

Decision Record
Effective Immediately

**Determination of NEPA Adequacy
(DNA)**

DOI-BLM-NV-W030-2013-0005-DNA

Burning Man ICP Relocation to Blue Pit

INTRODUCTION

BLM Black Rock Field Office proposes moving the location of 2013 Burning Man Incident Command Post (ICP) from the 2012 location on the playa (off the 12 mile entrance) to be adjacent to a mineral material site known as the Blue Pit (gravel pit). The pit is located three quarters of a mile north of the 12 mile entrance to the Black Rock Playa on the east side of county road 34(Refer to attached location map). The ICP would be in full operation for eight days beginning the weekend before Labor Day through Labor Day each year. The ICP would cover approximately 2 acres, equipment and supplies located on the site would include; a roll off dumpster, multiple hand washing stations, portable toilets, 4 plus modular trailers, and a communication tower. Flaggers would be placed on country road 34 at the entrance/exit to the ICP during heavy traffic times, usually during shift changes for the more that 35 law enforcement staff. Flaggers and/or signage would be posted at the entrance/exit during shift changes to increase public awareness of increased traffic on county road 34 and improve visibility of the entrance/exit thus increasing safety near and around the ICP. Having the ICP off the playa would alleviate a host of existing problems such as dust infiltration and the appearance of random “Burners” wandering into ICP. The trash dumpster that is procured for BLM’s use would no longer be accessible to other agencies and participants, ensuring its availability for the duration of the event. Communications would also improve, due to new positioning of the command post repeater. Each year a closure order is placed in effect surrounding the event to allow law enforcement agencies to conduct their activities previous, during and post event. This closure period is in direct correlation to the Burning Man Event. The closure order area would be expanded to include the Blue Pit location (currently located approximately 500ft. outside of the existing closure order area). BLM manages the use of mineral material sites through contracted sales and Free Use Permits. To allow BLM to control access to the ICP, no use of the mineral material site would be authorized during the closure order. Future users of this material site would be informed of the timing restrictions (period of closure order) and agree to stipulations requiring no use of the pit for the duration of the closure order.

CONFORMANCE/COMPLIANCE

I have reviewed this Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (Burning Man ICP Relocation to Blue Pit, DOI-BLM-NV-W030-2013-0005 DNA) and have determined that the proposed action is in conformance with

the approved land use plan (Resource Management Plan for Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness, and other Contiguous Lands in Nevada. Date Approved: July 2004).

On the basis of the information contained in the DNA, it is my determination that implementation of the proposed action and recommended mitigation will not have environmental impacts beyond those already addressed in Environmental Assessment, DOI-BLM-NV-W030-2012-0005, Burning Man 2012-2016 Special Recreation Permit; Decision Record and dated 06/12/2012 and Finding of No Significant Impact dated 06/12/2012.

DECISION

Based on the proposed action as described in the DNA and subject to the implementation of the recommended mitigation (attachment A of DNA) below, it is my decision to authorize the action.

Wildlife Stipulation:

The Burning Man ICP is proposed to be erected within Blue Pit during avian breeding season (March 1st through August 31st). The vegetation surrounding Blue Pit contains potential Burrowing Owl habitat. The Burning Man 2012-2016 Special Recreation Permit (NVW03500-12-01) does analyze migratory birds. However nest surveys were not a stipulation for migratory birds because the ICP was located on the Black Rock Playa, which contains no migratory bird breeding habitat. In order to avoid potential impacts to breeding migratory birds, a nest survey shall be conducted by a qualified biologist within potential breeding habitat prior to any surface disturbance proposed during the avian breeding season (March 1st through August 31st). Surveys must be conducted no more than 10 days and no less than 3 days prior to initiation of disturbance. Surveys must follow established BLM standards and protocols, and should be approved by the BLM biologist prior to being implemented. If active nests are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established. If no active nests are present in the area surveyed, implementation of the project should commence within 10 days of survey completion.

AUTHORITY

The authority for action is established by the BLM's responsibility under the Federal Land Policy and Management Act of 1976 (FLPMA) (Section 103(c)), which requires public lands to be managed on the basis of multiple use, and to take any action necessary to prevent unnecessary or undue degradation of lands (Section 302(b)). In addition, the authority for action is established by the Federal Lands Recreation Enhancement Act (REA), which authorizes the BLM to issue special recreation permits for group activities and recreation events. This action is integral to the administration of the existing Burning Man special recreation permit.

ADMINISTRATIVE REVIEW OR APPEAL

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Gerald Dixon, Field Manager, Black Rock Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

Therefore, it is my decision to allow for the implementation of the project as described in the attached DNA Worksheet.

Authorized Official: /s/ Gerald Dixon

Gerald Dixon
Black Rock Field Office Manager

Date: 3/4/13