

Biological Resource Land Use Clearance Policies and Procedures (RCP)

RCS-44-08

Approved September 10, 2008

INTRODUCTION

The Resources Committee of the Navajo Nation Council is the legislative oversight of the Division of Natural Resources that includes the Navajo Nation Department of Fish & Wildlife (NNDFW). It has the responsibility and authority to adopt policies, procedures and regulations that protect the biological resources of the Navajo Nation. The Resources Committee, by Resolution No. RCMA-34-03, dated March 13, 2003, approved the Biological Resource Land Clearance Policies and Procedures formerly referred to as the BRLC. The purpose of the RCP is to assist the Navajo Nation government and chapters ensure compliance with federal and Navajo laws which protect, wildlife resources, including plants, and their habitat resulting in an expedited land use clearance process.

The NNDFW is established, “to conserve, protect, enhance and restore the Navajo Nation’s fish, wildlife, plants and their habitat, through aggressive management programs for the spiritual, cultural and material benefit of present and future generations of the Navajo Nation”. After years of research and study, the NNDFW has identified and mapped wildlife habitat and sensitive areas that cover the entire Navajo Nation. The maps are attached, hereto, as attachment “A”, and are incorporated herein by reference.

The RCP Policies and Procedures will help direct development to areas where impacts to wildlife and/or their habitat will be less significant. Development includes but is not limited to human activities that result in permanent structures, temporary, long term, or repetitive disturbance to wildlife or habitat as defined by Navajo Nation Code 17 NNC § 500 et. Seq. This should increase certainty in planning and implementation of projects, while ensuring the perpetuation of wildlife resources for present and future generations. The entire Navajo Nation has been divided into six types of wildlife areas. These areas provide the framework for planning specific development projects, but site-specific planning to address wildlife resources will still be necessary, in most cases. This RCP Policies and Procedures explains what restrictions apply in each area and describes the process for the planning and approval of projects with respect to wildlife resources.

The following is a brief summary of six (6) wildlife areas identified in attachment “A”:

1. Highly Sensitive Area – recommended no development with few exceptions.

2. Moderately Sensitive Area – moderate restrictions on development to avoid sensitive species/habitats.
3. Less Sensitive Area – fewest restrictions on development.
4. Community Development Area – areas in and around towns with few or no restrictions on development.
5. Biological Preserve – no development unless compatible with the purpose of this area.
6. Recreation Area – no development unless compatible with the purpose of this area.

Preparation of a Biological Evaluation (BE) is required for development in any area, except in Area 4, and for certain exceptions (see below). A BE:

- Is documentation of impacts that a proposed project may have on biological resources;
- Must consider direct, indirect, short-term, long-term and cumulative impacts and impacts from actions that are dependent on, or are clearly related to the proposed development;
- Contains accurate information about the location of the development, including but not limited to a legal description, distance to landmark, and a map (7.5' USGS topographic quadrangle);
- Must contain a copy of the Data Response received from Navajo Natural Heritage Program specific to the project.

For information about the contents of a BE, contact NNDFW. Additionally, the Department possesses additional information on wildlife, including biology, distribution, occurrence records, avoidance measures, management recommendations and wildlife law. Project sponsors, including chapter officials, or those working on behalf of a chapter on land-use planning, are encouraged to contact the Department for this information.

EXCEPTIONS – Projects that do not require preparation of a BE

1. CHAPTER TRACTS (project completely within existing tract)
2. RENEWAL OF EXISTING BUSINESS SITE LEASES and NPDES Permits (not including expansion of lease area)
3. NHA RENOVATIONS/RECONSTRUCTIONS (project within previously withdrawn areas)
4. Installation of new equipment on existing communications towers.
5. Transfer of federal lands.

6. Installation of highway signs, pavement markings, traffic signals, railroad warning devices, small passenger shelters, where there will be minimal ground disturbance within an existing right-of-way.
7. Maintenance of an existing utility pump house and substation (not including expansion of right-of-way or lease area).
8. Alterations to facilities to make them accessible to elderly and handicapped persons.
9. Maintenance and improvements to track and rail beds when carried out within the existing right-of-way.
10. Modernization of existing paved roads & highways including resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, except in the areas below where puccinellia parishiii must be addressed:
 - US 89 & US 89A
 - US 491 (from Naschitti to Colorado state line),
 - US 160 (from HWY 89 to Tuba City and from Red Mesa to 4 Corners Monument)
 - US 64 (from Teec Nos Pos to Hogback)
 - NM SR 134 (from Sheepsprings to 10 miles west of jct US 491)
 - AZ SR 64 (from US 89 to NN boundary)
 - Navajo Rte 5 (from US 491 to Chaco River bridge)
 - Navajo Rte 12 (from Window Rock to Tsaile)
 - Navajo Rte 13 (from Red Valley to 491)
 - Navajo Rte 19 (from US 491 to Toadlena)
 - Navajo Rte 36 (from 491 east to Hogback)
11. Any other agreements with NNDFW and outside entities for expediting project approval.

Federal laws for environmental planning and protection apply to all areas when the Federal government is involved in funding, carrying out, or authorizing, in whole or in part, proposed development. These laws include the National Environmental Policy Act, Endangered Species Act, Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. The wildlife areas identified herein do not supersede or replace Federal law, but can be an important tool in addressing the requirements of these laws. Federal actions that may affect federally listed species will require consultation with the U.S. Fish and Wildlife Service.

Process for planning and approval of development:

- A. Project Sponsor requests information on biological resources, specific to the proposed development, from the Navajo Natural Heritage Program
- B. Project Sponsor, or their consultant, prepares a BE for the proposed development
- C. Department reviews the BE to determine if impacts to biological resources are accurately assessed, impacts that can not be avoided are reasonably mitigated, and that no other reasonable alternatives exist
- D. Department issues a biological resource compliance form to the Project Sponsor, either concurring or not concurring with the BE based on the review
- E. The Biological Resource Compliance form must be part of any project approval application package

The following is a more detailed description of the six (6) wildlife areas, identified in attachment "A", which provides an explanation of the applicable restrictions on development, and describes the process for the planning and approval of projects with respect to wildlife resources.

AREA 1: HIGHLY SENSITIVE AREA.

This area contains the best habitat for endangered and rare plant, animal and game species, and the highest concentration of these species on the Navajo Nation. The purpose of this area is to protect these valuable and sensitive biological resources to the maximum extent practical.

The general rule for this area is no activity or development that is going to result in significant impact to wildlife resources. Restricted development is allowable only if the following criteria are met. All development requires the preparation of a BE. An acceptable BE must fully consider alternatives to the proposed development, and provide a compelling reason to develop in this area.

Criteria for Allowable Development:

- A. Residential/business development is allowed within Area 1 if it is:
 - 1. Not within or close enough to the habitat to cause significant impacts
 - 2. Located on the perimeter of the area; if not on the perimeter, there must be no reasonable alternatives
 - 3. Located within 1/8 mile of similar development
- B. Other types of development are allowed in Area 1 if:
 - 1. It is not within or close enough to habitat to cause significant impacts
 - 2. There are no reasonable alternatives outside the area

AREA 2: MODERATELY SENSITIVE AREA.

This area has a high concentration of rare, endangered, sensitive and game species occurrences or has a high potential for these species to occur throughout the landscape. The purpose of this area is to minimize impacts on these species and their habitats, and to ensure the habitats in Area 1 do not become fragmented.

The rule for this area is that all development be placed to avoid species and their habitat. Avoidance needs to include an adequate buffer to address long-term and cumulative impacts. The buffer distance will depend on the species and the situation, and may be up to one mile. All development requires the preparation of a BE. Follow the Process for planning and approval of development, Page 4.

AREA 3: LESS SENSITIVE AREA.

This area has a low, fragmented concentration of species of concern. Species in this area may be locally abundant on 'islands' of habitat, but islands are relatively small, limited in number and well spaced across the landscape. However, the Department recognizes that lands within Area 3 may be not be completely surveyed for the potential occurrence of sensitive species or habitat.

Follow the Process for planning and approval of development, Page 4. If the NNHP provides a Data Response for a project in Area 3 that states that there are no known or potential species of concern for a specific project, then a BE does not need to be drafted. The project is in compliance with the Endangered Species Act and the NESL. The project sponsor can receive a Biological Resource Compliance Form by requesting concurrence from the Director, Department of Fish and Wildlife that the project will not affect species of concern.

All developments requires preparation of a BE. Generally, the need to avoid sensitive habitats should be less frequent in this area; therefore, development in these areas is more likely to proceed as planned with proper and timely planning.

AREA 4: COMMUNITY DEVELOPMENT.

The Department has determined that areas around certain communities do not support the habitat for species of concern and therefore development can proceed without further biological evaluation. Whenever possible the NNDFW recommends that project sponsors attempt to locate their projects within

Community Development Areas.

For project approval of all developments that are completely contained within Area 4, submit documentation to Department Director, including (but note exceptions below):

- a. Location plotted on a 7.5' USGS topographic quadrangle map or reasonable facsimile;
- b. Brief description of project, including acreage.

Exceptions:

1. This applies to all development except that which may have significant impacts outside the community. An example of this is large-scale industrial development that may impact air or water quality. For projects of this type, follow the standard "Process for planning and approval of development" (Page 4).
2. For certain communities, there are exceptions where one species have the potential to occur. For these exceptions, the biological evaluation need only address that species, and be submitted to the Department for approval. These communities are:
 - Pinon (Mountain Plover)
 - Tuba City (Puccinellia parishii)

AREA 5: BIOLOGICAL PRESERVE.

These areas contain excellent, or potentially excellent, wildlife habitat and are recommended by the Department for protection from most human-related activities, and in some cases are recommended for enhancement. Only a few of these areas have been identified or designated, to date. Future areas will be identified on a case-by-case basis. A variety of protection and enhancement techniques are available, and the Department is interested in working with the chapter and land-user to protect/enhance these habitats by providing technical assistance, and possibly materials and labor. The Department is interested in receiving proposals from chapters and land-users for these types of areas. Ultimately, the Department maintains the authority for designating and managing biological preserves. However, the Department may delegate certain management responsibilities to the local level, under Department oversight.

No new activity or development is allowed within these Preserves, unless it is compatible with management goals for the area. For projects to develop Biological Preserves, the standard "Process for planning and approval of development" (Page 4) needs to be implemented. This does not include approved pre-existing activities.

AREA 6: RECREATION AREA.

These areas are used for recreation that involves wildlife, or have potential for development for this purpose. Recreation can involve consumptive and/or non-consumptive uses of wildlife resources, and is often a part of a broader outdoor experience. Examples include fishing lakes, camping and picnic areas and hiking trails. Several areas have been identified as Recreation Areas. Future areas will be identified on a case-by-case basis. A variety of management techniques are available, and the Department is interested in working with the chapter and land-user to develop and/or manage these areas. The Department is also interested in receiving proposals from chapters and land-users for these types of areas. Ultimately, the Department maintains the authority for designating and managing recreational areas that involve wildlife. However, the Department may delegate certain management responsibilities to the local level, under Department oversight. The Department encourages chapters to plan development in this area compatible with the purpose, for example nature trails, interpretive displays and picnic areas.

No new development is allowed within Recreation Areas, unless it is compatible with management goals for the area. For projects to develop Recreation Areas, the standard "Process for planning and approval of development" (page 4) needs to be implemented.