



**Supplementing 36 CFR Part 220:  
Addition of New Categorical Exclusion  
For Certain Restoration Projects**

**SUPPORTING STATEMENT**

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## Introduction

The USDA Forest Service (USFS) is proposing to add a new categorical exclusion (CE) to its regulations for implementing the National Environmental Policy Act (NEPA) that addresses common activities associated with restoration projects. CEs identify actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS).

On January 3, 2018, the USFS published in the Federal Register an Advance Notice of Proposed Rulemaking (83 FR 302) associated with the Agency's Environmental Analysis and Decision Making (EADM) change effort. The USFS is publishing the proposed rule to update the agencies NEPA procedures, including development of the new Restoration CE.

For decades the USFS has implemented forest and watershed restoration projects. The USFS has found that in certain circumstances the environmental effects of some restoration activities have not been individually or cumulatively significant. The USFS's vast experience predicting and evaluating the environmental effects of the category of activities outlined in this supporting statement has led the agency to propose supplementing its NEPA regulations with a new CE to achieve restoration activities that improve forest health and resiliency to disturbances, and/or improve terrestrial and aquatic habitat and other watershed conditions.

The Council on Environmental Quality (CEQ) regulations in title 40, Code of Federal Regulations, Part 1507.3 (40 CFR 1507.3) provide that agencies, after notice and comment, may adopt categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an EA or an EIS. Current USFS procedures for complying with and implementing the NEPA are set out in 36 CFR 220. The list of categories of actions (CEs) that do not require preparation of an EA or an EIS by the USFS are found in 36 CFR 220.5. All references to parts of 36 CFR 220 correspond with the rule text provided in the proposed rule (for example, CEs were formerly in section 220.6 of the regulation; in the proposed rule they are in section 220.5).

The use of CEs allows the USFS to protect the environment more efficiently by (a) reducing the resources spent analyzing proposals that generally do not have significant environmental impacts, and (b) focusing resources on proposals that may have significant environmental impacts.

The USFS's categorically excluded actions are guided by land management plans on each of the national forests and grasslands. The land management plans identify where and under what conditions management activities could occur to meet plan objectives, provide for ecological sustainability, and contribute to social and economic sustainability. The proposed restoration CE is intended to maintain or restore ecological functions, and will allow the Agency to more efficiently implement projects that include restoration activities to improve forest health and resiliency to disturbances, and/or improve terrestrial and aquatic habitat and other watershed conditions.

The Forest Service defines restoration in its Ecosystem Restoration Policy and 2012 Planning Rule as "the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.

Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions.”

The USFS believes the new CE routinely does not individually or cumulatively have a significant effect on the human environment. This categorical exclusion will not apply where there are extraordinary circumstances<sup>1</sup>, involving threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; floodplains and wetlands; and archeological or historic sites.

### **USDA Forest Service Environmental Analysis and Decision Making Focus**

The USFS is establishing this Restoration CE as part of the broader effort to improve how the Agency conducts EADM. The USFS is not fully meeting agency expectations and those of their publics, partners, and stakeholders to improve the health and resiliency of forests and rangelands, create jobs, and provide economic benefits. The USFS is not able to successfully make measurable progress on addressing the more than 80 million acres of National Forest System (NFS) lands that are at severe risk from insect, disease, and wildfire.

As part of this effort, the USFS is updating its NEPA policies and procedures to make them more efficient, while fully honoring its environmental stewardship responsibilities. The reforms will improve or eliminate inefficient or redundant processes, while maintaining a commitment to high-quality environmental analysis based on the best available science. The proposed Restoration CE will contribute to the increased pace and scale of the work accomplished on the ground, an intended result of improving the Agency’s NEPA policies and procedures, and will promote the diversity, health, resilience, and productivity of America’s national forests and grasslands.

### **USDA Forest Service Restoration and Resilience Focus**

The USFS’s *Strategic Plan for FY 2015-2020*<sup>2</sup> includes an emphasis on developing forest and grassland ecosystems that are resilient and adaptive in a changing environment. One of the objectives of the *Strategic Plan* is to foster resilient, adaptive ecosystems to mitigate climate change. This includes an emphasis on restoring ecosystems that are naturally adapted to wildland fire and repairing ecosystems that have been damaged by severe wildfire. To meet this goal, the USFS seeks to maintain resilient land and water conditions at the watershed level and to restore deteriorated lands and waters (such as abandoned mine lands and areas of unmanaged recreation use that need rehabilitation). The USFS also seeks to develop and apply mitigation, treatment, and restoration methods, technologies, and strategies for addressing disturbances such as wildfire, human use, invasive species, insects, extreme weather events, and changing climatic conditions. The long-term result of this objective is to for the nation’s forests and grasslands to be in a healthy and ecological condition.

The USFS uses ecological restoration to manage NFS lands in a sustainable manner (Forest Service

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<sup>1</sup> Extraordinary Circumstances are defined in the Agency’s NEPA regulations at 36 CFR 220.5 (b) (as reflected in the proposed rule)

<sup>2</sup> USDA Forest Service Strategic Plan for FY 2015-2020: [https://www.fs.fed.us/sites/default/files/strategic-plan%5B2%5D-6\\_17\\_15\\_revised.pdf](https://www.fs.fed.us/sites/default/files/strategic-plan%5B2%5D-6_17_15_revised.pdf)

Manual (FSM) 2020). The aim is to reestablish and retain ecological resilience of NFS lands and associated resources to achieve sustainable management and provide a broad range of ecosystem services. Healthy, resilient landscapes will have greater capacity to recover from disturbances and large scale threats to sustainability, especially under changing and uncertain future environmental conditions such as those driven by climate change and increasing human uses (FSM 2020.2).

In addition, the USFS watershed condition policy goal is “to protect National Forest System watersheds by implementing practices designed to maintain or improve watershed condition, which is the foundation for sustaining ecosystem and the production of renewable natural resources, values, and benefits” (FSM 2520).

The proposed Restoration CE includes common activities designed to promote forest, watershed, and habitat restoration and recovery activities that meet the goals and objectives of land management plans. In addition, the proposed Restoration CE addresses decommissioning roads and trails, as well as construction of NFS system roads and trails to improve access for project implementation. These activities address the increased ability to restore lands where current system roads and trails may be unsuitably located.

### **Purpose of Supporting Statement**

This supporting statement summarizes the administrative record and rationale for the addition of new Forest Service CEs in 36 CFR 220. In the proposed rule, the section on CEs is moved from section 220.6 to 220.5; references to 36 CFR 220 included below apply to the order in the proposed rule.

The USFS establishes CEs for specified classes of actions that are supported by a record showing that they normally will not have significant environment impacts, individually or cumulatively. The USFS establishes CEs based on, in part, its experience implementing similar actions, the experience of other Federal agencies, and information provided by the public.

### **CEQ Regulatory Basis for CEs**

The National Environmental Policy Act, 42 U.S.C 4321 *et seq*, requires that Federal agencies consider the environmental effects or impacts of proposed Federal actions. NEPA requirements apply to any Federally-funded or undertaken project, decision, or action. NEPA also established the CEQ, which issued regulations at 40 CFR §§ 1500 - 1508 implementing the procedural provisions of NEPA.

The CEQ regulations are applicable to all Federal agencies for implementing the procedural provisions of NEPA, except where compliance would be inconsistent with other statutory requirements (40 CFR 1500.3). The CEQ regulations require Federal agencies to adopt their own implementing procedures to supplement CEQ’s regulations, and to establish and use “categorical exclusions” to define categories of actions that do not normally individually or cumulatively have a significant effect on the human environment and therefore do not require preparation of an EA or EIS. (40 CFR 1507.3(b)(2)(ii) and 40 CFR 1508.4).

### **Forest Service Implementation of Categorical Exclusions**

In compliance with the CEQ regulations, a CE is defined as “a category of actions that does not

individually or cumulatively have a significant effect on the human environment” (40 CFR § 1508.4). A proposed action may be categorically excluded from analysis and documentation in an EA or EIS when there are no extraordinary circumstances related to the proposed action and the proposed action is within one or more of the categories listed at 7 CFR 1b.3 or 36 CFR 220.5(d) or (e) (36 CFR 220.5(a)).

For the proposed Restoration CE discussed in this supporting statement, USFS personnel will continue to use an interdisciplinary approach in developing proposed actions, identifying design features to limit adverse environmental effects, and conducting the extraordinary circumstances review described at section 220.5 of the proposed rule. When the responsible official determines that extraordinary circumstances exist, the responsible official will not categorically exclude the action, and will instead prepare the appropriate documentation for compliance with NEPA (36 CFR 220.5(b)).

In determining whether a particular proposed action qualifies for a CE, the USFS responsible official must determine that the proposed activity meets two criteria. First, the proposed action must fit within the description of a category of actions that is identified as a CE in the agency’s NEPA regulations (36 CFR 220.5). Second, if a proposed action is within a CE identified in USFS regulations, the responsible official must determine that there are no extraordinary circumstances. Extraordinary circumstances include a list of resource conditions that must at a minimum be considered. The list is intended as a starting place and does not preclude consideration of other factors or conditions by the responsible official.

The responsible official relies on many sources of information in making a determination concerning extraordinary circumstances, including input from the public, input from the interdisciplinary team process, and consultation with other agencies.

The USFS evaluates each individual action it proposes under NEPA using an interdisciplinary process, including those actions that it ultimately determines meet their NEPA obligations with a CE. In determining whether a particular proposed activity satisfies NEPA obligations with a CE, the USFS responsible official must determine that the proposed activity meets the two criteria identified above.

The USFS will continue to inform the public of the proposed action by posting on the Schedule of Proposed Actions (SOPA) and conduct additional public engagement at the discretion of the responsible official. The SOPA is a USFS document available on the internet<sup>3</sup> that provides public notice about proposed USFS actions for which a record of decision, decision notice, or decision memo would be or has been prepared pursuant to NEPA. The SOPA also identifies a contact for additional information on a proposed action (36 CFR 220.3). For all proposed actions subject to NEPA that are anticipated to be categorically excluded from documentation in an EIS or an EA and for which a decision memo would be required, “the local responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA” (36 CFR 220.4(d)).

If one or more of the resource conditions included in the extraordinary circumstances listed at 36 CFR § 220.5(b)<sup>4</sup> is present, the interdisciplinary team must determine the degree to which any cause-and-effect

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<sup>3</sup> The SOPA can be accessed at <http://www.fs.fed.us/sopa/>.

<sup>4</sup> Under the proposed revisions to 36 CFR 220.5(b), resource conditions that should be considered in determining

relationship exists between the proposed action and the potential effect on the resource. The mere presence of any one or more resource conditions does not preclude the use of a CE. Extraordinary circumstances exist when there is a cause-effect relationship between a proposed action and listed resource conditions and the responsible official determines that there is a likelihood of substantial adverse effects

The use of a CE for a proposed action does not absolve the USFS from complying with any applicable statutory requirement (e.g., Clean Water Act, Clean Air Act) or mandatory consultations such as those associated with the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA). The NHPA and ESA and their implementing regulations have their own standards for exempting classes of actions from their requirements and apply independently of NEPA to proposed actions. In addition, State and Federal permit requirements (e.g., under the Clean Water Act, section 404(d)) must still be met when a CE is used.

Listing a category of actions as categorically excluded in the USFS's NEPA regulations does not constitute a conclusive determination regarding the appropriate level of NEPA review for a specific proposed action. Rather, the listing creates an initial presumption that a CE rather than an EA or an EIS is typically appropriate for the listed actions. As indicated in 36 CFR 220.5, this presumption is rebutted when there are extraordinary circumstances related to the proposed action that indicate the potential for significant environmental effects.

## **CEQ Guidance on Supplementing Categorical Exclusions**

On November 23, 2010, the CEQ released its guidance memo on "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act." This memo provided Federal departments and agencies guidance on how to establish new CEs in accordance with section 102 of the NEPA (42 U.S.C. 4332) and the CEQ's implementing regulations (40 CFR 1500-1508).

The November 2010 CEQ guidance memo provides methods for gathering information to substantiate a CE. CEQ highlights the need to gather sufficient information to support establishing a new CE based on the anticipated environmental effects associated with the category of proposed actions to be included in the CE. An agency can substantiate a CE using sources of information gathered by one or more of the following methods:

### **1. Previously Implemented Actions**

An agency's assessment of the environmental effects of previously implemented actions can be a key source of information to support the development of new CEs. CEQ states that agencies can obtain useful substantiating information by monitoring and/or otherwise evaluating the effects of previously

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whether "extraordinary circumstances" related to a proposed action warrant further analysis and documentation in an EA or an EIS are: (i) Federally listed threatened or endangered species or designated critical habitat, or Forest Service sensitive species; (ii) Flood plains, wetlands, or municipal watersheds; (iii) Congressionally designated areas, such as wilderness, wilderness study areas, wild and scenic rivers, or national recreation areas; (iv) A roadless area designated under 36 CFR Part 294; (v) Research natural areas; (vi) American Indians and Alaska Native religious or cultural sites; and (vii) Archaeological sites, or historic properties or areas.

implemented actions, e.g. previous actions analyzed in EAs that consistently support Findings of No Significant Impact (FONSI).

## **2. Impact Demonstration Projects**

When Federal agencies lack experience with a particular category of actions that is being considered for a proposed CE, the agency may undertake demonstration projects to assess the environmental effects of those actions.

## **3. Information from Professional Staff, Experts, and Scientific Analysis**

A Federal agency may rely on the expertise, experience, and judgment of its professional staff as well as outside experts to assess the potential environmental effects of applying the proposed CE, provided the experts have knowledge, training, and experience relevant to the implementation and environmental effects of the actions described in the proposed CE.

Scientific analyses are additional sources of information that can be used to substantiate a proposed CE.

## **4. Benchmarking Other Agencies' Experiences**

The CEQ memo states that a Federal agency cannot rely solely on the existence of another agency's CE to support a decision not to prepare an EA or an EIS for its own action. The agency may, however, support establishment of a CE of its own based on another agency's experience with a comparable CE and the supporting statements developed when the other agency's CE was established and a showing of comparability with the benchmarked CEs. Comparability is demonstrated based on: (1) characteristics of the actions; (2) methods of implementing the actions; (3) frequency of the actions; (4) applicable standard operating procedures or implementing guidance (including extraordinary circumstances); and (5) timing and context, including the environmental setting in which the actions take place.

The USFS has used a combination of (1) previously implemented actions; (3) information from professional staffs, expert opinions, and scientific analysis; and (4) benchmarking other agencies' experiences to support the development of the proposed Restoration CE. The USFS believes it has sufficient experience implementing this category of proposed actions and that developing and implementing impact demonstration projects would not provide additional information to support this CE.

## **Process and Supporting Information for Development of Proposed Categorical Exclusions**

This section explains how the USFS determined that the category of proposed actions listed below should be categorically excluded from documentation in an EA or EIS under NEPA. In accordance with the November 2010 CEQ Guidance Memo, the USFS provides a justification for the proposed CE containing:

- a combination of environmental analysis, decision documents, monitoring, and supplemental information from previously implemented actions prepared by USFS field units that includes descriptions of the conditions and environmental impacts where these categories of proposed actions were implemented;

- scientific research and analyses, where available, corresponding to the types of actions in this CE;
- a listing of USFS and external technical experts who have the expertise, experience, and judgment to develop the new CE, including their justification statements;
- references to existing CEs used by other Federal agencies that are the same as or comparable to the USFS's proposed CEs; and
- a comparability analysis of the benchmarked CEs used to support the USFS proposed CE, including a review of extraordinary circumstances applied by the Federal agencies.

For the category of actions proposed as a CE, the USFS conducted interdisciplinary meetings and discussions with agency experts to review past agency actions and scientific analysis. These discussions, experiences, environmental reviews, and expertise were used to determine that the category of proposed actions should be established as a new CE. Key agency experts who participated in these meetings and in the development of this statement are listed in the Appendix B.

The USFS also collected environmental review information from field units that have undertaken these proposed actions over the past five years to maximize the quality, objectivity, utility, and integrity of the information provided..

Additional project documentation was queried from the USFS's Project, Appeals and Litigation System (PALS). For several projects, effects findings were then verified through direct contact with the corresponding field unit(s). Many projects verified effects findings through post-implementation monitoring. The data and information, represent on-the-ground knowledge, experience, and judgment of the interdisciplinary specialists, researchers, and responsible officials who provided it. These steps conform to the Office of Management and Budget and Departmental guidelines for quality information (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/fedreg/reproducible2.pdf>).

The proposed CE includes both specific quantifiable limitations (e.g., acre limitations) and a narrative description of the resource conditions and environmental parameters appropriate for its use. As described above, an interdisciplinary environmental review would be conducted to determine whether (1) the project falls within a CE; and (2) whether extraordinary circumstances exist.

### **Existing USFS Categorical Exclusions for Restoration**

The USFS has several existing CEs, documented at 36 CFR 220.5(e), that have similar activities to those included in the proposed Restoration CE. These existing CEs include (6) timber stand and/or wildlife habitat improvement; (11) post-fire rehabilitation activities; (12) harvest of live trees; (13) salvage of dead and/or dying trees; (14) commercial and non-commercial sanitation harvest of trees to control insects or disease; (18) restoring wetlands, streams, riparian areas; and (20) activities that restore, rehabilitate, or stabilize lands occupied by roads and trails. All of these CEs apply the consideration of extraordinary circumstances (36 CFR 220.5(b)(2)), and require documentation in a project or case file and a decision memo (36 CFR 220.5(e)).

While the types of activities may be similar, the proposed Restoration CE is unique from these existing CEs in that 1) it would allow activities to be implemented on a broader scale, and 2) if commercial or non-commercial timber harvest activities are proposed they must be carried out in combination with at

least one additional restoration activity and harvested acres cannot exceed 4,200 of the 7,000 acres to meet restoration objectives within the project area. The activities allowed under the proposed CE are similar to those that can be implemented under stewardship contracting (Section 604 (16 USC 6591c) of Public Law 108-148 as amended by Section 8205 of Public Law 113-79, the Agricultural Act of 2014), though stewardship contracting would not be a required mechanism for implementation under the Restoration CE.

The design for this CE was based, in part, on the review of previously implemented actions that identified that the USFS commonly included a range of the activities to address restoration needs in their EAs (Appendix A). As mentioned previously, the analysis of these restoration activities, whether implemented singularly or bundled, were not determined to result in potentially significant effects, as was documented in the associated FONSI for each project reviewed.

### **Best Management Practices**

The USFS developed the National Best Management Practices (BMP) Program<sup>5</sup> to improve management of water quality consistent with the Clean Water Act and State water quality programs. In April 2012, the USFS released the National Core BMP Technical Guide. This Guide includes National Core BMPs for a wide range of activities. Specific to the proposed CE included in this supporting statement, the Guide includes National Core BMPs for Mechanical Vegetation Management Activities, Wildfire Management Activities, and Road Management Activities. The specific BMPs related to the proposed CE are included in the individual justification statement below.

### **Justification for the Proposed Restoration CE**

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36 CFR 220.5(e)(26). Ecosystem restoration and/or resilience activities on NFS lands in compliance with the applicable land management plan, including, but not limited to the plan's goals, objectives, or desired conditions. Activities to improve ecosystem health, resilience, and other watershed conditions cannot exceed 7,300 treated acres. If commercial/non-commercial timber harvest activities are proposed they must be carried out in combination with at least one additional restoration activity and harvested acres cannot exceed 4,200 of the 7,300 acres.

- (1) Restoration and resilience activities include, but are not limited to<sup>6</sup>:
  - (i) Terrestrial and aquatic habitat improvement and/or creation,
  - (ii) Stream restoration, aquatic organism passage, or erosion control,
  - (iii) Road and/or trail decommissioning (system and non-system),

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<sup>5</sup> <https://www.fs.fed.us/biology/watershed/BMP.html>

<sup>6</sup> The USFS uses the phrases “including, but not limited to,” “including,” and “such as” to introduce lists of examples, and considers the phrases to be synonymous. The USFS’ lists of examples are not intended to be exhaustive of all possible actions that fit within a category of actions. The USFS generally uses “including, but not limited to,” the first time examples are introduced in a provision and “such as” for any needed clarification in the examples.

(iv) Control of invasive species and reestablishing native species.

(v) Hazardous fuels reduction and/or wildfire risk reduction,

(vi) Prescribed burning,

(vii) Reforestation,

(viii) Commercial harvest, and/or

(ix) Non/pre-commercial thinning.

(2) Road and trail limitation. A restoration/resilience activity under this category may include:

(i) Construction of permanent roads up to 0.5 miles.

(ii) Maintenance or reconstruction of NFS roads and system trails, such as relocation of road or trail segments to address resource impacts.

(iii) Construction of temporary roads up to 2.5 miles. All temporary roads constructed for a project under this category shall be decommissioned no later than 3 years after the date the project is completed.

### **Definition of Restoration**

The Forest Service defines restoration in its Ecosystem Restoration Policy (FSH 1909.12 and 36 CFR 219.19) as “the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions. Functional restoration focuses on the underlying processes that may be degraded, regardless of the structural condition of the ecosystem.”

### **Implemented Actions**

The USFS has many years of on-the-ground experience with restoring forest and watershed conditions by harvesting and thinning trees from dense forest stands; reducing hazardous fuels through either mechanical methods or prescribed fire; removing dead and dying trees resulting from a broad-scale disturbance event (insect, disease or wildfire), improving aquatic and habitat conditions, reducing the occurrence of invasive species, and decommissioning, maintaining and reconstructing roads and trails.

The Forest Service reviewed recently implemented actions to develop this proposed CE by randomly selecting a sample of 68 projects from over 718 projects completed under an EA from fiscal years 2012 to 2016. The associated Decision Notice (DN) and FONSI were reviewed to look at the types of project activities occurring on the ground related to restoration actions. The EAs detailed in Appendix A represent projects where actions are entirely covered under the proposed Restoration CE, or a portion thereof, where the scope of activities are broader but still contain individual actions encompassed under

this CE. The average of commercial and non-commercial harvest activities from the 68 sampled EAs was 4,237 acres, and the average of total project activities was 7,369 acres. Appendix A provides more detail regarding the activities included in the sampled EAs.

To obtain information related to implementation and monitoring of these projects, USFS personnel on national forests across the U.S., who were familiar with the projects, responded to a questionnaire intended to verify whether the observed effects of these implemented projects were consistent with the NEPA analysis, and if not, examine how they differed. Twenty of the 68 projects were subject to additional review through the questionnaire. Five of the projects either had not been implemented yet or no response was received from the national forest where it was located. For the 16 projects listed in Appendix A that received survey responses, respondents indicated that the effects were not more intense or substantial than predicted in the EA, DN, and FONSI. The respondents also described how effects were observed or documented following project implementation. None of the environmental analyses for the projects reviewed for this proposed CE predicted significant environmental effects on the human environment.

Based on a review of past actions, information from professional staffs, experts, scientific analysis, a review of CEs implemented by other Federal agencies, and the USFS's extensive experience with implementing projects that restore forest and watershed conditions, the USFS has concluded that this category of actions does not have individual or cumulative significant effects and, therefore, should be categorically excluded from documentation in an EA or EIS.

This category would appear in 36 CFR 220.5(e)(26), Categories of Actions for Which a Project or Case File and Decision Memo are Required. The scope of the proposed new category is consistent with the scope of the 68 projects examined in this review, including the 16 projects that received survey responses, each of which had no significant environmental effects. Consequently, the level of effects associated with the proposed new category are also expected to be below the threshold for significant environmental effects.

There are no foreseeable events that indicate that the activities proposed under this CE would substantially differ in the future. The Agency has, therefore, concluded that the environmental impacts attendant to these activities will not differ significantly from that of the information and data associated with the previously implemented actions. That is, based upon the data and information, the agency does not expect that activities undertaken under this categorical exclusion will have either individually or cumulatively significant environmental effects (as defined under NEPA). Additionally, project activities would be implemented consistent with the applicable land management plan and BMPs and with any appropriate mitigation measures.

### **BMPs**

The purpose of the core BMPs<sup>7</sup> developed by the USFS is to avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources that may result from common management activities, such as restoration and road management, on NFS lands. Following are some of the National BMPs that would likely be considered by interdisciplinary teams when planning and implementing

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<sup>7</sup> <https://www.fs.fed.us/biology/watershed/BMP.html>

projects using the Restoration CE:

<b>Fire BMP</b>	<b>Objective</b>
Fire-2 Use of Prescribed Fire	Avoid, minimize, or mitigate adverse effects of prescribed fire and associated activities on soil, water quality, and riparian resources that may result from excessive soil disturbance as well as inputs of ash, sediment, nutrients, and debris.
<b>Vegetation BMPs</b>	<b>Objective</b>
Veg-1 Vegetation Management Planning	Use the applicable vegetation management planning processes to develop measures to avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources during mechanical vegetation treatment activities.
Veg-2 Erosion Prevention and Control	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources by implementing measures to control surface erosion, gully formation, mass slope failure, and resulting sediment movement before, during, and after mechanical vegetation treatments.
Veg-3 Aquatic Management Zones	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources when conducting mechanical vegetation treatment activities in the AMZ.
Veg-4 Ground-Based Skidding and Yarding Operations	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources during ground-based skidding and yarding operations by minimizing site disturbance and controlling the introduction of sediment, nutrients, and chemical pollutants to waterbodies.
Veg-5 Cable and Aerial Yarding Operations	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources during cable and aerial yarding operations by minimizing site disturbance and controlling the introduction of sediment, nutrients, and chemical pollutants to waterbodies.
Veg-6 Landings	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources from the construction and use of log landings.

Veg-7 Winter Logging	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources from winter logging activities.
Veg-8 Mechanical Site Treatment	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources by controlling the introduction of sediment, nutrients, chemical, or other pollutants to waterbodies during mechanical site treatment.
<b>Road BMPs</b>	<b>Objective</b>
Road-3 Road Construction and Reconstruction	Avoid or minimize adverse effects to soil, water quality, and riparian resources from erosion, sediment, and other pollutant delivery during road construction or reconstruction.
Road-4 Road Operations and Maintenance	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources by controlling road use and operations and providing adequate and appropriate maintenance to minimize sediment production and other pollutants during the useful life of the road.
Road-5 Temporary Roads	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources by storing closed roads not needed for at least 1 year and decommissioning unneeded roads in a hydrologically stable manner to eliminate hydrologic connectivity, restore natural flow patterns, and minimize soil erosion.
Road-6 Road Storage and Decommissioning	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources when constructing, reconstructing, or maintaining temporary and permanent waterbody crossings.
Road-7 Stream Crossings	Locate and design roads to avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources.
Rec-4 Motorized and Non-motorized Trails	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources by controlling soil erosion, erosion of trail surface materials, and water quality problems originating from construction, maintenance, and use of motorized and nonmotorized trails.

### Information from Professional Staffs, Experts, and Scientific Analysis

The USFS has a strong cadre of professional staff and scientists with extensive experience implementing and researching restoration activities on NFS lands. Appendix B has a list of professional staff and experts with knowledge of activities identified under this category of actions can

be found in Appendix B. These experts provide extensive experience implementing and monitoring these types of activities. Their experiences include conducting and leading interdisciplinary teams through environmental analysis on project proposals, resource specialists involved in on-the-ground implementation of these restoration activities, and program managers guiding the development and execution of restoration programs. The experience of these professional staffs is from a wide range of ecosystems across the United States including forested, grassland, and arid landscapes.

Examples of peer reviewed scientific analysis, research and monitoring conducted on forest, watershed and habitat activities identified under this category of actions are listed in Appendices C and D. These references document management effectiveness and mitigation of resource effects of the activities proposed under the Restoration CE

Based on professional staff and expert opinion, scientific analyses, and agency experience, the USFS has determined that the environmental impacts of actions identified under this category of actions are not significant.

### **Benchmarking Other Agencies' Experiences**

A review of CEs established by other Federal agencies and by Congress was completed by an interdisciplinary team. The CEs cited below are those that have actions similar to those proposed by the USFS under this category. Based on this review, the USFS's interdisciplinary team found that it would be conducting activities similar in size and scope under similar resource conditions and with similar environmental impacts to the CEs of other Federal agencies. Accordingly, the USFS concluded that its activities under this CE would not individually or cumulatively result in significant effects on the human environment and, therefore, should not require documentation in an EA or EIS.

### **Bureau of Land Management**

The Bureau of Land Management (BLM) has an agency mission that is the most similar to the USFS and conducts similar activities to address restoration needs. The CEs listed below include management of fish and wildlife habitat, forest management, including impacts or risks from insects and disease, and salvaging dead or dying trees, or trees impacted by disturbances and address construction of temporary roads as a part of these activities.

The BLM's extraordinary circumstances include four that correlate directly with the USFS: threatened and endangered species, American Indian sacred and religious sites, sites on the National Register of Historic places, and cumulative effects. Other BLM extraordinary circumstances correspond to CEQ's significance criteria. Refer to Appendix E for a comparison of agency extraordinary circumstances.

### **Bureau of Land Management**

#### DOI Manual CH 11.9 (A) Fish and Wildlife

- (1) Modification of existing fences to provide improved wildlife ingress and egress.
- (2) Minor modification of water developments to improve or facilitate wildlife use e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).
- (3) Construction of perches, nesting platforms, islands, and similar structures for wildlife use.
- (5) Routine augmentations, such as fish stocking, providing no new species are introduced.

#### DOI Manual 11.9 (C) Forestry

- (2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.
- (3) Seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of non-forest to forestland. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellent, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.
- (4) Pre-commercial thinning and brush control using small mechanical devices.

### **Bureau of Indian Affairs**

The Bureau of Indian Affairs (BIA's) CEs listed below include forest stand improvement; responses to emergency range and forest rehabilitation, including salvage of damaged timber; logging road construction; prescribed burning; and forestation projects including native species. These activities are similar to those in the proposed USFS Restoration CE.

The BIA determines if there are extraordinary circumstances through the use of CEER Checklist (DOI regulation 43 CFR 46.215). If any of the listed extraordinary circumstances are listed, then the project must be modified to eliminate the extraordinary circumstance, or the CE may not be used and an EA or EIS must be conducted.

**Bureau of Indian Affairs**

DOI Manual Chapter 10.5(H):

- (3) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.
- (4) Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (5) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (6) Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (7) Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

**Natural Resources Conservation Service**

The Natural Resource Conservation Service's (NRCS') CE listed below include restoration and stabilization of riparian areas and water ways, which are similar activities to those proposed by the USFS under the CE. Based on the expertise of agency resource professionals who have experience implementing these actions across the country, the USFS believes that methods of implementing these actions are the same or similar to NRCS. The NRCS differs from the USFS implementation in that NRCS implementation takes place primarily on non- Federal and agricultural lands, where USFS actions are primarily focused on National Forest and Grasslands.

The NRCS NEPA guidance does include several extraordinary circumstances that correspond to those of the USFS. They include the presence of threatened and endangered species and wetlands. Several NRCS extraordinary circumstances closely correlate with CEQ's significance criteria (40 CFR 1508.27). Refer to Appendix E for a comparison of agency extraordinary circumstances.

### **Natural Resources Conservation Service**

- 7 CFR 650.6 (d)(1): Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services;
- 7 CFR 650.6 (d)(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances;
- 7 CFR 650.6 (d)(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes;
- 7 CFR 650.6 (d)(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, e.g., utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods)"
- 7 CFR 650.6 (d)(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition;
- 7 CFR 650.6 (d)(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes.

### **U.S. Fish and Wildlife Service**

These Fish and Wildlife Service's (FWS') CEs include activities for the restoration of fish and wildlife habitats through constructing or installing structures to support or protect habitat, through prescribed burning, and through supplementation of native species. These include similar objectives and activities that could be implemented by the USFS when restoring fish and wildlife habitats.

The FWS has extraordinary circumstances consideration similar to that of the USFS: threatened and endangered species, American Indian sacred and religious sites, and sites on the National Register of Historic places. Refer to Appendix E for a comparison of agency extraordinary circumstances.

#### **Fish and Wildlife Service (DOI Manual Ch. 8.5 (B))**

- (3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.
  - (i) The installation of fences.
  - (ii) The construction of small water control structures.
- (4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.
- (5) Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Service procedures.
- (6) Introduction or supplementation (e.g., stocking) of native, formerly native, or established species in to suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

#### **Categories Established by Congress**

The two categories established by Congress are both amendments to the Healthy Forests Restoration Act of 2003 (HFRA) and address activities to reduce risk from insects and disease, and risk of wildfire on Federal public lands, which are similar in both intent and activity to those of the proposed USFS Restoration CE. However, the proposed Restoration CE differs from these in that it allows for a broader scope of restoration activities, and is not limited to the areas designated by statute.

The two categories address extraordinary circumstances differently. The Agricultural Act of 2014 is silent on the consideration of extraordinary circumstances. The Consolidated Appropriations Act of 2018 requires application of agency extraordinary circumstances.

**HFRA, Section 603 as Amended by Agricultural Act of 2014, Sec. 8204.** Insect and disease infestation.

Under section 603, an insect and disease project may be categorically excluded from documentation in an environmental assessment or an environmental impact statement and exempt from pre-decisional objections. In order to use this CE, projects must:

- Maximize old growth and large trees to the extent the trees promote stands that are resilient to insect and disease threats;
- Consider the best available scientific information; and
- Be developed through a collaborative process that:
  - includes multiple interested persons representing diverse interests;
  - and is transparent and non-exclusive, or meets the requirements of a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act.

Projects that carry out part of a proposal that complies with the eligibility requirements of Collaborative Forest Landscape Restoration Program will meet the collaborative process requirements of section 603.

Section 603 imposes limitations on the use of the section 603 CE. A project that is categorically excluded:

- May not exceed 3,000 acres; and
- Shall be located in the wildland urban interface, or in an area in condition classes 2 or 3 in Fire Regime Groups I, II, or III, if outside the Wildland Urban Interface.
- May not include the establishment of permanent roads, but may allow for necessary maintenance and repairs on existing permanent roads and may allow for the construction of temporary roads (where not otherwise prohibited) for the purposes of carrying out this section. Temporary roads would have to be decommissioned no later than three years after the date of project completion.

The section 603 CE may not be used in areas that are:

- Congressionally designated Wilderness and Wilderness Study Areas;
- Areas where the removal of vegetation is restricted or prohibited by statute or by Presidential proclamation; and
- Areas where the activities described above would be inconsistent with the applicable Land and Resource Management Plan.

**HFRA, Section 605 as Amended by the Consolidated Appropriations Act of 2018: Categorical Exclusion for Wildfire Resilience Projects**

Amends the Healthy Forest Restoration Act of 2003, by adding section 605. The primary purpose of this CE is for wildfire resilience projects and is very similar to the HFRA CE created in the Agricultural Act of 2014.

Components of the CE that are similar to the 2014 HFRA CE are:

- Carried out in accordance with subsections (b), (c) and (d) of section 102 and sections 104 and 105.
- Exempt CE from objections under section 105.
- Maximizes retention of old growth.
- Considers best available science.
- Is developed and implemented through a collaborative process.
- Project size is 3,000 acres.
- Projects can occur within the WUI or lands outside of WUI within condition classes 2 or 3 in Fire Regime groups 1, 2, or 3.
- No new permanent roads. Temporary roads must be decommissioned within 3 years after project.
- Cannot be carried out in Wilderness, where removal of vegetation is restricted or prohibited by acts of Congress or Presidential proclamation or would be inconsistent with a land management plan.
- Public notice and scoping are required.
- There are reporting requirements on acres treated utilizing this authority.

## Conclusions

The USFS finds that the category of actions defined in the Restoration CE above does not individually or cumulatively have significant environmental effects on the human environment. The Agency's finding is predicated on data represented by implementation of past actions; expert judgment of responsible officials; determinations from the 68 projects reviewed for this supporting statement; information from professional staff, experts, and scientific analyses; a review of CEs implemented by other Federal agencies; a responsible official's review of CEQ significant criteria (40 CFR 1508.27) and the extraordinary circumstances listed in 36 CFR 220.5(b); and the USFS's extensive and rich experience with implementing and subsequent monitoring of restoration activities.