

BLM REPORT IN RESPONSE TO  
SECRETARIAL MEMORANDUM ON IMPROVING PLANNING AND NEPA  
PROCESSES AND SECRETARIAL ORDER 3355

September 27, 2017

The Bureau of Land Management (BLM) has developed this Report in response to the March 27, 2017 Memorandum from the Secretary of the Interior on improving the BLM's resource management planning and *National Environmental Policy Act* (NEPA) review processes. This Report also implements the direction in Secretarial Order 3355, "Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, 'Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.'" (August 31, 2017)

This Report and its accompanying recommendations were developed by a team of BLM subject matter experts. The Report incorporates significant input received from a variety of stakeholders and subject matter experts from other federal agencies, state and local governments, American Indian tribes, and the general public. The recommendations cover a spectrum of approaches to improve the BLM's resource management planning and NEPA processes, including compliance with other statutes (e.g., the *Endangered Species Act* and the *National Historic Preservation Act*) that are often addressed concurrently and discussed in resource management plans and NEPA documents. The goals of the recommendations are to demonstrate greater responsiveness to local needs, achieve cost and time savings, and reduce litigation risk, while continuing to fulfill the BLM's resource stewardship responsibilities.

While many of the recommendations in this Report can be implemented through changes in policy and internal business practices, other recommendations would require regulatory or legislative changes. The BLM believes that, in whole or in part, the recommendations contained in this Report will:

- Expedite the NEPA process by exploring opportunities to establish new categorical exclusions, and modify or clarify the scope of existing Categorical Exclusions (CX);
- Improve coordination with our state, local, and tribal governmental partners by updating and clarifying guidance on the BLM's coordination and consistency requirements under the *Federal Land Policy and Management Act* (FLPMA);
- Improve NEPA compliance by revising BLM policies and guidance to promote: tiering to related NEPA analyses that have already been prepared; conducting analyses that focus predominantly on the resource issues central to making a decision; and engaging external stakeholders earlier in the process.

- Request that the Council on Environmental Quality (CEQ) revise its NEPA procedures to facilitate increased use of State and Tribal documents that followed a process that parallels the requirements of NEPA;
- Promote effective use of analog and spatial data and technology through such measures as: developing robust data standards; strengthening the Bureau's ability to use and share data; modernizing the Bureau's infrastructure and geospatial platform; and improving the internal and external collaborative capabilities of BLM systems of record such as ePlanning;
- Enhance coordination and cooperation with other federal agencies through outreach early and often throughout the planning process;
- Improve land use planning by revising policies and guidance related to processes such as resource inventories, administrative designations, plan monitoring, and plan evaluation and
- Streamline internal business processes through such mechanisms as alternative staffing models, enhanced use of contracting (including improved NEPA contract evaluation protocols and guidance), and training.

The BLM will continue to engage with other federal agencies, state, local, and tribal government partners, and the public during the implementation of recommendations in this Report as appropriate and in compliance with FLPMA and NEPA.

#### I. Background/Need for Report

The BLM manages approximately 245 million acres of public land and 700 million acres of subsurface federal mineral estate. These public lands and minerals are integral to the lives and livelihoods of communities and families across the nation. The BLM plans for a wide variety of activities on the public lands in compliance with FLPMA and other applicable laws. More than 160 Resource Management Plans (RMPs) establish desired outcomes for and guide the use of the public lands. These RMPs serve as foundational documents with which all authorized uses must conform.

The BLM authorizes uses for: mineral development such as coal leases, and oil and gas leases and drilling permits; for infrastructure projects, such as rights-of-way for renewable energy generation and transmission, and for transportation; livestock grazing permits; special recreation permits; and other uses. These authorizations are supported by the annual completion of more than 5,000 NEPA documents. The BLM's success in managing the public lands depends on utilizing timely resource management planning and environmental review processes that result in well-informed RMP and project authorization decisions.<sup>1</sup>

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<sup>1</sup> Other environmental review processes that may be required prior to a project authorization include, Section 7 of the *Endangered Species Act*, Section 106 of the *National Historic Preservation Act*, and Section 404 of the *Clean Water Act*.

For many years, local and state governments, American Indian tribes and the general public have raised concerns about the significant costs and delays that can be associated with project and **resource management planning decisions, with such delays potentially taking away from BLM’s** ability to complete important work on the ground. On March 27, 2017 as a result of the President signing H.J. Resolution 44, which nullified the December 12, 2016 revisions to the regulations governing BLM land use planning (43 CFR 1601 and 43 CFR 1610), the Secretary of the Interior directed the BLM to identify and recommend results-oriented improvements to its land use planning and NEPA processes<sup>2</sup>. The Secretary specifically highlighted the need for effective, efficient and transparent planning and NEPA processes that take less time, cost less money, and are more responsive to local needs. To achieve these objectives, the Secretary directed the BLM to identify solutions that meet the following criteria:

1. Finding better ways to incorporate and partner with state planning efforts;
2. Reducing duplicative and disproportionate analyses;
3. Considering more user-friendly representation of the planning process so stakeholders can easily determine status;
4. Fostering greater transparency in the NEPA process, including proper accounting of timeframes, delays, and financial costs of NEPA analyses;
5. Seeking opportunities to avoid delays caused by appeals and litigation;
6. Building trust with our neighbors through better integration of the needs of state and local governments, tribal partners, and other stakeholders; and
7. Developing and implementing efforts to “right-size” environmental documents instead of defaulting to preparing an Environmental Impact Statement (EIS) in circumstances when such a document is not absolutely needed.

On August 31, 2017, the Deputy Secretary issued Secretarial Order 3355, which provides **direction to improve and streamline the Department’s NEPA and infrastructure permitting** processes.<sup>3</sup> In addition to requiring DOI agencies to consider general ways to expedite NEPA compliance, this Order sets specific time and page limits for EISs and asks agencies to propose similar limits for Environmental Assessments (EA). The Order also requires agencies to consider integrating into its NEPA processes the best management practices established through the *Fixing America’s Surface Transportation Act* (FAST Act) and measures outlined in E.O. 13807. This Report responds to both the March 27, 2017 Secretarial memo and Secretarial Order 3355; with Appendix C providing specific recommendations to address the directives in Secretarial Order 3355.

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<sup>2</sup> Secretarial Memorandum, *Improving the Bureau of Land Management’s Planning and National Environmental Policy Act Processes* (March 27, 2017) (the Secretarial Memo).

<sup>3</sup> Secretarial Order 3355, *Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”* (August 31, 2017).

The BLM used criteria from the above referenced Secretarial Memo and Secretarial Order to prepare this Report, which provides recommendations to improve the planning and NEPA processes. The Report also addresses recommendations being developed concurrently by the BLM and the Office of Surface Mining Reclamation and Enforcement (OSMRE) assigned to review solid and fluid mineral development in the context of NEPA analysis and planning. Given **that BLM's resource management planning and NEPA processes can be impacted** by compliance with other applicable laws and many other program-driven processes, BLM considered recommendations to a broad set of agency policies, programs and statutes involved in the planning and NEPA processes.

#### External Stakeholder Input on Streamlining Process for Collecting External Input

To help identify opportunities to streamline the land use planning and NEPA processes, the BLM sought individual input from state, local and tribal entities and the general public. This outreach effort was crucial to ensure that the BLM considered the information, views and values of those groups, which helped inform our recommendations.

The BLM received information from numerous state and local governmental officials, as well as the Western Governors Association (WGA), the National Association of Counties (NACo) and the National Association of Conservation Districts (NACD). BLM State Directors and local authorized officers conducted outreach and engagement with tribal governments, and each BLM State reviewed, summarized and submitted to the project team all tribal input regarding this effort. In addition, the BLM solicited public input over a 21-day period to collect information from all members of the public.

#### Summary of Local and State governments and Tribal Input

The BLM received input from dozens of state and local governments and tribes. Reaction has **generally been positive to the BLM's effort to identify opportunities to improve its planning and NEPA processes.** These governmental partners have expressed particular interest in ensuring effective coordination in the planning and NEPA processes in line with the requirement under section 202 of FLPMA, 43 U.S.C. 1712(c)(9) to coordinate during the planning process with other Federal agencies, State, local and Tribal governments. This includes a desire to see state and local plans and tribal concerns prioritized when the BLM establishes its preferred alternative(s). Throughout this process State, local, and Tribal governments have expressed a desire to leverage their unique expertise in the NEPA process and also suggested that the BLM establish liaison positions within their organizations in order to ensure effective coordination. Other recommendations from governmental partners are summarized in detail in Appendix B.

#### Summary of Public Input

The BLM also received over 1,000 recommendations from the public. Public input varied greatly in terms of themes, interests, and positions. Common ideas on reducing disproportionate and duplicative analyses included promoting plan flexibility to allow the incorporation of new data and findings, and using data from local and other federal agencies to determine baselines. Many individuals recommended focusing on identifying and involving stakeholders before planning begins, and effectively educating the general public on the NEPA process. With regard to creating transparency in the planning and NEPA processes, recommendations included making better use of social media, making meetings with stakeholders open to the public, sharing data sets that underlie any BLM decisions, writing public outreach material in plain English, and making documents easily searchable online. A summary of key public input received can be found in Appendix B.

## II. Recommendations

### Related Streamlining Efforts

Multiple efforts are currently underway that would provide direction to the BLM to improve its resource management planning and NEPA processes. Specifically, the BLM and the Office of Surface Mining Reclamation and Enforcement (OSMRE) are jointly engaged in an effort to identify inefficiencies and establish a plan of action for streamlining the Federal coal leasing and permitting processes, including associated NEPA analyses. The groups working on these internal efforts are collaborating to ensure any strategies for improvements specifically identified through the coal effort that impact the planning or NEPA process are consistent with or will be incorporated into this effort.

The Administration has also prioritized the streamlining of environmental review and permitting processes for infrastructure projects. Both Title 41 of the 2015 *Fixing America's Surface Transportation Act* (FAST Act) and E.O. 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure", set forth requirements that will allow for more efficient and effective Federal infrastructure project decisions. Certain BLM infrastructure project authorizations (e.g. rights-of-way for transmission, energy generation, and pipelines) may be subject to these statutory and policy requirements recognized in the **Administration's infrastructure efforts, including those related to early engagement with cooperating agencies; coordination to allow for the issuance of a single federal decision; and making timely decisions, with the goal of issuing authorization decisions within two years.** The BLM has therefore developed its land use planning and NEPA recommendations to be consistent with and support the initiative to expedite infrastructure permitting decisions.

### Development and Review of Recommendations

In developing this Report, the BLM utilized a group of interagency subject matter experts from within the BLM itself, the Department of the Interior, and other federal agencies, and a team of select senior BLM leaders to provide oversight and direction.

These groups considered a broad set of agency policies, programs and statutes involved in the planning and NEPA processes, which resulted in the development and consideration of hundreds of unique ideas. The BLM applied the criteria outlined in the Secretarial Memorandum and organized ideas into six areas: 1) Improving the NEPA Process, 2) Leveraging Data and Technology, 3) Expanding Coordination and External Engagement, 4) Effective Integration with Other Laws, 5) Aligning Internal Business Processes, and 6) Improving Land Use Planning. A short description of each area is below:

1. Improving the NEPA Process: NEPA requires Federal Agencies to assess the environmental effects of their proposed actions prior to making decisions. Therefore, NEPA compliance is required for all resource management planning decisions and subsequent implementation actions. See Figure 1 for the NEPA process.
2. Leveraging Data and Technology: Resource management and the underlying NEPA analysis both require utilization of readily available environmental information.
3. Expanding Coordination and External Engagement: BLM is required to engage in meaningful coordination with state, local and tribal governments in its resource management planning process and cooperate, as appropriate, with federal, state, local and tribal governments in its NEPA process.
4. Effective Integration with Other Laws: Resource management planning and other project level decisions must also comply with other environmental and cultural review requirements.
5. Aligning Internal Business Processes: Multiple program offices are often involved either directly or indirectly, as subject matter experts, in the resource management planning and NEPA processes. In addition, many levels of review within the BLM can sometimes be associated with decisions.
6. Improving Land Use Planning: Resource management planning governs actions undertaken by the BLM with regards to managing public lands. See Figure 2 and Figure 3 for the BLM planning and associated NEPA processes.

The BLM further reviewed the proposed recommendations with a focus on input supplied by local and State governments and American Indian tribes, as well as the general public. The section below provides an overview of the issues identified and recommendations to address those issues. Actions are noted as either Legislative (L) (requiring new legislation), Regulatory (R) (requiring the agency to revise its existing regulations) or Policy (P) (potentially requiring issuance of, or revision to internal policy documents). Appendix A provides a table with more details on the recommended actions, including the inefficiency or constraint that would be addressed, who has the authority to implement the action, and a timeframe for implementation of the action.

*Recommendations (see Appendix A for more detail)*

## *Improving the NEPA Process*

BLM's NEPA program is essential to ensure compliance with NEPA's statutory and regulatory requirements, as well as to help promote and improve informed decision-making and to involve the public and other stakeholders in the decision-making process. However, current NEPA compliance practice within the BLM does not consistently take advantage of opportunities to reduce the size and scale of NEPA documents. This is most notably due to underuse of existing CX and the need for new CXs to accommodate changing laws and resource conditions. CXs represent categories of actions that have been determined not to have a significant effect on the human environment and do not, absent extraordinary circumstances, require preparation of an EIS or EA. Reliance on a CX is a form of NEPA compliance, and can often expedite the issuance of a use authorization decision by a BLM line officer. In addition, the CEQ NEPA regulations, which provide for implementation of NEPA for all of the federal government, could be updated to provide more direction on the development of EAs and CXs.

As currently implemented, the NEPA process is perceived as cumbersome, lengthy, difficult to understand<sup>4</sup>. While recognizing that compliance with NEPA is required prior to BLM planning and project level decisions, it is important to minimize redundancies to ensure that projects are completed on time without incurring unnecessary costs and adding burdens that unnecessarily encumber multiple-use, constrain economic growth, and prevent job creation. Accordingly, the BLM should evaluate and disclose environmental effects in NEPA documents that are "concise, clear, and to the point" (40 CFR 1500.2(b)), while eliminating redundancy and concentrating on important issues rather than amassing needless detail. This can be accomplished most effectively by ensuring the BLM uses its NEPA compliance tools tactically as well as strategically.

The following specific action items are recommended to improve the NEPA process, with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- Clarify that certain "transactional" actions that are categorically excluded from NEPA (e.g. transfer of oil and gas leases between operators, transfers of livestock grazing permits between operators, and transfers of equipment between agencies) do not necessarily require formal NEPA documentation. (P)
- Consider whether CXs can be used for the following types of routine actions, either through establishment of a new CX or modification of an existing CX: (L or P)<sup>5</sup>

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<sup>4</sup> Recently completed EISs and related costs include: Spring Creek Lease by Application (LBA) EIS (\$320,000), and Greater Sage Grouse Mineral Withdrawal EIS (\$10M, though this number does not reflect the full cost as the EIS is not completed).

<sup>5</sup> The establishment of any categorical exclusions through policy would be in accordance with CEQ Guidance, including appropriately documenting how the class of actions described by the categorical exclusions is not expected to have significant individual or cumulative environmental effects.

- Vegetation restoration treatments for wildlife habitat, noxious weeds and invasives, post wildfire treatments, targeted livestock grazing, and hazardous fuels treatments (e.g.; implemented through stewardship contracts);
  - CXs established for use by other Federal agencies would apply to parallel similar BLM actions such as:
    - 1) implementation of forest resiliency treatments on up to 3,000 acres;<sup>6</sup>
    - 2) certain fuels management activities that do not exceed 10,000 acres;<sup>7</sup>
    - 3) aquatic and riparian habitat restoration activities.
  - Wild horse and burro gather operations;
  - Sales of excess wild horses and burros;
  - Application of population growth suppression techniques to wild horses and burros, including contraception and sterilization;
  - Euthanasia of excess wild horses and burros for which an adoption or sale demand does not exist;
  - Reclamation of older oil and gas well sites;
  - Actions related to maintaining existing and approved range improvements not currently covered by a CX;
  - Temporary continuation of current grazing management activities (e.g.; extending a grazing season by two weeks);
  - Certain types of land use plan revisions and land use plan amendments, such as small scale land disposals or acquisitions of inholdings within a monument;
  - Issuance of special recreation permits in "Special Areas"<sup>8</sup> designated for recreational use when surface disturbance would be minimal;
  - Oil and gas leasing and development actions that are categorically excluded from further NEPA consideration under the Energy Policy Act of 2005 through development of a legislative proposal;
  - Actions where federal involvement or control is minimal compared to the non-federal involvement or control such as oil and gas wells that run horizontally from private wells into adjacent federal minerals, or wells drilled into mixed ownership minerals where the federal share constitutes 50 percent or less of total minerals; and
  - Actions involving small coal actions (e.g. Exploration Licenses, certain Lease Modification Applications (LMA), Research, Development, and Demonstration (RD&D) Leases) and BLM's action of leasing federal coal.
- Require that NEPA documents supporting RMP decisions relating to oil and gas development evaluate impacts projected by the Reasonably Foreseeable Development

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<sup>6</sup> acre limit established in Agricultural Act of 2014 (Farm Bill).

<sup>7</sup> acre limit defined in HR 2936 - Resilient Federal Forests Act, HR 2613 - Fostering Opportunities for Resources and Education Spending through Timber Sales Act of 2017, and S 1731 - Forest Management Improvement Act.

<sup>8</sup> See 43 CFR 2932.5.

Scenario (RFD). Clarify that this NEPA review should be in enough detail to support the use of a subsequent Determination of NEPA Adequacy (DNA) to cover certain implementation level decisions, such as leasing decisions. (P)

- Clarify that reinstatement of a mineral lease for which NEPA analysis was previously conducted can often be supported by a DNA. (P)
- Update the NEPA handbook or otherwise provide guidance to:
  - 1) maximize opportunities for adopting other agencies' NEPA analysis, tiering from higher order NEPA analyses, and using DNAs;
  - 2) utilize joint-lead NEPA documents, consistent with SO 3355 and E.O. 13807;
  - 3) consider adaptive management in NEPA analysis to enable flexibility in implementing subsequent decisions;
  - 4) establish best practices to create a user-friendly, searchable PDF document;
  - 5) provide clarification regarding the scope of "connected actions"<sup>9</sup> under NEPA;
  - 6) provide guidance on documentation of issues considered but not further analyzed; and
  - 7) utilize an issue-based<sup>10</sup> approach to NEPA in order to appropriately eliminate issues from detailed analysis. (P)
- Provide guidance to address implementation of required page and time limits associated with EISs, in line with SO 3355, for which BLM is the lead agency and have not reached the drafting stage. (P)
- Develop a proposal to establish targeted page and time limits for the preparation of EAs. Submit proposal to the Deputy Secretary as required in SO 3355. (P)
- Establish guidance to implement recording all agency decisions in one combined Record of Decision (referred to in E.O. 13807 as "One Federal Decision,") and issuance of all Federal authorization decisions for the construction of an EIS-level project within 90 days of the issuance of a ROD in accordance with SO 3355. (P)
- Provide mandatory training for BLM employees that focusses on tools to expedite NEPA compliance, including the appropriate use of CXs and DNAs; right-sizing analyses to develop more EAs (including those that result in mitigated Findings of No Significant Impact) rather than defaulting to EISs; and using programmatic analyses to effectively cover many similar actions in one analysis to support site-specific decision-making. (P)
- Explore codifying the concept of including DNA processes in Departmental NEPA regulations to allow for their use across bureaus. (R)
- Formalize in CEQ's NEPA regulations the criteria for issue-based approach for the preparation of all EAs and EISs, which is currently outlined in BLM's NEPA handbook. Issue-based NEPA concentrates analysis on issues that are most germane to the decision-maker, namely those that are of interest to the public or otherwise central to the proposed decision, and deemphasizes analysis on secondary resources and issues. (R)

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<sup>9</sup> As defined in 40 CFR 1508.21 (a)(1)(i-iii).

<sup>10</sup> The term "issue-based approach" refers to the process by which BLM identifies and eliminates issues from detailed analysis in a NEPA document based on their significance/importance to the decision to appropriately narrow the discussion of these issues in the statement.

- Refine the criteria used to determine significant effects to facilitate clear identification of why impacts are/are not significant in a Finding of No Significant Impact (FONSI).<sup>11</sup> (P)
- Rewrite and/or clarify extraordinary circumstances.<sup>12</sup> (R)
- Request that CEQ modify its NEPA regulations to facilitate the use of state and tribal environmental documents, where adequate, to reduce duplication of analyses for partners and stakeholders. This is supported by SO 3355. (R)
- Request CEQ provide guidance on further defining "reasonably foreseeable future actions"<sup>13</sup> to address the scope of a cumulative impacts<sup>14</sup> analysis and clarifying the effects non-federal actions when determining whether federal actions have a significant impact. (P)
- Promote greater transparency and accountability by publishing total costs and associated contractor support at the conclusion of the NEPA process..

The BLM utilizes high quality information in its resource management planning and NEPA processes. While individual successes exist, widespread use of the agency's corporate document, data management, and decision support systems such as ePlanning<sup>15</sup> and eGIS<sup>16</sup> is not complete, which results in inefficiencies due to use of parallel and potentially incompatible locally-operated systems. Some of these challenges are a result of limitations to the current bandwidth of existing internal IT infrastructure. This lack of a corporate approach to document and data management across the BLM creates challenges for field staff trying to gain access to core data needed to make expedited decisions. In addition, data provided by other federal, state and local partners is not always in a format that can be easily integrated into existing systems to readily

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<sup>11</sup> "Finding of no significant impact" is defined by 40 CFR 1508.13 to mean a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

<sup>12</sup> Extraordinary circumstances include criteria in which a normally excluded action may have a significant environmental effect and therefore may not utilize a categorical exclusion to comply with NEPA. See 40 CFR 1508.4.

<sup>13</sup> As included in 40 CFR 1508.7.

<sup>14</sup> Cumulative Impacts is defined in the CEQ NEPA Implementing Regulations 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. See 40 CFR 1508.7.

<sup>15</sup> ePlanning is a web-based software application that helps BLM users to create, write, manage, and publish National Environmental Policy Act (NEPA) documents and planning documents. It also allows for the public to easily search and view these types of documents and provide comments electronically. The application includes functionality to manage the content in documents, publish the content for printing or create web formats, create and enable documents for comments, and analyze comments. See ePlanning public website: [https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do)

<sup>16</sup> eGIS provides a framework for the management of content and promotes collaboration among staff across all Programs and Offices in the Bureau of Land Management. It leverages existing geospatial investments in Desktop, Citrix, Web GIS Apps, Mobile GIS and Location Analytics by making them discoverable, accessible and integrated and provides access to a common set of base maps, including one customized from BLM National Data, simple tools, web GIS services, and geospatial data from both the Bureau and from outside sources.

inform decisions. Lastly, BLM's ability to engage and receive feedback with the public and other agencies is limited due to lack of a nimble and modern public facing website and access to tools focused on internal and external collaboration. As bandwidth constraints are addressed, opportunities exist to expand potential efficiencies of ePlanning and eGIS.

The following specific action items are recommended to better leverage data and technology with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- Collect, store, catalogue, and provide sufficient bandwidth to access core data sets common to BLM offices within a single portal to access all Bureau data. Such data sets could include, e.g., transportation networks, wetland location, and soils classifications. (P)
- Prioritize development of consistent data standards and implement data stewardship requirements for nationwide datasets used to inform planning decisions. (P)
- Prioritize inter-agency efforts now underway to identify a standard set of land health indicators<sup>17</sup>. Such indicators would support multiple uses in planning and decision-making, including development of the RMP-required “analysis of the management situation,” setting RMP goals and objectives, local-level decision-making (e.g., issuance of a grazing permit), RMP monitoring, and RMP evaluation. (P)
- Establish template data sharing agreements between other federal state, local and tribal government and BLM managed data to ensure seamless access to critical data sets for planning decisions. Utilize and incorporate more relevant local and state and tribal data such as state-generated datasets associated with state-delegated *Clean Water Act* and *Clean Air Act* activities and locally generated socio-economic data that meet established data quality standards in accordance with SO 3355.
- Improve the internal and external collaborative capabilities of ePlanning; specifically including templates for web-based RMPs and a web-based commenting tool to evaluate alternatives. In addition, enhance the system to schedule and track permit processing and other required authorizations with other Federal agencies; allow the public to receive notifications of upcoming projects; track progress of existing ones; and establish a performance accountability system for EIS-level projects in accordance with SO 3355. (P)
- Update the regulations relating to the *Mining Law of 1872* and the *Mineral Leasing Act of 1920*, and other program specific regulations to require the submission of geospatial data as part of the baseline information submitted by applicants. (R, L)

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<sup>17</sup> Land health standards describe the minimum requirements for land health and are used to develop objectives in land use plans. The regulations in 43 CFR subpart 4180 require State Directors, in consultation with Resource Advisory Councils (RACs), to develop Land Health Standards for lands within their jurisdiction. A standard set of land health indicators across BLM lands would allow for the efficient evaluation of land health and determination of current progress toward achievement of the land health standards.

- Continue the establishment of a geographic information and mapping system in accordance with the Energy Policy Act of 2005, in line with e-GIS, for oil and gas leasing geospatial data to support land use plan decisions. (P)
- Prioritize implementing best practices for minimizing redundancies in application development. (P)
- Prioritize development and use of standardized (where appropriate) integrated spatial analyses. (P)
- Prioritize development and use of standard decision support tools. (P)
- Modernize BLM web sites to be easier to access, both internally and externally. (P)

Consistent and effective coordination with governmental partners, particularly with state, local and tribal governments, is necessary to ensure that the BLM makes informed land use planning decisions that **reflect input from impacted partners. Opportunities exist to strengthen the BLM's** relationships with state, local and tribal governments through improving our coordination responsibilities mandated by FLPMA. These improvements include the development of clear policies regarding coordination with Cooperating Agencies that will ensure transparency, commitment, and sincerity and a process that balances consideration of relevant local knowledge with all available information. In addition, having the review for consistency and engagement early in the NEPA and planning processes with those most likely to be impacted by the project will minimize delays.

The following specific action items are recommended to more effectively coordinate and engage with external partners with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- **Strengthen and integrate BLM's coordination with State and local governments and their** planning efforts, pursuant to Section 202(c)(9) of FLPMA. (R), (P)
- Clarify that the Governor's consistency review of the land use planning processes should be inclusive of a consistency review of local land use plans, programs, and policies. (R), (P)
- Establish procedures for conducting outreach prior to publication of a Notice of Intent (NOI) to develop an EIS to identify and address issues early in the NEPA process, with a particular focus on outreach to impacted regulatory agencies that may affect the project outcomes. In addition, initiate cooperating agency status with State agencies no later than 60 days after receiving a complete project application package in accordance with SO 3355. (P)
- Develop national-level Memorandums of Understandings (MOUs) between the BLM and state and local partner organizations to formalize regular coordination outside of an **individual planning or project's NEPA processes, address a process for consistency** reviews of state and local plans, and consideration of local policies and programs. (P)

- Prioritize the completion of training related to BLM Manual 1780 and Handbook H-1780-1 on Improving and Sustaining BLM-Tribal Relations. (P)
- Establish guidance to make preliminary EIS alternatives available for public review, prior to formal publication of preferred alternatives in a notice of availability of the EIS. (P)
- Provide BLM with expanded exemptions under the *Freedom of Information Act* (FOIA) to protect the confidentiality of sensitive information shared by State, Local and Tribal governments, such as reburial information. These expanded exemptions would bring BLM in line with exemptions currently available to the U.S. Forest Service. (L)
- Develop a common template for RMPs in ePlanning, host RMPs electronically on the web, and ensure RMPs make ready use of GIS information to make plans easier to read and understand. (P)
- Review current *Federal Advisory Committee Act* (FACA) guidance and training, including how it addresses maximizing utilization of Resource Advisory Committees/Councils. Make changes or create new training, if necessary, to address what you can and cannot do and best practices for engaging RACs under FACA. (P)

Resource management planning and other project level decisions must also comply with other statutes that are often addressed concurrently and discussed in resource management plans and NEPA documents (e.g., the *Endangered Species Act* and the *National Historic Preservation Act*). Barriers to effective integration of the resource management planning and NEPA processes with other statutory requirements currently exist. This can result in redundant, multi-agency reviews which impact the timeline and budget of a project. For example, a multi-agency review of the same fish habitat may result in contradictory findings and guidance from regulatory agencies with jurisdiction for fish and wildlife resources, resulting in delays to RMP completion, or project-level implementation. In addition, requirements of statutes that must be followed contemporaneously with the resource management planning and NEPA processes can impact important agency resources (both budget and time) by resulting in the creation of overly lengthy documents designed more to forestall litigation than to promote informed decision-making.

The following specific action items are recommended to minimize redundancies through integration of other laws with planning and NEPA processes with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- With respect to the direction in section 201 of FLPMA, 43 U.S.C. 1711(a), to prepare and maintain an inventory of resources and their values and clarify any ongoing need to inventory for lands with wilderness characteristics. If inventories are continued, utilize a simplified GIS-based process wherever possible. (L), (R), (P)
- Ask Congress to revise the *Equal Access to Justice Act* (EAJA) to reduce or eliminate the attorney fees that can be recovered in litigation<sup>18</sup>, or provide a mechanism for agencies to

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<sup>18</sup> For Fiscal Years (FY) 2011 through 2016, BLM paid an average of \$999,663 per year in EAJA fees.

recover the costs and fees they incur for successfully defending a land use planning document, NEPA analysis and/or implementation decisions. (L), (P)

- Limit the number of FOIA requests from any one group, requiring more stringent justification for fee waivers, and increased search and redaction fees so agency can recover all of its direct costs<sup>19</sup>. (L), (R)
- Revise the 2000 MOA among USFWS, BLM, National Marine Fisheries Service (NMFS), and U.S. Forest Service (USFS), which established a general framework for a streamlined process for interagency cooperation associated with ESA consultations. This will include more effective use of conference opinions and synchronous consultation procedures and mirrored determinations between NMFS and USFWS, in such cases that a federal agency is required to consult with both Services on the same species. (P)
- Explore the potential to cease formal consultation under the ESA with the FWS or the NMFS for the adoption, revision, or amendment of a **RMP based on a “no effect”** determination made by the BLM. (L), (R), (P)
- Work with Congress on legislation or seek changes to the regulations implementing Section 7 of the ESA to provide discretion to the Federal action agency to determine whether to reinstate ESA consultation on an existing land use plan when a new species is listed or critical habitat is designated, or other reinstatement triggers currently in the regulations are tripped. (L), (R)
- Work with Congress to clarify the direction for BLM lands in Western Oregon that are currently managed under the Oregon and California Lands Act of 1937. Additionally, explore the ability of the Fish and Wildlife Service to utilize BLM modeling in recovery plans developed and implemented under the ESA for ESA listed species. (L)
- Address issues that arise with split estate mineral actions, including the establishment of an MOU with affected agencies identifying BLM as the lead for NEPA analyses for lease reinstatements and providing templates and clarity in regulation and various guidance and policy documents to focus the scope of analyses under NEPA for split estate activities. (R), (P)
- Evaluate the potential to harmonize the protest and appeal processes across all BLM programs, including the role of the Interior Board of Land Appeals (IBLA) and the Office of Hearings and Appeals (OHA). (L), (R)
- Exempt wildfire management decisions from stay during appeals. (R)
- Update the regulations for protest of a forest management decision to streamline the protest process and exempt forest management activities from the IBLA appeal process. (R)
- Amend IBLA regulations for wild horse and burro activities to shorten the appeals period from 30 days to 15 days and the time to respond to an appeal from 45 days to 30 days. (R)

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<sup>19</sup> Nearly 1,000 FOIA requests were filed with the BLM during fiscal year (FY) 2017. In FY 2016, the BLM spent approximately \$2.8M on FOIA-related costs, of which <1% (\$15,151) were collected to offset those costs.

- Explore potential options to expedite grazing administrative remedies such as:
  - 1) shorten the IBLA timeframes to appeal period to 15 days and the time to respond to an appeal to 30 days
  - 2) eliminate the Hearings Division stage and send appeals directly to IBLA, or
  - 3) eliminate the protest period for a proposed grazing decision. (L), (R)
- Amend the *Wild and Free-Roaming Horse and Burro Act of 1971* regulations to allow for decisions that are effective immediately upon issuance for operations such as remote darting for fertility control. (R)
- Broaden the current federal interagency Oil and Gas Air Quality MOU, which establishes a consistent, repeatable and mutually agreed upon process to analyze impacts to air quality from oil and gas activities on BLM lands, to cover additional BLM activities and more formally involve the states. Ensure the MOU clarifies the roles and responsibilities of the various federal and states agencies in administering the Clean Air Act. (P)
- Coordinate with the FWS to develop consistent national Migratory Bird Treaty Act (MBTA) policy to establish a consistent definition of take and application of mitigation measures for restoration, fire resiliency and timber sale activities. (P)
- Identify opportunities to modify the existing nationwide programmatic agreement under Section 106 of the National Historic Preservation Act (NHPA) and State-level protocols to identify additional smaller actions that warrant an expedited Section 106 process, especially for those actions that are categorically excluded from more detailed NEPA analysis. (P)
- Establish that activities categorically excluded from more detailed NEPA analysis are not considered federal undertakings pursuant to the NHPA. (L)

### *Aligning Internal Business Processes*

Opportunities exist to better align work processes and staffing to more nimbly address Administration priorities and expedite resource management planning and NEPA processes. For example, current redundancies exist regarding the review and analysis of certain threatened and endangered species, causing confusion and differing determinations regarding a path forward. Additionally, inefficiencies exist where RMPs must undergo multiple Washington Office (WO) reviews and briefings. Both of the previously described challenges to the way BLM currently conducts internal business can contribute to increased project cost and create delays.

The following specific action items are recommended to better align BLM and DOI business processes with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- Combine the responsibilities for implementing Section 7 of the ESA by the NMFS and the FWS into a single regulatory agency in order to avoid reaching inconsistent conclusions regarding habitat impacts during consultation. In lieu of a merger of the organizations, require participation of FWS and NMFS at all significant milestones of

plan development, including development of alternatives, and require one of the agencies to be the lead in reviewing and responding to Biological Assessments, and in preparing a single Biological Opinion when one is necessary under Section 7. (L)

- **Utilize alternate staffing models (e.g., “strike teams”) to regionalize or nationalize certain work processes focused on completing priority projects (e.g., infrastructure projects) or expeditiously addressing the need for scarce skills. Such regionalized teams could address actions such as the development or review of RMPs, fluid mineral lease applications, and geographic information systems (GIS) for all programs. (P)**
- Develop guidance to better integrate BLM and BIA work processes to support Indian mineral development. (P)
- Eliminate redundancies and streamline both the Federal Register Notice (FRN) processes and Washington Office (WO) reviews associated with resource management planning decisions. (P)
- Develop and maintain an easily understandable process flowchart for the field for preparing, reviewing, and routing Federal Register Notices accurately and efficiently. (P)
- Establish clear communication from the WO to the State Offices (SO) and further to the District/Field Office (DO/FO) on current litigation and policy issues to consider in documents. (P)
- Conduct issue-based briefings on an as needed basis (e.g., alternatives development, grazing) versus briefings at set milestones during the planning process (Draft RMP, Proposed RMP). (P)
- Establish national-level contracts to utilize third parties to reduce time and costs associated with resource management plan development and/or environmental analyses. (P)
- Establish mechanisms to utilize other agencies' existing contracting vehicles. (P)
- Bolster BLM contracting mechanisms to ensure that 1) NEPA / planning scopes of work accurately reflect the work that is needed to inform related decisions and 2) ensure that contractor performance throughout and after the contract is executed are properly evaluated by the BLM contracting officer representative and, 3) and these evaluations are used when securing subsequent projects. (P)
- Institute an annual or periodic training requirement and employee accountability mechanism for developing associated NEPA and planning competencies. (P)
- Institute a NEPA training curriculum based on roles in the NEPA process, with consideration of specialized legislation that impacts NEPA reviews (e.g., line officer, NEPA practitioner, ID Team member, project manager, Alaska National Interest Lands Conservation Act (ANILCA)). (P)
- Amend current protest and appeals regulations to require a standardized template for submission of protest/appeal that emphasizes summarization of each protest point followed by supporting rationale. (R)

- Eliminate IBLA's hard-copy requirement for delivery of case files and administrative records and require electronic recordkeeping processes. (R)
- Develop consistent procedures and leverage the use of modern technologies and capabilities for electronic recordkeeping and record delivery to readily store, sort and track documents to facilitate records management and development of administrative records. (P)

### *Improving Land Use Planning*

As part of a 2012 strategic assessment<sup>20</sup>, the BLM determined that its resource management planning process was costly<sup>21</sup>, both in terms of budget and time, and often resulted in cumbersome decisions to implement on public lands. As a result of that assessment and similar reviews, BLM has determined that its resource management planning process needs to be proactive and nimble, while focusing on working collaboratively with partners at different scales to produce highly useful decisions that readily address the rapidly changing environment and conditions. In addition, opportunities exist to strengthen the relationships with state and local governments on planning decisions through improving our coordination responsibilities mandated by FLPMA.

The following specific action items are recommended to improve the planning process with the legislative (L), regulatory (R), or policy (P) mechanism noted in parentheses for implementation of the recommendation:

- Using standardized datasets, provide comprehensive geospatially-enabled inventory of all planning designations (e.g. Areas of Critical Environmental Concern, Lands with Wilderness Characteristics, Special Recreation Management Areas) and resource allocations / allowable uses (e.g. leasing stipulations, right-of-way restrictions, and lands potentially suitable for disposal). (P)
- Explore the following options regarding the designation of Areas of Critical Environmental Concern (ACECs), as described in section 202 of FLPMA, 43 U.S.C. 1712(c)(3): (L), (R), (P)
  - 1) Separating ACEC designations from the RMP process through an amendment to FLPMA and regulatory changes.

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<sup>20</sup> Winning the Challenges of the Future: A Road Map for Success in 2016, BLM (October 2011).

<sup>21</sup> RMP revision and amendment costs vary greatly depending on the complexity of issues addressed. A recent review estimated that, since 2009, the average RMP revision requires approximately \$3.2 million in land use planning program subactivity funds. Average total costs are predicted to be in the range of \$5-\$7 million when including other program funding subactivities. Since 2009, the average RMP amendment has cost approximately \$357,000 in land use planning program subactivity funds. Average total costs for RMP amendments are estimated to be in the range of \$500,000 and \$1.2 million when including other program subactivities. Specific examples of recently-completed RMP revisions and amendments include: Eastern Interior Alaska RMP Revision and EIS (\$1.985M); National Petroleum Reserve Integrated Activity Plan and EIS (\$2.042M); TransWest Express RMP Amendment and EIS (\$3.7M); Rangeland Greater Sage Grouse RMPs/Amendments and EISs (\$66M).

- 2) Update guidance for establishing ACECs and how they interact with other protective designations under laws other than FLPMA and other administrative designations.
- Update the guidance for resource management planning to address the following:(P)
  - 1) For RMPs, include an alternative developed and/or preferred by the local Resource Advisory Committee/Council (RAC).
  - 2) establish outcomes-based goals and measureable objectives;
  - 3) exclude or restrict making implementation-level decisions in land use plans;
  - 4) institutionalize the concept of issue-based planning;
  - 5) develop more focused purpose and need statements and a standardized plan evaluation template for more targeted plan amendments or revisions.
- Define and clarify plan maintenance opportunities to accommodate small shifts in resource conditions and allocations through plan maintenance. (P)
- Establish a CX for RMP revisions and or amendments to expedite the development of RMP revisions and or amendments for which subsequent, site-specific NEPA analysis would be required (L, R, P).
- Expedite the RMP amendment process by reducing Federal Register publication requirements for noticing EA-level amendments. (R, P).
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- Develop and deliver a core curriculum of RMP training, which is focused on establishing skills for the development of appropriate planning products at key stages in the RMP process. (P)
- Establish a publicly available database or dashboard to track important milestones associated with planning and NEPA documents. (P)

### III. Next Steps

The executive summary section of this Report identifies next steps with regards to the recommendations outlined in this Report. Many of the recommendations that can be addressed through changes in policy or internal business practices may be implemented over a short time frame while the larger issues and actions are discussed and considered internally. However, the implementation timeframes for all of the recommended actions assume that each action is implemented individually. Depending on the number of actions that are ultimately directed to be implemented by the Secretary, these timeframes could lengthen considerably without additional resources.

Any action taken on recommended items identified in this Report may require additional outreach and input from stakeholders; most notably affected state, local and tribal governmental partners. In addition, any promulgation of regulations would require public notice and comment.

### V. Figures and Appendices

Figure 1: NEPA Process flowchart

Figure 2: EIS –level planning efforts flowchart: Required steps for new plans, revisions, and amendments.

Figure 3: EA level planning efforts flowchart: Required and optional planning steps

Appendix A: Detailed Summary Table of all recommendations categorized by themes:

- 1) Improving the NEPA Process,
- 2) Leveraging Data and Technology,
- 3) Expanding Coordination and External Engagement,
- 4) Effective Integration with Other Laws,
- 5) Aligning Internal Business Processes, and
- 6) Improving Land Use Planning

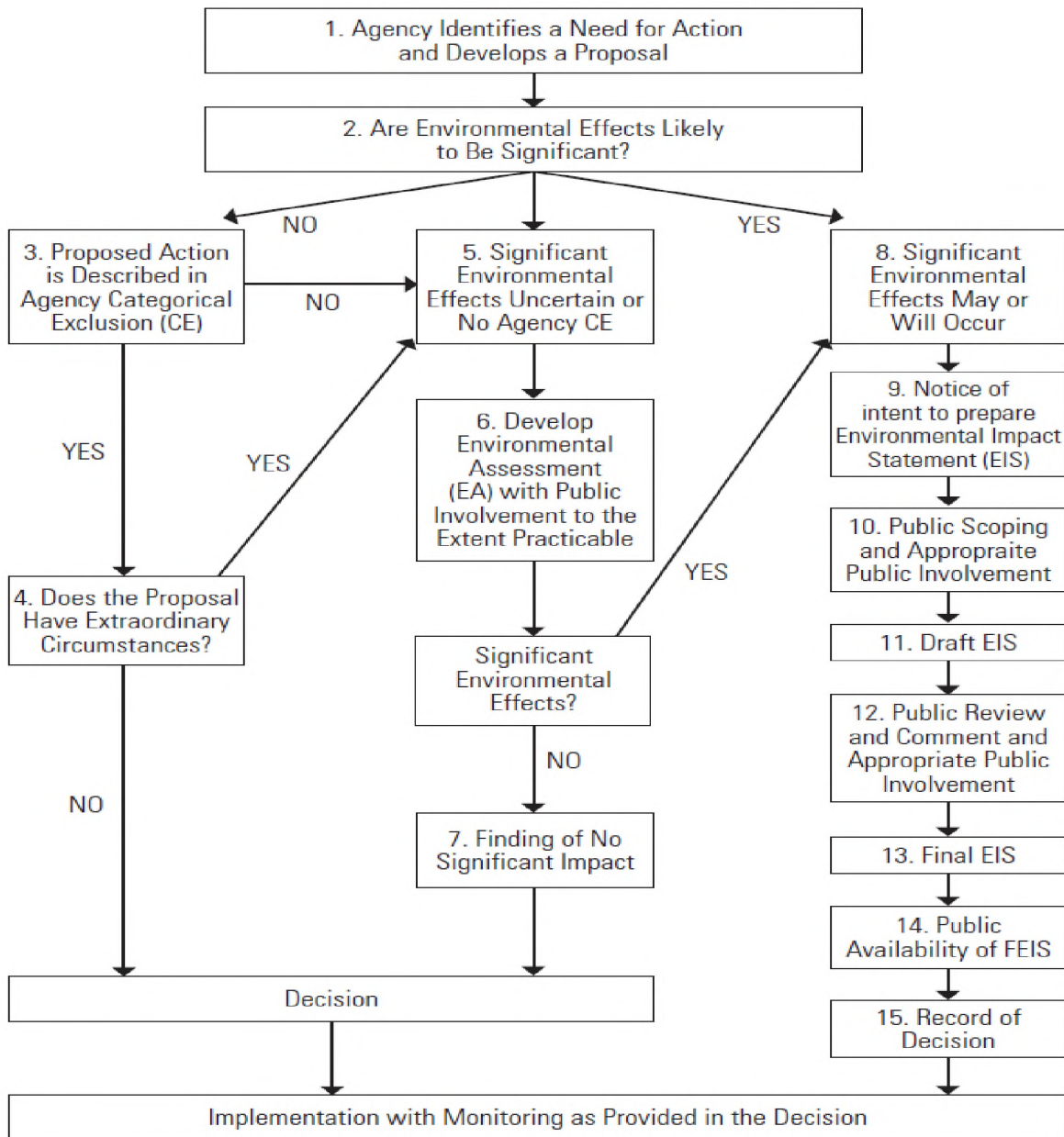
Appendix B: Report on State/Local/Tribal Government and Public Input

Appendix C: Specific Action Items Addressing Secretarial Order 3355

Appendix D: Secretarial Memorandum: Improving the Bureau of Land Management’s Planning and National Environmental Policy Act Process (March 27, 2017)

Appendix E: Secretarial Order 3355: Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” (August 31, 2017)

## The NEPA Process



*\*Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS or the Record of Decision (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).*

Figure 1: NEPA Process Flowchart. (Source: Council on Environmental Quality Citizens Guide to NEPA, December 2007).

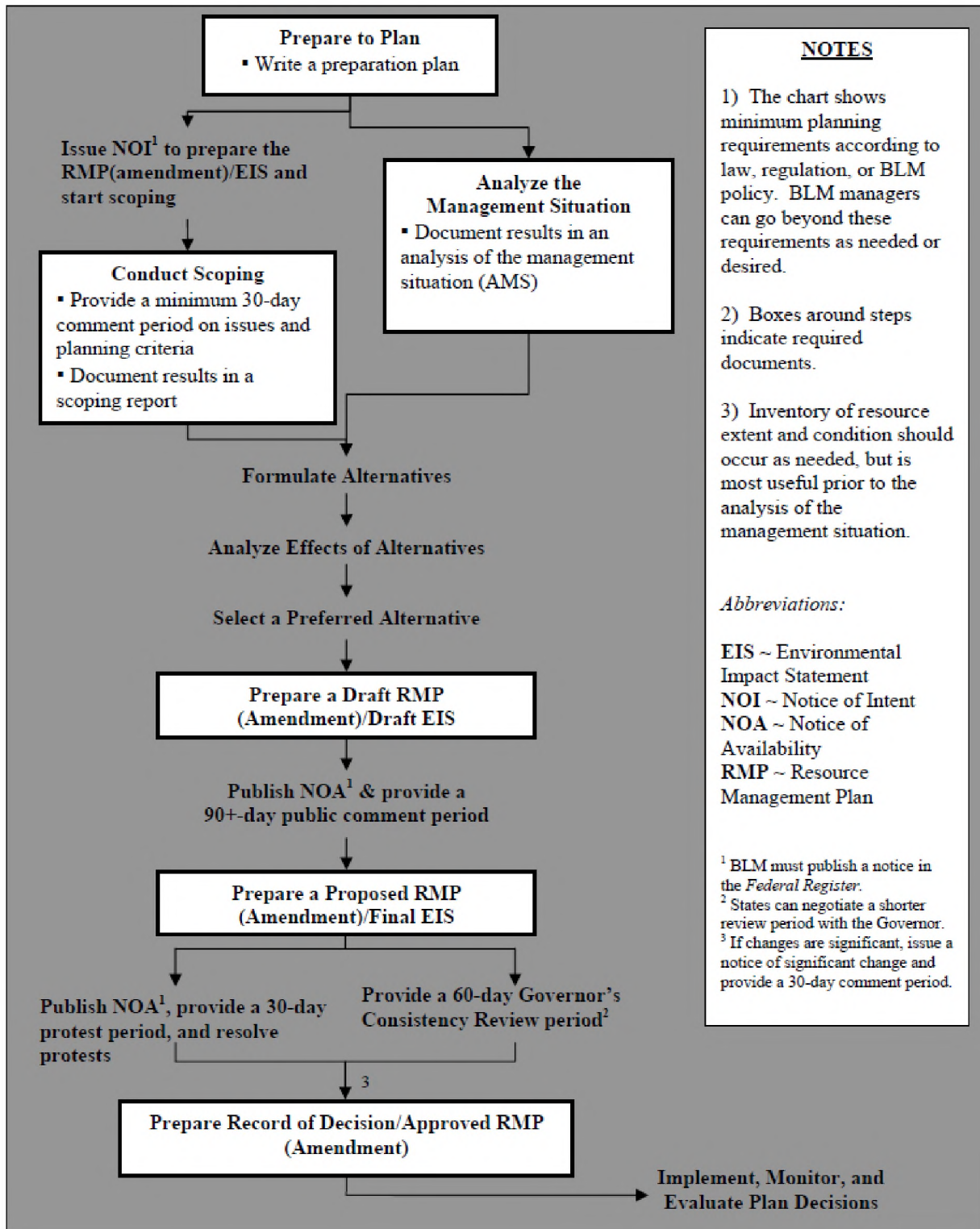


Figure 2: FIGURE 2: EIS –level planning efforts: Required steps for new plans, revisions, and amendments. (Source: BLM Land Use Planning Handbook H-1601-1).

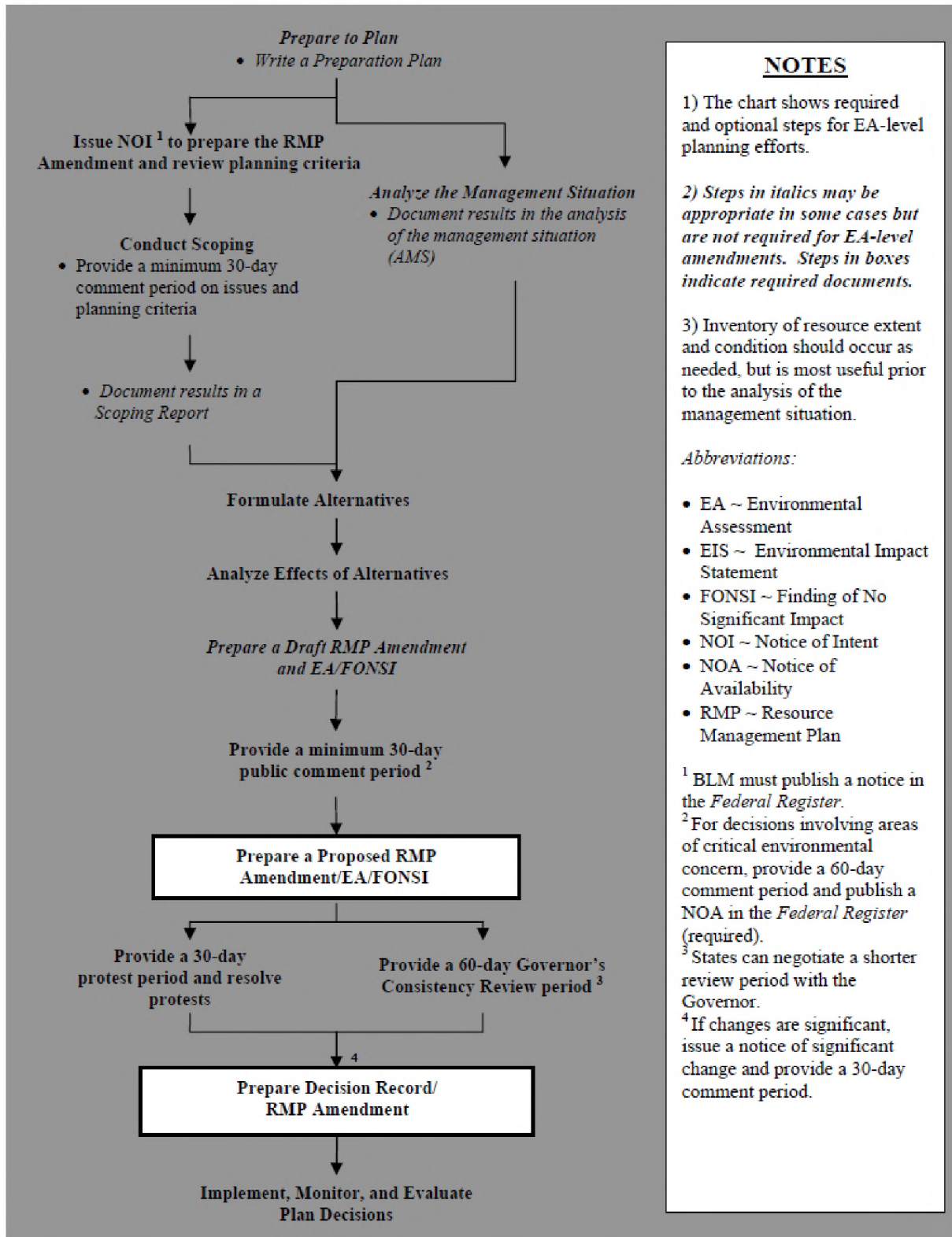


Figure 3: Figure 3: EA level planning efforts flowchart: Required and optional planning steps (Source: BLM Land Use Planning Handbook H-1601-1).