



**Re: BLM Streamlining Planning & NEPA Input Form**

The American Forest Resource Council (AFRC) submits the following comments in response to the above-referenced request for “succinct and unique ideas” relevant to the six focus areas. See <https://docs.google.com/forms/d/e/1FAIpQLSeLo66QO8mm0Jme-O-KQ7S6Wfxrn7VYCzN-jQH1zR49F6cQfg/viewform>.

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance environmental protection, forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands.

AFRC represents over 50 forest products businesses and forest landowners. Many of our members have their operations in communities adjacent to and intermingled with BLM-administered lands in western Oregon and the management on these lands ultimately dictates not only the viability of their businesses but also the economic health of the communities themselves. Oregon’s forest sector employs approximately 58,000 people, with AFRC’s membership directly and indirectly constituting a large portion of those jobs. Rural communities in the area of BLM-managed lands are directly affected by BLM resource management plans and are particularly sensitive to the impacts of BLM plans on the forest products sector.

BLM is charged with managing lands designated under the Oregon and California Railroad and Coos Bay Wagon Road Grant Land Act of 1937 (O&C Act), 43 U.S.C. §§ 1181a-1181f. The O&C Act reserved approximately 2.6 million acres of federal owned forestland in Oregon for permanent forest production. AFRC members based in and outside of Oregon have harvested and processed timber from O&C lands. AFRC’s members have been adversely impacted due to delays in implementation of BLM timber sales from O&C lands. O&C lands are also important to 18 local Oregon counties, who are entitled to 50 to 75 percent of the gross receipts generated from sales of O&C timber.

AFRC applauds BLM’s intention to improve on (1) focused analysis; (2) user-friendly planning; (3) transparency; (4) being good neighbors; (5) reducing litigation; and (6) “right-sized” environmental analysis. We offer the following suggestions and ideas for improving BLM’s Planning and NEPA process to four of the six focus areas with an emphasis on the impacts on local communities in the assessment and implementation phase of resource planning.

## **User-Friendly Planning: How Can the BLM Help State and Local Governments, Tribal Partners, and Other Stakeholders Understand and Participate in the Planning Process?**

### Solution #1: Amend the Definition of “Public Involvement”

BLM’s regulations define “public involvement” to mean “the opportunity for participation by the public in decision making and planning with respect to the public lands.” 43 C.F.R. § 1601.0-5. AFRC suggests clarifying and strengthening opportunities for public involvement and to clarify the scope of 43 C.F.R. § 1610.2, by amending the definition of public involvement to the following:

“Public Involvement” means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

This definition makes clear that the views of “affected citizens” are to be solicited “at locations near the affected lands.” This focus on local input is important and should be emphasized in the rule.

## **Being Good Neighbors: How Can the BLM Build Trust and Better Integrate the Needs of State and Local Governments, Tribal Partners, and Other Stakeholders?**

### Solution #1: Redefine BLM “Accomplishments”

BLM has an internal protocol to define a project as an “accomplishment” when a timber sale has been offered. However, to meet the needs of stakeholders – like the forest products industry and local communities – BLM should categorize a project as an accomplishment when the sale has been offered, sold, and awarded. For example, the Medford BLM District has offered over 50 MMBF of timber over the past 10-15 years but those sales have never been awarded, meaning the sawlogs never reached the locals mills and the timber receipts were not received by O&C counties.

Moreover, the O&C Act requires that the annual productive capacity be determined and declared. The Allowable Sale Quantity (ASQ) is based on the capacity of the lands to produce a constant timber supply. To determine whether the declared ASQ levels for BLM’s timber program have been adequately achieved per district, BLM should define a project as “accomplished” when the timber sale has been offered, sold and awarded. The House Appropriations Committee’s Fiscal Year 2018 Interior, Environment and Related Agencies Appropriations Bill Report has also directed BLM to “report timber sale accomplishments in volume of timber sold and awarded, rather than merely the volume offered for sale.”

## **Reducing Litigation: How Can the BLM Create Legally Defensible Documents and Avoid the Delays Associated with Legal Challenges?**

### Solution #1: Streamlining Protests

AFRC requests that BLM modify its regulations and/or policies related to protests to forest management decision, 43 C.F.R. § 5003.3, and provide better direction on protest

requirements. BLM forest management decisions include a variety of actions but are most often advertised timber sales. Currently, 43 C.F.R. § 5003.3(b) merely provides that “[p]rotests shall be filed with the authorized officer and shall contain a written statement of reasons for protesting the decision.” AFRC requests content-based requirements for protests to better streamline and strengthen the process by making it clear the responsibilities of the protester. AFRC suggests that the following requirements be added to BLM’s protest process and/or included in a “template protest form”: the protester must (1) state how the protester participated in the preparation of the forest management decision planning process; (2) clearly identify the specific grounds for the protester’s position that the forest management decision is contrary to Federal laws, regulations or policies; and (3) concisely explain why the forest management decision is believed to be inconsistent with Federal laws, regulations or policies applicable to public lands. We understand that some BLM districts have had backlogs for responses to protests, in part, because of lengthy and incoherent protests. BLM should consider requiring protesters to disclose all protest points upfront (on the first page of the protest document) rather than burying those points in lengthy protest narratives. This proposed solution would help BLM districts better identify the protester’s concerns and help shorten the timeline for responses. By imposing such content and formatting requirements, BLM can respond more quickly to protests, avoid needless responses to the protester’s general objections to BLM’s timber sale program (which have little relevance to the sale at issue) and instead respond to protest points that specifically identify how the decision is contrary to Federal laws, regulations or policies. BLM’s protest procedures, e.g., IM-OR-2008-084 *Timber Sale Decisions, Protests, and Appeals* (Attachment 3-1), could be easily modified to include such requirements without the need for any regulatory changes.

#### Solution #2: BLM Protest Response Deadline

AFRC has concerns about lengthy delays in BLM’s responses to protests of timber sales. 43 C.F.R. § 5003.3(d) and (e) require that BLM “reconsider the decision to be implemented in light of the statement of reasons for the protest and other pertinent information” and serve the “decision in writing on the protesting party.” Individual protests often contain dozens of protest points that BLM feels obligated to respond to in detail before the project and timber sale can move forward. The Solicitor’s Office has directed BLM to prepare thorough, detailed responses to each protest point, despite limited staff and funds to do so, because protest decisions are the last opportunity for the BLM to clarify or explain its position. The delays associated with protest responses, in turn, prohibit the agency from awarding timber sales and delay the agency from planning and executing future projects. BLM’s policy provides a deadline for protest responses: “OR/WA BLM policy directs that protest decisions be resolved in a timely fashion so as to be able to award a timber sale within 90 days after receipt of the high bid.” See *Timber Sale Procedures: Administrative Remedies and Department Hearings and Appeals Procedures as per 43 CFR Subpart 5003 and 43 CFR Part 4*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att1.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att1.pdf) (page 1-3); see also *Overlay of Standard Administrative Review Timeframe within 90-day Bid Acceptance Period*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att4.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att4.pdf). Some BLM districts have been able to comply with this policy while other BLM districts have lengthy response timelines. To put the issue in context, the Salem BLM District prepared a 20-page response to a protest in 45 days; whereas, the Medford BLM District prepared an 18-page response to a protest in 600 days. In addition, the recent House

Appropriations Committee's Fiscal Year 2018 Interior, Environment and Related Agencies Appropriations Bill Report has directed BLM to "prioritize response to administrative protests on timber sales in a timely manner." To avoid unnecessary delays in project implementation, AFRC proposes that BLM institute a regulatory (rather than policy) requirement that all protests shall be responded to within 45 days, so that the sale may be awarded within 90 days of auction.

### Solution #3: Full Force and Effect After Denial of Protests

AFRC has concerns about the lengthy delays resulting from the Interior Board of Land Appeals (IBLA) appeal process. Many protests are designed solely to delay award of the sale rather than raise genuine concerns about the forest management decision. Typically, upon denial of a protest, the authorized BLM officer may proceed with implementation of the project decision (43 CFR § 5003.3(f)), known as "full force and effect." However, according to OR/WA BLM policy "districts do not implement timber sale decisions until the [IBLA] has an opportunity to review any stay request and BLM's response," which is 45 days. See *Timber Sale Procedures: Administrative Remedies and Department Hearings and Appeals Procedures as per 43 CFR Subpart 5003 and 43 CFR Part 4*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att1.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att1.pdf) (page 1-5). That means for advertised timber sales where the protest decision is appealed, BLM will award the timber sale contract 45 days after the date for filing a notice of appeal. *Id.* To adequately address delays associated with administrative appeals, BLM should have a policy of giving sales "full force and effect" once the protest is denied. This would allow the timber sales to move forward while an administrative appeal is pending unless a stay is in place. Such a policy change would require amendments to the following internal memorandum: *Language for Award of Contract in the IBLA Transmittal Notice of Appeal*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att9.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att9.pdf), *Language for Protest Decision regarding Full Force and Effect*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att8.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att8.pdf); and IM 2008-149, available at <https://www.blm.gov/policy/im-2008-149>.

### Solution #4: Remove Interior Board of Land Appeals Process for Timber Sale Decisions

A protester may appeal and seek a stay of a BLM timber sale decision to the IBLA if the party meets the standing requirements under 43 C.F.R. § 4.410. The notice of appeal must be filed within 30 days after the protest decision was served to the protester. 43 C.F.R. § 4.411(a). BLM must respond to a request for a stay to the IBLA within 10 days. 43 C.F.R. § 4.21(b)(3). Just like protests, administrative appeals are often designed to delay the award of the timber sale rather than raise genuine concerns about the project. OR/WA BLM policy, for example, directs that timber sale contracts not be awarded until the IBLA has had an opportunity to review (45 days) any stay request and BLM's response. See, e.g., *Overlay of Standard Administrative Review Timeframe within 90-day Bid Acceptance Period*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084\\_Att4.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/im-or-2008-084_Att4.pdf). Because a protester may file a lawsuit after the IBLA denies a stay, AFRC sees no benefit to allowing protesters three bites at the apple to delay/stop a BLM timber sale – protest, administrative appeal to IBLA, and litigation in federal court. For BLM to actually achieve the 90-day deadline, from the date of the timber sale auction and the award of the timber sale contract, BLM should remove timber sales from the IBLA administrative appeal process. This proposed solution would require amendments to 43 C.F.R. chapter 4.

## **“Right-Sized” Environmental Analysis: How Can the BLM More Closely Match the Level of NEPA Analysis to the Scale of the Action Being Analyzed?**

### Solution #1: Page Limitations for Environmental Assessments.

The Council on Environmental Quality (CEQ) states in its 2007 publication, *A Citizens Guide to NEPA*, that “The environmental assessment (EA) is intended to be a concise document that briefly provides sufficient evidence and analysis.” See [https://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-CitizensGuide.pdf](https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CitizensGuide.pdf). CEQ has provided guidance on page limitations for an environmental impact statement (EIS), a document only required for “major Federal actions significantly affecting the quality of the human environment”: “The text of final environmental impact statements . . . shall normally be *less than 150 pages* and for proposals of unusual scope or complexity shall normally be less than 300 pages.” 40 C.F.R. § 1502.7 (emphasis added). In addition, CEQ directs that EAs should be concise and not more than 10-15 pages:

While the regulations do not contain page limits for EA’s, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues

*Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, available at <https://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf> (FAQ 36a). BLM’s EAs, however, routinely far exceed the 150-page limitation that is intended for EISs not EAs. For example, the Nedsbar EA is a 418-page document for a maximum treatment of 1,498 acres and generates 3.4 MMBF of timber. This EA is a far cry from “concise” and is an example of a “wrong-sized” environmental analysis. This huge document and the funding associated to generate the analysis is a waste of administrative resources. On the other hand, the East Fork Nehalem EA (149 pages) and Letz Ride (52 pages) more closely resemble a “right sized” environmental analyses. The East Fork Nehalem project treats 717 acres with thinning and regeneration harvest. The Letz Ride project treats 858 acres and generates 10 MMBF, treating 57% of the acre amount in the Nedsbar project with significantly less NEPA analysis.

In AFRC’s view, directing funds so that BLM silviculture staff can do their job of assessing the needs of forest stands should take precedence over directing funds to generate 418 pages of analysis that will likely be litigated by opponents of active management. AFRC urges BLM to modify its policies to strive toward meeting the direction of the CEQ on future projects by implementing page limitations on its EAs and publishing concise documents with brief analysis. Such an approach could free up funding necessary to permit BLM foresters to spend more time in the field and conduct the stand exams needed to facilitate proper forest management treatments.

### Solution #2: Tiering to Programmatic EISs

To accomplish more concise NEPA analysis, BLM should strive toward tiering to the agency’s programmatic EISs and incorporate by reference important documents. CEQ

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regulations direct that agencies should tier to EISs. “Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28).” 40 C.F.R. § 1502.20. CEQ also directs that agencies incorporate by reference certain materials into an EIS: “Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action.” 40 C.F.R. § 1502.21. BLM’s NEPA Handbook provides a three-step process to tier to a NEPA document: “(1) state that it is tiered to another NEPA document; (2) describe the NEPA document to which it is tiered; and (3) incorporate by reference the relevant portions of the NEPA document to which it is tiered (cite and summarize, as described in section 5.2.1, Incorporation by Reference).” NEPA Handbook at 27. Given that BLM has issued new Resource Management Plans (RMPs) for western Oregon, tiering to the programmatic EIS would streamline the preparation of an EA and (potentially) FONSI for the individual actions, so long as the remaining effects of the individual actions are not significant. AFRC requests that BLM institute an internal policy that encourages tiering its project level analysis to the RMPs when appropriate. The proposed solution could be achieved through a change BLM’s NEPA Handbook, rather than a regulatory change.

In conclusion, AFRC appreciates the opportunity to comment on BLM’s request for streamlining planning and NEPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Joseph". The signature is written in a cursive, slightly slanted style.

Travis Joseph  
President