

## PART I. NOMINATOR

First Name:	Phil
Last Name:	Hanceford
Organization:	The Wilderness Society
Project Title:	[None Submitted]
Submitted by:	Member of the Public
Date Received:	06/13/2011

## PART II. SHORT ANSWERS

### I. What Federal agency or agencies will be involved in this pilot project?

The federal agency involved in the pilot project is the Bureau of Land Management.

### II. What is the Federal action to which this NEPA pilot project applies?

The Bureau of Land Management (BLM) is preparing programmatic EAs for issuing Special Recreation Permits (SRPs) for commercial, competitive or organized groups within three units of the National Landscape Conservation System. A programmatic EA can provide standard criteria for a determination of the types of permits to consider, while still requiring specialized oversight by the agency. The first document that is very close to final was to address commercial motorized use in the Vermilion Cliffs National Monument. This was in response to a large increase of SRP applications for the Vermilion Cliffs and Grand Canyon-Parashant National Monuments for motorized vehicle events. The monuments responded by putting a moratorium on issuing new SRPs for motorized use inside the monuments until they could complete a programmatic EA to address cumulative impacts and set standard criteria for issuing permits.

### III. How will this pilot project reduce the costs and time needed to complete the NEPA process?

This change in process, from case-by-case permitting to programmatic documents, allows for BLM to examine the impacts from these types of events at a landscape-level and respond appropriately, rather than dealing with each permit on a case-by-case basis. It also sets an expectation for applicants of the type of standards they must meet to be considered as eligible for an event, thus making the permitting process more efficient for everyone.

Setting criteria for SRPs will decide the thresholds for issuing future permits in the planning area. While site-specific NEPA analyses will be required for each permit, BLM will likely tier to the programmatic EA for some of the impacts analysis at the programmatic level, thus reducing the costs and time needed to complete the NEPA process. Of course, it should be clear that BLM may only tier to the programmatic EA if the analysis is detailed enough for the type of action to show that BLM took the requisite hard look.

There are several new adjustments to the previous policies on SRPs. One of the most important changes is the agency's obligation to deny any SRP if the field office can not guarantee that every step of the permit can be properly administered. BLM has to make a determination for every permit that "BLM has the capacity to properly administer the permit." IM 2011-019.

Thus, even though this programmatic EA can provide standard criteria for a determination of the types of permits to consider, BLM must still document each step of the process for each permit and make an official determination as to whether the agency has the capacity to process, administer, and ensure that all of the terms and conditions of the permit is fulfilled, including, but not limited to providing law enforcement and other staff on hand to monitor the event and ensuring that the area has been restored after the use.

#### IV. How will this pilot project ensure rigorous environmental protection?

Programmatic assessments for issuing SRPs on BLM lands will provide a broader view of the type and amount of uses that should be permitted in an area, rather than the site-by-site or event-by-event analysis that BLM currently engages in. If BLM sets strong standard criteria that consider the many aspects of protecting natural and cultural resources, then BLM should account for all those factors in each SRP that is applied for. Once the right criteria are set, then BLM should also have a framework within the programmatic EA for decision-making with regard to future SRP applications.

BLM should use the programmatic EA to go beyond the regulatory minimum and set criteria, terms, and stipulations for authorizing/administering SRPs. From the supporting comments on Programmatic EA on issuing and managing SRPs within the Grand Staircase-Escalante National Monument (please see the complete list from the hard-copy sent to you), we recommend BLM include, as a minimum, certain criteria and terms in the programmatic EA:

BLM should propose mandatory criteria for evaluating each permit. BLM has the opportunity to propose a system by which each SRP is evaluated for a determination of whether the use is appropriate or not. This not only makes the BLM's job of processing these applications standardized and easier, it also gives the applicant an expectation of how the application should be structured.

BLM can set evaluation criteria for all permits across the board in order to better anticipate challenges that may arise from an increase in conflicts stemming from these permits. This approach allows BLM more of a rational basis and control of groups requesting permits, whether anticipated or not. This also allows the agency with the discretion to grant the permit based on these factors. Criteria include: Is there potential for harm of listed monument objects in the area? Does the activity minimize conflicts with other users? Are the routes to be used located to prevent impairment of wilderness quality or suitability? What is the ability of soils/vegetation to recover from impacts? Is monitoring and inspection required? The terms of the permits are another important management tool that BLM should use to ensure that the proposed activity stays in line with the policies and

rules of the Monument. Once the decision is made to issue a SRP, BLM should require that each permit contain strict, mandatory terms for the applicant (see scoping comments).

**V. How will this pilot project improve the quality and transparency of agency decisionmaking?**

The issuance of Special Recreation Permits on BLM lands requires a great deal of forethought and planning as to how to properly administer the permit. Often times, BLM finds itself issuing SRPs on a case-by-case basis without the benefit of having criteria to measure whether the permit meets the broader goals for the area. In addition, this case-by-case approach often leads to a less than satisfactory cumulative impacts analysis since the agency is looking at one permit at a time rather than the many types of SRPs issued in a field office throughout the year.

Having a programmatic analysis for a field office or designated area that sets criteria and performance measures for issuing SRPs will improve the quality of decision-making by providing the agency with a standard framework for when to issue the permit, decline the application, or allow the use with restrictions. It will also increase the transparency by making the SRP process and what BLM is looking for when it processes permits a more open process with expectations up front.

**VI. Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe?**

In addition to the Vermilion Cliffs National Monument, BLM is also working on programmatic EAs for the Grand Canyon-Parashant National Monument and the Grand Staircase-Escalante National Monument. We would like to see such programmatic documents be developed across the agencies or for similar event applications so the agency can adequately plan for and manage these events.

Besides programmatic EAs, the agencies may also choose to set criteria for SRPs in land use plans, such as BLM did in the Price Field Office Resource Management Plan (please see the illustrative appendix, sent to you with the hard-copy comments).

The scoping comments, mentioned above and sent to you in hard-copy with this nomination, show the type of criteria we recommend.

### **PART III. PROJECT DESCRIPTION**

*(See attachment on following page.)*

## NEPA Pilot Project Narrative:

This pilot project would involve the preparation of a comprehensive programmatic NEPA document for a field office or other planning unit of the Bureau of Land Management (BLM). The project should include standard criteria and terms and conditions that would apply to all Special Recreation Permits (SRP) in the planning area. To be successful, the criteria and terms must go beyond what is required of the agency when issuing SRPs and build strong natural and cultural resource protections at the landscape level. This criteria should then be applied to a framework for making the actual decision of whether to issue the permit or not, or to issue the permit with restrictions.

In addition, if future NEPA analyses will tier to this programmatic analysis, then there must be a comprehensive impacts analysis. This analysis must take into account the cumulative impacts of issuing SRPs in the area as well as the relation to other uses of the area.

The Vermilion Cliffs National Monument is currently preparing a programmatic EA for commercial motorized SRPs in the monument. The document should be finalized soon and could possibly serve as a model or pilot for other such efforts depending on the standard criteria and terms set and the scope of analysis. The Wilderness Society has been involved in providing the agency with a recommended approach to this document including specific criteria and a framework for decision-making. Another area that might be appropriate as a pilot project is the Grand Staircase-Escalante National Monument, where BLM is just beginning to prepare a programmatic EA for issuing SRPs for the monument.

June 13, 2011

Horst G. Greczmiel  
Council on Environmental Quality  
Associate Director for NEPA Oversight  
722 Jackson Place, NW  
Washington, DC 20503  
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**RE: Improving the Practice of NEPA: Call for Innovative Pilot Project Proposals**

Dear Mr. Greczmiel,

Please accept the following NEPA innovative pilot project proposal nomination on behalf of The Wilderness Society (TWS). The format of this nomination follows the submission form at <http://www.whitehouse.gov/webform/submit-nepa-pilot-project-nomination>.

**What Federal agency or agencies will be involved in this pilot project?:**

The federal agency involved in the pilot project is the Bureau of Land Management.

**What is the federal action to which this NEPA pilot project applies?:**

The Bureau of Land Management (BLM) is preparing programmatic EAs for issuing Special Recreation Permits (SRPs) for commercial, competitive or organized groups within three units of the National Landscape Conservation System. A programmatic EA can provide standard criteria for a determination of the types of permits to consider, while still requiring specialized oversight by the agency. The first document that is very close to final was to address commercial motorized use in the Vermilion Cliffs National Monument. This was in response to a large increase of SRP applications for the Vermilion Cliffs and Grand Canyon-Parashant National Monuments for motorized vehicle events. The monuments responded by putting a moratorium on issuing new SRPs for motorized use inside the monuments until they could complete a programmatic EA to address cumulative impacts and set standard criteria for issuing permits.

**How will this pilot project reduce the costs and time needed to complete the NEPA process?:**

This change in process, from case-by-case permitting to programmatic documents, allows for BLM to examine the impacts from these types of events at a landscape-level and respond appropriately, rather than dealing with each permit on a

case-by-case basis. It also sets an expectation for applicants of the type of standards they must meet to be considered as eligible for an event, thus making the permitting process more efficient for everyone.

Setting criteria for SRPs will decide the thresholds for issuing future permits in the planning area. While site-specific NEPA analyses will be required for each permit, BLM will likely tier to the programmatic EA for some of the impacts analysis at the programmatic level, thus reducing the costs and time needed to complete the NEPA process. Of course, it should be clear that BLM may only tier to the programmatic EA if the analysis is detailed enough for the type of action to show that BLM took the requisite hard look.

There are several new adjustments to the previous policies on SRPs. One of the most important changes is the agency's obligation to deny any SRP if the field office cannot guarantee that every step of the permit can be properly administered. BLM has to make a determination for every permit that "BLM has the capacity to properly administer the permit." IM 2011-019. Thus, even though this programmatic EA can provide standard criteria for a determination of the types of permits to consider, BLM must still document each step of the process for each permit and make an official determination as to whether the agency has the capacity to process, administer, and ensure that all of the terms and conditions of the permit is fulfilled, including, but not limited to providing law enforcement and other staff on hand to monitor the event and ensuring that the area has been restored after the use.

### **How will this project ensure rigorous environmental protection?:**

Programmatic assessments for issuing Special Recreation Permits (SRP) on BLM lands will provide a broader view of the type and amount of uses that should be permitted in an area, rather than the site-by-site or event-by-event analysis that BLM is currently engaged in. In turn, if BLM sets strong standard criteria that consider the many aspects of protecting natural and cultural resources, then BLM should take all of those factors into account for each SRP that is applied for. Once the right criteria are set, then BLM should also have a framework within the programmatic EA for decision-making with regard to future SRP applications.

Additionally, the agency must follow directives in BLM policy for SRPs. The BLM should use the programmatic EA to go beyond the regulatory minimum and set criteria, terms, and stipulations for authorizing and administering SRPs. From the scoping comments on Programmatic EA on issuing and managing SRPs within the Grand Staircase-Escalante National Monument, we recommended the BLM to include, as a minimum, the following criteria and terms as part of the programmatic EA:

The BLM should propose mandatory criteria for evaluating each permit. BLM has the opportunity to propose a system by which each SRP is evaluated for a determination of whether the use is appropriate or not. This not only makes the BLM's job of processing these applications standardized and easier, it also gives the applicant an expectation of how the application should be structured.

Due to the nature of SRPs, BLM can set evaluation criteria for all permits across the board in order to better anticipate challenges that may arise from an

increase in conflicts stemming from these permits. This approach allows BLM more of a rational basis and control of groups requesting permits, whether anticipated or not. This also allows the agency with the discretion to grant the permit based on these factors. Criteria include: Is there potential for harm of listed monument objects in the area? Does the event occur within the Front Country or Passage Zones? Is the activity one that minimizes conflicts with other users? Are the routes to be used located to prevent impairment of wilderness quality or suitability? What is the ability of soils and vegetation to recover from impacts? What is the contribution to climate change? Is monitoring and inspection required? (Please see the attached scoping comments for the complete list and the appropriate permitting result to a response to the criteria questions.)

The BLM should propose standard terms and conditions to apply to each permit. The terms of the permits are another very important management tool that BLM should use to ensure that the proposed activity stays in line with the policies and rules of the Monument. Once the decision is made to issue a SRP, BLM should require that each permit contain strict and mandatory terms for the applicant. Terms that should apply include the following: All appropriate fees are paid prior to the proposed activity; compliance with existing land use plan decisions; performance standards for specific uses; no harassment of wildlife, abide by tread lightly/leave no trace standards,

Strict enforcement measures and penalties should be prescribed for breach of the terms of the SRP, including permit revocation and prosecution if the noncompliant activity is illegal. We also recommend that BLM set forth an annual performance evaluation process of the permittee's compliance with the terms and general performance.

**How will this project improve the quality and transparency of agency decision making?:**

The issuance of Special Recreation Permits on BLM lands requires a great deal of forethought and planning as to how to properly administer the permit. Often times, BLM finds itself issuing SRPs on a case-by-case basis without the benefit of having criteria to measure whether the permit meets the broader goals for the area. In addition, this case-by-case approach often leads to a less than satisfactory cumulative impacts analysis since the agency is looking at one permit at a time rather than the many types of SRPs issued in a field office throughout the year.

Having a programmatic analysis for a field office or designated area that sets criteria and performance measures for issuing SRPs will improve the quality of decision-making by providing the agency with a standard framework for when to issue the permit, decline the application, or allow the use with restrictions. It will also increase the transparency by making the SRP process and what BLM is looking for when it processes permits a more open process with expectations up front.

**Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe: (2500 characters)**

In addition to the Vermilion Cliffs National Monument, BLM is also working on programmatic EAs for the Grand Canyon-Parashant National Monument and the Grand Staircase-Escalante National Monument. We would like to see such programmatic documents be developed across the agencies or for similar event applications so the agency can adequately plan for and manage these events. Besides programmatic EAs, the agencies may also choose to set criteria for SRPs in land use plans, such as BLM did in the Price Field Office Resource Management Plan (see attached appendix).

The attached scoping comments, mentioned above, show the type of criteria we recommend.

**Narrative describing the NEPA pilot program you would like to nominate:**

This pilot project would involve the preparation of a comprehensive programmatic NEPA document for a field office or other planning unit of the Bureau of Land Management (BLM). The project should include standard criteria and terms and conditions that would apply to all Special Recreation Permits (SRP) in the planning area. To be successful, the criteria and terms must go beyond what is required of the agency when issuing SRPs and build strong natural and cultural resource protections at the landscape level. This criteria should then be applied to a framework for making the actual decision of whether to issue the permit or not, or to issue the permit with restrictions.

In addition, if future NEPA analyses will tier to this programmatic analysis, then there must be a comprehensive impacts analysis. This analysis must take into account the cumulative impacts of issuing SRPs in the area as well as the relation to other uses of the area.

The Vermilion Cliffs National Monument is currently preparing a programmatic EA for commercial motorized SRPs in the monument. The document should be finalized soon and could possibly serve as a model or pilot for other such efforts depending on the standard criteria and terms set and the scope of analysis. The Wilderness Society has been involved in providing the agency with a recommended approach to this document including specific criteria and a framework for decision-making. Another area that might be appropriate as a pilot project is the Grand Staircase-Escalante National Monument, where BLM is just beginning to prepare a programmatic EA for issuing SRPs for the monument.

Sincerely,

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*Delivered via U.S. Mail and email*

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**RE: Scoping Comments on Programmatic EA on issuing and managing Special Recreation Permits within the Grand Staircase-Escalante National Monument**

Dear Mr. Beal,

Please accept the following scoping comments on behalf of The Wilderness Society (TWS) and the Southern Utah Wilderness Alliance (SUWA) for the preparation of a programmatic EA (EA) for the management of special recreation permits within the Grand Staircase-Escalante National Monument (GSENM). Our respective missions are to protect wilderness and inspire Americans to care for our wild places. TWS represents more than half a million members and supporters nationwide and both TWS and SUWA staff and members have great interest in the protection and enhancement of the natural and cultural resources of the GSENM.

The GSENM was designated for the purpose of protecting the outstanding geological, paleontological, archaeological, historical and ecological objects found within the monument. See, Proclamation 6920, Sept. 18, 1996. And, with forward-thinking stewardship and management, BLM can provide positive recreation experiences in the monument, including the minimization of conflicts between motorized and non-motorized or quiet use recreationists, without sacrificing the values and resources for which the GSENM was established to protect. At a time of unprecedented growth of recreation in the surrounding region and a surge of recreational use of the monument, we applaud the BLM's efforts to come up with management criteria to address applications from organized groups visiting and camping in the monument that apply for SRPs. BLM should take this opportunity to be a model for other national monuments and units within the National Landscape Conservation System, which are to be held to a higher standard of protection than non-designated landscapes.

## I. BLM Must Take a Hard Look at Impacts from Issuing SRPs

NEPA dictates that agencies take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9<sup>th</sup> Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, BLM is required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define “cumulative impact” as:

the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added).

And the regulations define “indirect effects” as those:

caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b).

To satisfy NEPA’s hard look requirement, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9<sup>th</sup> Cir. 1999). Second, BLM must analyze these impacts in light of the proposed action. *Id.* If the BLM determines that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.” *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9<sup>th</sup> Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

Pursuant to Secretarial Order (S.O.) No. 3289, agencies within the Department of Interior must “analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department’s purview.” S.O. 3289, incorporating S.O. 3226. This programmatic EA falls squarely under this guidance and BLM must assess impacts from the proposed actions that may directly, indirectly, or cumulatively result in exacerbating climate change within this document.

**Recommendation:** Setting criteria for SRPs will decide the thresholds for issuing future permits in the planning area. While site-specific NEPA analyses will be required for each permit, BLM will likely tier to the programmatic EA for some of the impacts analysis at the programmatic level. However, BLM may only tier to the programmatic EA if the analysis is detailed enough for the type of action to show that BLM took the requisite hard look. We strongly recommend that BLM perform a detailed evaluation of the impacts to natural and cultural resources, including specific monument objects, and the impacts to other visitors from the types of events and associated uses that groups will likely apply for SRPs in the monument over the next 20 years.

## **II. BLM Must Prioritize the Protection of Monument Objects**

With the designation of the GSENM, BLM was given a new mandate for management of these lands to “protect[] the objects” identified in Proclamation 6920 and to do so by preserving the primitive, frontier state of the landscape as the most important aspect of the monument. Because of its ecological and cultural significance, which merited designation as a national monument and inclusion in the National Landscape Conservation System (NLCS), the monument requires different management from other BLM lands. The overriding objective of the monument is the permanent conservation of its natural and cultural resources as described in the Proclamation. Management must place priority on conserving, protecting and restoring the natural and cultural values of this landscape, and must identify and restrict those uses of the land that are secondary to that objective.

The proclamation establishing the monument identifies the myriad special attributes that earned the Monument designation, and are to be protected as “objects of interest.” The monument is to remain a remote and undeveloped place where “nature shapes human endeavors,” and not the other way around. As provided by the Monument Management Plan (MMP), BLM’s first priority is to safeguard its remote, undeveloped frontier character. MMP at 5. Second, BLM will encourage opportunities for scientific study. *Id.*

The Proclamation for the Grand Staircase-Escalante National Monument does not include recreation as one of the purposes of the Monument; however, BLM did address this in the overall vision for the monument in the MMP:

**While interpretation and recreation will be accommodated, and in some areas developed, the intention of these management activities will be to contribute to the protection and understanding of the Monument resources.** Developed recreational and interpretive sites will be limited to small areas of the Monument. At these sites visitors can experience, and come to better understand, the scientific resources of the Monument and the process and importance of scientific research in improving our knowledge of natural systems. This will be accomplished without causing serious impacts to the resources themselves. Undeveloped recreation will be accommodated as long as no significant impacts to Monument resource will occur. **Limits on large groups, commercial uses, and even limits on overall numbers of individuals will be**

**used when needed to prevent impacts to Monument resources.** MMP at 5 (emphasis added).

Thus, it is clear from the language of the Proclamation as well as the Monument Management Plan that management of large, organized or commercial groups is not the primary or secondary purpose of the monument. While such use may be accommodated, BLM should be wary of allowing such uses where there may be a likelihood of conflict with the primary purposes of the monument.

Additionally, the Proclamation also makes it clear that “[r]emoteness, limited travel corridors and low visitation have all helped to preserve intact the monument's important ecological values.” Thus, while visitors can experience these sites and landscapes of the GSENM, high visitor use levels, motorized vehicle use, and other recreational uses should be restricted so as to not cause harm to the monument objects and values expressed in the Proclamation.

Secretary of Interior Salazar recently signed Secretarial Order 3308 declaring, among other things, that BLM must ensure that the objects and values for which an NLCS unit is designated will be prioritized over other multiple uses if those uses conflict with those values.

The BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values. If consistent with such protection, appropriate multiple uses may be allowed, consistent with the applicable law and the relevant designations under which the components were established.

This reiterates and emphasizes BLM’s own policy guidance on this subject as set forth in Instruction Memorandum (IM) No. 2009-215.

Recreational use can be extremely damaging to soils, wildlife, cultural resources, and the experience of other users who are looking for a quiet and remote setting as described by the Proclamation. BLM should inventory the monument objects in the areas to be affected by the EA and set appropriate criteria and terms applicable to each SRP that ensures the protection of the objects, and “the remote and undeveloped character” of the monument before allowing SRPs to be issued for any particular area in the GSENM. In addition to the Proclamation, BLM may also find the document entitled “List of Historic and Scientific Objects of Interest” helpful in this task (attached).

**Recommendation:** The agency must, take precautions protect the identified monument objects at the expense of a non-prioritized use, and specifically a use that was not included in the Proclamation. It should be explicit in the EA that the monument is to be managed in its primitive, frontier state, which includes a sense of remoteness and limited travel corridors. The document should also include an inventory of objects found in the areas proposed for potential SRP use, with specific criteria and strong terms and conditions for issuing SRPs within the monument.

### **III. BLM Must Comply with Secretarial Order 3310**

BLM must comply with Secretarial Order No. 3310, issued December 22, 2010, which affirms that the protection of lands with wilderness characteristics is a high priority for BLM and an integral part of the agency's mission. Secretarial Order No. 3310 reaffirms the importance of wilderness quality lands to preserve and protect a variety of critical values, including historic and cultural resources, remote recreational experiences such as hiking, hunting, and fishing, opportunities for solitude and quiet reflection, the chance to observe wildlife in a natural setting, and a healthy ecosystem for the benefit of the planet.

The Order specifically "directs BLM to protect wilderness characteristics through land use planning and *project-level decisions . . .*" Sec. Order No. 3310 § 1 (emphasis added). And, the Secretarial Order requires BLM to submit a report to the Secretary within six months that "describes the BLM's plan for considering wilderness characteristics in existing land use plans consistent with this Order . . ." Sec. Order § 5.e (emphasis added).

Importantly, the Order requires that BLM analyze project-level management decisions in accordance with the Secretarial Order, in order to preserve the agency's discretion to protect wilderness characteristics through subsequent land use planning. Sec. Order No. 3310 § 5.a. BLM is directed to develop policy "guidance" to accompany the Secretarial Order. Sec. Order No. 3310 § 5.d.(3). To that end, BLM has made available for public review, its draft guidance, "Draft Manual 6300-2 - Consideration Of Lands With Wilderness Characteristics In The Land Use Planning Process." Available on line at:

<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=117194>

BLM's Draft Wilderness Characteristics Manual addresses procedures for considering proposed projects in areas not yet analyzed consistent with the new wild lands policy. Draft Manual 6300-2, § .2. Pursuant to the draft wilderness characteristics manual, a new wilderness characteristics inventory would not be required only if the proposal is in conformance with an existing land use plan and the BLM manager makes an initial determination that wilderness characteristics "are clearly lacking" in the proposed project area. Lands clearly lacking in wilderness character are described as those that have "extensive surface disturbance and/or do not meet the size criterion of 5,000 acres or any of the size exceptions." *Id.* at § .21. It is critical to note that such determinations cannot be made based on the more discretionary criteria of opportunities for solitude or primitive, unconfined recreation.

Finally, the BLM's Draft Wilderness Characteristics Manual notes that where an inventory identifies lands with wilderness character, but "BLM has not completed a land use plan process that addresses those lands in a manner consistent with Secretary's Order 3310 and this policy, the BLM shall evaluate whether closures or restrictions of areas and/or routes under 43 CFR Subparts 8341 ad 8364 are warranted to implement this policy and preserve the BLM's discretion to protect wilderness characteristics through subsequent land use planning. *Id* at § .25 (emphasis added).

**Recommendation:** BLM must comply with Sec. Order 3310 in this programmatic EA for SRPs. The MMP was completed prior to the issuance of Sec. Order No. 3310 and the MMP's treatment

of wilderness character lands has not yet been determined to be consistent with the Secretarial Order. Thus, BLM must make a determination that the lands included in this programmatic EA are “clearly lacking” in wilderness characteristics based on “extensive surface disturbance and/or do not meet the size criterion” or defer this decision until such time as such a determination has been made, or until BLM inventories the area in accordance with BLM’s forthcoming guidance and amends the MMP as appropriate.

#### **IV. BLM’s Actions Must Be Consistent with the Monument Management Plan**

FLPMA requires that BLM manage areas pursuant to land use plans, such that once a resource management plan is completed, FLPMA requires that “all future resource management authorizations and actions . . . and subsequent more detailed or specific planning shall conform to the approved plan.” 43 C.F.R. § 1610.5-3. The FLPMA regulations further define “conformity” to mean “that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.” 43 C.F.R. § 1601.0-5(b).<sup>1</sup> The following are specific directives and prescriptions in the Monument Management Plan (MMP) that contain obligations for the management of SRPs and recommendations for complying with those duties:

##### **A. No competitive events are allowed in the monument**

The MMP has a strict prohibition on competitive events in the monument. MMP at 36. Regulations for SRPs (43 C.F.R. § 2932.5) and the BLM Handbook on Recreation Permit Administration (H-2930-1) define competitive use as follows:

Competitive use means any organized, sanctioned, or structured use, event, or activity on public land in which two or more contestants compete and either of the following elements apply:

1. Participants register, enter, or complete an application for the event; or
2. A predetermined course or area is designated.

One or more individuals contesting an established record such as speed or endurance is also considered to be a competitive use.

Examples of competitive events include off-highway vehicle races, horse endurance rides, mountain bike races, rodeos, poker runs, orienteering, land speed records, and Eco-Challenge events.

The EA should make it explicit that no competitive event will be authorized in the monument.

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<sup>1</sup> In *Norton v. SUWA*, the Supreme Court elaborated on these two obligations: The statutory directive that BLM manage “in accordance with” land use plans, and the regulatory requirement that authorizations and actions “conform to” those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan. Unless and until the plan is amended, such actions can be set aside as contrary to law pursuant to 5 U.S.C. § 706(2). 542 U.S. 55 at 69.

B. All other special permitted events are to be managed by the most restrictive zone the event encounters

The MMP unequivocally requires that specially permitted events be in accordance with the “requirements of the most restrictive zone that the event encounters.”

C. Management Zones criteria must inform SRP decisions for the various zones.

The four management zones in the monument were designed to emphasize various aspects of the monument and direct visitation appropriately so that uses neither conflict with or harm monument objects and values nor impair the enjoyment of other users. As a general rule, most visitors and users of SRPs should be directed to the Frontcountry Zone first, then the Passage Zone as a secondary option. However, BLM must “avoid directing or encouraging further increases in vistiation” to the the Passage Zone. MMP at 9. Thus, BLM must, as part of this programmatic EA, disclose quantitative data on the level of visitation that was present in February, 2000, at the time the MMP was issued, and ensure that any SRP use in the Passage Zone does not result in increased visitation. The Outback and Primitive Zones are both designed to provide a more undeveloped, primitive, and self-directed experience and thus are inappropriate for most SRPs, which are issued to accommodate large, organized groups. BLM should set criteria accordingly for each visitor experience as provided in the MMP.

1. *Camping while engaged in an event requiring a Special Recreation Permit should be restricted*

The MMP restricts camping to developed campgrounds or designated primitive camping areas in the Passage Zone. MMP at 35. However, this did not contemplate the type of large recreational use that usually require SRPs. BLM should set criteria and terms for group size and length of stay for groups that plan on camping. Under no circumstances should large groups be able to monopolize the use of a campground or area at the expense of other users of the monument.

2. *Group size must be expressly restricted according to the MMP*

Pursuant to the MMP, there should be no group in the Passage or Outback Zones over 25 people. MMP at 39. The MMP does allow for a permit for more people to be considered with the appropriate NEPA analysis. However, limits should be set on the amount of people allowed and the places in which groups larger than 25 people will be allowed in this EA as this is clearly the exception to the rule. Sanitation, trash, possibility for conflicts to other users, and other concerns are amplified as more people are permitted. This is especially true in a place that stresses remoteness and low visitation as part of the experience of the monument.

The limitation for group size in the Primitive Zone is 12 people and 12 pack animals. *Id.* It should also be clear that if the event calling for the permit will *foreseeably reach* in to the Primitive Zone of the monument, there can never be more than 12 people and 12 pack animals allowed. *Id.*

**Recommendation:** BLM must comply with the MMP. Thus, no competitive events must be allowed and other events must comply with the management criteria for the appropriate zone. The management zones set forth in the MMP must guide the issuance of SRPs in the monument. SRPs are most appropriate in the Frontcountry and possibly the Passage Zones (when managed in order to avoid encouraging increases in visitation); SRPs are inappropriate in the Outback and Primitive Zones.

## V. BLM Must Follow Directives in BLM Policy for SRPs

BLM regulations and policy, including 43 C.F.R. § 2930, BLM Manual 2930, Handbook H-2930-1, and IMs 2011-019 and 2011-041, provide the agency with direction on authorizing and administering SRPs. Directives in these regulations and policies require, among other things, operating plans with detailed information, permit stipulations, bonding, minimum fees and performance evaluations. While these requirements are a good starting point, BLM should use its discretion in drafting this programmatic EA to go beyond the minimum and set criteria, terms, and stipulations that will ensure to the protection of the monument objects and values.

BLM recently issued Instruction Memorandum (IM) 2011-019 for the administration of special recreation permits. This guidance was issued in response to an event that was streamlined through the process, not well planned, and with little oversight, resulting in the death of eight people. Due to the nature of these types of large group events, it is critical that BLM set the right criteria up front for the safety of those involved and to protect the natural and cultural resources—this is especially true in a remote and often-unforgiving landscape like the Grand Staircase-Escalante National Monument.

IM 2011-019 makes several new adjustments to the previous policies on SRPs. One of the most important changes is the agency's obligation to deny any SRP if the field office cannot guarantee that every step of the permit can be properly administered. BLM has to make a determination for every permit that "BLM has the capacity to properly administer the permit." IM 2011-019. Thus, even though this programmatic EA can provide standard criteria for a determination of the types of permits to consider, BLM must still document each step of the process for each permit and make an official determination as to whether the agency has the capacity to process, administer, and ensure that all of the terms and conditions of the permit is fulfilled, including, but not limited to providing law enforcement and other staff on hand to monitor the event and ensuring that the area has been restored after the use.

Additionally, all SRPs must contain provisions for the national minimum standards set by IM 2011-041 for adjustment to fees. These provisions take effect March 1, 2011 and include the following:

- The minimum annual SRP fee will increase \$5, to \$100.
- The minimum assigned site fee will increase \$10, to \$200.
- The "per person per day" fee for competitive events and organized groups will remain \$5 per day.

**Recommendation:** BLM is bound by regulations and policies for authorizing and administering SRPs. These directives and guidelines should be the starting point for criteria, terms, stipulations,

and fees in developing a programmatic EA for the planning area. However, BLM should go beyond these to apply additional restrictions for SRPs in order to protect the monument objects and resources.

## **VI. BLM Should Set Strong Mandatory Criteria and Terms for SRP**

From the obligations set out in the sections above, we strongly recommend BLM to consider including, as a minimum, the following criteria and terms as part of the programmatic EA:

### **A. BLM should propose mandatory criteria for evaluating each permit**

BLM has the opportunity to propose a system by which each SRP is evaluated for a determination of whether the use is appropriate or not. This not only makes the BLM's job of processing these applications standardized and easier, it also gives the applicant an expectation of how the application should be structured.

As a baseline, BLM regulations require the agency to apply the following criteria to SRPs:

- (a) Conformance with laws and land use plans;
- (b) Public safety,
- (c) Conflicts with other uses,
- (d) Resource protection,
- (e) The public interest served,
- (f) Whether in the past you complied with the terms of your permit or other authorization from BLM and other agencies, and
- (g) Such other information that BLM finds appropriate.

43 C.F.R. § 2932.26

The following are comments and recommendations on what should be included in the RMP as well as a suggested methodology for processing SRP applications:

#### *1. Evaluation factors that should be considered before an SRP is issued*

Due to the nature of SRPs, BLM can set evaluation criteria for all permits across the board in order to better anticipate challenges that may arise from an increase in conflicts stemming from these permits. This approach allows BLM more of a rational basis and control of groups requesting permits, whether anticipated or not. This also allows the agency with the discretion to grant the permit based on these factors. We recommend each of the following criteria be evaluated and ranked before any SRP is issued:<sup>2</sup>

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<sup>2</sup> A similar approach was recently proposed by Vermilion Cliffs National Monument in a draft programmatic EA for commercial motorized SRPs in the monument and surrounding areas. See Environmental Assessment DOI-BLM-AZ-A020-2010-0001-EA, available at:

<http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/nepa/projects/strip/10.Par.6591.File.dat/AZ-A020-2010-0001-EA.pdf>

Criteria	Permit More Likely	Permit Less Likely	Deny as proposed
<b>Is there potential for harm of listed monument objects in the area?</b>	No, the area does not contain monument objects or there is no chance of harm	Uncertain of the occurrence of monument objects in the area or the chances of harm	Yes, the activity will almost certainly have some harmful impact on monument objects
<b>Does the event occur within the Frontcountry or Passage Zones?</b>	Yes. The activity will be contained within the Frontcountry Zone, or secondarily in the Passage Zone.	Yes, but it is foreseeable that the activity will extend into the Outback or Primitive Zones.	No. The activity will primarily occur within the Outback or Primitive Zones.
<b>If this is an event involving motorized vehicles, are all vehicles street-legal?</b>	Yes, all vehicles are street-legal and all participants have been informed that any vehicles that are not street-legal are subject to prosecution	There is a possibility that some of the vehicles will not be compliant to be street-legal and the applicant has not provided adequate assurances that all vehicles will be street-legal	No, this event involves some vehicles that are not street-legal
<b>Is the activity one that minimizes conflicts with other users?</b>	Yes, there is a very small chance of conflict with other users	Conflict may occur because of the time of year, size of the group, type of event or other factor	No, conflict will likely occur among users in the area
<b>Are the routes to be used located to prevent impairment of wilderness quality or suitability?</b>	Yes, the routes are located away from Wilderness Study Areas or lands maintained for wilderness character so as not to impair wilderness quality or suitability	Routes may not have a direct impact on the wilderness resource, but have not necessarily been located to minimize damage.	No, routes will likely impair wilderness quality and/or suitability due to the continuous impact of the activity and proximity to the wilderness area or lands maintained for wilderness character
<b>Ability of soils and vegetation to recover from impacts?</b>	Yes. Site and associated features demonstrate resilience and resistance to anticipated impacts	Moderate. Site and associated features demonstrate some ability to resist/recover from impacts	No. Site and associated features demonstrate limited ability to resist/recover from impacts
<b>Contribution to climate change?</b>	Low. GHG emissions, creation of dust, and other contributing factors to climate change will be insignificant relative to other activities occurring in the area	Moderate. GHG emissions, creation of dust, and other contributing factors to climate change will be notable relative to other activities occurring in the area	High. GHG emissions, creation of dust, and other contributing factors to climate change will be substantial relative to other activities occurring in the area

<b>Exclusive use of the area/conflicts with other users?</b>	No, the proposed activity will not require the exclusive use of the area and/or conflicts with other users will be minimal.	Moderate. The activity will likely conflict with other users' experiences in the short term as a dominant use, even if not the exclusive use of the area.	Yes, the proposed activity will require the exclusive use of the area at the expense of other users
<b>Duration of use?</b>	Short. 1 day or less.	Moderate. 2 to 4 days.	Long. More than 4 days.
<b>Number of vehicles used for the event?</b>	Low. 2 or less vehicles.	Moderate. 3 to 6 vehicles.	High. More than 6 vehicles.
<b>Propensity of the type of activity to cause damage?</b>	Low. Activity is one that commonly has little to no impact to resources in the area.	Moderate. Activity is one that tends to have some short term impacts to resources in the area.	High. Activity commonly has impacts on the resources of the area.
<b>Competitive event?</b>	No.		Yes. Competitive events are prohibited by the MMP.
<b>Mechanical equipment required?</b>	No. No vehicles or other mechanized equipment is required in support of the proposed activity	Moderate. Some vehicles or mechanized equipment is required in support of the proposed activity.	High. Vehicles or other mechanized equipment is required in support of the proposed activity
<b>Monitoring and inspection required?</b>	BLM can devote adequate resources and personnel for the enforcement of the proposed activity throughout the duration of the permit per BLM H-2930-1. Issuance of permit will not affect workload measures.	BLM has relatively little resources or personnel to devote to enforcement of the proposed activity and can only provide partial enforcement and will impact BLM workload measures.	No resources or personal to devote to enforcement of the proposed activity. The BLM will need to cancel or alter workloads measures to monitor the permit.
<b>Past violation of terms or conditions by applicant?</b>	No. The applicant has not violated the law, policies or guidance, or the terms of prior permits issued with respect to the nature of the proposed activity.	The applicant has not violated the law or terms of an SRP, but has received a warning or informal reprimand in a review of the application after the event occurred.	Yes. The applicant, on at least one occasion, has violated the law, policies and guidance, or the terms of prior permits issued with respect to the nature of the proposed activity.
<b>Additional facilities</b>	No. No additional	Yes, some additional	Yes, major additional

<b>needed?</b>	facilities or facility maintenance are needed throughout the duration of the proposed activity.	facilities and/or additional facility maintenance are needed for the proposed activity.	facilities and/or additional facility maintenance are needed for the proposed activity.
<b>Capacity of sites and areas to withstand repeated use?</b>	High. The proposed area has much capacity for such use and is able to withstand a large amount of repeated use	Moderate. The proposed area has an average capacity for such use and is able to withstand a medium amount of repeated use	Low. The proposed area has a low capacity for such use and/or is unable to withstand repeated use
<b>Does BLM have the capacity to fulfill, or complete, all the necessary steps of a use authorization?</b>	Yes. BLM has enough resources allocated to ensure the completion of every step of the use authorization.		No. BLM does not have enough money, staff, time, or other resources to fully complete every step of the use authorization.
<b>Has the applicant submitted all applicable fees with the application, including national minimum fees and any additional fees required to administer the permit?</b>	Yes. BLM has collected all fees required for the administration of the permit.	No. All or some of the fees have not been collected.	No. Applicant has not submitted fees and does not intend to.

#### B. BLM should propose standard terms and conditions to apply to each permit

The terms of the permits are another very important management tool that BLM should use to ensure that the proposed activity stays in line with the policies and rules of the Monument. Once the decision is made to issue a SRP, BLM should require that each permit contain strict and mandatory terms for the applicant. Terms that should apply include the following:

- All appropriate fees are paid prior to the proposed activity
- Compliance with all Federal law, policy, and guidance
- Compliance with existing land use plan decisions
- Minimum guide to participant ratio
- Seasonal restrictions
- Performance standards for specific uses
- No harassment of wildlife (slow down or stop if wildlife in the area)
- Yield to other users
- Abide by tread lightly/leave no trace standards
- Wash all vehicles before the event to help prevent the spread of non-native and invasive species

- Minimum number of permits per year for uses in certain areas (e.g. permits can be issued by a lottery system)
- Mitigation standards set
- Reclamation of the area if necessary
- All camps would be located at least 200 feet from any known paleontological or archaeological sites, including, but not limited to trackways or fossilized remains, prehistoric camps, rock shelters, caves, and historic buildings.
- All existing camps intended for SRP use would be inventoried for paleontological or cultural resource values and closed if sensitive sites are being impacted either by current SRP users, or members of the general public.

Strict enforcement measures and penalties should be prescribed for breach of the terms of the SRP, including permit revocation and prosecution if the noncompliant activity is illegal. We also recommend that BLM set forth an annual performance evaluation process of the permittee's compliance with the terms and general performance.<sup>3</sup>

## **Conclusion**

We are encouraged that BLM is taking a proactive approach to management of special recreation activities in the monument and look forward to working with BLM throughout this process to find the right criteria, terms, and conditions to help address impacts from group recreational uses and events. Please contact us with any questions you may have.

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<sup>3</sup> One example of a performance evaluation process for SRPs can be found in Alaska BLM SRP Application Booklet (2008) at 13-14, available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/rec/rec\\_pdffs.Par.61619.File.dat/SRP-2008.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/rec/rec_pdffs.Par.61619.File.dat/SRP-2008.pdf)

# APPENDIX 14 –

## Evaluation Factors – Commercial, Competitive and Organized Group SRPs (Outside of Special Areas<sup>1</sup>)

### Sensitivity of the Site and associated features to Expected Uses and Impacts

#### -Soils and Vegetation

- Low – Site and associated features demonstrate resilience and resistance to anticipated
- Moderate – Site and associated features demonstrate some ability to resist/recover from impacts
- High – Site and associated features demonstrate limited ability to resist/recover from impacts

#### -Associated Features (such as cultural, paleontological, visual, wildlife resources)

- None – No associated features
- Moderate – Some associated features present, existing protection is adequate
- High – Resource conflict exists at the site

### Potential Environmental Effects

Low	Effects of a temporary nature and surface disturbance of less than 1 acre
Moderate	Effects lasting less than one year, surface disturbance less than 5 acres
High	Effects lasting more than one year, surface disturbance more than 5 acres

### Size of Area

Small	< 5 acres
Medium	5 to 40 acres
Large	> 40 acres

### Exclusive Use Area

No	No exclusive use of any area will be required
Yes	An area of exclusive use will be required to support the permitted activity

### Duration of Use

Short	One day or less
Moderate	Two to six days
Long	> six days

### Anticipated Number of Participants/Vehicles

Low	<50 people	<25 vehicles
Medium	50 to 100 people	25 to 50 vehicles
High	>100 people	>50 vehicles

### Competitive Event

- Y The event or activity is competitive in nature
- N The event or activity is non-competitive

### Mechanical Equipment Required

- Y Vehicles or other mechanized equipment required in support of activity
- N No vehicles or other mechanized equipment required.

### BLM Monitoring and Inspection Requirements

<sup>1</sup> Special Areas are areas designated by Congress, the Secretary of the Interior, or BLM State Director where permits and fees may be required.

None	No significant pre or post permit oversight activities required
Low	Pre or post permit activities require <8 hours BLM oversight
High	Pre or post permit activities require >8 hours BLM oversight

### Permit Classification

Evaluation Factors	Permit Class			
	I	II	III*	IV*
Soils and Veg.	Low	Low/Moderate	Moderate	High
Assoc. Features	None	None/Moderate	Moderate	High
Env. Effects	Low	Low/Moderate	Moderate	High
Size	Small	Medium	Medium	Large
Exclusive Use	No	No	No	Yes
Duration	Short	Short/Moderate	Moderate	Long
Participants	Low	Low/Medium	Medium	High
Competitive	No	No	Yes	Yes
Mech. Equip .	No	Y or N	Y	Y
Monitoring and Inspection	None	None/Low	Low	High
Examples	Group Camping, Guided Hunting, Organized Groups, Scout Camporees	Commercial River Rafting, Fat Tire Bike Fest, Van & Bus Tours on System Roads	OHV Tours, ATV Jamboree, Non-Motorized Competitive Events	Festivals, Motorized Competitive Events,

\* - Class III and IV events are more likely to require cost recovery due to the probability of these events needing more than 50 hours of BLM staff time for permit administration.

### Permit Types Allowed by ROS Class

ROS Class or SRMA/ERMA	Special Recreation Permit Class Allowed			
	I	II	III	IV
Primitive	Y	Y or N	N	N
Semi-Primitive Non Motorized	Y	Y or N	Y or N	N
Semi-Primitive Motorized	Y	Y	Y	N (Exceptions for travel through SPM on linear features)
Roaded Natural	Y	Y	Y	Y
Rural	Y	Y	Y	Y

### Permit Types Allowed by SRMA

*(Objectives and prescriptions in the Alternatives further define the allowability of SRPs in each SRMA)*

SRMA/ERMA	Special Recreation Permit Class Allowed			
	I	II	III	IV
Desolation Canyon	Y	Y	N	N
Cleveland Lloyd Dinosaur Quarry	Y	Y	N	N
San Rafael Swell	Y	Y	Y	Y
Labyrinth Canyon	Y	Y	Y	N
Nine Mile Canyon*	Y	Y	N	N

Price ERMA	Y	Y	Y	Y
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\*Under Alternatives where designated as an SRMA