



**USDA Forest Service**  
**Proposed Soil and Water Restoration Categorical Exclusions**  
**Frequently Asked Questions**  
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### **What is the Final Rule implemented by the Forest Service?**

The Forest Service supplemented its National Environmental Policy Act (NEPA) regulations (36 CFR Part 220) with three new categorical exclusions for activities that restore lands negatively impacted by water control structures, disturbance events, and roads and trails. These categorical exclusions will allow the Forest Service to more efficiently analyze and document the potential environmental effects of soil and water restoration projects that are intended to:

- restore the flow of waters into natural channels and floodplains by removing, replacing or modifying water control structures;
- restore lands and habitat to pre-disturbance conditions by removing debris and sediment conditions following natural or human-caused events; and
- restore lands occupied by roads and trails that are not National Forest System roads or are not National Forest System trails to natural conditions.

The full text of the categorical exclusions can be found

at: <http://www.fs.fed.us/emc/nepa/restorationCE/includes/FRProposedNotice061312.pdf>

### **Why did the Forest Service add three new categorical exclusions for soil and water restoration?**

Categorical exclusions allow the Forest Service to more efficiently document the environmental review process while reducing the cost to the taxpayers of unnecessary documentation for projects that do not typically have significant environmental impacts. Categorical exclusion documents are less costly to write and review compared to environmental assessments which can be hundreds of pages long.

### **Can I contact someone if I have questions about the final rule such as how the proposed categorical exclusions would be used?**

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### **What is a categorical exclusion? What is it for?**

Categorical exclusions are an essential part of the NEPA regulations that provide a categorical determination, based on agency experience, that certain categories of actions do not normally result in significant impacts to the human environment, eliminating the need for unnecessary or lengthy documentation in an environmental assessment or environmental impact statement. The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agencies may, after notice and comment, adopt these categories of actions.

**Do Categorical Exclusions Exempt the Forest Service from NEPA?**

No. A categorical exclusion is *not* an exemption from NEPA requirements, rather it is an option to reduce the need for excessive paperwork for actions determined to not have a significant environmental effect.

**Are Categorical Exclusions exempt from environmental analysis and public scoping?**

Agency NEPA regulations guiding the Agency's environmental analysis and required scoping can be found in 36 CFR 220. Categorical exclusions are about documentation; they do not preclude environmental analysis and public involvement. Responsible officials must determine the level and depth of analysis and extent of public involvement based on the nature and complexity of each proposed action.

**Will the establishment of these three categorical exclusions authorize the Forest Service to restore lands whenever and wherever they want?**

No. Establishing categorical exclusions in the regulations do not authorize any actions on the ground. Site-specific proposals using any of these categorical exclusions will follow Agency NEPA requirements, including public involvement.

**Will the public be notified of proposed projects under these categorical exclusions?**

As with all Forest Service proposed actions, scoping is required, including those that would appear to be categorically excluded. The public is notified at a minimum through a schedule of proposed actions (SOPA), posted nationally

(<http://www.fs.fed.us/sopa/index.php>) and on specific national forest web sites.

Depending on the nature of the proposal and public interest, the public is typically notified in a variety of ways in addition to the schedule of proposed actions, for example by letter, e-mail, phone, flyers, newsletters, announcements, meetings, field trips, and the media.

**Will Categorical Exclusion #20, the road and trail restoration category, be used to limit public access on Forest Service roads and trails?**

No. The proposed road and trail restoration category (#20) would not be used to make access decisions about which roads and trails are to be designated open for public use, or which will be closed from public use. It would be used for restoring lands impacted by lands occupied by roads and trails that are not National Forest System roads or are not National Forest System trails to natural conditions, are no longer needed and no longer maintained. The restoration of lands occupied by unmaintained non-system roads and trails is important to promote hydrologic, aquatic, and watershed restoration. This proposed categorical exclusion will allow the Forest Service to restore roads and trails more efficiently where public access is not currently permitted – roads and trails that are already closed.

**Is Categorical Exclusion #20, the road and trail restoration category, a back door way to implement the Forest Service’s Travel Management Rule (36 CFR 212)?**

No. In implementing the Travel Management Rule (36 CFR Part 212, Subpart A) the Forest Service expects to identify an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns. The agency uses travel analysis to identify the minimum road system, including unneeded roads. Responsible officials are directed to engage the public to the degree practicable in identification of the minimum road system at an appropriate scale. The road and trail restoration category (#20) would not be used to make access decisions about which roads and trails are to be designated for public use.

**Will restoring the flow of waters into natural channels and floodplains by removing, replacing or modifying water control structures impact existing water rights?**

No. The proposed categorical exclusion to restore wetlands, streams, and riparian areas by removing, replacing, or modifying water control structures may not be used to adjust or eliminate existing water rights or special use authorizations. Categorical exclusion #18 includes the statement that the CE cannot be used “where valid existing rights or special use authorizations are not unilaterally altered or canceled.”

**What are the differences between documenting these proposed activities using the environmental assessment process and a categorical exclusion process?**

The Forest Service prepares approximately 2,500 to 3,000 categorical exclusion decision memos and 400 environmental assessments each year. Cost savings for categorical exclusions are in document preparation and review as it takes approximately six to nine months less to prepare and review a categorical exclusion decision memo than a typical environmental assessment that can be hundreds of pages long. By using categorical exclusions the Forest Service gains efficiencies that allow us to move more rapidly through the environmental review process while not sacrificing environmental protection.

**Will the Forest Service use a collaborative approach to the development, planning and implementation of activities proposed under these three categorical exclusions?**

Projects using these three proposed categorical exclusions are not required to use a collaborative approach. However, all categorical exclusions require scoping for public participation. As part of the scoping process for proposals covered by these categorical exclusions, the responsible official must determine the extent of interest and invite the participation of affected Federal agencies, affected Tribes, State and local agencies, and other interested parties, as appropriate.

**What safeguards are in place to ensure that actions proposed to be categorically excluded by the Forest Service are environmentally safe?**

Any activity performed using the three new categorical exclusions must meet all applicable Federal, State, and local laws, as well as land and resource management plan

standards and guidelines. Under the three new categories, the Responsible Official must conduct appropriate consultations with Federal and State regulatory agencies such as those required by the Endangered Species Act and the National Historic Preservation Act. For decades, the Forest Service has implemented terrestrial and aquatic restoration projects. The agency's long experience in dealing with soil and water restoration treatments leads the agency to conclude that implementation of the three new categories would not result in significant impacts on the environment.

**Will the categorical exclusions be subject to notice, comment and appeal procedures?**

These three proposed categorical exclusions would be subject to the same public notice, comment and appeal procedures that currently apply to these types of categorical exclusions.

**What consultation is required by the Endangered Species Act and the National Historic Preservation Act for categorically excluded projects?**

Agencies must conduct appropriate consultations with Federal and State regulatory agencies, such as those required by the Endangered Species Act and the National Historic Preservation Act. Activities categorically excluded from documentation in an environmental assessment or an environmental impact statement must still be evaluated to assess effects on threatened and endangered species, and undergo an appropriate level of consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Similarly, categorically excluded activities undergo consideration of effects on properties protected by the National Historic Preservation Act, along with appropriate consultation with State Historic Preservation Officers.

**Will the Forest Service fulfill its government-to-government consultation responsibilities to American Indian Tribal Governments when using the proposed categorical exclusions?**

Yes. The Forest Service would still have the responsibility to honor the government-to-government relationship between Tribes and the Federal Government.