

# DNRC CATEGORICAL EXCLUSIONS FOR FOREST MANAGEMENT ACTIVITIES

(Revised August 2009)

## **Introduction:**

The following identifies the process and documentation needed for forest management activities that are classified as categorical exclusions by the Administrative Rules of Montana for Forest Management [Forest Management Rules: ARM 36.11.447(3)(a) through (w)]. These projects do not require an environmental assessment or environmental impact statement pursuant to MEPA (MCA 75-1-101 through 324) and DNRC Administrative Procedures for MEPA (ARM 36.2.521 through 543). Categorical exclusions are still subject to the Forest Management Rules.

## **Process:**

1. Determine if your forest management project qualifies as a categorical exclusion using criteria listed in:
  - a. ARM 36.11.447(2)(a) through (j) – Refer to extraordinary circumstances where categorical exclusion may not apply.
  - b. ARM 36.11.447 (3)(a) through (w) – Refer to activities where categorical exclusion may apply.
2. Where appropriate, seek internal input from:
  - a. Unit Personnel
  - b. Resource Specialists
  - c. Forest Management Bureau
3. Contact adjacent landowners if there is need to cross their lands.
4. Complete Categorical Exclusion Form with support from resource specialists.
5. If it is unclear whether the proposed action may generate significant impacts, stop categorical exclusion process and complete further environmental analysis (EA or EIS) to determine the potential for significance.
6. Sign/date decision (Decisionmaker).
7. For timber harvest, send Categorical Exclusion Form with original signature and supporting documentation to Forest Operations Section Supervisor at Forest Management Bureau. Send an electronic copy to Forest Management Planner at the Forest Management Bureau.
8. While there are no formal requirements, notify any appropriate public.

**Public Involvement:** There are no formal requirements for public involvement with a categorical exclusion. A notification or courtesy (not scoping) letter to lessees, adjacent landowners, and interested publics may be appropriate (no comment period).



## INSTRUCTIONS FOR COMPLETING THE FORM

The Categorical Exclusion Documentation form records the qualification of a project for one of the 23 categories subject to exclusion from environmental review as adopted in the ARM 36.11.447(3)(a) through (w). **For timber harvest projects, please send completed form with original signature to the Forest Management Bureau.** A copy of the form should also be kept at the Unit/Area office, along with any other project information (maps, data, contracts, etc.). Categorically excluded timber harvests are still subject to all other Forest Management Rules and permit or sale requirements. A categorical exclusion for salvage timber harvest between 200 MBF and 500 MBF board feet is considered a Timber Sale and will require Land Board approval.

**Project Name:** Enter the name of the project proposal—e.g. “Deer Creek Timber Permit.”

**Proposed Implementation Date:** Date you expect the actual work on the project to start.

**Proponent:** Lessee, company, State department and division that are proposing the action and department that is responsible for review.

**Type and Purpose of Action:** Briefly identify and describe the proposed action in a few sentences, including an idea of the scope of the proposal (e.g., “Issue a timber permit to remove approximately 50 MBF of timber from June 1996 to October 1996; SE $\frac{1}{4}$ NW $\frac{1}{4}$  of S16, T2N, R20W. The permittee will be subject to the stipulations included in the permit.”)

**Category:** These refer to the categorical exclusions adopted in the Forest Management Rules (see ARM 36.11.447(3)(a) through (w)).

### **General Considerations for Extraordinary Circumstances:**

According to ARM 36.11.447 (2), categorical exclusions may not apply where extraordinary circumstances may occur. Extraordinary circumstances refer to cases where projects may affect resources, species, or situations listed in ARM 36.11.447(2)(a) through (j). To determine if your project triggers an extraordinary circumstance:

- 1. Identify if resources, species, or situations listed in ARM 36.11.447(2)(a) through (j) are present.**
- 2. If those resources, species, or situations are not present, then your project may be categorically excluded.**
- 3. If those resources, species, or situations are present, determine if your activity is likely to affect them.**

*Presence of resources, species, or situations **does not alone** preclude your project from categorical exclusion. We may categorically exclude projects whose effects to resources, species, or situations can be circumvented through project design (controlling timing, duration, extent, etc.).*

If you are having difficulty determining whether or not an effect is likely to occur, consult with Area resource specialists and/or the Forest Management Bureau.

The following was designed to assist you in determining if your project may trigger an extraordinary circumstance on one or more of the following resources, species, or situations:

- 1) **sites with high erosion risk [ARM 36.11.447(2)(a)].**
  - Determine the erosion risk from established soil surveys, existing inventories or site-specific field evaluations (as referenced in ARM 36.11.425). Site factors affecting erosion are soil type, slope, and activity.
  - Consult with Area Hydrologist/Soil Scientist to determine if your project is likely to contribute to unacceptable levels of erosion.
- 2) **federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS [ARM 36.11.447(2)(b)].**
  - Determine if federally listed threatened and endangered (T&E) species or critical habitat is present. *Presence of a species or critical habitat does not alone preclude your project from categorical exclusion.* Federally listed T&E species include grizzly bear, Canada lynx, and bull trout. Critical habitat has been designated for Canada lynx and bull trout.
  - Consider local agreements (e.g. Swan Valley Grizzly Bear Conservation Agreement).
  - Determine if your project area contains components important to habitat for listed T&E species (lynx habitat, dens, etc).
  - Consult with Area Wildlife Biologists and/or Fisheries Biologists to determine if your project is likely to have adverse effects to federally listed T&E species and or critical habitat.
- 3) **within municipal watersheds [ARM 36.11.447(2)(c)].**
  - Determine if your project occurs within a municipal watershed.
  - Consult with Area Hydrologist to determine if your project is likely to have adverse effects to water quality or quantity within the watershed.
- 4) **the SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures [ARM 36.11.447(2)(d)].**
  - Determine if your project occurs within the SMZ of a fish bearing stream or lake.
  - Consult with Area Hydrologist or Fisheries Biologist to determine if your project is likely to have adverse effects on fisheries.
- 5) **state natural area [ARM 36.11.447(2)(e)],**
- 6) **Native American religious and cultural sites [ARM 36.11.447(2)(f)],**
- 7) **archaeological sites [ARM 36.11.447(2)(g)], or**
- 8) **historic properties and areas [ARM 36.11.447(2)(h)].**
  - Determine if your project occurs in or near one of these areas or sites (ARM 36.11.447 (2)(e) through h).
  - Consult DNRC archeologist with map of proposed harvest unit and road building to determine if your project is likely to have adverse effects to these sites or areas.

9) **Several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review [ARM 36.11.447(2)(i)].**

- Determine if your project occurs near other related projects.
- If assessment of cumulative effects raises questions on an otherwise low risk project, do an EA checklist to determine the potential for significant impacts.

10) **Violations of any applicable state or federal laws or regulations [ARM 36.11.447(2)(j)].**

- Determine if your project violates state or federal laws (i.e. Forest Management Rules, SMZ Law, BMPs, Clean Air Act, etc.).

## CATEGORICAL EXCLUSION DOCUMENTATION FOR DNRC FOREST MANAGEMENT ACTIVITY

Project Name: BN Overpass-Butler Cost Share Supplement #32

Proposed Implementation Date: August, 2010

Proponent: State of Montana, Department of Natural Resources and Conservation

Type and Purpose of Action: Enter into Cost Share Supplement with USFS. Acquire Cost Share Easement that accesses trust land parcels.

Location: Libby, Montana Sections 16, 21 & 22 of T30N R29W

County: Lincoln

**Category (refer to ARM 36.11.447 (3)(a) through (w) for additional detail):**

- a)  Temporary Uses of Land with Negligible Effects
- b)  Plans and Policies
- c)  Leases and Licenses
- d)  Acquisition of Land or Interest in Land
- e)  Road Maintenance and Repair
- f)  Bridges and Culverts
- g)  Crossing Class 3 Streams
- h)  Temporary Road Use Permits
- i)  Road Closure
- j)  Material Stockpiles
- k)  Backfilling
- l)  Gathering Forest Products for Personal Use
- m)  Regeneration
- n)  Nursery Operations
- o)  Water Wells
- p)  Herbicides and Pesticides
- q)  Other Hazardous Materials
- r)  Fences
- s)  Waterlines
- t)  Removal of Small Trees
- u)  Removal of Hazardous Trees
- v)  Cone Collection

- w)  Timber Harvest (<100 MBF green or 500 MBF salvage)

By process of the adoption of the Forest Management Rules on February 27, 2003, pursuant to ARM 36.2.523(5)(a), the Department of Natural Resources and Conservation, Trust Land Management Division, has adopted the above categorical exclusions for activities conducted on state forested trust lands. "Categorical Exclusion" refers to a type of action that does not individually, collectively, or cumulatively require an EA or EIS unless extraordinary circumstances occur (ARM 36.2.522(5)).

**Extraordinary Circumstances:**

Will the proposed action affect one or more of the following resources, species or situations in the project area? If the resource, species, or situation is present, but project design avoids potential adverse effects on the resource, the answer is "No". One "Yes" answer indicates that Categorical Exclusion is not appropriate for the project, and an EA or EIS must be conducted.

YES      NO

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | a) Sites with high erosion risk.   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | b) Federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS.  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | c) Municipal watersheds.   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | d) The SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures.  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | e) State natural area.   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | f) Native American religious and cultural sites.   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | g) Archaeological sites.   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | h) Historic properties and areas.  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | i) Several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | j) Violations of any applicable state or federal laws or regulations.  |

The project listed above meets the definition of the indicated categorical exclusion, including specified conditions and extraordinary circumstances, as provided in the Forest Management Rules (ARM 36.11.447).

Prepared by: Jeremy Rank  
(Name)

August 3, 2010  
(Date)

Decision by: Mark Peck  
(Name)

Libby Unit Manager  
(Title)

/s/Mark Peck  
(Signature)

8/4/2010  
(Date)

## **Attachment A: Decision Rationale**

Project: BN-Overpass, Butler Cost Share Supplement #32

Date: August 2, 2010

Decision-maker: Mark Peck, Libby Unit Manager

Although this particular project does not fit any of the listed activities that qualify as categorical exclusions under ARM 36.11.447 (3)(a-w), it has been determined that it qualifies as a categorical exclusion for the reasons listed below under the *Finding* statements following the listed statute and Administrative Rules.

**MCA 75-1-201** (1) (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) [i.e. environmental review] if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

**Finding:** This project is considered a transfer of ownership interest where no material change in terms or conditions is occurring – thereby adhering to cat-ex requirements as outlined in statute.

**ARM 36.2.523** (5) The agency is not required to prepare an EA or EIS for the following categories of action:

- (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;
- (b) administrative action: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
- (c) minor repairs, operations, or maintenance of existing equipment or facilities;
- (d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;
- (e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
- (f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment

**Finding:** This project is considered an administrative action and one that is primarily economic in nature with no affect to the human environment – thereby adhering to cat-ex requirements as outlined in DNRC ARM for MEPA.

**ARM 36.11.447** (2) Categorical exclusions shall not apply where extraordinary circumstances may occur.

- (a) sites with high erosion risk;
- (b) federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS;
- (c) within municipal watersheds;
- (d) the SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures;
- (e) state natural area;
- (f) Native American religious and cultural sites;
- (g) archaeological sites;
- (h) historic properties and areas;
- (i) several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or
- (j) violations of any applicable state or federal laws or regulations.

**Finding:** Even though this activity is not specifically listed as a categorical exclusion in ARM 36.11.447(3)(a-w), this project does not trigger any of the extraordinary circumstances listed above – thereby adhering to cat-ex requirements as outlined in Forest Management ARMs.