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To Provide For Protection of Natural Values
On Adjacent Protected Lands

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BLM Land Planning and Consistency Obligations To Provide For Protection of Natural Values On Adjacent Protected Lands

I. Introduction

This paper examines BLM planning obligations to provide for consistency of BLM-authorized activities or uses with adjacent protected lands and uses, primarily national parks. Of particular interest is the priority given by the Federal Land Policy and Management Act to designation and management of "areas of critical environmental concern," and the relationship of that protective designation to the statutory protections afforded national parks by the National Park Service Organic Act. This analysis concentrates on planning for protection of national park values, although similar principles may apply, sometime with different emphasis or force, to the protection of wilderness and other protected lands.

These issues are addressed from the perspective of an advocate for intensified protection of national parks, with emphasis on the author's observation of park protection issues in Utah.

After exploring the potential for better park protection under the existing statutory framework, a series of problems are presented for application of these concepts in the context of BLM planning. The issues framed by these problems are offered for further discussion.

A. Adjacent land threats in "State of the Parks 1980"

In 1980, the National Park Service [NPS] reported to Congress the results of its survey of threats confronted by our national parks, and concluded that "without qualification, it can be stated that the cultural and the natural resources of the parks are endangered both from without and from within" by a broad range of threats "which have the potential to cause significant damage to park resources or to seriously degrade important park values or park experiences." NPS's analysis of those threat showed that --

> more than 50 percent of the reported threats were attributed to sources or activities located external to the parks, [particularly] industrial and commercial development projects on adjacent lands; air pollutant emissions, often associated with facilities located considerable distances from the affected parks; urban encroachment; and roads and railroads.

U.S. Department of the Interior, National Park Service, State of the Parks 1980, at vii-viii.

B. Threats from adjacent BLM lands: examples from Utah

While the State of the Parks 1980 report did not attempt to identify the management status of the adjacent lands from which "external" threats arise, it is clear that activities on BLM lands are a major source of threats. A brief and partial survey of examples of significant park threats in Utah demonstrates that existing or planned development activities on BLM lands are a major source of adjacent-land threats to national parks in the West.

Examples:

1. Canyonlands National Park currently confronts a massive threat, less than a mile from the Park boundary, from the Department of Energy's formal designation of a site on BLM lands as one of the five sites qualified for selection as the first high-level nuclear waste repository. While DOE had the lead role in making and assessing that selection, any implementation of that proposal would require BLM authorization for the use or withdrawal of the proposed site. In the course of approving preliminary work at the site, and approving two memoranda of understanding with DOE to facilitate the project, BLM has declined to raise concerns about the impacts that the proposed repository would have on the Park.

If ultimately chosen, the site would be subjected to massive drilling, tunneling and excavation, construction of a mile-square industrial facility with massive buildings, huge crane-like structures, and a railroad and truck terminal, and a railroad and truck haul routes descending adjacent canyons or climbing the benches along the Colorado River and ascending through the Canyonlands Basin shared with the Park. (See further discussion, infra, at 17 and 38).

2. Zion National Park faces the threat of BLM's potential renewal of a coal prospecting permit for lands along the eastern border of the Park. If granted, that permit could readily ripen into a preference right lease for a coal strip mine and underground coal mine, with major impacts on the Park. After

initially proposing to approve on the basis a sketchy environmental assessment, BLM has (for some time) been preparing an Environmental Impact Statement to assess the impacts of any decision to grant the requested renewal.

3. Zion National Park also faces powerful, politically supported demands by Utah's Washington County Water Conservancy District for authority to construct a major dam and reservoir in a wilderness study area on BLM lands in Parunaweap Canyon, just upstream from the Park boundary. To date, only the necessary water right applications have been filed, but the conservancy district has been actively lobbying for BLM support.

4. Capitol Reef National Park currently confronts plans for a dam on the Fremont River upstream of the Park. Water would be diverted into a nine-mile "penstock" pipeline to be constructed on BLM lands along the Fremont River, terminating at a turbine generator in a power house to be located in the Fremont River gorge, just outside the Park boundary. The project threatens to have serious impacts on the contiguous gorge and pristine river bottoms adjacent to the park, as well as on the river and significant fisheries both within and upstream of the Park. Proponents of the project have recently obtained a preliminary planning permit from the Federal Energy Regulatory Commission and are presumably preparing applications to BLM.

5. Bryce Canyon National Park currently faces renewed efforts to authorize strip mining in the BLM's Alton coal field within the viewshed, air shed and earshot of Yovimpa Point. In

the earlier round of this continuing dispute, BLM unqualifiedly supported the development; and it has most recently renewed its support of the project by approving a right-of-way for a slurry line from the Alton field to a proposed Nevada Power plant site.

Approval of this development will create powerful incentives for further expansion of strip mining operations and leasing in coal fields lying immediately west of the present Alton leases. While primacy in the regulatory role has recently been assumed by Utah's Division of Oil, Gas and Mining, BLM's role to date has not reflected concern for the park impacts of the proposed or potential future developments.

6. Although oil and gas exploration has currently been quiescent in Utah, as elsewhere, existing and current BLM land planning continues, in key areas, to provide for minimum BLM management of drilling or development on BLM lands adjacent to the parks. Assignment of categories for oil and gas development only occasionally reflect concern for the impacts on scenic and use qualities of those park lands. Similar potential problems are reflected in plans for management of other mineral development. (See, e.g., further discussion in "problems" and related "issues" from Utah's Grand Resource Proposed Management Plan and Final Environmental Impact Statement, and from the draft San Juan Resource Management Plan and EIS, infra at pages 28-38.)

7. BLM has approved and sought to implement state indemnity selections of lands adjacent to Natural Bridges National Monument, Glen Canyon National Recreation Area, Grand

Gulch Outstanding Natural Area and Capitol Reef National Park, areas containing premier park and wilderness lands. Despite the major planning implications of those decisions, BLM has sought to take that action without completing either a plan amendment for its existing management framework plan or a new resource management plan. [Compare the recent action of the Oregon State Director in requesting remand of similar decisions pending on appeal to IBLA because his re-analysis of the applicable management framework plan showed that it "may not be sufficiently detailed to support the decision for disposal of certain of the lands proposed for exchange. Letter dated Jan. 16, 1987, from Paul M. Vetterick (for Charles W. Luscher) to Honorable William Philip Horton, Chief Administrative Judge, Interior Board of Land Appeals.]

* * * *

The above are merely some examples of park threats arising from adjacent BLM lands in Utah, offered to show the scope, proximity and potential severity of those threats. Some or most of these threats ultimately may not materialize, though most appear to be seriously promoted. But all, or virtually all of these and most similar examples could have been effectively addressed by an objective, open and serious BLM planning process that gave appropriate and meaningful weight to statutorily protected park values and resources.

II. Legal Basis for BLM Obligation To Exercise Its Authority Consistently With Protection of National Parks From Threats Arising On Adjacent BLM Lands

Protection of national park values and resources from the consequences of developments on BLM public lands depends heavily upon the extra-park reach of the fundamental park protection legislation, and the interaction of that legislation with BLM's legal obligations under its organic legislation. Because a relatively few cases have explored the extra-park reach of park protection under the National Park System Organic Act and its "Redwoods Amendments," 16 USC § 1, 1a-1, the key cases will be explored before analyzing the "reach" that may be derived from the park legislation.

In addition to cases interpreting the extra-park reach of the National Park Organic Act, federal environmental and planning legislation has significantly complemented and expanded the statutory and administrative protection required for parks. Judicial application of those requirements frequently compels adjacent land-management agencies to assess their actions in light of the impacts of those actions on adjacent protected lands. See generally Keiter, "Jurisdictional and Institutional Issues: Public Lands," in papers delivered at University of Colorado Natural Resources Law Center conference on "External Development Affecting the National Parks: Preserving 'The Best Idea We Ever Had;'" Keiter, "On Protecting the National Parks From The External Threats Dilemma," 20 Land and Water Law Review 355 (1985); Hiscock, "Protecting National Park System Buffer

Zones: Existing, Proposed and Suggested Authority," 7 Journal of Energy Law & Policy 35 (1986).

A. The limited case law recognizes the extra-park reach of park protection legislation.

Because of a dearth of administrative enforcement actions to protect national parks from external threats, and a relatively limited number of private actions, there has been only limited judicial interpretation of the relevant legislation protecting national parks. As a result, there has also been little judicial elaboration of the legal obligation of land management agencies to assure that activities under their management do not degrade the values and resources of our national parks.

Despite that limited case law, however, judicial interpretations of the basic park protection statutes provide substantial support for application of basic park protection legislation to activities beyond park boundaries, at least where activities on lands managed by other agencies may have significant detrimental impacts on park values and resources.

Two key cases address the extra-park reach of park protection statutes in the context of actions to compel NPS and the Secretary of the Interior to exercise their authority to protect park resources. While neither provide definitive answers, both support the existence of such an affirmative duty; and they strongly suggest that the authority to fulfill that duty reaches beyond park boundaries.

The series of three cases which ultimately gave rise to the "Redwoods amendments" to the Organic Act clearly held that the Secretary of the Interior has a rigorous duty of extra-park protection. The cases arose from NPS' failure to take effective action to protect the newly-established Redwoods National Park. Serious damage to redwood stands along a key drainage was resulting and predicted to result from stream siltation caused by clearcut logging of private lands adjacent to the Park. The federal district court held that NPS and the Secretary of the Interior "arbitrarily and in abuse of discretion" had failed to take several available steps to seek protection for the Park from the consequences of improper and damaging logging on the adjacent private lands. Sierra Club v. Department of the Interior, 398 F.Supp 284, at 293 (N.D. Cal. 1975). The Court based that judgment on the

> duties imposed upon [defendants] by the National Park System Act, 16 USC § 1, the Redwood National Park Act, 16 USC § 79a, and duties otherwise imposed upon them by law . . . ."

Id. The latter reference to duties "otherwise imposed" by law must be taken as referring to the Court's earlier opinion denying the government's motion to dismiss, based in part on its view of the Secretary's "fiduciary obligations" in fulfilling a "public trust" responsibility to protect the Park. Sierra Club v. Department of the Interior, et al., 376 F.Supp. 90, at 93, 95 (N.D. Cal. 1974). [The Court later concluded that various actions taken by the Secretary and Department had "purged" them of their failure to perform their legal duties. Sierra Club v. Department

of the Interior, et al., 424 F.Supp. 172 (N.D. Cal. 1976).]

The second case addressing the extent of the duty to protect park resources from extra-park threats arose in the context of plaintiff's claim that the Secretary had an enforceable duty to define and assert water rights in various streams in order to protect the United States' interest in those waters for Grand Canyon National Park and Glen Canyon National Recreation Area. The Court approvingly acknowledged the government's concession that under the National Park Service Organic Act --

> the Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the National Park System.

Sierra Club v. Andrus, et al., 487 F.Supp. 443 (D.D.C. 1980). Taking a more limited view of the Court's role in judicial review, however, the Court recognized the wide range of options available to the Secretary in fulfilling that statutory duty. Thus, the Court declined to review the Secretary's exercise of discretion in choosing among those options, and denied plaintiff's request for an order compelling the Secretary to define park-related water rights and assert them in pending state water adjudications. [The Court also conclusively rejected any "public trust" theory as the basis for relief, essentially holding that the park legislation had occupied the field and preempted any federal common law duty. 487 F.Supp. at 449.]

While the requested relief was denied in Sierra Club v. Andrus, the Court's emphasis on the Secretary's discretion was premised on its view of the wide range of options within the

scope of the Secretary's authority to protect park waters. In light of the specific streams and lands in question (i.e., water arising on lands outside the national parks), at least two of the four options available to the Secretary would clearly have included land actions affecting lands outside of park boundaries:

> Such actions may include, but are not limited to:. . . 3) denying the land exchanges and rights-of-way which may constitute or aid a threat to Park resources, . . . or 4) bringing trespass or nuisance actions if appropriate.

487 F.Supp. at 448.

Other cases, in much narrower contexts, have also recognized the extra-park reach of NPS park protection authority. See, e.g., Free Enterprise Canoe Renters Association v. Watt, 711 F.2d 852 (8th Cir. 1983)(sustaining regulations that barred uncertificated, out-of-park canoe rental agencies from utilizing county or state roads to launch canoes within the exterior boundaries of the Ozark National Scenic Riverways); United States v. Brown, 552 F.2d 817 (8th Cir. 1977) (sustaining regulations that barred hunting on waters within Voyageurs National Park in which state claimed ownership or concurrent jurisdiction and on which state law continued to permit hunting.)

B. The Statutory Arguments

1. The National Park Service Organic Act and its 1978 "Redwoods Amendments" impose protective standards of general application, and specifically require the Secretary of the Interior and the Secretary's delegates, including BLM, to prevent damage to park values and resources.

The basic legal standard for protection of the national parks is established by the National Park Service Organic Act, together with its 1978 "Redwoods Amendments," which impose general standards prohibiting any "impairment" or "derogation" of Park values and resources, except where necessary for reasonable protection and enjoyment of park visitors.

The relevant provision of the original 1916 National Park Service Organic Act provides that the "fundamental purpose" of national parks, monuments and reservations is --

> to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 USC § 1. (Act of August 25, 1916, 39 Stat. 535.)

The 1978 "Redwoods Amendments" to the NPS Organic Act specifically directed that "the promotion and regulation" of these park areas "shall be consistent with and founded in" the above purpose, and further directed that --

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.

16 USC § 1a-1. (As amended Pub.L. 95-250, Title I, § 101(b), Mar. 27, 1978, 92 Stat. 166.) (Emphasis added.)

Literally read, the prohibition against derogating the parks' values and purposes clearly appears to apply to all "authorization of activities" -- hence, to apply generally to all federal, or at least Department of the Interior, activities. However, a contrary view is sometimes offered based on the language of the immediately preceding sentence, which reads --

> Congress further reaffirms , declares, and directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by section 1 of this title . . . .

It may be argued that this preceding language qualifies the words "the authorization of activities" -- thus limiting the scope of the "derogation" provision to "activities" involving the "promotion and regulation" of areas <u>within</u> the park system. See, e.g., GAO, "Parks and Recreation -- Limited Progress Made in Documenting and Mitigating Threats to the Parks," Report to the Chairman, Subcommittee on National Parks and Recreation, Committee on Interior and Insular Affairs, House of Representatives, GAO/RCED-87-36 (Feb. 1987).

That limiting interpretation, however, is not only inconsistent with the literal generality of the "authorization of activities" provision. It also appears inconsistent with other aspects of the "derogation" provision. Thus, a reading of "authorization of activities" that narrowly limits it to management of in-park "activities" would entirely and unnecessarily

duplicate the later disjunctive provision which applies the derogation standard also to "management and administration of these areas."

Furthermore, applicability of the "derogation" provision (and thus, of the Organic Act protections) to all adjacent land-management agencies can be derived not only by the literal generality of the phrasing, but also from the clear implications of the clause providing "except as may have been or shall be directly and specifically provided by Congress." That "exceptions clause" obviously preserves a narrow realm of permitted "derogations" where they are the result of specific and explicit Congressional authorization. But the "exceptions clause" also serves to define the wider field in which the general prohibitions are applicable: there would have been little need or call for the exceptions clause unless Congress had also assumed that, apart from specific exceptions, the general prohibition on "derogation" of park values would have wide application to all "authorization of activities" -- whether initiated within or outside the parks -- that would impact on park values. And that analysis is strengthened by recognition that explicit provisions in the Organic Act authorized a wide range of Park Service management activities whose potential "impairment" of park values was already validated by the Act itself. See, e.g., 16 USC §§ 1a-2, 1b.

The extra-park reach of the "derogation" provision was strongly emphasized in the report of the key Senate committee

recommending the Redwoods Amendments, which explained that their purpose was --

> to refocus and insure that the basis for decisionmaking concerning the System continues to be the criteria provided by 16 USC §1,

emphasizing that --

> this restatement of these highest principles of management is also intended to serve as the basis for any judicial resolution of competing private and public values and interests in the areas surrounding Redwood National Park and other areas of the National Park System.

Report of the Committee on Energy and Natural Resources of the United States Senate, 95th Cong., 1st Sess., Senate Report No. 95-528, at pages 7-8 (1977). (Emphasis added.)

The broad applicability of the standards established by the Organic Act to all decisions, and to all park units, was further emphasized by the Committee in its "Section-By-Section Analysis" of the "derogation" prohibition of §1a-1:

> The committee has been concerned that litigation with regard to Redwood National Park and other areas of the system may have blurred the responsibilities articulated by the 1916 Act creating the National Park Service.
>
> Accordingly, this provision suggested by the administration would appear to be particularly appropriate. The Secretary is to afford the highest standard of protection and care to the natural resources within Redwood National Park and the National Park System. No decision shall compromise these resource values except as Congress may have specifically provided.

Id. at 14 (emphasis added.) The Committee's specific emphasis that "no decision" is to compromise park resources suggests a protection of general application; at a minimum, it must be read as applying to all decisions made by or on behalf of the

Secretary of the Interior.

2. The values and resources to be protected from external threats include, in addition to the categories recognized by the Organic Act, the resources identified by the specific park enabling legislation and those identified for preservation and use by each park's general management plan.

Under the 1916 Organic Act, the values and resources to be preserved "unimpaired" included "the scenery and the natural and historic objects and the wild life therein." The Redwoods Amendments, in reemphasizing and "refocussing" the original preservation purposes of the 1916 Act, further provided that the prohibition against derogation of the parks was applicable for protection of "the values and purposes for which these various areas have been established." Thus, proper application of these protective policies explicitly requires protection against threats to any specific values, resources or purposes identified in specific park enabling legislation as well the general values identified in the Organic Act.

In addition, 16 USC § 1a-7 provides for "general management plans" which, for each unit of the National Park System, are to provide "measures for the preservation of the area's resources" -- strongly implying that the specific resources identified for preservation in these general management plans should be protected from derogation if they may reasonably be considered to be among "the values and purposes" for which the particular park unit was established.

3. Department of the Interior interpretation: explicit application of extra-park protection standards to resist withdrawals or cooperative agreements for use of BLM land for a nuclear waste repository adjacent to Canyonlands National Park.

The above approach is strongly reflected in the interpretation relied upon by the Department of the Interior in recent disputes with the Department of Energy over DOE selection of a site in close proximity to Canyonlands National Park as one of five sites qualified for final consideration as a nuclear waste repository. Recognizing that DOE's selection of the site could be effected only through a withdrawal or other arrangement for use of BLM public lands less than a mile from the Park, DOI contested DOE's selection with a powerful assertion of the extra-park protection offered by the Organic Act and the Redwoods Amendments. After extensive citation of the above provisions and of the specific resources recognized in the legislative history of the Canyonlands enabling act, DOI wrote:

> The language of the NPS statutes prohibit all activities that would lead to derogation of the values and purposes for which units of the National Park System were established. This legislation spells out a nondiscretionary mandate for the conservation and protection of park resources, and for their public use and enjoyment. We are required to protect and preserve the resources of each park and to ensure that each park's integrity is preserved for the enjoyment of present and future visitors. There is no provision in this mandate for "balancing" or "trade-offs" to permit activities that in any way would compromise park resources or values. Therefore, environmental degradation in an area such as Canyonlands National Park, which was established to protect natural resources and unusual scenic beauty, must be avoided.
>
> In summary, the Department of the Interior cannot sanction the required withdrawals or a cooperative agreement for use of public lands adjacent to

people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and condition; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. [FLPMA § 103((c), 43 USC § 1702(c). Emphasis added - see below.]

It is apparent that the above definition of the "multiple use" mandate of FLPMA reflects an eclectic collection of diverse and competing values not easily harmonized, including commodity production uses that may sometimes conflict with park protection policies. But in the portions emphasized above, the definition also repeatedly embraces important themes that are fully compatible with, and tend to promote or even require, long-term protection of park values and resources.

c. "Areas of critical environmental concern:" singled out for priority among FLPMA policies

In the context of an eclectic set of policies that give substantial latitude for and weight to preservation purposes, FLPMA's establishment of priorities among competing policies is particularly crucial. Thus, it is in that context that the provisions governing FLPMA's fundamental land planning

obligations give priority to "areas of critical environmental concern" in both the identification ("inventory") of resources and values, and in the development of land use plans. FLPMA §§ 201(a) and 202(c)(3), 43 USC §§ 1711(a) and 1712(c)(3).

The "areas of critical environmental concern" [ACECs] singled out by FLPMA for "priority" are defined as follows:

> The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. [FLPMA § 103(a), 43 USC § 1702(a).]

Obviously, the ACEC concept is not entirely self-executing and leaves some room for judgment in application. Nevertheless, as discussed below, the internal logic of the definition, coupled with the priority role assigned to the concept in the FLPMA land planning, compellingly argue that BLM lands adjacent to parks (or other statutorily protected lands) must be managed consistently with their protected values.

d. <u>FLPMA land planning and the role of ACECs</u>

FLPMA commands a deceptively simple and obvious course for BLM land management: inventory the public lands and resources; prepare management plans for them consistent with FLPMA policies; maintain those plans on a current basis; and manage the lands and resources in accordance with the plans. FLPMA §§ 201, 202 and 302, 43 USC §§ 1711, 1712 and 1732.

While the land planning provisions are directed primarily to the process for implementation, they, too, include policy directives that support protection of adjacent park preserves. Thus, the cornerstone for planning -- the inventory provision -- requires inventory not only of the "public lands and their resources." It also requires inventory of --

> other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.

FLPMA § 201(a), 43 USC § 1711(a).

Similarly, FLPMA's command that BLM "develop, maintain, and, when appropriate, revise land use plans," FLPMA § 202(a), 43 USC § 202(a), is coupled requirements that emphasize FLPMA's policies complementary to park protection. The primary example, of course, is the direct command that the Secretary's land planning must --

> give priority to the designation and protection of areas of critical environmental concern.

FLPMA § 202(c)(3), 43 USC § 1712(c)(3). Furthermore, the previous priority for inventory of ACECs is given further priority by the directive that BLM's land planning "rely, to the extent it is available, on the inventory of the public lands, their resources, and other values." FLPMA § 202(c)(4), 43 USC § 1712(c)(4).

Most, if not all, of the other guidelines for execution of the land planning obligation are also consistent with a requirement that planning decisions afford protection for adjacent park resources and values. See particularly the requirements that the Secretary "use and observe the principles

of multiple use;" "consider present and potential uses;" "consider the relative scarcity of the values involved and the availability of alternative means . . . and sites for realization of those values;" "weigh long term benefits to the public against short-term benefits:" and "provide for compliance with applicable pollution control laws . . . ." FLPMA §§ 202(c)(1),(5)((6)(7)and (8), 43 USC § 1712(c)(1),(5), (6),(7) and (8).]

e. <u>The required "coordination" with land planning and management of other federal agencies heightens protection for adjacent park lands</u>

Protection of park resources and values from threats arising on BLM lands is further strengthened by FLPMA's directive to "coordinate the land use inventory, planning, and management activities . . . with the land use planning and management programs of other Federal department and agencies" [as well as state and local government]. FLPMA § 202(c)(9), 43 USC § 1712(c)(9).

Obviously, the duty to "coordinate" with adjacent land "planning" and "management" carries a heightened obligation when the character of the adjacent land simultaneously triggers other substantive FLPMA policies, such as the ACEC provisions, that independently impose strong protective obligations. Although the "coordination" provision undoubtedly allows some discretion in accommodating BLM management obligations with those of other agencies, the provision must be interpreted to give precedence to the substantive FLPMA policies. So interpreted, "coordination" with the planning and management of an adjacent national park

should reasonably be understood to require that BLM's management plans be informed by recognition of the values to which FLPMA gives "priority." In particular, the ACEC provision requires that BLM planning recognize the "importance" of the park resources and values and the need for "special management attention . . . to protect and prevent irreparable damage" to those resources that could result from activities on the BLM lands.

f. The ACEC values protected by FLPMA cannot be confined to BLM lands

Most of the foregoing interpretations are based upon the fundamental premise that FLPMA's various substantive policies protecting scenic, natural, cultural, wildlife, recreation and similar values are triggered by the proximity of those values where they are protected in adjacent national parks.

One basis for that position, of course, is the suggested interpretation of the amended National Park Organic Act provision that bars the Secretary of the Interior from "exercising" any "authorization of activities" in "derogation" of park values and purposes. 16 USC § 1a-1, see supra at 12-16.

But FLPMA offers its own answer. As pointed out above, the "coordination" provision provides another substantial basis for that interpretive premise: the obligation to "coordinate" reflects FLPMA's recognition that the values and resources of the land are interwoven and interdependent, without regard for agency boundaries. That oneness of important land values and resources

is clearly adopted in the basic provision implementing FLPMA's protective policies -- the definition of ACECs.

In identifying areas where special management attention is needed to "protect and prevent irreparable damage," FLPMA defines the land values protected by the ACEC concept in open-ended terms. They include "important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes;" and there is no suggestion that the protected values should be confined to those arising "on" BLM lands. Thus, the ACEC provision should be applicable wherever the values it specifies for protection are "important" -- a standard surely met where Congress has created a park.

Furthermore, in most instances (e.g., scenery, wildlife) the protected values are undoubtedly present in widely contiguous areas "on" both park and BLM lands. Thus, regardless of whether the ACEC values would be "important" if isolated to the BLM lands alone, their "importance" may still be attributed to their integral relationship with the same values in an adjacent park.

In short, while the planning and management duties under FLPMA relate to BLM public lands, the natural values protected by those duties are not so confined. Ultimately, that result is virtually compelled by the intrinsic nature of the specific values protected: "scenic" values, like the others identified by FLPMA for protection, do not stop at the boundary between BLM and NPS jurisdiction, no matter which direction one is looking.

g. Applicable case law requires BLM planning and management decisions to reflect protections given to adjacent park values and resources.

In applying the National Environmental Policy Act obligation to prepare an environmental analysis of the effects on the human environment of major federal actions, the federal courts have now repeatedly held that the responsible agency must analyze all of the reasonably predictable consequences on protected adjacent lands or resources that may result from an agency's proposed action on lands under its active development or management. See, e.g., Northwest Indian Cemetery Ass' v. Peterson, 565 F.Supp. 586 (N.D. Cal 1983), aff'd in part and partially vacated as moot, 795 F.2d 688 (9th Cir. 1986). Furthermore, the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act give special emphasis to impacts on "unique" lands, specifically "park lands" among others, in defining an agency's duty to determine the intensity of potential impacts, and thus the significance of proposed federal actions. 40 CFR §1508.27(b)(3).

Despite frequently wide grants of agency discretion, where a reviewing court finds that protective legislation establishes "law to apply," the court must review rigorously to assure that the agency has exercised its discretion in compliance with that governing law, with full consideration of the "relevant factors" pertinent to compliance. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). (Discretion of the Secretary of Transportation to approve federal funding of a highway through a

park was confined by a rigorous statutory obligation to assure that there were no "feasible and prudent alternatives" to use of the park.) In applying that standard of review, the courts have given intensive application to legal requirements designed to protect affected values and resources. See, e.g., Stop H-3 Ass'n v. Coleman, 533 F.2d at 434 (1976). And that intensive review has been specifically applied to hold that BLM's California Desert Conservation Area Plan adopted criteria as the basis for identifying routes for motorcycle races which were unlawfully in conflict with applicable regulations that imposed more stringent standards. American Motorcyclist Association, et al., v. Watt, et al., 543 F.Supp. 789 (C.D. Cal. 1982).

Under this standard of judicial review, then, a reviewing Court will provide intensive review of agency decisions and actions which fail to give appropriate application or weight to legal standards that govern the protection of lands and resources. Thus, in Sierra Club v. Department of the Interior, 376 F.Supp 90 (N.D. Cal. 1974) and 398 F.Supp. 284 (N.D. Cal. 1985), the court held that, despite considerable discretion in exercising his duty to protect Redwoods National Park under the National Park Organic Act (and other "law to apply"), the Secretary of the Interior had breached the legal duty imposed by that law in failing to take available steps to protect the park from the damaging effects of activities on adjacent lands.

Similarly, in Sierra Club v. Block, 615 F.Supp. 44 (D.Colo. 1985), the Court held that the Wilderness Act provides "law to

apply" adequate to permit judicial review of the Forest Service's failure to take action to preserve federal reserved water rights for wilderness areas. Emphasizing Wilderness Act language closely akin to the National Park Service Organic Act, the court held that Act "provides both legislative direction and manageable standards by which to judge the agency's failure to act in this case." Id. at 48. Subsequently, the same Court reaffirmed the appropriateness of judicial review, again emphasizing the agency's failure to comply with the protective policies of the Wilderness Act by taking action to protect reserved water rights. Sierra Club v. Block, 622 F.Supp. 842, 863-64 (D.Colo. 1985). Although the court declined to order specific action by the agency, it did so because, despite a general agency duty "to protect and preserve wilderness water resources," it found "no specific statutory duty to claim reserved water rights." 622 F.Supp at 864.

In contrast to Block, as emphasized above, BLM does have a highly specific, priority duty to identify ACEC's, and to development land management plans that give priority to their designation and protection. That relevant "law to apply" would provide a substantial basis for judicial review of planning decisions that disregard potential impacts on adjacent park lands.

III. Problems and issues arising from application of park protection obligations to BLM land planning

The above discussion argues that BLM must give substantial weight to the protection of adjacent park lands in implementing its planning function under FLPMA and in making determinations about the nature, scope and intensity of activities to be authorized on the public lands. In particular, BLM planning must recognize that FLPMA creates significant substantive protections for park lands; requires reference to park protection standards and park plans in implementing those protections throughout the planning process; and provides a substantial foundation for judicial review of BLM planning actions affecting park lands.

The following problems explore specific issues concerning the application of park protection requirements in the context of current BLM's planning activities. Each of the problems were raised and presented for BLM's consideration in the course of planning for a specific BLM resource management plan (RMP), or in contemplation of those efforts. The problems are focussed by comments relevant to park protection concerns that were submitted to BLM, together with BLM responses to those comments or related BLM position statements. The issues raised are presented on the assumption that they may be at least partially answered by BLM practice under its planning regulations, 43 CFR Part 1600; by related BLM Director's Washington Office "instruction memoranda;" or by applicable provisions of the BLM Manual. But in most instances, neither regulations nor instructions clearly answer these concerns, and on-the-ground practice seems inconsistent

with the legal framework developed above.

Although these problems are offered to raise significant questions about the adequacy of consideration of park protection issues, BLM should not necessarily be held strictly accountable for the phrasing of the responses excerpted in the problems. Without doubt, the burden of preparing these RMP/EIS responses sometimes tests the limits of human tolerance for detailed explanation. On the other hand, the CEQ Guidelines for preparation of environmental impact statements expressly require that the agency, in responding to comments, must either change the proposed action or alternatives, change its analysis of the issue, make factual corrections, or --

> Explain why the comments do not warrant further agency response, citing the sources, authorities or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

40 CFR §1503.4. That requirement, obviously, tracks the NEPA and administrative practice obligations imposed by reviewing courts' insistence upon meaningful explanation for disregard of significant comments or criticism. American Motorcyclist Association, et al. v. Watt, et al., 534 F.Supp. 923, 936 (C.D. Cal. 1981), affirmed, 714 F.2d 962 (9th Cir. 1983).

The problems and issues:

PROBLEM #1: Do "multiple use" policies preclude planning for management to protect adjacent park lands?

[Comment by the National Park Service (NPS) and BLM response as reported in final EIS and proposed RMP for the Grand Resource Area, Utah.]

NPS Comment:

> The visual resources surrounding Arches and Canyonlands National Parks are of concern to us because they are a component of the scenery viewed by park visitors from within the parks. We realize that these areas cannot receive the same protection as park lands, but we would like to see consideration given to averting or mitigating impacts on the visual resource as viewed by visitors to these parks. [Consideration] should include visual resource management Class I designations, which are noticeably absent . . . . [FEIS at 4-55.]

BLM Response:

The inventory of visual resources did not identify any Class I areas on BLM administered lands within the [planning area]. The class I designation is normally given to areas managed under special designations, such as Wild and Scenic Rivers. The public lands surrounding the national parks are managed for multiple use. [FEIS at 4-56.]

Issue: To what extent does BLM's obligation to manage the public lands for "multiple use" preclude it from planning and providing for protective management of scenic areas viewed from, or as a component of the views in, the national parks?

PROBLEM #2: Under what circumstances do potential conflicts between resource development and park protection become an appropriate planning issue?

[Comment by author on BLM "preplanning analysis" for San Juan Resource Management Plan; response by Utah State Director, BLM.]

Comment:

This letter requests . . . that BLM revise its identification of the planning issues to include issues addressing the conflicts between mineral development and the scenic, recreational, aesthetic and cultural values of the area, particularly as those conflicts may affect Canyonlands National Park.

BLM Response:

Locatable mineral allocations are not managed with an RMP, but rather in accordance with the 1872 Mining Law, as amended. . . . Withdrawals are made by the Secretary or Congress, although recommendations can be made through the RMP. . . .

Oil and gas leases are issued based on oil and gas leasing categories. These will be included in the RMP. . . . These categories are determined in response to potential impacts of oil and gas development upon a conflicting resource. . . . [A]ny new adjustments to the current system are not expected to be a problem.

BLM does not have the authority to plan for lands within Canyonlands National Park. We do not manage public lands as a "buffer zone" to the park. Canyonlands National Park is preparing a management plan; we will assess the alternative plans considered through the RMP process to determine if they are or are not consistent with the park plan.

Issues: (1) Where substantial portions of BLM lands bounding a major natural and wilderness park are currently open to mineral development and oil and gas leasing without any special management designations, is the potential conflict between resource development and park protection an

appropriate planning issue for RMP consideration?

(2) Under what circumstances would that issue become a mandatory planning issue?

(3) To the extent that analysis of that planning issue would require consideration of some sort of management "buffer" on BLM lands adjacent to the park, does anything in FLPMA or in BLM's other statutory duties foreclose that management option?

(4) Are management constraints on locatable mineral development beyond the scope of BLM management authority that can be considered in BLM's planning process for RMPs? Lease restrictions or restriction categories for oil and gas leasing?

(5) When, if ever, would management constraints or restrictions for park protection require withdrawals of the lands in question? Is consideration of such withdrawals appropriate for analysis in RMP planning?

PROBLEM #3: To what extent are protective stipulations under BLM oil and gas leasing categories appropriate and adequate devices for planning park protection?

[NPS comment and BLM response as reported in final EIS and proposed RMP for the Grand Resource Area, Utah.]

NPS Comment:

Also with regard to visual resources, . . . substantial portions of land adjacent to Arches and Canyonlands

National Parks [are shown] as open to potash exploration and leasing as well as oil and gas leasing. Certain [BLM wilderness and state park] areas have been buffered by [more protective] Category 2 and 3 areas, while the National Parks have not. We recommend that similar buffer areas be established adjacent to the parks because of their special preservation status as national parks and proposed wilderness areas. [FEIS at 4-55.]

BLM Response:

The oil and gas leasing category system is oriented toward protecting site-specific resource values. The categories are not designed to act as protective buffers. [FEIS at 4-56.]

Issues: (1) Does BLM's oil and gas leasing category system reflect an established BLM policy concerning the type or extent of values or resources that may be protected by application of those categories in RMP planning?

(2) Does any BLM policy bar the use of lease stipulation categories to establish protective buffers adjacent to parks or other protected lands?

(3) What is the range of protective types of stipulations that may be utilized for that purpose through the leasing category system?

(4) Would ACEC designation of areas needing buffer protection permit the application of more rigorous management restrictions for park protection than are available under the oil and gas leasing category system?

PROBLEM #4: Where ACEC values are present, should their identification and consideration in RMP planning be precluded or limited by the possibility of their protection under standard management practices? Under what circumstances do adjacent park values trigger their identification and consideration as ACEC?

[Comment by the Natural Resources Defense Council and BLM response as reported in final EIS and proposed RMP for the Grand Resource Area, Utah.]

Comment:

Potential Areas of Critical Environmental Concern receive no analysis, or even mention that we can find, yet the regulations require that priority be given to their identification, designation, protection and management. Why is there no discussion ?
[FEIS at 4-58.]

BLM Response:

ACEC designation was not proposed in the Draft RMP because it was determined that other multiple use management actions could adequately protect resource values. [FEIS at 4-63 and 4-54.]

Issues: (1) Doesn't RMP identification and consideration of ACECs depend upon a resource inventory which indicates the presence of "important historic, cultural, or scenic values," etc., that could be threatened, regardless of the types of management alternatives that may be available to protect those values?

(2) If the appropriate ACEC values are shown by inventory to be present, isn't it the purpose of the RMP process to analyze and determine the management actions necessary to protect those values? Doesn't that require consideration of all

of the potential ACEC's throughout the RMP analysis?

(3) In light of NPS' and others comments in the Grand Resource Area RMP on the need for protection of national park scenic resources (see problems #1 and #3), what "management actions" in addition to ACEC designation are available for that purpose?

(4) How would those alternative management actions be given adequate consideration in the RMP planning process unless scenic resource/development conflicts are identified as a planning issue?

PROBLEM #5: To what extent and on what grounds should differing management alternatives considered for an RMP affect ACEC identification, designation and management protection?

A summary of the various "special management designations" analyzed by the draft San Juan RMP shows that under the most protective alternative considered, 7 ACECs and 11 "outstanding natural areas" or "research natural areas" were proposed. Under the less protective alternatives, only a few of those special designations were proposed. [See "Table 2-6," extracted from draft San Juan RMP, attached as an appendix to this paper.]

Nowhere in the draft RMP does BLM explain what considerations prompted the exclusion of many of these areas under the various plan alternatives, including the preferred alternative. Since by far the largest number of "special

designations" were considered for purposes of the two highly protective alternatives [alternatives C and D -- see appendix], the strong implication is that the proposed protections were considered because of the generally protective policies considered under those alternatives.

The parallel implication is that the designations were <u>not</u> considered on grounds relating primarily to the threat to the resources resulting from proposed management activities. If that consideration had been weighed, it would seem more likely that the greater number of protective designations would be proposed for those management alternatives adopting a generally less protective policy stance.

<u>Issues:</u> (1)<u>If all areas whose resource qualities are eligible for potential ACEC consideration are to be reviewed throughout the RMP planning process, is BLM required to explain the grounds on which it concludes that some of those areas will not be designated</u>?

(2) <u>To what extent and on what grounds is it appropriate for the general objectives of particular management alternatives considered in an RMP to affect designation of areas identified as potential ACECs?</u>

PROBLEM #6: What criterita guide selection of "planning issues" for RMP preparation, and how does their selection affect the scope and content of other issues to be resolved in RMP planning?

[BLM description of the cultural resource values in Utah's San Juan Resource Area, summarized in the "Management Situation Analysis" [MSA] which accompanied development of the Draft San Juan RMP and EIS (May 1986); followed by BLM's explanation of its decision not to include management and protection of archeological resources as a planning issue.]

BLM's Management Situation Analysis:

Archaeologically, the San Juan Resource Area is one of the richest locales under BLM management. . . . Of the approximately 17,000 recorded sites in San Juan County, it is estimated that over 10,000 are situated on public lands. Only about 5 per cent of public lands in the SJRA has been intensively inventoried for cultural resources, leading archaeologists to estimate that the resource area may hold as many as 200,000 sites. . . .

The overall trend in the condition of cultural resources in the SJRA is downward, because of impacts primarily from energy exploration and development, recreation use, and pot hunting. In the few areas where those activities do not occur, the overall trend is stable. [MSA at pages 4331-1, 4331-2.]

* * * *

BLM's Draft RMP/EIS:

Management and protection of archeological and historic resources has been identified as a concern by the public, academic institutions, the BLM, and other federal, state and local government agencies.

Use and management of cultural resources is specifically governed by law and regulation. The need for protection of these resources is established by law and is beyond the discretion of BLM field office personnel. Accordingly, this topic does not qualify as a planning issue.

Conflicts between protection of cultural sites and use or management of other resources are covered in this RMP/EIS according to the other resource affected.

[Draft RMP/EIS at page 1-6.]

Issues: (1) What criteria govern the identification of planning issues that will be considered throughout the analysis in an RMP?

(2) What kind, depth or level of consideration and analysis distinguishes "planning issues" from other issues of concern to be considered in RMP planning? Can management decisions be made peculiar to a particular issue or problem even though that issue or problem is not identified as a "planning issue?"

(3) What policy, guideline or other directive forbids consideration as planning issues of matters which are nondiscretionary or involve obligations required by law?

PROBLEM #7: Under what circumstances do the potential consequences of a single major project qualify it for consideration as an RMP "planning issue?"

[Comments by author on BLM "preplanning analysis" for San Juan Resource Management Plan and response by BLM State Director and by District Manager.]

Comment:

BLM [should] revise its identification of the planning issues to be addressed in the San Juan RMP to include issues affecting use of the public lands for possible development of a nuclear waste repository and potential conflicts between that development and scenic, recreational, aesthetic and cultural values, particularly those of Canyonlands National Park.

BLM Response:
We do not believe that it is appropriate for BLM to address the nuclear waste repository unilaterally in the current RMP effort. Although BLM is providing input to the Department of Energy (DOE), we are not the lead agency. Decisions on the nuclear waste repository will be made by DOE (with input from BLM and other agencies) and by the Congress within the framework of a national perspective. [State Director Response.]

* * * *

[Under 43 CFR §1610.5-5,] a planning amendment may be made in response to . . . "a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions, and decisions" in the existing plan. While an RMP is intended to be a comprehensive document, this does not mean that everything that BLM does must be carried simultaneously through an RMP planning effort. Where appropriate, individual studies, analysis, and actions can be considered as separate activities; then keyed into an RMP through routine plan maintenance and/or amendment. [State Director's response.]

* * * *

Moab District BLM will complete a plan amendment in compliance with 43 C.F.R., Part 1600, at the time the Davis and Lavender Canyon sites are nominated as suitable for site characterization. [Moab District Director's Response.]

Issues: (1) Where proposals for specific projects or actions may diverge significantly from the "scope of resource uses" or from the "terms, conditions and decisions" that underlie an existing or pending plan, what criteria govern BLM's obligation to analyze such proposals in its planning process?

(2) What guidelines govern decisions by BLM to defer in its planning process to the decisions of other agencies in some circumstances (e.g., DOE), while declining to defer in other circumstances (e.g., NPS)?

Special Management Designations, by Alternative — PA = primitive area; ONA = outstanding natural area;

Program	Area/ (Resource Value)	Alternative A Designation	Acres	Alternative B Designation	Acres	Alternative C Designation	Acres	Alternative D Designation	Acres	Alternative E Designation	Acres
4322	Bridger Jack Mesa (relict vegetation)	None	0	RNA	1,760	ACEC	5,290	RNA	5,290	RNA	5,290
4322	Lavender Mesa (relict vegetation)	None	0	RNA	640	ACEC	640	RNA	640	RNA	640
4331	Alkali Ridge (cultural)	None	0	None	0	ACEC	170,320	ACEC	170,320	ACEC	35,890
4331	North Abajo (cultural)	None	0	None	0	ACEC	65,450	ACEC	65,450	ACEC (Shay Canyon)	1,770
4331	Grand Gulch (cultural)	None	0	None	0	ACEC	4,240	ACEC	4,240	ACEC (with recreation)	49,130
4331	Hovenweep (cultural)	None	0	None	0	None	0	ACEC	2,000	None	0
4333	Grand Gulch (recreation)	PA	37,810	None	0	ONA	69,500	ONA	69,500	ACEC (with cultural)	49,130
4333	Dark Canyon (recreation)	PA	62,040	None	0	ONA	68,100	ONA	68,100	ACEC	62,040
4333	Slickhorn Canyon (recreation)	None	0	None	0	ONA	25,800	ONA	25,800	None	0
4333	John's Canyon (recreation)	None	0	None	0	ONA	17,500	ONA	17,500	None	0
4333	Fish & Owl Canyons (recreation)	None	0	None	0	ONA	40,300	ONA	40,300	None	0
4333	Road Canyon (recreation)	None	0	None	0	ONA	24,500	ONA	24,500	None	0
4333	Lime Canyon (recreation)	None	0	None	0	ONA	25,300	ONA	25,300	None	0
4333	Mule Canyon (recreation)	None	0	None	0	ONA	6,000	ONA	6,000	None	0
4333	Arch Canyon (recreation)	None	0	None	0	None	0	ONA	4,200	None	0
4333	Lockhart Basin	None	0	None	0	ACEC	56,660	ACEC	56,660	None	0
4351	Cajon Pond (wildlife)	None	0	None	0	None	0	None	0	ACEC	40

Appendix

SUPPLEMENT TO:

BLM Land Planning and Consistency Obligations To Provide For Protection of Natural Values On Adjacent Protected Lands

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The Public Lands During The Remainder of the 20th Century:
Planning, Law, and Policy in the Federal Land Agencies

Natural Resources Law Center
University of Colorado School of Law
June 8-10, 1987

SUPPLEMENT TO:

BLM Land Planning and Consistency Obligations To Provide For Protection of Natural Values On Adjacent Protected Lands

The following summary outlines certain regulations and policies pertinent to the "problems" raised in the principal paper.

I. Basic issue: identification of "planning issues" to be considered and resolved by the RMP planning process.

Resolution of problems #2, #6 and #7 depend, in the first instance, on the availability and application of substantive standards for identifying the issues that must be addressed the RMP planning process.

FLPMA Guidance:

FLPMA requires that land use plans be developed, maintained and revised [§§ 102(a)(2) and 202(a)]; that the planning be based on inventory of the lands and their resources [§§ 102(a)(2), 201(a), and (202(c)(4)]; and that the plans comply with an assortment of specified policies and guidelines including multiple use and sustained yield, priority for ACECs, etc. [§ 202(c)(1)-(9)] Other provisions require that land management decisions be made in accordance with land use plans [§302(a)], and specify that obligation with respect, e.g, to decisions to exclude one or more of the principal land uses [§ 202(c)(1) and (2)], and to sell public lands [§203].

With the exception of the above provisions, certain general policy declarations, and requirements for public participation, FLPMA does not specify the detailed requirements for the conduct of the required "land use planning." Thus, the basic rules for implementation of the planning requirement are established by BLM regulations at 43 CFR 1601-1610; and those rules are further elaborated and implemented by related provisions of the BLM Manual.

BLM Planning Regulations on Identification of Planning Issues

BLM planning regulations recognize a variety of sources that "may" play a role in identification of planning issues, including "guidance" that may be provided by the Director and State Director, and a variety of official national policy pronouncements. [43 CFR § 1610.1] The State Director is to "ensure" that guidance implemented in the planning process is "as consistent as possible" with existing official resource management plans, policies or programs of the various affected state and federal agencies. [43 CFR §§ 1610.3-1(c)(1) and 1610.3-2].

The most specific -- and none too specific -- guidance for identification of planning issues provided by the BLM planning regulations is at 43 CFR § 1610.4-1 ("Identification of Issues"), which simply provides that the public and various interested government entities --

> shall be given an opportunity to suggest "concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan

and that --

> The District and Area Manager shall analyze those suggestions, plus available district records of resource conditions, trends, needs and problems, and select topics and determine the issues to be addressed during the planning process.

Somewhat more explicit requirements for identification of issues may be circuitously derived from the above regulation's express adoption of the Council on Environmental Quality regulations on "scoping" for an environmental impact analysis, at 40 CFR § 1501.7. Particularly relevant are the CEQ requirements under that regulation that an agency --

> (2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth . . . . [and]
> (3) Identify and eliminate from detailed study the issues which are not significant . . . .

Thus, the scope of "issues" to be considered in the resource management planning process is elaborated by CEQ's concept of "significance" and its detailed explanation of "scope" for purposes of the scoping process.

"Significantly" is defined by the CEQ regulations, at 40 CFR § 1508.27, primarily for the purpose of determining under NEPA whether a proposed action will significantly affect the human environment. But since "scoping" is undertaken for the purpose of identifying the issues to be considered in that determination, the CEQ concept of "significance"is highly relevant in determining RMP planning issues.

The regulation specifies a number of criteria that should be helpful in identifying issues for land planning, emphasizing concerns about intensity of impact and consideration of those impacts in light of their context. Most pertinent here is the specific requirement that "intensity" of impacts should be

determined by considering a number of factors including cumulative impacts and -

> Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

[40 CFR § 1508.27; emphasis added.]

"Scope" of the matters to be considered in environmental impact analysis (and in land planning) is explained in comprehensive terms to require analysis of a wide range of connected, cumulative or similar actions; a wide range of alternative courses of action; and direct, indirect and cumulative impacts of those actions. [40 CFR § 1508.25]

BLM Manual

Following the lead of the above regulations, the BLM Manual [Manual] provides that identification of issues "orients the planning process to the significant resource management problems and land use conflicts in the area covered by the plan." [Manual at § 1616.1] The manual repeatedly places a heavy emphasis on consideration of issues suggested by the public and the level of interest in those concerns expressed through the public participation process.

The Manual most explicitly states criteria for selection of planning issues in the following guide for "actions [to] help identify the planning issues:"

> Identify comments which involve competing or conflicting uses, views that clearly suggest the need for a management decision, and management practices or uses that are a source of public controversy and for which there are alternatives.

[Manual at §1616.13-D-3]

The manual also suggests specific criteria for identification of issues in explaining what suggestions should be excluded as "not appropriate," excluding items which --

> a. Cannot be resolved within resource management planning (e.g. , concerns with policy or procedures beyond the control of field managers).
>
> b. Represent unrelated administrative problems (e.g., unauthorized uses or noncompliance with stipulations).

c. Are more appropriate to activity planning (e.g., road, fence or drill pad placement, or the design of a new parking area at a recreation site).

d. Are within the jurisdiction of some other agency or level of government (e.g. game management authority of the State).

e. Are emotional or unsubstantiated statements of personal conviction.

[Manual § 161.13-D-1]

In addition to general criteria for identification of planning issues, the BLM Manual offers guidance regarding the treatment of a variety of values and resources in the planning process. A series of instructions in the form of "Supplemental Program Guidance" for those values and resources has recently been issued for inclusion in the Manual. These specific resource-related guidance instructions provide a basis for determining the "significance" of issues for planning.

For example, under a "Supplemental Program Guidance For Land Resources," (issued Nov. 14, 1986 as Manual Release 1-1470), BLM instructed with regard to "natural areas" that, with certain exceptions,

> the following natural area related determinations are required in every resource management plan . . . .
>
> Identify natural areas, if any, that exist in the resource area. These areas must be designated as Areas of Critical Environmental Concern (ACEC'S) following the procedures set forth in BLM Manual Section 1617.8.
>
> . . . . A research natural area is an area which contains natural resource values of scientific interest and is managed primarily for research and educational purposes.
>
> . . . . An outstanding natural area is an area which contains unusual natural characteristics and is managed primarily for educational and recreational purposes.

[Manual Supplemental Program Guidance at §1623.31-A-1-a and b]

A similar example is provided by a similar "Supplemental Program Guidance For Environmental Resources," including guidance on air, soil, water, vegetation and visual resources. The guidance on visual resources provides, with certain exceptions, that --

> The following visual resources related determinations are required in every resource management plan . . . .
>
> Management objectives are established for the visual resources in the planning area through the assignment of visual resource management (VRM) classes

[as follows:]
. . . . VRM Class I. This class applies to areas where the objective is to maintain a landscape setting that appears unaltered by man....
Designate scenic ACEC's. Show the boundaries of these ACECs on an appropriate map and describe the general management practices, uses allowed, and mitigating measures. . . .

[Manual Supplemental Program Guidance at § 1621.41-A-1-a and -2]

The "exceptions" to the above general policies requiring specific determinations are obvious (e.g., the resource in question is not present) with the exception of the following provision:

> A determination is not required if management has decided that it would be premature to make the determination in question and that it should be handled through a subsequent plan amendment when and if the need arises (Such deferrals are normally identified during preplanning.)

[Manual Supplemental Program Guidance at § 1620.06-D] The legal or analytical basis for this potentially broad exception to the planning obligation is nowhere discussed or provided. Presumably the provision should be interpreted in light of CEQ's directive that --

> Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

[40 CFR § 1501.2]

II. Basic Issue: identification and consistent inclusion of ACECs in the planning process

Resolution of problems #4 and #5 depends upon the standards for identification of "areas of critical environmental concern" to be derived from FLPMA, and upon the effect that identification of ACECs is required to be given in the planning process. The basic questions of interest here concern: (1) the degree to which the ACEC values of an area are to be governed by the area's relationship to a park or other protected lands; and (2) whether consideration and designation of ACECs is governed by the presence of values needing protection, or whether designation requires, in addition, an identified threat to those values that may arise from anticipated activities or management problems in

the area.

FLPMA Guidance

FLPMA defines "areas of critical environmental concern" as follows:

> The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

[FLPMA § 103(a), 43 USC § 1702(a).]

The principal paper (at page 24-25) argues that FLPMA's definition of ACECs is open-ended and contains no suggestion that the values and resources protected under the ACEC concept are confined to those arising "on" BLM lands.

More difficult is the question whether designation or consideration of ACECs throughout all RMP planning alternatives is required. BLM practice appears to permit consideration of an ACEC under some planning alternatives while disregarding it under other alternatives, depending upon generalized conclusions about the degree of threat that may arise under the various alternative management scenarios. (See,e.g., problem #5.)

The parenthetical phrases in FLPMA's ACEC definition can, of course, be read to support the above BLM practice. But the parenthetical, "(when such areas are developed or used or where no development is required)," does not speak in terms of degrees of development or use. Rather, it requires identification and designation where there is any development or use unless BLM can support a determination that no management attention is necessary in order to "protect" the protected values and resources.

> The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

Furthermore, read in context with the whole definition, the emphasis of the parenthetical is focussed on protection of the "important" values and resources: it recognizes that their

presence may require "no development" in order to assure their protection.

BLM Planning Regulations on ACECs

Although skimpy, the BLM planning regulations tend to support the above interpretations.

After merely repeating the statutory definition of ACECs [43 CFR § 1601.0-5(a)], the main contribution of the regulations lies in its requirement that the pre-planning inventory data be analyzed to identify areas meeting the following standards of "relevance" and "importance:"

> (1) Relevance. There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.
>
> (2) Importance. The above described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern.

[43 CFR § 1610.7-2] Obviously, while the above provisions do not resolve the question, they tend to support the notion that values shared in common with or important because of formally protected adjacent lands are appropriate for ACEC designation.

BLM's ACEC regulations are somewhat more explicit in supporting a requirement of consistent consideration of ACECs for designation throughout all alternatives developed in the planning process. The introductory sentence of the regulations reads:

> Areas having potential for [ACEC] designation and protection management shall be identified and considered throughout the resource management planning process . . . .

[43 CFR § 1610.7-2]

BLM Manual

While recent elaborations of BLM policy on ACECs offer further support for designation based on values related to adjacent protected lands (see infra), the current BLM Manual provisions do not explicitly support that analysis. The basic ACEC provisions in Manual § 1617 continue merely to recite the basic requirements of the statute and regulations. It offers only the following addition to the identifying criteria, in refining the criterion of "importance:"

> Qualities or circumstances that make such a resource fragile, sensitive, rare, irreplaceable, endangered, threatened, or vulnerable to adverse change may be among the reasons management action is appropriate.

[Manual § 1617.8-C-1(b)] And in explaining considerations that may be "evidence of importance," the Manual implies that broader considerations may play a role:

> An indication of importance may be found in non-BLM sources and in the judgment of specialists qualified by knowledge, training, or experience to assess these qualities. Information developed by other Federal agencies . . . may provide evidence of importance.

[Manual § 1617.81-C-2]

The more recent additions to the Manual's planning provisions, in "Supplemental Program Guidance" for various resources, strongly suggest that relevant values to be considered may relate to adjacent protected lands. Thus, in requiring assessment of visual resources and the designation of "scenic ACECs," the "Supplemental Guidance" for visual resources indicates that planning may require --

> Data on the location and visual management requirements of special areas such as Wilderness Areas (or Wilderness Study Areas), National Wild and Scenic Rivers, National Landmarks and National Trails.

[Manual Supplemental Guidance at § 1621.43-A-3] Almost consciously excluded is consideration of the "visual management requirements" of national parks -- though their management needs clearly involve the same considerations.

The Manual's treatment of the obligation to identify and consider ACECs throughout the planning process is seriously inconsistent. The introductory provision explicitly provides that --

> Areas which may receive ACEC designation and management are identified and considered throughout the resource management planning process.

[Manual at § 1617.8] And preplanning analysis of the "management situation" requires thorough analysis of inventory data and ACEC criteria at that stage for classification of qualifying areas as "a potential ACEC eligible for further consideration." [Manual at § 1617.82-A-3 and 3-b] While the requirement of "consideration" is repeated in other provisions without more detailed explanation, other provisions apparently permit "consideration" of some management alternatives in a plan <u>without</u>

consideration of the identified ACECs:

> When analyzing the possible designation of a potential ACEC through alternatives formulation and selection of a preferred alternative . . . , the following are considered: . . . Different management prescriptions . . . are examined in the formulation of alternatives. A potential ACEC must be considered in at least one of the plan alternatives studied in detail. Treatment in at least two alternatives, however, is recommended . . . .

[Manual § 1617.82-B-1] Yet an implicitly conflicting position is included in the same section:

> A potential ACEC is considered as appropriate across the range of alternatives. An ACEC area is not necessarily associated only with alternatives favoring protection. An ACEC in some cases may be more appropriate in alternatives favoring production.

[Manual § 1617.82-B-2]

Finally, as indicated supra, the recent additions to the Manual of "Supplemental Program Guidance" emphasize an obligation of uniform consideration and designation with regard to at least certain resources and values. Thus, the guidance on "natural areas" requires BLM to identify and designate those areas as ACECs. See page 5, supra.

Recent ACEC proposals

BLM "Instruction Memorandum" No. 86-299 (Mar. 6, 1986) proposed an "action plan" and a "draft guidance statement" on ACECs for further consideration, designed to achieve more consistency. (Attached.) That memorandum was followed by Instruction Memorandum No. 86-712 (Sept. 24, 1986), which offered a draft proposal for revised BLM Manual provisions on ACECs, including significant steps on both of the ACEC issues addressed above. Particularly important were provisions which emphasized the relationship of planning and of ACECs to other protective designations applied by other agencies, and provisions that specifically required that "all potential ACECs are included in the preferred alternative unless there is a clear and documented reason not to do so." (Proposed revision of Manual § 1617.83-B-1.)

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

1617.8(202/340)

March 6, 1986

Instruction Memorandum No. 86- 299
Expires 9/30/87

To: Directorate, WO Division Chiefs, and AFOs

From: Director

Subject: Achieving a Consistent Approach Bureauwide to Areas of Critical Environmental Concern (ACEC) Designation in Resource Management Planning
DD 4/18/86

The Congress singled out ACECs for priority designation during land use planning in section 202(c)(3) of the Federal Land Policy and Management Act (FLPMA). To date, 40 resource management plans (RMPs) have been completed to the proposed RMP and final environmental impact statement (EIS) stage. (Over 25 more RMPs are in preparation.) ACECs are frequently an issue in plan protests to the Director. Consideration of ACEC protests and associated planning records over time has shown that treatment of ACECs in these completed RMPs, and in plan amendments in some cases, is uneven and inconsistent. Consequently, some of the protests have been difficult to resolve. This is a concern for the Bureau of Land Management (BLM) and a growing source of criticism.

Several factors may account for the inconsistency. However, we believe that confusion and uncertainty about ACEC requirements and implementation procedures largely account for the present level of disparity. Some field offices, for example, are still citing the "Orange Book" as a source of procedural guidance or suggesting that ACEC designations are made after RMP completions.

Designation and protection of ACECs are a useful tool for managers in meeting BLM multiple use objectives. We have prepared an action plan outlining a series of steps to (1) assure improved use of ACECs, and (2) achieve a consistent approach Bureauwide to designation. (See Enclosure 1.) The staff work, consultation, review, and the products associated with these steps will, we believe, increase awareness and understanding of ACECs and related requirements. We also expect the outlined steps to clarify key features of the ACEC provisions and result in appropriate revision of existing BLM directives and training materials. The emphasis and review of FLPMA's ACEC provisions at this time should also be helpful in preparing RMPs that have not reached the draft stage.

The first item on the action plan is a guidance statement. The statement will serve as a base for subsequent ACEC action plan steps. (See Enclosure 2.)

The statement may also be a useful reference to the designation of ACECs in ongoing resource management planning. Comments on the draft guidance statement and later reviews associated with other action plan steps (e.g., hazardous waste site recommendations, etc.) will be used in revising the ACEC portion of BLM Manual Section 1617. Comments on Enclosure 2 should be submitted to the Director (202) by April 18, 1986.

Additionally, field offices will have opportunity to review proposed BLM Manual Section revisions before they are approved. Plans for an outreach program and external review are still being developed at this time. The results of early public contacts will help refine strategies with respect to the timing and scope of subsequent public involvement.

If you have questions regarding this memorandum, please contact the Office of Planning and Environmental Coordination (Gordon Knight, 653-8824 or Jim Colby, 653-8830).

James M Parker

James M. Parker
Acting

2 Enclosures
Encl. 1 - Action Plan
Encl. 2 - Draft Guidance Statement

ACTION PLAN FOR ACHIEVING CONSISTENT BUREAUWIDE APPROACH TO ACEC DESIGNATIONS IN RESOURCE MANAGEMENT PLANNING

A. ACTION STEPS AND TIMEFRAMES

Step 1. Guidance Statement. Prepare a guidance statement for Director approval that clarifies the ACEC requirements of the FLPMA and provides a basis for consistent BLM interpretation of ACEC provisions. Use the statement as a base for achieving consistency in ACEC designations. Send the approved statement to field officials along with a copy of the action plan for achieving a consistent approach to ACECs.

Deadline: February 28, 1986.

Step 2. Hazardous Waste. Prepare an option paper which examines a proposal (from DOI) to provide for the designation of existing hazardous waste sites as ACECs. Set forth pros and cons. Obtain appropriate BLM review and comment as a basis for a decision recommendation to the Director.

Deadline: March 14, 1986.

Step 3. Draft Special Management Area (Recreation) Policy Paper. Review the draft paper, incorporating recent experiences, and prepare paper for technical review. Then complete a detailed crosswalk and technical review of draft paper in light of the Director's ACEC guidance statement (Step 1) and the objective of a consistent bureauwide approach to ACEC designation. Assess implications to the draft paper and its further development. Assess options for integrating, harmonizing or eliminating any conflicts and/or contradictions. Provide recommendations, if needed, to aid Director decisionmaking.

Deadline: March 28, 1986.

Step 4. BLM Management Team Briefing. Brief the Management Team on ACEC designation experiences, related consistency problems, and the need for a unified approach. Review the statutory requirements for ACECs and the policy basis for achieving a consistent approach as set forth in the Director's guidance statement (Step 1). Explain the action plan and its associated elements. Discuss how States can implement the guidance.

Deadline: April 9-11, 1986.

Step 5. NPLAC - Spring Meeting. Brief the National Public Lands Advisory Council on the BLM action plan for achieving a consistent approach to ACEC designations. Provide appropriate reference materials. Explain the ACEC requirements, the basic concept, and the rationale for BLM implementing guidance. Seek advice, as appropriate, on elements under review for Director decision (e.g., the hazardous waste site proposal and special management areas (Recreation) policy paper).

Deadline: May 14-16, 1986.

Step 6. Directives Revisions. Make changes to existing planning Manual Sections as necessary to incorporate Director guidance for achieving a consistent approach to ACEC designation. Coordinate preparation, or revision, of resource program (activity) guidance by program offices as needed to aid BLM management/protection of ACECs (e.g., renewable resources, recreation and cultural, geology, hazardous waste, etc.).

Deadline: September 28, 1986.

Step 7. Public Involvement (Outreach). Conduct a staged outreach which provides for the following: (a) low-keyed, informal, advisory contacts with various interest group representatives, initiate early-on and focus on steps underway to achieve a consistent Bureauwide approach to ACEC designation, (b) consultation with the NPLAC, and (c) consideration of expanded, more formal public involvement, including review of Directives revisions, as indicated through completion of preceding Action Plan steps and Director feedback.

Deadline: September 30, 1986.

Step 8. Training Strategy. Assess the training situation and management opportunities to provide in FY 87 and FY 88 appropriate instruction on ACEC requirements and the BLM approach to ACECs in plan preparation and implementation. Integrate, as opportunities permit, ACEC teaching points into on-going planning and resource program training. Prepare necessary instructional materials and implement. Orient training to the development of a common understanding of the ACEC provision and associated requirements.

Deadline: September 30, 1986.

B. RESPONSIBILITIES

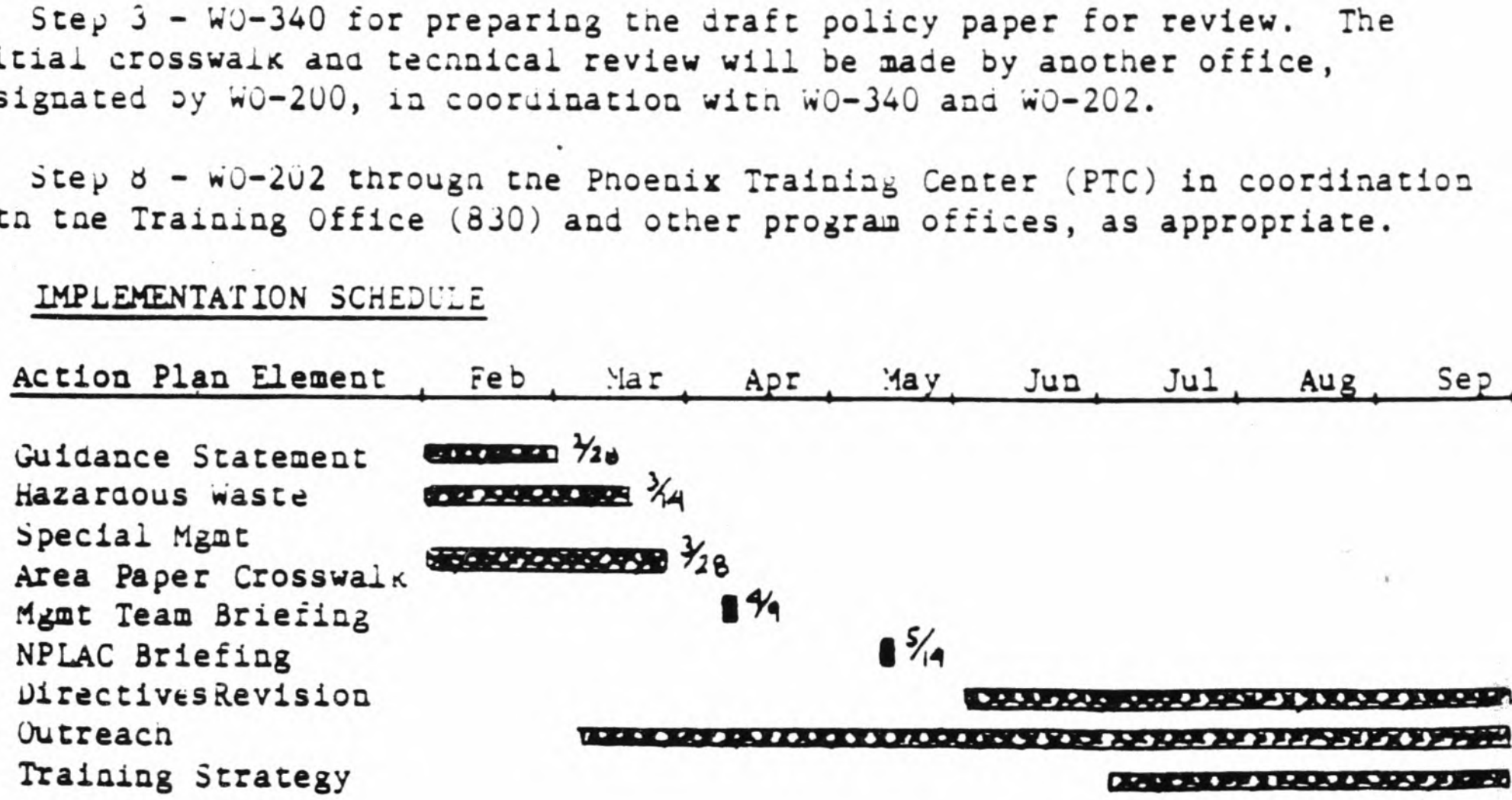
1. Step 1 - Office of Planning and Environmental Coordination (202) and Division of Recreation, Cultural and Wilderness Resources (340) jointly.

2. Steps 2 and 4-7 - WO-202 in coordination with WO-340, Office of Legislation and Regulatory Management (140), Hazardous Waste (501) and other program offices, as appropriate.

3. Step 3 - WO-340 for preparing the draft policy paper for review. The initial crosswalk and technical review will be made by another office, designated by WO-200, in coordination with WO-340 and WO-202.

4. Step 8 - WO-202 through the Phoenix Training Center (PTC) in coordination with the Training Office (830) and other program offices, as appropriate.

C. IMPLEMENTATION SCHEDULE



DRAFT

AREAS OF CRITICAL ENVIRONMENTAL CONCERN IN RESOURCE MANAGEMENT PLANNING

I. Statutory Aspects

A. Designation of Areas of Critical Environmental Concern (ACEC). The Federal Land Policy and Management Act (FLPMA) requires that the BLM "give priority to the designation and protection of ACECs" in the development and revision of land use plans (Section 202(c)(3)). The FLPMA defines ACECs to mean "areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." (Section 103(a))

B. Significance of Statutory Mandate. The language of the ACEC provisions and the legislative history of the Act provide clear guidelines for implementation. To aid understanding, key features are reviewed below.

1. The designation of ACECs during resource management planning is an affirmative requirement. That requirement is at least comparable to Congressional direction to BLM to "use and observe the principles of multiple use and sustained yield" (Section 202(c)(1)) and to "use a systematic interdisciplinary approach" in planning (Section 202(c)(2)).

2. Priority is afforded to ACECs. Among the nine requirements of Section 202(c), this is the only direction which uses the words "give priority." Areas which require special management attention must be accorded precedence during resource management planning. The statutory language necessitates in a very active sense more than mere "consideration," which is the direction in some subsequent paragraphs. This means the study of areas reviewed for designation must be thorough and well documented to show substantially more attention than "consideration."

3. The ACEC provision demands two specific actions for areas requiring special management attention. They are designation and protection. Just providing protective management for a recognized ACEC value, alone, is insufficient to fulfill the statutory requirement. Designation is also required. The RMP (or amendment) must provide both. Designation and protection are complementary rather than alternative actions.

4. ACECs are fully supportive of and compatible with BLM's multiple use mandate and mission. This feature is emphasized in the FLPMA definition in the parenthetical phrase "when such areas are developed or used or where no development is required." The legislative record further underscores the Congressional intent to harmonize ACECs with multiple use management and public land development. Management prescriptions for ACECs may exclude uses but the ACEC designation, per se, does not presume the exclusion of any uses. ACECs are an integral part of multiple use management and a tool to achieve the best possible balance of uses where special values exist.

5. The ACEC provision conveys a unique and explicit designation authority. It is the only existing authority for BLM managers to specifically designate public land areas. Under it, areas are designated that warrant special management attention to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

b. ACECs may be designated, modified or dropped (due to changed circumstances) only through the planning process and by approval of an RMP, RMP revision or plan amendment. ACECs are not designated through an activity plan or by announcement in the Federal Register (although there are notice requirements for designation).

C. Characteristic Areas. The definition of ACECs portrays the diversity of public land resources and values subject to designation. The following list further reflects the diversity of areas eligible for designation as envisioned in the FLPMA and related legislative history. The list should also aid BLM understanding of the ACEC provision.

1. Historic Resources and Values. These may include historical features which are important to the region, State, and Nation; rare or sensitive archeological resources; and significant religious or cultural resources important to Native Americans.

2. Cultural Resources and Values. These may include rare or sensitive archeological resources; and significant religious or cultural resources important to Native Americans.

3. Scenic Values. These include areas of high scenic value and relative scarcity.

4. Fish and Wildlife Resources. Important or critical habitat for endangered, sensitive, or threatened species is an example.

5. Other Natural Systems or Processes. The following illustrate types of resources or values, among others, in this category:

a. Important or critical habitat for endangered, sensitive, or threatened plant species or rare, endemic, or relic plants or plant communities.

b. Geologic features which exemplify natural systems or processes such as volcanism, fossilization, geothermal activity, cave formation, etc.

c. Unusual or unique terrestrial, aquatic, or riparian communities.

d. Areas of unstable soils and high seismic activity; rare soils.

e. Dunes, lakes and floodplains of rivers and streams.

6. Natural Hazards. These include areas where human visitation or habitation is likely and which have hazards such as those listed below. (A hazard caused initially or triggered by human action may be considered "natural" for ACEC purposes if it subsequently has become part of a natural process and endangers human life, health, or property.)

a. avalanche areas
b. dangerous flooding areas
c. landslide or seismic zones
d. dangerous cliffs, etc.

7. Combination of Values. These include areas which have a combination of values which individually may or may not qualify an area for ACEC designation. An example would be an area with significant scenic, historic, and biologic values.

II. Implementation Aspects

A. ACEC Directives. The pertinent provisions of FLPMA and the planning regulations (43 CFR 1600) and BLM Manual Section 1617.8 set forth current guidance and procedures for designating ACECs. The Manual Section includes a useful review of the key ACEC concepts and instructions for handling nominations. All procedural directions for designating ACECs during planning are contained in that Manual Section, including other cross-referenced planning Manual Sections and planning regulations provisions. Note that the "Orange Book" was replaced by BLM Manual Section 1617 on April 6, 1984. Key features of the current directives are addressed below.

B. Manager Role in Designation. BLM managers supervising the preparation of RMPs (AMs), providing general direction and guidance (DMs), and approving RMPs (SDs) determine, through the planning process, whether an area warrants designation and special management attention. The guidance for planning, including the ACEC directives (A above) and the specific information developed during planning, is the basis for managers' ACEC recommendations and decisions. The information developed during planning includes the results of resource inventories, public participation, consultation and coordination with other Federal agencies, State and local governments, and Indian tribes. It also includes the written analysis and evaluation that are developed in the course of preparing an RMP. The guidance and planning information, in combination, provides the manager the operational context, including physical setting, within which to make the decision for ACEC designations. Designation is not automatic.

C. Identification Criteria. The planning regulations establish two criteria, relevance and importance, to aid in the evaluation and designation of ACECs. These criteria serve as thresholds to help determine, in the course of plan preparations, whether an area warrants designation. The relevance and importance determinations initially made in the analysis of the management

situation are reexamined in light of the written analysis, public comment and otner information that are developed in preparation of the draft and proposed RMP. In all cases, if botn the criteria are met, the area shall be given priority for ACEC designation throughout the planning process. The decision to designate or not designate an area is made by the manager considering both criteria and supporting information.

D. Documentation. State Director approval of an RMP document accomplishes ACEC designation. The narratives, tables and maps making up the plan set forth tne allowable uses and management direction applicable to the ACEC(s). The analysis in tne RMP and associated EIS shows the substantive evaluation and review made during plan preparation and the magnitude of study/priority afforded to ACEC designations. Most importantly, the plan and associated EIS serve to demonstrate that all areas found to meet the identification criteria have been given priority for designation and protection. (Giving priority can be demonstrated many ways - emphasis in scoping, treatment in at least two plan alternatives, presentation in the document, etc.) The RMP document should clearly explain decisions to designate ACECs. It should clearly explain decisions which conclude potential areas do not warrant designation.

E. Activity Planning. Site-specific and more detailed plans for ACECs will usually be prepared. The preparation of such plans is guided by applicable resource program requirements in conformance with management prescriptions of the RMP. The resource value(s) associated with the ACEC determineswnat activity plan guidance applies (e.g., Cultural, Geology and Minerals, Recreation, watersned, Wildlife, etc.). If multiple program activities are involved in a particular ACEC, rather than a single program activity, a coordinated or combined activity plan will be prepared.