



**Supplementing 36 CFR Part 220:  
Proposed Categorical Exclusions For  
Certain Special Use Projects**

**SUPPORTING STATEMENTS**

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## Table of Contents

Introduction.....	3
USDA Forest Service Environmental Analysis and Decision Making Focus.....	3
Purpose of Supporting Statement.....	4
CEQ Regulatory Basis for CEs.....	4
Forest Service Implementation of CEs.....	4
CEQ Guidance on Supplementing Categorical Exclusions.....	6
Process and Supporting Information for Development of Proposed CEs.....	7
Review of Past Agency Actions.....	8
Best Management Practices.....	8
Individual Justification for Each Proposed Special Use CE.....	8
Proposed Special Use CE #1 – No Decision Memo Required.....	8
Implemented Actions.....	9
BMPs.....	10
Information from Professional Staff, Experts, and Scientific Analysis.....	10
Benchmarking Other Agencies’ Experience.....	10
Proposed Special Uses CE #2 – No Decision Memo Required.....	12
Implemented Actions.....	13
BMPs.....	13
Information from Professional Staff, Experts, and Scientific Analysis.....	13
Benchmarking Other Agencies’ Experience.....	14
Proposed Special Uses CE #3 – Decision Memo Required.....	15
Implemented Actions.....	16
BMPs.....	17
Information from Professional Staff, Experts, and Scientific Analysis.....	17
Benchmarking Other Agencies’ Experience.....	17
Conclusions.....	18

## Introduction

The USDA Forest Service (USFS) is proposing to add one new categorical exclusion (CE), expand an existing CE, and combine two other existing CEs related to special uses to its regulations for implementing the National Environmental Policy Act (NEPA), which addresses common activities related to land and program management. 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 effort to change Environmental Analysis and Decision Making (EADM). The USFS is publishing the proposed rule to update the Agency's NEPA procedures, including development of the new special use CEs.

The Council on Environmental Quality (CEQ) regulations in Title 40, Code of Federal Regulations, Part 1507.3 (40 CFR 1507.3) provide that agencies may adopt CEs after public notice and opportunity to comment. Current USFS procedures for complying with and implementing NEPA are in 36 CFR Part 220. The list of categories of actions (CEs) that do not require preparation of an EA or an EIS by the USFS are 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.

For decades the USFS has authorized a variety of land uses supporting recreation, access, energy uses, and other activities that benefit the public. The USFS has found that in certain circumstances the environmental effects of many of these activities have not been individually or cumulatively significant. The USFS's vast experience in 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 new CEs to improve the efficiency of delivering these services to the public.

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 new special use CEs are intended to reduce the time needed to authorize use and occupancy of National Forest System (NFS) lands by simplifying the analysis process where the Agency's experience has shown that there are no significant impacts.

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

The USFS is establishing these Special Use CEs as part of the broader effort to improve how the

Agency conducts environmental analysis and decision making (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 and recreational benefits. The Agency has a backlog of more than 5,000 applications for new special use permits and renewals of existing special use permits that are awaiting environmental analysis and decision.. 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 Special Use CEs will increase the pace and scale of 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, and help provide improved and enhanced access for the public.

### **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, in part, on its experience implementing similar actions, the experience of other Federal agencies, and information provided by the public.

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

NEPA 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, including grants. NEPA also established the CEQ, which issued regulations implementing NEPA at 40 CFR 1500-1508.

The CEQ regulations apply to all Federal agencies, 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 CEs for categories of actions that normally do not 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 1508.4).

### **Forest Service Implementation of CEs**

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 part 1b.3 or 36 CFR 220.5(d) or (e) (36 CFR 220.5(a)).

For all proposed new CEs and the proposed revision to an existing 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 of proposed actions described at 36 CFR 220.5. 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 action meets two criteria. First, the proposed action must fit within the description of a category of actions 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 the USFS's NEPA 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 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>1</sup> that provides public notice about those 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 covered by a CE that requires a decision memo, "the 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 at 36 CFR 220.5(b)<sup>2</sup> is present, the interdisciplinary team must determine the degree to which any cause-and-effect relationship exists between the proposed action and the potential effect on the resource. The mere presence of any extraordinary circumstances does not preclude the use of a CE. Extraordinary circumstances exist when there is a cause-and-effect relationship between a proposed action and listed resource conditions and the responsible official determines that there is a likelihood of substantial adverse effects.<sup>3</sup>

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<sup>1</sup> <http://www.fs.fed.us/sopa/>.

<sup>2</sup> Under the proposed revisions to 36 CFR 220.6(b), resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant 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.

<sup>3</sup> This sentence reflects proposed revisions to 36 CFR 220.6(b)(2) to clarify the USFS's extraordinary circumstances review.

The use of a CE for a proposed action does not absolve the USFS from complying with any applicable statutory requirement (e.g., the Clean Water and Clean Air Acts) or mandatory consultation 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 a CE 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 category of actions. As indicated in 26 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 "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 NEPA (42 U.S.C. 4332) and CEQ's implementing regulations (40 CFR 1500-1508).

The November 2010 CEQ memo provides guidance on methods for gathering information to substantiate a CE. CEQ highlights the need to gather sufficient information to support establishing a 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 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 a 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 category of proposed actions. 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 proposed actions; (2) methods of implementing the proposed actions; (3) frequency of the proposed actions; (4) applicable standard operating procedures or implementing guidance (including extraordinary circumstances) for the proposed actions; and (5) timing and context, including the environmental setting in which the proposed actions would 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 its proposed special use authorization CEs. The USFS believes it has sufficient experience implementing these categories of proposed actions and that developing and implementing impact demonstration projects would not provide additional information to support these CEs.

### **Process and Supporting Information for Development of Proposed CEs**

This section explains how the USFS determined that the categories 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 each 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 proposed actions in these CEs;
- a listing of USFS and external technical experts who have the expertise, experience, and judgment to develop the new CEs, 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 three USFS proposed CEs, including a review of extraordinary circumstances applied by the Federal agencies.

For all of the categories of actions proposed as CEs, 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 categories of proposed actions should be included in new CEs. Key agency experts who participated in these meetings and in the development of this statement are listed in the appendices under the corresponding proposed CE.

The USFS also collated environmental review information, data, and scientific research from field units that have undertaken projects in these categories of 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 verified through monitoring. The data and information represent on-the-ground knowledge, experience, and judgment of the interdisciplinary specialists, responsible officials, and researchers 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>).

### **Review of Past Agency Actions**

The USFS undertook a review of past agency actions to identify the types of activities related to special use authorizations that ordinarily do not have significant effects on the environment, and as a result may warrant the adoption of additional categorical exclusions. Between fiscal years 2012-2016, 198 project decisions were entered into the USFS' Planning, Appeals, and Litigation System that included special use management as a project purpose and were analyzed with an environmental assessment. The USFS initially screened this project list to remove 61 projects that were missing data or documentation, contained errors, or were broader in scope than solely special use management. The USFS reviewed the remaining 137 projects in more detail to identify potential new CEs related to special use authorizations. As part of this analysis and refinement, the USFS arrived at the three proposed CEs discussed in this supporting statement. The 75 projects listed in Appendix A represent those that are relevant to these proposed CEs.

### **Best Management Practices**

The USFS developed the National Best Management Practices (BMPs) Program<sup>4</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 CEs included in this supporting statement, the Guide includes National Core BMPs for Facilities and Non-Recreation Special Uses Management Activities, Recreation Management Activities, and Road Management Activities. The specific BMPs related to the proposed CEs are included in the individual justifications of the proposed CEs, below.

## **Individual Justification for Each Proposed Special Use CE**

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### **Proposed Special Use CE #1 – No Decision Memo Required**

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<sup>4</sup> <https://www.fs.fed.us/biology/watershed/BMP.html>

**36 CFR 220.5(d)(11):** Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is a purely clerical action to account for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include but are not limited to:

- (i) Issuing a new authorization to replace a powerline authorization that is at the end of its term;
- (ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands.
- (iii) Issuing a new permit to replace an outfitting and guiding permit that is at the end of its term, or to convert a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.

The foregoing proposed CE would consolidate the existing CE at 36 CFR 220.5(e)(15), which requires a decision memo, with existing the CE at 36 CFR 220.5(d)(10), which does not require a decision memo. These existing CEs would be removed. The proposed CE would not require a decision memo. Both existing CEs cover clerical modification or reauthorization of existing special uses. Both these CEs apply only when modification or reauthorization of an existing special use does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, and only when the permit holder is in full compliance with the terms and conditions of the special use authorization. Proposed special use CE #1 would retain these two requirements.

### **Implemented Actions**

The USFS has extensive experience authorizing special uses ranging from one-time recreation events to long-term use and occupancy of NFS lands, including outfitting and guiding; rights-of-way for power lines, utilities, oil and gas transmission lines, and road access to private lands; recreational residences; organization camps; and communications sites. This category combines two existing categories into one to increase efficiency and management of special uses and eliminate confusion over which category to apply. The proposed CE also would add examples to enhance clarity.

The USFS reviewed over 1,500 actions associated with existing CE #15 from fiscal years 2012-2016. This review indicated that CE #15 is being used as intended and within its limiting factors. The USFS analyzed an additional two EAs for which this category would apply from the review of past agency actions described above. One of the EAs authorized the conversion of 15 transitional special use permits into priority use permits. The other EA authorized the continued use of 5 recreation residences and renewal of the associated special use permits. The USFS reached a finding of no significant impact on each of these EAs.

## BMPs

The purpose of the Recreation and Special Uses Management Activities core BMPs developed by the USFS is to avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources that may result from management activities located on NFS lands. Following are some of the National BMPs that would likely be considered by interdisciplinary teams when planning and implementing projects covered by proposed special use CE #1:

BMP	Objective
Fac-1 Facilities and Non-Recreation Special Uses Planning	Use the applicable special use authorization and administrative facilities planning processes to develop measures to avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources during construction and operation of facilities and non-recreation special use activities.
Fac-8 Non-Recreation Special Use Authorizations	Avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources from physical, chemical, and biological pollutants resulting from activities under non-recreation special use authorizations.
Rec-9 Recreation Special Use Authorizations	Avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources from physical, chemical, and biological pollutants resulting from activities under recreation special use authorizations.

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

The USFS has a strong cadre of professional staff and scientists with extensive experience in special uses management on NFS lands. Appendix B has a list of professional staff with knowledge of activities identified under this category of proposed actions. This group of experts provided input and review of the proposed CE based on their expertise.

## Benchmarking Other Agencies' Experience

An interdisciplinary team reviewed lists of other Federal agencies' CEs and extraordinary circumstances. Cited below are CEs from other Federal agencies that cover proposed actions similar to those covered by the proposed special use CE. For example, CEs highlighted below include lease and permit renewals for activities similar to those authorized by the USFS, such as rights-of-way, cabin sites, recreation management, and other uses.

Based on this review, the USFS's interdisciplinary team found that the proposed special use CE would cover proposed activities that would be similar in size and scope, that would be conducted under similar resource conditions, and would have similar environmental impacts to the CEs of other Federal agencies. In addition, each agency's extraordinary circumstances (Appendix C) were found to address the CEQ criteria with several commonalities with the USFS's extraordinary

circumstances (regarding threatened and endangered species, American Indian sacred and religious sites, sites listed in the National Register of Historic Places, and cumulative effects). Accordingly, the USFS concluded that proposed actions covered by this proposed special use CE would not individually or cumulatively result in significant effects on the human environment and, therefore, should not be documented in an EA or EIS.

**Bureau of Land Management (DOI/BLM: 516 Chapter 11 - 11.9.E)**

(9) Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

**Bureau of Reclamation (DOI/Reclamation: 516 Chapter 14.5.D.)**

8) Renewal of existing grazing, recreation management, or cabin site leases which do not increase the level of use or continue unsatisfactory environmental conditions.

**U.S. Fish and Wildlife Service (DOI/USFWS: 516 Chapter 8.5)**

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

**National Park Service (DOI/NPS: 516 Chapter 12.5.A)**

- (1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.
- (4) Reissuance/renewal of permits, rights-of-way or easements not involving new environmental impacts

**U.S. Department of Defense, Navy (DOD/Navy: 32 CFR 775.6)**

(17) Renewals and/or initial real estate ingrats and outgrants involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing Federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

**U.S. Department of Defense, Air Force (DOD/USAF: 32 CFR Part 989, Appendix B)**

A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

**Department of Homeland Security (DHS Instruction Manual #023-01-001-01)**

C2. Lease extensions, renewals, or succeeding leases where there is no change in the facility's use and all environmental operating permits have been acquired and are current.

### **U.S. Department of the Treasury (Treasury Directive 75-02)**

C2. Lease extensions, renewals, or succeeding leases for real property and all facilities on such property where there is no change in the facility's use and all environmental permits have been acquired and are current.

Based on a review of past actions, a review of CEs implemented by other Federal agencies, and the USFS's extensive experience authorizing the use and occupancy of NFS lands, the USFS has concluded that the category of proposed actions covered by this proposed CE would not individually or cumulatively have significant effects on the human environment and, therefore, should be categorically excluded from documentation in an EA or EIS.

This CE would be codified at 36 CFR 220.5(d) and would not require a project or case file and a decision memo. The scope of the proposed CE is consistent with the scope of the projects examined in this review, each of which had no significant environmental effects. Consequently, the level of effects associated with the proposed actions covered by the proposed CE is expected to be below the threshold for significant environmental effects.

There are no foreseeable events that indicate that the proposed actions covered by the proposed CE would substantially differ in the future. The Agency has, therefore, concluded that the environmental impacts attendant to these proposed actions would not differ significantly from those associated with the implemented actions. That is, based upon the data and information collected in the review, the Agency does not expect that proposed actions covered by this proposed CE would individually or cumulatively have significant effects on the human environment. Additionally, project activities would be implemented consistent with the applicable forest plan and BMPs and with any appropriate mitigation measures.

### **Proposed Special Uses CE #2 – No Decision Memo Required**

**36 CFR 220.5(d)(12):** Issuance of a new authorization or amendment of an existing authorization for activities that occur on existing roads or trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision. Subject to the foregoing condition, examples include but are not limited to:

- (i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;
- (ii) Issuance of a permit to host a motorcycle enduro ride on existing roads;
- (iii) Issuance of an outfitting and guiding permit for backcountry skiing;
- (iv) Issuance of a permit for a one time use of existing facilities for fund raising activities and other recreational events.
- (v) Issuance of a campground concession permit for an existing campground that has

previously been operated by the Forest Service.

### Implemented Actions

The USFS has substantial experience authorizing recreation special uses that occur on existing NFS roads or NFS trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision. Many of these recreation special uses occur on existing NFS roads or NFS trails or in existing facilities that are designed and managed for those uses and have no more impacts than noncommercial public use.

The Forest Service reviewed the NEPA documentation for 12 recent projects that relate specifically to the types of actions associated with this proposed CE, ranging from recreation events involving motor vehicle use, mountain bike use, or horseback use on existing NFS roads and NFS trails to outfitter and guide permits for snowmobiling, cat-skiing backpacking, and fly-fishing activities. The environmental analyses detailed in Appendix A support proposed actions that would be covered by this proposed special uses CE. The USFS reached a finding of no significant impact on each of the environmental assessments associated with these projects.

The USFS additionally obtained information related to implementation and monitoring for two of these 12 projects. Specifically, the USFS surveyed personnel who were familiar with the projects to verify that observed effects of these implemented projects were consistent with the NEPA analysis, and if not, to determine how they differed. For the projects listed in Appendix A the 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 special uses CE predicted significant effects on the human environment.

### BMPs

The purpose of the Recreation and Special Uses Management Activities core BMPs developed by the USFS is to avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources that may result from management activities located on NFS lands. Following are some of the National BMPs that would likely be considered by interdisciplinary teams when planning and implementing projects utilizing proposed special uses CE #2:

<b>BMP</b>	<b>Objective</b>
Rec-9 Recreation Special Use Authorizations	Avoid, minimize, or mitigate adverse effects to soil, water quality, and riparian resources from physical, chemical, and biological pollutants resulting from activities under recreation special use authorizations.

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

The USFS has a strong cadre of professional staff and scientists with extensive experience in special uses management on NFS lands. Appendix B has a list of professional staff with knowledge of activities identified under this category of proposed actions. This group of experts provided input and review of

the proposed CE based on their expertise.

### **Benchmarking Other Agencies' Experience**

An interdisciplinary team reviewed other Federal agencies' CEs and extraordinary circumstances. Cited below are CEs from other Federal agencies that cover proposed actions similar to those covered by this proposed special uses CE. Based on this review, the USFS's interdisciplinary team found that the proposed special uses CE would cover proposed actions that would be similar in size and scope, would occur under similar resource conditions, and would have similar environmental impacts to the CEs of other Federal agencies. In addition, a review of the other Federal agencies' extraordinary circumstances (Appendix C) determined that they address the CEQ significance criteria and have several commonalities with the USFS's (regarding threatened and endangered species, American Indian sacred and religious sites, sites listed in the National Register of Historic Places, and cumulative effects). Accordingly, the USFS has concluded that the proposed actions covered by this proposed special uses CE would not individually or cumulatively result in significant effects on the human environment and, therefore, should not be documented in an EA or EIS.

### **Bureau of Land Management (DOI/BLM: 516 Chapter 11 - 11.9.E)**

H. Recreation Management. Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; that impacts no more than 3 staging area acres; and/or for recreational travel along roads, trails, or in areas authorized in a land use plan. This CX cannot be used for commercial boating permits along Wild and Scenic Rivers. This CX cannot be used for the establishment or issuance of Special Recreation Permits for "Special Area" management (43 CFR 2932.5).

### **U.S. Department of Defense, U.S. Navy (32 CFR Part 775)**

(31) Approval of recreational activities which do not involve significant physical alteration of the environment or increase human disturbance in sensitive natural habitats and which do not occur in or adjacent to areas inhabited by endangered or threatened species.

### **Department of Homeland Security (DHS Instruction Manual #023-01-001-01)**

B6 Approval of recreational or public activities or events at a location typically used for that type and scope (size and intensity) of activity that would not involve significant physical alteration of the environment.

In the USFS's experience, the potential for special uses to have significant effects on the human environment is generally avoided when special uses occur on existing NFS roads or NFS trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision.

Based on the review of past actions, a review of CEs implemented by other Federal agencies, and the USFS's extensive experience authorizing recreation special uses that occur on existing NFS

roads or NFS trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision, the USFS has concluded that the proposed actions covered by this proposed CE would not individually or cumulatively have significant effects on the human environment and, therefore, should be categorically excluded from documentation in an EA or EIS.

This proposed special uses CE would be codified at 36 CFR 220.5(d)(12), would not require a project or case file and decision memo, and would be consistent in scope with the projects examined in the review, each of which had no significant environmental effects. Consequently, the level of effects associated with the proposed actions covered by the proposed special uses CE is expected to be below the threshold for significant environmental effects.

There are no foreseeable events that indicate that the proposed actions covered by this proposed special uses CE would substantially differ in the future. The Agency has, therefore, concluded that the environmental impacts attendant to these proposed actions would not differ significantly from those associated with the implemented actions. That is, based upon the data and information collected in the review, the Agency does not expect that proposed actions covered by this proposed special uses CE would individually or cumulatively have significant effects on the human environment.

### **Proposed Special Uses CE #3 – Decision Memo Required**

**36 CFR 220.6(e)(3):** Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:

- (i) Approving the construction of a meteorological sampling site;
- (ii) Approving the use of land for a one-time group event;
- (iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;
- (iv) Approving the use of land for a 40-foot utility corridor that crosses four miles of a national forest;
- (v) Approving the installation of a driveway, or other facilities incidental to use of a private residence;
- (vi) Approving new or additional telecommunication facilities, improvements, or use at a site already used for such purposes;
- (vii) Approving the expansion of an existing gravel pit or the removal of mineral materials from an existing community pit or common-use area;
- (viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

This proposed special uses CE would expand the scope of the existing special uses CE at 36 CFR 220.6(e)(3) by increasing the acreage of special uses covered by the CE from 5 to 20. In

addition, the words minor (continuation of minor special uses) and contiguous (less than five contiguous acres) were removed to improve clarity. The presence of “minor” in CE (e)(3) has caused confusion among Agency personnel because it is not a term of art in this context.

### **Implemented Actions**

The USFS has substantial experience authorizing special uses that involve minimal acreage. The USFS reviewed the NEPA documentation for 62 recent projects that relate to actions associated with this proposed CE. These projects are listed in Appendix A. The activities in those projects included:

- New electric transmission and distribution line construction;
- Replacement, relocation, and upgrades to existing transmission lines and towers;
- Construction of fiber optic communication lines;
- New construction of natural gas pipelines;
- Maintenance and replacement of existing natural gas pipelines;
- Construction of new water pipelines and replacement or extension of existing water pipelines;
- Construction of water treatment plants, related facility expansion, and water storage tank construction;
- Repair and expansion of existing dams and associated facilities;
- Construction of communications facilities at existing and new sites;
- Reconstruction and widening of existing roads, construction and reconstruction of access roads, and bridge replacement;
- Expansion of an existing cinder pit; and
- Vegetation management that is incidental to the above activities.

The average size of these projects was 40 acres, with a range from under five acres to over 300 acres. The environmental analyses detailed in Appendix A support proposed actions that would be covered by this proposed special uses CE. The USFS reached a finding of no significant impact on each of the environmental assessments associated with these projects.

The USFS additionally obtained information related to implementation and monitoring of 9 of these projects. Specifically, the USFS surveyed personnel located across the U.S. who were familiar with the projects to verify that observed effects of these implemented projects were consistent with the NEPA analysis, and if not, to determine how they differed. For the projects listed in Appendix A the 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 special uses CE predicted significant effects on the human environment. In the USFS’s experience, approval, modification, or continuation of special uses that require less than 20 acres of NFS lands does not have the potential to have significant effects on the human environment.

## BMPs

The purpose of the Recreation and Special Uses Management Activities core BMPs developed by the USFS is to avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources that may result from management activities located on NFS lands. Following are some of the National BMPs that would likely be considered by interdisciplinary teams when planning and implementing projects utilizing proposed special uses CE #4:

<b>BMP</b>	<b>Objective</b>
Fac-1 Facilities and Non-Recreation Special Uses Planning	Use the applicable special use authorization and administrative facilities planning processes to develop measures to avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources during construction and operation of facilities and non-recreation special uses activities.
Fac-2 Facility Construction and Stormwater Control	Avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources by controlling erosion and managing stormwater discharge originating from ground disturbance during construction of developed sites.
Fac-8 Non-Recreation Special Use Authorizations	Avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources from physical, chemical, and biological pollutants resulting from activities under non-recreation special use authorizations.
Fac-9 Pipelines, Transmission Facilities, and Rights-of-Way	Avoid, minimize, or mitigate adverse effects on soil, water quality, and riparian resources during the construction and maintenance of pipelines, powerlines, transmission facilities, and other rights-of-way.

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

The USFS has a strong cadre of professional staff and scientists with extensive experience in special uses management on NFS lands. A listing of professional staff with knowledge of activities identified under this category of proposed actions can be found in Appendix B. This group of experts provided input and review of the proposed CE based on their expertise.

## Benchmarking Other Agencies' Experience

An interdisciplinary team reviewed other Federal agencies' CEs and extraordinary circumstances was completed by an interdisciplinary team. Cited below are CEs from other Federal agencies that cover proposed actions similar to those covered by this proposed special uses CE. Based on this review, the USFS's interdisciplinary team found that the proposed actions covered by the proposed special uses CE would be similar in size and scope, would occur under similar resource conditions, and would have similar environmental impacts to the CEs of other Federal agencies. In addition, a review of the other Federal agencies' extraordinary circumstances (see Appendix C) determined that they address the CEQ significance criteria and have several commonalities with the USFS's (regarding threatened and

endangered species, American Indian sacred and religious sites, sites listed in the National Register of Historic Places, and cumulative effects). Accordingly, the USFS has concluded that the proposed actions covered by this proposed special uses CE would not result individually or cumulatively in significant effects on the human environment and, therefore, should not be documented in an EA or EIS.

**Bureau of Land Management (DOI/BLM: 516 Chapter 11 - 11.9.E)**

(19) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

**National Park Service (DOI/NPS: 516 Chapter 12.5A)**

(5) Issuance of permits for demonstrations, gathering, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.

This proposed special uses CE would be codified at 36 CFR 220.6(e), would require a project or case file and decision memo, and would be consistent in scope with the projects examined in the review, each of which had no significant environmental effects. Consequently, the level of effects associated with the proposed actions covered by the proposed special uses CE is expected to be below the threshold for significant environmental effects.

There are no foreseeable events that indicate that the proposed actions covered by this proposed special uses CE would substantially differ in the future. The Agency has, therefore, concluded that the environmental impacts attendant to these proposed actions would not differ significantly from those associated with the implemented actions. That is, based upon the data and information collected in the review, the Agency does not expect that proposed actions covered by this proposed special uses CE would individually or cumulatively have significant effects on the human environment.

## **Conclusions**

The USFS finds that the proposed actions covered by the proposed special use CEs would not individually or cumulatively have significant effects on the human environment. The Agency's finding is predicated on data from implementation of past actions; expert judgment of responsible officials; determinations regarding the previously implemented 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 significance criteria (40 CFR 1508.27) and the extraordinary circumstances listed in 36 CFR 220.5(b); and the USFS's extensive experience in authorizing and monitoring special uses.