

Unit 3.10. Write Proposed Plan, Final EIS/Issue ROD



Unit Objectives

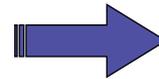
- Develop and describe a process for selecting a Proposed Plan
- Outline the key contents of a Proposed Plan
- Write effective decisions taking into account public comments



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Approach to Turning a Draft Plan into a Proposed Plan

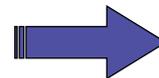
- Review Draft Plan/preferred alternative and list reasons it was preferred
- Review and evaluate all comments
- Involve collaborators
- Address internal BLM input
- Consider results of interagency consultations (e.g., biological opinion)
- Modify preferred alternative and present rationale



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Approach to Turning a Preferred Plan into a Proposed Plan (Cont.)

- Ensure Proposed Plan was adequately evaluated in Draft EIS (mix and match OK)
- Consider the policy objectives in FLPMA and NEPA
- Apply best professional judgment based on knowledge of on-the-ground resources



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Approach to Turning a Draft Plan into a Proposed Plan (Cont.)



- Explain the rationale for each component of Proposed Plan
- Ensure plan goals, objectives and management actions and allocations are supported by evidence in the administrative record
- Brief congressional delegation

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Proposed Plan vs. Draft Plan

- | | |
|---|--|
| <ul style="list-style-type: none"> ■ Proposed Plan <ul style="list-style-type: none"> ◆ Preferred Alternative (w/ any modifications) ◆ RMP has all required components ◆ FEIS separate ◆ Can be protested | <ul style="list-style-type: none"> ■ Draft Plan <ul style="list-style-type: none"> ◆ Range of Alternatives (including preferred) ◆ Draft RMP has all required components ◆ Draft RMP and DEIS combined ◆ Cannot be protested |
|---|--|

The RMP/ROD and FEIS will each be a stand alone document at this point

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Plan v. Implementation Decisions in RMP

- Plan decisions provide general management policy to guide future actions, set standards for future site-specific actions, and allocate lands for specific uses
- Implementation plan decisions are more site-specific and require no further NEPA analysis prior to the action occurring
- Both are elements of an alternative, but they must be clearly differentiated because administrative remedy (protest or appeal) is different
- BLM Planning Handbook, page 30

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Exercise M. Write Proposed Plan/Final EIS

- Using the information below, each small group will:
 1. Read the proposed management actions.
 2. Read the public comments.
 3. Modify any of the management actions that you feel are necessary. Write the edits on the flip chart.
 4. Report changes to the class.

Contents of Final EIS

- Follows same format of Draft EIS: republish entire document with changes made as a response to comments (and other appropriate changes) and also includes:
 - ◆ “Dear Reader” Letter (protest procedures)
 - ◆ Copies of substantive comments received
 - ◆ Responses to substantive comments by issue area
 - ◆ May incorporate by reference unchanged appendices from draft
 - ◆ Summarize changes from DEIS
 - ◆ FOIA privacy issue (BLM Planning Handbook, page 4)

Planning Handbook, Appendix F; CEQ NEPA regulations 40 CFR 1503.4

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Internal Review of Administrative Draft of Final EIS and Proposed Plan

- BLM must independently review consultant and partner products
- Review by partners/cooperating agencies: pros and cons
- FOIA issues
- Internal BLM review: State Office, Washington Office requires briefing
- Congressional delegation briefing

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Issuance of Final EIS

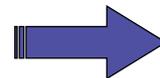
- Final EIS must be sent to
 - ◆ Federal agencies with jurisdiction or expertise
 - ◆ Collaborators
 - ◆ Persons requesting to be notified
 - ◆ Persons who submitted comments
- Public Notice of Proposed Plan/Final EIS availability
- EPA review of Proposed Plan Final EIS
- Federal Register Notice of Proposed Plan /Final EIS availability

IM 2007-057, IB 2007-108

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Governor's Consistency Review BLM Planning Regulations Requirements

- 60-day review of Proposed Plan/Final EIS
- Governor must identify any inconsistencies with state or local plans, policies, or programs
- Comments considered by State BLM Director
- State BLM Director must notify governor if comments not accepted
- BLM Planning Handbook, Appendix E



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Governor's Consistency Review BLM Planning Regulations Requirements (Cont.)

- Governor has 30 days to appeal to Washington D.C. BLM director
- BLM director must balance national and state interests
- BLM director must inform Governor in writing
- BLM director must publish reasons in Federal Register
- Early collaboration with Governor's Office needed to avoid surprises

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Protests and their Resolution

- A protest is a “pre-decisional appeal”
- Protest made to Washington D.C. BLM Director
- Internal review between State and National office
- Standing to protest
- Protest period—within 30 days of Federal Register Notice
- Protest letter submittal required
- Resolution of protests: decision by BLM director

Appendix E of the Planning Handbook

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Effect of Consistency Review and Protests

- Based on Governor's consistency review or protests, BLM Director may:
 - ◆ Withhold approval of protested portion (if severable)
 - ◆ Deny appeal or protest, in whole or in part
 - ◆ Return the RMP, in whole or in part, to state for further clarification/consideration
 - ◆ Change RMP proposed management decisions, in whole or in part
- Substantial changes to the RMP will trigger additional 30-day public review period

Appendix E of the Planning Handbook

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Required Contents of a Record of Decision

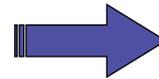
- Statement explaining decision
- Explanation of alternatives considered and environmentally preferable alternative
- Factors considered by agency
- BLM Planning Handbook, Appendix F-5

BLM 1988 NEPA Handbook V.C.6.; CEQ NEPA Regulations 40 CFR 1505.2;
BLM Planning Handbook, Appendix F

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Appeals of Implementation Decisions

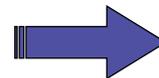
- Generally appealable to IBLA
 - ◆ Note: some program-specific guidance provides for a protest process prior to final decision and IBLA appeal
- Most of the BLM decisions that implement provisions of the land use plan may be appealed to IBLA
- Standing:
 - ◆ Any party adversely affected by BLM's decision has the right to appeal
 - ◆ Party must transmit a Notice of Appeal in within 30 days after the date of service of final decision



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Appeals of Implementation Decisions (Cont.)

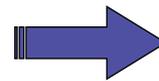
- Statement of Reasons, including a statement of standing, must be filed within 30 days after the Notice of Appeal
- Within 15 days after the Statement of Reasons, the appellant must file proof of that service with IBLA
- Factors IBLA considers in accepting an appeal
 - ◆ Was the Notice of Appeal filed in a timely manner with the proper office?
 - ◆ Is the appellant a party to the case and adversely affected by the decision being appealed?



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Appeals of Implementation Decisions (Cont.)

- The IBLA Decision whether the BLM:
 - ◆ followed applicable laws and regulations,
 - ◆ adhered to established policies and procedures, and
 - ◆ considered relevant information in reaching a decision.
- A implementation decision will not be effective or implemented during the 30-day appeal period, but IBLA or the Director of the Office of Hearings and Appeals can put the decision into full force and effect immediately when the public interest requires



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Appeals of Implementation Decisions (Cont.)

- Implementation decision becomes effective on the day of after the expiration of the 30-day appeal period (unless a petition for a stay is filed with notice of appeal)
- A decision, or portion of a decision, for which a petition for stay is filed with IBLA is effective if:
 - ◆ The IBLA denies or partially denies the petition for a stay, or
 - ◆ The IBLA fails to act on the petition within 45 calendar days after the expiration of the 30-day appeal period.

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Contents of an Approved Plan

- BLM Planning Handbook, Appendix F-5
- Changes from Governor's consistency review
- Changes from resolved protests



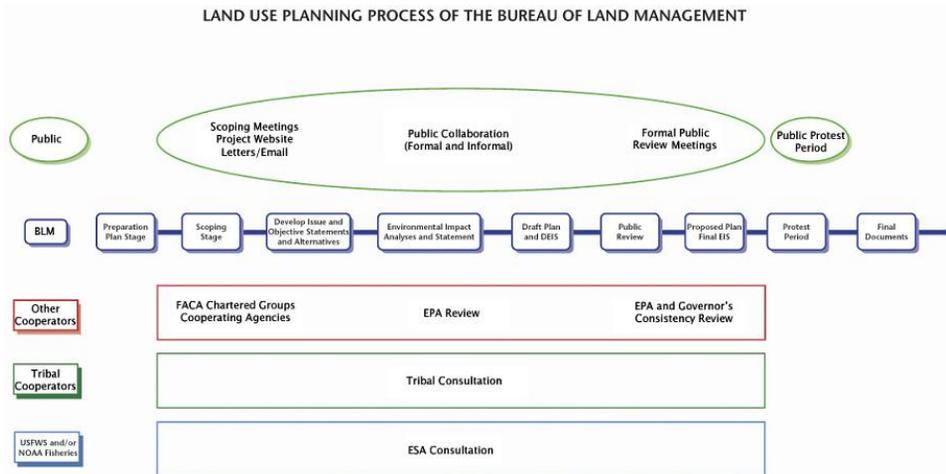
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Notification of an Approved Plan



- Public notice of Approved Plan
 - ◆ Press release
 - ◆ Internet notification of approved plans
 - ◆ Other

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Notes

- What I am going to do differently when I get back to my office...