



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources
CITIZENS' ADVISORY COMM'N ON FEDERAL AREAS
Sara Taylor, Executive Director

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March 3, 2015

Via Email

Eastern Interior Field Office
Attn: Eastern Interior RMP, Bureau of Land Management
1150 University Avenue
Fairbanks, Alaska 99709-3844
easterninterior@blm.gov

Re: Additional Proposed Areas of Critical Environmental Concern in the Eastern Interior Planning Area

Dear Director Cribley,

The Citizens' Advisory Commission on Federal Areas (the Commission) has reviewed the Additional Information regarding proposed Areas of Critical Environmental Concern (ACEC) in the Eastern Interior planning area and offers the following comments for your consideration.

The Additional Information's description and application of the criteria for ACEC designation appears highly subjective and scantily justified, particularly considering the reduced availability of enormous areas of public lands for multiple and non-conflicting uses. This holistic approach ignores the ecological, social and legal context of Alaska, which favors significant restraint. The Alaska National Interest Lands Conservation Act (ANILCA) provided a balance between the social and economic needs of Alaska and its citizens and protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, along with fundamental limitations on the use of executive withdrawals. This reference is not intended to imply that ACECs are not important, relevant and viable management tools where "special management attention is required." However, this reference is intended to illustrate that context matters in consideration and application of the designation criteria, and Alaska is unique.

The first criterion of "relevance" requires "presence of a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." It would be difficult to find a square foot of public lands in Alaska (if not the entire U.S.) that did not satisfy this sweeping criterion. Alaska possesses an overwhelming abundance of significant and highly valued natural resources, and this criterion only requires something be present. Section 1613.1.11(A) of the BLM Manual uses adjectives like "rare," "essential" and "endangered, sensitive or threatened." These adjectives only describe examples of "relevant" resources, but they are illustrative of an inherent singularity which should also be present.

The second criterion of "importance" requires the "value, resource, system, process or hazard" identified under "relevance" to have "substantial significance and values," generally meaning "more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern." On its face, this criterion also fails to offer a clear distinction for areas in Alaska that could and would not qualify for designation as an ACEC. The calculus here must be given some context, meaningful sidebars, relative scale

and *considerable justification* in any proposed designation. The Additional Information does provide discussion on how the proposed ACEC additions satisfy the “importance” criteria, but this discussion does little more than support the “presence” of the wildlife or habitat identified in the “relevance” criteria.

While no wildlife or habitat reports, studies or data are provided in the Additional Information, the Commission appreciates that Dall sheep, moose, trumpeter swans, short-eared owls, caribou, mineral licks and contiguous wetlands are natural resource values potentially present in one or both of the proposed ACEC additions. The Commission is concerned, however, that this presence, without more, is sufficient grounds on which to base the creation of an ACEC, let alone designations which include roughly 725,000 acres. For example, other than a few anecdotal or unempirical assumptions, no information is provided on:

- Local or regional population or species estimates or trends and relative dispersion
- Historical trends in habitat usage and/or abandonment, including:
 - Potential causes of variation
 - Seasonal patterns of use
- Existing, planned, proposed or potential uses, activities or conflicts in the proposed ACECs
- Impacts from existing uses or activities or anticipated impacts from planned, proposed or potential uses or activities to:
 - Habitat and/or habitat usage
 - Behavior and/or migration
 - Survival and/or recruitment
- Mineral resource assessments and impact to the local and state economy from designation
- Anticipated impacts of designation on adjacent land management and uses
- The type, level or extent of the purported degradation of the proposed Mosquito Flats ACEC
- The individual and relative value or necessity of additions to the proposed Fortymile ACEC
- The scientific impetus behind the exact acreages and scale of the proposed designations
- How the additional designation of an ACEC will impact or relate to existing withdrawals, including mineral entry withdrawals and Wild and Scenic River corridors
- How the designations will impact or accommodate the use and access provisions in ANILCA (e.g., Titles VI, VIII, XI and XIII)

According to Section 1613.2.22(B)(1) of the BLM Manual, no special management attention is required (and no designation is warranted) where “allowable uses being prescribed for the vicinity could not result in harmful effects to the important and relevant resource values[.]” Most if not all of the above information is critical in determining whether this is the case, and to developing management prescriptions for the proposed ACEC additions where harmful effects are identified. Section 1613.2.22(A) recommends inquiries such as:

- “What is the capability of the resource or hazard [identified under “relevance”] in terms of the level and type of use it can sustain without risk or threat?”
- “Are resource uses contributing to the degradation of or threatening the existence of the important and relevant values?”
- “What land and resource uses would be compatible and under what conditions should they be conducted or permitted in order to protect the relevant and important values?”
- “What uses or actions would not be compatible with protection of the identified values even when conditioned?”
- “What measures can be taken to protect the potential ACEC value(s) without restricting other resource uses?”
- “How will existing rights affect management of the resource or hazard?”

While the Additional Information does articulate wildlife and habitat concerns for the area, it does not provide any reasonable relationship between those concerns and the proposed management prescriptions. For instance, it is neither clear how climate change will impact the area nor how limitations on uses or activities could effectively curtail or mitigate those impacts. The Additional Information describes uncredited observations of caribou behaviors and reproductive capacity in the presence of oil and gas development on the North Slope; however, no proposed similar developments or prospects in the area are given and no connection is drawn respecting the type of habitat or particular herd characteristics in the Eastern Interior planning area to assume a correlative effect.

If these relationships are unknown, or merely just possibilities, it is difficult to see how management prescriptions can be reasonably considered. Without a perceptible concern prompted by ongoing, similar or potential uses, how would the BLM determine which uses should be prohibited, for how long, and whether or not such prohibitions are addressing, or could address, those concerns? Some relationships could be known based on existing withdrawals, but even those are not explored. For example, vast areas within the proposed ACEC additions have been closed to mineral entry for decades following extensive periods of use. Information on how those closures have impacted, mitigated or prevented concerns from materializing could support extending closures to mineral entry to the rest of the proposed area. And, if there is no impact, the necessity for continuing, and especially extending, mineral entry withdrawals does not make sense.

The Additional Information does not provide any discussion of less restrictive alternatives to designation which were or could be considered to address perceived wildlife and habitat concerns, now or in the future. As just one example, if conservation concerns are identified for a particular wildlife population or species, as the manager of fish and wildlife, the State of Alaska has tools and authorities to address them. This is particularly relevant here since the 2012 draft Resource Management Plan for the Eastern Interior planning area identified predation, high harvest and severe winters as the primary causes of low caribou numbers. Also, if contiguous wetlands are at risk, the Environmental Protection Agency and Army Corps of Engineers have authorities under the Clean Water Act to protect those wetlands during permitting.

Further, if management and/or use of non-BLM lands in the planning area could, as the Additional Information notes, create or contribute to impacts on BLM lands, no potential for collaboration or issue-based problem solving with adjacent landowners is identified or offered. This is key for the Fortymile ACEC additions, where a patchwork mosaic of federal, state and private land will be surrounded by the proposed designation. The Additional Information does not even mention the State of Alaska's 2003 Upper Yukon Area Plan or the 1985 Yukon-Charley Rivers National Preserve General Management Plan.

Even if less restrictive alternatives are not required points of consideration, BLM's available management tools are essential in determining whether designation is appropriate. Section 1613.1.12 of the BLM Manual describes "special management attention" as required where "management measures . . . would not be prescribed in the absence of the designation." Section 1613.2.22 provides that "[a]t least one management prescription for each potential ACEC must be developed which provides special management attention."

However, every identified issue and use limitation could be addressed through BLM's existing management tools and frameworks; therefore, the BLM has not shown where "special management attention is required" in the proposed additions. Significant capacity to mitigate concerns is housed in BLM's authorities to permit and lease these areas. For example, mineral exploration and development can be managed through terms, conditions and stipulations in a permit or lease or any of a number of standing requirements, including plan

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of operations approvals, reclamation and bonding. If OHV use is shown to be detrimental to area resources, BLM also has tools to limit OHV travel throughout the proposed areas.

Even restrictions that *do* require designation should accompany some targeted special management necessity and be limited as such. Section 1613.2.22(B)(2) of the BLM Manual provides that the “size of a proposed ACEC *shall be as necessary* to protect . . . the important and relevant values within the context of the set of management prescriptions for public lands in the vicinity” (emphasis added). Thus, if designation is *necessary* to protect mineral licks, the ACEC should be limited to the areas where mineral licks occur. If designation is *necessary* to protect calving and post-calving, the ACEC and associated user restrictions should be limited to the places where and times in which those activities occur. If designation is *necessary* to prevent habitat degradation, associated user restrictions should address how the proscribed use degrades the habitat and any alternatives to blanket, large-scale designations which could achieve a similar result.

Lastly, any restrictions to access guaranteed and protected under ANILCA cannot be accomplished simply through the designation of an ACEC. Where applicable, any restrictions on these statutory grants of access require specific findings and public engagement subsequent to the planning process.

The designation of an ACEC accompanies both noted and potential future management prescriptions and must be based on some defensible justification of special management necessity. Instead, the proposed ACEC additions balance multiple uses on the slender reed of presence or absence of natural resource values and generic assumptions about wildlife responses to human activities. If the situation is otherwise, that is not apparent from any information provided to the public for consideration.

For these reasons, the Commission does not support the proposed ACEC additions and requests the areas remain undesignated until sufficient information can be provided which justifies or supports consideration for designation. Further, the Commission encourages judicious interpretation and reserved application of the criteria governing ACEC proposals consistent with the Alaska context. Thank you for this opportunity to comment. Please contact me if you have any questions or concerns.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Sara Taylor', with a long horizontal flourish extending to the right.

Sara Taylor
Executive Director

CC: Kip Knudson, Director of Federal/State Relations, D.C. Office of the Governor of Alaska
Mark Myers, Commissioner, Alaska Department of Natural Resources
Susan Magee, Statewide ANILCA Coordinator, ANILCA Implementation Program
Samantha Carroll, Project Coordinator, DNR Office of Project Management and Permitting