

EXHIBIT 23

BLM COVID Protocol for Public Hearings and Consultation Guidance Document



United States Department of the Interior

Office of the Secretary
Office of Environmental Policy and Compliance
1849 C Street, NW - MS 5538 - MIB
Washington, D.C. 20240

April 10, 2020

9042.1

Memorandum

To: Bureau and Office Directors

From: Michaela E. Noble, Director *MEN*
Office of Environmental Policy and Compliance

Re: Interim Guidance for National Environmental Policy Act Processes – Public Participation and Document Schedules during COVID-19

On March 13, 2020, President Trump declared a National Emergency in response to the coronavirus (COVID-19) pandemic. Due to COVID-19, President Trump has issued guidelines recommending avoiding gatherings of more than ten people and many governors have issued stay at home orders. In order to support the Department of the Interior's (Department's) commitment to providing meaningful public engagement, while ensuring the health and safety of our employees and the people and communities we serve, the Office of Environmental Policy and Compliance (OEPC) provides the following recommendations for the Department's bureaus and offices (bureaus) on public participation—including public meetings, access to documents, and comment periods—relating to National Environmental Policy Act (NEPA) compliance:

Public Meetings:

While agencies must generally provide for public participation in the NEPA process, there is no specific requirement that public participation take the form of in-person meetings. To the extent that bureaus contemplate public meetings, however, in response to the COVID-19 outbreak, bureaus should consider alternatives to in-person meetings, unless they are required by other legal authorities, and after consultation with the Office of the Solicitor. Where appropriate, bureaus may provide virtual public involvement using livestreams, teleconferences, or virtual meeting rooms to encourage public involvement in the NEPA process.

The bureaus should check the Centers for Disease Control and Prevention (CDC) Website for the latest Federal guidance and maintain awareness of the most current guidance from state, local, and tribal public health and governmental officials. The bureaus should also refer to Department guidance and instruction in response to COVID-19. Since many of these guidelines are being updated frequently to respond to changing conditions, the OEPC advises bureaus against

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scheduling in-person events during this period of significant uncertainty to avoid any last-minute changes to meeting plans.

When conducting virtual public involvement, bureaus should consider the following:

- When using virtual tools, bureaus should plan meetings to maximize community access to Agency documents (e.g., Administrative Record File) and technology, to the extent practicable.
- For those unable to access document or meeting materials electronically, bureaus should provide the public with the opportunity to receive meeting materials by the U.S. Postal Service mail, an express delivery service, or other physical access that meets the CDC guidelines for social distancing.
- In advance of a livestream or teleconference, the bureau should provide the meeting presentation on the project website. During a livestream and teleconference, presenters should note which slide they are on so that those only able to call in may follow along.
- In advance of a livestream or teleconference, bureaus should notify the public whether comments will be accepted as part of the meeting, with reiteration at the meeting.
- To promote public outreach, bureaus should consider recording the livestream and providing the recording on the project website or local radio stations throughout the scoping or public comment period. The bureaus should note in public meeting materials if the livestreams and teleconferences will be recorded.
- The technology services used to provide virtual public involvement should be approved by Department/bureau IT personnel prior to use.

For projects supported by an Environmental Impact Statement (EIS), bureaus should update communication plans to incorporate virtual technology and ensure accessibility. The bureaus should provide a description of how they are handling public meetings and comments in the briefing materials sent to the Department's Review Team and in the related communication plan for the Stage 2 (NOI); Stage 4(Draft EIS); and Stage 5 (Final EIS, if applicable).

Regarding providing NEPA documents for public review:

The bureaus should make NEPA documents available for public review on-line, and, if needed to ensure universal accessibility, offer to provide a copy of the NEPA document via the U.S. Postal Service mail, an express delivery service, or in another manner that complies with CDC guidelines for social distancing.

Lessons Learned Forum:

An OEPC SharePoint site has been created to provide a forum for bureaus to provide lessons learned or ask questions of other bureaus on public participation or other potential COVID-19 implications for the NEPA process.

COVID-19 Impacts to NEPA compliance schedules:

In most cases COVID-19 should not delay NEPA compliance for bureau proposed actions.

The Federal agencies have set up teleworking procedures during COVID-19 (see Environmental Protection Agency notice) and should be available to work with bureaus on NEPA documents.

The Advisory Council on Historic Preservation (ACHP), has provided information on National Historic Preservation Act Section 106 compliance reviews during COVID-19.

If an EIS schedule is impacted due COVID-19 because of resources or external factors, bureaus should evaluate if the EIS should be placed into pause status in the Department's NEPA and Permit Tracking Database or if a waiver is needed, consistent with the Deputy Secretary Memorandum: Additional Direction on Implementing Secretary's Order 3355. When EISs schedule delays require a waiver, bureaus should fill out the approved waiver template.

The EISs should only be placed into pause status if delayed by more than one month. The bureaus have the discretion to place a project or project action in pause status if the reason for the pause meets an external factor in the Database dropdown. The external factors include: local government factors; state government factors; tribal government factors; project sponsor factors; and natural disasters.

If a project or project action is delayed due to non-external factors, bureaus should follow the approved elevation procedures to get approval to place a project or project action in pause status. Once approval is granted, bureaus would note in the status notes why the pause status is being used.

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RE: Interim Guidance on NEPA public participation during COVID-19

Michel, Robin B <rmichel@blm.gov>

Mon 4/13/2020 10:46 AM

To:

- Hall, Mark E <mehall@blm.gov>;
- McCullough, Ester M <emccullo@blm.gov>;
- Farrell, Katherine <kfarrell@blm.gov>

Cc:

- Ricci, Lynn B <lr Ricci@blm.gov>

I re-checked the ACHP website and the paragraph I included in the previous e-mail is still live on their website.

I do question the ACHP's authority to state that 106 consultations should be paused. As Bryan said, we will need BLM decision makers to determine what course we'll take.

From: Hall, Mark E <mehall@blm.gov>

Sent: Monday, April 13, 2020 10:33 AM

To: McCullough, Ester M <emccullo@blm.gov>; Farrell, Katherine <kfarrell@blm.gov>

Cc: Ricci, Lynn B <lr Ricci@blm.gov>; Michel, Robin B <rmichel@blm.gov>

Subject: Fw: Interim Guidance on NEPA public participation during COVID-19

Bryan Hockett's advice on the ACHP guidance.

From: Hockett, Bryan S <b50hocke@blm.gov>

Sent: Monday, April 13, 2020 9:17 AM

To: Hall, Mark E <mehall@blm.gov>

Subject: Re: Interim Guidance on NEPA public participation during COVID-19

That stated guidance has been updated, so the one shown in the email is outdated already. There was a question as to whether the ACHP had the legal authority to state this "pause" in the first place. I don't remember exactly what the latest guidance says on their website.

Basically we all know that some tribes have simply stated that they are not available and cannot be reached to consult. So the question becomes, I think, from BLM's perspective, have the tribes made an effort to be available to consult and be flexible on consultation processes as BLM is attempting? We can never really know the answer to this question, so my opinion has been to continue to try to reach out to tribes for projects that managers feel are critical to move forward for the health and well being of the country, such as energy-related projects. If the tribe refuses to engage in consultation or simply says they cannot or do not have the ability to do so, I do not recommend that we follow an ACHP guidance that says, essentially, that projects deemed essential for the health and well being of the country

should be indefinitely placed on hold. I think our managers need to manage risk and decide, on a case-by-case basis, whether it is prudent to document your efforts to engage in G2G consultation to meet the reasonable and good faith standard in this time of a pandemic and move forward - based not only on the critical nature of the project, but also on previous consultation in the area (do you feel confident that any tribal concerns can be addressed without further engagement?) etc.

The ACHP has no authority within NEPA. Their authority lies within NHPA only.

Bryan.

From: Hall, Mark E <mehall@blm.gov>
Sent: Monday, April 13, 2020 8:51 AM
To: Hockett, Bryan S <b50hocke@blm.gov>
Subject: Fw: Interim Guidance on NEPA public participation during COVID-19

Any comment on this from the ACHP?

From: Michel, Robin B <rmichel@blm.gov>
Sent: Monday, April 13, 2020 8:47 AM
To: Farrell, Katherine <kfarrell@blm.gov>; Ricci, Lynn B <lr Ricci@blm.gov>; O'Hanlon, Heather M <hohanlon@blm.gov>; Hall, Mark E <mehall@blm.gov>
Cc: Loda, Kenton M <kloda@blm.gov>; Subia, Tai A <tsubia@blm.gov>; Black, Jeanette L <jblack@blm.gov>
Subject: RE: Interim Guidance on NEPA public participation during COVID-19

I visited the ACHP's website to see their recommendations for 106 consultation during the pandemic. Here's the gist:

The Section 106 deadlines for the response of State and Tribal Historic Preservation Officers, and Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties affected by the undertaking, regardless of its location (collectively, States/Tribes/NHOs), will be considered paused while, due to the COVID-19 outbreak, an office is closed or work conditions are such that the States/Tribes/NHOs are unable to carry out their Section 106 duties or statutory rights to consultation in a timely fashion (e.g., staff unavailability due to health reasons; restricted access to records; state or tribal laws requiring hard copy records; lack of Internet access or telework capabilities). The clock will resume once the conditions are no longer in effect.

<https://www.achp.gov/digital-library-section-106-landing/section-106-and-coronavirus-impacts>

Meanwhile the 3355 clock keeps ticking...

Robin

From: Farrell, Katherine <kfarrell@blm.gov>
Sent: Monday, April 13, 2020 8:35 AM
To: Michel, Robin B <rmichel@blm.gov>; Ricci, Lynn B <lr Ricci@blm.gov>; O'Hanlon, Heather M <hohanlon@blm.gov>
Cc: Loda, Kenton M <kloda@blm.gov>
Subject: Fw: Interim Guidance on NEPA public participation during COVID-19

FYI - i haven't read this yet

Katherine Farrell
Acting Associate District Manager
Winnemucca District
(775) 623-1516
kfarrell@blm.gov

From: Oepc, NEPA <nepa_oepc@ios.doi.gov>
Sent: Monday, April 13, 2020 7:15 AM
To: Oepc, NEPA <nepa_oepc@ios.doi.gov>
Subject: Interim Guidance on NEPA public participation during COVID-19

Good morning,

The Office of Environmental Policy and Compliance (OEPC) has issued [interim guidance](#) on National Environmental Policy Act (NEPA) public participation, including public meetings and access to documents during COVID-19. If you have any questions or lessons learned that you can share for other NEPA practitioners on how to handle the NEPA process during COVID-19, please visit the [discussion board](#) on the [NEPA Process during COVID-19 SharePoint site](#).

Thank you,
OEPC



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Nevada State Office

1340 Financial Boulevard

Reno, Nevada 89502-7147

<https://www.blm.gov/nevada>

June 30, 2020

In Reply Refer To:
1790 (NV910) I

Instruction Memorandum No. 2020-022

Expires: 9/30/2023

To: District and Field Office Managers
Attn: Program Leads, Project Managers, Planning and Environmental
Coordinators (P&ECs), and Communications staff

From: State Director

Subject: Updated State-Wide Procedures to Implement Secretarial Orders for the National
Environmental Policy Act (NEPA) and Planning Process

Program Area: All Minerals and Resources Program Areas

Purpose: This Instruction Memorandum (IM) provides implementation and procedural guidance on the integration of Secretarial Order 3355 and other Orders that apply to the preparation, review, approval, and publication of Environmental Impact Statements (EISs) and Environmental Assessments (EAs) that cover major projects, land use plans, and other applicable federal actions subject to compliance with NEPA.

This IM provides reference guidance and consistency among BLM Nevada Offices, and updates Nevada IMs 2019-017 (EIS Review Process) and 2018-033 (*Federal Register* Publication Process). This IM includes an Attachment of "Best Practices" as procedures for routing of NEPA documents and requesting review by the Nevada State Office (NVSO). Additional references and policy guidance have been compiled at the "Nevada NEPA" SharePoint site accessible to BLM Nevada staff.

This SharePoint site features Secretarial Orders and Memos, existing IMs as examples from Nevada Offices, the Nevada EIS and EA tracking sheet ("BASS"), the FAST-41 procedure, and other policy direction and guidance. This SharePoint site is maintained and updated by the NVSO planning and NEPA program staff in collaboration with P&EC staff and others from District Offices. SharePoint link:

<https://doimspp.sharepoint.com/:f:/r/sites/NEVADANEPA/Shared%20Documents/General?csf=1&web=1&c=3zbLMN>

This IM, where applicable, refers to the specific program, procedural, and/or policy documents identifying details, authorities, and requirements to ensure that deviations from them do not

occur, and policies are not altered by this IM. State, District, and Field Office Managers will adhere to the procedures described in the attachment to this IM.

A representative NEPA process that District Offices may follow is outlined in the Project Management Process IM for the Battle Mountain District (IM No. BMD-2018-IM 003, May 14, 2019), and is available via the SharePoint site linked above. This process provides a general outline that other BLM Offices may follow as procedural guidance. Other projects may opt not to follow this process, and application of the process may vary among Offices. Projects are not required to follow the process per BMD-2018-IM-003, and this will not impact management approval and/or the decision-making process for the project. If departures from the process are anticipated that could affect implementation or meeting requirements for EIS page number or time limits under Secretarial Order 3355, the responsible manager should consult with the NVSO (Resource advisor, Tim Shannon) and the assigned Solicitor at the earliest opportunity.

Administrative or Mission-Related: Mission-Related

Policy/Action: This IM establishes guidance and direction for State, District, and Field Office Managers and program leads, P&ECs, project managers, interdisciplinary teams, Communications staff, and others to execute and implement their roles and responsibilities related to Secretarial Order 3355, and subsequent Secretarial Orders efficiently and effectively. This guidance also outlines appropriate communication and coordination between the District and Field Offices, the Office of the Regional Solicitor, and the NVSO.

As required under WO IM 2018-016 and subsequent BLM Nevada policies, the first BLM Senior Executive Service (SES) member with line authority over the proposed action is ultimately responsible for the EIS process and document preparation. The SES member (i.e., State Director) is responsible for ensuring the quality of the EISs and for identifying any politically sensitive or controversial issues related to an EIS for the BLM Director's office. District Managers are also responsible for reading the EIS and associated documents and for ensuring their quality and adherence to applicable policies prior to requesting review by the NVSO and State Director briefing.

Scheduling upper level reviews in a deliberative manner, with adequate lead time, is critical for NEPA document quality and legal defensibility. Draft and Final EISs shall receive a 14-day review and comment period by the NVSO, with the package of associated documents made available in accordance with the "Best Practices" procedure attached. Review of EAs and EIS Records of Decision is optional but could be requested by either the NVSO or District Office.

The 14-day review period for the NVSO shall be incorporated into the EIS project timeline or schedule and may run concurrently with reviews by local interdisciplinary teams and/or cooperating agencies. This 14-day review period begins on a regular workday, but does not start until the pertinent documents, including a project-specific comment form, are made available on the designated SharePoint site for the project.

District offices shall follow the EIS page and time limits under Secretarial Order 3355 as the default NEPA process for EIS projects in Nevada. If a proponent requests and qualifies for the

FAST-41 process (see links and documents at the SharePoint site), the proponent may then utilize that procedure if they qualify as a Major Infrastructure Project. If the project qualifies under the One Federal Decision directive, additional inter-agency coordination requirements are necessary; however, status as a *One Federal Decision* project still requires that BLM Nevada offices adhere to EIS timeline and page limits under Order 3355. As a One Federal Decision project, District offices also shall collaborate with other Interior bureaus and agencies to agree on timelines and mutual responsibilities prior to publishing the EIS Notice of Intent.

Regional Solicitors shall be engaged in every step of EIS preparation, including the following sections and stages: Purpose and Need, development of Alternatives, Effects Analysis, Cumulative Effects, and Response to Comments. Regional Solicitors should also be invited and included as members of the project interdisciplinary team.

The Nevada EIS and EA tracking sheet ("BASS") shall be updated by District Offices on a biweekly basis, preferably no later than the second Monday of a pay period. The BASS tracking sheet (Excel workbook file) provides key information for ongoing NEPA projects, including milestone dates, key staff involved, project cost estimates, and other data fields. Even if no recent changes have occurred to a project status, biweekly project updates to the BASS spreadsheet should include the date (first column) when the project entry was last checked by the District Office.

Similar to EISs, the preparation costs for Environmental Assessments (EAs), when those costs exceed ten thousand dollars, shall be indicated on the lower right cover of the final EA, in accordance with Secretarial Order 3380 (March 10, 2020) and the subsequent directive through Interior Environmental Review Memorandum No. ERM 10-12 (April 28, 2020). EA total preparation costs also shall be entered into the BASS tracking sheet within 15 days following the EA Decision Record approval and signature (EAs approved since March 10, 2020). The NVSO will enter data about the EA into the Interior NEPA and Permit Tracking Database, similar to EISs.

Timeframe: Effective Immediately

Budget Impact: Over the long-term, there will be significant savings realized as timeframes for document preparation are reduced.

Background: Since the issuance of Order 3355 (August 31, 2017), the NVSO has issued guidance for EISs and Federal Register Notices through Nevada IMs 2019-017 (EIS Review Process) and 2018-033 (Federal Register Publication Process). BLM Nevada has enjoyed great success with Departmental Review Team briefings and approvals to publish because of the clear, consistent procedure outlined in these IMs. Additionally, the Battle Mountain District has piloted a Project Management Process for EIS and EA-level mining projects (per their IM No. BMD-2018-IM 003, dated May 14, 2019). Since the project management process was implemented, the Battle Mountain District has experienced a 100% approval record with the Departmental Review Team meeting the EIS page and time limit requirements with defensible NEPA documents and sustainable agency decisions.

Manual/ Handbook Sections Affected: None.

Coordination: This IM was coordinated through the Nevada State Office Resource Advisor, Deputy State Director (DSD) for the Division of Minerals Management, and Nevada State Office Planner in the Division of Resources, Lands, and Planning.

Contact: Questions regarding this IM should be directed to the NVSO Resource Advisor, Timothy Shannon, (775) 861-6732.

Signed By:
Jon K. Raby
State Director

Authenticated By:
Cheryl Vocolka
Executive Assistant

Attachment

1 – Best Practices (2 pp.)