem to warrant some type of discussion in the Proposal. These factors range from true emergency closures during the event to restoration efforts that may be occurring in an area post event. Rather than discussing the relationship of existing emergency provisions, the Proposal would appear to consolidate all permitted events and emergency management actions into a single category for the issuance of closure orders. This consolidation of authority could create barriers for management rather than resolve them as requirements for meeting various statutory requirements for funding responses are not addressed.

The preservation of due process and public engagement of interests that may be impacted by any closures is critical to protecting multiple uses. The Proposal, when taken in conjunction with the recently released BLM Conservation Strategy, only increases our concerns for the protection of due process and public engagement for any interest that may be impacted in this process. This new Conservation Strategy created the concept of a conservation lease that could be issued in response to the climate emergency. Assuming for the sake of these comments, there is a climate emergency the challenges sought to be addressed in the Conservation Strategy are neither unforeseen, or when compared to a fire or flood, or pose the immediate and proximate risk to public safety or resources to warrant an expedited closure processes without public engagement. While the Conservation Strategy addresses threats less proximate and unforeseen than a traditional emergency, the Proposal seems to allow a similar response from managers. When the Proposal is taken in concert with the Conservation Strategy, it appears the ending management situation would allow for closures of public lands by the leaseholder but fails to address how these closures would be vetted for NEPA compliance and other regulatory requirements. The current Proposal only expands this concern around due process and public engagement as the Proposal seeks to provide almost open-ended authority for managers to close areas until RMPs can be revised to address an issue. The Organizations are unable to understand how an emergency risk could be tied to an artificial deadline of a revision of a planning document that maybe decades away would not be hugely problematic to implement on the ground.

Each of these existing models of management responses are the result of the highly variable nature of the proximity and foreseeability of each risk to the public or resources. The proximity of risk to the public or resources and foreseeability of the risk are factors that must be balanced in any regulatory structure responding to this issue with due process protections and public engagement. The Organizations are supportive of greater transparency in public lands management and public access to public lands for a variety of reasons. The Organizations vigorously assert the Proposal fails to strike the proper balance in protecting due process and public engagement in public lands management and moves towards closure orders being issued

for management concerns that have not been subjected to NEPA or emergency closures being issued for issues that are neither unforeseen or a direct imminent risk to public safety or resources.

**2(a)(1). Existing statutes and regulations allow the IBLA and the BLM Director to issue immediately applicable emergency closure orders.**

Currently, BLM managers have wide ranging authority to issue temporary closure orders for public lands, including permitted events and emergency responses. The Organizations are not aware of concerns around the use of this authority when it is narrowly tailored and responding to a serious and direct threat to public safety or resources. However, land managers must balance a variety of concerns in making these decisions. The rational use of these closure authorities has created significant trust between managers and local communities when these communities face an emergency. Goodwill between managers and the public is immediate when BLM managers use their authority to protect public safety or resources by issuing closures in response to local conditions such as fires, floods and other unforeseen significant risks to that community. Closure orders are also issued for events and there is often support from the communities who feel engaged in the decision making for events and often are the direct recipients of the economic benefits of the events. The management goodwill from existing efforts will be negatively impacted if the Proposal is implemented, as there is no balance of competing interests even addressed and risks are simply not a direct or imminent risk to public safety or resources due to a localized condition.

Unlike existing regulations, the Proposal fails to balance between emergency closure authority and legally required due process and statutorily required public engagement in public lands management decision making. This will massively erode public support for emergency response and other needed management actions. The Proposal is entirely unsuccessful in providing any credible basis to alter the current regulatory mechanisms addressing these issues. Rather than addressing changes in a meaningful manner, the Proposal chooses to make random inaccurate

assertions on various issues, including existing closure authority. The failure of the Proposal to address authority in a coordinated and thoughtful manner will create conflicts with communities as some will be forced to bear more burden of closures than others, who are facing a similar risk. Questions about why public land was closed in certain areas and not others to address a threat that is entirely unrelated to the public lands will not lead to anything but creating division between communities and managers.

The failure of the Proposal to accurately reflect current authority is immediate as it asserts managers lack of authority to issue immediately effective emergency closures. As an example, the Proposal makes numerous references to public safety or resources being the basis for the request for expanded closure authority such as the following:

“However, aspects of 43 CFR 8364.1— such as the requirement to publish temporary closure and restriction orders in the Federal Register and the absence of a provision authorizing the BLM to issue temporary closure and restriction orders with immediate full force and effect—can hinder the BLM’s ability to respond effectively to exigencies that arise on public lands. Streamlining and modernizing the manner in which the BLM notifies the public about temporary closure and restriction orders, as well as providing authorized officers with the ability to issue such orders with immediate effectiveness, would allow the BLM to better perform its mission to responsibly manage public lands and protect public safety.”<sup>4</sup>

The conflict with this assertion and existing regulatory authority is immediate and immense as existing BLM regulations provide broad authority for emergency closures in a wide range of situations.<sup>5</sup> It has been our experience that emergency closure orders in relation to active fires

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<sup>4</sup> See, Dept of Interior, Bureau of Land Management, Temporary Closure and Restriction Orders; Proposed Rule; Federal Register / Vol. 88, No. 223 / Tuesday, November 21, 2023 / at pg. 81023(hereinafter referred to as the “Proposal listing”

<sup>5</sup> See, Generally 43 CFR Part 9210.

are an overwhelming reason for the issuance of closure orders. We are not aware of any challenges being presented around the timely issuance of closure orders as part of an active fire response. The lack of legal challenges is evidence of the overwhelming support the public has for these efforts. The existing regulations specifically allow emergency closure authority in fire response efforts as follows:

“§9212.2 Fire prevention orders. (a) To prevent wildfire or facilitate its suppression, an authorized officer may issue fire prevention orders that close entry to, or restrict uses of, designated public lands.

(b) Each fire prevention order shall:

- (1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;
- (2) Specify the time during which the closure or restriction shall apply;
- (3) Identify those persons who, without a written permit, are exempt from the closure or restrictions;
- (4) Be posted in the local Bureau of Land Management office having jurisdiction over the lands to which the order applies; and
- (5) Be posted at places near the closed or restricted area where it can be readily seen.”<sup>6</sup>

Contrary to the assertions in the Proposal that BLM managers lack authority to issue closure orders that are immediately effective, the above provisions provide broad authority for closures in response to an emergency that is unforeseen and which presents an imminent and direct threat to public safety or resources. We are unable to identify any emergency closure order issued for active fire response that has been appealed. If this is a concern it should have been raised in the Proposal and addressed with greater detail. While we are aware of challenges to closure orders being in place extended periods of time after the proximate and direct risk to public safety or

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<sup>6</sup> See, 43 CFR §9212.2

resources has passed, this is a different management concern and outside the scope of what the Proposal is seeking to achieve.

The inaccuracy of the Proposal summary of this management situation expands as existing BLM regulations allow for expedited appeal process to review emergency closures and many other decisions at the BLM Director's discretion. Current BLM regulations specifically provide this expedited authority as follows:

**"§ 4.21 General provisions.**

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately;"<sup>7</sup>

The Organizations simply cannot envision a situation where an emergency closure for an issue that was truly unforeseen and a risk to the public or resources, such as a fire or flood, would not be subject to the use of the public interest exception provided. If this situation is actually arising, the remedy should be educating line officers on their ability to issue orders such as this and providing a clearly defined guidance document for local managers to understand the Director concerns about making a decision in this manner. The remedy simply is not new regulations. The Organizations are concerned that this waiver provision is not mentioned in the Proposal, and this creates the possibility the Proposal is seeking to address issues outside those discussed in the register notice. The Organizations are not able to envision a situation where there is an **actual** emergency threatening the public's health safety and welfare or resources, where such a finding would be difficult to issue. These Orders simply are not challenged or appealed to the best of

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<sup>7</sup> See, 43 CFR §4.1a

our knowledge. If this type of an appeal is common, the Proposal should have provided this information and has not.

Our concerns around the basis and direction of the Proposal expand when the exceptions for closure orders specifically addressed in the Proposal are reviewed. These concerns are unusual to say the least. An example of the unusual nature of these concerns would be exemplified in the Proposal provisions such as the following:

“The proposed rule clarifies that specific groups can also be exempt from closure or restriction orders, such as Tribal members that may need to access an otherwise closed area for traditional or cultural uses.<sup>8</sup>”

While the Organizations vigorously support the right of any member of the public to access public lands, the Organizations are finding it difficult to understand why this provision would be included in the Proposal if true emergency closures were the management concern. We find it difficult to identify a cultural resource that would allow public access to an area that was subject to closure for a fire or flood response effort. Again, if this was a management concern of some scale, the Proposal should have addressed the scale and scope of this issue.

The questionable basis of the Proposal around closure orders increases as many existing regulations provide a far more broad authority to managers to allow access into restricted areas for fire response than is provided by the above provisions. BLM fire closure regulations again are used as an example of managers authority to provide limited public access as these regulations provide broad authority on this issue as follows:

“§9212.3 Permits. (a) Permits may be issued to enter and use public lands designated in fire prevention orders when the authorized officer determines that the permitted activities will not conflict with the purpose of the order.

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<sup>8</sup> See, Proposal Listing at pg. 81024

- (b) Each permit shall specify:
- (1) The public lands, roads, trails or waterways where entry or use is permitted;
  - (2) The person(s) to whom the permit applies;
  - (3) Activities that are permitted in the closed area;
  - (4) Fire prevention requirements with which the permittee shall comply; and
  - (5) An expiration date.
- (c) An authorized officer may cancel a permit at any time.”<sup>9</sup>

This authority is commonly used to allow those impacted by fire and flood to gain access to areas to understand the scope and scale of impacts to them at the first opportunity the area is arguably safe for them to access the area. Could this authority be used to provide access to tribal members to access a cultural site? That answer is of course. We would be opposed to any assertion this authority has been used in a discriminatory manner or in a manner not recognizing cultural concerns.

Given the immensely broad existing authority to provide for site and issue specific flexibility in the administration of closure orders, the Organizations must question why cultural and tribal issues might be a concern. The Proposal again fails to identify what significant concern is there for emergency closures and possible impacts to cultural and tribal needs? As a result, the new provisions provide less authority for managers to address access issues during a true emergency as there can be an innumerable number of issues that could be addressed in an emergency outside cultural and tribal access. Clearly the provision is not here to protect tribal access to lands that are closed due to an emergency such as a fire or flood.

The Organizations are also aware that many tribal and cultural sites are sensitive in nature and release of information on the sites are often legally protected. The relationship of these protections and the new provisions should be a concern, as the use of this provision to allow access would entail the need to provide additional legal basis for the order being issued. This is

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<sup>9</sup> 43 CFR §9212.3

a hurdle to the effective management of emergency responses as current authority is broad in nature and managers would have no trouble outlining an order that allowed access to tribal members without raising concerns about confidential information on sites and other resources. Again, these types of concerns also make us question why emergency response and permitted issues were thought to be the proper basis for the scope of the Proposal. Cultural and tribal access in areas closed for permitted events should have been addressed in the NEPA process, and concerns like this should not be allowed to intervene after the NEPA process has closed as this would create an immense burden on the permit holder and possibly create public safety issues or resource impacts for the permit. Rather than streamlining the issuance of orders provisions such as this will only make the process more complicated.

**2(a)(2). Existing CEQ regulations allow alternative arrangements for NEPA compliance in emergency response situations.**

Existing BLM regulations further allow for a streamlined and expedited NEPA compliance process for emergency response, which further avoids the concerns about a possible delay in response by managers in emergency situations. Given these broad and encompassing provisions for emergency response, the Organizations are not able to understand a benefit from including permitted events in the scope of the Proposal. This is another example where the Proposal is complicating rather than streamlining any response, as these provisions that are currently reasonably clear. This streamlined authority is outlined in BLM NEPA handbook as follows:

“2.3 EMERGENCY ACTIONS In the event of an emergency situation, immediately take any action necessary to prevent or reduce risk to public health or safety, property, or important resources (516 DM 5). Thereafter, other than those actions that can be categorically excluded, the decision-maker must contact the BLM Washington Office, Division of Planning and Science Policy (WO-210) to outline subsequent actions. The CEQ regulations (40 CFR 1506.11) provide that in an emergency “alternative arrangements” may be established to comply with NEPA.

Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance.

The CEQ regulations for alternative arrangements for dealing with such emergencies are limited to the actions necessary to control the immediate effects of the emergency. Other portions of the action, follow-up actions, and related or connected actions remain subject to normal NEPA requirements, so you must complete appropriate NEPA analysis before these actions may be taken (40 CFR 1506.11).

The “alternative arrangements” take the place of an EIS and only apply to Federal actions with significant environmental impacts (see section 7.3, Significance). If the proposed action does not have significant environmental effects, then the alternative arrangements at 40 CFR 1506.11 do not apply.

If you anticipate the proposed emergency response activity will have significant environmental effects, we recommend that you assess whether an existing NEPA analysis has been prepared (e.g., implementing preexisting plans) or whether there is an applicable exemption. For example, certain Federal Emergency Management Agency (FEMA) response actions are exempt from the NEPA (see the NEPA Handbook Web Guide).

Given the large amount of flexibility already provided for in existing regulations, the Organizations find any assertion of possible delay in the ability of managers to respond to emergencies difficult to support or understand. If there are concerns, the Proposal should have addressed them. The large amount of latitude in emergency response currently provided also causes the Organizations concern as this clarity is based on emergency management concerns and not the closures that are related to permitted events that have gone through NEPA. These are separate issues and

should be dealt with separately even if they are both addressing possible concerns for public safety or resources.

**2(a)(3) Existing regulations provide for identification of starting and ending times of emergency closure orders.**

The systemic failure of the Proposal to accurately address existing closure powers and existing minimum requirements for issuance of an order using this authority is again displayed in the Proposal provisions addressing the specificity of timing requirements in the issuance of closure orders. Existing provisions are largely aligned on the need to specify the start and end date of any emergency or closure order. These provisions are simply not addressed in the Proposal, which asserts the declaration of closure times is a benefit of the Proposal. This alleged benefit is outlined in the Proposal as follows:

“require that all orders specify the date and time that a temporary closure or restriction becomes effective and terminates;”<sup>10</sup>

As previously noted in these comments, 43 CFR §19212.3 specifically mandates process needed to issue closure and restriction orders. These regulations have specific provisions requiring the timing of the applicability of these restrictions for a beginning and end date. Again, we are unable to align these existing highly specific regulations addressing the need for specific dates to start and stop area closures with an assertion that the Proposal will expand the clarity in the scope of closure dates as identified.

**2(a)(4) Emergency provisions provide significant short and long term emergency response declarations**

Accurately addressing the basis and specific requirements for the issuance of closure orders can greatly impact the long-term recovery path for an area after the direct threat of an emergency has passed. Many of the recovery resources that are available are unique and are somewhat

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<sup>10</sup> See, Proposal listing at pg. 81022

tailored to the issue being responded to. As an example, existing regulations allow managers are allowed to hire staff for activities during an event, which authority is specifically provided as follows:

“Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons or persons seriously ill or injured to the nearest place where interested parties or local authorities are located.”<sup>11</sup>

The ability to make emergency hires is further supplemented by the ability to address salaries in emergency situations, which is outlined in statute as follows:

“Employment and compensation of personnel to perform work occasioned by emergencies. Notwithstanding any other provision of law, persons may be employed or otherwise contracted with by the Secretary of the Interior to perform work occasioned by emergencies such as fire, flood, storm, or any other unavoidable cause and may be compensated at regular rates of pay without regard to Sundays, Federal holidays, and the regular workweek.”<sup>12</sup>

The expanded management authority provided for administrators in response to an emergency situation continues in many instances well beyond active emergency response. Congress has provided numerous issue specific funding streams for longer term response to challenges such as the FLAME act, which addressed funding for administrators to remediate areas impacted by fire

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<sup>11</sup> See, 43 USC §1742

<sup>12</sup> See, 43 USC §1469

after the direct impacts had passed. <sup>13</sup>Given the complexity of these management models, the Organizations must ask why analysis of possible impacts to these issue specific resources and funding streams from the Proposal is not addressed in the Proposal. This would be a major concern if streamlining emergency and permit response was the issue to be addressed. This lack of information makes us think a streamlined response is not what the Proposal is seeking.

**2(b). The Proposal should not be used as a substitute for NEPA compliance for permits or planning.**

The Organizations vigorously assert that any streamlined or revised authority to issue closure or access restriction should not be used as a replacement for the full NEPA process. The Organizations have concerns around the relationship of existing NEPA regulations and requirements to the implementation of the entire Proposal. Throughout the Proposal there are numerous references to compliance with NEPA being allowed. These are without weight if emergency provisions of NEPA are used for the compliance with NEPA for management decisions that are not a direct and significant threat to public safety or resources. While there may be projects that could be performed with a categorical exclusion or using a streamlined NEPA process, such as those provided in the Healthy Forest Restoration Act, there are also projects that will be undertaken that will need an EA or EIS to undertake.

As noted in other portions of these comments, NEPA provides significant flexibility for managers to comply with its requirements as part of an emergency response effort. These short term answers should not be seen as a manner to avoid addressing long term underlying problems with areas impacted by any issue. An example of this concern is the fact that in many areas BLM resource management plans are simply horribly out of date. Given the unusual nature of the Proposal the Organizations are concerned that this new closure authority could be seen as a stop gap or method to avoid public engagement in RMP revisions.

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<sup>13</sup> See, 43 USC 1748(a)(PL 111-88)

**3(a)(1). The Proposal seeks authority well outside permitted activities and emergency response.**

While the Proposal asserts to be addressing emergency situations and permits, often times the direction of the Proposal strays far from these issues and directly addresses the incorporation of emergency closures as part of a basic management model. The Proposal seeks to provide hugely broad authority on many instances and appears to be an attempt to simply avoid undertaking NEPA analysis and/or public engagement in a timely manner.

As we have outlined previously in these comments, many of our Organizations engage on a large amount of site specific remediation efforts, such as trash pickups or cleaning illegal shooting ranges making the need for both long and short term response to issues important to our concerns. These short term responses are done with a desire to address issues and impacts that managers are unwilling or unable to manage. Long term resolution of these types of problems require NEPA analysis, coordinated responses from other government agencies, partners and wide public engagement. If an illegal shooting area is closed, part of the decision process must include educating the public where legal shooting opportunities are provided. Only this type of integrated management response will address issues and protect resources.

This desire to avoid NEPA by merely closing areas for reasons that remain unclear, is reflected as follows in the Proposal as follows:

“Under the proposed rule, the BLM would continue to establish closures and use restrictions after other management strategies and alternatives have been explored, including, but not limited to, increased law enforcement, cooperative efforts with local governments, engineering, education, and outreach.”<sup>14</sup>

We have to question how the above fact pattern could ever be involved in emergency response or closures for permitted activities. Many times responses such as those above are only provided

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<sup>14</sup> See, Proposal listing at pg. 81025

with partners, meaning public engagement and good communication are necessary to truly resolve issues. Clearly the above situation is addressing something that has occurred for years, which begs the question of why would a long-term closure be thought to be advantageous rather than pursuing NEPA in a timely manner. This is why we are very concerned about the implementation of management responsibilities being used as the basis for closures.

Not only is this management model going to erode good will for effective management responses it will put resources at risk as it could be much easier for manager to simply close an area and ignore the problem rather than undertake the NEPA necessary to resolve the issue. Using an emergency closure in this manner would also appear to immediately violate NEPA requirements which are outlined as follows in the Code of Federal Regulations:

“§ 1508.25 Scope. Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”<sup>15</sup>

The Organizations cannot envision where the fact pattern provided in the Proposal could be used in any other manner than to avoid timely NEPA analysis and public engagement on issues. This situation would be a per se violation of NEPA regulations and would represent a management direction that should be avoided moving forward rather than one that was highlighted. Rather than implementing a management responsibility, the provision is creating a management authority that simply does not exist. Provisions such as this give us great concern regarding both possible due process concerns for permittees and public engagement requirements of numerous statutes being avoided. The Organizations submit this concern can only be resolved with additional protections being added to the Proposal to avoid authority being used in this manner.

**3(a)(2) Multiple uses under new mandate must be protected from impacts from implementation of management responsibilities that is not defined.**

The Proposal seeks to create an entirely new basis for the issuance of emergency closures and access restrictions, which the Proposal calls “the implementation of management responsibilities.” The Organizations are very concerned that the Proposal makes no reference to protecting multiple use mandates with the new “implementation of management

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<sup>15</sup> 40 CFR §1508.25(a)

responsibilities” authority provided for closures. In direct contradiction to protecting existing legal obligations the Proposal lays out situations where this new authority could be used to avoid legal obligations. The systemic avoidance of existing legal obligations is exemplified by the failure to define the term “implementation of management responsibilities” in the Proposal.

Definitions of foundational terms such as this will be critical to implementation of the Proposal as there is no generally accepted definition for this term. The need to define this foundational element of the Proposal is exemplified by the fact that all existing definitions arguably related to the concept proposed appear to be related to human resources management. While the position of implementation manager may be somewhat defined in the employment field any of these job descriptions are highly industry sector driven and unrelated to the concept being proposed. The failure to define what could and could not be a management responsibility that would be implemented makes any substantive voicing of concerns around the application of the concept impossible. The hugely open ended nature of this concept is concerning as it could be used to close an area for endangered species issues or the construction of a massive wind or solar farm or a new open pit mine. None of these efforts will benefit recreation. However this term is finally defined and applied, this definition must protect multiple uses, due process and public engagement of all interests relative to the implementation of responsibilities being undertaken. Implementation of management responsibilities should not be used to create management authority not provided for already or avoid full NEPA compliance.

The failure to define a foundational term such as the “implementation of management responsibilities” creates significant concerns as the concept that is being proposed is wide ranging at best. The concept of implementing management responsibilities is very broad in nature and triggers concepts far in excess of the BLM merely hiring a contractor to perform services for them. Courts reviewing these provisions have held that schemes avoiding NEPA are invalid holding that:

“BLM may take steps to "maintain" plans under 43 C.F.R. § 1610.5-4, which permits maintenance as necessary to reflect minor changes in data. 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. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records. 43 C.F.R. § 1610.5-4.”<sup>16</sup>

The Organizations are concerned that without a clearly defined scope of actions that could be taken within this new authority to implement management responsibilities, management will be undertaken without NEPA or public engagement. This will do nothing more than erode public trust in the management decisions, result in decisions that are not sustainable in the long run and immense amounts of litigation. In order to avoid these issue the definition must clearly resolve questions such as the following: What is the scope of limitations on this ability to designate this authority? Is it an emergency based authority? Is it a resource management plan, that could be decades out of date? Is it some other statutory authority, such as the endangered species act?

**3(a)(3). The concept of “temporary” must be clearly defined in the Proposal.**

The Organizations are VERY concerned that the window of time that the Proposal appear to be addressing and operating under are never addressed and appears to be highly flexible in challenges it seeks to address. There is a significant difference between a temporary closure of any area for an afternoon long event and a large scale closure that might last many years. Clearly identifying an expected life span of a management decision is critical to the success of the management decision. This type of concern is frequently see in existing emergency response efforts. Often large closure areas are acceptable and advised in fire response when fires are not

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<sup>16</sup> *Klamath Siskiyou Wildlands Center v. Broody*, 468 F.3d 549 (9<sup>th</sup> Circuit 2006)

easily located or responses are being developed. Often management efforts expand, closure areas adapt to expanding information. Once fires are extinguished, closures of areas not impacted are often lifted. Even areas impacted are quickly reopened. Closures spanning many years after events and responses have ceased are opposed by the public.

Rather than addressing the need to tailor closures and management responses to the minimum amount needed to achieve management goals and needs the Proposal is open ended on a concern such as this. An example of this would be how the concept of “temporary” is discussed in the Proposal:

“the term “temporary” should be understood in relation to the underlying condition for which the BLM determines that a closure or restriction is warranted; it would not impose any specific time limitations on a closure or restriction order issued under § 8364.1. Instead, a temporary closure or restriction order would generally remain in effect until the situation it is addressing has ended or abated, it expires by its own terms, or the BLM issues a superseding decision, which can include incorporating the terms of a closure or restriction order into a resource management plan in accordance with the regulations at 43 CFR part 1600.”<sup>17</sup>

The Organizations must express their immediate and complete opposition to any closure that would remain open until any RMP was revised, as we are able to identify numerous BLM RMP that were completed in the late 1970s and early 1980s and have never been updated. The possibility that a temporary closure could span more than 45 years is simply unacceptable in every way. This would be a violation of numerous planning and NEPA requirements that have been addressed previously in these comments.

The conflict of this assertion with numerous internal provisions of the Proposal must be recognized and addressed. The Organizations must note that the Proposal asserts a benefit of

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<sup>17</sup> See, Proposal listing at pg. 81025

providing the requirement of identifying starting and stopping dates for any order. As previously noted, this provision already exists. Additionally, identification of a start and end date for closure orders would imply this is based on an identifiable time on a calendar and not an unspecified point in the future when a management decision might occur. These types of open ended scope of temporary closures would also support our concerns regarding due process and public engagement in decision making in this process. While the Proposal generally asserts to be simply streamlining protection of the public for permits and emergencies, these provisions cause us to believe that a much larger review of the BLM planning process is sought to be undertaken.

**3(b)(1). The definition of an emergency should not be altered to allow political goals to be achieved without public engagement.**

The relationship of the Proposal's expanded closure and access restriction authority to other management initiatives is not addressed or analyzed despite a clear relationship between the Proposal and at least one other effort. Clearly identified boundaries of what the Proposal considers an emergency and what would not be an emergency or permitted event would be very helpful and again is not provided. One of the strengths of the emergency concept and authority to close lands for permitted events is a proximate threat to the public safety or resources that is unforeseen or for management of the event to avoid public safety or resource concerns. As noted in the previous sections, the authority for this type of management action is scattered across numerous statutory provisions. Most do not have a definition of emergency as these provisions are simply applying the commonly understood definition of terms and this has led to significant goodwill being developed in permitted and emergency closure situations.

While the Proposal does not specifically address a change in the definition of emergency, many of the provisions seem to open that discussion without addressing it directly. This is a concern that must be clarified in the comments as we are applying the generally understood definition of emergency in our comments, which Merriam Webster defines an emergency as follows:

**"1:** an unforeseen combination of circumstances or the resulting state that calls for immediate action

2: an urgent need for assistance or relief”<sup>18</sup>

The Organizations would be vigorously opposed to any effort that resulted in the commonly understood definition being applied more loosely or to further a management goal that has been determined without serious public engagement and NEPA review. Too often concepts such as emergencies or crisis or other terms evoking the possibility of catastrophic implications to public safety or resources are used to gain attention to issues. This does not mean these are emergencies as often these issues are entirely foreseeable and are not presenting an urgent risk to public safety or resources.

**3(b)(2) A clear definition of an emergency is needed to maintain programmatic boundaries between management efforts.**

The need for a clear definition of emergency is needed to avoid overlap and possible conflict between various management efforts and programs. When there is a perception that a statutorily mandated management effort is not responding fast enough for certain political interests, assertions of the need for emergency responses from other those interests are often made. One interests dissatisfaction with the pace of any management effort should never create an emergency for other interests or managers. It has been our experience that frequently this type of artificial emergency type concern is expressed to local managers and the open ended expansion of these managers ability to declare emergencies and provide management responses will only catapult the use of this tactic. The challenges to local managers will be immediate as they are already horribly short staffed and unable to provide basic services in many situations. Adding more issues for them to immediately address will only exponentially compound this shortfall rather than resolve it as decisions will not be well researched or understood. The problems this will create in the long term will be immense.

Not only could this open-ended emergency authority compound existing management problems, it could create entirely new problems and conflicts. The need for a clear definition of emergency

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<sup>18</sup> [Emergency Definition & Meaning - Merriam-Webster](#) accessed 1/16/24

to avoid the possibility of expanded legal challenges to artificial emergency type restrictions is exemplified when the relationship of the new open ended emergency authority is linked to pending listings of species on the Endangered Species list, and our concerns expand exponentially when listing of plants is addressed. The myriad of legal complications that arise from the relationship of these two issues is simply overwhelming. The Proposals failure to recognize the possibility of expanding legal challenges in the alleged attempt to reduce legal challenges to decisions is concerning to say the least. This would be a failure of one of the cornerstone benefits asserted to be coming from the Proposal and that failure to even discuss a concern like this is problematic.

For decades the US Fish and Wildlife Service has been bombarded with emergency petitions to list all kinds of species, and often these emergency listings fail to provide sufficient information to warrant further investigation. As a result of this course of conduct, the Fish and Wildlife Service has provided extensive guidance on how to prepare a sufficient petition to list any species.<sup>19</sup> These emergency petition listings have spanned a few pages and seek to list dozens of species and are coupled with immense public pressure and artificial urgency to list. Other times these emergency listings are brought in response to opposition to a project that may be slated to enter the NEPA analysis phase of development or if a party has dissatisfaction with the conclusion of a NEPA effort. Pressure to use this open-ended emergency authority could actually serve as a barrier to the NEPA processes functioning as required if the desire is to preempt or preclude the NEPA or regulatory process in other agencies. This type of ramification is a concern and again it is not discussed in the Proposal.

The possibility of legal challenges arises from the preemptive use of these new emergency powers is immediately present when these new emergency powers are sought to be used to force management decisions for species in areas that may not be habitat at all. We frequently see issues such as this around the management of modeled but unoccupied habitat for a species. We are intimately familiar with several efforts to address modeled but unoccupied habitat as an

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<sup>19</sup>[fws.gov/sites/default/files/documents/ESA-Public-Petition-Guidance.pdf](https://www.fws.gov/sites/default/files/documents/ESA-Public-Petition-Guidance.pdf)

emergency RMP revision after failures to designate this as primary habitat with the USFWS have failed. In several instances the USFWS has provided good reasons why areas were not designated but those are never addressed in the effort to undertake RMP revisions.

This type of conflict between parallel decision making processes could be significant. This tactic has become more problematic as the legal requirements for determinations for modeled but unoccupied habitat have significantly altered since the US Supreme Court's unanimous 2018 decision in *Weyerhaeuser* which held as follows:

“Only the “habitat” of the endangered species is eligible for designation as critical habitat. Even if an area otherwise meets the statutory definition of unoccupied critical habitat because the Secretary finds the area essential for the conservation of the species, Section 4(a)(3)(A)(i) does not authorize the Secretary to designate the area as critical habitat unless it is also habitat for the species.”<sup>20</sup>

Decisions addressing critical habitat or the designation of modeled but unoccupied habitat should remain with the US Fish and Wildlife Service as the average land manager will lack both the resources and expertise to address issues such as this. Often questions such as this are brought to land managers ***because*** of the lack of expertise and resources on the issue and are raised with an immense amount of artificial urgency to protect the species and habitat. Land managers can make decisions based on this type of pressure and bad information. The ability to provide emergency closures in this situation, which would not be legally sufficient will only expand legal challenges and result in resources being moved from actual challenges on the ground to support challenges to these decisions.

**3(b)(3) Closure restrictions only compound our concerns regarding impacts of the new BLM Conservation and Landscape Health Proposal (Docket # 1004-AE-92).**

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<sup>20</sup> See, *Weyerhaeuser v. US Fish and Wildlife Service*; 586 US \_\_\_\_ (2018) pg. 9.

The systemic failure of the Proposal to accurately reflect current management authority, address possible challenges that could flow from proposed changes and define even basic terms in the Proposal is concerning. This course of conduct leads us to the conclusion that there could be an ulterior motive for the Proposal. The relationship of the Proposal and the new BLM Conservation and Landscape Health Proposal (“CLHP”) which is again paving the way for large scale leasing of public lands through what we assume will be Natural Assets Companies (“NACs”) cannot be overlooked. The relationship of these efforts greatly expands our concerns despite the recent decision of the SEC to withdraw their proposed regulations for the NACs business model.<sup>21</sup> While some have heralded the SEC withdraw of the NACs regulations, this only expands our concerns as whatever the SEC was proposing in terms of requirements would have led to at least some type of oversight and transparency in the operations of NACs. As a result of the SEC withdraw, this business model is entirely unregulated or overseen.

The relationship of the CLHP which appears to provide the ability to create temporary closures to benefit lease holders and this proposal cannot be overlooked. Regardless of the business model used, this concept remains problematic for our Organizations. The scattered and uncoordinated manner that land management agencies have chosen to address this concept with only adds to our frustration with this idea. Clearly large scale discussions are occurring on the issue and no one has chosen to engage with existing partners to provide understanding of the NACs concept. The Conservation Strategy Proposal fails to address impacts of possible closures in any substantive manner with the following provisions:

“The proposed rule would define the term “casual use” so that, in reference to conservation leases, it would clarify that the existence of a conservation lease would not in and of itself preclude the public from accessing public lands for noncommercial activities such as recreation. Some public lands could be temporarily closed to public access for purposes authorized by conservation

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<sup>21</sup> [Notice of Withdrawal of Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies \(sec.gov\)](#)

leases, such as restoration activities or habitat improvements. However, in general, public lands leased for conservation purposes under the proposed rule would continue to be open to public use.”<sup>22</sup>

The CLHP continues to outline the risks to public lands and sustainability it is seeking to remedy as follows:

“Increased disturbances such as invasive species, drought, and wildfire, and increased habitat fragmentation are all impacting the health and resilience of public lands and making it more challenging to support multiple use and the sustained yield of renewable resources. Climate change is creating new risks and exacerbating existing vulnerabilities.”<sup>23</sup>

The overlap of these concerns, issues and proposed responses clearly could fall within the scope of this Proposal and support emergency declaration being issued cannot be overlooked. The Organizations have already participated in many collaboratives on a wide range of issues, including grouse, wolverine, wilderness designations and many others where issues and concerns such as those listed above are identified as emergency or crisis issues that has to be addressed. Often these assertions are made with no factual basis to support the assertion and despite the artificial urgency allegedly supporting the management action must be taken to prevent an emergency that was imminent, no calamity has befallen the area or species when management action proposed is not take. Our concerns around the possible large scale leasing of public lands to for profit entities with no background in land management are discussed in detail subsequently in these comments. Providing detailed and meaningful definitions for foundational terms and concepts governing leasing and emergency declarations will be a significant step towards resolving our concerns on this issue.

**4(a). The NEPA analysis for the Proposal is entirely lacking.**

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<sup>22</sup> See, Proposal at pg. 19588

<sup>23</sup> See, Proposal at pg. 19585

The growing history of systemic avoidance of NEPA requirements and public engagement from the BLM around planning efforts is deeply concerning as significant revisions to planning efforts have been proposed to be implemented with almost zero public comment or NEPA scrutiny. The Organizations are opposed to the promulgation of the Rules under the Proposal with simply the issuance of a categorical exclusion, as use of a categorical exclusion in this manner is exactly the type of NEPA compliance that must be avoided in the decision making process for public lands. This BLM decision to adopt the lowest level of NEPA analysis for this large scale and complex effort is clearly stated in the Proposal as follows:

“The BLM intends to apply the Departmental categorical exclusion at 43 CFR 46.210(i) to comply with NEPA.”<sup>24</sup>

This position is problematic for the Proposal, given the national scope and scale of the rulemaking, large number of partners and significant number of efforts that are clearly occurring concurrently with the Proposal. This is a conflict with NEPA requirements that large projects receive heightened levels of NEPA analysis. The Organizations vigorously assert that NEPA analysis of the Proposal must be significantly expanded as proceeding under just a categorical exclusion violates both NEPA and internal guidance documents of the BLM.

Not only is this irregular, it is in conflict with the NEPA compliance for most other major rule makings in the natural resources area. The Organizations experiences with the development of the USFS 2012 planning rule are highly relevant to our concerns about the lack of analysis being undertaken by the BLM. The USFS sought to coordinate their efforts and undertake a complete EIS of the new rule and its impacts. Rather than consolidate all issues into a single location and coordinated efforts, BLM has chosen to divide their planning efforts into numerous initiatives, each of which are being treated as a separate unrelated proposal. The cumulative impact of these numerous isolated efforts must be reviewed and streamlined as most decisions will be

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<sup>24</sup> See, Proposal at pg. 81027

made under multiple overlapping standards, making the relationships of these standards to each other critical in developing an effective decision making process. An efficient effective process will also foster better relationships with partners, as partners will not be forced to attend repetitive meetings or discussions to address similar issues.

Any assertion the Proposal may continue forward with just a Categorical Exclusion and comply with NEPA planning requirements is immediately inconsistent with landscape target of the goals and objectives of the Proposal. The Organizations believe the inherent conflict of the determination the Proposal may proceed with only a categorical exclusion is immediately apparent when the goals and objectives of the Proposal are compared to existing guidance documents from the BLM on the necessity to prepare an EIS. This internal BLM guidance documents provide:

**"11.8 Major Actions Requiring an EIS.**

A. An EIS level analysis should be completed when an action meets either of the two following criteria.

- (1) If the impacts of a proposed action are expected to be significant; or
- (2) In circumstances where a proposed action is directly related to another action(s), and cumulatively the effects of the actions taken together would be significant, even if the effects of the actions taken separately would not be significant,"<sup>25</sup>

The Organizations submit that the landscape level goal of the Proposal can only be achieved through a significant change in landscape level planning despite the piecemeal and ad hoc method of development for the Proposal. The lack of factual basis in the BLM position that the Proposal can move forward without an EIS level of analysis is clear when the cumulative impacts of all the separate planning efforts (Renewable Energy, species, recreation) are consolidated.

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<sup>25</sup> [www.blm.gov/wo/st/en/prog/planning/nepa/webguide/departamental\\_manual/516\\_dm\\_chapter\\_11.html#11-8](http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/departamental_manual/516_dm_chapter_11.html#11-8)

What is being proposed is a landscape change to BLM operations, that in many ways fails to operate within existing statutory authority.

The Organizations also submit that the position of the BLM that only a Categorical Exclusion under NEPA is necessary to undertake a complete review of their planning rule is simply insulting to partners of all types. It has been the Organizations experience that even small projects or permits, including club rides that occur on existing resources require at least an Environmental Assessment. Many of the partners are involved in multi-year EA type analysis on a wide range of issues and will be working through the EA process on small projects, like trail reroutes or parking lots, as BLM planning simply moves forward with a Categorical Exclusion on this landscape effort. The Organizations submit these differences in NEPA application cannot be overlooked and will do little to foster support or partnership for planning efforts moving forward.

**4(b) Meaningful public engagement must be a priority and has been systemically avoided by the Agency.**

Public engagement is a critical step in any land management decision making process that should not be overlooked and Proposal twists this concern into something that is blamed on the appeal process. Public engagement as proposed would be negatively impacted as permitted events would now be lumped into emergency response. This lack of clarity would create immense conflict around permitted events and emergency response. Meaningful public engagement will reduce this type of unintended impact. Public engagement is necessary to ensure that if an area is closed that other resources are not being directed towards the closures area. Even within the recreational community, public engagement will ensure that local resources are not being allocated to the same planning area as the resources of a NAC. Public engagement will also ensure that management partners are aware of efforts and proper alignment of partner efforts can be achieved. If there is a large project that actually warrants a closure order the State wildlife managers probably should be aware of the closure to avoid the sale of site-specific hunting permits in the location. This will only create conflict between partner managers if hunting

licenses are sold and then hunters find out their licenses have been rendered valueless as access to hunting areas has been lost because managers did not talk to each other.

#### **4(c) Community engagement strategy for BLM conflicts with the Proposal.**

The management process outlined in the Proposal, which is significantly reducing community engagement and avoiding NEPA requirements thru expanded emergency authority is directly conflicting with assertions from the BLM that they are seeking to engage with local communities. This vision is clearly laid out in the 2023 BLM Recreation Strategy as follows:

“**Vision:** By increasing and improving collaboration with community service providers, the BLM will help communities produce greater well-being and socioeconomic health and will deliver outstanding recreation experiences to visitors while sustaining the distinctive character of public lands recreation settings.”<sup>26</sup>

Again, the conflict of these two parallel efforts within the BLM creates significant concern for the Organizations. The immediate conflict of these two efforts cannot be overstated and the distrust between managers and partners will only be expanded as partners will not believe any assertion of the desire to actually engage with them in the future. Actual engagement with communities is not achieved with mere words.

#### **5. The relationship between Natural Asset Companies and existing partners and management decisions warrants meaningful discussions.**

The Organizations must express frustrations with the Proposal, and several related proposals that appear to be laying the foundation for the large-scale leasing of federal public lands to for profit entities. Generally, this model appears to be associated with the operation of Natural Asset Companies (NACs). This assumption is based on the limited information that the NYSE is providing on this issue at the landscape level and generalized SEC filings regarding this business

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<sup>26</sup> See, DOI; Bureau of Land Management; connecting with communities – BLM National Recreation Strategy- 2023 at pg. 2. A complete copy of this document is available here: [blm.gov/sites/default/files/docs/2023-08/Blueprint for 21st Century Outdoor Recreation508.pdf](https://blm.gov/sites/default/files/docs/2023-08/Blueprint%20for%2021st%20Century%20Outdoor%20Recreation508.pdf)

model. Given the SEC filings and the fact the NYSE is restructuring for this effort, the effort is significant and there has been engagement with federal land managers as part of this effort.

It is highly frustrating that despite all the managers assertions of increased community engagement, the NACs concept of land management has had no meaningful coordinated engagement from anyone. Our representatives have noticed sudden interest in various BLM public meetings from fund managers, investment groups and others type of businesses that simply are not involved with public lands issues. When casual conversations have been attempted with fund managers on their attendance at the meeting, their answers have been evasive and sometimes confrontational. When questions at these meetings are directed towards land managers on these interests being present at land management meeting, BLM staff has not been able to provide anything akin to a decent answer and some have merely walked away. This poor engagement and general direction of the management model outlined causes concerns for us immediately. It is disappointing at best as our partnership with BLM managers has spanned decades and resulted in hundreds of millions of dollars in direct funding to BLM efforts. Despite this partnership, managers will simply not engage with any information of conceptual discussion, despite the fact this could be an idea we would support with a little meaningful engagement on basic questions.

This systemic avoidance of public engagement on what is clearly a major effort has created conflict that may be entirely unnecessary as often our concerns are foundational and start with how would our programs and partnerships be addressed in the NACs model of management. Without basic information we are forced to try and build understanding of the concept based on loosely aligned press articles, SEC filings and information on investment organizations webpages. This is a problem and certainly not a foundation of trust between interests that will be needed to achieve successful implementation of this concept.

The first basic concern we have is with the emergency closure proposal and relationship of the NACs operational model relates to the multiple use mandate. Many of the assertions found on

the NYSE page outlining what NACs business model seeks to achieve is immediately problematic for the multiple use mandate. Per the NYSE webpage, a NAC is created to address the following goals and challenges:<sup>27</sup>

“To address the large and complex challenges of climate change and the transition to a more sustainable economy, NYSE and Intrinsic Exchange Group (IEG) are pioneering a new class of listed company based on nature and the benefits that nature provides (termed ecosystem services). NACs will capture the intrinsic and productive value of nature and provide a store of value based on the vital assets that underpin our entire economy and make life on earth possible. Examples of natural assets that could benefit from the NAC structure include natural landscapes such as forests, wetlands and coral reefs, as well as working lands such as farms.”

The summary of the NAC efforts on New York Stock Exchange website continues as follows:

“Intrinsic Exchange Group (IEG) is introducing a new type of company whose equity captures the value of natural assets and the ecosystem services they produce. Natural Asset Companies (NACs) are fundamentally different than traditional companies because they are chartered to protect, restore, and grow the natural assets under their management to foster healthy ecosystems.”

The Organizations are aware that the Securities and Exchange Commission has proposed general outlines for the administration of a NAC type business. This Proposal may have been the largest and most coordinated effort to outline what a NAC is intended to achieve and how those goals would be achieved and how these goals would relate to other business activities. As part of this effort, significant opposition to the concept was received by the SEC from what can only be summarized as a diverse range of interests. As a result of this opposition, the SEC announced the

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<sup>27</sup> See, [Natural Asset Companies \(NACs\) | NYSE](#). This website was accessed January 15, 2024.

withdrawal of their proposal.<sup>28</sup> While the SEC has withdrawn their proposed regulations for NACs, we believe the NACs effort will continue without the approval of the SEC. Given the scale of these efforts, we don't see this change being brief or not impacting federal lands

As we have noted, the BLM is working on several proposals that would be huge steps towards implementing a NACs model of management and BLM engagement can only be summarized as bad. Many of these BLM Proposals would grant broad new authority to implement management responsibilities in numerous ways from executing leases to authorizing closures. All of this is being done under the guise of streamlining authority for the benefit of recreation. This is a conclusion we must disagree with. From the motorized recreational perspective, all this model of management does is allow DOI to declare a climate emergency, or ESA emergency or similar remote threat to public safety or resources and then turn over management to third parties that have clearly stated they have no interest in multiple use. These are for profit entities that BLM simply does not have the staff to begin to oversee or manage. The complete lack of alignment with the goals of the NACs model causes concern for how a recreation project in any form could comply with what NYSE is stating as the goal for these businesses.

As we have noted previously, land manager engagement on these multiple coordinated planning efforts has been poor. We have many basic questions around leasing of public lands, and would reassert our position that with some guidance and education of our interests the NACs model might be a management model that existing partners could support. We are again asking these questions in the hope of creating some type of meaningful dialog on this effort. Some preliminary questions on this issue would include:

1. What is the relationship of a NACs effort to the multiple use mandate and more specifically existing multiple use recreational decisions? Multiple use concepts simply do not seem to be the priority at all when you have the NYSE stating the mission is to increase capture of natural value and improve environmental, social

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<sup>28</sup> [Notice of Withdrawal of Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies \(sec.gov\)](#)

and corporate governance (“ESG”) scores for corporations. Candidly recreation is just not reflected in any businesses ESG scores and elevating corporate profitability to this level of use of public lands will be immensely problematic.

2. If there are discussions about the creation of a conservation credit program for partners, we would like to participate. The motorized community has been a partners with Federal land managers for decades. Our efforts certainly could be the basis of conservation credits. Our concerns, outside protection of multiple uses and avoiding closures, initially would include:

a. Does conservation include just wildlife or water and soil or air efforts as well? We are aware that the US Fish and Wildlife Service has a conservation credit program in place already that works on private lands. What is the relationship between these efforts?

b. How is the process of issuing credits going to be allocated? It would appear that the decision has already been made that leasing is the mechanism for allocation of credits. This model to allocation does not work for motorized efforts as a lease implies exclusive possession of the area by the leaseholder. Balancing multiple uses and conservation would be far more achievable if the relationship was based on permit rather than a lease as most permit holder do not have exclusive possession of the area subject to the permit. Additionally leasing would result in another layer of paperwork to work through for our efforts and a lease like this for recreation would be completely uninsurable from our perspective.

c. The credit allocation process needs to reflect all partners. Just in the recreation world, we must believe that state wildlife agencies would want credits for their work. State Wildlife agencies work is foundational to any sustainability effort as they count animals and provide boots on the ground. Legally most wildlife is

under the primary jurisdiction of the state even on federal lands. If we are protecting a species, exact counts of population have always been provided by state wildlife agencies. These NACs credits could reduce the cost burden on the hunting and fishing community for licenses and equipment purchases. This would be hugely beneficial to these partners as well.

d. How would the programmatic nature of many efforts, such as state wildlife agencies and OHV/OSV registration programs be reflected and balanced with the project by project nature inherent in a lease? Allocating credits based on projects might be a stop gap for some projects, like a site specific clean up but much of our effort is programmatic in nature. Programmatically based credits probably should go back to the state for grant funded projects as most states prohibit grant recipients from profiting from the grants. Clearly leases don't align with this type of situation and individual partners will be poorly suited to sell conservation credits. Also the sale of credits will be easier and more efficient if the credits are bundled into groups for sale rather than being sold one by one.

e. We are assuming that any leases or similar efforts would be subject to public bidding and other requirements like most government contracts? The ramifications of this question are significant in isolation.

f. How will basic equity, payment of front end costs in developing leases and multiple uses be addressed in management of leases? Clearly these leases will need archeological surveys, §7 consultations and community engagement before they are ever put out for public bid. IE if an area is leased to a third party but the crews the OHV program funds remain working in the area and many others how would this relationship be determined. Credits should be provided to the person doing the work and not just the lease holder.

g. How will lease holder performance be monitored? If a leaseholder closes an area without authority who deals with this? Currently, BLM has no staff now to deal with unauthorized gates etc making any assertion of agency oversight problematic. For profit lease holders will see to maximize profits from the lease and public access is not going to align with that motivation. The idea of a local club having to sue a wall street leaseholder to reopen trails improperly closed is not appealing to us for many reasons.

h. How does all the new efforts align with existing efforts and planning? As outlined in these comments, the emergency authorities under NEPA or Healthy Forest Restoration Acts or similar grants of emergency authority to land managers should not be used for leasing to for profit companies. The implications to goodwill between managers and communities from emergency response efforts must be recognized and addressed.

i. All this work would need a significant allocation of BLM staff to support NEPA and leaseholder monitoring and many other facets of large projects. We are concerned this new management model will only exacerbate current staffing shortfalls within the agencies rather than resolve them. Our programs provide significant funding for staff and NEPA and this funding really does not improve the staffing situation. Why would a lease holder be any different? District rangers will still need to sign EA or Cat ex, cultural resource inventory will still need to occur, §7 consultation will still be needed, public meeting held for conservation efforts. This will greatly expand staff demands and this is all going to be needed before a lease is ever signed. This will mean projects we would like to move will simply fall further down the list of priorities.

j. These credits appear to be valuable and if we can obtain credits for the state OHV programs, our desire would be to resell the credit and then directly reinvest

the proceeds in the program to support more work on the ground almost immediately. The issuance of credits to NACs would provide profits to shareholders and that funding would probably have a much longer route back to reinvestment.

k. How will any improvements be maintained in the long run once the lease has run out? Leaseholder will have no reason to continue maintenance.

While we are aware that many of these questions are outside the scope of this Proposal when it is viewed in isolation, many of these concerns would be immediately if the relationship of NACs to federal lands was handled in a more coordinated and cohesive manner. As a result, we are again asking these questions again in the hope of triggering meaningful public engagement.

## **6. Conclusions.**

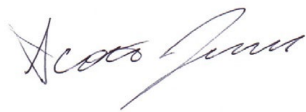
The above Organizations must vigorously oppose the proposed expansion of authority to issue temporary closures and restriction orders on lands managed by the BLM provided in the Proposal. The Proposal spans a mere five pages of the Federal Register and provides random unsupported assertions combining wildly disparate situations in an attempt to support the Proposal. The Proposal asserts to be creating new management authority despite BLM having been provided this authority for decades. The Proposal then addresses unusual concerns around how this existing authority would be applied, such as asserting there are significant appeals of emergency closures currently. This is problematic for many reasons.

Our Opposition to the Proposal compounds when the Proposal then attempts to provide new basis for closures, based on concepts such as “implementation of management responsibilities” for unspecified periods of time. No discussion of what this term means or how it could be applied under existing regulations is provided at all. The Proposal also appears to create the possibility that emergency closures could span decades by allowing closure orders to exist until Resource Management Plans can be updated.

The Proposal is highly frustrating to existing partners as it appears to merely another step in the opening of BLM to large scale leasing of federal public lands to Natural Asset Companies without public engagement in any phase of this discussion. The Proposal is clearly seeking to allow emergency closure orders to be issued in circumstances where there is little proximate and significant risk to the public simply to avoid NEPA analysis of leasing efforts. It is highly frustrating the Proposal seeks to apply provisions created for effective and efficient manager response to true on the ground emergencies in a manner that was never intended when this authority was created. We believe this effort will ultimately be unsuccessful and could actually result in significant negative impacts to resources. The use of emergency response provisions in this manner will create significant erosion of support for these provisions and expand distrust of the public in any action the agency takes.

The Organizations and our partners remain committed to providing high quality recreational resources on federal public lands while protecting resources and would welcome discussions on how to further these goals and objectives with new tools and resources. If you have questions, please feel free to contact Scott Jones, Esq. (518-281-5810 / [scott.jones46@yahoo.com](mailto:scott.jones46@yahoo.com)) or Fred Wiley (661-805-1393/ [fwiley@orba.biz](mailto:fwiley@orba.biz)).

Respectfully Submitted,



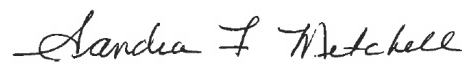
Scott Jones, Esq.  
CSA Executive Director  
COHVCO Authorized Representative



Chad Hixon  
TPA Executive Director



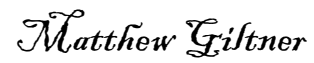
Marcus Trusty  
President – CORE



Sandra Mitchell  
Executive Director – IRC  
Authorized Representative – ISSA



Clif Koontz  
Executive Director  
Ride with Respect



Matthew Giltner  
Executive Director  
Nevada Offroad Association