



## Key Concepts for Implementing the Minimization Criteria

Recognizing our mutual interests in encouraging and supporting the BLM in its efforts to conduct and complete comprehensive travel and transportation management planning for all of its units, The Wilderness Society and BlueRibbon Coalition/Sharetrails.org are working to explore and identify areas of agreement and for collaborative engagement. Our organizations believe that travel planning is a critical tool to promote high-quality, sustainable recreation for all public land users and to protect and conserve our shared public lands and their myriad uses and benefits for current and future generations. To that end, we encourage the BLM to prioritize travel and transportation management planning and to work collaboratively with stakeholders to ensure transparency and identify positive outcomes, while complying with governing laws and policies.

Recognizing that compliance with the “minimization criteria” articulated in Executive Order 11644<sup>1</sup> has been a significant stumbling block in some travel management decisions, we have identified the following concepts that we believe help articulate and clarify the agency’s legal obligations. These concepts are based on our shared understanding of relevant caselaw and agency policy and practice, and on our decades of collective experience engaging in hundreds of travel management planning processes with multiple agencies around the country.

We encourage the BLM to incorporate these concepts into its guidance documents. Most immediately, this would include the ongoing revision of Handbook 8342. We believe each of these concepts is consistent with direction in the recently revised Manual 1626.

1. The minimization criteria articulated in Executive Order 11644 are binding upon the BLM and implemented through 43 C.F.R. § 8342.1.
2. BLM must document compliance with the minimization criteria in the administrative record for its travel and transportation management decisions. This requires both a meaningful route-by-route and area-by-area showing.
3. What compliance with the minimization criteria does and does not mean:
  - a. Compliance has a substantive component.
  - b. Acknowledging or considering the criteria is not sufficient; instead, the agency must apply the criteria and provide sufficient information to explain how they were applied (e.g., BLM cannot rely solely on a broad rationalization that it reduced acreage or route mileage open to OHV use).

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<sup>1</sup> BLM codified these criteria in its travel management regulations at 43 C.F.R. § 8342.1. The regulation refers to the criteria as the “designation criteria.” For purposes of this document, “minimization criteria” and “designation criteria” are used interchangeably.

- c. The minimization criteria concern both site-specific impacts (e.g., soil stability and erosion associated with a particular route) and landscape-scale impacts (e.g., air quality or fragmentation of wildlife habitat based on route density).
  - d. Compliance does not mean impacts associated with OHV use must be eliminated or reduced to the smallest extent possible.
  - e. In each situation, there is a range of alternatives that can satisfy the minimization criteria. However, under NEPA, the agency can only carry forward action alternatives for which it can articulate an initial, good faith showing that the designated system satisfies the minimization criteria. To accomplish this, the BLM should logically undertake a preliminary assessment of the criteria before, or at least as part of, alternative development.
  - f. Compliance may include a mix of system design elements (e.g., closure, relocation, or realignment) and other minimization techniques designed to reduce impacts (e.g., seasonal restrictions, armored stream crossings, erosion control measures, enhanced signage, entry quotas or other numeric use limits).
  - g. BLM should have a reasonable expectation, based on existing and anticipated resources and capacity, that it is capable of implementing, monitoring, and enforcing the designated system and other elements of each action alternative.
  - h. Linear features identified during the initial route inventory that lack an identifiable or asserted purpose and need (e.g., fence lines, obviously redundant routes, routes with no evidence or assertion of recent use) should be designated as closed to OHV use in each action alternative.
  - i. Linear features designated as closed to OHV use in the action alternatives can, in appropriate circumstances, be identified and analyzed for decommissioning, restoration, or similar actions in order to demonstrate a more comprehensive strategy to minimize impacts.
4. Existing designation decisions may satisfy the minimization criteria where the agency can reasonably demonstrate how the criteria were applied and that there are no significant changed circumstances or impacts.
  5. Early public engagement and transparency about the minimization criteria will lead to better results. Pre-NEPA analysis and stakeholder engagement to identify resource impacts, existing and anticipated uses and conflicts, access needs and preferences, and other relevant information will aid in minimization criteria compliance and help streamline the NEPA process.