



***Bureau of Land Management
Director's Summary Protest Resolution
Report***

**East Alaska Proposed
Resource Management Plan
Amendment, Environmental
Assessment and Finding of No
Significant Impact
(PRMPA/EA/FONSI)**

December 15, 2021

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Acronyms and Abbreviations

Term	Definition
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CRSR	Congressional Research Service Report
DRMPA/EA	<i>East Alaska Draft Resource Management Plan and Environmental Assessment</i>
East Alaska PRMPA/EA	<i>East Alaska Proposed Resource Management Plan Amendment and Environmental Assessment</i>
EIS	Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
MFP	Management Framework Plans
NEPA	National Environmental Policy Act
RMP	Resource Management Plan

Introduction

The Bureau of Land Management (BLM) Glennallen Field Office released the East Alaska Proposed Resource Management Plan Amendment and Environmental Assessment (East Alaska PRMPA/EA) for public protest on September 28, 2021. The BLM received eight protest letters during the 30-day protest period.

The planning regulations at 43 Code of Federal Regulations 1610.5-2 outline the requirements for filing a valid protest. The regulatory authority of the Director to resolve protests (43 C.F.R. §§ 1610.5-2(a)(3); 1610.5-2(b)) has been delegated to, among other officials, the Assistant Director for Resources and Planning through BLM Manual MS-1203 Delegation of Authority, which is consistent with applicable case law and longstanding BLM practice.

The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons held standing to protest. All eight letters received met the criteria for a valid protest. Six letters had comments only. Two of the letters had valid protest issues. The BLM documented the responses to the valid protest issues raised in the letters in the protest resolution report. The decision for each protest, regarding its validity and its approval or denial, was recorded in writing along with the reasons for the decision.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Alaska State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Proposed RMPA were necessary. The decision was sent to the protesting party by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protest issue summary statement.

Protesting Party Index

Protester	Organization	Determination
Jeff Levin		Dismissed – Comments only
Timothy Griffin		Dismissed – Comments only
Andrew Moderow	Alaska Wilderness League	Dismissed – Comments only
Pat Lavin	Defenders of Wildlife	Denied
Lisa Wax ¹		Denied
Jonathan Goold		Dismissed – Comments only
Graham Kraft		Dismissed – Comments only

Table Notes

¹ Two duplicate protest letters were submitted by Lisa Wax

FLPMA – Consistency with BLM Policy

Lisa Wax

Individual

Issue Excerpt Text: “BLM is to consider only proposals that conform with land use plans” (CRSR). Amending land use plans to make them conform is a dereliction of duty undermining future revisions. BLM has not only disregarded multiple FLPMA laws, but it is also defying this land’s Federal guiding doctrine, BLM’s East Alaska Resource Management Plan, which clearly states that these land sections are not available.

Summary:

The East Alaska PRMPA/EA is inconsistent with the BLM’s Land Exchange policy, as quoted in the Congressional Research Service Report (CRSR) and is therefore in violation of the Federal Land Policy and Management Act (FLPMA).

Response:

The BLM’s Land Exchange Handbook (2200-1), which is the source for the protester’s quoted statement from the CRSR, states that, “[i]n instances where the proposed exchange is not consistent with the existing RMP (Resource Management Plan) or MFP (Management Framework Plan), the BLM must complete a plan amendment.” (BLM Land 2200-1, p. 6-3). Additionally, the BLM planning regulations at 43 CFR 1610.5-5 provide a process by which the BLM can amend an RMP when there is a “change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions, and decisions of the approved plan.”

The existing language in the 2007 East Alaska RMP states, “No exchanges would take place until all Native and State Entitlements are met” (EA, p. 2). The passage of the Dingell Act presented new circumstances for lands within the East Alaska planning area by directing the BLM to “identify sufficient acres of accessible and economically viable Federal land [in the Chugach Region] that can be offered in exchange. . .” through the Chugach Region Land Study (EA, p. 2; Dingell Act, Section 1113(b)). To comply with this new legislative direction the BLM needed to evaluate whether to maintain the management direction in the East Alaska RMP that required all Native and State entitlements are met before entertaining new exchanges. Therefore, the BLM initiated this planning process to review whether lands should be made available for exchange in the East Alaska RMP Planning Area and receive public involvement in the process to inform the decision.

The East Alaska PRMPA/EA is consistent with the requirements of all applicable law, regulation, and BLM policy. Accordingly, this protest is denied.

FLPMA – Exchanges

Defenders of Wildlife

Pat Lavin

Issue Excerpt Text: There is no basis provided for BLM’s conclusion that the two parcels identified - and only those parcels - are accessible and economically viable. That is the key finding behind amending the RMP to make those two parcels available for exchange. The absence of any basis for it renders the decision arbitrary.

Summary:

The BLM violated FLPMA section 206 by not identifying all lands that are accessible and economically viable for exchange in the planning area.

Response:

Section 102(a)(1) of FLPMA provides that the general policy of the United States is to retain public lands in Federal ownership “unless *as a result of the land use planning procedure provided for in this Act*, it is determined that disposal of a particular parcel will serve the national interest.” 43 U.S.C. § 1701(a)(1) (emphasis added). The criteria by which the BLM may identify parcels for disposal, including land exchanges, are articulated in Section 203 of FLPMA, which authorizes the BLM to dispose of lands that have been identified as meeting the FLPMA disposal criteria (43 U.S.C. § 1713(a)). The disposal of BLM lands through exchange is governed by agency regulations at 43 C.F.R. Subpart 2200, which explain, in relevant part, that “[t]he authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable” (43 CFR 2200.0 6(g)).

As explained in the EA, the BLM—pursuant to its discretion under FLPMA and the criteria for the Chugach Region land study provided in Section 1113 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law No. 116-9)—identified two parcels that are 1) accessible, 2) economically viable, and 3) capable of being offered for exchange (EA, pg. 1-3). The agency determined that because the existing East Alaska RMP prohibits exchanges in the planning area until all Native and State entitlements are met, the agency would have to amend the RMP before the exchanges could be approved. Therefore, the agency undertook this analysis to determine whether the parcels near Thompson Pass could be made available for exchange through a land use plan amendment. There is no requirement that a land use plan or, in this case, a land use plan amendment, identify all lands that meet the disposal criteria and may be eligible for exchange. Furthermore, this determination does not limit the BLM’s ability to identify other parcels in the East Alaska planning area that also meet the Dingell Act criteria in the future.

The BLM properly identified parcels meeting both the FLPMA disposal criteria and the Dingell Act criteria for potential exchange and analyzed that decision through a land use plan amendment. Accordingly, this protest is denied.

NEPA – Purpose and Need***Defenders of Wildlife******Pat Lavin***

Issue Excerpt Text: BLM has erroneously stated that the Dingell Act "requires" this amendment. The Act bears no mention of the RMP, let alone an amendment to the RMP. In fact, the Act does not even necessitate BLM land. The amendment is based on false pretense. ... The EARMP/East Alaska Management Plan clearly states that the land is not available and should be managed for its public recreation value. Moderow continues, "At its core, though, the process is flawed because it relies on a mis-reading of the Dingell Act."

Summary:

The East Alaska PRMP/EA violates the National Environmental Policy Act (NEPA) by basing the purpose and need on an incorrect reading of the Dingell Act.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13; 40 CFR 1501.5(c)(2)). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2).

The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project.

As stated in BLM’s response to public comments on this issue in Appendix F, while the Dingell Act does not specifically require the BLM to amend an RMP (EA, p. 53) it does specifically require the BLM to “identify sufficient acres of accessible and economically viable Federal land [in the Chugach Region] that can be offered in exchange...” through the Chugach Region Land Study (EA, p. 2; Dingell Act, Section 1113(b)). The mechanism by which the BLM would identify any lands within the East Alaska RMP area that could be offered for exchange as part of the Chugach Region Land Study would be through consideration of an amendment to the East Alaska RMP, because the approved RMP does not allow for such exchanges, but rather states “[n]o exchanges would take place until all Native and State Entitlements are met” (EA, p. 2).

The purpose and need for the East Alaska PRMP/EA is consistent with the requirements of all applicable law, regulation, and BLM policy. Accordingly, this protest is denied.

NEPA – Public Involvement***Lisa Wax******Individual***

Issue Excerpt Text: Please review Secretarial Order 3373 “which requires documentation of impacts to recreational access”. For example, 3.3 reads “without data on use patterns... it is not possible to say...”. Why has BLM not reached out to any of the outdoor operators in an attempt to gather data and to invite them into the conversation? Again, wherein lies the due diligence?

Lisa Wax***Individual***

Issue Excerpt Text: At the very least, the 85 folks should have been granted a 30 day, not a 3-day, comment period (without a "Participate Now" option). My request was denied. BLM has failed to abide by its "Planning Process". "Release of this Draft RMP Amendment/EA and an unsigned draft FONSI will initiate a 30-day public comment period during which the BLM will host a virtual public meeting." There was certainly no confusion about the Chugach Corporation shareholders being notified of the public meetings. They got on the guest list without even submitting a scoping comment while many other folks of the public who signed up for email updates were left out of the loop. The public should not have to bear the burden, should not be silenced and removed from transparency on account of "technological glitches" and/or political pressure.

Summary:

BLM failed to comply with the FLPMA’s public involvement requirements by:

- Failing to adequately engage local user groups and communities during public outreach throughout the planning process, and
- Failing to adequately notify the public of the East Alaska DRMPA/EA public comment period.

Response:

NEPA requires that agencies provide adequate public notice to ensure public involvement in the preparation of EAs and FONSI, and notice should be tailored to particular circumstances (40 CFR 1506.6; Question 38, Forty Most Asked Questions Concerning the Council on Environmental Quality's [CEQ] National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 23, 1981)). Similarly, the BLM planning regulations (43 CFR 1610.2) and the BLM Land Use Planning Handbook (H-1601-1) required the Bureau to provide the public with "opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities" (43 C.F.R. 1610.2(a)). More specifically, the regulations require that the BLM provide public notice and opportunity for input at the outset of the process with a notice of intent that includes the proposed planning criteria and announcement of the public scoping period (43 CFR 1610.2(c), 1610.4-1, and 1610.4-2), and a 30-day protest period to provide for public input on the proposed RMPA and EA (43 CFR 1610.4-8 and 1610.5-1(b)). Neither the NEPA regulations nor the BLM planning regulations require the agency to reach out to each potentially interested party, but rather provide public notice and multiple opportunities for the affected public's input.

The BLM conducted the East Alaska PRMPA/EA planning effort in accordance with FLPMA and NEPA and regulations, policies, and guidance implementing these statutes. Both FLPMA and NEPA and their respective implementing regulations, policies, and guidance require agencies to facilitate public involvement early on and throughout the planning process. Secretarial Order 3373 (SO 3373) did not create any new public involvement requirements for the BLM planning process beyond those in FLPMA and NEPA. Rather, SO 3373 directed the BLM to amend or develop agency policies and guidance, as appropriate, to consider the increase or decrease of public access for outdoor recreation as one of the factors in determining the appropriateness of the disposal or exchange. The EA discusses impacts to recreational access in section 3.1, *How would the Proposed Action Affect Recreational Opportunities and Public Access* (EA, pp. 16-19).

Section 1.5, *Public Input and Issue Development*, of the East Alaska PRMPA/EA details how the BLM met the NEPA requirements to facilitate early and constant public involvement throughout this land use planning effort (EA, pp. 4-12). The BLM published a public notification on November 24, 2020, that detailed the proposed planning criteria and announced a scoping period. The BLM accepted public scoping comments for 41 days, closing the comment period on January 4, 2021 (EA, p. 4).

As described in Section 1.5, the BLM provided public notice of the East Alaska PRMPA/EA process and providing information about how to submit comments using a variety of methods, including social and traditional media as well as agency websites. The scoping period and associated virtual scoping meetings, as well as the DRMPA/EA comment period and public meetings were advertised on the BLM website, through emails sent to interested parties, on Facebook, via Twitter, through press releases and in local newspapers (EA, pp. 4-5). Additionally, a press release that included the date and times of the East Alaska DRMPA/EA public meetings and comment period, was sent to six regional media outlets and four larger Alaska media outlets on June 2, 2021. Notification of the DRMPA/EA public meetings were also advertised on Facebook and Twitter on June 2, June 9, and June 16, 2021. Specific media outlets that the BLM used in providing notice for various stages of the

planning process, including the DRMPA/EA public meetings are described in Section 4.3, Media (EA, p. 25-26).

In order to ensure adequate public involvement, the BLM provided a 37-day review and comment on the East Alaska DRMPA/EA and FONSI, which started on June 2, 2021, and ended on July 2, 2021 (EA, p. 5). On June 17, 2021, BLM held two virtual public comment meetings, via the Zoom platform, in which the BLM presented on the proposed action and environmental analysis, verbally collected comments, and communicated the deadline and methods to submit written comments on the East Alaska DRMPA/EA. A total of 22 people attended the meetings. The BLM received comments from 40 individuals and organizations/associations during the public comment period for the East Alaska DRMPA/EA. Comments were submitted by mail and through the ePlanning website and covered a broad spectrum of opinions, ideas, and concerns (EA, p. 52).

The BLM complied with the direction in NEPA and FLPMA and other statutory, regulatory, and agency policy to involve Federal, state, tribal, and local governments, as well as the public, cooperating agencies, interested parties, and organizations. Accordingly, this protest is denied.

NEPA – Impacts Analysis – Socioeconomics

Lisa Wax Individual

Issue Excerpt Text: Finally, after finding without evidence that there are exactly two accessible and economically viable parcels in BLM ownership in the Chugach region, the EA fails to analyze any impacts associated with those future economically viable land uses. While the amendment is not itself a land exchange, the EA must provide a plan-level assessment of the reasonably foreseeable impacts of the exchange that the amendment is intended to facilitate. This assessment would be based on the reasons that the parcels were found to be economically viable in the first place.

Lisa Wax Individual

Issue Excerpt Text: Then BLM acknowledges, “Another complication in estimating social and economic impacts is that we do not know how a potential entity that would receive these lands in exchange would manage the lands. As such, while not knowing the specifics of how it would occur, it is expected that the land would be put into an economical use. However, since the use cannot be foreseen, it is unknown if the net social and economic effects would be positive or negative and the degree of the effect.” ... The “unknown“ disables BLM from accomplishing what FLPMA requires of you.

Summary:

BLM failed to adequately analyze economic impacts from reasonably foreseeable future actions resulting from making lands available for potential exchange.

Response:

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information. (BLM NEPA Handbook, H-1790-1, 6.8.1.2

Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). The NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)).

NEPA directs that data, and an environmental analysis must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the East Alaska PRMPA/EA.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The baseline data provide the necessary basis to make informed land use plan-level decisions. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. The plan does not carry out a land exchange; it does however identify lands for potential future exchange within the East Alaska PRMPA/EA planning area.

As stated in Section 1.4, *Reasonably Foreseeable Future Actions*, some development within the 1,280 acres of lands considered for disposal may occur, but any development would be challenged by steep terrain, winter conditions, and cost (EA, p. 3). For these reasons, the BLM assumed “low intensity” development for the purposes evaluating the effects of making additional lands available for potential future exchange and to evaluate the differences between action alternatives. This development assumption contains the appropriate level of detail with respect to the BLM’s proposed action.

The BLM adequately analyzed social and economic impacts in Section 3.3, *How Would the Proposed Action Affect Social and Economic Conditions*, of the East Alaska PRMPA/EA (EA, pp. 21-23). The East Alaska PRMPA/EA considered the effects of BLM’s proposed action when added to other past, present, and reasonably foreseeable (not highly speculative) future actions. This served as the determining factor for the level of analysis performed and presented. The analysis in that section accounted for the relationship between the proposed action and these reasonably foreseeable actions.

The BLM complied with NEPA’s requirement to analyze economic impacts in the East Alaska PRMPA/EA. Accordingly, this protest is denied.