

Planning and National Environmental Policy Act Considerations

Planning:

Land and resource use management is best accomplished through the planning process. It is through the planning process that the Bureau of Land Management (BLM) weighs "... long-term benefits to the public against short-term benefits" and takes actions necessary to prevent unnecessary or undue degradation of the lands, their resources, or the environment.

Resource Management Plans (RMP) shall address temporary closure and restrictions of areas and trails on public lands open to off-highway vehicle (OHV) use. Where OHV activities are causing considerable adverse effects to resources, temporary closures can be implemented under the authority of 43 CFR §8341.2 and §8364.1. The purpose of a temporary closure or restriction is to protect public health and safety, or prevent unnecessary or undue resource degradation due to unforeseen circumstances.

All Resource Management Plans (RMP) and all Travel Management plans (TMP) at a minimum should include the following statement in accordance with 43 CFR §8341.2 with regard to off-highway vehicle (OHV) use:

Where off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the affected areas shall be immediately closed to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.

The above statement shall be evaluated through the National Environmental Policy Act (NEPA) process associated with either the RMP or TMP that describes as specifically as possible the resources, uses, and locations likely to be adversely affected by OHV use. It should be analyzed in the plan as an action that is, common to all alternatives. If analyzed appropriately, temporary closures and restrictions considered under this process will not require further NEPA analysis and can be processed with a Determination of NEPA Adequacy as necessary.

National Environmental Policy Act (NEPA):

When remedial action in response to an emergency situation will result in significant environmental consequences (positive or negative environmental consequences), the agency may seek alternative NEPA arrangements under 40 CFR § 1506.11. In those circumstances, the BLM is required to consult with the Council on Environmental Quality (CEQ) prior to taking the action and the remedial action must be narrowly limited to whatever is necessary to control the immediate impacts of the emergency. The CEQ regulation provides the following:

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the federal agency taking the action should consult with the CEQ about alternative arrangements. Agencies and the CEQ will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

While the regulation recognizes the need to react to emergencies, it is only when the action to remedy the situation will result in significant environmental consequences that CEQ regulations allow for limited circumvention of traditional NEPA review. As stated in the regulation, “Other actions remain subject to NEPA review”. The elements of NEPA review shall include:

1. a brief statement of the factual circumstances giving rise to the agency’s need to intervene in the public’s use of the public lands,
2. explanation of the agency’s authority to intervene,
3. issue/problem identification in the vernacular of “purpose and need”,
4. development of alternative remedial actions,
5. description of the affected environment, and
6. identification and discussion of the environmental consequences associated with each remedial action, followed by
7. a finding of insignificant environmental consequences associated with the selected alternative or the issuance of a record of decision.