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Farm Bill Primer: What Is the Farm Bill?

The farm bill is an omnibus, multiyear law that governs an array of agricultural and food programs. It provides an opportunity for policymakers to comprehensively and periodically address agricultural and food issues. In addition to developing and enacting farm legislation, Congress is involved in overseeing its implementation. The farm bill typically is renewed about every five years. Since the 1930s, Congress has enacted 18 farm bills.

Farm bills traditionally have focused on farm commodity program support for a handful of staple commodities—corn, soybeans, wheat, cotton, rice, peanuts, dairy, and sugar. Farm bills have become increasingly expansive in nature since 1973, when a nutrition title was first included. Other prominent additions since then include horticulture and bioenergy titles and expansion of conservation, research, and rural development titles.

Without reauthorization, some farm bill programs expire, such as the nutrition assistance and farm commodity support programs. Other programs have permanent authority and do not need reauthorization (e.g., crop insurance) and are included in a farm bill to make policy changes or achieve budgetary goals. The farm bill extends authorizations of discretionary programs. The farm bill also suspends long-abandoned permanent laws for certain farm commodity programs from the 1940s that used supply controls and price regimes that would be costly if restored.

The omnibus nature of the farm bill can create broad coalitions of support among sometimes conflicting interests for policies that individually might have greater difficulty achieving majority support in the legislative process. In recent years, more stakeholders have become involved in the debate on farm bills, including national farm groups; commodity associations; state organizations; nutrition and public health officials; and advocacy groups representing conservation, recreation, rural development, faith-based interests, local food systems, and organic production. These factors can contribute to increased interest in the allocation of funds provided in a farm bill.

What Is in the 2018 Farm Bill?

The Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334, H.Rept. 115-1072) was the most recent omnibus farm bill. It contained 12 titles (see **text box**). In November 2023, Congress enacted a one-year extension to cover FY2024 and crop year 2024 (P.L. 118-22, Division B, §102). Provisions in the 2018 farm bill modified some of the farm commodity programs, expanded crop insurance, amended conservation programs, reauthorized and revised nutrition assistance, and extended authority to appropriate funds for many U.S. Department of Agriculture (USDA) discretionary programs. The 2018 farm bill, as extended, begins expiring at the end of FY2024.

Titles of the Farm Bill (P.L. 115-334)

Title I, Commodities: Provides support for major commodity crops, including wheat, corn, soybeans, peanuts, rice, dairy, and sugar, as well as disaster assistance.

Title II, Conservation: Encourages environmental stewardship of farmlands and improved management through land retirement programs, working lands programs, or both.

Title III, Trade: Supports U.S. agricultural export programs and international food assistance programs.

Title IV, Nutrition: Provides nutrition assistance for low-income households through programs, including the Supplemental Nutrition Assistance Program (SNAP).

Title V, Credit: Offers direct government loans and guarantees to producers to buy land and operate farms and ranches.

Title VI, Rural Development: Supports rural housing, community facilities, business, and utility programs through grants, loans, and guarantees.

Title VII, Research, Extension, and Related Matters: Supports agricultural research and extension programs to expand academic knowledge and help producers be more productive.

Title VIII, Forestry: Supports forestry management programs run by USDA's Forest Service.

Title IX, Energy: Encourages the development of farm and community renewable energy systems through various programs, including grants and loan guarantees.

Title X, Horticulture: Supports the production of specialty crops, USDA-certified organic foods, and locally produced foods and authorizes a regulatory framework for industrial hemp.

Title XI, Crop Insurance: Enhances risk management through the permanently authorized Federal Crop Insurance Program.

Title XII, Miscellaneous: Includes programs and assistance for livestock and poultry production, support for beginning farmers and ranchers, and other miscellaneous and general provisions.

What Was the Estimated Cost in 2018?

Farm bills authorize programs in two spending categories: mandatory and discretionary. While both types of programs are important, mandatory programs usually dominate the farm bill debate. Programs with mandatory spending generally operate as entitlements. The farm bill provides mandatory funding for programs based on multiyear budget estimates (*baseline*). Programs authorized for discretionary funding are not funded in the farm bill and wait for future appropriations action.

Farm bills have both 5-year and 10-year budget projections. The 10-year score for the 2018 farm bill was budget

neutral, and program outlays were projected to be $867 billion over FY2019-FY2028 (**Table 1**). Four titles accounted for 99% of the 2018 farm bill's mandatory spending: nutrition (primarily SNAP), commodities, crop insurance, and conservation. Programs in all other farm bill titles accounted for about 1% of mandatory outlays and receive mostly discretionary (appropriated) funds.

Table 1. Budget for the 2018 Farm Bill and the Baseline in February 2024 for Farm Bill Programs
(million dollars, 10-year mandatory outlays)

Titles	2018 Farm Bill at Enactment FY2019-FY2028 ($ millions)	Baseline as of February 2024 FY2025-FY2034 ($ millions)
Commodities	61,414	61,510
Conservation	59,748	57,919
Trade	4,094	4,990
Nutrition	663,828	1,147,727
Credit	-4,558	a/
Rural Development	-2,362	a/
Research	1,219	1,300
Forestry	10	a/
Energy	737	500
Horticulture	2,047	2,100
Crop Insurance	77,933	123,999
Miscellaneous	3,091	800
Total	**867,200**	**1,400,845**

Sources: CRS using CRS Report R45425, *Budget Issues That Shaped the 2018 Farm Bill*; and CRS analysis of the Congressional Budget Office (CBO) February 2024 baseline at https://www.cbo.gov/about/products/baseline-projections-selected-programs, for the five largest titles and amounts in law for programs in other titles.

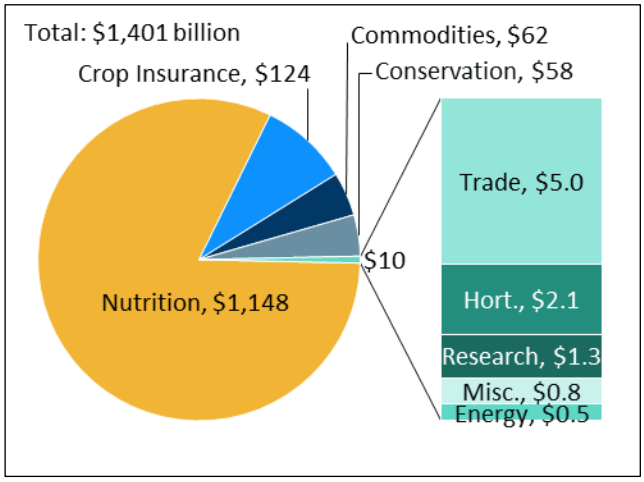
Notes: a/ = Baseline for the credit title is likely negative indicating payments into the Farm Credit System Insurance fund. The rural development title has no current programs with baseline. Baseline for the forestry title is $10 million or less.

What Is the Current Farm Bill Budget?

The CBO baseline represents budget authority and is a projection at a particular point in time of what future federal spending on mandatory programs would be assuming current law continues. It is the benchmark against which proposed changes in law are measured. Having a baseline provides projected future funding if policymakers decide that programs are to continue.

CBO released a scoring baseline for the 2023 legislative session in May 2023. It may remain the scoring baseline until CBO releases another baseline in spring 2024, at the discretion of the Budget Committees. The February 2024 baseline indicates resources that may be in a new scoring baseline. CRS used this projection for the major farm bill programs, and funding indicated in law for other farm bill programs that are not included in the annual projection, to estimate a budget availability in farm bill programs of $682 billion over 5 years (FY2025-FY2029) and $1,401 billion over 10 years (FY2025-FY2034) (**Figure 1**).

Figure 1. Baseline for Farm Bill Programs, by Title
(billion dollars, 10-year mandatory outlays, FY2025-FY2034)



Source: CRS using the CBO February 2024 baseline for the five largest titles and amounts in law for programs in other titles.

The relative proportions of farm bill spending have shifted over time. In the 2024 projection, the nutrition title is 82% of the baseline, compared with about 76% when the 2018 farm bill was enacted. Sharp increases in the nutrition title reflect pandemic assistance and administrative adjustments to SNAP benefit calculations. For non-nutrition programs, baseline amounts in 2024 are greater than when the 2018 farm bill was enacted ($253 billion over 10 years as of 2024 compared with $210 billion over 10 years in 2018).

Supplemental spending is not part of the baseline but may be important because of its size in recent years. In FY2019 and FY2020, the Trump Administration increased outlays by over $25 billion to producers affected by retaliatory tariffs. From FY2020 to FY2022, Congress and the White House provided over $30 billion of supplemental pandemic assistance to farms and over $60 billion for nutrition. In addition, P.L. 117-169 (the Inflation Reduction Act of 2022) added over $17 billion in outlays for programs in the farm bill's conservation and energy titles. Since 2018, Congress has authorized more than $19 billion of ad hoc disaster assistance for agricultural losses. In 2023, the Biden Administration announced $2 billion from its authority for trade promotion and food aid. Congress may address farm bill programs in light of this funding.

Information in Selected CRS Reports

CRS In Focus IF12233, *Farm Bill Primer: Budget Dynamics*

CRS In Focus IF12115, *Farm Bill Primer: Programs Without Baseline Beyond FY2024*

CRS Report R47659, *Expiration of the 2018 Farm Bill and Extension in 2024*

CRS Report R45210, *Farm Bills: Major Legislative Actions, 1965-2023*

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Farm Bill Primer: Forestry Title

Forest management generally, as well as forest research and forestry assistance, is within the jurisdiction of the agriculture committees in Congress. Although most forestry programs are permanently authorized, forestry often is addressed in the periodic farm bills to reauthorize many agriculture programs. Five of the past six farm bills included a separate forestry title, including the most recent farm bill, Title VIII of the Agricultural Improvement Act of 2018 (P.L. 115-334; the 2018 farm bill). In November 2023, Congress enacted a one-year extension of P.L. 115-334 to cover FY2024 and crop year 2024 (P.L. 118-22, Division B, §102). This In Focus summarizes some of the forestry provisions addressed in the 2018 farm bill and issues Congress may debate in future farm bills.

Forestry in the United States

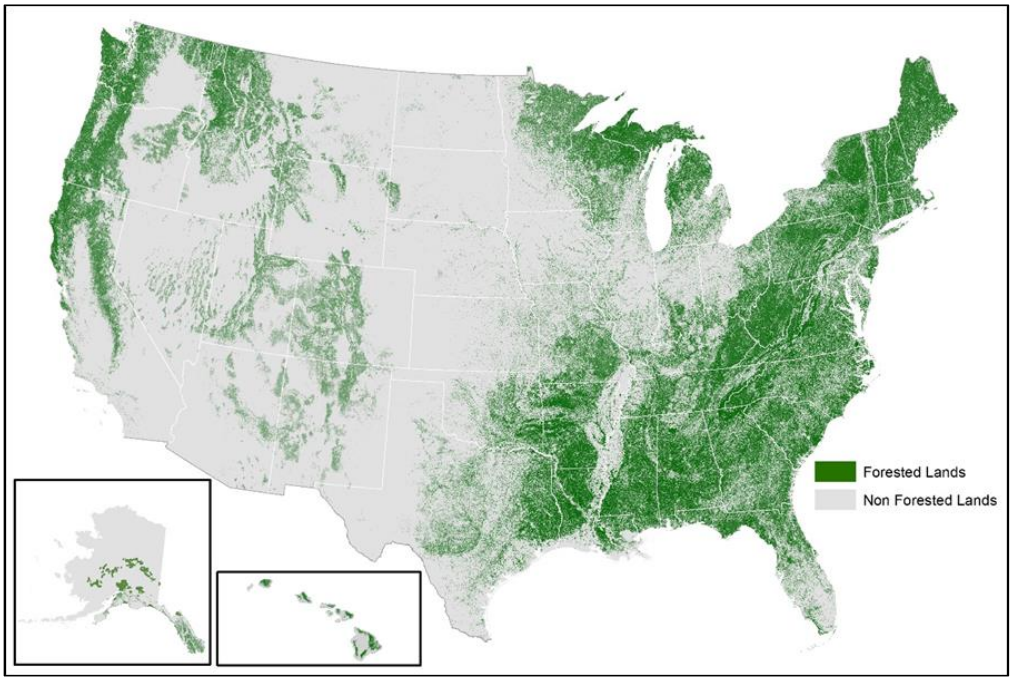
One-third of the land area in the United States is forestland (765 million acres; see **Figure 1**). These lands provide ecological services, including air and water resources; fish and wildlife habitat; opportunities for recreation and cultural use; and timber resources for lumber, plywood, paper, and other materials, among other uses and benefits.

Most forestland in the United States is privately owned (444 million acres, or 58%). Nonindustrial private landowners (i.e., private, noncorporate entities that do not own wood-processing facilities) own 288 million acres; private corporate landowners (e.g., timber investment trusts) own the remaining 156 million acres. The federal government owns 238 million acres of forestland, and states and other public entities own 84 million acres of forestland.

The federal government engages in four types of forestry activities: managing federal forests; providing financial, technical, or other resources to promote forest ownership and stewardship and the forest products industry generally (referred to as *forestry assistance*); sponsoring or conducting research to advance the science of forestry; and engaging in international forestry assistance and research.

The Forest Service (FS, within the U.S. Department of Agriculture) is the principal federal forest management agency. In addition to administering most forestry assistance programs, conducting forestry research, and leading U.S. international forestry assistance and research efforts, FS also is responsible for managing 19% of all U.S. forestlands (145 million acres) as part of the National Forest System (NFS). Many of FS's land management, assistance, and research programs have permanent authorities and receive appropriations annually through the discretionary appropriations process. Other federal agencies also manage forestlands, including the Department of the Interior's Bureau of Land Management, National Park Service, and Fish and Wildlife Service.

Figure 1. Forest Cover Across the United States



Source: Congressional Research Service, using data from the U.S. Forest Service and the State of Alaska.
Note: The conterminous United States, Alaska, and Hawaii are presented at different scales.

Forestry in the 2018 Farm Bill

Title VIII of the 2018 farm bill repealed, modified, reauthorized, and created several forestry research, assistance, and federal land management programs.

- **Research.** The forestry title of the 2018 farm bill modified one and repealed several forestry research programs, including repealing a grant program to support minority and female students studying forestry and a project demonstrating wood bioenergy.

- **Assistance.** The 2018 farm bill repealed, modified, and reauthorized some forestry assistance programs. This included providing explicit statutory authorization and congressional direction for programs that had been operating under existing but broad authorization, such as the Landscape Scale Restoration Program. The law also established, reauthorized, and modified assistance programs to promote wood innovation for energy use, building construction, and other purposes to facilitate the removal of forest biomass on both federal and nonfederal lands and to mitigate wildfire risk.

- **Federal Forest Management.** The 2018 farm bill included provisions related to federal and tribal forest management, such as provisions modifying planning requirements; establishing two watershed protection programs; expanding the availability of agreements to perform cross-boundary projects; reauthorizing and extending the Collaborative Forest Landscape Restoration Program; and adding or modifying FS's authorities to lease, sell, or exchange NFS lands.

Forestry-related provisions also were included in other 2018 farm bill titles. For example, the Conservation (Title II), Research (Title VII), Energy (Title IX), and Miscellaneous (Title XII) titles each contained provisions related to forestry or forest ownership.

Considerations for a Future Farm Bill

Congress may use a future farm bill to modify existing programs or funding authorizations, or to establish new options for forestry research, assistance to nonfederal forest owners, and management of federal forestlands. In addition, Congress may use a new farm bill to address any unforeseen issues with provisions enacted in the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58). The IIJA authorized, provided program direction, and appropriated funding for several FS assistance and research programs and activities. Alternatively, Congress may elect not to address forestry issues in a new farm bill if, for example, Congress determines existing authorities and programs adequately address the nation's forestry needs.

Congress also could use a new farm bill to address any concerns related to forest health management generally on both federal and nonfederal lands. For example, this could include programs to reduce the risk of catastrophic disturbance events, such as an uncharacteristically severe wildfire or insect or disease infestations. For nonfederal forests, this may include establishing or modifying assistance programs to enhance wildfire protection, preparedness, and forest resiliency. For federal forests, this may involve establishing new authorities or expanding existing authorities to reduce the accumulation of vegetation—often referred to as *hazardous fuels reduction*—or other forest restoration activities.

Because many forest risks span multiple ownership boundaries, Congress may use a future farm bill to consider new approaches to expand or facilitate cross-boundary forest management activities. This could be done by authorizing and/or incentivizing various federal and nonfederal partnerships and collaborations. In contrast, Congress may want to restrict those activities, for example, to target more specific concerns or areas.

Congress also may use a new farm bill to continue facilitating the development or advancement of wood products. In previous farm bills, and in other legislation, Congress established several programs to promote new markets and uses for woody biomass, in part to encourage forest restoration and reduce wildfire threats. A new farm bill might extend, expand, alter, or terminate these programs or could replace them with alternative approaches.

Forests have the potential to mitigate climate risk but also may be impacted by changing climatic conditions. Forests sequester and store large amounts of carbon and have the potential to mitigate future greenhouse-gas emissions. The effects of changing climatic conditions on forests is uncertain but include potential impacts to the range and distribution of tree species, changes in wildland fire behavior, and uncertainties related to future carbon sequestration potential, among others.

To address some of the uncertainties regarding climate impacts to forest management, Congress may consider using a new farm bill to modify existing research programs or establish new ones, domestically and internationally. Additionally, Congress could use a new farm bill to establish programs to increase or optimize carbon sequestration on both federal and nonfederal lands, through market or nonmarket mechanisms. Relatedly, Congress may consider modifying the amount or type of resources invested in forest inventorying and monitoring, which could provide benefits related to the establishment and implementation of programs to promote forest carbon sequestration. In particular, advancements in forest carbon lifecycle accounting may improve understanding of the carbon footprint of wood products relative to other products.

Related CRS Reports

CRS Report R45219, *Forest Service Assistance Programs*.

CRS Report R46976, *U.S. Forest Ownership and Management: Background and Issues for Congress*

CRS Report R45696, *Forest Management Provisions Enacted in the 115th Congress*

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Legal Sidebar

Federal Land Management: When "Multiple Use" and "Sustained Yield" Diverge

June 21, 2023

The Federal Land Policy and Management Act (FLPMA) has provided the framework for federal management of public lands since 1976. Among other things, FLPMA instructs the Secretary of the Interior (Secretary) to manage public lands "under principles of multiple use and sustained yield." This Legal Sidebar explains a potential change that the Bureau of Land Management (BLM), an agency within the Department of the Interior tasked with management of federal lands, has proposed in how it implements the dual mandate of multiple use/sustained yield on federal lands.

The Supreme Court has described "multiple use management" as "a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put." Because FLPMA includes more than 200 million acres in its definition of *public lands*, many parties have significant interests in the interpretation and application of this short phrase *multiple use and sustained yield*.

Understanding the meaning of that phrase starts with FLPMA itself. The statute envisions management that balances the use of the resources of public lands with the preservation of those resources for future generations. It defines *sustained yield* as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." FLMPA offers a more detailed definition of *multiple use* that obliges BLM to manage the lands under its purview "so that they are utilized in the combination that will best meet the present and future needs of the American people," allowing for periodic adjustments "to conform to changing needs and conditions" and taking into account "the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." It also requires "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

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These statutory definitions create some obligations and constraints for BLM's land management policies, but they also allow the agency some latitude to interpret the subjective concepts found in these statutory definitions as it sees fit. Federal case law has interpreted multiple use/sustained yield obligations in the context of FLPMA and in the related Multiple-Use Sustained-Yield Act of 1960, which sets forth management principles for national forests administered by the U.S. Forest Service. That case law suggests that the courts will be deferential to agency evaluations and interpretations related to land management, particularly where those decisions are informed by technical expertise. One court noted that the multiple use/sustained yield and related obligations in the act "breathe discretion at every pore."

To date, BLM has not made a comprehensive attempt to explain how it interprets its authority and obligations under FLPMA's multiple use and sustained yield principles. The phrases *multiple use* and *sustained yield* barely appear in BLM's FLPMA promulgated regulations, although BLM's forest management regulations include a framework for "sustained-yield forest units" in certain regions in accordance with FLMPA and other statutory obligations. Instead, BLM's interpretation of its multiple use and sustained yield goals must be inferred from its decisions on a case-by-case basis. BLM has promulgated a variety of manuals, handbooks, and memoranda to guide staff and stakeholders in particular decisions, but those sources often refer to multiple use and sustained yield principles in the abstract rather than providing details about implementation. For example, BLM's handbook on "Land Use Planning" provides that agency plans should be crafted "under the principles of multiple use and sustained yield."

On March 30, 2023, BLM took a step to define more explicitly how it will balance the competing goals of multiple use and sustained yield principles, issuing a proposed rule to amend its regulations to prioritize healthy ecosystems. The text of the proposed rules focuses on the "sustained yield" aspect of BLM's obligation, noting that it is imperative that the agency "steward public lands to maintain functioning and productive ecosystems and work to ensure their resilience." By *resilience*, the agency means that "ecosystems and their components can absorb, or recover from, the effects of disturbances and environmental change."

The proposed rule focuses on the protection, resilience, and restoration of public lands, framing the conservation policies contained in the proposed rule as necessary to allow BLM to "effectively manage for multiple use and sustained yield in the long term." BLM highlights three tools for protecting resilience: protection of intact native habitats, restoration of degraded habitats, and informed decisionmaking—particularly with respect to plans, programs, and permits.

The proposed rule would create a new regulatory framework to allow the agency to focus land management practices that protect this resilience. FLMPA directs BLM to adopt Land Use Plans for tracts or areas under its purview and to ensure that management decisions about particular projects or actions conform to those plans. This proposed rule would apply a "fundamentals of land health" analysis, which is currently used on grazing areas, to all BLM lands. It would also amend and codify the process for designation of "areas of critical environmental concern" (ACECs). The latter change includes a requirement that the agency consider "ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions" in ACEC designation and management considerations. These new types of analysis and area designations would be incorporated into its management plans to guide project-level decisionmaking.

Perhaps the most significant change proposed in the rule is the creation of "conservation leases," a proposed new program that would allow BLM to issue leases on federal lands "for the purpose of pursuing ecosystem resilience through mitigation and restoration." Details on this proposal are sparse, as BLM is soliciting comments on the appropriate format, duration, scope, and even name for the proposed leasing program. BLM also clarified that the program "is not intended to provide a mechanism for precluding other [federal land] uses, such as grazing, mining, and recreation" and that "[c]onservation leases should not disturb existing authorizations, valid existing rights, or state or Tribal land use

management." BLM's explanation for the conservation leases suggests that they could be used in conjunction with other multiple use goals to achieve an appropriate balance between those goals. For example, BLM suggests that the project sponsor for a renewable energy project might also enter into a conservation lease to compensate for the loss of wildlife habitat that the renewable energy project may cause.

Stakeholders who wish to participate in this rulemaking process may do so by submitting comments to BLM. Comments are due July 5, 2023. Additionally, some Members of Congress have suggested that legislation may be appropriate to address the proposed rule. Members in both the House and the Senate have drafted legislation directing BLM to withdraw the proposed rule and to prohibit adoption of the rule "or any substantially similar rule" in the future. These opponents of the proposed rule argue that it could infringe on "long-standing multiple uses (of federal lands), like grazing, timber management, and mineral development." Congressional supporters of the proposed rule may also consider enacting the programs and priorities contemplated by the proposed rule into legislation, as a future Administration would otherwise be free to amend or repeal the rule.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600 and 6100

[BLM_HQ_FRN_MO450017935]

RIN 1004–AE92

Conservation and Landscape Health

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) promulgates this final rule, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, to advance the BLM's multiple use and sustained yield mission by prioritizing the health and resilience of ecosystems across public lands. To support ecosystem health and resilience, the rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make informed management decisions based on science and data. To support these activities, the rule applies land health standards to all BLM-managed public lands and uses, codifies conservation tools to be used within FLPMA's multiple-use framework, and revises existing regulations to better meet FLPMA's requirement that the BLM prioritize designating and protecting areas of critical environmental concern (ACECs). The rule also provides an overarching framework for multiple BLM programs to facilitate ecosystem resilience on public lands.

DATES: The final rule is effective on June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Patricia Johnston, Project Manager for the Conservation and Landscape Health Rule, at 541–600–9693, for information relating to the substance of the final rule. Individuals in the United States who are deaf, deafblind, or hard of hearing, or who have a speech disability, may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Under FLPMA, the principles of multiple use and sustained yield govern the BLM's stewardship of public lands, unless otherwise provided by law. The BLM's ability to manage for multiple use and sustained yield of public lands depends on the resilience of ecosystems across those lands—that is, the ability of the ecosystems to withstand disturbance. Ecosystems that collapse due to disturbance cannot deliver ecosystem services, such as clean air and water, food and fiber, wildlife habitat, natural carbon storage, and more. Establishing and safeguarding resilient ecosystems has become imperative as the public lands experience adverse impacts from climate change and as the BLM works to ensure public lands and ecosystem services benefit human communities. The Conservation and Landscape Health Rule establishes the policy for the BLM to build and maintain the resilience of ecosystems on public lands in three primary ways: (1) protecting the most intact, functioning landscapes; [1] (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs.

The rule establishes a definition of ''conservation'' that encompasses both protection and restoration actions,[2] recognizing that the BLM must protect intact natural landscapes and restore degraded landscapes to achieve ecosystem resilience. To support efforts to protect and restore public lands, the rule clarifies that conservation is a use on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield mandate. Recognizing that public land conservation is incompatible with a ''one size fits all'' approach, the rule identifies multiple conservation tools to be used where appropriate, including protection of intact landscapes, restoration and mitigation planning, and ACEC designation. Consistent with how the BLM promotes and administers other uses, the rule establishes a durable mechanism—mitigation and restoration leasing—to facilitate both mitigation and restoration on the public lands, while providing opportunities to engage the public in the management of public lands for this purpose. Achieving ecosystem resilience will require, to some extent, the protection of intact landscapes. The goal of the rule is to provide a decision support and prioritization framework for the BLM as it seeks to identify where such protection is appropriate. The rule does not prioritize conservation above other uses; instead, it provides for considering and, where appropriate, implementing or authorizing conservation as one of the many uses managed under FLPMA, consistent with the statute's plain language.

The final rule also clarifies throughout that its provisions should be implemented in a manner that supports land use planning decisions and objectives that emphasize specific uses in specific areas. The Desert Renewable Energy Conservation Plan, for example, identifies Development Focus Areas and conservation areas, as well as conservation and management actions to mitigate the effects of renewable energy development. The 2015 Greater Sage-grouse Plans provide more protections for the most valuable Priority Habitat Management Areas while permitting more activities and related impacts in General Habitat Management Areas. The West-wide Energy Corridors designated by the BLM are identified as areas that are suitable for large transmission lines or pipelines, subject to site-specific analysis of proposed projects and required conditions to avoid or minimize adverse impacts. This preamble and the rule text raise as an example throughout areas that are managed for recreation or degraded lands prioritized for development. The use of this example is not meant to imply that the Bureau permits development only on degraded land.

This final rule does not alter the manner in which the BLM makes or implements these types of land use planning decisions and recognizes how managing for ecosystem resilience across a landscape can incorporate conservation and development, as well as other uses. This recognition is reflected in the rule's approach to identifying and managing areas for landscape intactness, prioritizing areas for restoration, and evaluating land health to inform decision-making.

[1] This rule defines ''intact landscape'' to mean ''a relatively unfragmented landscape free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's composition, structure, or function. Intact landscapes are large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes provide critical ecosystem services and are resilient to disturbance and environmental change and thus may be prioritized for conservation action. For example, an intact landscape would have minimal fragmentation from roads, fences, and dams; low densities of agricultural, urban, and industrial development; and minimal pollution levels.''

[2] In this rule, conservation is a use; protection and restoration are tools to achieve conservation. Protection is not synonymous with preservation; rather, it allows for active management or other uses consistent with multiple use and sustained yield principles.

The BLM's efforts to protect and restore landscapes and ecosystems and make informed planning, permitting, and program decisions rest on the agency's ability to assess land health conditions and consider those conditions when making decisions. The rule therefore modifies existing BLM practice by applying the fundamentals of land health and related standards and guidelines to all BLM-managed public lands and uses, not just grazing (see § 6103.1(a)). This broad application includes uses, such as oil and gas development and renewable energy generation, that are likely to result in at least local impacts to land health. This rule requires the BLM to take ''appropriate action'' where a specific land use is a factor in failing to achieve land health, but what constitutes ''appropriate action'' may be constrained in a given case both by law and the applicable resource management plan (RMP). For example, where lands are available for solar development under the RMP, options for taking ''appropriate action'' to address land health would not include prohibiting solar development, but may include measures to avoid, minimize, or compensate for impacts from solar development. In general, assessments of land health are intended to inform how uses are managed, rather than if they occur, by providing accurate data on current conditions. In implementing the fundamentals of land health, the rule codifies the need across BLM programs to use high-quality information to prepare land health assessments and evaluations and make determinations about land health condition.

The rule reiterates the importance of meaningful consultation during decision-making processes with Tribes and Alaska Native Corporations on issues that affect their interests, as determined by the Tribes. It requires the BLM to respect and incorporate Indigenous Knowledge into management decisions for ecosystem resilience and directs the BLM to seek opportunities for Tribal co-stewardship of intact landscapes and other lands and ecosystems, consistent with agency and departmental guidance.

Finally, the rule amends the existing ACEC regulations to better assist the BLM in carrying out FLPMA's requirement to give priority to the designation and protection of ACECs. The regulatory changes elaborate on the role of ACECs as the principal administrative designation for protecting important natural, cultural, and scenic resources, and they establish a more comprehensive framework for the BLM to identify, evaluate, and consider special management attention for ACECs in land use planning. The rule emphasizes the role of ACECs in contributing to ecosystem resilience by clarifying that ACEC designation can be used to protect landscape intactness and habitat connectivity.

II. Background

A. The Need for Resilient Public Lands To Achieve Multiple Use and Sustained Yield

The BLM manages approximately 245 million acres of public lands, roughly one-tenth of the land area of the United States. These lands have become increasingly degraded in recent decades through the appearance of invasive species, extreme wildfire events, prolonged drought, and increased habitat fragmentation.[3] Degradation of the health of public lands threatens the BLM's ability to manage public lands as directed by FLPMA.

FLPMA requires that unless ''public land has been dedicated to specific uses according to any other provisions of law,'' the Secretary, through the BLM, must ''manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by [the Secretary] under section 202 of this Act when they are available'' (43 U.S.C. 1732(a)). The term ''sustained yield'' means ''the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use'' (43 U.S.C. 1702(h)).

The term ''multiple use'' means ''the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.'' (43 U.S.C. 1702(c)).

FLPMA also directs the BLM to ''take any action necessary to prevent unnecessary or undue degradation of the lands.'' (43 U.S.C. 1732(b)). Additionally, section 102(a)(8) of FLPMA declares that it is the policy of the United States that ''the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use'' (43 U.S.C. 1701(a)(8)). Many of these resources and values that FLPMA authorizes the BLM to safeguard emanate from functioning and productive native ecosystems that supply food, water, habitat, and other ecological necessities.

Taken together, FLPMA's mandate to manage public lands for multiple use and sustained yield and its requirement to protect certain resources and values requires balanced management that maintains the availability of such resources and values for future generations. (See 43 U.S.C. 1702(c)) Widespread degradation of land health significantly limits the ability of public lands and their ecosystems to provide such resources and values and is inconsistent with the management direction and responsibility conferred to the BLM through FLPMA. The general resilience of public lands will determine the BLM's ability to effectively manage for multiple use and sustained yield over the long term. Resilience is a critical ecosystem trait that allows ecosystems to maintain or regain their composition, structure, and function following disturbances, including those resulting from changing environmental conditions. For example, maintaining habitat connectivity allows organisms to adapt to a changing climate from the North Slope of Alaska to the Rio Grande Valley of Colorado and New Mexico. To ensure the resilience of public lands,

[3] See, *e.g.,* Long-Term Trends in Vegetation on Bureau of Land Management Rangelands in the Western United States (*https://www.sciencedirect.com/science/article/pii/S1550742422001075*); Greater Sage-grouse Plan Implementation: Range-wide Monitoring Report 2015–2020 (*https://eplanning.blm.gov/public_projects/2016719/200502020/20050224/250056407/Greater%20Sage-Grouse%20Five-year%20Monitoring%20Report%202020.pdf*).

FLPMA provides the BLM with ample authority and direction to conserve ecosystems and other resources and values across the public lands.

The BLM recognizes this need for public lands to continue to provide resources and values when declaring its mission ''to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.'' (*blm.gov;* see also 43 U.S.C. 1702(c)) Without ensuring that public lands and their component ecosystems can maintain their function and be resilient to future change, the agency risks failing on its statutory mandate and its commitment to future generations.

To assist the BLM in carrying out its mission and statutory mandate, this rule provides direction and tools to protect and restore landscapes and ecosystems and make decisions supported by science and data, assisting the agency in managing for resilient landscapes that support multiple uses and sustained yield of resources and preventing unnecessary or undue degradation of the lands and their resources. As intact landscapes play a central role in maintaining the resilience of an ecosystem, the rule emphasizes protecting those public lands with intact, functioning landscapes and restoring others. This rule is designed to support sustained yield such that the nation's public lands can continue to supply food, water, habitat, and other ecological necessities that can resist and recover from drought, wildfire, and other disturbances, and continue to provide energy, forage, timber, recreational opportunities, and safe and reliable access to minerals.

B. Conservation Use for Resilient Public Lands

Conservation is a key strategy for supporting resilient public lands, now and into the future. Conservation takes many forms on public lands, including in the ways grazing, recreation, forestry, wildlife and fisheries management, and many other uses are carried out. Conservation is both a land use and also an investment in the landscape intended to increase the yield of certain other benefits elsewhere or later in time. This rule focuses on conservation as a land use within the multiple use framework, including in decision-making, authorization, and planning processes. The rule develops the toolbox for conservation use—defined here as encompassing both protection and restoration actions—enabling some of the many conservation strategies the agency employs to steward the public lands for multiple use and sustained yield.

FLPMA has always encompassed conservation as a land use. As described above, FLPMA authorizes and obligates the BLM to, within the multiple use framework, protect natural resources, preserve public lands, and provide habitat for fish and wildlife, among other conservation measures. The BLM has been practicing conservation of the public lands throughout the agency's history. The change this rule aims to achieve is providing clear, consistent, and informed direction, vetted and shaped by public input, for conservation use to be implemented on the public lands in support of ecosystem resilience.

The rule does not prioritize conservation above other multiple uses. It also does not preclude other uses where conservation use is occurring. Many uses are compatible with different types of conservation use, such as sustainable recreation, grazing, and habitat management. The rule also does not enable conservation use to occur in places where an existing, authorized, and incompatible use is occurring.

One of the primary tools for conservation use that is established in this rule is restoration and mitigation leasing (called conservation leasing in the proposed rule). Restoration or mitigation leases can help facilitate dynamic landscape management over time by allowing an area to recover and be available for other uses after the termination of the lease. For example, a restoration lessee may collaborate with an existing grazing permittee to restore degraded rangeland with the ultimate goal of resuming sustainable grazing. These leases are not the only way to conduct restoration and mitigation on the public lands; these types of conservation activities occur in many ways. The leases provide a clear and consistent tool for those actions when appropriate and useful. Like all conservation uses included in the rule, restoration and mitigation leases will not be used where existing rights and authorized uses are in place that would conflict with the conservation use.

The BLM has, over the years, developed and revised regulations for many multiple uses, whereas a placeholder has remained in Title 43 of the CFR for the agency to develop regulations broadly pertaining to conservation. With this rule, the BLM provides necessary regulations for using conservation to support ecosystem resilience and landscape health.

C. Management Decisions To Build Resilient Public Lands

The rule recognizes that the BLM has three primary ways of applying conservation actions to manage for resilient public lands that inform one another and potentially overlap: (1) protection of intact, functioning landscapes; (2) restoration of degraded habitats and ecosystems; and (3) making decisions informed by appropriate conservation considerations identified through the development and execution of plans, programs, and permits. The organization of the rule text emanates from this structure, with principal sections on (1) protection of landscape intactness and guidance on the identification and designation of ACECs; (2) direction to plan for and restore degraded habitats; and (3) instruction for management actions to facilitate conservation, including application of mitigation, all based on the use of high-quality information and adherence to land health standards for all BLM programs.

1. Protection

As intact landscapes play a central role in maintaining the resilience of ecosystems, the rule provides direction for the protection of intact, functioning landscapes. The final rule directs the BLM to maintain an inventory of landscape intactness as a resource value and identify intact landscapes in land use plans and to protect the intactness of certain landscapes by, for example, implementing conservation actions that maintain ecosystem resilience and conserving landscape intactness when managing compatible uses. Inventories of landscape intactness focus on an estimate of naturalness measured against human-caused disturbance and influence. The BLM intends to assess intactness through use of watershed condition assessments consistent with peer-reviewed methods developed jointly with the U.S. Geological Survey.[4] One of the principal administrative tools the BLM has available to protect public land resources is the designation of ACECs. ACECs are areas where special management attention is needed to protect important historical, cultural, and scenic values or fish and wildlife or other natural resources; ACECs can also be designated to protect human life and safety from natural hazards. The rule clarifies and expands existing ACEC regulations to better support the BLM in carrying out FLPMA's direction to give

[4] See, for instance, this collaborative effort between the BLM and the USGS: A Multiscale Index of Landscape Intactness for the Western U.S. | U.S. Geological Survey (*usgs.gov*).

priority to the designation and protection of these important areas.

Pursuant to Executive Order 14072, *Strengthening the Nation's Forests, Communities, and Local Economies,* 87 FR 24851 (Apr. 22, 2022), and consistent with managing for multiple use and sustained yield and other applicable law, the BLM is working to ensure that forests and woodlands on public lands, including old and mature forests and woodlands, are managed to: promote their continued health and resilience, retain and enhance carbon storage, recruit old-growth forests and characteristics, conserve biodiversity, mitigate the risk of wildfires, enhance climate resilience, enable subsistence and cultural uses, provide outdoor recreation opportunities, and promote sustainable local economic development. Older forests and woodlands, including pinyon and juniper woodlands, which are the BLM's most abundant old forest type, have characteristics that contribute to ecosystem resilience and further the objectives of this rule. The characteristics include providing important wildlife habitat, maintaining intact landscapes, contributing ecosystem services, and harboring significant social and cultural values for human communities. As such, these resources will be considered and evaluated for protection and expansion under multiple provisions of the rule.

2. Restoration

To promote consistency in its application, the final rule establishes principles for the design and implementation of BLM restoration actions on public lands. To direct restoration efforts, the rule also requires that resource management plans identify restoration outcomes and that the BLM identify priority landscapes for restoration, develop restoration plans, and track implementation of restoration actions.

The rule offers new tools in the form of restoration leases and mitigation leases that allow qualified entities to directly support efforts to build and maintain resilient public lands. These leases will be available to entities seeking to restore public lands or mitigate reasonably foreseeable impacts from an authorized activity. Leases will not override valid existing rights or preclude other, subsequent authorizations so long as those authorizations are compatible with the restoration or mitigation use. The rule establishes the process for applying for and granting leases, terminating or suspending them, determining noncompliance, and setting bonding obligations. The rule expresses a preference for lease applications that are derived from collaboration with existing permittees, lease holders, or adjacent land managers or owners, or that include other specific factors enumerated in 6102.4(d) that will make lease issuance more likely. Restoration and mitigation leases will be issued for a term consistent with the time required to achieve their objectives. Restoration leases will be issued for a maximum of 10 years but can be renewed if necessary to serve the purposes for which the lease was first issued. Once these purposes have been achieved, the lease will not warrant renewal. Any mitigation lease will require a term commensurate with the impact(s) it is offsetting. Restoration and mitigation leases may also provide opportunities for co-stewardship with federally recognized Tribes.

3. Management Actions for Decision-Making

The final rule delineates how its goals can be achieved when implementing programs, establishing land use plans, and authorizing use. In doing so, the rule requires the BLM to use high-quality information, including Indigenous Knowledge. To ensure the BLM does not limit its ability to build resilient public lands when authorizing use, the rule requires the BLM to apply a mitigation hierarchy (*i.e.,* take actions to avoid, minimize, and compensate for certain residual impacts, generally in that order). (See § 6102.5.1(a)).[5] For important, scarce, or sensitive resources, the BLM must apply the mitigation hierarchy with particular care, with the goal of eliminating, reducing, and/or offsetting impact on the resource. The rule also establishes regulations to govern the BLM's approval of a third-party mitigation fund holder.

The final rule highlights the importance of environmental justice in decision-making, including advancing environmental justice through restoration and mitigation actions as one of the rule's objectives. The BLM is implementing Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad,* 86 FR 7619 (Jan. 27, 2021) and Executive Order 14096 on *Revitalizing Our Nation's Commitment to Environmental Justice for All,* 88 FR 25251 (Apr. 26, 2023), which establish environmental justice initiatives and policy goals.[6] The BLM issued guidance in September 2022 clarifying minimum requirements for incorporating environmental justice considerations in environmental reviews (Instruction Memorandum 2022–059, ''Environmental Justice Implementation''). This rule builds on the agency's current commitments and direction by highlighting opportunities to address impacts to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution and to advance environmental justice. In planning for and prioritizing landscapes for restoration, the rule requires consideration of where restoration can address impacts on communities' environmental justice concerns, as well as other social and economic benefits. Environmental justice considerations are also identified as a factor in evaluating proposals for restoration and mitigation lease applications.

To support conservation actions and decision-making, the rule extends the application of the fundamentals of land health (taken verbatim from the existing fundamentals of rangeland health at 43 CFR 4180.1 (2005)) and related standards and guidelines to all lands managed by the BLM and across all program areas. The fundamentals are general descriptions of conditions that maintain the health and functionality of watersheds, ecological processes, water quality, and threatened, endangered, and special-status species habitat. The standards measure the level of physical and biological conditions required for healthy lands and sustainable uses of public lands, essentially identifying trends toward achieving or not achieving desired conditions. Assessment and evaluation of the standards informs decision-making at all levels of the BLM, including decisions made in resource management plans. However, it is the evaluation of multiple lines of evidence to conclude whether or not each land health standard is being achieved that is most relevant to a decision maker. Multiple lines of evidence that may be used to evaluate land health include, but are not limited to, standardized quantitative monitoring data, remote sensing-derived maps and data, qualitative assessments, photos, water quality data, habitat assessments, disturbance and land use

[5] The BLM's final rule adopts the definition of ''mitigation'' used by the Council on Environmental Quality's regulations implementing the procedural requirements of NEPA, 40 CFR 1508.1(s), including for compensatory mitigation: ''Compensating for the effect by replacing or providing substitute resources or environments.'' *Id.* § 1508.1(s)(5). This definition also aligns with existing BLM policy, including its Mitigation Manual Section, MS–1794, and its Mitigation Handbook, H–1794–1.

[6] These efforts build on prior Executive Orders, such as Executive Order 12898 on *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* 59 FR 7629 (Feb. 11, 1994).

history, and weather and climate data relevant to each land health standard. Determining if a standard is being achieved, or not achieved, can inform how a land use may be modified or adapted to improve land health conditions consistent with the fundamentals. The rule does not require, however, that individual actions ''comply'' with the fundamentals of land health, nor does it require achievement of those fundamentals (as measured by the land health standards) as a precondition for any BLM decision.

Currently, the fundamentals of land health and related standards apply only to rangeland systems where the BLM authorizes grazing.[7] Existing land health standards vary across regions and states creating a complex, but locally adapted system of rangeland evaluation. The rule includes a process for developing and adopting consistent national land health standards and amending or supplementing them to apply them more effectively to habitats managed by the BLM other than rangelands (*e.g.,* forests, deserts, shrublands, wetlands). Until the BLM has developed a consistent set of national standards, existing standards and indicators will be applied according to the process described within this rule. However, broadening the applicability of existing land health standards ensures the BLM will more formally and consistently consider the condition of public lands in decision-making. The rule includes instruction, largely consistent with the existing framework at 43 CFR 4180.1, on how the BLM must assess, evaluate, and determine if public lands are meeting land health standards. At a critical moment in the health and history of our public lands, the rule directs the BLM to perform such assessments and evaluations at broad spatial and temporal scales, thereby creating efficiencies in the land health process and opportunities to streamline permit renewals and authorizations.

D. Tribal Engagement and Co-Stewardship

The final rule reflects the U.S. Government's special relationship with Indian Tribes by incorporating updated requirements for government-to-government consultation, provisions for respecting Indigenous Knowledge, and direction to seek opportunities for Tribal co-stewardship.

The BLM is committed to working with Tribes in the management of the public lands, which are the ancestral homelands of many American Indian and Alaska Native Tribes. The BLM is the country's largest land manager, and it is vital that the BLM respect the nation-to-nation relationship that exists with American Indian and Alaska Native Tribes while incorporating co-stewardship where possible. Engaging with Tribes through co-stewardship opportunities is a priority for the BLM as identified in: Joint Secretarial Order 3403 on *Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* (Nov. 15, 2021); BLM Permanent Instruction Memorandum No. 2022–011, *Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403* (Sept. 13, 2022); and the Department of the Interior Departmental Manual Part 502, *Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community.*

In response to comments and consultation on the proposed rule,[8] the BLM made several updates to the final rule to better embrace its commitment to working with Tribes in managing the public lands for ecosystem resilience and landscape health. A stated objective of the final rule (43 CFR 6101.2(i)) is to: ''[i]mprove engagement and co-stewardship of public lands with Tribal entities and promote the use of Indigenous Knowledge in decision-making.'' The final rule intends to achieve this objective through provisions for Tribal consultation, incorporation of Indigenous Knowledge, and co-stewardship.

The final rule directs the BLM to meaningfully consult with Indian Tribes and Alaska Native Corporations on actions that are determined, after allowing for Tribal input, to potentially have a substantial effect on the Tribe or Corporation. In taking management actions for ecosystem resilience, and in recognition that Tribes can initiate consultation upon request, the final rule requires the BLM to meaningfully consult with Indian Tribes and Alaska Native Corporations during the decision-making process. These changes promote consistency with Departmental Manual guidance for consultation with Tribes.

The rule includes guidance for respecting and considering Indigenous Knowledge and directs the BLM to identify opportunities for co-stewardship as an overarching objective and specifically when managing intact landscapes, planning restoration actions on public lands, and taking management actions for ecosystem resilience.

The final rule also includes updated definitions for Indigenous Knowledge and high-quality information to reflect current guidance and to make clear that Indigenous Knowledge qualifies as high-quality information when it is gained by prior informed consent, free of coercion, and generally meets the standards for high-quality information.

E. Inventory, Evaluation, Designation, and Management of ACECs

To implement FLPMA's direction to ''give priority to the designation and protection of areas of critical environmental concern,'' (43 U.S.C. 1712(c)(3)), the rule updates regulatory requirements found at 43 CFR 1610.7–2 and codifies policy instruction found in the BLM Manual that guides its treatment of ACECs. (*https://www.ntc.blm.gov/krc/system/files?file=legacy/uploads/5657/5_1613_ACEC_Manual%201988.pdf*) The BLM inventories, evaluates, and designates ACECs as part of the land use planning process. The land use planning process guides BLM resource management decisions in a manner that allows the BLM to respond to issues and consider trade-offs among environmental, social, and economic values in determining appropriate land uses for specific areas. Further, the planning process requires coordination, cooperation, and consultation and provides other opportunities for public involvement that can foster relationships, build trust, and result in durable decision-making.

In 40 years of applying the procedures found at 43 CFR 1610.7–2 and in the ACEC Manual, the BLM has identified a need for several revisions that it has now made in this final rule. These revisions are needed to provide clear direction and comprehensive guidance encompassing all elements of the ACEC designation and management process.

[7] The BLM currently maintains inventory, assessment and monitoring data from its implementation of the grazing regulations related to rangeland health through the agency's Assessment, Inventory, and Monitoring (AIM) program, and makes this data available to the public. *https://www.blm.gov/aim.*

[8] Pueblo of Tesque Comments on Bureau of Land Management Conservation and Landscape Health Rule (July 5, 2023), ; Pyramid Lake Paiute Tribe, Public Comment Regarding the Proposed Public Lands Rule (June 27, 2023), *https://www.regulations.gov/comment/BLM-2023-0001-153233;* Northwest Arctic Native Association (NANA) Regional Corporation, Inc., Comments—Proposed Conservation and Landscape Health Rule (July 5, 2023), *https://www.regulations.gov/comment/BLM-2023-0001-154147;* Colorado River Indian Tribes, Comments on BLM Proposed Federal Land Policy and Management Act of 1979 (FLPMA) Regulations on Conservation and Landscape Health (June 20, 2023), *https://www.regulations.gov/comment/BLM-2023-0001-120501;* Ute Indian Tribe of the Uintah and Ouray Reservation, Comments on the Bureau of Land Management Proposed Rule on Conservation and Landscape Health (June 27, 2023), *https://www.regulations.gov/comment/BLM-2023-0001-147694.*

Additionally, the final rule codifies the BLM's procedures for considering and designating potential ACECs, providing more cohesive direction and consistency than the previous procedures, which were described partially in regulation and partially in agency policy. The rule maintains the general process for inventorying, evaluating, designating, and managing ACECs, but makes specific changes to clarify and improve that process. The process is generally described here, with more detailed explanation in the ''Section-by-Section Discussion of the Final Rule and Revisions from the Proposed Rule'' and in the ''Response to Public Comments'' sections of this preamble to the final rule.

In the initial stages of the land use planning process, the BLM, through inventories and external nominations, identifies any potential new ACECs to evaluate for relevance, importance, and the need for special management attention. The BLM determines whether such special management attention is needed by evaluating land use planning alternatives and considering additional issues related to the management of the proposed ACEC, including public comments received during the planning process. Special management measures may also provide an opportunity for Tribal co-stewardship. In approved resource management plans, the BLM identifies all designated ACECs and provides the management direction necessary to protect the relevant and important values for which the ACECs were designated.

This rule establishes procedures that require the BLM to consider ecosystem resilience, landscape-level needs, and rapidly changing landscape conditions in designating and managing ACECs, and it establishes a management standard to ensure ACEC values are appropriately conserved. The rule also provides that the BLM may, at the agency's discretion, implement temporary management for potential ACECs identified outside of an ongoing planning process until the potential ACEC can be evaluated for designation through a land use planning process. When implementing temporary management, the BLM will comply with all applicable laws, including the National Environmental Policy Act (NEPA), notify the public of the temporary management, and periodically reevaluate its decision to provide for temporary management. These provisions do not change the presumption that the BLM generally addresses its management of areas that may be appropriate for an ACEC designation through the land use planning process. The final rule also codifies research natural areas as a type of ACEC designated for the primary purpose of research and education on public lands, consistent with existing regulations (43 CFR subpart 8223) and policy.

The BLM intends to revise its ACEC manual to integrate the new and existing regulations into policy and provide more detailed guidance for their implementation. Guidance will help the BLM and the public better understand how the ACEC regulations are applied on a case-by-case basis.

F. Statutory Authority

FLPMA establishes the BLM's mission to manage public lands ''under principles of multiple use and sustained yield'' (except for lands where another law directs otherwise). (43 U.S.C. 1732(a)) Multiple use is defined as:

> the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long- term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(43 U.S.C. 1702(c)). Sustained yield is defined as, ''the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.'' (43 U.S.C. 1702(h)).

FLPMA also authorizes the Secretary to promulgate implementing regulations necessary ''to carry out the purposes'' of the Act. (43 U.S.C. 1740) This rule, enacted under that authority, (1) defines and regulates conservation use on the public lands in service of FLPMA's multiple use and sustained yield mandates; (2) provides for third-party authorizations to use the public lands for restoration and mitigation under FLPMA section 302(b) (43 U.S.C. 1732(b)); and (3) revises the existing regulations implementing FLPMA's direction in sections 201(a) and 202(c)(3) (43 U.S.C. 1711(a) and 1712(c)(3)) that the BLM shall give priority to the designation and protection of ACECs. (*See also* 43 U.S.C. 1701(a)(11) (''[I]t is the policy of the United States that—regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.'')).

This rule clarifies that conservation is a use on par with other uses and responds to the direction inherent in FLPMA's multiple use and sustained yield mandate to manage public lands for resilience and future productivity and to mitigate resource impacts. A number of comments questioned the BLM's authority to treat ''conservation'' as a use within FLPMA's multiple use framework. As a general matter, the definition of ''multiple use'' makes clear, and courts have affirmed, that managing some lands for conservation use is a permissible, and indeed crucial, aspect of managing public lands under the principles of multiple use and sustained yield, as FLPMA requires. (*See* 43 U.S.C. 1702(c); *see also New Mexico ex rel. Richardson* v. *BLM,* 565 F.3d 683, 710 (10th Cir. 2009) (''It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses . . . BLM's obligation to manage for multiple use does not mean that development must be allowed . . . Development is a possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values.''); *Theodore Roosevelt Conservation P'ship* v. *Salazar,* 616 F.3d 497, 518 (D.C. Cir. 2010) (''[T]he Bureau has wide discretion to determine how those [FLPMA] principles [of multiple use and sustained yield] should be applied.''); *Or. Nat. Desert Ass'n* v. *BLM,* 531 F.3d 1114, 1134 (9th Cir. 2008) (recognizing that the BLM's ''wide authority to manage the public lands under principles of multiple use and sustained yield allows it ample discretion for management of lands with wilderness values'')).

Public Comments on Statutory Authority

Several comments suggested more specifically that the decision in *Public Lands Council* v. *Babbitt,* 167 F.3d 1287 (10th Cir. 1999), would prohibit the restoration and mitigation leases available under this rule.

We disagree. In that case, the Tenth Circuit held that the Taylor Grazing Act and section 402 of FLPMA could not authorize ''issuing a 'grazing permit' that excludes livestock grazing for the entire term of the permit.'' *Id.* at 1307.

The court, therefore, enjoined the regulations purporting to authorize Taylor Grazing Act permits that provided for no grazing. In doing so, the Tenth Circuit expressly stated that the question in the case was ''not whether the Secretary possesses general authority to take conservation measures—which clearly he does.'' *Id.*

The present rule, in contrast to the grazing rule at issue in *Public Lands Council* v. *Babbitt,* is an exercise of that authority to take conservation measures. It does not rely on the Taylor Grazing Act, nor does it modify the terms and conditions available for grazing permits or authorize the BLM to issue grazing permits approving non-grazing uses. Rather, this rule provides for a separate category of leases, which can be exercised on public lands in areas with other ongoing uses, such as active grazing, consistent with the BLM's authority under FLPMA to ''manage the public lands under principles of multiple use and sustained yield'' (43 U.S.C. 1732(a)) and to ''regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands.'' (43 U.S.C. 1732(b)) The final rule renames what the proposed rule called ''conservation leases'' as ''restoration leases'' and ''mitigation leases'' to more precisely describe the activities that would be authorized on the leased lands.

A number of comments that object to including ''conservation'' alongside other uses in FLPMA's multiple use framework, including a letter from the Small Business Administration, Office of Advocacy (Advocacy), point to the absence of the word ''conservation'' from FLPMA's definition of ''principal or major uses.'' (*See* 43 U.S.C. 1702(*l*))

We disagree. Those comments misapprehend the meaning of the term ''principal or major uses'' within the statutory framework established by FLPMA. That term does not appear in any of FLPMA's discussion of multiple use, and the principal or major uses included in the definition of that term do not hold an exclusive or even superior position within the multiple use framework. Indeed, that defined term appears in FLPMA only in section 202(e) (43 U.S.C. 1712(e)), which provides that all land use plan decisions are subject to revision and modification and—specific to principal or major uses—includes a Congressional reporting provision (section 202(e)(2)) that contains no substantive constraint on the BLM's authority. The Advocacy letter asserts that restoration or mitigation leases must be submitted to Congress, citing Section 202(e)(2). But section 202(e)(2) merely provides for congressional *notification* if a management decision ''excludes (that is, totally eliminates)'' one or more of the principal or major uses for two or more years on an area exceeding one hundred thousand acres or more'' of the public lands. (43 U.S.C. 1712(e)(2)) The adoption of the final rule does not immediately result in any restoration or mitigation lease going into effect, much less one that covers one hundred thousand or more acres, let alone one that ''totally eliminates'' a principal or major use on such an area for two or more years. Nor does it follow from the rule that the leases the BLM does issue would necessarily meet the criteria to trigger section 202(e)(2). More importantly, the Advocacy letter fails to grapple with the necessary and obvious implication of this provision: Congress's clear recognition that the BLM is *authorized* to take actions that would exclude principal or major uses—including from large tracts of land—as long as it reports such actions to Congress when it does. In short, the provision is not only inapplicable to most, if not all, restoration and mitigation leases that may be issued under this rule, but it clearly demonstrates that the BLM has the authority Advocacy claims it lacks.

Several commenters suggested that the issuance of a final rule that recognizes conservation as a use of the public lands and allows for the issuance of restoration and mitigation leases might be challenged in federal court under the Administrative Procedure Act, speculating further that a reviewing court might evaluate these features of the rulemaking under the major questions doctrine.

We disagree. The Supreme Court deemed the major questions doctrine to apply when an agency's asserted statutory authority is unclear and when the ''history and the breadth of the authority'' and the ''economic and political significance'' of its assertion provide a ''reason to hesitate.'' *West Virginia* v. *EPA,* 142 S. Ct. 2587, 2595 (2022). But as this preamble to this final rule explains elsewhere in detail, and as courts have confirmed, FLPMA's animating principles of multiple use and sustained yield embrace conservation use as an integral component of the BLM's stewardship of the public lands. Moreover, while restoration and mitigation leases are specific new tools for managing the public lands, FLPMA provides clear and broad authority to manage the public lands at the discretion of the Secretary, including for conservation use, for the reasons described in detail above, and including through leases. (43 U.S.C. 1732(a)–(b))

The BLM has a long history of exercising that broad regulatory authority to manage its lands through leases and similar instruments, including by issuing permits or right-of-way grants that authorize the permit holder to implement restoration and mitigation as a component or a condition of an authorization to use the public lands for development or extractive purposes. See, *e.g.,* M–37039, The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation, at 11–22 (Dec. 21, 2016) (reinstated by M–37075 (Apr. 15, 2022)) (''[The] BLM's charge under FLPMA to manage public lands based on principles of multiple use and sustained yield supports use of mitigation. The authority to evaluate and impose mitigation arises out of the broad authority FLPMA vests in the BLM to pursue congressional goals . . . for public lands. The BLM can evaluate and require mitigation through both the land use planning process and site-specific authorizations.''); *Theodore Roosevelt Conservation P'ship,* 616 F.3d at 505–06, 515–17 (concerning planning decision that outlined mitigation measures to be imposed as conditions of approval for oil and gas drilling). For the reasons noted above, Congress has spoken clearly that conservation—including in the forms of restoration or mitigation—is an appropriate use of the public lands and that, where a given use of the public lands is appropriate, leasing is an appropriate means to regulate such use.

Several commenters noted that a different BLM rule—Resource Management Planning, 81 FR 89580 (Dec. 12, 2016)—was subject to a congressional joint resolution of disapproval under the Congressional Review Act (CRA) (5 U.S.C. 802). These commenters suggested that this rule, therefore, may be precluded by the CRA provision that ''a new rule that is substantially the same as'' a rule that does not continue in effect due to a joint resolution of disapproval may not be issued. (5 U.S.C. 801(b)(2))

We disagree. This rule, which would promulgate a series of new regulations at 43 CFR part 6100 and make changes to 43 CFR 1610.7–2, is not substantially the same as the BLM's 2016 rule. The 2016 rule included amendments to § 1610.7–2, but they were different in substance and form from the revisions proposed in this rule and involved a much broader amendment to all of the

planning regulations at 43 CFR part 1600. For example, this rule identifies ''landscape intactness'' as a value meriting consideration for conservation, including through designation of ACECs, and calls for land health evaluations at geographic scales broader than grazing allotments. But these features of the present rule do not amount to the same landscape-scale planning approach that was central to the 2016 rule, and which would have been (and would need to be) implemented through a wholesale revision of the planning regulations at 43 CFR part 1600.

A number of comments noted that the BLM's management of the public lands is subject to additional laws beyond FLPMA and in some cases asked that the BLM limit the geographic scope of the final rule to exclude areas of public lands where another statute provides direction or informs how the BLM should manage those lands.

We agree that laws beyond FLPMA govern BLM's management of the public lands, but we decline to amend the rule in response to these comments. The final rule applies across BLM-managed lands. However, implementation of the rule—that is, land use planning and individual project-level decisions—will be subject to and must be undertaken consistent with all applicable laws, including the Mining Law of 1872, 30 U.S.C. 22 *et seq.,* the Oregon and California Revested Lands Sustained Yield Management Act of 1937, 43 U.S.C. 2601 *et seq.* (the O&C Act), the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 *et seq.* (ANILCA), the Paleontological Resources Preservation Act of 2009, 16 U.S.C. 470aaa *et seq.* (PRPA), the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (ESA), the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), and the National Historic Preservation Act, 54 U.S.C. 300101 *et seq.* (NHPA).

G. Related Executive and Secretarial Direction

The rule is consistent with directives set forth in several Executive and Secretary's Orders and related policies and strategies. These directives call on the Department of the Interior (DOI), and the Federal Government more generally, to use landscape-scale, science-based, collaborative approaches to natural resource management.

They include Executive Order 14072, *Strengthening the Nation's Forests, Communities, and Local Economies,* recognizes that healthy forests are ''critical to the health, prosperity, and resilience of our communities.'' It states a policy to:

> pursue science-based, sustainable forest and land management; conserve America's mature and old-growth forests on Federal lands; invest in forest health and restoration; support indigenous traditional ecological knowledge and cultural and subsistence practices; honor Tribal treaty rights; and deploy climate-smart forestry practices and other nature-based solutions to improve the resilience of our lands, waters, wildlife, and communities in the face of increasing disturbances and chronic stress arising from climate impacts.

The Executive Order calls for defining, identifying, and inventorying our nation's old and mature forests, then stewarding them for future generations to provide clean air and water, sustain plant and animal life, and respect their special importance to Tribal Nations. This rule advances these objectives by providing a framework for conservation use on public lands that would apply to mature and old-growth forests and woodlands managed by the BLM.

And Joint Secretarial Order 3403 on *Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,* issued on November 15, 2021, by DOI and the Department of Agriculture, reiterates the Departments' commitment to the United States' trust and treaty obligations as an integral part of managing Federal lands. The order emphasizes that ''Tribal consultation and collaboration must be implemented as components of, or in addition to, Federal land management priorities and direction for recreation, range, timber, energy production, and other uses, and conservation of wilderness, refuges, watersheds, wildlife habitat, and other values.'' The order also notes the benefit of incorporating Tribal expertise and Indigenous Knowledge into Federal land and resources management.

H. Public Involvement in the Proposed Rule

The BLM published the proposed rule in the **Federal Register** on April 3, 2023 (88 FR 19583), for a 75-day comment period ending on June 20, 2023. In response to public requests for an extension, on June 15, 2023, the BLM announced a 15-day extension of the comment period. The official comment period extension notice was published on June 20, 2023 (88 FR 39818). The extended comment period closed on July 5, 2023.

During the comment period, the BLM hosted a variety of public outreach activities. The BLM held two virtual public meetings on May 15 and June 5, 2023. The BLM held three in-person meetings in Denver, Colorado (May 25, 2023); Albuquerque, New Mexico (May 30, 2023); and Reno, Nevada (June 1, 2023) to provide an overview of the proposed rule and answer questions from the public. All webinars and meetings were led by a third-party facilitator. A video recording of the May 15 virtual meeting and presentation slides in English and Spanish are available on the BLM website. The BLM also posted a reviewer guide and fact sheet, frequently asked questions on topics of interest, infographics, and other background information on the BLM website to further public understanding of the proposed rule. (*https://www.blm.gov/public-lands-rule.*)

In addition, the BLM conducted external outreach and participated in dozens of meetings to discuss the content of the proposed rule, including congressional briefings; meetings with States and State agencies; meetings with grazing, recreation, renewable energy, and other stakeholder interest groups and associations; and presentations at conferences and events. Meetings were conducted by both headquarters staff and regional staff across the country.

I. Tribal Consultation on the Proposed Rule

At the beginning of the rulemaking process, letters were sent to all federally recognized Tribes and Alaska Native Claims Settlement Act Corporations informing them of the proposed rule and inviting them to engage with the BLM to discuss their thoughts and concerns. The BLM conducted government-to-government consultation on the proposed rule as requested by Tribes.

To facilitate understanding of the proposed rule, the BLM posted all meeting materials, including a recording of the first virtual meeting, frequently asked questions, and meeting handouts, on its website to accommodate Tribal members and other members of the public who could not attend a public meeting. This final rule is informed by input received from Tribes during the public comment period. Over 20 Tribal governments, Alaska Native Corporations, and tribal entities submitted formal comments on the proposed rule. Tribal comments covered a range of topics including ACEC nomination, tribal consultation and co-stewardship, protection of cultural resources, and restoration and mitigation leasing. Responses to Tribal input are addressed in the ''Tribal Engagement and Co-Stewardship'' and ''Section-by-Section Discussion of the Final Rule and Revisions from the

Proposed Rule'' sections of this preamble to the final rule.

J. Summary of Changes

The BLM received an initial total of 216,403 comments from regulations.gov. Further analysis showed that there were public comment submissions with multiple cosigners, sometimes several thousand on one submission, which were initially counted as separate submissions but ultimately identified as a single submission with multiple signatures. Therefore, although 216,403 people voiced their opinion, the final count of comment letters came to 152,673. The comment letters on the proposed rule are available for viewing on the Federal e-rulemaking portal (*https://www.regulations.gov*) (search Docket ID: BLM–2023–0001).

The BLM has reviewed all public comments and made changes, as appropriate, to the final rule based on those comments and internal review. Those changes are described in detail in the ''Section-by-Section Discussion of the Final Rule and Revisions from the Proposed Rule'' of this preamble to the final rule. In addition, the ''Response to Public Comments'' section in this preamble to the final rule provides a summary of issues raised most frequently in public comments and the BLM's response.

III. Section-by-Section Discussion of the Final Rule and Revisions From the Proposed Rule

Note: This section of the preamble discusses newly promulgated part 6100 first before turning to the revisions to § 1610.7–2, notwithstanding that § 1610.7–2 appears first in the final rule text. Part 6100 contains the core content of this final rule, which frames the need for revision to § 1610.7–2.

43 CFR Subchapter F—Preservation and Conservation

PART 6100—ECOSYSTEM RESILIENCE

Subpart 6101—General Information

Section 6101.1—Purpose

This section describes the overall purpose for the rule. The rule is designed to facilitate healthy wildlife habitat, clean water, and ecosystem resilience so that public lands can better resist and recover from disturbances like drought and wildfire. It also aims to enhance mitigation options, establishing a regulatory framework for those seeking to use the public lands, while also ensuring that the public enjoys the benefits of mitigation measures. The rule discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring.

In response to public comments, the final rule expands the purpose statement to include preventing permanent impairment or unnecessary or undue degradation of public lands, in addition to promoting the use of conservation to ensure ecosystem resilience.

Section 6101.2—Objectives

This section lists the specific objectives of the rulemaking. These objectives were discussed at length earlier in the preamble for the rule. In response to public comments, the BLM added four objectives to the original six, which are to: provide for healthy lands and waters that support sustainable outdoor recreation experiences for current and future generations; prevent permanent impairment or unnecessary or undue degradation of public lands; improve engagement and co-stewardship of public lands with Tribal entities and promote the use of Indigenous Knowledge in decision-making; and advance environmental justice through restoration and mitigation actions.

Additionally, in response to public comments, the final rule expands the objective that originally read ''Promote conservation by maintaining, protecting, and restoring ecosystem resilience and intact landscapes'' by specifically adding ''including habitat connectivity and old-growth forests.''

Section 6101.3—Authority

A number of comments identified potential additional statutory authority on which the BLM might rely in promulgating this rule. The BLM has determined the reference to statutory authority is sufficient.

A number of comments raised questions about the relationship between the rule and other laws, such as the Mining Law, the O&C Act, and ANILCA, that apply to particular areas or particular uses of the public lands. The final rule adds language in this section to clarify that implementation of the rule is subject to other applicable laws.

Section 6101.4—Definitions

This section provides new definitions for concepts such as conservation, ecosystem resilience, sustained yield, mitigation, and unnecessary or undue degradation, along with other terms used throughout the rule text. These definitions apply to the use of those terms in part 6100, while definitions for the terms casual use, conserve, ecosystem resilience, intactness, landscape, monitoring, protect, and restore also apply to the use of those terms in § 1610.7–2.

The final rule adopts, without revision, the proposed definitions of the terms: casual use; important, scarce, and sensitive resources; mitigation; mitigation strategies; monitoring; public lands; and reclamation. The final rule revises the proposed definitions of the terms: conservation, disturbance, effects, high-quality information, Indigenous Knowledge, intact landscape, landscape, permittee, protection, restoration, sustained yield, and unnecessary or undue degradation (including by identifying the elements of undue degradation and unnecessary degradation).

The final rule defines additional terms to provide further clarity for implementing the rule: in-lieu fee program, intactness, land health, mitigation bank, mitigation fund, significant causal factor, significant progress, and watershed condition assessment. The final rule removes the definitions of the terms best management practices and land enhancement. The BLM decided to remove the definition of best management practices, because it is not a term that is generally used for describing mitigation measures. The BLM decided to remove the definition of land enhancement based on public comments that found the term confusing.

The proposed rule defined the term ''resilient ecosystems.'' The final rule defines ''ecosystem resilience'' instead. The final rule does not, as some comments suggested it should, formally define the term ''permanent impairment,'' but the BLM intends that its meaning be informed by how it is used within the rule's definition of sustained yield.

The following paragraphs describe the definitions adopted in the final rule and changes to these definitions from the proposed rule as applicable.

The final rule defines the term ''casual use'' in order to clarify that the existence of a restoration or mitigation lease would not in and of itself preclude the public from accessing public lands for noncommercial activities such as recreation. Authorized officers may temporarily close public access for purposes authorized by restoration and mitigation leases, such as habitat improvement projects. However, in general, public lands leased for these purposes under the final rule would continue to be open to public use. The BLM received public comments recommending the definition be expanded to explicitly include uses

such as recreation. However, the BLM decided to retain the definition from the proposed rule because it exists in the same form in current regulations at 43 CFR 2920.0–5(k). The final rule adds language to the restoration and mitigation leasing section to clarify that leases will not preclude access to or across leased areas for recreation use, research use, or other compatible authorized uses, in addition to casual use. The definition of ''casual use'' in this part does not change the definition of casual use in 43 CFR 3809.5.

The final rule defines ''conservation'' in the context of these regulations to mean the management of natural resources to promote protection and restoration. The overarching purpose of the rule is to help facilitate the use of conservation to support ecosystem resilience, and in doing so the final rule clarifies conservation as a use within the BLM's multiple use framework, including in decision-making concerning land use planning and proposed projects. The final rule includes a stated objective to promote conservation on public lands, and subpart 6102 outlines principles, directives, management actions, and tools—including a new tool in restoration and mitigation leases—to meet this objective and fulfill the purpose of the rule. The BLM received comments recommending the definition of ''conservation'' more closely align with other definitions and recommending that the BLM distinguish between ''conservation'' and ''preservation.'' The definition of ''conservation'' was updated in the final rule to make clear that conservation is a use and that protection and restoration are tools to achieve conservation.

The final rule defines the term ''disturbance'' to provide the BLM with guidance in identifying and assessing impacts to ecosystems, restoring affected public lands, and minimizing and mitigating future impacts. Identifying and mitigating disturbances and restoring ecosystems are important components of supporting ecosystem resilience on public lands. The BLM received public comments recommending the BLM clarify that disturbances can be natural or human-caused, suggesting that defining disturbance as a discrete event was too restrictive, and recommending that the BLM adjust the definition to more closely align with how ''disturbance'' is used in environmental impact statements. The definition of disturbance was updated in the final rule to clarify that disturbance can be either discrete or chronic, characteristic (where ecosystem or species have evolved to survive such a disturbance) or uncharacteristic, and that disturbance can be natural or human-caused.

The final rule defines the term ''ecosystem resilience'' (whereas the proposed rule included a definition of ''resilient ecosystem'') in the context of the rule's foundational precept that the BLM's management of public lands on the basis of multiple use and sustained yield relies on resilient ecosystems. The definition is broad and mirrors Department guidance by including concepts of resistance, recovery, and adaptation. The BLM received comments that suggested removing this term, changing the definition to clarify that habitat connectivity is key to a resilient ecosystem, and changing the definition to better and more accurately describe the characteristics of a resilient ecosystem. The BLM changed the term to ''ecosystem resilience'' to match the usage of this term in the rule and defined ecosystem resilience to be consistent with existing DOI definitions of this term.[9] DOI's definition of ecosystem resilience is inclusive of three commonly used terms in scientific literature: resistance (*i.e.,* withstand disturbance), recovery (*i.e.,* recover from disturbance, and adaptability (*i.e.,* change/adapt to disturbance). The purpose of the rule is to facilitate the use of conservation as part of sustained yield, such that ecosystems on public lands can adapt to environmental change, resist disturbance, and maintain or regain their function following environmental stressors such as drought and wildfire.

The final rule defines the term ''effects'' as the direct, indirect, and cumulative impacts from a public land use and clarifies that the term should be viewed as synonymous with the term ''impacts'' for the purposes of the rule. The BLM received comments recommending the definition be changed to match the definition of effects in the BLM's planning regulations. The definition of effects was updated in the final rule to reference 40 CFR 1508.1(g) and clarify that the use of direct, indirect, and cumulative impacts in the rule is consistent with the definition of those terms in 40 CFR 1508.1(g).

The final rule defines the term ''high-quality information'' so that its use would ensure that the best available scientific information underpins decisions and actions that would be implemented under the proposed rule to achieve ecosystem resilience. The definition also clarifies that Indigenous Knowledge can be high-quality information that should be considered alongside other information that meets the standards for objectivity, utility, integrity, and quality set forth in the Department's Information Quality Guidelines. *https://www.doi.gov/ocio/policy-mgmt-support/information-quality-guidelines.* The BLM received public comments recommending that Indigenous Knowledge be considered as high-quality information, recommending that the BLM use the term ''credible data'' to describe high-quality information, and that the definition be clarified to be more specific about what qualifies as high-quality information. The definition of high-quality information was updated in the final rule to reference the most current Department guidance on scientific information and to specify when Indigenous Knowledge would be considered high-quality information in decision-making.

The final rule defines the terms ''important,'' ''scarce,'' and ''sensitive'' resources to provide clarity and consistency in the BLM's implementation of mitigation requirements, including under the final rule. The BLM received comments that the definition of these terms was vague and requesting more detail to clarify when a resource would qualify as important, scarce, or sensitive, as well as comments requesting more clarity on how the BLM determines whether a resource is important, scarce, or sensitive. The final rule does not change the definition of these terms, which are consistent with the BLM's mitigation policy and handbook. A determination that a resource is important, scarce, or sensitive is dependent on location, conditions within a planning area affecting a particular resource (*e.g.,* drought), and the adverse effects on that resource from other past and foreseeable future land uses.

The final rule defines the term ''Indigenous Knowledge'' to reflect the DOI's policies, responsibilities, and procedures to respect and equitably promote the inclusion of Indigenous Knowledge in the Department's decision-making, resource management, program implementation, policy development, scientific research, and other actions. The BLM received comments recommending changes to the definition of this term to encompass proper terminology for Indigenous Knowledge and make it consistent with existing Department regulations and guidance, or to drop the term from the rule. The definition of Indigenous Knowledge was updated in the final

[9] *https://www.doi.gov/sites/default/files/department-of-interior-climate-action-plan-final-signed-508-9.14.21.pdf.*

rule to clarify that Tribes may use different terms to refer to this concept and to bring the definition of Indigenous Knowledge in line with current BLM, Department, and White House guidance.[10] The final rule adds a definition for the term ''in lieu fee program.'' This term is used in § 6102.5.1, Mitigation, to describe an available method for offsetting adverse impacts. The definition of this term is consistent with the BLM's mitigation policy.

The final rule defines the term ''intact landscape'' to guide the BLM with implementing direction. The rule (§ 6102.2) would require the BLM to identify intact landscapes on public lands, manage certain landscapes to protect their intactness, and pursue strategies to protect and connect intact landscapes. The BLM received comments suggesting the definition be updated to clarify the size of an intact landscape, clarify the characteristics of an intact landscape (including cultural landscapes), and add habitat connectivity and mature, old-growth forests as markers of an intact landscape. The definition was updated in the final rule to reflect commonly used definitions in policy and ecological literature, link the definition of ''intact landscape'' to the revised ''landscape'' definition, and define intact landscapes in a manner that is more easily measured and assessed by the BLM to inform conservation actions. The revised definition reflects the reality that intactness exists on a spectrum and efforts to protect intactness should not be limited by a single threshold, but rather reflect landscape-specific levels required to support multiple use and sustained yield.

The final rule adds a definition for the term ''intactness,'' which is a measure of the degree to which human influences alter or impair the structure, function, or composition of a landscape. Because the rule requires the BLM to identify intact landscapes, the agency will need to measure and inventory intactness as a resource value. The final rule clarifies that as part of managing to protect intact landscapes, the BLM will develop and maintain an inventory of landscape intactness using watershed condition assessments to establish a consistent baseline condition. The BLM will then use the intactness inventory, along with other high-quality information including habitat connectivity and migration corridor data, to identify intact landscapes in the land use planning process and consider management opportunities.

The final rule adds a definition for the term ''land health.'' Land health is used throughout the rule to refer to the concept of a healthy and functioning ecosystem, and the BLM defines the term in the final rule to clarify the desired outcome of establishing land health standards and to be consistent with the definition of rangeland health in the BLM's Rangeland Health Standards Handbook, H–4180–1.[11]

The final rule makes small adjustments to the definition of the term ''landscape'' to be more inclusive in terms of the types of resources and interests that can anchor a landscape and to align with definitions used in landscape ecology. The term ''landscape'' is used throughout the rule to characterize a meaningful area of land and waters on which restoration, protection, and other management actions will take place. Determining how the BLM's management actions can influence the health and resilience of ecosystems can vary across landscapes and over time.

The rule defines ''mitigation'' consistent with the definition provided by existing Council on Environmental Quality regulations (40 CFR 1508.1(s)), which identify various ways to address adverse impacts to resources, including steps to avoid and minimize those impacts and compensate for residual impacts. As a tool to achieve ecosystem resilience of public lands, the BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then minimize, and then compensate for any residual impacts. This definition and the related provisions in the rule supplement existing DOI policy, which among other things provides boundaries to ensure that compensatory mitigation is durable and effective. The BLM made no changes to the definition from the proposed rule.

The final rule adds a new definition for the term ''mitigation bank'' because the term is used in the final rule along with ''in-lieu fee program'' as a category of mitigation projects that would require a mitigation lease with additional requirements beyond those that would be required for smaller, single-use mitigation projects. A mitigation bank is a site where resources are restored, established, enhanced, or protected for the purpose of providing compensatory mitigation for an authorized use that is impacting similar resources elsewhere. The definition in the rule is consistent with the definition in the BLM's Mitigation Manual, MS–1794.[12]

The final rule adds a new definition for the term ''mitigation fund'' because the rule provides standards for the BLM to approve, through a formal agreement, a third-party mitigation fund holder to implement compensatory mitigation programs or projects. A mitigation fund is an account established by a mitigation fund holder to collect and then disperse funds for projects that satisfy compensatory mitigation commitments and obligations. The rule also provides for the BLM in some circumstances to require mitigation lease holders to submit a formal agreement with a qualified mitigation fund holder.

The final rule defines the term ''mitigation strategies'' as documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in advance of anticipated public land uses. The BLM received comments recommending replacing the word ''strategies'' with ''approaches'' or ''documents.'' The final rule does not change the definition of this term, which is consistent with the definition of mitigation strategies from the BLM's Mitigation Manual, MS–1794.

The rule defines the term ''monitoring'' to describe a critical suite of activities involving observation and data collection to evaluate (1) existing conditions, (2) the effects of management actions, or (3) the effectiveness of actions taken to meet management objectives. Management for ecosystem resilience requires the BLM to understand how proposed use activities impact resource condition at many scales. Monitoring is a critical component of the BLM's Assessment, Inventory and Monitoring (AIM) Strategy,[13] which provides a standardized framework for assessing natural resource condition and trends

[10] Executive Office of the President, Office of Science and Technology Policy and Council on Environmental Quality, Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf;* BLM Instruction Memorandum No. 2022–011, Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403 (Sept. 13, 2022), *https://www.blm.gov/policy/pim-2022-011.*

[11] This handbook describes the authorities, objectives, and policies that guide assessment of public land health and taking appropriate action to achieve, or make progress toward achieving, specified rangeland health standards. *https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h4180-1.pdf.*

[12] This manual provides guidance on implementing consistent principles and procedures for mitigation in the BLM's authorization of public land uses. *https://www.blm.gov/sites/default/files/docs/2021-11/MS-1794%20Rel.%201-1807.pdf.*

[13] The *AIM Strategy* provides quantitative data and tools to guide and justify policy actions, land uses, and adaptive management decisions. *https://www.blm.gov/aim.*

on BLM-administered public lands. The BLM did not change the definition of ''monitoring'' from the proposed rule because it is based on the definition and use of that term in the grazing regulations (43 CFR 4100.0–5), is science-based, and enables the application of data to inform land management and understand management effects.

The rule defines the term ''permittee'' as a person or organization with a valid permit, right-of-way grant, lease, or other land use authorization from the BLM. The rule largely discusses ''permittees'' when identifying the responsibility of parties in the context of mitigation and in discussing the opportunities to rely on third parties in complying with mitigation requirements. The proposed rule defined a permittee as a person; the final rule defines a permittee as a person or other legal entity.

The final rule defines ''protection'' in the context of the overarching purpose of the rule, which is to promote the use of conservation measures to support the ecosystem resilience of public lands. ''Protection'' is a critical component of conservation, alongside restoration, and describes acts or processes that keep resources safe from degradation, damage, or destruction. The rule (§ 6101.2(b)) would include a stated objective to promote the protection of intact landscapes on public lands as a critical means to achieve ecosystem resilience. The BLM received comments that requested clarification of the term protection and recommended distinguishing between protection and preservation. Commenters suggested removing the term preserve from the definition of protection, and commenters were concerned that the term protection, as it was defined in the proposed rule, was intended to set land aside and preclude other uses. The definition of protection was updated in the final rule to clarify that protection is not synonymous with preservation and is not intended to prevent active management or other uses.

The rule defines ''public lands'' in order to clarify the scope of the proposed rule and its intended application to all BLM-managed lands and uses. The definition is similar to the definition of ''public lands'' that appears at 43 CFR 6301.5, but the BLM has modified the definition from the proposed rule in response to comments to clarify that this rule extends only to BLM-managed surface estate. The resulting definition in this rule is specific to new part 6100 and should not be interpreted as changing the definition of ''public lands'' in any other context, including where that term would extend to BLM-managed mineral estate under other BLM regulations.

The rule defines ''reclamation'' to identify restoration practices intended to achieve an outcome that reflects project goals and objectives, such as site stabilization and revegetation. While ''reclamation'' is a part of a continuum of restoration practices, it contrasts with other actions that are specifically designed to recover ecosystems that have been degraded, damaged, or destroyed. Reclamation often involves initial practices that can prepare projects or sites for further restoration activities. The rule, at § 6102.4.2, discusses reclamation in the context of bonding restoration and mitigation leases to ensure lessees hold sufficient bond amounts to provide for the reclamation of the lease areas and the restoration of any lands or surface waters adversely affected by lease operations. The BLM made no changes to the definition from the proposed rule.

The final rule defines ''restoration'' in the context of the overarching purpose of this rule, which is to promote the use of conservation to ensure the ecosystem resilience of public lands. ''Restoration'' is a critical component of conservation, alongside protection, and describes acts or processes of conservation that passively or actively assist the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM received comments suggesting that the rule acknowledge both passive and active restoration as legitimate restoration methods and comments calling for the clarification of what the BLM's broad-scale recovery goals are for restoration. Specifically, commenters identified the need to be explicit about the goal of returning ecosystems to a more natural, native ecological state and that the use of nonnative species in restoration projects is not the preferred option. The definition of restoration was updated in the final rule to include both active and passive restoration and to clarify that the goal of restoration efforts is the recovery of an ecosystem to a more natural, native ecological state.

The final rule adds a definition for the term ''significant causal factor'' because the rule uses this term to trigger an obligation on the part of the BLM to take appropriate action, including through the modification of authorizations and management practices for relevant programs and uses, in order to achieve land health. A significant causal factor is a use, activity, or disturbance that prevents an area from achieving or making significant progress toward achieving one or more land health standards. The rule requires the BLM to document a determination of the significant causal factor in circumstances in which resource conditions are not achieving or making significant progress toward achieving land health standards. If the BLM determines that existing management is a significant causal factor preventing achievement of land health standards, authorized officers must take appropriate action as soon as practicable.

The final rule adds a definition for the term ''significant progress,'' which is used in the rule as the measure of satisfactory progress toward achieving land health standards. Many comments requested clarification of this term, and while it is impractical to quantify the magnitude or rate of change that constitutes significant progress, the BLM developed a qualitative definition for purposes of implementing the rule. The term is defined to mean measurable or observable changes in the indicators that demonstrate improved land health. Acceptable levels of change must be realistic in terms of the capability of the resource but must also be as expeditious and effective as practical.

The final rule bases its definition of ''sustained yield'' on the FLPMA definition of that same term. This rule facilitates the use of conservation to achieve resilient ecosystems on public lands, which are essential to managing for multiple use and sustained yield. The BLM received comments suggesting the definition be updated to incorporate more precisely the language of the statutory definition, as well as comments recommending combining the definitions of sustained yield and multiple use and incorporating non-renewable resources into the definition of sustained yield. The final rule updates the definition of sustained yield to remain focused on renewable resources and responsible development of non-renewable resources and to add ''consistent with multiple use'' to mirror the FLPMA definition of sustained yield.

In response to public comments, the final rule expands the definition of ''unnecessary or undue degradation'' to address its distinct elements of ''unnecessary degradation'' and ''undue degradation''; and confirms that the statutory obligation to prevent ''unnecessary or undue degradation'' applies when either unnecessary degradation or undue degradation, and not necessarily both, is implicated. The rule explains that ''undue degradation'' is harm to land resources or values that is excessive or disproportionate to the proposed action or an existing disturbance. For example, approving a

proposed access road through the only remaining critical habitat for a plant listed as endangered under the Endangered Species Act, even if there is not another location for the road, would generally (although not always) result in undue degradation. The rule explains that ''unnecessary degradation'' is harm to land resources or values that is not needed to accomplish a use's stated goals. For example, approving a proposed access road through critical habitat for a plant listed as endangered under the Endangered Species Act that could be located elsewhere without impacting critical habitat and still provide the needed access would generally (although not always) result in unnecessary degradation.

This definition is consistent with BLM's affirmative obligation under FLPMA to take action to prevent unnecessary or undue degradation, which applies when either unnecessary degradation or undue degradation, and not necessarily both, is implicated. The definition of ''unnecessary or undue degradation'' applies to the use of those terms in the part 6100 regulations promulgated by this rule. It does not alter the definition of the term ''unnecessary or undue degradation'' at § 3809.5 of this chapter and does not apply to that term's use in the regulations at subpart 3809 of this chapter.

The final rule adds a definition for ''watershed condition assessment,'' which is defined to mean a process for assessing and synthesizing information on the condition of soil, water, habitats, and ecological processes within a watershed following the land health fundamentals through consideration of the watershed's physical and biological characteristics, landscape intactness, and disturbances. Watershed condition assessments are equivalent to the ''watershed condition classifications'' and ''land health assessments'' discussed in the proposed rule. The final rule updates the term and provides this definition in response to many public comments seeking clarification and efficiency of process.

Section 6101.5—Principles for Ecosystem Resilience

The rule relies upon express direction provided in FLPMA to manage public lands on the basis of multiple use and sustained yield, and it establishes the principle that the BLM must conserve renewable natural resources at a level that maintains or improves ecosystem resilience in order to achieve this mission. The BLM made only minimal changes to this section from the proposed rule.

Section 6101.5(d) directs authorized officers to implement principles of ecosystem resilience by recognizing conservation as a land use within the multiple use framework, including in decision-making, authorizations, and planning processes; protecting and maintaining the fundamentals of land health; restoring and protecting intact public lands; applying the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and preventing unnecessary or undue degradation.

Subpart 6102—Conservation Use To Achieve Ecosystem Resilience

The rule clarifies that conservation is a use on par with other uses of public lands under FLPMA's multiple use framework. FLPMA directs the BLM to manage the public lands in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values, among other resources and values, and that protects certain public lands in their natural condition. The BLM implements this mandate through land use plan allocations, including designations, and other planning decisions that conserve public land resources, seeking to balance conservation uses with other uses, such as energy development and recreation. The BLM also complies with this mandate when issuing decisions that implement its land use plans. In these implementation decisions, including when authorizing projects, the BLM promotes conservation use by requiring appropriate mitigation of impacts to natural resources on public lands. The rule provides specific direction for implementing certain programs in a way that emphasizes conservation use and provides new tools and direction for managing conservation use to facilitate ecosystem resilience on public lands.

As described in detail in each section, the BLM updated the final rule in response to public comments to clarify processes, including how conservation uses would occur within and outside of land use planning processes; enumerate guiding principles for restoration and mitigation actions; and provide other adjustments to improve public understanding and agency implementation of the rule. The most significant change to this subpart is that the final rule establishes restoration and mitigation leases as two separate types of leases instead of providing simply for conservation leases available for both purposes (which was the approach in the proposed rule). The final rule expands the regulations governing these leases to provide a more comprehensive framework for implementation and respond to concerns heard from the public.

Section 6102.1—Protection of Landscape Intactness

The BLM changed the title of § 6102.1 from ''Protection of Intact Landscapes'' in the proposed rule to ''Protection of Landscape Intactness'' in the final rule. Public comments suggested that the rule distinguish intactness as a resource value from intact landscapes as delineated units. The change in the title of § 6102.1 reflects that landscape intactness is the resource value that the BLM is seeking to identify and protect. The final rule includes a definition of the term ''intactness'' to further guide implementation of this section. Section 6102.1(a) and (b) require the BLM to manage certain landscapes to protect their intactness and to seek to prioritize actions that conserve and protect landscape intactness. The following section, 6102.2, provides direction for the BLM to inventory and protect intactness on the public lands by identifying and managing intact landscapes in the land use planning process.

Section 6102.2—Management To Protect Intact Landscapes

The BLM revised § 6102.2 in response to public comments requesting clarity around how intact landscapes would be identified and managed within and outside of the land use planning process and to distinguish intactness as a resource value from intact landscapes as delineated units. The final rule establishes in § 6102.2(a) that the BLM will maintain an inventory of intactness on the public lands, in accordance with FLPMA's requirement that the BLM maintain an inventory of all public lands and their resources and other values.

In the land use planning process, § 6102.2(b) requires the BLM to use the intactness inventory, and other available information including habitat connectivity and migration corridor data, to identify intact landscapes, evaluate alternatives to manage intact landscapes, and identify which intact landscapes or portions of intact landscapes will be managed for protection. Furthermore, in the land use planning process, § 6102.2(c) requires the BLM to identify desired conditions and landscape objectives to guide implementation decisions regarding management of intact landscapes. In making management decisions for intact landscapes, the BLM will seek to work

with communities to identify the most suitable areas to protect as intact landscapes; consult with Tribes to identify opportunities for co-stewardship; establish partnerships; and monitor effectiveness of ecological protection activities.

In addition to the land use planning process described above, § 6102.2(d) requires authorized officers to prioritize acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems, and § 6102.2(e) directs the BLM to develop a national system for collecting and tracking disturbance and intactness data and to use those data to minimize disturbance and improve ecosystem resilience. Data will be made available to the public.

Section 6102.3—Restoration

In the proposed rule, restoration was divided across three sections (Restoration, Restoration Prioritization, and Restoration Planning). The final rule keeps a Restoration section but combines the remaining two sections into a Restoration Prioritization and Planning section. The definition of restoration, critical to interpretation of this section, has been updated to provide that restoration actions include both passive and active measures that assist the recovery of an ecosystem that has been degraded, damaged, or destroyed. The definition has been further updated to clarify that the intent of restoration actions is the return of more natural, native ecological states. The final rule emphasizes the importance of restoration in achieving multiple use and sustained yield and requires a consideration of the causes of degradation, the recovery potential of an ecosystem, and the allowable uses in the governing land use plan, such as whether an area is managed for recreation or is degraded land prioritized for development, in determining restoration actions. Principles for restoration actions, which were previously located in the Restoration Planning section of the proposed rule, are now found in the Restoration section to clarify that such principles apply to all restoration actions.[14] The principles include direction to consult with Tribes to identify opportunities for co-stewardship or collaboration, similar to the direction provided for managing intact landscapes.

[14] The reference to ''low-tech restoration activities'' in section 6102.3(d) means the practice of using simple, low unit-cost, structural additions (*e.g.,* wood and beaver dams in streams) to mimic natural functions and promote specific processes.

Section 6102.3.1—Restoration Prioritization and Planning

A combined restoration prioritization and planning section at 6102.3.1 requires the identification of restoration outcomes in resource management plans. Consistent with these outcomes, the section requires the identification of priority landscapes for restoration at least every 5 years and provides for a number of considerations for authorized officers when doing so. The section requires the development of restoration plans at least every 5 years and enumerates criteria with which restoration goals, objectives, and management actions identified in the plans must adhere. Among other criteria, restoration plans must adhere to commonly accepted principles and standards within the field of ecological restoration. Lastly, the section requires authorized officers to track restoration implementation and progress against identified goals and assess why restoration outcomes are not being met and what, if anything, is additionally needed to achieve restoration goals.

Section 6102.4—Restoration and Mitigation Leasing

Section 302(b) of FLPMA (43 U.S.C. 1732(b)) grants the Secretary authority to regulate through appropriate instruments the use, occupancy, and development of the public lands. Under that broad authority, the rule provides a framework for the BLM to issue restoration and mitigation leases on public lands for the purpose of pursuing ecosystem resilience through mitigation and restoration actions. The BLM will determine whether a lease is an appropriate mechanism based on the context of each application for a proposed lease, consistent with the final rule.

The BLM received many comments on the leasing provisions in the proposed rule that resulted in changes in the final rule. These changes include: establishing restoration leases and mitigation leases rather than conservation leases, which as proposed would have been used for either purpose; enabling conservation districts and State fish and wildlife agencies to hold leases; including consideration of factors to incentivize lease proposals that collaborate with existing permittees and other affected interests and meet other desirable criteria; requiring lessees to report annually on lease activity; and providing for the BLM to waive or reduce the rent of a restoration lease if the lease is providing valuable benefit to the public lands and is not generating revenue.

Many commenters were concerned about public access to public lands that are leased for restoration or mitigation purposes and expressed concern that the rule's definition of ''casual use'' does not explicitly guarantee use for common activities. While the BLM did not change the definition of ''casual use'' in order to remain consistent with existing regulations, the final rule specifically states that a restoration or mitigation lease will not preclude access to or across leased areas for recreation use, research use, or other authorized use that is compatible with the restoration or mitigation activities.

Some commenters questioned whether the BLM through this rulemaking or subsequent land use planning would allocate public lands as available to or excluded from restoration and mitigation leasing. The final rule does not identify or limit public lands that could be leased for restoration or mitigation purposes. However, several provisions guide the evaluation of which lands are suitable for leasing. The rule requires the BLM to identify restoration priority landscapes, intact landscapes, and landscape-scale mitigation strategies, and these areas would be logical locations for leases to support restoration and mitigation efforts the agency is prioritizing. The rule also enumerates factors for evaluating lease proposals based on criteria that are expected to make leases more successful. The rule does not allow for leases to be issued where an existing, authorized, and incompatible use is occurring, effectively removing areas from consideration for at least some activities that could be authorized by a restoration or mitigation lease. Additionally, any restoration or mitigation lease would need to conform to the BLM's approved land use plan. These provisions collectively guide restoration and mitigation leases to the most suitable locations without requiring the BLM, in every instance, to undertake a plan amendment or revision to allocate lands as available for leasing.

The following paragraphs summarize the restoration and mitigation leasing provisions in the final rule.

Section 6102.4(a) authorizes the BLM to issue restoration and mitigation leases for the purpose of restoring degraded landscapes or mitigating impacts resulting from other land use authorizations. Entities that can hold restoration and mitigation leases include individuals, businesses, non-governmental organizations, Tribal governments, conservation districts, and State fish and wildlife agencies. Qualified entities for a mitigation lease to establish an in-lieu fee program

would be limited to non-governmental organizations, State fish and wildlife agencies, and Tribal government organizations. Leases cannot be held by foreign persons as that term is defined in 31 CFR 802.221. The BLM will rely on standard lease adjudication practices established in 43 CFR 2920 to determine if a lease applicant meets the preconditions in this part for a qualified entity. Restoration and mitigation leases will be issued for the necessary amount of time to meet the lease objective. A lease issued for restoration purposes can be issued for an initial term of up to 10 years, whereas a lease issued for mitigation purposes will be issued for a term commensurate with the impact it is mitigating. Activity on all leases will be reviewed for consistency with lease provisions at regular intervals and can be extended beyond their primary terms when extension is necessary to serve the purpose for which the lease was first issued. Section 6102.4(a)(4) precludes the BLM from issuing new authorizations to use the leased lands if the use would be incompatible with the authorized restoration or mitigation use set forth in the lease.

Section 6102.4(b) and (c) set forth the application process for restoration and mitigation leases. Applicants are required to submit detailed restoration or mitigation development plans that include information on outreach with existing permittees, lease holders, adjacent land managers or owners, and other interested parties. The authorized officer can require additional information such as environmental data and proof that the applicant has the technical and financial capability to perform the restoration and mitigation activities.

Section 6102.4(d) enumerates factors for the authorized officer to consider when evaluating a lease application. Those factors include: lease outcomes that are consistent with restoration principles established in the rule; lease outcomes tied to desired future conditions that are consistent with the management objectives and allowable uses in the governing land use plan, such as an area managed for recreation or degraded land prioritized for development; collaboration with existing permittees, leaseholders, and adjacent land managers or owners; outreach to or support from local communities; and consideration of environmental justice objectives.

Once a lease application is approved, § 6102.4(e) requires the applicant to provide the BLM with a monitoring plan and to report annually and at the end of the lease period on lease activity.

Section 6102.4(f) and (g) provide that restoration and mitigation leases do not entitle leaseholders to the exclusive use of the public lands and that other uses compatible with the objectives of the restoration or mitigation lease are explicitly allowed on leased lands. Consistent with other land use authorizations, such as rights-of-way, it is the BLM's view that no property interest is conveyed by issuing these leases. Section 6102.4(g) confirms that a restoration or mitigation lease will not preclude access to or across leased areas for casual use, recreation use, research use, or other use taken pursuant to a land use authorization that is compatible with the approved restoration or mitigation use.

Section 6102.4(j) directs that cost recovery, rents, and fees for restoration and mitigation leases will be governed by existing regulations at 43 CFR 2920.6 and 2920.8 and that the BLM will generally collect annual rental based on fair market value. Recognizing that restoration lessees are providing a service to the public and the BLM, the rule provides for waiving or reducing the rent of a restoration lease if a valuable benefit is being provided to the public and revenue is not being generated. This approach is consistent with the approach in waiving rents for rights-of-way in 43 CFR 2806.15. Although section 102 of FLPMA provides a policy preference for recovering fair market value for the use of the public lands (*see* 43 U.S.C. 1701(a)(9)), the BLM is not required to do so, especially in circumstances in which departing from charging a fair market value rent would further other policy priorities identified in section 102 of FLPMA. Here, the BLM has determined that allowing authorized officers the discretion to reduce or waive rent for restoration leases will assist in its effort to manage the public lands to protect the quality of ecological and other relevant values. (*See* 43 U.S.C. 1701(a)(8))

Section 6102.4.1—Termination and Suspension of Restoration and Mitigation Leases

The final rule makes only minimal changes to § 6102.4.1 from the proposed rule. Section 6102.4.1 outlines processes for suspending and terminating restoration and mitigation leases. Where the leaseholder fails to comply with applicable requirements, fails to use the lease for its intended purpose, or cannot fulfill the lease's purpose, the BLM may suspend or terminate the lease. An authorized officer must issue an immediate temporary suspension of a lease upon determination that a noncompliance issue adversely affects or poses a threat to public lands or public health or safety. Following termination of a lease, the leaseholder has sixty days to fulfill its obligation to reclaim the site (*i.e.,* return the site to its prior condition or as otherwise provided in the lease). That obligation is distinct from the goal of restoring the site to its ecological potential that underlies the lease.

Section 6102.4.2—Bonding for Restoration and Mitigation Leases

The final rule authorizes the BLM to require a bond for a restoration or mitigation lease involving surface-disturbing or active management activities, but does not require a bond in all cases as the proposed rule would have. Section 6102.4.2(a) directs that for mitigation leases, the lease holder will usually be required to provide letters of credit or establish an escrow account for the full amount needed to ensure the development plan meets all performance criteria. The final rule includes considerations for requiring a bond, such as the type and intensity of surface-disturbing activities, proposed use of experimental or non-natural restoration methods, and risks associated with the proposed actions.

Section 6102.4.2(b) through (d) establishes additional bonding provisions regarding statewide bonds, filing of bonds, and default and are unchanged from the proposed rule.

Section 6102.5—Management Actions for Ecosystem Resilience

The final rule includes minor updates to this section in response to comments suggesting more clarity around how the section connects to other sections of the rule. Commenters also recommended strengthening the focus on ecosystem resilience and emphasizing biodiversity as an important component of ecosystem resilience. This rule focuses primarily on supporting healthy and resilient ecosystems, which are the basis for multiple use and sustained yield and which, if achieved, will benefit biodiversity, water security, carbon sequestration, forage, and a host of other values.

Section 6102.5 sets forth a framework for the BLM to make informed management decisions based on science and data, including at the planning, permitting, and program levels, that would help to facilitate ecosystem resilience. As part of this framework, authorized officers are required to identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts; develop and implement protection,

restoration, mitigation, monitoring, and adaptive management strategies; [15] and share watershed condition assessment data with the public. The final rule cross-references these requirements listed in § 6102.5(a) with other sections of the rule that provide additional guidance on these management actions for ecosystem resilience.

Section 6102.5(b) requires the BLM to meaningfully consult with Tribes and Alaska Native Corporations and makes a change from the proposed rule that provides for Tribal input on whether actions are likely to substantially impact Tribes or Alaska Native Corporations. The rule also requires the BLM to respect and include Indigenous Knowledge in decision-making, including through Tribal co-stewardship, and updates provisions and definitions in the rule to reflect current departmental and agency guidance.

Consistent with applicable law and resource management plans, including, for example, where an area is managed for recreation or is degraded land prioritized for development, authorized officers are required to make every effort to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience. Permanent impairment of ecosystem resilience would be difficult or impossible to avoid, for example, on lands on which the BLM has authorized intensive uses, including infrastructure and energy projects or mining, or where the BLM has limited discretion to condition or deny the use. Through this frame, the rule recognizes that the BLM may develop land use plans that prioritize degraded areas for development, such as in the Arizona Restoration Design Energy Project, or generally prioritize areas for utility-scale development, such as the Solar Energy Zones designated in the 2012 Western Solar Plan, and that the effects on ecosystem resilience in such a plan may be mitigated but will not be completely avoided. The rule also requires the authorized officer to provide justification for decisions that may impair ecosystem resilience. In other words, the rule does not prohibit land uses that impair ecosystem resilience; it requires avoidance as a general matter and an explanation if impairment cannot be avoided.

[15] Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes and, if not, facilitating management changes that will best ensure that outcomes are met or reevaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain (43 CFR 46.30).

To ensure the best available science is underpinning management actions, the rule requires the BLM to use national and site-based assessment, inventory, and monitoring data, along with other high-quality information, to evaluate resource conditions and inform decision-making.

Section 6102.5.1—Mitigation

The rule at § 6102.5.1(a) directs the BLM to apply the mitigation hierarchy to avoid, minimize, and compensate for adverse impacts to all public land resources, generally in that order. The rule states further that mitigation approaches or requirements may be identified in land use plans or other decision documents. Consistent with BLM's existing policy on mitigation (H–1794–1), which requires BLM to consider compensatory mitigation for important, scarce, or sensitive resources, § 6102.5.1(b) expands upon this direction by requiring that mitigation to address adverse impacts to such resources should be applied with the goal of eliminating, reducing, and/or offsetting impacts on the resource, consistent with applicable law. This facilitates BLM's compliance with its multiple-use and sustained yield mission by conserving such resources for future generations. Determining the maximum benefit to an impacted resource from a compensatory measure is often achieved by carefully identifying the type, location, timing, and other aspects of the compensatory mitigation measure. This assessment is conducted as standard practice in the BLM's NEPA analysis and decision documents.

The rule also identifies new principles at § 6102.5.1(c) to apply when implementing mitigation, including the need to ensure compensatory mitigation is commensurate with the impacts, and the use of adaptive management, landscape-scale approaches, high-quality information, and performance criteria and effectiveness monitoring.

At § 6102.5.1(d), the rule allows the BLM to approve and use third-party mitigation fund holders to administer funds for the implementation of compensatory mitigation programs or projects and specifies the type of actions third parties can perform with compensatory mitigation funding. Section 6102.5.1(e) establishes the requirements for different types of entities that could be considered and approved as mitigation fund holders. The mitigation fund holder could be a State or local government, if, among other requirements, that entity can demonstrate to the satisfaction of the BLM that it is acting as a fiduciary for the benefit of the mitigation project and site. The section also allows for a mitigation fund holder to be an entity that, among other requirements, qualifies for tax-exempt status and provides evidence it can successfully hold and manage mitigation accounts.

Sections 6102.5.1(f) through (i) provide further direction to authorized officers in managing mitigation leases and lease holders, including provisions to govern the collection of annual rent at fair market value for large or otherwise substantial compensatory mitigation programs or projects on public lands, including mitigation banks and in-lieu fee programs.

Subpart 6103 Managing Land Health To Achieve Ecosystem Resilience

Section 6103.1—Land Health Standards

Consistent with the proposed rule, § 6103.1 of the final rule directs that all program areas of the BLM must be managed in accordance with the fundamentals of land health, which are adopted, verbatim, from the fundamentals of rangeland health included at 43 CFR 4180.1 (2005). It does so by establishing a series of procedural requirements to guide the BLM's actions to address land health. The rule does not require that individual actions ''comply'' with the fundamentals of land health, nor does it require achievement of those fundamentals (as measured by the land health standards) as a precondition for any BLM decision.

The rule in this section directs authorized officers to adopt national land health standards across all ecosystems that provide consistency and conformance with the fundamentals of land health and facilitate progress toward meeting land health. Acknowledging the importance of standards in managing all of the BLM's programs in accordance with the fundamentals, the title of § 6103.1 has been changed to Land Health Standards. Section 6103.1 includes a new paragraph (b) describing the resources, processes, and values addressed through national land health standards as well as a new timeline at paragraph (e) to review and amend or supplement standards and a subsequent timeline to ensure standards remain sufficient. A new paragraph at § 6103.1(d) instructs authorized officers to incorporate geographically distinct land health standards when needed to address unique or rare ecosystem types that may not be addressed by the national standards. These new timelines in the final rule—along with additional

implementation specificity found in other land-health related sections of the rule—are introduced in response to comments that sought more clarity and specificity for how standards may be updated to serve as appropriate measures for the fundamentals. Section 6103.1(f) makes explicit that any new or amended land health standard must be approved by the BLM Director prior to implementation.

Section 6103.1.1—Management for Land Health

Section 6103.1.1(a) conveys the importance of assessing land health at a broad scale to manage for ecosystem resilience and provides that authorized officers should rely on assessments and evaluations conducted at such scales, as appropriate, to support decision-making. Section 6103.1.1(b) reinforces the direction that all BLM program areas must be managed to facilitate progress toward achieving land health standards. Section 6103.1.1(b)(1) requires authorized officers to apply existing standards in the administration of all BLM programs. Initially, this will mean applying the existing standards prepared pursuant to subpart 4180 of this chapter to all programs, *not just* grazing. Moving forward, consistent, national standards will be completed pursuant to procedures set out in this subpart, and not under the procedures set out in subpart 4180, and will then apply to all programs, *including* grazing. Section 6103.1.1(b)(2) directs programs to develop management guidelines, which are best practices in managing programs to achieve goals. Management guidelines are to be reviewed at least every 10 years consistent with review timelines in other sections that relate to land health. As with standards, existing management guidelines applicable to the grazing program will continue to apply. New and amended guidelines for grazing should be developed under the procedures in this subpart, and not subpart 4180. Sections 6103.1.1(c) and (d) require that land health be included in land use planning, primarily when identifying allocation decisions and actions that are anticipated to achieve land health outcomes, as well as any impediments in doing so.

Section 6103.1.2—Land Health Evaluations and Determinations

Section 6103.1.2(a) has been modified to require that authorized officers complete watershed condition assessments and land health evaluations at least every 10 years. Watershed condition assessments supplant land health assessments in the proposed rule and characterize resource conditions, while subsequent land health evaluations interpret assessment findings to draw conclusions about whether land health standards are being achieved consistent with the fundamentals of land health. This efficiency of process responds to many comments and concerns about the BLM's ability to complete land health assessments across broad spatial scales.

Direction to conduct watershed condition assessments and land health evaluations at broader spatial scales, as opposed to at the scale of an allotment or other more narrowly drawn boundary or project area, builds on best practices currently deployed by BLM field offices, responds to comments recommending landscape-scale approaches as a way to address the backlog of pending land health assessments and evaluations, and better serves efforts to understand and address land health conditions across management boundaries.

Section 6103.1.2(d) provides what must be incorporated when conducting land health evaluations, such as watershed condition assessments and high-quality information requirements. Section 6103.1.2(d) further clarifies the requirements for conducting land health evaluations, including that authorized officers document the rationale and findings as to whether each land health standard is achieved or making significant progress towards achievement.

Sections 6103.1.2(e), (f), and (g) describe the process after land health evaluations determine if resource conditions are or are not achieving or making significant progress toward achieving land health standards. When watershed condition assessments and land health evaluations find that resource conditions are achieving or making significant progress toward achieving land health, then project-level decisions should rely on such evidence where possible and appropriate. Section 6103.1.2(f) provides for tiering documentation and evidence from broad-scale assessments and evaluations for project-level decisions, such as grazing permit renewals, which promotes efficiency and streamlines decision-making. This provision responds to comments concerned with the existing backlog of assessments land health evaluations.

When watershed condition assessments and land health evaluations find that resource conditions are not achieving, or making significant progress toward achieving, land health standards, then causal factor determinations, as directed by § 6103.1.2(f), must be prepared no later than a year after the evaluation. Determinations document significant causal factors for non-achievement. Section 6103.1.2(f)(3) requires authorized officers to take appropriate action as soon as practicable to address nonachievement of land health standards when the significant causal factors include existing management practices or levels of use on public lands. However, as clarified in § 6103.1.2(f)(4), to the extent existing grazing management practices or levels of grazing use on public lands are significant causal factors preventing achievement of land health standards, authorized officers must also comply with the requirement for taking appropriate action set by § 4180.2(c) of this chapter, including that appropriate action be taken not later than the start of the next grazing year.

Further, as noted previously, appropriate actions in a specific situation will be informed and may be constrained by applicable law and the governing land use plan. For example, where a land use planning approach, such as BLM Arizona's Restoration Design Energy Project, is intended to support development of renewable energy on disturbed or previously developed sites, then appropriate actions would be designed to add measures that facilitate the progress of the affected lands toward meeting the applicable fundamentals of land health. However, these actions would be informed by the overall approach of identifying disturbed lands suitable for renewable energy development and applying measures consistent with those management decisions. This is consistent with the approach to incorporate design features into the Restoration Design Energy Project Record of Decision to reduce overall impacts to the lands identified for development. (See *https://eplanning.blm.gov/public_projects/nepa/79922/107093/131007/RDEP-ROD-ARMP.pdf*).

Section 6103.1.2(f)(5) identifies some appropriate actions that may be deployed to address practices and uses determined to be significant causal factors, consistent with applicable law, regulation, and the governing resource management plan and its management objectives, such as where an area is managed for recreation or is degraded land prioritized for development. For example, if a governing resource management plan identifies degraded lands for solar development and those areas are not meeting standards, the authorized officer should consider that land use planning decision in determining the appropriate action. In that circumstance, it would typically

not be appropriate to deny solar or wind use altogether, although design features or other mitigation measures may be applied. Section 6103.1.2(i) reinforces that appropriate actions must be consistent with existing resource management plans and notes that if planning decisions do not allow for appropriate actions to address significant causal factors, then an authorized officer may decide to amend or revise the applicable land use plan. However, whether to undertake a planning process is at the discretion of the authorized officer. Sections 6103.1.2 (j) and (k) respond to public comment by requiring annual, publicly available reporting on assessment, evaluation, and determination accomplishments; results; and actions.

Section 6103.2—Inventory, Assessment, and Monitoring

The final rule requires the BLM to complete watershed condition assessments every 10 years and consider them in multiple decision-making processes. New paragraphs at § 6103.2(a) further describe the purpose, process, and requirements of conducting watershed condition assessments in support of land use planning, protection of intact landscapes, managing for ecosystem resilience, informing restoration actions, and informing land health evaluations and determinations. In response to public comments encouraging consistency in analysis approach, standard data sources, and transparency, the final rule adds in § 6103.2(a) that the BLM must utilize multiple sources of high-quality information to understand conditions and trends relevant to land health standards and incorporate consistent analytical approaches, quantitative indicators, and benchmarks where practicable. It is anticipated that watershed condition assessments will frequently be completed not by BLM State Offices, but by national-level resources, such as the National Operations Center, utilizing standardized procedures and existing data and analyses and validated with local data and high-quality information as appropriate.

Section 6103.2(b) clarifies that the BLM's inventory of public lands includes both landscape components and core indicators that address land health fundamentals and requires the use of high-quality information and inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decision-making across program areas. In response to public comments, the BLM clarified that this inventory specifically includes infrastructure and renewable resources and that it is available to the public (currently, *https://gbp-blm-egis.hub.arcgis.com/*). Section 6103.2(c) establishes principles to ensure that inventory, assessment, and monitoring activities are evidence-based, standardized, efficient, and defensible.

43 CFR Chapter II

Subpart 1610—Resource Management Planning

Section 1610.7–2—Designation of Areas of Critical Environmental Concern

The rule includes changes to the land use planning regulations to elaborate on the role ACECs play as the principal administrative designation for public lands where special management attention is required to protect important natural, cultural, and scenic resources and to protect against natural hazards. It reiterates FLPMA's requirement that the BLM give priority to the identification, evaluation, and designation of ACECs during the land use planning process and provides additional clarity and direction for complying with this statutory requirement. The rule codifies in regulation procedures for considering and designating potential ACECs that were, prior to promulgation of this rule, partially described in regulation and partially described in agency policy.

The BLM received many comments on the ACEC provisions of the proposed rule, and the final rule reflects changes the BLM made based on public comments. As described in more detail below, changes from the proposed rule include: providing for the BLM to implement temporary management for potential ACECs identified outside of an ongoing planning process, with public notice and periodic reevaluation; codification of research natural areas as a type of ACEC designated for the primary purpose of research and education on public lands, consistent with existing regulations and policy; a presumption that all areas found to meet all three ACEC criteria will be designated in the resource management plan; a management standard that requires the BLM to administer designated ACECs in a manner that conserves, protects, and enhances the relevant and important values; and a definition for the term ''irreparable damage.''

The final rule also confirms that proposed and existing ACECs being addressed in the planning process for a resource management plan or a plan amendment will be identified in all applicable **Federal Register** Notices and in public outreach materials. The BLM will not be required to produce separate notices specific to ACECs. The following paragraphs summarize the ACEC provisions in the final rule.

Section 1610.7–2(a) confirms that ACECs are the principal administrative designation for public lands where special management is required to protect and prevent irreparable damage to important resources. ACECs are considered and designated in land use planning processes, including resource management plan revisions and amendments.

Section 1610.7–2(b) requires authorized officers to identify, evaluate, and give priority to areas that have potential for designation and management as ACECs in the land use planning process, and it provides that proposed and existing ACECs that will be addressed in the planning process for a resource management plan, plan revision, or plan amendment will be identified in all applicable public notices.

Section 1610.7–2(c) requires authorized officers to identify areas that may be eligible for ACEC status early in the planning process and specifies the need to target areas for evaluation based on resource inventories, internal and external nominations, and existing ACEC designations.

Section 1610.7–2(d) outlines the three criteria that must be met for ACEC designation, which are relevance, importance, and special management attention. The rule provides that values and resources may have importance if they contribute to ecosystem resilience, landscape intactness, or habitat connectivity, in addition to other importance criteria. The final rule requires that values and resources have more than local importance to meet the importance criteria, a change from the proposed rule based on public comments. Special management attention prevents irreparable damage to the relevant and important values and would not be prescribed if the relevant and important values were not present. The rule defines ''irreparable damage'' in this context to mean: ''harm to a value, resource, system, or process that substantially diminishes the relevance or importance of that value, resource, system, or process in such a way that recovery of the value, resource, system, or process to the extent necessary to restore its prior relevance or importance is impossible.'' Requiring a finding that special management attention is necessary for ACEC designation is consistent with BLM practice and guidance but was not a feature of the

regulations prior to promulgation of this rule.

Section 1610.7–2(e) provides that the BLM may designate an ACEC research natural area (RNA) for an area that meets all three ACEC criteria set forth in § 1610.7–2(e) and is consistent with the purposes for research natural areas established in existing regulations at 43 CFR subpart 8223. These regulations allow the BLM to establish RNAs for the primary purpose of research and education on public lands having natural characteristics that are unusual or that are of scientific or other special interest. The BLM's current guidance, as set forth in the agency's Land Use Planning Handbook and ACEC Manual, considers RNAs as a type of ACEC that are to be designated following the ACEC designation process. The BLM has designated many ACEC RNAs in existing land use plans following this guidance. Because this rule is codifying the BLM's ACEC guidance and process, and in response to public comments on this topic, the final rule provides for this RNA designation.

Section 1610.7–2(f) provides that the boundaries of proposed ACECs shall be identified for public lands as appropriate to encompass the relevant and important values and geographic extent of the special management attention needed to provide protection.

Section 1610.7–2(g) requires the BLM to analyze in detail all potential ACECs that have relevant and important values in planning documents. In the land use planning process, the BLM evaluates the need for special management attention to protect the relevant and important values of potential ACECs, which could include other allocations and designations that would provide appropriate protection and prevent irreparable damage to the relevant and important values.

Section 1610.7–2(h) directs that an approved resource management plan, plan revision, or plan amendment will list all designated ACECs, identify their relevant and important values, and include the special management attention being provided to them.

Section 1610.7–2(i) establishes procedures for addressing potential ACECs that are identified outside of an ongoing planning process. The State Director has the discretion to determine the appropriate time to evaluate whether the nomination meets the relevant, important, and special management criteria identified in 1610.7–2(d)(1) through (3). If a potential ACEC nomination meets all three criteria specified in the regulations—that is, it has relevance and importance and needs special management attention—then the State Director will, at their discretion, either initiate a land use planning process to evaluate the potential ACEC for designation or provide temporary management consistent with the existing resource management plan to protect the relevant and important values from irreparable damage. The final rule clarifies that the authorized officer in this context would be the State Director, consistent with other portions of the rule addressing decisions on potential ACECs. If the BLM decides to implement temporary management, the BLM will comply with all applicable laws, including NEPA, notify the public, and reevaluate the area periodically to ensure temporary management is still necessary. This provision does not change the presumption that ACECs are nominated and addressed through resource management planning processes, and it does not require the BLM to evaluate ACEC nominations outside the planning process.

Section 1610.7–2(j) requires the State Director to: determine which ACECs to designate based on specific factors including a presumption that all potential ACECs that meet all three criteria will be designated; provide a justification and rationale in decision documents for decisions both to designate an ACEC and not to designate an ACEC; administer designated ACECs in a manner that conserves, protects, and enhances the relevant and important values and only allow casual use or uses that will ensure the protection of the relevant and important values; and prioritize acquisition of inholdings within ACECs and adjacent or connecting lands that also possess the relevant and important values of a specific ACEC. In response to comments, the final rule eliminated the requirement included in the proposed rule that State Directors provide annual reports describing activity plans and implementation actions for each ACEC in the State. Such reporting is more appropriately developed during implementation of the final rule and should remain within the discretion of the State Director.

Section 1610.7–2(k) authorizes the State Director to remove an ACEC designation in a land use planning process only when special management attention is not needed because another legally enforceable mechanism provides an equal or greater level of protection, or when the relevant and important values are no longer present, cannot be recovered, or have recovered to the point where special management is no longer necessary.

Section 1610.7–2(l) identifies terms that are used in the ACEC section—casual use, conserve, ecosystem resilience, intactness, landscape, monitoring, protect, and restore—and provides that they should be interpreted consistent with the definitions of those same terms in § 6101.4.

Severability

The provisions of the rule should be considered separately. If any portion of the rule were stayed or invalidated by a reviewing court, the remaining elements would continue to provide the BLM with important and independently effective tools to advance conservation on the public lands. In particular, revisions to existing planning regulations at 43 CFR part 1600 governing the designation and management of ACECs are separate from the balance of the rule, which promulgates the new 43 CFR part 6100. Within part 6100, the rule includes a number of aspects that function independently and hold independent utility. For example, the rule's provisions pertaining to the identification and management of intact landscapes and other values in land use planning and agency decision-making; its framework for third-party restoration and mitigation leasing; and its procedures for adopting national land health standards, assessing land health, and using those assessments to drive agency decisions operate as independent means to achieve the rule's overarching goal of facilitating conservation of the public lands. Hence, if a court prevents any provision of one part of this rule from taking effect, that should not affect the other parts of the rule. The remaining provisions would remain in force.

IV. Additional Response to Public Comments

The BLM received an initial total of 216,403 comments from regulations.gov. Further analysis showed that there were public comment submissions with multiple cosigners, sometimes several thousand on one submission, which were initially counted as separate submissions but ultimately identified as a single submission with multiple signatures. Therefore, although 216,403 voiced their opinion, the final count of comment letters came to 152,673. The comment letters on the proposed rule are available for viewing on the Federal e-rulemaking portal (*https://www.regulations.gov*) (search Docket ID: BLM–2023–0001).

The BLM has reviewed all public comments in the context of the proposed rule and the particular

solicitations for comment in its preamble. The BLM has made changes to the final rule based on the public comments that refine and further develop the concepts identified in the proposed rule. The BLM did not make wholesale changes or additions, even when prompted to do so by the public comments, that would have caused the final rule to materially alter the issues included in or substantially depart from the terms and substance of the proposed rule. Changes made are described in this section and the ''Section-by-Section Discussion of Final Rule and Revisions from the Proposed Rule'' section.

The following is a summary of significant issues raised in comments the BLM received on the proposed rule and responses to these comments. The comments highlighted in the following paragraphs fell into several categories: comments related to sections of the proposed rule; comments related to public lands uses and resources not addressed in the rule; and comments on the rulemaking process. See the Section-by-Section discussion for responses to public comments on specific sections of the proposed rule.

A. Conservation Leasing

Commenters generally sought a better understanding of many aspects of the conservation leasing proposal, including the purposes and uses of the leases, and identified the need for terminology that better reflects those purposes and uses. Commenters requested additional detail within the rule text for what would and would not be allowed under a conservation lease, clarification on the terms and duration of the leases, and information on how conservation leases would interact with existing uses such as grazing and recreation.

In response to these comments, the BLM updated the rule to provide clarity and specificity for the leasing program being established in the rule. Significantly, the final rule establishes two distinct types of leases in place of referring to ''conservation leases'': restoration leases and mitigation leases. Restoration leases can be used to facilitate restoration of land and resources by passively or actively assisting the recovery of an ecosystem; and mitigation leases can be used to offset impacts to resources resulting from other land use authorizations. Restoration can occur under a mitigation lease when restoration is a mitigation action being taken pursuant to the lease. The final rule enumerates factors for authorized officers to consider when evaluating lease proposals, such as whether the applicant is collaborating with existing permittees, whether the lease would advance environmental justice objectives, or whether the objectives of the proposed leases would be supported by current management of the lands. The final rule also enables conservation districts and State fish and wildlife agencies to hold restoration and mitigation leases and specifies that recreation uses would not generally be precluded by restoration or mitigation leases.

Many comments also asked about how conservation leases relate to valid existing rights and permitted uses, including grazing, mining, and oil and gas leasing. Restoration and mitigation leases would not disturb existing authorizations, valid existing rights, or State or Tribal land use management. If the proposed activities in a restoration or mitigation lease would conflict with existing authorizations, such as if a specific type of restoration would not be compatible with grazing and the proposed location is already subject to a grazing authorization, then the restoration or mitigation lease could not be issued on those particular lands unless the proposal were modified to eliminate the conflict. While an applicant might propose a lease to help achieve restoration or mitigation outcomes on public lands, the BLM retains discretion as to whether to issue a lease in response to a proposal.

Some commenters raised concerns about the ability of foreign entities to use conservation leases to block development of critical mineral or energy projects on public lands or to obtain conservation leases near military bases or other sensitive government installations. In response to these and other comments on the potential use of conservation leases in ways that would excessively interfere with other uses or to intentionally block development, the BLM clarified that restoration and mitigation leases may only be issued for two discrete purposes: restoration of degraded landscapes or mitigation to offset the impacts of development (6102.4(a)(1)). To specifically address concerns around foreign actors, the BLM also revised the rule to explicitly exclude foreign persons, as that term is defined in 31 CFR 802.221, from being qualified to hold a restoration or mitigation lease. The BLM will rely on its standard lease adjudication practices established in 43 CFR 2920 to determine if a lease applicant meets the preconditions for a qualified lease holder.

The final rule includes various other updates to the language throughout the text of the rule to provide readers with a clearer understanding of the goals and future implementation of the leasing program. For example, the final rule adopts principles for restoration and mitigation that provide additional structure for restoration and mitigation leases. The final rule also refines the BLM's discussion of intact landscapes and restoration priority landscapes, which would support identification of areas for restoration and mitigation leases.

Many commenters recommended that conservation leases should undergo NEPA analysis. A project-level decision to issue a restoration or mitigation lease will comply with NEPA, as is typically the case for Federal actions on public lands, and the BLM will prepare a NEPA analysis to support such project-level decisions when appropriate.

B. Restoration

Commenters provided a wide variety of comments on the topic of restoration. Comments generally related to one of three broad issues: the definition of restoration; the process by which restoration priorities are identified and the use of resource management plans (RMPs) in doing so; and conflicts that can arise in the application of restoration actions.

Several commenters expressed the need for clarifying the definition of restoration and suggested that it should include the concept of returning an area to its natural, native ecological state with several comments recommending that the BLM look to the Society for Ecological Restoration's ''International Principles and Standards for the Practice of Ecological Restoration'' for guidance.

Other commenters requested clarification as to where, how, and when restoration priorities are determined under the rule and called for transparency and public engagement in this process. Some comments also mentioned the use of resource management plans to identify and communicate restoration priorities and expressed concern that including restoration plans in RMPs could complicate and lengthen the RMP adoption or revision process. Other commenters, however, suggested that focusing on creating a 5-year schedule for restoration activities within RMPs is too narrow and proposed looking across watersheds (or subbasins or basins) to identify priorities at the state level, irrespective of RMP boundaries. They stated doing so may assist the BLM in better allocating limited restoration funds. Other comments suggested that restoration plans focus on implementation-level decisions rather than being incorporated into RMPs. One

comment suggested that each BLM district have a map identifying specific areas suitable for restoration measures.

Commenters expressed concerns about the practicalities and potential conflicts with implementing restoration across all BLM-administered lands. Comments discussed how in certain cases, restoration to a reference state may not be feasible or appropriate because the landscape has crossed an ecological threshold and is highly unlikely to be fully restored, or because the resource has high value or function and unique character that cannot be restored or replaced. Several comments discussed the proposed rule's treatment of land health standards in the context of restoration, noting that some restoration actions may not always have positive effects on land health and questioning whether achieving land health standards should be the sole purpose of restoration plans. Commenters raised examples of restoration projects in which the BLM removed pinyon-juniper forest through ecologically damaging practices such as chaining.

In response to comments, the BLM included a new provision within § 6102.3 (''Restoration'') to apply a set of principles to all restoration activities. These principles were largely identified in the draft rule in the context of planning for restoration. In response to comments, these principles now apply to all restoration actions and, among other purposes, seek to ensure that restoration actions directly address the causes of degradation and, importantly, take into consideration the recovery potential of the habitat. These principles will help the BLM target the right restoration actions in the right places, thereby reducing unintended outcomes and increasing the potential for successful restoration.

The principles also ensure that both passive and active management actions are allowable and promoted as restoration activities. Likewise, the definition of restoration has been changed to include explicit mention of both passive and active processes or actions and, in response to comments, include a stated goal of restoration actions to return ecosystems to a ''more natural, native ecological state.''

In response to comments on restoration prioritization and planning, the BLM revised the rule text to provide for the development of restoration plans outside of the RMP revision or amendment process. The final rule requires authorized officers to identify priority landscapes for restoration, consistent with existing, applicable RMP goals and objectives, and to prepare a restoration plan for those priority landscapes. Technical details, including for example geographic scale, for the development of restoration plans can be addressed through agency guidance. Such guidance may also address how to incorporate land health standards into restoration plans and may identify commonly accepted scientific standards within the field of ecological restoration for restoration work.

C. Mitigation

Generally, comments on the mitigation aspects of the rule could be grouped into three categories: the BLM's authority under FLPMA to require mitigation; the policies and practices that govern how the BLM will deploy mitigation, including use of the mitigation hierarchy; and the use of leases, as proposed by the rule, for mitigation purposes.

Many commenters expressed reservations about the BLM's mitigation management approach under the proposed rule, particularly how it might conflict with the multiple use mandate outlined in FLPMA. Critics argued that this could inadvertently prioritize resource preservation at the expense of a more comprehensive management approach, in particular with regard to grazing and recreation. Some commenters posited that the proposed mitigation standards are unlawful and reach beyond the BLM's authority under FLPMA and conflict with other statutory mandates. Other commenters conveyed the reverse, suggesting that the BLM's authority and responsibility to apply the mitigation hierarchy is central to managing for multiple use and sustained yield.

For the reasons discussed in more detail in the Background section above, FLPMA allows the BLM to balance the need for resource conservation alongside other uses as part of managing under principles of multiple use and sustained yield. In turn, FLPMA vests the BLM with broad authority to incorporate appropriate mitigation in its land use planning and to require other users of the public land to avoid, minimize, and compensate for resource impacts, as appropriate, from authorized uses. 43 U.S.C. 1712I, 1732(a)–(b); *see also* M–37039, The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation, at 11–22 (Dec. 21, 2016) (reinstated by M–37075 (Apr. 15, 2022)) (''[The] BLM's charge under FLPMA to manage public lands based on principles of multiple use and sustained yield supports use of mitigation. The authority to evaluate and impose mitigation arises out of the broad authority FLPMA vests in the BLM to pursue congressional goals . . . for public lands. The BLM can evaluate and require mitigation through both the land use planning process and site-specific authorizations.'').

There were a number of comments regarding how and where the BLM would deploy mitigation under the proposed rule. Commenters recommended that the BLM amend the rule to require mitigation only to the extent practicable or reasonable and highlighted the need for the BLM to coordinate mitigation with local and State conservation plans. Many commenters were concerned that the use of compensatory mitigation would allow for development in sensitive areas that would otherwise not be allowed, such as ACECs or intact landscapes, and recommended that compensation should not be used to justify activities that could degrade these areas. Some commenters called on the BLM to require that compensatory mitigation measures ensure a net benefit for biodiversity, adhering to established international principles, or avoid the net loss of ecologically intact land. Some commenters narrowed their concern to how compensatory mitigation may specifically impact recreation, which can significantly degrade public resources, and urged that the rule not apply compensatory mitigation requirements to nonprofit organizations, and that ongoing trail use not be subject to such requirements.

In response to these comments, the BLM added mitigation principles to the final rule to provide a framework for how mitigation will be deployed under the rule, including through the mitigation hierarchy and mitigation leasing. The principles are consistent with agency policy and guidance for implementing mitigation, such as developing landscape-scale mitigation strategies, requiring performance criteria and effectiveness monitoring for mitigation programs and projects, and ensuring that compensatory mitigation is durable, additional, timely, and commensurate with adverse impacts. The final rule also confirms that the BLM will adhere to the mitigation hierarchy and that for important, scarce, or sensitive resources, the BLM will apply the mitigation hierarchy in the manner that achieves the maximum benefit to the impacted resource.

Many commenters emphasized the necessity of ensuring that any mitigation credits are based on completed restoration efforts that are actively functioning as habitat for native species impacted by development. These

commenters objected to permitting any proposal to issue credits based on future promises of restoration. Another commenter advocated for third-party mitigation fund holders to facilitate restoration on BLM-managed lands, specifically highlighting the role of private sector mitigation providers, including the ability for private third-party providers to hold mitigation funds. In response to comments, the BLM clarified the types of third-party entities it will allow to hold mitigation funds through a formal agreement. The mitigation fund holder could be a State or local government, if, among other requirements, that entity can demonstrate to the satisfaction of the BLM that it is acting as a fiduciary for the benefit of the mitigation project and site. The section also allows for a mitigation fund holder to be an entity that, among other requirements, qualifies for tax-exempt status and provides evidence it can successfully hold and manage mitigation accounts.

D. Land Health

Comments on aspects of land health in the proposed rule were diverse and focused on: BLM's capacity to evaluate land health across all BLM managed lands, the land health fundamentals, standards, and guidelines; the connection between land health and ecosystem resilience; the application of land health in resource decision-making; and questions about the role of Resource Advisory Councils.

Several commenters conveyed support for the proposal to apply the fundamentals of land health and related standards and guidelines to all BLM-managed public lands and uses, expanding them beyond their original application to rangelands and grazing.

In response to comments, the rule includes streamlined assessment processes applicable at broad spatial scales and a subsequent timeline to review whether such standards remain sufficient.

Commenters provided different recommendations as to how standards and guidelines should be updated. Some suggestions included tying new standards to quantifiable ecologically based performance metrics, specific ecoregions, specific resources, or local ecosystems and conditions. Whatever the outcome of new standards, many commenters conveyed a need for the BLM to provide the public the rationale for new standards and guidelines and clarity as to how they will be applied.

In response to comments, the final rule includes language adopting consistent national land health standards and an allowance to modify national standards to address unique and rare geographic needs.

A few commenters recommended the BLM use flexibility in land health standards to accommodate the diverse array of land uses, especially nonrenewable resources and those with potential surface-disturbing impacts. Various commenters expressed concern that expanding application of land health was unworkable as the BLM cannot meet the current demands for conducting land health analysis under 43 CFR Subpart 4180. To address this, commenters provided several recommendations, including setting appropriate monitoring frequencies, scales, and thresholds, with timelines for corrective actions and milestones. Additionally, commenters supported applying land health at the watershed rather than narrower or smaller scales (allotments, projects, etc.).

In response to comments, the final rule directs the BLM to establish nationally consistent land health standards and indicators and tiers land health standards directly from the fundamentals of land health in order to apply land health standards to a diverse array of land uses. Authorized officers must adopt the national standards and may also adopt geographically specific standards when necessary to evaluate rare or unique habitat or ecosystem types, such as permafrost. To address concerns about the BLM's capacity to apply land health standards to all program areas, the final rule allows field offices to use watershed condition assessments (completed every 10 years) as the baseline for land health evaluations. With watershed condition assessments, land health is assessed at a broad spatial and temporal scale, and may be supplemented by locally specific data.

Some commenters were confused about the role of the Resource Advisory Councils in the development of new standards and guidelines and sought clarification. Although the BLM engages with its Resource Advisory Councils on a wide range of issues, the rule does not require the engagement of Resource Advisory Councils in the development and supplementation of standards and guidelines.

E. Areas of Critical Environmental Concern

Various commenters advocated for strengthening the ACEC relevance and importance criteria, particularly by including habitat connectivity and biodiversity considerations, to ensure the protection of natural, cultural, and scenic resources. Additionally, many comments highlighted the importance of old-growth and mature forests and requested explicit language in the rule to protect and restore old-growth conditions through ACEC designation. The final rule establishes that a historic, cultural, or scenic value; a fish or wildlife resource; or a natural system or process has importance if it contributes to ecosystem resilience, landscape intactness, or habitat connectivity, among other importance criteria. While the final rule does not explicitly contemplate protection of old-growth forest conditions through ACEC designation, the rule specifically enables that management decision by identifying ecosystem resilience and landscape intactness as elements of the ACEC importance criterion. Other provisions in the final rule note that old-growth forests contribute to ecosystem resilience and landscape intactness, such as §§ 6101.2 and 6102.1.

Commenters recommended the final rule mandate more stringent management of designated ACECs in order to ensure protection of relevant and important values identified by the BLM. In response to these comments, the BLM added a management standard to the final rule to ensure ACEC values are appropriately managed for protection and clarified the presumption that a potential ACEC that meets all three criteria of relevance, importance, and needing special management attention will be designated in the land use plan.

Commenters raised concerns about ACEC nominations occurring outside of land use planning processes and that temporary management of potential ACECs would delay other land use authorizations such as renewable energy projects. Questions were raised about the responsibility to notify the public of temporary management decisions and whether temporary management must conform to the current resource management plan. Commenters were also generally interested in ensuring stakeholders and the public have adequate opportunities to participate in ACEC designation decisions.

Generally, the BLM addresses ACECs in the land use planning process. This is because designation of ACECs is intended to be a proactive land management decision to enhance management of important lands and resources. Such decisions should be made while also considering other potential management decisions that may affect those same lands and resources. In rarer situations, the BLM may identify a potential ACEC outside of the planning process and find that it needs special management attention to

ensure proper stewardship of resources and values the agency is charged with managing. In both contexts, the BLM must find that the lands at issue not only possess relevant and important values but also require special management attention. The final element of the standard for ACEC designation means more than finding special management attention will benefit the identified values; rather, it requires a finding that special management is necessary for their stewardship.

Within the land use planning process, the BLM has many tools at its disposal to provide necessary management of resources, ranging from special designation to more narrow management prescriptions. Outside of the planning process, temporary management of a potential ACEC may be the best option for addressing an area that has relevant and important values and requires special management attention to protect them. In those situations, under the final rule and consistent with existing guidance, the BLM may at the agency's discretion implement temporary management to protect the relevant and important values from irreparable damage until the BLM determines whether to designate the potential ACEC through a land use planning process. When implementing temporary management, the BLM would comply with applicable laws and regulations, notify the public, and reevaluate the decision periodically.

The BLM has the authority and the responsibility to mitigate impacts to public land resources from land use authorizations, including by avoiding, minimizing, and offsetting those impacts, independent of ACEC designation status. 43 U.S.C. 1732(a)–(b). Therefore, the BLM does not expect that an ACEC nomination or temporary management process will increase conflict where resources may be impacted by development proposals. Rather, the BLM intends these provisions of the rule to provide a proactive pathway for managing relevant and important values that require special management attention in the limited circumstances in which these values are identified outside of the planning process.

For example, if the BLM is evaluating a proposed development project and has not incorporated consideration of new ACEC designations into the NEPA process for that project, then it is anticipated that the BLM, consistent with existing guidance, would analyze potential impacts to resources and apply the mitigation hierarchy to address those impacts through the NEPA process rather than considering new ACEC designations as part of the ongoing NEPA process. This rule would not require the authorized officer to analyze ACEC nominations during that NEPA process. Rather, the State Director would have the discretion to determine when to evaluate ACEC nominations; the State Director could elect to defer that evaluation to an upcoming planning process. The State Director also would have the discretion to apply temporary management in the area, but only after determining that the area meets the relevance and importance criteria and that special management is necessary to protect the area's relevant and important values from irreparable damage. In other words, the State Director's discretion would include: continuing to process the project by deferring analysis of ACEC nominations; using the data related to ACEC nominations to inform the project analysis; and processing ACEC nominations and incorporating any temporary management into the project evaluation. In all circumstances, the BLM has the discretion to consider ACEC nominations and take steps to implement temporary management for relevant and important values or undertake a plan amendment process to designate new ACECs as outlined in the final rule. The BLM plans to provide additional guidance on situations in which an ACEC nomination overlaps with a pending development project application.

The final rule also emphasizes the ample opportunities for public notice and comment on the ACEC designation process through the resource management planning process, which requires robust public and stakeholder engagement as well as cooperation with local governments and consultation with Tribal governments (43 CFR 1610.2). The final rule confirms that proposed and existing ACECs being addressed by a resource management plan or a plan amendment will be identified in all applicable **Federal Register** Notices and in public outreach materials. The BLM will not, however, be required to continue to produce separate notices specific to ACECs which the BLM found to be duplicative and not in the public interest. The BLM will continue to provide the public with an opportunity to comment on proposed and existing ACECs through the land use planning and associated NEPA requirements for public involvement.

F. Intact Landscapes

Many commenters requested clarity on the rule provisions related to intactness, including how intact landscapes would be identified and managed. Comments recommended that a comprehensive inventory of intact landscapes be part of the land use planning process and that the rule make stronger commitments to prioritizing the conservation and protection of intact landscapes in order to advance the purpose of supporting ecosystem resilience. Additionally, commenters stressed the importance of incorporating community input.

Some commenters emphasized the need to consider other potential uses, such as renewable energy development, and the multiple use management approach when determining whether to manage certain landscapes for intactness. Several comments addressed the importance of acknowledging the human history of intact landscapes and incorporating the concept of cultural landscapes, as well as considering co-stewardship agreements for identified landscapes.

In response to these comments, the BLM updated the rule to clarify that ''landscape intactness'' is part of the resource inventory that is to be maintained and considered in accordance with FLPMA. The final rule also clarifies the land use planning process for this resource, which includes using the intactness inventory to identify and delineate intact landscapes, evaluating alternatives for managing the intact landscapes, and making management decisions for at least some of the intact landscapes or portions of intact landscapes that conserve their intactness. Habitat connectivity and migration corridor data would inform identification and management of intact landscapes, and the BLM would seek opportunities for Tribal co-stewardship in managing and protecting intact landscapes. The BLM anticipates that intact landscapes may vary widely in size and that not every acre of an intact landscape will be managed the same way, as the management focus would be on maintaining function of intact landscapes while facilitating multiple use and supporting sustained yield.

The identification of intact landscapes in the land use planning process would not necessarily preclude land use authorizations that would impair their intactness; rather the BLM would make management decisions for each landscape that would determine allowable uses. Some development could be compatible with management to conserve intactness, and intact landscapes may serve as desirable areas for restoration and mitigation leases. Once an intact landscape has been identified in a land use planning

process, the BLM would consider that resource and analyze potential impacts to it in the planning process and NEPA analysis to evaluate proposed uses, regardless of management decisions for the landscape, consistent with NEPA's requirement that the BLM analyze potential impacts from proposed actions.

G. Grazing

Commenters expressed concern regarding what they considered to be broad and ambiguous interpretations of terms ''conservation,'' ''intact landscapes,'' and ''ecosystem resilience,'' and for the potential for the proposed rule to limit or prohibit consumptive uses, such as grazing. The comments highlighted the need for clarity and consistency in definitions and objectives, suggesting modifications to acknowledge existing uses permitted under FLPMA.

The BLM also received a significant number of comments questioning how conservation leases relate to authorized grazing. Many comments highlighted the need to clarify how proposed conservation leases will interact with grazing management, particularly in cases where grazing may conflict with restoration goals.

In response to comments, the BLM made changes to the leasing section of the final rule. Those changes are summarized in the ''Section-by-Section Discussion of the Final Rule and Revisions from the Proposed Rule'' section and in the ''Conservation Leasing'' section of this discussion. Importantly, the BLM clarified that if proposed activities in a restoration or mitigation lease would conflict with existing authorizations, such as if a specific type of restoration would not be compatible with grazing and the proposed location is already subject to a grazing authorization, then a lease authorizing that type of restoration could not be issued on those particular lands. Additionally, the final rule elevates proposals for leases that can demonstrate collaboration with existing permittees, leaseholders, and adjacent land managers or owners and those that have support from local communities.

Commenters expressed different views as to whether grazing can be used as a land health solution, with some noting that grazing should be used as a land health management tool, while others stated that any use of grazing operations by the BLM to promote land health standards would likely preclude achieving land health goals. Some commenters argued that managed grazing can in fact achieve land health standards and that specific practices, such as targeted grazing, have been used to create fire breaks, manage invasive species, and promote land health. Other commenters argued that livestock grazing is incompatible with restoration and that grazing should be eliminated in areas undergoing restoration. This rule is not establishing or revising regulations governing the BLM's grazing program and does not contemplate using or not using grazing as a land health management tool. As previously discussed, conservation takes many forms on public lands, including in the ways grazing and many other uses are carried out. This rule focuses on conservation as a land use within the multiple use framework and develops the toolbox for conservation use that enables some of the many conservation strategies the agency employs to steward the public lands for multiple use and sustained yield. Grazing as a management tool may fit within these strategies.

Many commenters emphasized the impact that livestock grazing has had on BLM-managed public lands and the need for the BLM to commit to its responsibility under 43 CFR subpart 4180 to monitor achievement of rangeland health standards and manage for proper functioning conditions. One commenter noted that when an allotment fails to meet the standards, changes in grazing practices must be instituted to restore rangeland health. The BLM is not revising subpart 4180 as part of this rulemaking.

H. Recreation

Many commenters emphasized that outdoor recreation is dependent on healthy public lands and waters that provide desirable recreation experiences, which in turn support regional economic growth and help Americans connect with their public lands. They further noted that climate change is having a particular impact on outdoor recreation through drought and catastrophic wildfire, highlighting the need for resilient public lands that can continue to provide recreation opportunities in a changing future. These commenters requested the rule explicitly recognize the tie between landscape health and outdoor recreation and acknowledge that sustainable recreation is compatible with conservation use.

In response to comments, the final rule includes a new objective to: ''Provide for healthy lands and waters that support sustainable outdoor recreation experiences for current and future generations.'' The BLM views sustainable recreation as being compatible with conservation management, including specifically with restoration and mitigation leasing, protection of intact landscapes, management for land health, designation of ACECs, and other principles and management actions provided for in the rule. Furthermore, the BLM anticipates that outdoor recreation would benefit from these conservation measures and would be considered a reason to protect and restore certain landscapes. The additional objective at § 6101.2(g) aims to reflect this intent. The final rule does not specifically address recreation in more detail because the rule is not intended to establish regulations governing recreation use.

Some commenters raised concerns that the rule would reduce the amount of public land available for outdoor recreation. The rule would not change plans, policies, or programs governing recreation activities on public lands; recreation management would still be determined at the local level through land use planning and site-specific recreation management actions such as developed recreation sites, transportation system routes, or trails. As the BLM implements the rule, recreation management decisions will incorporate the objectives and principles set forth in the rule to support landscape health and ecosystem resilience. The rule is not intended to prevent or decrease outdoor recreation use; rather it ensures that recreation on public lands can be managed and grow sustainably while benefiting from the conservation of healthy lands and water.

I. Renewable Energy

Commenters raised concerns about the potential conflicts that could arise between the proposed rule and the BLM's ability to manage and promote renewable energy development. In response to comments, the BLM clarified mitigation language that would allow for renewable energy siting and development, or other kinds of projects, even when that development produces unavoidable impacts. Establishing methods to ensure impacts can be offset and expanding the ability to site compensatory mitigation on public lands through mitigation leases creates more opportunity to permit use while accounting for the unavoidable impacts of such use.

Commenters argued that application of land health standards to renewable energy projects as well as changes to identification and designation of ACECs may have the effect of significantly diminishing the BLM's ability to identify locations where it can permit renewable energy installations and

associated infrastructure. As noted in the discussion of the BLM's response to comments on ACECs, the BLM does not expect that ACEC designations or the potential for temporary management of proposed ACECs will increase conflict where resources may be impacted by development proposals. Rather, the BLM intends these provisions of the rule to provide a proactive pathway for managing relevant and important values that require special management attention, including in the limited circumstances in which these values are identified outside of the planning process.

Lastly, commenters conveyed concern that the proposed rule rested too much decision-making authority on BLM staff over a number of aspects of the rule and that such authority should reside with BLM State Directors. In response, the BLM clarified the responsibilities of Field Managers and State Directors in the ACEC section.

J. Cultural Resource Management

Some comments discussed the connection between cultural values and ecosystem resilience and requested an acknowledgement of this connection and clarity for whether and how the rule would incorporate cultural values or otherwise apply to cultural resource management. Commenters requested that the BLM consider how conservation strategies included in the rule intersect with cultural resources. Specifically, commenters recommended that the rule address American Indian contributions to stewarding the landscapes that the BLM now manages as public lands and may conserve through implementation of this rule, including Indigenous Knowledge and practices handed down over millennia. Commenters also recommended that lands that contain areas of sacred and ceremonial significance to Tribes should not be eligible for conservation leasing unless the purpose of the lease is directly related to those resources.

The BLM is committed to working with Tribes in the management of the public lands, which are the ancestral homelands of American Indian and Alaska Native Tribes. The BLM recognizes Indigenous Peoples have interacted with and stewarded the lands now managed as public lands since time immemorial. This human presence and stewardship continue to influence the lands addressed in the rule, including intact landscapes and ACECs.

Cultural resources can be and often are an essential component of functioning and productive ecosystems, and natural components of ecosystems can also be cultural resources. Some of the BLM's most intact and resilient ecosystems are often also locations with a high probability of containing cultural resources. Cultural and natural values of landscapes co-exist as reasons to protect and manage these landscapes, emphasizing the importance of Indigenous Knowledge and co-stewardship.

Actions and decisions aimed at restoring, maintaining, and conserving ecosystems and landscapes may inadvertently result in impacts to cultural resources. All such undertakings will be subject to section 106 of the NHPA, as well as NEPA. Through the section 106 process, the BLM will, in consultation with Tribes, State and Tribal Historic Preservation Officers, and interested parties, identify, evaluate, and resolve any adverse effects on historic properties. Any potential adverse effects to historic properties will be avoided, minimized, or otherwise mitigated in accordance with law, regulation, and policy. Effects to cultural resources that are not identified as historic properties under the NHPA will be considered and managed through land use plans and the NEPA process. In addition, the BLM will strive to consider and implement the new Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites.[16]

K. Mature and Old-Growth Forests

Many comments were received emphasizing the need to protect old-growth and mature forests as part of meeting the rule's stated purpose of supporting ecosystem resilience on public lands. Commenters recommended adding provisions to the rule to establish emphasis areas for old-growth and mature forests, limit or prohibit tree cutting on BLM-managed lands, facilitate designation of old-growth forests as ACECs, and focus on climate sustainable logging. Commenters highlighted the scientific and social values of old-growth and mature forests and requested explicit language in the rule to protect these valuable ecosystems consistent with Executive Order 14072.

Executive Order 14072, *Strengthening the Nation's Forests, Communities, and Local Economies,* calls for defining, identifying, and inventorying the nation's old and mature forests and stewarding them for future generations to provide clean air and water, sustain plant and animal life, and respect their special importance to Tribal Nations, consistent with applicable law. The BLM is working with the U.S. Forest Service to implement the provisions in Executive Order 14072 related to mature and old-growth forests. In April 2023, the BLM and U.S. Forest Service released a definition framework and initial inventory of mature and old-growth forests on Federal lands, and the agencies are now analyzing threats to those forests pursuant to the Executive Order. The initial inventory identified 8.3 million acres of old-growth and 12.7 million acres of mature forest on BLM-administered lands, the majority of which are pinyon and juniper woodlands. Mature and old-growth forests and woodlands contribute to ecosystem resilience by providing wildlife habitat, clean water, carbon storage, and landscape intactness. They also have important social and cultural values.

The final rule facilitates conservation of BLM-managed forests and woodlands through multiple provisions, including those related to identification and protection of intact landscapes; conservation tools to protect certain lands and resources through land use planning; avoiding authorizing uses of the public lands that permanently impair ecosystem resilience; and co-stewardship opportunities with Tribes. In order to clarify this intent, the final rule specifically identifies conservation of old-growth forests within the objectives of the regulation. Because this is a procedural rule, establishing emphasis areas or other site-specific protections for old-growth forests is outside the scope of the rule.

L. Wild Horses and Burros

The BLM received comments on using the rule to change wild horse and burro management on public lands. Commenters recommended classifying wild horses and burros as a use of public lands, requiring the BLM to show that removal of livestock could not achieve the same objective as removal of wild horses and burros, restricting livestock grazing to reduce methane emissions and provide more forage for wild horses and burros, and allowing restoration and mitigation leases to be used to protect wild horse and burro habitat.

Management of wild horses and burros is governed by the Wild Free-Roaming Horses and Burros Act of 1971, as amended, and its implementing regulations (43 CFR part 4700). Wild horses and burros are managed in the

[16] Working Group of the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites (2023), *https://www.bia.gov/sites/default/files/media_document/sacred_sites_guide_508_2023-1205.pdf* (providing guidance on implementation of Executive Orders 13175, 13007, and 14096, and related policies).

areas where they are found, and decisions on herd management are made through the BLM's land use planning process. This rule does not authorize or mandate decisions to manage wild horses and burros. The rule does require the use of high-quality information that promotes reasoned, fact-based agency decisions in making land use allocations and other land use authorizations, including grazing authorizations. Restoration and mitigation leases are narrowly defined tools for restoring degraded landscapes or compensating for impacts of development and are not appropriate mechanisms for protecting wild horse and burro habitat.

M. NEPA Compliance for the Rule

A number of comments objected to the BLM's intent to rely on a categorical exclusion to comply with NEPA and called on the BLM to instead prepare an environmental assessment or environmental impact statement under NEPA.

The BLM has determined that the categorical exclusion set out at 43 CFR 46.210(i) applies to this rulemaking. That provision excludes from NEPA analysis and review actions that are ''of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' That categorical exclusion applies because the rule sets out a framework but is not self-executing in that it does not itself make substantive changes on the ground and will not (absent future decisions that implement the rule) restrict the BLM's discretion to undertake or authorize future on-the-ground action; thus, the rule is administrative or procedural in nature. Any future actions, including both land use planning and individual project-level decisions, including decisions to issue a restoration or mitigation lease, will be subject to the appropriate level of NEPA review at the time of that decision. Where the BLM will undertake such actions, which of the various tools provided in this rule it will use when doing so, and the particular methods and activities it will employ are unknown at this time, making the environmental effects associated with those future actions too speculative or conjectural to meaningfully evaluate now. The BLM has also determined that none of the extraordinary circumstances identified at 43 CFR 46.215 applies to this rulemaking.

N. Inventory, Assessment, and Monitoring

Public comments recommended that monitoring data and analyses should be made public to promote transparent decision processes. Commenters recommended emphasis on particular monitoring approaches and discouraged use of other approaches and requested more details on the monitoring implementation process and how it would tie to decision-making across different types of decisions. Commenters also recommended adding a process for monitoring prioritization.

Many commenters asked for clarification on watershed condition classifications, renamed ''watershed condition assessments'' in the final rule, including who would complete them and how often, what data they would include, whether outside partners would be engaged, and how they would tie to decision-making. Many recommended a nationally consistent process for completing watershed condition assessments in order to ensure that they were efficient and effective. Some asked how watershed condition assessments would interact with and inform the BLM land health process. Several questioned whether additional assessments were needed.

In response to public comments, the final rule clarifies that a focus of the rule is monitoring of infrastructure and renewable resources. It states that inventory, monitoring, and assessment information will be publicly available (currently, at the BLM Geospatial Business Platform Hub, *https://gbp-blm-egis.hub.arcgis.com/*), consistent with the Open Government Data Act, section 202(b). The final rule defines watershed condition assessments and specifies that they will be created using a consistent process and standardized data. The final rule recommends that high-quality information, including monitoring and watershed condition assessments, be used to inform many different types of decisions in the rule. Further details regarding inventory, assessment, and monitoring, including watershed condition assessments, may be addressed in implementation guidance.

Some comments questioned whether the monitoring provisions of the rule apply to cultural and paleontological resources. As stated in the Authority section of the final rule, implementation of the rule will be subject to and must be undertaken consistent with all applicable laws, which would include the NHPA and the PRPA.

O. Economic Analysis and Compliance With the Regulatory Flexibility Act

Many commenters insisted that the Regulatory Flexibility Act (RFA) required the BLM to prepare an initial regulatory flexibility analysis and, by extension, that this final rule would require a final regulatory flexibility analysis. Those commenters requested specific documentation and details of the economic impact on small businesses and other entities. Commenters stated that the BLM's certification that the rule would not have a significant economic impact on a substantial number of small entities lacked a proper factual basis.

The BLM disagrees with commenters' assertion that the RFA required for the proposed rule and so requires for this final rule a regulatory flexibility analysis. The BLM certified at the proposed rule stage and certifies again in promulgating this final rule that the rule will not have a significant economic impact on a substantial number of small entities. Under the Small Business Administration's (SBA) Guide for Federal Agencies to Comply with the Regulatory Flexibility Act, when certifying that a regulatory flexibility analysis is not required, the ''certification should contain a description of the number of affected entities and the size of the economic impacts and why either the number of entities or the size of the impacts justifies the certification.'' Here, the BLM has undertaken an economic threshold analysis and concluded that the magnitude of the impact on any individual or group, including small entities, is expected to be negligible (Economic Threshold Analysis). In support of this determination, the BLM followed SBA's certification checklist items.

The SBA's guidelines provide, ''The RFA does not define 'significant impact' or 'substantial number,' and it is the agencies' discretion on where to set these thresholds on a rule-to-rule basis based on their judgment.'' The BLM exercised its discretion to conclude that an initial regulatory flexibility analysis was not required for the proposed rule and that a final regulatory flexibility analysis is not required now.

V. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866, 13563 and 14094)

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan.

21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. E.O. 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') will review all significant rules. Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action constitutes a ''significant regulatory action'' within the scope of E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the ''notice-and-comment'' rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

For the purpose of conducting its review pursuant to the RFA, the BLM certifies that the rule would not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605. The rule does not affect any existing use of public lands, nor does it impose restrictions on future use. The rule modifies BLM decision-making processes and does not directly regulate any industry, but it may affect industries related to environmental restoration or mitigation activity or other sectors that rely on public lands management. The BLM does not expect those impacts to be significant. See the Economic Analysis, *Potential Impact on Small Entities,* for more information.

Congressional Review Act (CRA)

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. The BLM did not estimate the annual benefits that this rule would provide to the economy. Please see the Economic Analysis for this rule for a more detailed discussion.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule would benefit small businesses by streamlining the BLM's processes.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would not have adverse effects on any of these criteria.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or the private sector, of $100 million or more in any 1 year.

This rule is not subject to those requirements of the UMRA. The rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. The rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Government Actions and Interference With Constitutionally Protected Property Rights Takings (E.O 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule will not interfere with private property. A takings implication assessment is not required.

Federalism (E.O 13132)

Under the criteria in Section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The BLM received broad and general comments suggesting that E.O. 13132 requires preparation of a federalism summary impact statement with respect to this rule. In particular, some comments raised concerns that conservation leases (now titled

restoration and mitigation leases) could infringe on state and local authority. Executive Order 13132 generally prohibits Federal agencies from promulgating rules that might have a substantial direct effect on states or local governments, on the relationship between Federal and State governments, or on the distribution of power and responsibilities among the various levels of government, without meeting certain conditions, such as consulting with elected State and local government officials early in the process. In particular, administrative rules may not create substantial direct compliance costs for state or local governments that are not otherwise required by statute and may not expressly or impliedly preempt state law without Federal agencies undertaking additional processes. This rule will inform the BLM's management approach on federal land in the several states where BLM manages public land, but nothing in the rule, including its provisions for restoration and mitigation leasing, preempts state law or requires state or local governments to comply with specific provisions. Nor does the rule modify let alone reduce the role, under FLPMA, of state and local governments in land use planning. As a result, a federalism summary impact statement is not required.

Civil Justice Reform (E.O 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of Section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of Section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribes (E.O 13175 and Departmental Policy)

The Department of the Interior (DOI) endeavors to maintain and strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that the rule has tribal implications.

In conformance with the Secretary's policy on Tribal consultation, the BLM sent letters to all Tribes at the beginning of the rulemaking process informing them of the proposed rule and inviting them to engage with BLM on their thoughts and concerns. The BLM received input from Tribal governments, Alaska Native Corporations, and Tribal entities in comments on the proposed rule, as well as in other meetings that included a broader range of topics, and incorporated their input in drafting the final rule. Consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will continue to consult with federally recognized Indian Tribes on any proposal that may have Tribal implications.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements that are subject to review by the OMB under the PRA. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

OMB has generally approved the existing information collection requirements contained in the BLM's regulations contained in 43 CFR subpart 1610 under OMB Control Number 1004–0212. The final rule would not result in any new or revised information collection requirements that are currently approved under that OMB Control Number.

For the reasons set out in the preamble, the BLM is amending 43 CFR by creating Part 6100 which would result in new information collection requirements that require approval by OMB. The information collection requirement contained in part 6100 will allow the BLM to issue a restoration or mitigation lease to qualified entities for the purpose of restoring degraded land or resources, or mitigation to offset the impacts of other land use authorizations. The new information collection requirements contained in the final rule are discussed below.

New Information Collection Requirements

§ 6102.4(b) and (c)—Restoration and Mitigation Leasing: Applications for restoration or mitigation leases shall be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application. Applications for restoration or mitigation leases shall include a restoration or mitigation development plan which includes sufficient detail to enable the authorized officer to evaluate the feasibility, impacts, benefits, costs, threats to public health and safety, collaborative efforts, and conformance with BLM plans, programs, and policies, including compatibility with other uses. The development plan shall include but not be limited to:

- Results from available assessments, inventory and monitoring efforts, or other high-quality information that identify the current conditions of the site(s) of the proposed restoration or mitigation action;
- The desired future condition of the proposed lease area including clear goals, objectives, and measurable performance criteria needed to achieve the objectives;
- Justification for passive restoration or mitigation if proposed;
- A description of all facilities for which authorization is sought, including access needs and any other special types of authorizations that may be needed;
- A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;
- Justification of the total acres proposed for the restoration or mitigation lease;
- A schedule for restoration activities, if applicable; and
- Information on outreach conducted or to be conducted with existing permittees, lease holders, adjacent land managers or owners, and other interested parties.

§ 6102.4(c)(4)—Restoration and Mitigation Leasing (additional information): After review of the restoration or mitigation development plan, the authorized officer may require the applicant to provide additional high-quality information, if such information is necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed lease. An application for the use of public lands may require documentation or proof of application for additional private, State, local or other Federal agency licenses, permits, easements, certificates, or other approval documents. The authorized officer may require evidence that the applicant has or prior to commencement of lease activities will have the technical and financial capability to operate, maintain, and terminate the authorized lease activities.

§ 6102.4(e)—Restoration and Mitigation Leasing/Monitoring Plan: If approved, the lease holder shall provide a monitoring plan that describes how the terms and conditions of the lease will be applied, the monitoring methodology and frequency, measurable criteria, and adaptive management triggers.

§ 6102.4(e)(1)—Restoration and Mitigation Leasing/Annual Report: The lease holder shall provide a lease activity report annually and at the end of the lease period. At a minimum, the report shall describe:

- the restoration or mitigation activities taken as of the time of the report;
- any barriers to meeting the stated purpose of the lease;
- proposed steps to resolve any identified barriers; and
- monitoring information and data that meet BLM methodology requirements and data standards (see § 6103.2(c)).

§ 6102.4.1(d)(3)—Termination and Suspension of Restoration and Mitigation Leases: Upon determination that there is noncompliance with the terms and conditions of a restoration or mitigation lease which adversely affects land or public health or safety, or impacts ecosystem resilience, the authorized officer shall issue an immediate temporary suspension. Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

§ 6102.4.2(a)—Bonding for Restoration and Mitigation Leases: Prior to the commencement of surface-disturbing activities, the authorized officer may require the restoration or mitigation lease holder to submit a reclamation, decommission, or performance bond conditioned upon compliance with all the terms and conditions of the lease covered by the bond. For mitigation leases, the lease holder will usually be required to provide letters of credit or establish an escrow account for the full amount needed to ensure the development plan meets all performance criteria.

§ 6102.5.1(d)—Mitigation—Approval of third parties as mitigation fund holders: § 6102.5.1(d) would allow in certain limited circumstances authorized officers to approve third parties as mitigation fund holders to establish mitigation accounts for use by entities granted land use authorizations by the BLM. The authorized officer will approve the use of a mitigation account by a permittee only if a mitigation fund holder has a formal agreement with the BLM.

§ 6102.5.1(e)—Mitigation—Approval of third parties as mitigation fund holders/State and local government agencies: State and local government agencies are limited in their ability to accept, manage, and disburse funds for the purpose outlined in § 6102.5.1 and generally should not be approved by the BLM to hold mitigation funds for compensatory mitigation sites on public or private lands. An exception may be made where a government agency is able to demonstrate, to the satisfaction of the BLM, that they are acting as a fiduciary for the benefit of the mitigation project or site, essentially as if they are a third party, and can show that they have the authority and perform the duties described in § 6102.5.1.

Information Collection Changes From Proposed to Final Rule:

The BLM introduced the following information collection requirements that were not in the proposed rule:

- Restoration and Mitigation Leasing/Monitoring Plan—43 CFR 6102.4(e);
- Restoration and Mitigation Leasing/Annual Report—43 CFR 6102.4(e)(1); and
- Mitigation/Approval third parties as mitigation fund holders/Annual Fiscal Reports—43 CFR 6102.5–1(e).

These ICs are necessary to provide monitoring mechanisms to help the BLM assure that we are achieving the desired outcomes of the restoration and mitigation plans.

The information collection requirements contained in this rule are needed to ensure that accountability through restoration monitoring and tracking is carried out effectively and that project goals are being met. The estimated annual information collection burdens for this rule are outlined below:

Collection of information	Number of responses	Time per response (hours)	Total hours
Restoration and Mitigation Leasing/Restoration or Mitigation Development Plan—43 CFR 6102.4(b) and (c)	10	10	100
Restoration and Mitigation Leasing/Additional Information 43 CFR 6102.4(c)(5)	8	25	200
Restoration and Mitigation Leasing/Monitoring Plan—43 CFR 6102.4(e)	9	5	45
Restoration and Mitigation Leasing/Annual Report—43 CFR 6102.4(e)(1)	9	2	18
Termination and Suspension of Restoration and Mitigation Leases/written request to resume or suspended activity—43 CFR 6102.4–1(d)(3)	1	240	240
Bonding for Restoration and Mitigation Leases—43 CFR 6102.4–2(a)	10	80	800
Mitigation/Approval third parties as mitigation fund holders—43 CFR 6102.5–1(e)	4	5	20
Mitigation/Approval third parties as mitigation fund holders—43 CFR 6102.5–1(g)	4	5	20
Mitigation/Approval third parties as mitigation fund holders/Annual Fiscal Reports—43 CFR 6102.5–1(e)	4	2	8
Mitigation/Approval third parties as mitigation fund holders/Annual Fiscal Reports—43 CFR 6102.5–1(e)	4	2	8

Information Collection Summary:

Title of Collection: Ecosystem Resilience (43 CFR part 6100).

OMB Control Number: 1004–0218.

Form Number: None.

Type of Review: New collection of information.

Respondents/Affected Public: Private sector businesses; Not-for-profit organizations; and State, local, or Tribal governments.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion; Annual.

Estimated Completion Time per Response: Varies from 5 hours to 240 hours per response, depending on activity.

Number of Respondents: 63.

Annual Responses: 63.

Annual Burden Hours: 1,459.

Annual Burden Cost: $0.

If you want to comment on the information-collection requirements in this rule, please send your comments and suggestions on this information-collection within 30 days of publication of this final rule in the **Federal Register**

to OMB by going to *www.reginfo.gov.* Click on the link, ''Currently under Review—Open for Public Comments.''

National Environmental Policy Act (NEPA)

This rule is excluded from review under the National Environmental Policy Act under Department Categorical Exclusion (CX) at 43 CFR 46.210(i). This CX covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The BLM has documented this CX's applicability to this action and posted it for public review here in docket BLM–2023–0001 on regulations.gov.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

Federal agencies must prepare and submit to OMB a Statement of Energy Effects (SEE) for any significant energy action. A ''significant energy action'' is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) Is designated by the Administrator of OIRA as a significant energy action. This rule is a significant action under Executive Order 12866; however, this rule does not affect energy supply, distribution, or use, and OIRA has not designated it a significant energy action. Therefore, it is not a significant energy action under E.O. 13211, and a SEE is not required.

The BLM received many comments on its determination that this rule is not a significant energy action. Commenters stated that the proposed rule, particularly the regulations pertaining to ACECs and the establishment of a restoration and mitigation leasing program (conservation leasing in the proposed rule), would displace oil and gas production and mining for critical minerals on public lands. Commenters also expressed concern that ACEC designation and restoration and mitigation leases could preclude energy rights of way for transmission lines. Commenters requested more information on how the BLM determined that this rulemaking would not have a significant adverse effect on energy supply, distribution, or use, and specifically requested the BLM complete a SEE for this rulemaking.

The BLM disagrees that the rule would adversely impact the supply, distribution, or use of energy. No part of the rule would preclude the development or transmission of energy on or across public lands without due consideration of multiple use and sustained yield principles through BLM's existing decision-making processes, including the required public engagement. Restoration and mitigation leases may not be issued in areas where an existing and otherwise incompatible use is occurring; thus, they would not displace existing mineral leases or mining claims. Restoration and mitigation leases are a narrow tool which may only be issued to restore degraded landscapes or to offset impacts of other land use authorizations; they may not be used to ''block'' development of mineral resources on lands allocated to such use in the governing Resource Management Plan. In many cases, these leases will facilitate the development of energy on public lands by providing an avenue for developers to satisfy obligations to offset the impacts of energy development through compensatory mitigation.

The revised regulations for ACEC designation will not adversely affect the supply, distribution or use of energy on public lands. FLPMA has required that the BLM prioritize the designation and protection of ACECs since 1976, and the final rule does not change that requirement or the overall process and parameters for their designation and management. The BLM does not expect that ACEC designations or the potential for temporary management of proposed ACECs will increase conflict where resources may be impacted by development proposals. Rather, the BLM intends these provisions of the rule to provide a proactive pathway for managing relevant and important values that require special management attention in the limited circumstances in which these values are identified outside of the planning process. See Section IV, Response to Comments, part E., Areas of Critical Environmental Concern, for more information.

Clarity of This Regulation (Executive Orders 12866, 12988 and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must: a) Be logically organized; b) Use the active voice to address readers directly; c) Use common, everyday words and clear language rather than jargon; d) Be divided into short sections and sentences; and e) Use lists and tables wherever possible.

Authors

The principal authors of this rule are: Patricia Johnston, BLM Division of Wildlife Conservation, Aquatics, and Environmental Protection; Darrin King, BLM Division of Regulatory Affairs; Chandra Little, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor.

The action taken herein is pursuant to an existing delegation of authority.

List of Subjects in 43 CFR Part 1600

Administrative practice and procedure, Coal, Conservation, Environmental impact statements, Environmental protection, Intergovernmental relations, Preservation, Public lands.

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus,

Deputy Assistant Secretary for Land and Minerals Management.

Accordingly, for the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as set forth below:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 43 U.S.C. 1711–1712.

■ 2. Revise § 1610.7–2 to read as follows:

§ 1610.7–2 Designation of areas of critical environmental concern.

(a) An area of critical environmental concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish or wildlife resources; or natural systems or processes or to protect life and safety from natural hazards. The BLM designates ACECs when issuing a decision to approve a resource management plan, plan revision, or plan amendment. ACECs shall be managed to protect the relevant and important values for which they are designated.

(b) In the land use planning process, authorized officers must identify, evaluate, and give priority to areas that have potential for designation and management as ACECs. Identification, evaluation, and priority management of

ACECs shall be considered during the development and revision of resource management plans and during amendments to resource management plans when such action falls within the scope of the amendment (*see* §§ 1610.4–1 through 1610.4–9). Proposed and existing ACECs that will be addressed by a resource management plan, plan revision, or plan amendment will be identified in all public notices required by this part (*see, e.g.,* § 1610.2).

(c) The authorized officer must facilitate the identification of eligible ACECs early in the land use planning process by:

(1) Analyzing inventory, assessment, and monitoring data to determine whether there are areas containing important historic, cultural, or scenic values; fish or wildlife resources; natural systems or processes; or natural hazards potentially impacting life and safety that are eligible for designation;

(2) Reevaluating existing ACECs in order to determine if the relevant and important values are still present and special management attention is still necessary; and

(3) Seeking nominations for ACECs, during public scoping, from the public, State and local governments, Indian Tribes, and other Federal agencies (*see* §§ 1610.2(c), 1602.5(b)(4) through (6)).

(d) To be designated as an ACEC, an area must meet the following criteria:

(1) *Relevance.* The area contains important historic, cultural, or scenic values; fish or wildlife resources; natural systems or processes; or natural hazards potentially impacting life and safety.

(2) *Importance.* A historic, cultural, or scenic value; a fish or wildlife resource; a natural system or process; or a natural hazard potentially impacting life and safety has importance if it has qualities of special worth, consequence, meaning, distinctiveness, or cause for concern; national or more than local importance, subsistence value, or regional contribution of a resource, value, system, or process; or contributes to ecosystem resilience, landscape intactness, or habitat connectivity. A natural hazard can be important if it is a significant threat to human life and safety.

(3) *Special management attention.* The important historic, cultural, or scenic values; fish or wildlife resources; natural systems or processes; or natural hazards potentially impacting life and safety require special management attention. ''Special management attention'' means management prescriptions that:

(i) Protect and prevent irreparable damage to the relevant and important values, or that protect life and safety from natural hazards; and

(ii) Would not be prescribed if the relevant and important values were not present. In this context, ''irreparable damage'' means harm to a value, resource, system, or process that substantially diminishes the relevance or importance of that value, resource, system, or process in such a way that recovery of the value, resource, system, or process to the extent necessary to restore its prior relevance or importance is impossible.

(e) The authorized officer may designate an ACEC research natural area if the area:

(1) Meets all of the criteria identified in § 1610.7–2(d)(1) through (3); and

(2) Is consistent with one or more of the primary purposes found at § 8223.0–5 of this chapter. A designated ACEC research natural area will be subject to the use restrictions at § 8223.1 of this title in addition to the special management attention prescribed by the authorized officer through land use planning.

(f) The boundaries of proposed ACECs shall be identified for public lands, as appropriate, to encompass the relevant and important values and geographic extent of the special management attention needed to provide protection.

(g) During a planning process, the planning documents must analyze in detail any proposed ACEC that has relevant and important values. Where the BLM has received ACEC proposals that do not have relevant and important values, the agency is not required to review those proposals in detail in planning documents. Through land use planning, the BLM will evaluate the need for special management attention to protect the relevant and important values, which could include other allocations and designations being considered, in order to provide for informed decision-making on the trade-offs associated with ACEC designation.

(h) The approved resource management plan, plan revision, or plan amendment shall list all designated ACECs, identify their relevant and important values, and include the special management attention, including management prescriptions for other uses, identified for each designated ACEC.

(i) ACEC nominations typically should be evaluated during a planning process. If a nomination for an ACEC is received outside of the planning process, the following provisions apply.

(1) The State Director will evaluate whether the relevant, important, and special management criteria identified in paragraph (d) of this section are met. The State Director will determine the appropriate time to complete this analysis. If the criteria identified in paragraph (d) of this section are met, then the State Director shall, at their discretion, either:

(i) Initiate a land use planning process; or

(ii) Provide temporary management consistent with the applicable resource management plan to protect the relevant and important values from irreparable damage. Any temporary management that is implemented would be in effect until the BLM either completes a land use planning process to determine whether to designate the area as an ACEC or, through periodic evaluation, finds designation is no longer necessary. The BLM will publish a public notice if temporary management is implemented.

(2) The State Director may defer evaluating the nomination to an upcoming planning process.

(j) The State Director shall:

(1) Determine which ACECs to designate based on:

(i) The presumption that all areas found to require special management attention will be designated;

(ii) The value of other resource uses in the area;

(iii) The feasibility of managing the designation; and

(iv) The relationship to other types of designations and protective management available.

(2) In the decision document for the resource management plan or plan amendment, provide a justification and rationale for both ACEC designation decisions and decisions not to designate a proposed ACEC.

(3) Administer designated ACECs in a manner that conserves, protects, and enhances the relevant and important values and only allow casual use or uses that will ensure the protection of the relevant and important values. This paragraph (j)(3) does not apply to those ACECs designated for natural hazards potentially impacting life and safety.

(4) Prioritize acquisition of inholdings within ACECs and adjacent or connecting lands identified as holding relevant and important values related to the designated ACEC.

(k) The State Director, through the land use planning process, may remove the designation of an ACEC, in whole or in part, only when:

(1) The State Director finds that special management attention is not needed because another legally enforceable mechanism provides an equal or greater level of protection; or

(2) The State Director finds that the relevant and important values are no longer present, cannot be recovered, or

have recovered to the point where special management is no longer necessary. The findings must be supported by data or documented changes on the ground.

(l) As used in this section, the terms casual use, conservation, ecosystem resilience, intactness, landscape, monitoring, protection, and restoration have the same meanings as in § 6101.4 of this chapter.

■ 3. Add part 6100 to read as follows:

PART 6100—ECOSYSTEM RESILIENCE

Subpart 6101—General Information

Subpart 6102—Conservation Use to Achieve Ecosystem Resilience

Subpart 6103—Managing Land Health to Achieve Ecosystem Resilience

Authority: 16 U.S.C. 7202; 43 U.S.C. 1701 *et seq.*

PART 6100—ECOSYSTEM RESILIENCE

Subpart 6101—General Information

§ 6101.1 Purpose.

The BLM's management of public lands on the basis of multiple use and sustained yield relies on healthy landscapes and resilient ecosystems. The purpose of this part is to promote the use of conservation to ensure ecosystem resilience and prevent permanent impairment or unnecessary or undue degradation of public lands. This part discusses the use of protection and restoration actions, as well as tools such as watershed condition assessments, land health evaluations, inventory, assessment, and monitoring.

§ 6101.2 Objectives.

The objectives of this part are to:

(a) Achieve and maintain ecosystem resilience when administering Bureau programs; developing, amending, and revising land use plans; and approving uses on the public lands;

(b) Promote conservation by maintaining, protecting, and restoring ecosystem resilience and intact landscapes, including habitat connectivity and old-growth forests;

(c) Integrate the fundamentals of land health and related standards and guidelines into resource management for all uses and activities on BLM-managed lands;

(d) Incorporate inventory, assessment, and monitoring principles into decision-making and use this information to identify trends and implement adaptive management strategies;

(e) Accelerate restoration and improvement of degraded public lands, air, and waters to properly functioning and desired conditions;

(f) Manage for ecosystems and their components to adapt, absorb, or recover from the effects of disturbances or environmental change through conservation, protection, restoration, or improvement of essential structures, functions, and redundancy of ecological patterns across the landscape;

(g) Provide for healthy lands and waters that support sustainable outdoor recreation experiences for current and future generations;

(h) Prevent permanent impairment or unnecessary or undue degradation of public lands;

(i) Improve engagement and co-stewardship of public lands with Tribal entities and promote the use of Indigenous Knowledge in decision-making; and

(j) Advance environmental justice through restoration and mitigation actions.

§ 6101.3 Authority.

These regulations are issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) as amended and section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Implementation of this part is subject to all applicable law.

§ 6101.4 Definitions.

As used in this part, the term:

(a) *Casual use* means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to any such activity.

(b) *Conservation* means the management of natural resources to promote protection and restoration. Conservation actions are effective at building resilient lands and are designed to reach desired future conditions through protection, restoration, and other types of planning, permitting, and program decision-making.

(c) *Disturbance* means changes in environmental conditions, either discrete or chronic. Disturbances may be viewed as ''characteristic'' when ecosystems and/or species have evolved to survive, exploit, and even depend on a disturbance or ''uncharacteristic'' when attributes of the disturbance (*e.g.,* type, timing, frequency, magnitude, duration) are outside prevailing background conditions. Disturbances may be natural or human-caused.

(d) *Ecosystem resilience* means the capacity of ecosystems (*e.g.,* old-growth forests and woodlands, sagebrush core areas) to maintain or regain their fundamental composition, structure, and function (including maintaining habitat connectivity and providing ecosystem services) when affected by disturbances such as drought, wildfire, and nonnative invasive species.

(e) *Effects* means the direct, indirect, and cumulative impacts, as defined in 40 CFR 1508.1(g), from a public land use. Effects and impacts as used in these regulations are synonymous.

(f) *High-quality information* means information that promotes reasoned, evidence-based agency decisions. Information that meets the standards for objectivity, utility, and integrity as set forth in the Department's Information Quality Guidelines [17] qualifies as high-quality information. Indigenous Knowledge qualifies as high-quality information when it is gained by prior, informed consent free of coercion, and generally meets the standards for high-quality information.

(g) *Important, scarce, or sensitive resources:*

(1) ''Important resources'' means resources that the BLM has determined to warrant special consideration, consistent with applicable law.

(2) ''Scarce resources'' means resources that are not plentiful or abundant and may include resources that are experiencing a downward trend in condition.

[17] U.S. Department of the Interior, Information Quality Guidelines, *https://www.doi.gov/ocio/policy-mgmt-support/information-quality-guidelines.*

(3) ''Sensitive resources'' means resources that are delicate and vulnerable to adverse change, such as resources that lack resilience to changing circumstances.

(h) *Indigenous Knowledge* means a body of observations, oral and written knowledge, innovations, technologies, practices, and beliefs developed by Indigenous Peoples through interaction and experience with the environment. Indigenous Knowledge is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continue to develop, and include understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed, held, and stewarded by Indigenous Peoples and is often intrinsic within Indigenous legal traditions, including customary law or traditional governance structures and decision-making processes. Other terms, such as Traditional Knowledge, Traditional Ecological Knowledge, Genetic Resources associated with Traditional Knowledge, Traditional Cultural Expression, Tribal Ecological Knowledge, Native Science, Indigenous Applied Science, Indigenous Science, and others, are sometimes used to describe this knowledge system.

(i) *In-lieu fee program* means a program involving the restoration, establishment, and/or enhancement and protection of resources at specific sites through funds paid to a local or State government agency, non-profit organization that qualifies for tax-exempt status in accordance with Internal Revenue Code (IRC) section 501(c)(3), or Tribal organization to satisfy compensatory mitigation requirements for adverse impacts resulting from BLM-authorized public land uses. Collected funds are pooled and expended on projects that provide compensatory mitigation for the same types of resource impacts. Similar to a mitigation bank, an in-lieu fee program sells mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor.

(j) *Intact landscape* means a relatively unfragmented landscape free of local conditions that could permanently or significantly disrupt, impair, or degrade the landscape's composition, structure, or function. Intact landscapes are large enough to maintain native biological diversity, including viable populations of wide-ranging species. Intact landscapes provide critical ecosystem services and are resilient to disturbance and environmental change and thus may be prioritized for conservation action. For example, an intact landscape would have minimal fragmentation from roads, fences, and dams; low densities of agricultural, urban, and industrial development; and minimal pollution levels.

(k) *Intactness* means a measure of the degree to which human influences, which can include invasive species and unnatural wildfire, alter or impair the structure, function, or composition of a landscape. Areas experiencing a natural fire regime can be intact.

(l) *Land health* means the degree to which the integrity of the soil, water, and ecological processes sustain habitat quality and ecosystem functions.

(m) *Landscape* means an area that is spatially heterogeneous in at least one factor of interest which may include common management concerns or conditions. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. Landscapes may be defined in terms of aquatic conditions, such as watersheds, or terrestrial conditions, such as ecoregions.

(n) *Mitigation* means:

(1) avoiding the impacts of a proposed action by not taking a certain action or parts of an action;

(2) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(3) rectifying the impact of the action by repairing, rehabilitating, or restoring the affected environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(5) compensating for the impact of the action by replacing or providing substitute resources or environments. In practice, the mitigation sequence is often summarized as avoid, minimize, and compensate. The BLM generally applies mitigation hierarchically: first avoid, then minimize, and then compensate for any residual impacts from proposed actions.

(o) *Mitigation bank* means a site, or suite of sites, where resources are restored, established, enhanced, or protected for the purpose of providing compensatory mitigation for impacts to the same types of resources from BLM-authorized public land uses. In general, the sponsor of a mitigation bank sells mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor.

(p) *Mitigation fund* means an account established by a mitigation fund holder through a written agreement with the BLM. Permittees with compensatory mitigation requirements may deposit funds with the fund holder, when approved to do so by the BLM. Funds are then expended by the fund holder on projects that mitigate for the same types of resources that were impacted as a result of BLM-authorized land uses.

(q) *Mitigation strategies* means documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area, at relevant scales, in advance of anticipated public land uses.

(r) ''Monitoring'' means the periodic observation and orderly collection of data to evaluate:

(1) existing conditions;

(2) the effects of management actions; or

(3) the effectiveness of actions taken to meet management objectives.

(s) *Permittee* means any person or other legal entity that has a valid permit, right-of-way grant, lease, or other BLM land use authorization.

(t) *Protection* means the act or process of conservation by maintaining the existence of resources while preventing degradation, damage, or destruction. Protection is not synonymous with preservation and allows for active management or other uses consistent with multiple use and sustained yield principles.

(u) *Public lands* means any surface estate or interests in the surface estate owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

(v) *Reclamation* means, when used in relation to individual project goals and objectives, practices intended to achieve an outcome that reflects the final goal to restore the character and productivity of the land and water. Components of reclamation include, as applicable:

(1) Isolating, controlling, or removing toxic or deleterious substances;

(2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;

(3) Rehabilitating fisheries or wildlife habitat;

(4) Placing growth medium and establishing self-sustaining revegetation;

(5) Removing or stabilizing buildings, structures, or other support facilities;

(6) Plugging drill holes and closing underground workings; and

(7) Providing for post-activity monitoring, maintenance, or treatment.

(w) *Restoration* means the process or act of conservation by passively or actively assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, native ecological state.

(x) *Significant causal factor* means a use, activity, or disturbance that prevents an area from achieving or making significant progress toward achieving one or more land health standards. To be a significant factor, a use may be one of several causal factors in contributing to less-than-healthy conditions; it need not be the sole causal factor inhibiting progress toward the standards.

(y) *Significant progress* means measurable or observable changes in the indicators that demonstrate improved land health. Acceptable levels of change must be realistic in terms of the capability of the resource but must also be as expeditious and effective as practical.

(z) *Sustained yield* means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of BLM-managed lands consistent with multiple use and without permanent impairment of the productivity of the land. Preventing permanent impairment means that renewable resources are not permanently depleted and that desired future conditions are met for future generations. Ecosystem resilience is essential to the BLM's ability to manage for sustained yield.

(aa) *Unnecessary or undue degradation* means harm to resources or values that is not necessary to accomplish a use's stated goals or is excessive or disproportionate to the proposed action or an existing disturbance. Unnecessary or undue degradation includes two distinct elements: ''Unnecessary degradation'' means harm to land resources or values that is not needed to accomplish a use's stated goals. For example, approving a proposed access road causing damage to critical habitat for a plant listed as endangered under the Endangered Species Act that could be located without any such impacts and still provide the needed access may result in unnecessary degradation. ''Undue degradation'' means harm to land resources or values that is excessive or disproportionate to the proposed action or an existing disturbance. For example, approving a proposed access road causing damage to the only remaining critical habitat for a plant listed as endangered under the Endangered Species Act, even if there is not another location for the road, may result in undue degradation. The statutory obligation to prevent ''unnecessary or undue degradation'' applies when either unnecessary degradation or undue degradation, and not necessarily both, is implicated.

(bb) *Watershed condition assessment* means a process for assessing and synthesizing information on the condition of soil, water, habitats, and ecological processes within watersheds relative to the BLM's land health fundamentals. A watershed condition assessment may include assessment of one or more of watershed physical and biological characteristics, landscape intactness, and disturbances.

§ 6101.5 Principles for Ecosystem Resilience.

(a) Except where otherwise provided by law, public lands must be managed under the principles of multiple use and sustained yield.

(b) To ensure multiple use and sustained yield, the BLM's management must conserve the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; preserve and protect certain public lands in their natural condition (including ecological and environmental values); maintain the productivity of renewable natural resources in perpetuity; and consider the long-term needs of future generations, without permanent impairment of the productivity of the land.

(c) The BLM must conserve renewable natural resources at a level that maintains or improves future resource availability and ecosystem resilience, in a manner consistent with multiple use and sustained yield.

(d) Authorized officers must implement the foregoing principles through:

(1) Conservation as a land use within the multiple use framework, including in decision-making, authorization, and planning processes;

(2) Protection and maintenance of the fundamentals of land health and ecosystem resilience;

(3) Restoration and protection of public lands to support ecosystem resilience, including habitat connectivity and old-growth forests;

(4) Use of the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations; and

(5) Prevention of unnecessary or undue degradation.

Subpart 6102—Conservation Use To Achieve Ecosystem Resilience

§ 6102.1 Protection of Landscape Intactness.

(a) The BLM must manage certain landscapes to protect their intactness, including habitat connectivity and old-growth forests. This requires:

(1) Maintaining ecosystem resilience and habitat connectivity through conservation actions;

(2) Conserving landscape intactness when managing compatible uses, especially where development or fragmentation that could permanently impair ecosystem resilience has the potential to occur on public lands;

(3) Maintaining or restoring resilient ecosystems through habitat and ecosystem restoration projects that are implemented over broader spatial and longer temporal scales;

(4) Coordinating and implementing actions across BLM programs, offices, and partners to protect intact landscapes; and

(5) Pursuing management actions that maintain or mimic characteristic disturbance, or mimic natural disturbance, when maintaining it is not possible.

(b) Authorized officers will seek to prioritize actions that conserve and protect landscape intactness in accordance with § 6101.2.

§ 6102.2 Management to Protect Intact Landscapes.

(a) The BLM will maintain an inventory of landscape intactness as a resource value using watershed condition assessments (*see* § 6103.2(a)) to establish a consistent baseline condition.

(b) When updating a resource management plan under part 1600 of this chapter, the BLM will use a baseline condition of intactness and available high-quality information about landscape intactness, such as watershed condition assessments, environmental disturbances, and monitoring (*see* § 6103.2), to:

(1) Identify and delineate boundaries for intact landscapes within the planning area, taking into consideration habitat connectivity and migration corridor data;

(2) Evaluate alternatives to protect intact landscapes or portions of the intact landscapes from activities that would permanently or significantly disrupt, impair, or degrade the ecosystem's structure or functionality of the intact landscapes; and

(3) Identify which intact landscapes or portions of intact landscapes will be managed for protection consistent with

the principles enumerated in § 6102.1(a).

(c) The BLM will identify desired conditions and landscape objectives to guide implementation of decisions regarding management of intact landscapes, habitat connectivity, and old-growth forests. As part of carrying out paragraph (b) of this section, the BLM will seek to:

(1) Establish partnerships to work across Federal and non-Federal lands to promote and protect intact landscapes;

(2) Work with communities to identify geographic areas important for their strategic growth and development in order to allow for better identification of the most suitable areas to protect intact landscapes and habitat connectivity;

(3) Consult with Tribes to identify opportunities for co-stewardship to protect intact landscapes (*see* § 6102.5(b)(4) through (6)); and

(4) Use high-quality information including standardized quantitative monitoring to evaluate the effectiveness of management actions for ecosystem resilience (*see* § 6103.2).

(d) When determining whether to acquire lands or interests in lands through purchase, donation, or exchange, authorized officers must prioritize the acquisition of lands or interests in lands that would further protect and connect intact landscapes and functioning ecosystems.

(e) Authorized officers must collect and track landscape intactness data to support minimizing surface disturbance and inform conservation actions. This information must be included in a publicly available national tracking system.

§ 6102.3 Restoration.

(a) The BLM must emphasize restoration on the public lands to achieve its multiple use and sustained yield mandate.

(b) In determining the restoration actions required to achieve recovery of ecosystems and promote resilience, the BLM must consider the causes of degradation, the recovery potential of the ecosystem, and the allowable uses in the governing land use plan, such as whether an area is managed for recreation or is degraded land prioritized for development. The BLM must then develop commensurate restoration goals and objectives (*see* § 6103.1.1).

(c) The BLM should employ management actions to promote restoration. Over the long-term, restoration actions must be durable, self-sustaining, and expected to persist in a manner that supports land health and ecosystem resilience.

(d) When designing and implementing restoration actions on public lands, including authorizing restoration leases, authorized officers must adhere to the following principles:

(1) Ensure that restoration actions address causes of degradation, focus on process-based solutions, and where possible maintain attributes and resource values associated with the potential or capability of the ecosystem;

(2) Ensure that actions are designed, implemented, and monitored at appropriate spatial and temporal scales using suitable treatments and tools to achieve desired outcomes;

(3) Coordinate and implement actions across BLM programs, with partners, and in consideration of existing uses to develop holistic restoration actions;

(4) Ensure incorporation of locally appropriate best management practices, high-quality information, and adaptive management that supports restoration;

(5) Identify opportunities to implement nature-based or low-tech restoration activities and use seed from native plants; and

(6) Consult with Tribes to identify opportunities for co-stewardship or collaboration (*see* § 6102.5(b)(4) through (6)).

§ 6102.3.1 Restoration Prioritization and Planning.

(a) Authorized officers must identify measurable and quantifiable restoration outcomes consistent with the restoration principles enumerated in § 6102.3 in all resource management plans.

(b) Authorized officers will, at least every 5 years, identify priority landscapes for restoration consistent with resource management plan objectives and the restoration principles enumerated in § 6102.3. In doing so, authorized officers must consider:

(1) Current conditions and causes of degradation as indicated by watershed condition assessments, existing land health assessments, evaluations, and determinations, and other high-quality information (*see* § 6103.2);

(2) The likelihood of success of restoration activities to achieve resource or conservation objectives including ecosystem resilience;

(3) Where restoration actions may have the most social and economic benefits or work to address environmental justice, including impacts on communities with environmental justice concerns; and

(4) Where restoration or mitigation can minimize or offset unnecessary or undue degradation, such as ecosystem conversion, fragmentation, habitat loss, or other negative outcomes that permanently impair ecosystem resilience.

(c) For priority landscapes identified in accordance with this subpart, authorized officers must periodically, and at least every 5 years, develop or amend restoration plans consistent with resource management plan objectives in accordance with part 1600 of this chapter. Each restoration plan must include goals, objectives, and management actions that are:

(1) Consistent with the restoration principles enumerated in § 6102.3;

(2) Commensurate with recovery potential;

(3) Evaluated against measurable objectives, including to facilitate adaptive management to achieve outcomes supporting ecosystem resilience (*see* subpart 6103);

(4) Developed consistent with scientifically accepted standards and principles for restoration; and

(5) Consistent with statewide and regional needs as identified in the assessment of priority landscapes for restoration as identified in this subpart.

(d) Authorized officers must track restoration implementation and progress toward achieving goals at appropriate temporal scales. If restoration goals are not met, authorized officers must assess why restoration outcomes are not being achieved and what, if any, additional resources or changes to management are needed to achieve restoration goals.

§ 6102.4 Restoration and Mitigation Leasing.

(a) The BLM may authorize restoration leases or mitigation leases under such terms and conditions as the authorized officer determines are appropriate for the purpose of restoring degraded landscapes or mitigating impacts of other uses.

(1) Restoration or mitigation leases on the public lands may be authorized for the following purposes:

(i) Restoration of land and resources by passively or actively assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, resilient ecological state; and

(ii) Mitigation to offset impacts to resources resulting from other land use authorizations.

(2) Authorized officers may issue restoration or mitigation leases to any qualified entity that can demonstrate capacity for implementing restoration or mitigation projects (as appropriate) and meets the lease requirements. Consistent with the lease adjudication practices established in 43 CFR 2920, qualified entities for restoration or mitigation

leases may be individuals, businesses, non-governmental organizations, Tribal governments, conservation districts, or State fish and wildlife agencies. Qualified entities for a mitigation lease to establish an in-lieu fee program are limited to non-governmental organizations, State fish and wildlife agencies, and Tribal government organizations. Restoration and mitigation leases may not be held by a foreign person as that term is defined in 31 CFR 802.221.

(3) Restoration or mitigation leases shall be issued for a term consistent with the time required to achieve their objective.

(i) A lease issued for purposes of restoration may be issued for a maximum term of 10 years, and all activities taken under the lease shall be reviewed mid-term for consistency with the lease provisions.

(ii) A lease issued for purposes of mitigation shall be issued for a term commensurate with the impact it is mitigating, and all activities taken under the lease reviewed every 5 years for consistency with the lease provisions.

(iii) Authorized officers may renew a restoration or mitigation lease if necessary to serve the purpose for which the lease was first issued, provided that the lease holder is in compliance with the terms and conditions of the lease and renewal is consistent with applicable law. Such renewal can be for a period no longer than the original term of the lease.

(4) Subject to valid existing rights and applicable law, once the BLM has issued a lease, the BLM shall not issue new authorizations to use the leased lands if the use would be incompatible with the authorized restoration or mitigation use.

(5) No land use authorization is required under the regulations in this part for casual use of the public lands covered by a restoration or mitigation lease.

(b) The application process for a restoration or mitigation lease and for renewal of such a lease is as follows:

(1) An application for a restoration or mitigation lease must be filed using an approved application form with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(2) The filing of an application gives the applicant no right to use the public lands.

(3) Acceptance of an application or approval of a lease is not guaranteed and is at the discretion of the authorized officer.

(4) Actions that pertain to or address geographic areas or resource conditions previously identified as needing restoration by the BLM through watershed condition assessments and existing land health assessments, land health evaluations, an existing restoration plan, a mitigation strategy, or high-quality inventory, assessment, and monitoring information shall be given priority for consideration (*see* subpart 6103).

(c) An application for a restoration or mitigation lease must comply with the following requirements:

(1) An application must include a restoration or mitigation development plan that describes the proposed restoration or mitigation use in sufficient detail to enable authorized officers to evaluate the feasibility, impacts, benefits, costs, threats to public health and safety, collaborative efforts, and conformance with BLM plans, programs, and policies, including compatibility with other uses.

(2) The development plan shall include, but not be limited to:

(i) Results from available assessments, inventory and monitoring efforts, or other high-quality information (*see* subpart 6103) that identify the current conditions of the site(s) of the proposed restoration or mitigation action;

(ii) The desired future condition of the proposed lease area including clear goals, objectives, and measurable performance criteria needed to determine progress toward achieving the objectives;

(iii) Justification for passive restoration or mitigation if proposed;

(iv) A description of all facilities for which authorization is sought, including access needs and any other special types of authorizations that may be needed;

(v) A map of sufficient scale to allow the required information to be legible as well as a legal description of primary and alternative project locations;

(vi) Justification of the total acres proposed for the restoration or mitigation lease;

(vii) A schedule for restoration activities if applicable; and

(viii) Information on outreach already conducted or to be conducted with existing permittees, lease holders, adjacent land managers or owners, and other interested parties.

(3) Restoration lease development plans must be consistent with § 6102.3 and mitigation lease development plans must be consistent with § 6102.5.1.

(4) Applicants must submit the following additional information, upon request of the authorized officer:

(i) Additional high-quality information, if such information is necessary for the BLM to decide whether to issue, issue with modification, or deny the proposed lease;

(ii) Documentation of or proof of application for any required private, State, local, or other Federal agency licenses, permits, easements, certificates, or other approvals; and

(iii) Evidence that the applicant has, or will have prior to commencement of lease activities, the technical and financial capability to operate, maintain, and terminate the authorized lease activities.

(d) When reviewing restoration and mitigation lease applications, authorized officers will consider the following factors, along with other applicable legal requirements, which will make lease issuance more likely:

(1) Lease outcomes that are consistent with the restoration principles in § 6102.3(d);

(2) Desired future conditions that are consistent with the management objectives and allowable uses in the governing land use plan, such as an area managed for recreation or prioritized for development;

(3) Collaboration with existing permittees, leaseholders, and adjacent land managers or owners;

(4) Outreach to or support from local communities; or

(5) Consideration of environmental justice objectives.

(e) If approved, the leaseholder shall provide a monitoring plan that describes how the terms and conditions of the lease will be applied, the monitoring methodology and frequency, measurable criteria, and adaptive management triggers.

(1) The lease holder shall provide a lease activity report annually and at the end of the lease period. At a minimum, the report shall specify:

(i) The restoration or mitigation activities taken as of the time of the report;

(ii) Any barriers to meeting the stated purpose of the lease;

(iii) Proposed steps to resolve any identified barriers; and

(iv) Monitoring information and data that meet BLM methodology requirements and data standards (*see* § 6103.2(d)).

(2) Additional requirements for development plans and monitoring plans for mitigation leases are provided in § 6102.5.1.

(f) An approved lease does not convey exclusive rights to use the public lands to the lease holder The authorized officer retains the discretion to determine compatibility of the renewal of existing authorizations and future land use proposals on lands subject to restoration or mitigation leases.

(g) A restoration or mitigation lease will not preclude access to or across leased areas for casual use, recreation use, research use, or other use taken pursuant to a land use authorization that is compatible with the approved restoration or mitigation use.

(h) Existing access that accommodates accessibility under section 504 of the Rehabilitation Act shall remain after a lease has been issued.

(i) A restoration or mitigation lease may only be amended, assigned, or transferred with the written approval of the authorized officer, and no amendment, assignment, or transfer shall be effective until the BLM has approved it in writing. Authorized officers may authorize assignment or transfer of a restoration or mitigation lease in their discretion if no additional rights will be conveyed beyond those granted by the original authorization, the proposed assignee or transferee is qualified to hold the lease, and the assignment or transfer is in the public interest.

(j) Administrative cost recovery, rents, and fees for restoration and mitigation leases will be governed by the provisions of 43 CFR 2920.6 and 2920.8, provided that the BLM may waive or reduce administrative cost recovery, fees, and rent of a restoration lease if the restoration lease is not used to generate revenue or satisfy the requirements of a mitigation program (*e.g.,* selling credits in an established market), and the restoration lease will enhance ecological or cultural resources or provide a benefit to the general public.

§ 6102.4.1 Termination and Suspension of Restoration and Mitigation Leases.

(a) If a restoration or mitigation lease provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the restoration or mitigation lease shall automatically terminate by operation of law upon the occurrence of such event.

(b) A restoration or mitigation lease may be terminated by mutual written agreement between the authorized officer and the lease holder.

(c) Authorized officers have discretion to suspend or terminate restoration or mitigation leases under the following circumstances:

(1) Improper issuance of the lease;

(2) Noncompliance by the holder with applicable law, regulations, or terms and conditions of the lease;

(3) Failure of the holder to use the lease for the purpose for which it was authorized; or

(4) Impossibility of fulfilling the purposes of the lease.

(d) Upon determination that the holder has failed to comply with any terms or conditions of a lease and that such noncompliance adversely affects or poses a threat to land or public health or safety, or impacts ecosystem resilience, the authorized officer shall issue an immediate temporary suspension.

(1) The authorized officer may issue an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any such holder, contractor, or subcontractor, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action that the authorized officer considers necessary to address the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience.

(2) The authorized officer may order immediate temporary suspension of an activity independent of any action that has been or is being taken by another Federal or State agency.

(3) Any time after an order of temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume activities authorized by the lease. The request shall be in writing and shall contain a statement of the facts supporting the request. The authorized officer may grant the request upon determination that the adverse effects or threat to land or public health or safety or impacts to ecosystem resilience are resolved.

(4) The authorized officer may render an order to either grant or deny the request to resume within 30 working days of the date the request is filed. If the authorized officer does not render an order on the request within 30 working days, the request shall be considered denied, and the holder shall have the same right to appeal as if an order denying the request had been issued.

(e) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a lease, the authorized officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to address the legal basis the authorized officer identifies for suspension or termination.

(2) After due notice of termination or suspension to the holder of a restoration or mitigation lease, if grounds for suspension or termination still exist after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge pursuant to 43 CFR part 4. The authorized officer shall suspend or revoke the restoration or mitigation lease if the administrative law judge determines that grounds for suspension or revocation exist and that such action is justified.

(3) Authorized officers shall terminate a suspension order when they determine that the grounds for such suspension no longer exist.

(4) Upon termination of a restoration or mitigation lease, the holder shall, for 60 days after the notice of termination, retain authorization to use the associated public lands solely for the purposes of reclaiming the site to its pre-use conditions consistent with achieving land health fundamentals, unless otherwise agreed upon in writing or in the lease terms. If the holder fails to reclaim the site consistent with the requirements of the lease terms within a reasonable period, all authorization to use the associated public lands will terminate, but that shall not relieve the holder of liability for the cost of reclaiming the site.

§ 6102.4.2 Bonding for Restoration and Mitigation Leases.

(a) *Bonding obligations.* (1) Prior to the commencement of surface-disturbing or active management activities, the authorized officer may require the restoration or mitigation lease holder to submit a reclamation, decommission, or performance bond conditioned upon compliance with all the terms and conditions of the lease covered by the bond, as described in this subpart. For mitigation leases, the lease holder will usually be required to provide letters of credit or establish an escrow account for the full amount needed to ensure the development plan meets all performance criteria. The bond amounts shall be sufficient to ensure reclamation of the restoration and mitigation lease area(s) and the restoration of any lands or surface waters adversely affected by restoration or mitigation lease operations. Such restoration may be required after the abandonment or cessation of operations by the restoration or mitigation lease holder in accordance with, but not limited to, the standards and requirements set forth by authorized officers.

(2) Considerations for requiring a bond include, but are not limited to:

(i) The type and level of active restoration;

(ii) Amount and type of surface disturbing activity;

(iii) Proposed use of non-natural restoration methods, such as the use of pesticides;

(iv) Proposed use of experimental methods of restoration;

(v) Risk of compounding effects resulting from restoration activities, such as a proliferation of invasive species; and

(vi) Fire risk.

(3) Surety bonds shall be issued by qualified surety companies certified by the Department of the Treasury.

(4) Personal bonds shall be accompanied by:

(i) Cashier's check;

(ii) Certified check; or

(iii) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a conservation use authorization.

(b) In lieu of bonds for each individual restoration or mitigation lease, holders may furnish a bond covering all restoration or mitigation leases and operations in any one State. Such a bond must be at least $25,000 and must be sufficient to ensure reclamation of all of the holder's restoration or mitigation lease area(s) and the restoration of any lands or surface waters adversely affected by restoration or mitigation lease operations in the State.

(c) All bonds shall be filed in the proper BLM office on a current form approved by the Office of the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Bonds shall be filed in the Bureau State Office having jurisdiction of the restoration or mitigation lease covered by the bond.

(d) Default.

(1) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a restoration or mitigation lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(2) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by authorized officers. In lieu thereof, the principal may file separate or substitute bonds for each conservation use covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by authorized officers. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from authorized officers.

(3) Failure to comply with these requirements may:

(i) Subject all leases covered by such bond(s) to termination under the provisions of this title;

(ii) Prevent the bond obligor or principal from acquiring any additional restoration or mitigation leases or interest therein under this subpart; and

(iii) Result in the bond obligor or principal being referred to the suspension and debarment program under 2 CFR part 1400 to determine if the entity will be suspended or debarred from doing business with the Federal Government.

§ 6102.5 Management Actions for Ecosystem Resilience.

(a) Authorized officers must:

(1) Identify priority watersheds, landscapes, and ecosystems that require protection and restoration efforts (*see* §§ 6102.2 and 6102.3.1);

(2) Develop and implement plans and strategies, including protection, restoration, and mitigation strategies that effectively manage public lands to protect and promote resilient ecosystems (*see* §§ 6102.1, 6102.3.1, 6102.5.1, 6103.1.2);

(3) Develop and implement monitoring and adaptive management strategies for maintaining sustained yield of renewable resources, accounting for changing landscapes, fragmentation, invasive species, and other disturbances (*see* § 6103.2);

(4) Report annually on the results of land health evaluations, and determinations (*see* § 6103.1.2);

(5) Ensure that watershed condition assessments incorporate consistent analytical approaches (*see* § 6103.2) both among neighboring BLM State Offices and with the fundamentals of land health; and

(6) Share watershed condition assessments in a publicly available national database to determine changes in watershed condition and record measures of success based on conservation and restoration goals.

(b) In taking management actions, and as consistent with applicable law and resource management plans, such as where an area is managed for recreation or is degraded land prioritized for development, authorized officers must:

(1) Make every effort to avoid authorizing uses of the public lands that permanently impair ecosystem resilience;

(2) Promote opportunities to support conservation and other actions that work toward achieving land health standards and ecosystem resilience;

(3) Issue decisions that promote the ability of ecosystems to passively recover or the BLM's ability to actively restore ecosystem composition, structure, and function;

(4) Meaningfully consult with Indian Tribes and Alaska Native Corporations during the decision-making process on actions that are determined, after allowing for Tribal input, to potentially have a substantial effect on the Tribe or Corporation;

(5) Allow State, Tribal, and local agencies to serve as joint lead agencies consistent with 40 CFR 1501.7(b) or as cooperating agencies consistent with 40 CFR 1501.8(a) in the development of environmental impact statements or environmental assessments;

(6) Respect Indigenous Knowledge, by:

(i) Improving engagement and expanding co-stewardship of public lands with Tribal entities;

(ii) Encouraging Tribes to suggest ways in which Indigenous Knowledge can be used to inform the development of alternatives, analysis of effects, and when necessary, identification of mitigation measures; and

(iii) Communicating to Tribes in a timely manner and in an appropriate format how their Indigenous Knowledge was included in decision-making, including addressing management of sensitive information;

(7) Seek opportunities to restore or protect ecosystem resilience when the effects of potential uses are unknown; and

(8) Provide justification for decisions that may impair ecosystem resilience.

(c) Authorized officers must use high-quality inventory, assessment, and monitoring data, as available and appropriate, to evaluate resource conditions and inform decision-making across program areas (*see* § 6103.2(c)), specifically by:

(1) Identifying clear goals or desired outcomes relevant to the management decision;

(2) Gathering high-quality information relevant to the management decision, including standardized quantitative monitoring data and data about land health;

(3) Selecting relevant indicators for each applicable management question (*e.g.,* land health standards, restoration effectiveness, assessments of intactness);

(4) Establishing a framework for translating indicator values to condition categories (such as quantitative monitoring objectives or science-based conceptual models); and

(5) Summarizing results and ensuring that a clear and understandable rationale is documented, explaining how the data were used to make the decision.

§ 6102.5.1 Mitigation.

(a) The BLM will apply the mitigation hierarchy to avoid, minimize, and compensate, as appropriate, for adverse impacts to resources when authorizing uses of public lands. As appropriate, the authorized officer may identify specific mitigation approaches or requirements to address resource impacts through land use plans or in other decision documents.

(b) For important, scarce, or sensitive resources, authorized officers shall apply the mitigation hierarchy with particular care, with the goal of eliminating, reducing, and/or offsetting impact on the resource, consistent with applicable law.

(c) When implementing the mitigation hierarchy, including authorizing mitigation leases, the BLM will:

(1) Use a landscape-scale approach to develop and implement mitigation strategies that identify mitigation needs and opportunities in a geographic area, including opportunities for the siting of large, market-based mitigation programs or projects (*e.g.,* mitigation banks) on public lands;

(2) Use high-quality information to inform the identification and analysis of adverse impacts, to determine appropriate mitigation programs or projects for those impacts, and to achieve appropriate and effective mitigation outcomes;

(3) Require identification of performance criteria for mitigation programs or projects, effectiveness monitoring of those performance criteria, and reports that assess the achievement of those performance criteria;

(4) Use adaptive management principles to guide and improve mitigation outcomes; and

(5) Ensure that any compensatory mitigation programs or projects are commensurate with the applicable adverse impacts and that the required compensatory mitigation programs and projects are durable, additional, and timely.

(6) As used in this section, the terms *additional, commensurate, durable,* and *timely* have the following definitions:

(i) *Additional* means the compensatory mitigation program or project's benefit is demonstrably new and would not have occurred without the compensatory mitigation measure.

(ii) *Commensurate* means the compensatory mitigation program or project is reasonably related and proportional to the adverse impact from authorizing uses of public lands.

(iii) *Durable* means the maintenance of the effectiveness of a mitigation program or project, including resource, administrative, and financial considerations.

(iv) *Timely* means the lack of a time lag between the impact to the resources and the achievement of the outcomes of the associated compensatory mitigation.

(d) The BLM may approve, through a formal agreement, a third-party mitigation fund holder to administer funds for the implementation of compensatory mitigation programs or projects. A BLM-approved third-party mitigation fund holder may:

(1) Collect mitigation funds from permittees;

(2) Manage funds in accordance with agency decision documents, use authorizations and applicable law; and

(3) Disperse those funds in accordance with agency decision documents, use authorizations, and applicable law.

(e) Approved third-party mitigation fund holders must file with the BLM annual fiscal reports. To qualify as a third-party mitigation fund holder, the entity must either:

(1) Qualify for tax-exempt status in accordance with Internal Revenue Code section 501(c)(3); provide evidence that they can successfully hold and manage mitigation accounts; be a public charity bureau for the State in which the mitigation area is located, or otherwise comply with applicable State laws; be a third party organizationally separate from and having no corporate or family connection to the entity accomplishing the mitigation program or project, BLM employees, or the permittee; adhere to generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board, or any successor entity; and have the capability to hold, invest, and manage the mitigation funds to the extent allowed by law; or

(2) Be a State or local government agency, if the government agency is able to demonstrate, to the satisfaction of the BLM, that:

(i) it is acting as a fiduciary for the benefit of the mitigation project or site and can show that it has the authority and ability to collect the funds, protect the account from being used for purposes other than the management of the mitigation project or site, and disburse the funds to the entities conducting the mitigation project or management of the mitigation site;

(ii) it is organizationally separate from and has no corporate or family connection to the entity accomplishing the mitigation program or project, BLM employees, or the permittee; and

(iii) it adheres to generally accepted accounting practices that are promulgated by the Governmental Accounting Standards Board or any successor entity.

(f) Authorized officers will require mitigation leases and collect annual rent at fair market value for large or otherwise substantial compensatory mitigation programs or projects on public lands, including mitigation banks and in-lieu fee programs. Mitigation leases may be required for other compensatory mitigation projects on public lands at the discretion of the authorized officer.

(g) In addition to the general requirements for mitigation leases (§ 6102.4), in some circumstances, authorized officers may require that mitigation lease holders submit to the agency a formal agreement with a qualified mitigation fund holder as defined in paragraph (d) of this section.

(h) An application for a mitigation lease for a mitigation bank or an in-lieu fee program, in addition to the requirements in (§ 6102.4(c)), must also include sufficient information about the anticipated demand for and duration of the mitigation bank or in-lieu fee program, the anticipated types of mitigation projects that will be conducted, and the methods that will be used to generate, evaluate, assess, and maintain the mitigation projects.

(i) Authorized officers will ensure that compensatory mitigation programs and projects, including those with mitigation leases, are tracked in the appropriate BLM data systems.

Subpart 6103—Managing Land Health To Achieve Ecosystem Resilience

§ 6103.1 Land Health Standards.

(a) The BLM shall develop national land health standards that facilitate progress toward achieving the following fundamentals of land health across all ecosystems on lands managed by the BLM:

(1) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(2) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(3) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, BLM management objectives established in the land use plan, such as meeting wildlife needs.

(4) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species.

(b) Land health fundamentals will be advanced through national land health standards that, at a minimum, address the following resources, processes, and values:

(1) Upland hydrologic function;

(2) Riparian, wetland, and aquatic hydrologic function;

(3) Upland ecological processes and biotic communities, including connectivity, and intactness of native plant and animal habitats;

(4) Riparian, wetland, and aquatic ecological processes and biotic communities including condition, connectivity, and intactness of native plant and animal habitats;

(5) Water quality; and

(6) Habitat condition connectivity and intactness for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species.

(c) To facilitate land health evaluations, the national land health standards will include indicators that are broadly applicable across the major ecosystem or habitat types (*e.g.,* forest, rangeland, cold water fisheries) the BLM manages, and will include indicators derived from standardized datasets.

(d) Authorized officers must manage all program areas in accordance with the fundamentals of land health and standards, as provided in this subpart. Authorized officers must adopt the national standards and indicators, and may, when necessary, incorporate geographically distinct land health standards and indicators to evaluate rare or unique habitat or ecosystem types (*e.g.,* permafrost) if such habitats or ecosystems cannot be evaluated using the national land health standards and indicators.

(e) Rangeland health standards developed under 43 CFR subpart 4180 will be reviewed and amended or supplemented as necessary to incorporate the national standards and indicators within 3 years of the effective date of these regulations. Subsequently, authorized officers shall review all land health standards for sufficiency at least every 10 years.

(f) Amended land health standards must be approved by the appropriate BLM State Director prior to implementation.

§ 6103.1.1 Management for Land Health.

(a) To facilitate ecosystem resilience, authorized officers should use watershed condition assessments (*see* § 6103.2), and land health evaluations and causal factor determinations to support decision-making. Such action promotes efficiency, supports environmental analysis, and streamlines decision-making.

(b) To facilitate ecosystem resilience, authorized officers must manage all program areas to progress toward achieving land health standards.

(1) Authorized officers must apply approved land health standards, as revised from rangeland health standards previously established under subpart 4180 of this chapter (fundamentals of rangeland health), across all ecosystems managed by the BLM.

(2) Programs that authorize and manage uses or implement management actions on public land will develop management guidelines, which are best management practices designed to facilitate progress toward achievement and maintenance of land health standards.

(i) Authorized officers may develop or adopt additional management guidelines to address local ecosystems and management practices.

(ii) Programs and authorized officers will review management guidelines for sufficiency and make necessary revisions at least every 10 years in conjunction with the review of land health standards described in this subpart.

(c) Land use plans must identify the allocations and actions anticipated to achieve desired land health outcomes, including actions to maintain or restore land health in accordance with the land health standards. These actions include, but are not limited to, prioritizing development in degraded areas as well as prioritizing and implementing restoration actions (*see* § 6102.3).

(d) Land use plans shall identify statutory, regulatory, and other requirements that may prevent achievement of land health standards.

(1) Best management practices and mitigation measures to minimize effects to land health resulting from these requirements should be identified and required where practicable.

(2) Environmental effects analysis, consistent with NEPA requirements, for proposed management actions must consider effects to relevant land health standards.

§ 6103.1.2 Land Health Evaluations and Determinations.

(a) Authorized officers shall rely on watershed condition assessments when possible to complete land health evaluations for BLM-managed lands on a periodic basis, at least every 10 years (§ 6103.2).

(b) Authorized officers must determine the priority landscape and appropriate scale for completing land health evaluations based on resource concerns and, as necessary, to support decision-making processes.

(c) Authorized officers must consider available watershed condition assessments and existing land health assessments, evaluations, and determinations in the course of decision-making processes for all program areas.

(d) Land health evaluations interpret watershed condition assessments, including locally relevant high-quality information to draw conclusions about whether land health standards are achieved on public lands. In the course of conducting land health evaluations, authorized officers should:

(1) Consider multiple lines of evidence to evaluate achievement of each standard;

(2) Identify trends toward or away from desired conditions through analysis of high-quality information available over relevant time periods and spatial scales;

(3) Document the rationale and findings as to whether each land health standard is achieved or significant progress is being made towards its achievement; and

(4) Develop an interdisciplinary monitoring plan with quantitative objectives that can be measured to demonstrate significant progress when a land health evaluation report identifies that any standard is not achieved but significant progress is being made towards achievement.

(e) When conducting a land health evaluation, if the authorized officer

finds that resource conditions are achieving or making significant progress toward achieving land health standards, no additional land health analysis is needed to authorize a use or permit activities.

(f) When conducting a land health evaluation, if the authorized officer finds that resource conditions are not achieving or making significant progress toward achieving land health standards, a documented causal factor determination must be prepared as soon as practicable but no later than 1 year after completion of the land health evaluation identifying the nonachievement. Causal factor determinations use available data to identify significant causal factors and describe contributing causal factors or conditions leading to non-achievement of standards.

(1) If the authorized officer determines sufficient information exists to identify and address the significant causal factors preventing resources from achieving or making significant progress towards achieving land health standards, no further land health analysis is required to address such factors.

(2) If the authorized officer determines insufficient information exists to identify and address the significant causal factors preventing resources from achieving or making significant progress to achieving land health standards, additional information, assessment and evaluation may be needed at finer scale.

(3) The authorized officer must take appropriate actions to facilitate achievement or significant progress toward achievement of land health standards as soon as practicable, unless otherwise specified in the land use plan, or when significant causal factors are outside of BLM control (*e.g.,* lack of streamflow due to dewatering on connected lands not administered by the BLM).

(4) To the extent existing grazing management practices or levels of grazing use on public lands are identified as significant causal factors preventing resources from achieving or making significant progress towards achieving land health standards, authorized officers must proceed under § 4180.2(c) of this chapter. by taking appropriate action as soon as practicable but no later than the start of the next grazing year.

(5) Taking appropriate action means implementing actions that will result in significant progress toward achieving land health standards. Appropriate action must be consistent with applicable law, regulation, and the governing land use plan and its management objectives, such as where an area is managed for recreation or is degraded land prioritized for development. Appropriate actions may include, but are not limited to:

(i) Establishment or modification of terms and conditions for permits, leases, and other use authorizations;

(ii) Development and implementation of activity plans;

(iii) Implementation of adaptive management actions; and

(iv) Control of unauthorized use.

(g) Upon determining that significant causal factors other than current management practices are preventing achievement of land health standards, but are not outside of BLM control (*e.g.,* presence of invasive species), the authorized officer shall identify and prioritize appropriate actions that may result in significant progress toward achievement of land health standards (*see* § 6102.5).

(h) Subject to other applicable law, authorized officers may implement restoration plans, modify authorized uses, or implement other management actions to increase expediency and effectiveness of progress towards achieving land health standards, to protect areas achieving land health standards, or to meet other objectives.

(i) If current authorized uses are determined to be significant causal factors and the authorized officer determines appropriate action is needed, then appropriate action must be consistent with the governing land use plan. Changes to some types of authorized uses may first warrant an amendment to the land use plan to allow the authorized officer to adjust those uses sufficient to make progress toward meeting land health standards. However, whether to undertake a planning process is at the discretion of the authorized officer.

(j) Authorized officers will report annually on land health evaluation, and determination accomplishments; results; and actions taken to address areas not achieving or making progress toward achieving standards.

(k) The BLM will maintain and annually update a publicly available record of land health evaluation and determination results and management actions taken to facilitate progress toward achieving land health standards.

§ 6103.2 Inventory, Assessment, and Monitoring.

(a) Watershed condition assessments must be completed at least once every 10 years and used to inform land use planning, protect intact landscapes (§ 6102.2), manage for ecosystem resilience (§ 6102.5), inform restoration actions (§ 6102.3), and inform land health evaluations and determinations (§ 6103.1.1). Watershed condition assessments assess and synthesize information on the condition of soil, water, habitats, and ecological processes within watersheds relative to the BLM's land health fundamentals and the national land health standards. When conducting watershed condition assessments, the BLM must:

(1) Compile and analyze multiple sources of high-quality information to understand conditions and trends relevant to each land health standard, including remote sensing products, field-based data, and other data gathered through inventory, assessment, and monitoring activities; and

(2) Incorporate consistent analytical approaches, quantitative indicators, and benchmarks where practicable.

(b) The BLM will maintain a publicly available inventory of infrastructure and natural resources on public lands. This inventory must include both critical landscape components (*e.g.,* roads, land types, streams, habitats) and core indicators that address land health fundamentals.

(c) Authorized officers will use high-quality inventory, assessment, and monitoring information, including standardized quantitative monitoring data, remote sensing maps, and geospatial analyses, to inform decision-making across program areas, including, but not limited to:

(1) Authorization of permitted uses;

(2) Land use planning;

(3) Watershed condition assessments and land health evaluations;

(4) Restoration planning, including prioritization;

(5) Assessments of restoration effectiveness;

(6) Consideration of areas of critical environmental concern;

(7) Evaluation and protection of intact landscapes;

(8) Restoration and mitigation leasing; and

(9) Other decision-making processes.

(d) Authorized officers must inventory, assess, and monitor activities as necessary to inform the decision-making processes identified in paragraph (b) of this section and, in so doing, must employ the following:

(1) Interdisciplinary monitoring plans for providing data relevant to decision makers;

(2) Standardized field protocols and indicators to allow data comparisons through space and time in support of multiple management decisions;

(3) Appropriate sample designs to minimize bias and maximize applicability of collected data;

(4) Integration with remote sensing products to optimize sampling and calibrate continuous map products; and

(5) Data management and stewardship to ensure data quality, accessibility, and use.

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