

Planning Nuts and Bolts: Proposed Plan, Final EIS, and ROD

In previous segments we talked about putting together the draft EIS announcing a preferred plan where you've announced, this is what we think so far, as far as environmental analysis is concerned, and you're asking for comments. You've received those comments and evaluated them and now we're moving into publishing the final EIS which will have your proposed plan leading up to the issuance the record of decision.

So within this segment, we're going to be talking about how you go about selecting the proposed plan as well as outlining the key contents that are going to be in the proposed consistent that what were in the preferred plan. And then we're going to also talk about the end of the process as you're trying to go through and issue that final EIS taking into account all of the public and other agency comments.

First, turning the preferred plan into the proposed plan. In the draft EIS, you had the preferred plan, you're going to be considering all of those screening elements that were related to selecting the preferred plan and reviewing them related to the comments you received, reviewing them related input you received, related to the collaborators. Also, if you got input from your ID team, from also other BLM, either from the state or Washington office, and you're considering all of those issues as you're moving forward and saying, okay what will be in this proposed plan?

You're also, later in your compliance processes for Section 7 of the Endangered Species Act for coordination with Fish and Wildlife Service and National Marine Fishery Service, your later in the process on your Section 106 process for coordination with the state Historic Preservation officer and it's this later input, which also will affect how you come up with your proposed plan. You will, possibly, have modified the preferred alternative based on comments and based on additional impact analysis that might have been necessary, and you're going to lay all that out and discuss why the preferred plan becomes something maybe different as a proposed plan. It could also stay the same depending on what kind of comments you received and what kind of record you have.

So, again, you're going through there making sure that your proposed plan has all of the things that were considered as part of the draft EIS and your preferred plan. You're also making sure it's consistent with the greater policy issues, both through FLPMA as well as impacts on the human environment. And another consideration is thinking about ways that the resource effects might be best served, the ultimate goals of your plan area, the vision, are they best served related to that preferred plan, are there changes that need to be made for the proposed plan.

And then you're coming forward with a plan that is going to, hopefully, address all of the issues that you've considered as far as comments received. You're, of course, possibly coordinating with the input anticipating consistency issues with the state and again, we're going to talk about the process in this segment related to the governor's consistency analysis. So, it's things like that that you want to make sure you're creating the record to show why you went from the preferred plan to the proposed plan and what kind of issues were necessary to consider related to that.

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So, on your screen you'll see comparison of what was in the proposed plan as opposed to what's in the draft plan. You're looking at the alternatives, again, possibly mixing and matching. Possibly changing which ones from alternative (a) or (b) or (c), you included as part of the proposed plan, you're looking at all of those issues. Your EIS is going to be trying to address the environmental impacts of all these things. You want to make sure it stays within the scope of the environmental impact analysis. You want to make sure that your proposed plan is adequate related to addressing all of the environmental concerns and the integration issues. And then, you're going to be basically creating a record of decision at the end of the process to select that as the resource management plan for your plan area.

There are certain issues within the plan that are protestable related to a process that we're going to talk about within this segment. There are other issues that are actually not protestable and you need to be identifying which ones require a protest process and which ones require an appeals process after the decision's made and again we'll talk about that in a few slides.

So your plan decisions are ones that are the more general management policy issues that are going to guide those future actions. They are basically setting up the stage for future decision making. Certain implementation decisions are made within the plan and they're more site specific where there may not be any future NEPA analysis, any future separate decisions that need to be made. Again, both of those elements might be an alternative related to the proposed plan in the final EIS and you should be identifying which are which within the document making sure that the reader knows that if they want to challenge, if they don't agree with some of BLM's decisions related to those plan decisions, they have a protest process.

If it's an implementation decision in the plan, there's an appeals process and that's spelled out how you might want to explain that within the BLM planning handbook and I recommend that you go through that, read it, make sure that you are able to distinguish between the two because that's very important for the challenge issues and again for those that don't necessarily agree with what BLM's doing.

You have the final EIS that you're going to be issuing. It is consistent with the format of the draft EIS, it has all of those same elements that are within the draft EIS. You're basically going to re-publish the entire environmental analysis with the changes that were made based on the comments you received. You're going to include a Dear Reader letter that's going to say where you are now in the process, we did a draft, we got comments, and we're now at the final stages of approving a plan and moving forward within the BLM planning process.

It's going to lay out the protest process, what you would need to do in order to create standing, and how you would submit your protests, and again we'll talk about that in just a little bit. It's going to include copies of the comments received. You may not be including the actual, every actual letter that you received. You're certainly supposed to include a summary of the comments. All of those letters, of course, are accessible

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through the Freedom of Information Act, a law that we talked about in another segment, so folks can see all the comments but you don't necessarily have to publish every single letter that was submitted especially if they're repetitive. You do need to include a copy of the substantive issues that were raised. So you've summarized them, you need to make sure that's all lined out.

You're also going to include all the responses to those comments. Again, this is a way of creating a record showing the public, yes we heard you and here's how we're responding. So you maybe would think about a numbering system, a way of tracking this, an index of comments to responses and how you're going to include that in the final EIS. You may not --- You don't necessarily have to re-publish every single appendix that you have if you have a lot of technical appendices. You could say that those are unchanged from the draft EIS and we're hereby incorporating that, so you don't necessarily have to pull everything into the final EIS. And basically you want to create some kind of errata index that says what's being changed from the draft to the final. Again, to make sure everybody can track those issues.

You're going to go through an internal review. Again, just like the draft EIS, thinking about first getting the internal team to review it, if there's peer review, if you have contractors helping you with some of the responses have you shown, created a record that shows independent judgment and that it reflects your independent judgment. Those are important issues. Making sure if you have reviewers do, outside of BLM, do some kind of review of a administrative draft version of the final EIS that you make sure you consider FOIA issues, are they going to leak it to the public or release it to the public beforehand, do you have the right agreements in place with those partners and cooperating agencies to have them commit to the process that you're working with. You're going to, of course, be involving the state office, possibly the Washington office if requested, and possibly Congressional briefing.

And then you're going to be issuing the final EIS. Again, like the draft EIS, the final EIS, the notice will go to EPA, they will publish it that it is available for consideration. You also might be publishing that notice to your mailing list, website, again all of the things in the draft EIS. Your mailing list might be bigger. You certainly want to be giving the notice to all the people that commented; they might not have been on your mailing list for the draft EIS, but they certainly should be added for the final. Anyone who commented on the draft EIS should at least get a notice that the final EIS is available.

One of the things as we mentioned previously that is important is to consider consistency with state, local, tribal government policies, programs, legal requirements. One of the reasons you're going to be doing that, it's good planning, it's required by FLPMA, it's required by NEPA. It's also related to this separate process that happens within development of the resource management plan. There's what's called the Governor's Consistency Review. The governor for the state which the BLM office is located has, basically, a review period prior to the final EIS being completed. So the, basically the proposed plan and the final EIS as it exists within that public review period

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there's also the opportunity for the state, the governor's office, to look at the proposed plan and decide if there is any inconsistency there with state programs.

They would submit those to the state BLM director, the governor, and then the state BLM director would decide if they're going to adjust the plan or adjust some of the analysis in response to the governor's consistency analysis, and then go through that process. If the governor's responses aren't adequately addressed, according to the governor, the governor has a chance to appeal to the BLM director in Washington, DC. The BLM director, of course, then will consider the governor's comments and their determination that there's an inconsistency with the national and state office interest for BLM and then the BLM director will decide what the result is, informing the governor in writing and then there will be a separate publication of those reasons within the federal register.

One of the important elements here that we've talked about through the scoping process, through the integration of laws process, throughout all of the different segments related to developing the plan and the EIS, is coordination is so important. Outreach is so important, scoping is so important related to the different government interests, of course the state government. If you're collaborating early with the state agencies, you will be, hopefully, incorporating their concerns and you will be consistent with the state programs. So, doing that early or at least understanding, yeah, you know there is a conflict between the federal policies and the state policy. We're going to expect that to be an issue at the end of the process; you can at least anticipate those kinds of issues. But hopefully you can resolve them prior to coming out with your proposed plan in the final EIS.

As we mentioned, there's a separate protest period. So again, you're issuing the final EIS and there's basically a consideration period. Sometimes it's called a review period, sometimes it's referred to as a cooling off period where you issue the final EIS and the public, other agencies, have a chance to at least review it. I saw that a draft EIS came out, I commented, I want to see how they responded to that comment. And there's this review period. There's also the governor's consistency review as well as a protest period. The protest period is basically what happens before the final decision is made on the plan and the record of decision is signed.

So the protest is pre-decisional it's called. And basically what happens is folks that aren't happy with the responses that were made, think that there are issues that they feel BLM hasn't acted consistent with the law or with the standard set or not consistent with the proposed plan and its goals and the objectives that were set. They could possibly protest. They, of course, need to have participated in prior aspects in order to create what's called "standing" to make that protest. And, as part of that the BLM handbook has a lot of information. You should be including that in the Dear Reader letter so folks know, up front, what's required of the protest process. And there's a period, 30 days after the federal register notice that the EIS is available, where someone can submit a protest letter saying, hey I'd like to protest to the BLM director in Washington, DC. The BLM director will resolve that either by deciding that changes

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need to be made to the plan or to the analysis to consistent with how the protest has been made or decide that those protests are not --- don't warrant any change to what's already been proposed in the final EIS.

Based on both the governor's consistency review and possible responses to protest, the BLM director might sever part of the plan and say we need to redo parts of it. May allow part of the decision in the plan to go final, send part of it back for recirculation of the supplemental EIS for the changes in the plan. May deny all the protests and appeal issues and allow the entire plan to go forward as proposed. Could return all of the plan for revision clarification. Depending on how the resource management plan changes, there may be a trigger for an additional 30-day review. Again, if you go back and redo aspects of the plan, there may be a need to actually do a supplement EIS related to it. So, depending on how the BLM director responds to the governor's consistency determinations from the protest, may alter how the final decision is made.

The final decision, assuming you've been able to withstand the slings of arrows of all of the folks that maybe are not as happy with some of the decisions that were made in that final, and the BLM director has said that, yes we should move forward with the decision on this proposed plan and accepted as the resource management plan. You're going to be preparing what's called a record of decision or sometimes the NEPA practitioners called it the ROD. And the ROD, basically, is an explanation of the decision making process. It's, again, that tip of the pyramid that we've seen in other segments where you've got the data analysis supporting that EIS, both the draft and the final, the preferred plan, the proposed plan and now we're creating a record of decision on this will be the approved plan.

That rationale really is important, again, to create that road map and showing how you got from point A to this last part in the planning process. You're going to talk about alternatives, refer to the different alternatives analyses that are done. You're going to talk about all the factors that were part of the selection of starting with the preferred plan going to the proposed plan and now the factors related to what the final decision is. You'll also be mentioning, if you got comments on the final EIS and in that last part in the process, the ROD will reflect that if there was a governor's consistency review issue and a protest issue, it will reflect that those were considered also. And a lot of that information and a format for the ROD is also part of your planning handbook that you should look at.

After the ROD has been signed, as I mentioned, there are certain implementation decisions that were part of the plan. Those don't get protests. Those, there's a separate process where folks that aren't happy with some of those implementation decisions as part of the plan, they have to wait until after the ROD is signed, after the final decision is made where they then appeal those implementation decisions within the plan to the IBLA or the Interior Bureau of Land Appeals. And that's an administrative legal process within BLM before you would get to the district courts of the federal court system, you would be appealing those decisions. Again, you're going to explain that in

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the Dear Reader letter, you're going to identify within the plan which decisions are plan decisions, which decisions are really implementation decisions so that the reader knows, hey if I want to challenge some of the implementation decisions I've got to create what's called, again, standing to be able to do that and I have to have participated in the process, I have to follow certain steps. As part of that, the appeals process you're supposed to create, basically the reasons why that you have standing, the reasons why you're trying to appeal that. There's this certain timeframe that they need to do that within.

There needs to be a certain timeframe in which all of that information goes through the IBLA and then the IBLA will consider those appeals, making sure process issues were taken care of, but then also making sure, hey, are there substantive issues here, is this consistent with legal requirements, is this consistent with all of the laws and regulations that apply, the standards, consistent with the vision, the goals, the objectives. All of the things that we've laid out through the other segments in developing the alternatives, developing the preferred plan, developing the proposed plan; BLM administrative law judges through the IBLA will be reviewing that. Looking over the shoulder of the BLM decision to decide is this consistent with these parameters that are already within the plan process.

And then, these implementation decisions, they don't typically become effective until 30 days after the appeal period and then as part of that, depending on what the IBLA decides, there might be changes within the plan that need to be addressed, there might be other issues that could cause recirculation of elements or portions of the plan. Again, those considerations are all related to this process. Did the IBLA accept the challenge? Did they feel that the challenge should be denied? Do they feel that the challenger didn't even have standing in the first place? And so, there are all of these issues related to the response and to timing.

And again, if you lay all that out within the Dear Reader letter, within the EIS, making sure that the reader understands, hey this is the process, it is helpful to make sure that they know the process. Also, when you're looking at the comments and trying to respond to comments, hopefully you're anticipating if folks have a lot of comments on implementation decisions within the plan, you can be thinking, okay, I should make sure that this record is really clear so that if this goes through the IBLA, we'll be successful after the review has happened.

Now we'll talk about the contents of the approved plan. Again, you've issued the proposed plan and the final EIS, went through the review process. First the general review process of the final, that cooling off period. Consistent with that is the separate protest period process and the governor's consistency review and then there's after the ROD, the appeals process. All of that, you're coming up with an approved plan. Within the approved plan, you're considering all of those things and possible changes and then you're deciding, okay, this is the final resource management plan that will, in fact, guide our decision making for the future related to our plan area.

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You're going to do a separate notice for this approved plan. This is not a notice that would go through EPA, this is not a part of the NEPA process, it's a part of FLPMA's process. So you want to send that notice, typically, to your mailing list, websites, other ways of doing that. You could possibly do a press release. You might even do some kind of a public meeting announcement where the collaborators are there. A lot of the participants, if they're going to use this information, are going to be very excited about this end of the process and you want to make sure that they are all notified of that because taking part in the process, they want, somehow, participate in the success at the end of the process with this plan. And, hopefully, this is something that will be used in the future related to your implementation decisions.