ON BEHALF OF THE ATTORNEYS GENERAL

OF

NEW MEXICO, CALIFORNIA, COLORADO AND WASHINGTON

May 6, 2026

Via electronic submission to: **https://eplanning.blm.gov/**

U.S. Department of the Interior
Bureau of Land Management
c/o Wade Salverson, Forestry Lead
Division of Forest, Rangeland and Vegetation Resources
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709
Attention: HQ-2000-2026-0001

Re: BLM's Proposed New Categorical Exclusion for Forest and Woodland Density Management, 91 Fed. Reg. 17299 (April 6, 2026); NEPA Number: DOI-BLM-HQ-2000-2026-0001-OTHER_NEPA

Dear Mr. Salverson,

The Attorneys General of New Mexico, California, Colorado, and Washington (the States) respectfully submit these comments on the U.S. Department of the Interior's notice of its proposal to adopt a categorical exclusion (CE) exempting timber density management projects of up to 5,000 acres on Bureau of Land Management (BLM) lands from environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, *et seq. National Environmental Policy Act Implementing Procedures for the Bureau of Land Management*, 91 Fed. Reg. 17,299 (Apr. 6, 2026) (Timber Density CE). BLM proposes the Timber Density CE in addition to, and without rescinding, an existing CE that exempts timber projects of up to 70 acres in size from NEPA review.

The States recognize the importance of taking an active role in managing public forest lands to reduce wildfire risks and address disturbances, especially given the conditions created by past forest management practices and climate change, which has resulted in increased drought, insect outbreaks, and longer and more severe fire seasons. However, BLM does not provide an adequate justification for this massive increase in the size of projects, and the allowance for construction of permanent roads, that will escape public input and environmental review should BLM adopt the CE as proposed. Despite BLM's claim to focus on public and infrastructure safety, the proposal does not limit the areas where it may be used (i.e. no focus on wildland urban interfaces), nor does it limit the number of times the CE may be used. BLM's proposal to exempt these larger projects from NEPA review in perpetuity, on land that it manages across the country, is especially problematic given the potential for significant environmental impacts from timber harvest projects of the size proposed, including soil disturbance, erosion, and wildlife impacts, as

well as cumulative impacts from the implementation of multiple projects without environmental review.[1]

The States are concerned with the potentially widespread application of this CE for large timber harvesting projects on public lands and that BLM and other agencies will not take the "hard look" at the environmental impacts caused by multiple timber harvesting projects of 5,000 acres that NEPA would otherwise require.

Safeguarding adequate review under NEPA and ensuring full public disclosure of the environmental impacts of timber projects on our public lands is of paramount importance to the States' interests. In California, BLM administers 15 million acres of public lands, equal to nearly 15% of the State's land area.[2] BLM-managed forest areas are spread throughout the State, but many of these lands are in the coastal ranges of Northern California, including in the California Coastal National Monument, the King Range National Conservation Area, and the Berryessa Snow Mountain National Monument. BLM also manages areas such as the Fort Ord National Monument near Monterey and the Sand to Snow National Monument outside of Palm Springs. BLM lands in California provide habitat for at least 34 animals and 68 plants listed as endangered or threatened under the federal Endangered Species Act, such as the bighorn sheep and Pacific fisher, as well as numerous other sensitive species that depend on forest habitat, such as the California spotted owl.

In New Mexico, BLM's forestry program manages 2 million acres of forests and woodlands.[3] BLM lands in New Mexico are spread throughout the State and include lands in the Fort Stanton-Snowy River Cave National Conservation Area, Rio Grande del Norte National Monument, the Organ Mountains-Desert Peaks National Monument, lands neighboring the Bosque del Apache National Wildlife Refuge, and others. Approximately 16 threatened and endangered animals and 11 threatened and endangered plants call New Mexico BLM-administered lands home.[4] They include the Mexican gray wolf, Aplomado falcon, the Gila trout, southwestern willow flycatcher, and the yellow-billed cuckoo, among others.

BLM also manages 3.5 to 4 million acres of forested lands in Colorado. More than 2.5 million of the forested acres are considered woodlands, dominated by piñon, juniper and oak, and the remaining forested acres consist of traditional commercial tree species such as ponderosa pine, lodgepole pine and Douglas fir. BLM Colorado works cooperatively with the U.S. Forest Service, Colorado State Forest Service, and other partners to restore forest health conditions, including mitigating bark beetle-associated impacts. Treatments to address forest health are not one-size-fits-all projects – they must be assessed by foresters and the approach carefully considered even within the same forest types. The proposed expansion of CE coverage to 5,000 acres for both

[1] BLM acknowledges the potential for environmental impacts but relies on the application of design features and Best Management Practices that are not actually required by the CE. *See generally* BLM Forest and Woodland Density CE Substantiation Report, available at https://eplanning.blm.gov/Documents/?id=8780a416-522f-f111-8341-001dd8029ed0&spid=9280a416-522f-f111-8341-001dd8029ed0#. Instead, they must only be disclosed and discussed. 91 Fed. Reg. 17,302.

[2] U.S. Dep't of the Interior, BLM, *BLM California Priorities 2021 Public Lands Facts Contacts Map*, https://www.blm.gov/sites/default/files/docs/2022-01/Public%20Lands%202021_508_0.pdf

[3] U.S. Dep't of the Interior, BLM, *BLM New Mexico Forests and Woodlands*, https://www.blm.gov/programs/natural-resources/forests-and-woodlands/forest-resilience/newmexico

[4] BLM, *New Mexico Threatened and Endangered Species*, https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered/state-te-data/new-mexico

salvage and thinning treatments would sacrifice BLM's ability to get expert local and state input regarding these larger-scale projects, and increase unnecessary risks to wildlife habitat, sensitive and listed wildlife species, and watershed health and protection.

While the States share BLM's interest in efficient and proactive forest management and wildfire risk management, and welcome partnerships with the federal government in legitimate wildfire prevention and forest management endeavors, the States are concerned that this CE is driven primarily by an economic agenda to "increase[] timber production," 91 Fed. Reg. 17,300, and "recover economic value from timber," *id.* at 17,302, at the expense of public participation in, and environmental review of, large projects.

For the following reasons, the States urge BLM to withdraw the proposed CE.

STATUTORY BACKGROUND

A. National Environmental Policy Act

Congress enacted NEPA in 1969 to "establish a national policy for the environment . . . and to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4321. NEPA serves two fundamental purposes: (1) to guarantee that agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts"; and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989).

To achieve these purposes, NEPA requires the preparation of a detailed environmental impact statement (EIS) for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). In taking a "hard look," NEPA requires federal agencies to consider the direct, indirect, and cumulative impacts of their proposed actions. *Diné Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 837 (10th Cir. 2019).[5]

The process for conducting environmental review was governed for nearly fifty years by implementing regulations adopted by the Council on Environmental Quality (CEQ). *See* 90 Fed.

[5] NEPA's requirement that agencies consider indirect and cumulative impacts of major federal actions remains binding, notwithstanding the U.S. Supreme Court's holding in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025), that environmental review of proposed actions need not consider possible projects that are distinct in time or place if the causal connection to the proposed action is overly attenuated, or that an agency has no authority to approve. *Id*. at 187-88. The Supreme Court was careful to note that indirect effects can fall within the scope of a proposed action, for example, water runoff or air emissions from a project that cause impacts many miles from the project. *Id*. at 187. Since the *Seven County* decision, the Ninth Circuit has affirmed that NEPA's "hard-look" requirement continues to apply, including the required consideration of cumulative impacts. *See Cascadia Wildlands v. U.S. Bureau of Land Mngt.*, 153 F.4th 869, 879 (9th Cir. 2025) ("NEPA . . . requires that a federal agency consider every significant aspect of the environmental impact of a proposed action . . . and establishes action-forcing procedures that require agencies to take a hard look at environmental consequences.") (citations and internal quotations marks omitted).

Reg. 10,610, 10,612 (Feb. 25, 2025). In 2008, the Department of the Interior (DOI) adopted NEPA implementing regulations to supplement the CEQ regulations. *See* 90 Fed. Reg. 29,498, 29,500 (July 3, 2025). In 2023, Congress enacted the Fiscal Responsibility Act (FRA), codifying the process for determining the level of environmental review set forth in the CEQ regulations, including the use of categorical exclusions. Pub. L. No. 118-5, 137 Stat. 10 (2023). Specifically, the FRA requires agencies to prepare an EIS for proposed major federal actions having "a reasonably foreseeable significant effect on the quality of the human environment." 42 U.S.C. § 4336(b)(1). The FRA requires agencies to prepare an environmental assessment (EA) for proposed major federal actions that do not "have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown." *Id*. § 4336(b)(2). If an EA results in a finding of no significant impact (FONSI), an agency need not prepare an EIS. *Ibid*. The FRA provides that an agency need not prepare an EA or EIS for a proposed action if it falls within a CE, *id*. § 4336(a)(2), which the FRA defines as "a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment." *Id*. § 4336e(1).

On January 20, 2025, President Trump issued Executive Order 14154, directing CEQ to propose rescinding its NEPA implementing regulations and issue guidance to agencies on NEPA implementation "to expedite permit approvals." 90 Fed. Reg. 8353, 8355 (Jan. 29, 2025). On February 19, 2026, CEQ issued guidance to agencies on NEPA implementation. Council on Env't Quality, Memorandum for Heads of Federal Departments and Agencies, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf. On February 25, 2025, CEQ published an interim final rule rescinding its NEPA regulations. 90 Fed. Reg. 10,610 (Feb. 25, 2025). CEQ published a final rule on January 8, 2026. 91 Fed. Reg. 618 (Jan. 8, 2026). On July 2, 2025, DOI published an interim final rule rescinding the majority of its NEPA regulations and replacing them with non-APA procedures contained in a "handbook." 90 Fed. Reg. 29,498 (July 3, 2025). The interim final rule retained, with amendments, DOI's NEPA regulations governing adoption and application of categorical exclusions. On February 24, 2026, DOI published a final rule, largely retaining amendments in the interim final rule regarding categorical exclusions. 91 Fed. Reg. 8738 (Feb. 24, 2026).

The current DOI regulations governing adoption and application of categorical exclusions provide that DOI may adopt categorical exclusions for categories of actions that "normally do not significantly affect the quality of the human environment" and for which preparation of an EA or EIS is not required. 43 C.F.R. § 46.205. In adopting a categorical exclusion, DOI must "[d]evelop a written record containing information to substantiate its determination. *Id*. § 46.205(h). Once adopted, categorical exclusions may be applied to actions unless an action, due to "extraordinary circumstances," may "have a significant environmental effect," in which case an EA or EIS must be prepared. *Id*. § 46.205(c). "Extraordinary circumstances" are defined to include, inter alia, proposed actions that would have "significant impacts on natural resources and unique geographic characteristics," would have "highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks," would "establish precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects," would "[h]ave significant impacts on species listed, or proposed to be listed on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species," or would "[s]ignificantly limit access to and ceremonial use of Indian sacred

sites on Federal lands . . . or significantly adversely affect the physical integrity of such sacred sites." *Id*. § 46.215(b)-(e), (g)-(h).

B. Administrative Procedure Act

Under the Administrative Procedure Act, 5 U.S.C. §§ 551–559, courts will set aside an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious where the agency has "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or offered an explanation so implausible that it could not be ascribed to a difference of view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). When promulgating a regulation, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Id*. (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

These core principles apply to an agency's decision to change existing policy. *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 513–15 (2009). While an agency need not show that a new rule is "better" than the rule it replaced, it still must demonstrate that "it is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates." *Id*. at 515 (emphases omitted). Further, an agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy." *Id*. Any "[u]nexplained inconsistency" between a new rule and its prior version is "a reason for holding an [agency's] interpretation to be an arbitrary and capricious change." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *see also Sierra Club v. Bosworth*, 510 F.3d 1016, 1018 (9th Cir. 2007) (finding that U.S. Forest Service promulgation of categorical exclusion for certain fuel reduction projects was arbitrary and capricious where agency failed to demonstrate that it made a "reasoned decision" based on relevant factors and information).

THE PROPOSED TIMBER DENSITY CATEGORICAL EXCLUSION

The proposed Timber Density CE adds another CE for timber harvesting by significantly increasing the size of timber harvesting projects that can be excluded from environmental review from 70 acres to 5,000 acres. *See* 91 Fed. Reg. 17,299 (Apr. 6, 2026). Specifically, BLM's proposed CE would eliminate environmental review for projects involving the "modification of tree density up to 5,000 acres of treatment area." *Id.* at 17,300. The Timber Density CE allows for the harvesting of trees up to 10% of the treatment area (500 acres) in "individual patches" of up to 2 acres. *Id.* at 17,302. The Timber Density CE also allows for construction of up to 5 miles of new permanent road and up to 2.5 miles of temporary road for every 1,000 acres of treatment area, a vast increase in what is allowed under the existing CE, C.7, which only allows for up to 0.5 miles of temporary road and does not allow for construction of permanent roads.

In its Substantiation Report, BLM acknowledges that the proposed CE "covers similar activities" to the existing CE, C.7. BLM Forest and Woodland Density CE Substantiation Report

at 8 (Substantiation Report).[6] BLM states that it is not replacing CE C.7—which provides for projects of up to 70 acres—because that CE "provides a more limited scope of actions that are useful." 91 Fed. Reg. 17,300.

BLM explains that "the existing 70-acre limitation for categorically excluded timber density management operations has proved insufficient to address the growing need for BLM to authorize additional density management over greater acreage," and cites the need to increase the scale of these projects to manage the 58 million acres of forested BLM land across the nation. *Id.*

However, as explained in more detail below, BLM does not support this assertion with adequate reasoning or evidence in the record, nor does it adequately explain why the existing CE for 70-acre parcel sizes is insufficient or how it reached the conclusion that its proposed larger treatment areas and additional miles of road will not have significant environmental impacts that would require NEPA review.

COMMENTS ON THE PROPOSED CATEGORICAL EXCLUSION

The States have four main concerns about the proposed CE. First, BLM failed to provide a reasoned explanation for increasing the project size 70-fold for density management projects. Second, BLM failed to provide an adequate explanation for 2-acre patch sizes, and failed to limit the geographical proximity of patches within a project. Third, BLM does not adequately address the controversy regarding commercial timber thinning. Finally, BLM does not adequately justify allowing 5 miles of permanent road per project and fails to address the environmental impact of additional road construction, including increased wildfire risk.

I. BLM FAILS TO PROVIDE A REASONED EXPLANATION FOR A SEVENTY-FOLD INCREASE IN PARCEL SIZE FOR TIMBER DENSITY MANAGEMENT.

As discussed above, the States recognize that timber thinning and harvesting projects are necessary and important. Indeed, the States have invested a substantial amount of critical resources in wildfire prevention and preparedness. The responsibility to protect against damaging wildfires is a shared responsibility, and the States encourage BLM to do its part. However, BLM must proceed as required by law. In proposing the Timber Density CE, BLM does not sufficiently explain how it reached its decision to propose 5,000 acres as the maximum treatment area that would be exempted from NEPA review, and fails to provide evidence that timber harvest projects of this size "normally do not significantly affect the quality of the human environment," 43 C.F.R. § 46.205. According to BLM's Substantiation Report for this CE, BLM examined a sample of 84 timber thinning/harvesting projects that it determined had no significant impact on the environment. Substantiation Report at 16.

In its analysis of these projects' acreage, BLM applied two separate statistical methods that are typically used together to find extreme values: First, it found the project size data's Interquartile Range (IQR) and then added a 1.5(IQR) fence according to the Tukey method to remove outliers from the low end and the high end. *Id*. at 19. These 1.5(IQR) fences removed 12 of the largest projects. *Id.* at 20. The largest project after the upper fence was added was 5,246 acres. Second, BLM applied a 99th percentile reading—to arrive at 5,158 acres, which it then rounded down to

[6] Available at https://eplanning.blm.gov/Documents/?id=8780a416-522f-f111-8341-001dd8029ed0&spid=9280a416-522f-f111-8341-001dd8029ed0#

5,000 acres. *Id.* BLM's use of the 99th percentile to determine the size of the project area to be covered by the CE stands in contrast to methods that the U.S. Forest Service has used in determining project size for similar projects—namely, the arithmetic mean of the acreage of timber harvesting projects.[7]

BLM cites U.S. Environmental Protection Agency (EPA) Guidance to justify its use of the 99th percentile method, citing *Guidance for Data Quality Assessment: Practical Methods for Data Analysis* (July 2000), https://www.epa.gov/sites/default/files/2015-06/documents/g9-final.pdf (EPA Data Guidance). Substantiation Report at 20, 41. According to the EPA Data Guidance, the EPA advises that "important for environmental data are the 90th, 95th, and 99th percentiles where a decision maker would like to be sure that 90%, 95%, or 99% of the contamination levels are below a fixed risk level." *Guidance for Data Quality Assessment* at 2-5. BLM also cites to EPA Guidance on using percentiles to determine dietary risk from pesticide residues in foods. U.S. EPA, *Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern* (March 2000), https://www.epa.gov/sites/default/files/2015-07/documents/trac2b054_0.pdf. Substantiation Report at 20, 41. That Guidance discusses the appropriateness of 99.9th percentile ranges to data sets to screen out outliers in terms of food consumption of pesticide residue samples.

But BLM does not explain how EPA's use of the 99th percentile for exposure to contamination levels is relevant to determining the size of timber thinning projects that it believes will not have any significant environmental impacts and thus can be exempted from environmental review through the establishment of a CE. Nor does BLM explain how the use of a fenced 1.5(IQR) to remove outliers is appropriately combined with a 99th percentile analysis to reach 5,000 acres: a result which is 2,000 acres greater than if BLM had used an arithmetic mean *without* removing outliers (~2,940 acres), or nearly 4,000 acres greater than if they had used a geometric mean after screening outliers (~1,158 acres) in the same manner. Only 14 out of the 84 projects studied were 5,000 acres or above in size, which indicates that these projects are not sufficiently representative of similarly sized projects across the nation's BLM-managed land.

The use of the 99th percentile therefore lacks reasoned support in the record and suggests that BLM is looking for extreme—rather than average—values to arrive at a pre-determined acreage size for timber density projects. The arbitrariness of this method is also evident when compared with BLM's approach to determining the acreage limit in the Timber Salvage CE—which also provides for a 5,000-acre treatment area limit. However, in the Timber Salvage CE Substantiation Report, BLM did not screen for outliers but instead selected a *90th* percentile to arrive at the same 5,000-acre limit. Thus, it seems that BLM has picked a desired project size and is applying different statistical methods for both salvage and timber density projects to arrive at a predetermined project size.

As the Ninth Circuit noted in *Bosworth*, an environmental impact statement "is of critical importance in a situation . . . where the categorical exclusion is nationwide in scope and has the potential to impact a *large number of acres*." *Bosworth*, 510 F.3d at 1028 (emphasis added). Like

[7] In *Colorado Wild, Heartwood v. U.S. Forest Service*, 435 F.3d 1204 (10th Cir. 2006), the Tenth Circuit affirmed the Forest Service's use of an arithmetic mean (rather than a geometric mean that screened outliers) to arrive at the CE size of 250 acres for the salvaging of dead and dying trees. But in that CE, and in that case, the Forest Service did not apply a 99th percentile—either before or after screening for outliers. So, the average project size in that case was much lower than if they had applied a 99th percentile analysis, even with outliers screened.

the CE in *Bosworth*, the proposed CE here could be potentially applicable to millions acres of BLM forested woodlands. Despite the potential for major impacts to forestlands across the country, BLM proposes to do away with environmental assessments and environmental impact statements for most timber thinning and harvesting projects and fails to address the cumulative impact of multiple 5,000-acre projects. While the States recognize the need for and importance of timber thinning and harvesting projects, they must be adequately balanced with NEPA's mandate requiring agencies to take a "hard look" at the significant environmental impacts of their actions and encouraging public participation.

II. BLM FAILS TO ADEQUATELY EXPLAIN WHY THINNING FOREST IN 2-ACRE PATCHES WOULD NOT CREATE SIGNIFICANT ENVIRONMENTAL IMPACTS.

The Timber Density CE provides that timber harvesting may "not exceed 2-acre individual patches and 10% of the treatment area." 91 Fed. Reg. 17,302. This presumably means that, within a 5,000-acre treatment area, a contractor may harvest up to 250 individual patches of two acres in size. Further, the CE places no constraints on the proximity of any one of the 2-acre parcels to each other within a 5,000-acre parcel. Potentially, then, 500 acres of each of these 5,000-acre parcels could be all but cleared in 2-acre patches that are close enough together to facilitate profitable timber production but that create significant harmful environmental impacts.

BLM also fails to adequately support its assertion that group selection of trees creating a 2-acre patch or canopy gap benefits forest health more than smaller gap sizes. Though BLM states that it has relied on peer reviewed literature and studies, BLM does not point to a specific study that shows the scientific benefit of creating canopy gaps that are two acres in size. The Substantiation Report summarizes the Best Available Science on Group Selection: "Experimental work shows light and early growth benefits saturate around ~0.75–1.5 ac and provide little added benefit above ~2 ac; larger openings increase wind/heat exposure with diminishing returns (York et al. 2007; Bigelow et al. 2011; Bigelow and North 2012)." Substantiation Report at 23.

BLM does not explain how its proposal for 2-acre patches—that are, according to its own summary, half an acre larger than the 1.5-acre size at which benefits from canopy gaps diminish—is in alignment with the best available science. BLM's own summary of the science suggests that multiple gap openings of 2 acres could increase wind and heat exposure, thus increasing forest wildfire risk and decreasing wildlife habitat. *See* Substantiation Report at 23.

BLM's Substantiation Report summarizes the 84 projects studied, stating that, "[w]here group selections were included, individual openings were generally ≤5 acres each and collectively did not exceed roughly 30% of the treated area; several EAs used smaller gap sizes (≤0.25–2.5 acres) and percentage caps (≤15 %)." Substantiation Report at 19. But BLM does not provide a quantitative data analysis for the group opening or canopy gap sizes from each project, or summarize the canopy gap data from all of the 84 projects studied. Individual projects BLM lists that mention specific gap size suggest that group openings larger than one acre are rare in this study group. *See, e.g.*, *id.* at 56 (describing Project #29, Marshal Fred Vegetation Management as having "0.5–1.0-acre group openings"); *id.* at 69 (describing Project # 35, Bi-County Timber management Project as having "group gaps up to 1 acre[]"); *id.* at 76 (describing Project # 39, Deadman's Folley Harvest Plan as having "gaps ≤0.25 acres").

Projects with canopy gaps similar to those contemplated in this CE were associated with commercial timber harvesting. *See*, *e.g.*, *id.* at 70 (describing Project #36, Panther Creek Timber Management Project as having "Commercial Thinning Units" with "1–4 acre group selection openings"); *id.* at 84 (describing Project #44, Gold Sardine Forest Management Project as having "gaps <1 acres, max 4 acres").

BLM does not explain how group selection that opens the canopy up to 2 acres in area would not "break[] up foraging habitat" for threatened species such as the Northern Spotted Owl, or other sensitive species, an environmental impact that was noted in many of the projects BLM studied. *See, e.g. id.* at 82 (describing impacts from Project #43, North Landscape EA on the Northern Spotted Owl: "Commercial thinning opens the canopy and breaks up foraging habitat, potentially displacing owls and reducing nesting/roosting suitability").

BLM does not address the cumulative impacts of multiple projects that would harvest up to 500 acres of timber per 5,000-acre treatment area.

III. BLM DOES NOT ADEQUATELY ADDRESS CONTROVERSY AROUND COMMERCIAL TIMBER THINNING.

BLM acknowledges that there is controversy about timber harvesting on public lands but proposes to establish the CE anyway. Substantiation Report at 25-26. Although DOI's 2025 amendments to its NEPA regulations deleted 43 C.F.R. § 46.215(c), which provided that extraordinary circumstances exist where an action "may have highly controversial effects," the Interim Final Rule explained that the rescinded "provision is intended only to provide that controversy about the nature and magnitude of the environmental effects of the action constitutes an extraordinary circumstance," and, "[i]n any event, the concept is sufficiently addressed in existing paragraph (d)." DOI, *National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg. 29,498, 29,501 (July 3, 2025) (rescinding portions of part 46 of title 43 but not 43 C.F.R. § 46.215(d), which was renumbered as 43 C.F.R. § 46.215(c)). The finalized regulations still provide that extraordinary circumstances exist where a project involves "highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks." 43 C.F.R. § 46.215(c). Therefore, case law predating this amendment remains valid: "A proposal is highly controversial when substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor, or there is a substantial dispute [about] the size, nature, or effect of the major Federal action." *Bosworth*, 510 F.3d at 1030–31 (internal quotation marks and citations omitted). When there is controversy, uncertainty about the effects, or substantial questions about a project's environmental impact, then an EIS is required. *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 870 (9th Cir. 2020) (holding that the U.S. Forest Service's determination that a highly controversial thinning project in a national forest had no significant effects was arbitrary and capricious).

Disputes and controversies are oftentimes brought to the fore during the NEPA process. A substantial dispute exists "when evidence, raised prior to the preparation of an EIS or FONSI, casts serious doubt upon the reasonableness of an agency's conclusions." *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001). When an agency publishes a notice of intent to prepare an EIS, NEPA requires public comment. 42 U.S.C. § 4336a(c). NEPA also requires

consultation with cooperating agencies that have jurisdiction or special expertise with respect to any environmental impact. 42 U.S.C. § 4336a(a)(3). This process helps fulfill NEPA's mandate to "utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment[.]" 42 U.S.C. § 4332(A). The importance of this deliberative process is bolstered when there is controversy because it allows all stakeholders to voice their concerns and raise issues that the agency may not have considered. However, if a CE is applied, then an agency is not required to go through this process, *see* 42 U.S.C. § 4336(a)(2), the collective experience and knowledge of stakeholders is ignored, and the agency is robbed of valuable information and analysis that could result in the protection of the environment and an improved project.

Here, BLM acknowledges that timber harvesting projects do indeed impact the environment. For example, at a high level, BLM summarizes studies that conclude that "thinning elevates fire severity or fails 'under extreme weather,'. . . thinning undermines habitat (e.g., spotted owl prey), hydrology/soils, or carbon; and . . . treatments rarely intersect wildfire and therefore cannot justify risk/cost." Substantiation Report at 25. To rebut these conclusions, BLM largely relies on the "bounded scope and design features as well as the efficacy of the treatments it covers." *Id*. However, it does not adequately explain how it came to the conclusion that projects as large as 5,000 acres would not suffer from these impacts. And while the CE lists certain design feature categories, it does not mandate the use of any of them, instead merely requiring their disclosure. *See* Substantiation Report at 5; 91 Fed. Reg. 17,302. By applying the proposed CE, BLM will not be required to consider the expertise of any member of the public or another federal or state agency as to the controversies that surround commercial timber thinning and harvesting.

IV. BLM FAILS TO ADEQUATELY JUSTIFY ADDING 5 MILES OF PERMANENT ROAD PER PROJECT OR ADDRESS THE ENVIRONMENTAL IMPACT OF ADDITIONAL ROAD CONSTRUCTION FROM TIMBER HARVESTING.

The Timber Density CE allows for the construction of up to 5 miles of permanent roads per 5,000 acres of treatment area, and up to 2.5 miles of temporary roads per 1,000 acres—which amounts to 12.5 miles of temporary roads for a 5,000-acre treatment area. Road construction itself creates the potential for significant impacts on the environment.

Of the 84 projects studied, BLM identified that 57% of them (49 out of 84) added no new permanent road. Substantiation Report at 19. After screening for outliers using the Tukey method, BLM arrived at 76 projects that added 7.35 miles of permanent road or less. *Id.* However, BLM does not explain why it did not use the arithmetic mean of the filtered projects—which would have been 1.08 miles, or even the arithmetic mean *without* filtering for outliers—which would have been 3.3 miles. Neither does BLM explain how it arrived at the 5-mile limit for permanent road construction, although it appears that BLM identified that the 5-mile limit lies somewhere between the 90th and 95th percentile of the projects studied, after screening for outliers. *See id.* ("IQR-filtered median 0 mi, Q1 0, Q3 1.1; 90th 4.8 mi, 95th 5.4 mi; filtered max 7.35 mi, n=76), with outliers screened using Tukey's method (upper fence ≈ 7.61 mi.)" *Id.*

BLM does not provide the underlying data for its temporary road analysis to support its selection of a 2.5-mile limit of temporary road per 1,000 acres. This 2.5-mile limit is above BLM's IQR-filtered median of 1.58 miles, based on a screened sample size of 21 out of the 84 projects.

BLM also does not consider the potential cumulative impact of new roads within one project that may be adjacent to another project.

Numerous studies demonstrate that roads have the potential to significantly impact the environment.[8] As stated by the U.S. Forest Service, "improperly constructed roads and poor road maintenance can increase the risk of erosion, landslides, and slope failure–endangering the health of watersheds that provide drinking water to millions of Americans and critical habitat for fish and wildlife."[9] It is unreasonable for BLM to assume that repeatedly allowing new road construction could not, cumulatively, result in significant impacts on the human environment.

One of the Timber Density CE's stated goals is to "enable wildfire preparedness to protect human life and property in the wildland urban interface." 91 Fed. Reg. 17,300. But the Timber Density CE does not constrain the location of future excluded projects to those near wildland urban interface areas, or to transportation corridors—as might be the case if these projects were primarily geared towards wildfire risk management.

While the States acknowledge that proper protection from wildfires is needed, BLM fails to properly contend with the vast scientific evidence that points to the role of roads in increasing the threat of wildfires. Extending and expanding roads into forested areas would likely increase the risk of fire ignition.[10] Roads also create pathways for invasive plant species that pose a long-term threat to forest health and may exacerbate fires. A study by the U.S. Forest Service's Rocky Mountain Research Station found that non-native plants are twice as common within 500 feet of a road as they are farther away.[11] The link between roads and invasive species across national forests was definitively established in a survey of nine states, with an apparent envelope of about 500 feet around roads in national forests where the risk of invasive species is significantly higher, posing long-term threats to ecosystem health.[12] Invasive plant species can impair the regeneration of native plants; invasive grasses typically increase the frequency of fires; and some invasive woody species can increase the risk of high-intensity fire.[13]

Despite the significant impacts of roads, BLM fails to properly consider the impacts of the distance of roads it proposes to allow in the CE and fails to sufficiently explain how it came to the conclusion that construction of these proposed lengths of roads, and the inclusion of permanent roads in addition to temporary roads, would not individually or cumulatively have significant environmental impacts. Moreover, the significant impacts created by roads adds to the controversy

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[8] *See, e.g.*, Benítez-López, Ana, et al., *The Impacts of Roads and Other Infrastructure on Mammal and Bird Populations: A Meta-Analysis*, Biological Conservation 143:6, 1307-1316 (June 2010), available at: https://www.sciencedirect.com/science/article/abs/pii/S0006320710000480; Alisa W. Coffin*, From Roadkill to Road Ecology: A Review of the Ecological Effects of Roads*, J. Transport Geography 15:5, 396-406 (Sept. 2007), available at https://www.sciencedirect.com/science/article/abs/pii/S0966692306001177; Trombulak, Stephen C., et al., "Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities," Conservation Biology 14:1, 18-30 (2001), available at: https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1046/j.1523-1739.2000.99084.x.

[9] U.S. Forest Serv., *Road Management Website, Background Question #8*, https://www.fs.usda.gov/eng/road_mgt/qanda.shtml.

[10] Gregory H. Aplet, et al., *Three-Decade record of contiguous-U.S. national forest wildfires indicates increased density of ignitions near roads*, Fire Ecology, 22:8 (2026), available at https://doi.org/10.1186/s42408-026-00450-2.

[11] Sean P. Healey, *Long-term Forest Health Implications of Roadlessness*, 15 Environmental Research Letters 10, 1-6, 6 (2020).

[12] *Id.* at 6.

[13] *Id.*

surrounding the proposed CE. To be compliant with NEPA, BLM cannot adopt the CE as proposed. Instead, it must conduct environmental reviews for the larger projects BLM is contemplating here, which will assist in the identification of specific design features and practices necessary for each project.

* * *

BLM relies on caps to the total acreage limit, the treated share, and caps on road construction to conclude that large timber harvesting projects will not have significant impacts. However, BLM does not adequately explain how these guardrails are sufficient. The establishment of the proposed CE would be permanent and there is no limit to the number of times it can be applied in the future. Similarly, there is no geographical constraint such as limiting the use of the CE to the wildland urban interface. Further, as mentioned above, the design features and Best Management Practices that BLM contends will be applied are not required by the CE. Instead, they must only be disclosed and discussed. 91 Fed. Reg. 17,302. While the States recognize the importance of fuel reduction and timber thinning projects, BLM must include guardrails that consider the diversity of the vast landscapes where the CE may be applied in the future.

CONCLUSION

BLM has failed to offer an adequately reasoned explanation for exempting timber density harvest projects up to 5,000 acres and associated roads from the requirements of NEPA. BLM should abandon this proposal and focus on work that will foster public participation so that all stakeholders can participate in the responsible stewardship of our shared environment and resources.

Sincerely,

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