Justification for Establishing a Categorical Exclusion for Scattered Single-Family Homesites

Bureau of Indian Affairs

INTRODUCTION

Housing is a critical need on all Indian reservations. Home construction may be completed with funding administered by the Bureau of Indian Affairs (BIA), as well as by other federal agencies. In many cases the BIA may also approve leases and/or rights of way associated with proposed homes. As a result of the federal funding and/or approvals, home construction is a federal action that requires compliance with the National Environmental Policy Act (NEPA). The BIA has historically conducted NEPA reviews of housing construction by completing individual or programmatic environmental assessments (EAs). While larger multi-family housing construction and subdivisions may still require an EA level of analysis, the BIA has developed an administrative record to demonstrate that EA documentation is no longer needed for scattered single-family homesites, and that these are more appropriately handled under a categorical exclusion (CE). As is the case with all CEs, these actions can be categorically excluded, provided there are no proposal or site specific extraordinary circumstances that raise environmental issues which merit further review and analysis in an EA or an Environmental Impact Statement (EIS).

PROPOSED CE

The BIA proposes the following CE:

> **"Approval of leases, easements or funds for single-family homesites and associated improvements, including but not limited to homes, outbuildings, access roads, and utility lines, which encompass five (5) acres or less of contiguous land, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws."**

This CE is intended to address the range of actions that may require BIA funding or approval for a single-family homesite proposed on tribal or allotted lands. A typical homesite may include leasing one or two acres of land for home construction. The single-family residence may be a building with one to four dwelling units. Other structures in the lease area could include a

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garage, barn or corral. In addition to building construction, associated easements may also need BIA approval on adjacent lands for an access road and utilities, such as gas, electric and fiber optics. Since most homesites are located near existing roads, these easements are relatively short and rarely longer than a quarter of mile. The five acre limitation would reasonably accommodate all of these actions related to home construction.

After discussions with the Council on Environmental Quality (CEQ), language was added to this CE to include adverse effects to cultural resources and compliance with federal and tribal laws. The CEQ thought it was valuable to include this language as part of the CE in order to emphasize the importance of these limitations. The BIA conducts a Categorical Exclusion Exception Review (CEER) for all current CEs and these limitations are normally considered, as well as the applicability of other extraordinary circumstances described in 43 CFR 46.215. The BIA documents every CE review by completing a CEER Checklist (See attached). This CEER Checklist will document a site-specific review of each homesite to ensure that no extraordinary circumstances exist that would require further analysis.

PROGRAM REVIEW

On August 16-18, 2011, the NEPA Coordinators from the twelve BIA Regional Offices met in Washington, DC to review current NEPA policies and directives. One focus of this meeting was to assess the applicability of current CEs and to determine if additional CEs needed to be developed. The meeting attendees recognized that the NEPA process and CEs in general needed to be reviewed, but they also saw an immediate need to address the funding and approval of scattered single-family homesites on Indian lands.

Homesites or easements on Indian trust lands, whether tribal or allotted, usually require BIA approvals and these approvals constitute the BIA's federal actions. The BIA conducts NEPA reviews on several hundred homesites each year on Indian reservations across the country. The NEPA documentation for these actions normally includes completion of an EA and a resulting Finding of No Significant Impact (FONSI). All regional NEPA coordinators at this meeting felt that their experience and previous history of environmental reviews had shown that no individual or cumulatively significant impacts to the environment had occurred as a result of individual homesite construction and all EAs completed for these actions resulted in FONSIs. No EA concluded that an EIS was necessary.

Some homesites may be developed by individuals with their own funding, and the only Federal action may be the approval of the lease. However, many may be developed with assistance from other Federal programs. The BIA's Housing Improvement Program provides grants and loans to tribes and individuals for home improvements and construction; various programs in the Department of Housing and Urban Development and the Department of Agriculture's Rural

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Development Program also provide loans and grants for housing. Financial and technical assistance for the construction of water and sanitation facilities can also be provided by the Rural Utilities Service and Indian Health Service. The BIA considered these programs when developing this CE.

In order to justify the new CE, the BIA completed the following reviews: (1) the Indian Affairs NEPA Coordinator reviewed other agency/bureau CEs to determine if comparable CEs were already in place; (2) the BIA Regional NEPA Coordinators were asked to review EAs completed on reservations for housing construction from 2009 to 2011 to determine if any significant impacts had been identified and how mitigation measures were included to ensure actions would not have the potential for significant impacts; and (3) the BIA Regional NEPA Coordinators were asked to review past housing sites to verify that no unforeseeable environmental impacts had occurred. These reviews were completed between August 19, 2011 and September 30, 2011.

COMPARABLE CES USED BY OTHER FEDERAL DEPARTMENTS AND AGENCIES

The following CEs currently in use by other agencies are similar in nature, scope and intensity as the proposed BIA housing CE. These CEs are comparable because they are for structures that provide housing or office space; they have a size limitation on the area to be disturbed; they are not restricted to an environmental setting or geographic region of the country; and they are subject to review for extraordinary circumstances.

Department of Army: 32CFR 651-Appendix B (c)(1). "Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste."

A size limitation of 5.0 acres is placed on the area of surface disturbance of the structure, and the facilities are limited to structures that would not hold any types of hazardous materials. Structures covered under this CE generally include barracks, office buildings and classrooms. In addition, the Army also completes a Record of Environmental Consideration (32 CFR 651. 19) to document that the action has received an environmental review.

Indian Health Service (IHS): Exclusion I.4. "Construction or lease of new facilities (including portable facilities and trailers) where such lease or construction: (a) Is at the site of an existing health care facility and the facility capacity is not substantially increased, (b) Is for buildings of less than 12,000 sq feet of usable space when less than five acres of surface land area are involved at a new site, or (c) Is for projects other than buildings when less than five acres of surface land area are involved at a new site."

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The types of structures included under this CE are related to IHS's mission to provide health care and generally include housing for IHS employees, as well as health care facilities. A size limitation of 12,000 square foot is placed on the size of any structure, as well a 5 acre limit for any land involved with the site. Before utilizing this CE the IHS conducts an environmental analysis of the action and completes an Environmental Review and Documentation Checklist.

Rural Development Program (RD): 7 CFR 1940.310(b). "Housing Assistance (1) the provision of financial assistance for the purchase of a single family dwelling or a multi-family project serving no more than four families; (2) the approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring FmHA or its successor agency under Public Las 103-354's approval."

The type of action covered by this CE is the funding for the construction of family home. The size limitation is not defined in acres, but rather by number of families that would be served; it could include one structure with units serving up to four families. The limitation is also defined in terms of building lots that are not located within a subdivision. The RD also completes and Environmental Checklist for Categorical Exclusions (Form RD 1940-22) to ensure that the action qualifies as a CE.

REVIEW OF EAS COMPLETED FOR INDIVIDUAL HOME SITES.

The BIA Regional NEPA Coordinators were asked to review the actions on individual home sites over the last three years (2009-2011) for which EAs were prepared. The scope of this review included six of the twelve BIA Regional Offices (Eastern, Great Plains, Midwest, Pacific, Western, and Southwest). These six responding Regions represent a geographically and environmentally diverse cross section of lands under BIA's jurisdiction and include the Indian lands in the states of California, Arizona, New Mexico, North and South Dakota, Minnesota, Wisconsin, Mississippi, Maine and Florida. They therefore sufficiently represent the geographic diversity of all twelve Regions.

Regional Coordinators from these six regions identified 159 EAs that covered over 643 individual homesites (Table 1).

Table 1 NEPA Reviews conducted for Scattered Housing Sites (2009-2011)

Region	Number of EAs/FONSIs	Number of Individual Homesites
Eastern	40	46
Great Plains	17	282
Midwest	7	57
Pacific	22	40
Southwest	63	74
Western	10	144
TOTAL	**159**	**643**

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The EAs ranged from a single homesite, to larger programmatic EAs covering over 100 scattered homesites. The EAs assessed the direct, indirect and cumulative effects of house construction and all resulted in FONSIs. Listed below are examples of the EAs that addressed multiple homesites.

EA for San Carlos Housing Authority, 2009 ARRA HIP Project, Contract No. CTH58T61679,San Carlos Indian Reservation, Gila and Graham Counties, Arizona. Fifteen homesites, FONSI issued in March 2010.

EA for Four ARRA funded homesites at Hoopa Agency, California. Four homesites, FONSI issued November 2009.

Programmatic EA for the Approval of Homesite Leases, Crow Creek Agency. Seven homesites, FONSI issued in February 2010.

Programmatic EA for Approval or Residential Leases, Cheyenne River Agency. Nine homesites, FONSI issued in March 2011.

Programmatic EA for Approval of Residential Leases, Winnebago Agency. Twenty-seven homesites, FONSI issued in July 2011.

Programmatic EA for American Recovery and Reinvestment Act of 2009 (ARRA) Funded Scattered Home sites, Housing Improvement Program, Bureau of Indian Affairs and the Rosebud Sioux Tribe. 2010. Ten homesites, FONSI issued in March 2010.

Programmatic EA for Approval of Residential Leases, Pine Ridge Agency. One hundred fourteen homesites, FONSI issued in October 2010.

Programmatic EA for Approval or Residential and Recreational Leases, Fort Totten Agency. Ninety-three homesites. FONSI issued April 2010.

Programmatic EA for the Approval of Homesite Leases, Standing Rock Agency. Five homesites, FONSI issued in June 2010.

Programmatic EA for the Approval of Residential Leases, Lower Brule Agency. Two homesites, FONSI issued in January 2011.

Programmatic EA for the Approval of Residential Leases, Sisseton Agency. Two homesites, FONSI issued in June 2011.

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The Programmatic EAs often identified mitigation measures, which were incorporated as design elements and became part of the lease stipulations. Typically they included: proper disposal of solid waste, erosion control measures, noxious weed control and re-establishment of vegetation, as well as inadvertent discovery stipulations for cultural resources. The most typical site specific mitigation measures that limited site selections involved modifying or moving the location of the homesite lease in order avoid cultural resources. Although this proposed CE would eliminate the need for an EA level of analysis, the normal CEER conducted by BIA would still continue to identify these types of limitations, and would include them in lease stipulations, when appropriate.

MONITORING OF INDIVIDUAL HOME SITE CONSTRUCTION

As part of the EA process, most homesites receive site specific reviews, which include a physical examination of the project area, prior to taking any federal action. In order to assess if any unforeseeable impacts had occurred, the Regional Coordinators were also asked to monitor homesites after construction had taken place. Post construction monitoring reviews were conducted on 117 homesites where construction had already occurred (Table 2). No unanticipated environmental effects were identified in any of these areas, and the conclusions of the original EAs and FONSIs were confirmed.

Table 2 Field Review/Monitoring of Home Sites

Region	Post Construction Site Monitoring	Effects Noted
Eastern	10	None
Great Plains	0*	None
Midwest	57	None
Pacific	40	None
Southwest	4	None
Western	6	None
TOTAL	**117**	

* After preparing programmatic EAs, the Great Plains Region conducts site specific reviews of each homesite prior to construction; no post construction monitoring was conducted.

CONCLUSION

The review of both individual and programmatic EAs showed that no individually or cumulatively significant impacts were attributable to individual homesites and the follow-up monitoring of selected homesites found that no unforeseen effects had occurred. It is therefore appropriate to consider scattered single-family individual home sites under a CE. This CE would restrict the area to be affected to less than five acres. Included within this five acre limitation would be the residence and any associated facilities, as well as any rights of way for utilities and access roads. The BIA would also complete a Categorical Exclusion Exception Review

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(CEER) for each CE to ensure that no exceptional circumstances apply. This CEER would be documented by completing a CEER Checklist.

PARTICIPATING PERSONNEL

Chet McGhee, Eastern Region, Environmental Protection Specialist, B.S. Environmental Science. Twelve years experience conducting environmental reviews for state and federal agencies.

Keith Blue Cloud, Eastern Region, Natural Resources Specialist. B.S. Zoology. Twelve years experience conducting environmental reviews for tribal and BIA programs.

Marilyn Bercier, Great Plains Region, Regional Environmental Scientist, B.S. Environmental Science. Twenty three years experience working for federal environmental programs and conducting environmental reviews

Jeffery Davis, Great Plains Region, Environmental Protection Specialist, B.S. Civil Engineering, B.S. Construction Technology. Fourteen years experience with Indian Health Service and BIA completing road design and construction, home site inspections and environmental reviews.

Scott Doig, Midwest Region, Regional Environmental Protection Specialist, B.S. Biology, MS Environmental Science. Eleven years experience with Tribes and BIA conducting environmental reviews.

Scott Hebner, Midwest Region, Environmental Protection Specialist, B.A./B.S. Biology and Secondary Education. Eighteen years experience with BIA and other federal agencies conducting environmental reviews.

Fred Vande Venter, Midwest Region, Environmental Protection Specialist, B.S. Biology. Fourteen years experience conducting environmental reviews for tribal and BIA programs.

John Rydzik, Pacific Region, Chief, Division of Environmental Cultural Resources Management and Safety, B.A. Landscape Architecture. Thirty-two years experience with tribal and BIA programs conducting environmental reviews.

Gil Stuart, Pacific Region, Environmental Protection Specialist, B.S. Forestry. Twelve years experience conducting environmental reviews.

Larry Blevins, Pacific Region, Environmental Protection Specialist, Environmental Assessor registered in California. Twenty years experience with the Department of Defense and BIA conducting environmental site assessments.

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Priscilla Wade, Southwest Region, Environmental Protection Specialist, B.S. Wildlife Science. Ten years experience conducting biological and environmental assessments.

Steve Davis, Southwest Region, Zuni Agency Natural Resources Manager, B.S. Range Science. Thirty years experience managing range and natural resource programs.

Chip Lewis, Western Region, Environmental Protection Specialist, B.S. Biology, MS Natural Resource Management. Twenty-six years with state and BIA conducting biological and environmental reviews.

Marvin Keller, Central Office, Federal Preservation Officer and NEPA Coordinator, B.A. Anthropology, M.S. Anthropology. Thirty years experience conducting archeological and environmental reviews.

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CATEGORICAL EXCLUSION EXCEPTION REVIEW (CEER) CHECKLIST

Project:	Date:
Letter and Text of category (BIA - 516 DM 10.5 ; DOI - 43 CFR46-210)	

Evaluation of possible exceptions to use the Categorical Exclusion (43 CFR 46.215):

1. This action would have significant adverse effects on public health or safety.	NO___	YES ___
2. This action would have an adverse effect on unique geographical features such as wetlands, wild & scenic rivers, refuges, floodplains, rivers, placed on nationwide river inventory, or prime or unique farmlands.	NO___	YES ___
3. This action would have highly controversial environmental effects.	NO___	YES ___
4. This action would have highly uncertain environmental effects or involve unique or unknown environmental risk.	NO___	YES ___
5. This action will establish a precedent for future actions.	NO___	YES ___
6. This action is related to other actions with individually insignificant but cumulatively significant environmental effects.	NO___	YES ___
7. This action will adversely affect properties listed or eligible for listing in the National Register of Historic Places.	NO___	YES ___
8. This action will affect a species listed or proposed to be listed as endangered or threatened.	NO___	YES ___
9. This action threatens to violate federal, state, local, or tribal law or requirements imposed for protection of the environment.	NO___	YES ___
10. This action will have a disproportionately high and adverse effect on low income or minority populations.	NO___	YES___
11. This action will limit access to, and ceremonial use of, Indian sacred sites on federal lands, by Indian religious practitioners, and/or adversely affect the physical integrity of such sites.	NO___	YES___
12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species.	NO___	YES___

A "yes" to any of the above exceptions will require that an environmental assessment be prepared.

NEPA Action - - - - CE ____ EA_____

Project (con't):_____

_____

Name and Title of person preparing this checklist

Concur Item 7: _____ **Date:** _____

Archeologist

Concur: _____ **Date:** _____

Regional Environmental Scientist

Approve: _____ **Date:** _____

Regional Director / Agency Superintendent

NOTES:

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