THE STATE of ALASKA
GOVERNOR BILL WALKER

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May 25, 2016

Neil Kornze, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, NW, Room 2134LM
Washington, DC 20240

Re: Proposed Rule 43 CFR 1500 Resource Management Planning (RIN 1004-AE39)

Dear Mr. Kornze:

The State of Alaska (State) has reviewed the Bureau of Land Management's (BLM) proposed rule amending 43 CFR 1600, Resource Management Planning (RIN 1004-AE39). The following comments represent the consolidated views of the State's resource agencies.

According to the proposed rule, BLM seeks to improve its ability to address landscape-scale issues and respond more effectively to environmental and social changes, as well as to update existing provisions for public involvement in the planning process. The rule also indicates that amendments to 43 CFR Part 1600 clarify existing text, improve readability, introduce new concepts, standardize use of FLPMA statutory terms, and reflect current style guidelines.

We support overarching goals intended to increase public involvement and improve efficiency, clarity, and transparency in the planning process. However, we are concerned that many of the proposed changes will likely increase an already overly-lengthy planning process (according to the supporting information for the proposed rule, the average plan takes 8.25 years to complete) and does not go far enough to ensure transparency and responsiveness to issues raised during the planning process.

We are also concerned that the proposed planning rule, similar to other national BLM initiatives, by design is not a good fit for the unique circumstances and uses in Alaska. BLM planning areas in Alaska are extremely large and encompass existing federal conservation system designations, state and Native corporation lands, as well as numerous scattered small communities and Native villages that are also federally recognized tribes. The majority of these lands are remote and largely undeveloped, with minimal or no transportation and utility infrastructure, and contain an abundance of natural resources that Alaskans rely upon for a wide range of

uses, including subsistence and potential economic development. In addition, existing relic withdrawals implemented pursuant to the Alaska Native Claims Settlement Act (ANCSA) that have long since outlasted their intended purpose underlay BLM multiple-use lands statewide. The State also has not yet received its full land entitlement granted under the Alaska Statehood Act, nor has BLM determined navigability for title purposes on most water bodies in the State, further complicating BLM's planning efforts related to management of navigable waters that are in state ownership subject to the intent of federal law (application of the Alaska Statehood Act, Submerged Lands Act).

These unique Alaskan conditions and needs were taken into consideration when the Alaska National Interest Lands Conservation Act (ANILCA) designated over one hundred million acres of conservation areas in the State. BLM multiple-use lands are a necessary part of the balance achieved in the compromise legislation of ANILCA.

> *This Act* ***provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska,*** *and at the same time* ***provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people;*** *accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a* ***proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition,*** *and thus* ***Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.***
> (ANILCA Section 101(d), emphasis added)

Based on our experience with current BLM planning efforts in Alaska, which have been applying certain elements of the proposed planning rule on an ad hoc basis, the rule's direction towards a resource preservation-oriented approach, rather than BLM's multiple use mandate, has the potential to threaten that very balance. These and other issues are discussed in more detail in the following comments.

Planning 2.0 Handbook

While BLM has been working on this planning rule and the accompanying handbook for years, the public has had just 90 days to absorb an extremely lengthy and repetitive Federal Register Notice – only to discover that many of the details on implementing the rule are contained in the yet to be released Planning 2.0 Handbook, which will not be subject to public review and comment. First and foremost, the development of accompanying guidance to implement a rule that has not yet been finalized is fundamentally pre-decisional. Not providing an opportunity for the public to comment on materials that provide more specific direction, such as categories and criteria for administrative designations not addressed in the Federal Land Policy and Management Act (FLPMA), is contrary to the proposed rule's transparency goal. The proposed rule contains ambitious new direction (e.g., landscape level planning, adaptive management) without sufficient detail for the public to understand exactly how these components will function.

Because BLM has long limited ANILCA implementing regulations or policies, for the past several years the State has requested the Alaska State Office work cooperatively to develop regional guidance to ensure ANILCA's unique provisions and overarching intent are reflected in resource management plans and related planning decisions. To date, there has been no progress on that effort despite our repeated requests and comments that the three on-going resource management plans in Alaska are not consistent with the statutory requirements in ANILCA. **Therefore, in addition to requesting that BLM provide the public with an opportunity to *review and comment* on the Planning 2.0 Handbook, we request an opportunity to work cooperatively with BLM on an Alaska Supplement to the Planning 2.0 Handbook to address ANILCA and other issues relative to Alaska's unique circumstances.** Crucial ANILCA issues that need to be addressed in BLM planning include subsistence use and access, inholding access, access for traditional activities, and transportation and utility systems.

Proposed Revised Planning Process

Review and Comment Opportunities

While we are supportive of BLM's efforts to provide more opportunities for public involvement in the planning process, we do not believe that it should come at a cost of reducing the time allotted for public review and comment in the planning process. Shortening public comment periods for the later stages is particularly problematic because that is when a preferred alternative is identified, and it is not until then that proposed decisions can be fully evaluated. The reviews that occur, particularly during the later stages of the planning process, allow for, among other things, important legal and adjacent landowner consistency matters to be raised and addressed.

The proposed rule also formalizes the use of complex and often overlapping designations which require more time for the public to review and understand. Shorter comment periods would not allow adequate time for public interaction and comment in remote areas, particularly in Alaska where even the existing comment periods are often not long enough for meaningful public engagement. In terms of numbers, reducing the comment period of the planning process by approximately 100 days would only reduce the overall process by 1% based on the current average time to complete plans. This seems to provide little gain in terms of the opportunity lost to commenters, particularly the public. We request the comment period lengths in the existing rule be retained.

If BLM is intent on reducing the time it takes to complete a planning process, we recommend combining planning steps (such as combining the assessment and scoping processes) or looking for ways to save time internally, instead of reducing the amount of time for commenting. In Alaska, BLM has three on-going planning processes running concurrently, all of which are implementing new national policies (e.g. wild lands policy, Planning 2.0, landscape mitigation, etc.). Not only does that overtask BLM staff, which has resulted in significant delays, it likewise creates a burden for local and state government staff, Native corporations and tribal staff, and the public. The proposed rule's emphasis on increased quantity of involvement may have the unintended consequence of decreasing the quality of final work products.

We are also concerned that BLM has apparently not considered the high likelihood of "planning fatigue" resulting from the additional planning steps. While increased involvement is a laudable goal, we are

concerned that few will have the time to fully involve themselves in the additional review opportunities, especially when all the federal land managers in Alaska (not just BLM) frequently have multiple planning efforts in play at once.

Additionally, the proposed rule does not address how BLM will address comments received outside of the official comment period (i.e., comments received during the "review" periods). We request the proposed rule at a minimum require that BLM *respond* to the comments received in response to a review opportunity during the next planning stage. For example, following a review opportunity, BLM should identify whether any changes to plan or non-plan (i.e. monitoring methods) components were made in response to comments received and why the changes were incorporated. Further, to ensure transparency, we also request that all public comments be made available for the public to review, regardless of whether they are received during an official comment period or following a review opportunity.

We request that the rule retain all requirements in the existing rule related to Federal Register notice and traditional means of notice. We support adding the internet (i.e. BLM website) as an additional means of notice, not a replacement for other means of notice. The proposed rule removal of the Federal Register requirement for several significant public notices is detrimental to the public's ability to become aware of BLM actions and proposals.

Coordination and consultation

The proposed rule purports to increase public involvement, yet does not explain how coordination and consultation will be accomplished. We encourage BLM to include the state, adjoining landowners and area residents into the planning process in a meaningful manner that incorporates their economic and social interests. We request BLM consult with the state fish and wildlife management agency regarding fish and wildlife habitat connectivity and wildlife migration corridors, particularly when non-BLM lands are involved in the planning analysis, and recognize existing State-BLM Memorandums of Agreement implemented under 43 CFR Part 24.6 (Cooperative Agreements) where applicable.

Cooperating Agency

The proposed rule will incorporate "eligible governmental entity" into the "cooperating agency" definition. BLM asserts that no change in meaning or practice is intended by this change, however, we are concerned that the definition could cause confusion that discourages local government participation if they believe there is potential that they may not be considered a cooperating agency, or that BLM may too narrowly define a local government's special expertise or whether local government participation is "feasible or appropriate."

We request the proposed rule retain the requirement in the existing rule that the BLM responsible official be required to notify the BLM State Director if a request for "cooperating agency" status is denied under 43 CFR 46.225(c). Under existing regulations at 43 CFR 1610.3-1(b), if a BLM official denies a request for cooperating agency status, the State Director must determine if the denial was appropriate.

We support retaining the confidentiality requirement for cooperating agencies in order to allow BLM to work through potential management ramifications for cooperating agencies with overlapping or adjacent resource

management authorities. Cooperating agencies can contribute sensitive information (e.g., cultural sites, subsistence sites, fish and wildlife information) during confidential review that they would be unable to disclose during the public stage of review. Confidential review also affords the agencies the opportunity to identify and resolve conflicts without creating unnecessary public worry or confusion. Both internal confidential cooperating agency review and public review serve an important purpose and should be retained.

Deciding Official

We do not support the proposed rule's reassignment of decision making authority from the State Director to an assigned staff official to be determined by the national BLM Director. The proposed rule provides little justification for reassigning the decision making authority to staff at a lower level than the State Director, and given the importance of these plans to the states through the large areas they encompass, we request that decision making authority on plans encompassed by a single state continue to be made at the level of State Director. Conversely, we are concerned about the elevation of currently local decisions to the national level via the involvement of the BLM Director in determining the deciding official, and planning area boundaries. Local knowledge is key to sound decision making in RMPs, and this may be lost under the proposed decision making structure.

ACECs

We do not support the changes in the proposed rule to the criteria used to designate Areas of Critical Environmental Concern (ACECs) and request the existing criteria be maintained. ACEC importance criteria would no longer require the geographically based "qualities of more than local significance," which would instead be replaced by the more subjective and vague degree of significance (e.g., "substantial" significance). The proposed changes weaken the criteria to the point that a case could be made for creating an ACEC in almost any area, contrary to FLPMA's description of *critical* concern. Potential ACEC designation would no longer require a separate 60 day public comment period, instead allowing the comment period to run congruent with NEPA comment periods (typically 60 days for an Environmental Impact Statement, 45 days for an Environmental Assessment) which also weakens the overall attention intended to be provided the process for the designation of an ACEC. Because of the ACEC's importance as a FLPMA-based designation and the likelihood of restrictions to public uses, we request the rule retain the existing requirement for a Federal Register notice, as opposed to the notice commensurate with the level of planning as called for in the rule.

We note that the proposed changes to ACEC regulations have not addressed how ACEC withdrawals, approved through resource management plans, that withhold areas of federal land from location and entry in order to maintain other public values in the area are just the first step in effectively implementing these withdrawals. 43 CFR1610.7 requires,

> *that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for **2 or more years** with respect to a tract of **100,000 acres** or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially*

implemented, would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use. [emphasis added]

Section 1326(a) of ANILCA further restricts the size of ACEC withdrawals in Alaska unless approved by Congress,

*To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding **five thousand acres** in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within **one year** after the notice of such withdrawal has been submitted to Congress.* [emphasis added]

Section 204 of FLPMA(b)(1)also requires additional notice and time limits for ACEC withdrawals,

Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

Section 204 of FLPMA(c)(1)further defines size and time limits,

On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days.

We request that the proposed rule, *43 CFR 1610.*8-2(b)(2), reference the subsequent administrative and Congressional authorizations necessary to implement ACEC withdrawals approved through resource management plans.

Other designations

FLPMA only provides specific direction on ACECs. We are concerned about the unexplained addition of administrative land conservation designations referenced in § 1610.1-2(b) of the proposed rule for inclusion in the BLM Land Use Planning Handbook. Area designations imply an outsized importance that may lead to other uses being unnecessarily curtailed. The proposed rule contains no criteria, definition, or description of biological significance for the administratively applied designations of Riparian Conservation Areas, High Priority Restoration Watersheds, Sensitive Caribou Winter Range, or any of the other designations recently used in BLM Alaska planning. All of these administrative designations create temporary withdrawals from multiple use areas similar to ACECs and Wilderness and, in Alaska at least, are typically over 5000 acres in size, which may trigger application of ANILCA Section 1326(a) and require approval by Congress. These administrative designations are currently being applied in Alaska through the recent RMP development for the Eastern Interior, Central Yukon, and Bering Sea Western Interior planning areas, which are each proposing and carrying forward numerous ACECs that are in some cases bordering each other, making for extensive blocks of land that limit multiple uses. We also note that in Alaska the general management prescriptions used for these areas are the same as are used for ACECs and Wilderness.

These administrative designations should be included in the proposed rule with ample descriptions of the criteria used for their designation and how they would be evaluated, possible restrictions to public uses and state administrative activities, and, perhaps most importantly, developed under public review process consistent with NEPA instead of through simple inclusion in the as yet unreviewed Planning Handbook. The rule's use of both geographic boundaries and criteria based boundaries for designations will lead to confusion that is already evident in designations for current planning processes in Alaska. When the designations also prohibit uses by the public and state agencies, the ambiguous criteria and boundaries will likely lead to management and enforcement issues and subsequent unnecessary litigation.

The formalization of other designations in the proposed rule also creates unnecessary and burdensome complexity, especially when combined with adaptive management and the potentially larger planning areas due to the landscape planning approach. The RMPs currently under revision in Alaska suffer from an overwhelming number of overlapping management designations and priorities, with little guidance as to how the overlapping designations and priorities will be interpreted in decision making during plan implementation. We request the proposed rule provide guidance to reduce RMP complexity for the benefit of the public.

We also note that existing PLOs that have fulfilled their purpose under the Alaska Native Claims Settlement Act underlay most BLM lands in Alaska. Past planning decisions to lift withdrawals have not been acted on by the Secretary. Current planning decisions to lift withdrawals are proposed as conditional upon Congressional authorization of a new FLPMA withdrawal. Under ANILCA, proposed withdrawals terminate if not approved within 12 months. It is unlikely that Congress will authorize new withdrawals so conditional proposals to lift

withdrawals are largely meaningless. Retaining these withdrawals interferes with the State's ability to complete its land selections through the Alaska Statehood Act. This issue will be further complicated by BLM applying administrative designations such as ACECs, Riparian Conservation Areas and others through this planning rule unless BLM addresses the issue within Alaska. We request that BLM take the necessary steps to work cooperatively with the State to resolve this long standing problem.

Multiple uses

While designations receive outsized attention in the proposed rule, uses including recreation and travel management seem to be relegated to step-down plans. However, these uses are of key public interest and are interdependent with other aspects of BLM management, including the management of area designations. By pushing use decisions to later phases after the determinations for special designations and wilderness characteristics have been made, multiple-use is deemphasized in favor of preservation contrary to the multiple-use intent of FLPMA. We recommend the planning rule address recreation, travel management, and other use decisions concurrently with designations and other decisions intended to limit or regulate uses. To defer use decisions until after designations are made has tremendous impacts on large remote areas of Alaska, including on the economies of rural communities

Premature implementation of DOI and BLM preliminary guidance

The proposed rule implements several controversial concepts, including wilderness characteristics and mitigation policy, which have made preliminary appearances in DOI or BLM guidance but have yet to be publicly reviewed and lack implementation guidance. We request "lands with wilderness characteristics" be removed from the list of specific factors to be considered in the assessment. BLM's attempts to create wild lands or other administrative wilderness have not resulted in consistent policy or guidance and it is therefore premature to include the phrase in the proposed rule. We also request the mitigation portion of the proposed rule stemming from Secretarial Order 3330 be removed. If BLM insists on including these concepts in the rule, at a minimum we request BLM involve the states in developing their implementation guidance, as both concepts significantly affect state interests.

Landscape level planning

We recognize the value of landscape level planning, particularly for managing fish and wildlife habitat. While RMPs in the contiguous 48 states may have been fragmented in the past by field office and state boundaries, the opposite is true in Alaska. Vast areas covering multiple ecoregions have been combined for planning purposes at a scale that is impractical for cohesive alternatives across the planning area. We encourage BLM to implement landscape level planning at a practical scale—whether that scale is larger or smaller than it has been in the past.

Adaptive management

We support the adaptive management concept, but are concerned the proposed rule provides BLM flexibility to the extent that the publicly vetted decisions in the RMP may be rendered meaningless. Implementation appears to only be loosely tied to the RMP and changes do not necessarily require additional public process or comprehensive NEPA review. The lack of certainty is detrimental to the public, especially those who rely on

BLM land and resources for their livelihood. We recommend the proposed rule strike a better balance by committing to public review of implementation that significantly differs from the direction in the RMP.

Information and data

We agree that unbiased and uncorrupted high quality information should be used in the decision making process as is described in the proposed rule. However, we are also aware that data limitations may exist (especially in rural Alaska) depending on the area and resource under consideration. The limitations and necessity of using lower quality data should be disclosed when it is the best available for use in planning, particularly when used in modelling efforts that are incorporated into planning processes, such as REAs. We request that all data sources be disclosed for data contributed by organizations other than the BLM, and that deference for State fishery and wildlife data and plans be provided.

Applicable legislation

BLM lands in Alaska comprise 72 million acres, or almost one-third of BLM's total acreage. It is imperative that the proposed rule refer to ANILCA, which directs BLM's management of its lands in Alaska. The planning rule needs to acknowledge guidance in enabling legislation for units of the National Landscape Conservation System, which in Alaska is ANILCA.

Governor's Consistency Review

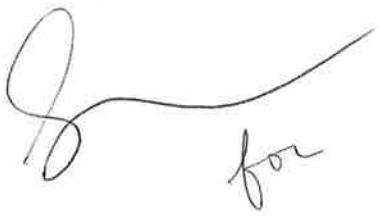
BLM appears to be seeking to reduce the purpose and significance of the Governor's Consistency Review criteria from "programs, policies and plans" to just "plans." The definition of "plans" is then narrowed from "resource related plans" to "land use plans," which may exclude wildlife management plans related to habitat management, for example. The decision making criterion is being changed from requiring the Director to accept the Governor's recommendations if they "provide for a reasonable balance between the national interest and the State's interest," to merely stating that the Director will consider the Governor's comments. We request the criteria not be changed, and we further request the proposed rule address how BLM will seek consistency with state programs, policies, and plans.

Conclusion

While BLM did grant a 30-day extension to the original comment deadline, we note that several entities requested a still longer comment period given the complexity of the proposed rule. BLM did conduct extensive scoping, but nevertheless the text of the rule was only released with the Federal Register notice. We request BLM address the significant issues unresolved by the current proposed rule in a revised proposed rule to be subject to an additional public review and comment period.

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions or to arrange follow-up discussions with state representatives.

Sincerely,



Susan Magee

State ANILCA Program Coordinator