

NATURAL RESOURCE DAMAGE PROGRAM

PROGRAMMATIC ENVIRONMENTAL REVIEW AND JUSTIFICATION FOR CATEGORICAL EXCLUSION CONSISTENT WITH ARM 12.2.444¹

EXECUTIVE SUMMARY

Montana Natural Resource Damage Program (NRDP) is preparing this Programmatic Environmental Review (Programmatic Review) to evaluate the impacts of projects commonly implemented that qualify for categorical exclusions. Categorical exclusions are a type of action that does not individually, collectively, or cumulatively require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under the Montana Environmental Policy Act (MEPA).

According to the applicable requirements of MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary and that may inform how public participation is conducted. NRDP is responsible for providing an appropriate level of public review based on the above considerations. §§ 75-1-101, *et seq.*, MCA.

NRDP has no statutory guidance or requirements for implementing MEPA. NRDP has reviewed the administrative rules promulgated by other agencies and has determined that it is appropriate to utilize Montana's Fish, Wildlife and Parks rules for preparation, content, and distribution of a programmatic review under ARM 12.2.444. This means at a minimum, a concise, analytical discussion of alternatives and cumulative environmental effects of these alternatives on the human environment that must include information specified for EAs under ARM 12.2.432. Where categorical exclusions are tiered from other agencies and that agency has analyzed alternatives in their adoption of a categorical exclusion, NRDP incorporates that analysis by reference of accepting the related and approved categorical exclusion.

Importantly, this Programmatic Review largely adopts categorical exclusions that have already been identified, considered, and impacts disclosed by other agencies. Where NRDP implements similar work with similar impacts, this Programmatic Review incorporates already established categorical exclusion and qualifies them as such for NRDP.

JUSTIFICATION FOR CATEGORICAL EXCLUSION

State agencies are required to integrate use of natural and social sciences and the environmental design for planning and decision-making in preparation for a detailed statement on proposed projects, programs, or other major actions of state government significances that affect the quality of the human environment. Mont. Code Ann. § 75-1-201. These are EAs or EISs. An agency may not be required to prepare an EA or EIS for actions that qualify for a categorical exclusion (CE) as defined by rule or justified by a programmatic review. ARM 17.4.607(5)(a). NRDP performs actions that are appropriate to designate as CEs.

The following Programmatic Review describes actions that seldom, if ever, cause significant impact. The programmatic review also identifies the circumstances that could cause an otherwise excluded action to

¹ ARM 12.2.444 concerns the preparation, content, and distribution of a programmatic review for Montana Fish, Wildlife, and Parks. There are no administrative rules guiding NRDP as of 2026.

potentially have significant environmental impacts and provides the procedure whereby these situations would be discovered and appropriately analyzed.

SCOPE AND CONTENT

This Programmatic Review is statewide in scope and identifies the processes NRDP uses to identify restoration projects excluded from environmental review. The purpose is for NRDP to comply with MEPA through a broad adoption of environmental review process and document the effects and impacts on the environment of commonly implemented restoration projects.

NRDP implements various projects across Montana based on the goals and objectives of applicable Restoration Plans. NRDP considers many projects to meet these goals and objectives, and certain projects regularly implemented do not individually, collectively, or cumulatively require the preparation of an EA unless certain extraordinary circumstances exist.

PROPOSED CATEGORICAL EXCLUSIONS

The following actions have been identified as actions taken by NRDP in implementing projects that qualify for CEs. These actions have been determined by other agencies to qualify as CEs.

Actions determined by other agencies to be CEs that are within the scope of NRDP work are described below and are heretofore adopted.

Actions that qualify for categorical exclusion under ARM 12.2.454:

- (a) Construction of riparian fences to protect streambanks;
- (b) Minor improvement in fish habitat by placement of habitat improvement structure;
- (c) Removal or modification of man-made obstruction in stream channels to provide or improve fish passage or to prevent loss of fish into diversions;
- (d) Vegetative bank stabilization;
- (e) Spawning channel development to provide additional habitat for reproduction;
- (f) Inventory, survey, or engineering activities for design or development of plans for river restoration and future fisheries improvement program projects;
- (g) Maintenance or repair of existing river restoration and future fisheries improvement program projects.

Actions that qualify for categorical exclusion under ARM 36.11.447(3) for forest management practices:

- (a) Minor temporary uses of land involving negligible or no disturbance of soil or vegetation and having no long-term effect on the environment;
- (b) Acquisitions of fee title, easements, rights-of-way, or other interest in land that do not tend to commit NRDP to other actions;
- (c) Issuing permissions for temporary use of easements for permanent access on existing roads;
- (d) Removal of materials that have been stockpiled from previous excavation;
- (e) Back filling of earth into previously excavated land with material compatible with the natural features of the site and that meet the required contamination levels;
- (f) Regeneration of an area to native vegetative species, through planting or other means, including site preparation that does not involve the use of herbicides or result in conversion of the vegetation type.

- (g) Seed procurement, growing, lifting, and distributing nursery stock, and associated non-chemical disease and pest control;
- (h) Low-intensity forest management activities as defined in ARM 36.11.403(43).

NRDP reviewed and considered other agencies' extraordinary circumstances that require environmental review for an action that would otherwise qualify as a categorical exclusion. NRDP developed and modified extraordinary circumstances to best address extraordinary circumstances relevant to the program's work that will prompt environmental review for actions that would otherwise qualify for a categorical exclusion. Extraordinary circumstances in which a normally excluded action requires an EA or EIS will include:

- (a) The action is identified to be of high public interest or controversy over environmental concerns;
- (b) Disturbances to streambed that is significant enough to require a temporary exemption from water quality standards;
- (c) Disturbances to areas previously restored where those disturbances are significant to disrupt the restored area functionality;
- (d) Action in areas where unremediated hazardous substances or oil are present;
- (e) Sites with high erosion risk where action will occur;
- (f) Known or suspected historical or archaeological sites or resources;
- (g) Known or suspected tribal religious or cultural site or resources;
- (h) Several related projects that individually may be subject to categorical exclusions but may occur at the same time or in the same geographic area that may in the aggregate be subject to environmental review

RESTORATION PROJECT SELECTION

NRDP uses two sets of criteria in selecting restoration projects – Legal Criteria and Policy Criteria. These criteria are also used in considering alternatives to restoration actions. The Legal Criteria is derived from the criteria set forth in the U.S. Department of the Interior natural resource damage assessment regulation under 43 C.F.R. § 11.82(d), which trustees to natural resources are to use when selecting restoration projects at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites. The legal criteria are also derived from 15 C.F.R. § 990.54 for discharges of oil under the Oil Pollution Act (OPA).

The Policy Criteria has been developed by the State to promote State goals. These criteria consider the following considerations:

Legal Criteria (CERCLA)

- Technical feasibility
- Relationship of expected cost to expected benefits
- Cost-effectiveness
- Results of restoration actions
- Adverse environmental impacts
- Recovery period and potential for natural recovery
- Human health and safety
- Federal, State, and Tribal policies, rules, and laws

Legal Criteria (OPA)

- Project cost and cost-effectiveness
- Project goals and objectives
- Likelihood of project success
- Avoidance of adverse impact
- Multiple resource and service benefits
- Public health and safety

Policy Criteria

- Normal government function
- Price

PUBLIC PARTICIPATION

The level of analysis for environmental review will vary on the complexity and seriousness of environmental issues associated with the proposed actions. The level of public interest will also vary and affect the appropriateness of public participation. NRDP will adjust public review to match these factors utilizing a method(s) consistent with ARM 12.2.433(1).

Because NRDP determines the proposed categorical exclusions would result in limited environmental impact, and these actions have been previously accepted as categorical exclusions, NRDP determined the following public notice strategy provided an appropriate level of public review.

- This Programmatic Review for Categorical Exclusions is a public document and may be inspected upon request. Any person may obtain a copy of the Programmatic Review by making a request to NRDP.
- Public notice was served on the Natural Resource Damage Program website at: [NRDP Notices – Montana Department of Justice](#)
- NRDP maintains a mailing list of persons interested in a particular action or types of action. NRDP notified all interested persons and distributed copies of the Programmatic Review to the persons for review and comment.
- The public notice announced the availability of the Programmatic Review, summarized its content, and solicited public comment.
- Public comments must be submitted via email to nrdp@mt.gov. The subject line must contain “Public Comment: Programmatic Review of Categorical Exclusions.” Comments may also be submitted by mail to: Natural Resource Damage Program, P.O. Box 201425, Helena, MT, 59620-1425. To be considered, comments must be received by the deadline.
- **Duration of Public Comment Period:** The public comment period began after the date of the Programmatic Review being uploaded to the NRDP Notice part of the website and sent out to all persons on the mailing list. Written or e-mailed comments were accepted until 5:00 p.m., MST, on the last day of public comment as listed below:
 - **Length of Public Comment Period:** 30 days
 - **Public Comment Period Begins:** January 21, 2026
 - **Public Comment Period Ends:** February 19, 2026