

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT & PERMITTING

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The State of Alaska, Department of Natural Resources (DNR) appreciates the opportunity to participate and comment on the development of the Northeast NPR-A Regional Mitigation Strategy (RMS). DNR has attended the 3 public workshops held by BLM on the development of this RMS. DNR continues to emphasize the importance of receiving stakeholder input, where the value of stakeholder outreach is dependent on BLM's ability to accept and implement the feedback received from all stakeholders. To date, the BLM staff in Alaska appear to be taking a sincere approach at developing a process to balance the wide variety of stakeholder's needs, but at the same time prioritizing the needs of those most impacted by future NPR-A development. DNR recognizes this will be a challenging task for BLM, as the NPR-A is impacted by a number of management plans, environmental guidance documents, and permit conditions, all of which have created committees, subcommittees, working groups, and other advisory panels/documents that now need to also consider the NPR-A NE RMS. The RMS will add to the ongoing confusion that it appears most stakeholders are having with regards to understanding the complex web of federal authorities, roles, guidance, and information that is impacting the NPR-A and its stakeholders.

As stated in our last letter to BLM on the NPR-A RMS:

"It is important to acknowledge that without BLM providing clear policy guidance and RMS development through a rulemaking process, BLM is essentially implementing draft policy without following a formal regulatory or procedural process. This approach limits the amount of effective transparency as well as limits any certainty that BLM is capable of providing to affected parties. This is important to note because implementation decisions regarding this RMS plan and associated impacts are currently unknown. While DNR questions the current process for the implementation of the RMS, we do see the need for conducting a transparent development process, in order to help ensure this plan is developed in a manner that is in the best interest of the State of Alaska. We appreciate BLM's ability to understand and balance this complicated relationship and we are interested in staying engaged with BLM and affected parties to help promote the best way for BLM to develop the NE NPR-A RMS."

While DNR does not support using draft policy to enforce BLM's need to develop the RMS, we do see the need to compartmentalize that concern and work with BLM to help develop a meaningful strategy, that if implemented, is in the best interest of the State of Alaska. DNR

supports the idea that any compensatory mitigation funds BLM receives from NPR-A development go to local communities, Native land owners, and individuals that live within or around the boundaries of NPR-A. Additionally, DNR continues to support BLM, assuring that any compensatory mitigation BLM has received from NPR-A development be used in a way that is acceptable to the impacted communities and encourages BLM to utilize the NPR-A working group to help develop this RMS and the process used to determine how mitigation funds are utilized.

Use the RMS to explain the entire process

As mentioned above and in past comments, DNR is concerned that the development of this plan will only add to the confusion stakeholders have in understanding how the NPR-A is managed, and will be managed moving forward. Therefore, DNR strongly encourages BLM to use the RMS process and subsequent guidance document(s) to describe and develop a clear and transparent path, that addresses and clarifies the entire permitting process that future projects will go through. The RMS should give clear guidance to any applicant on how to navigate the multitude of plans and overlapping federal authorities and explain how any proposed project/activity will be evaluated for permitting. While the RMS strategy document explains how compensatory mitigation will be evaluated, it makes few substantive comments about how the EIS process, the IAP, NPR-A working group, and RMS will work together and when and how each process, document, entity, or group will fit into the overall permitting process.

DNR suggests adding an appendix (or section) that shows a step-by-step process for permitting any future activities from project application to ROD and where, when, and how each of these processes, documents, and groups (i.e. NPR-A working group) will factor into the overall process. BLM has stated the RMS will be used as a tool for future BLM staff to evaluate compensatory mitigation, but as seen on GMT-1 it is unclear to everyone, including BLM staff at times, how all of these BLM created plans, processes, and entities fit together and what is the purpose/role of each of these in the overall process.

How will positive impacts be evaluated?

It is unclear how positive impacts will be considered other than stating that they won't be:

“Finally, impacts to the following resources from future development regardless of where it occurs in the region were identified as minor, negligible, or positive, and are not further considered in this RMS” (page 11 of RMS document for NE NPR-A).

This document should consider the positive impacts (other than local hire) from projects and discuss how they should be evaluated. For example, temporal and spatial impacts to subsistence use should be fully evaluated in order to better inform decision-making. Increased infrastructure development in the NPR-A could provide greater opportunity for subsistence use, and the prevalence of subsistence hunting should be fully understood in order to ascertain any positive or negative impact. The RMS should incentivize positive

impacts and reward future applicants for activities that add value to or benefit the NE region of NPR-A. It is unclear why this document is only concerned with “unavoidable negligible impacts” and why positive impacts would not be addressed in a RMS document that is being developed to ensure responsible development.

The RMS should consider what development would look like on a regional scale. To do that, the RMS should discuss how to analyze positive impacts and how they fit into the long range goals of the NE region of the NPR-A. Without a full understanding of how to address all impacts, adverse or positive, this RMS will not give the guidance and transparency it is striving for and will miss an opportunity to incentivize positive impacts from future development.

Estimates for compensatory mitigation cost per acre impacts seem to be arbitrary and capricious (table 1).

DNR has concerns about how the costs in table 1 were calculated. The per acre costs represented for the scenarios in table 1 seem subjective and some of these base costs appear extremely high, especially considering costs in table 1 only account for one resource variable in what appears to be an additive process (i.e. \$1 million per acres when project is with 3-10 miles of nearest community).

DNR requests that the final RMS document use a more reasonable methodology and expand the explanation of how these costs were calculated. GMT-1 is an individual project with specific impacts and opportunities and should not be relied upon as a reliable reference to develop future mitigation costs throughout the NPR-A. If BLM chooses to develop costs using GMT-1 as a reference point, BLM is simply taking the arbitrary costs of GMT-1 mitigation and dividing it by total acres in order to hypothesize future cost impacts. We iterate the importance of evaluating the function of the resources, the magnitude of the impacts, and duration of impacts. This approach should help produce an equation/methodology that allows the public and affected stakeholders to understand the science and math behind these estimates.

“...this RMS is proposing to use the precedence of the GMT1 mitigation settlement to estimate an appropriate base cost for impacts...” (page 16 of RMS document for NE NPR-A).

BLM should establish costs based on a transparent methodology rather than establishing costs that justify a previously established arbitrary compensatory mitigation costs from GMT-1. Furthermore, the development of a cost methodology was not analyzed in the NPR-A Integrated Activity Plan (IAP) EIS.

Concerns about creating a multilayered bargaining process

The RMS was meant to give some predictability about how to evaluate impacts and assess compensatory mitigation cost(s). DNR is concerned that this document is describing an additional step in calculating cost for compensatory mitigation. This is apparent in table 1 where this document illustrates that BLM could amend the IAP, after an application is received in a manner which increases compensatory mitigation costs. BLM would then need to consult the NE NPR-A RMS, then assess (“increase” terminology used in table 1 last two columns) more cost through the NEPA process, and eventually finalize the cost just before BLM, or other federal agencies, issue a ROD. This process will most like put future applicants in a position that unfairly forces them to choose between permitting delays versus agreeing to pay potentially exorbitant and unjustified compensatory mitigation costs. Additionally, this document should also describe how mitigation from other federal agencies would be considered in the analysis and how BLM should calculate (or not calculate) those resources that other federal agencies are already mitigating for. DNR encourages BLM and other federal agencies to establish compensatory mitigation costs as early on in the permitting process as possible, with the hopes of achieving the following:

- Increasing meaningful conversations early on in the process
- Creating a more transparent process where compensatory mitigation costs are discussed in a more efficient and established process rather than repeatedly negotiating at several stages of the overall process
- Assurance that BLM’s compensatory mitigation will consider the resources and processes that other agencies are legally required to compensate for (i.e. USACE compensatory mitigation for unavoidable impacts to aquatic resources in compliance with the Clean Water Act)
- Greater assurance that this draft policy will develop an RMS in a manner that considers all other existing authorities, planning documents, and past efforts and analysis

DNR appreciates the opportunity to continue working with BLM and would like to acknowledge the hard work that BLM Alaska has put into this RMS process, to date. BLM will need to continue to use an adaptive approach on this process, as they learn more about stakeholder input and how this draft policy and existing policies work together.

Implementing a draft policy directed from groups and people from outside Alaska (that seemingly were not aware of the existing guidance and processes already in place for the NPR-A) has complicated an already complex process. As stated, DNR is concerned that this

RMS will only add another regulatory or procedural layer to the already complex web of regulatory hurdles associated with conducting business and managing resources in the NPR-A. The RMS process will further confuse the public, complicate the process, arbitrarily add costs, and several layers of uncertainty allowing BLM to “negotiate” compensatory mitigation costs. To ensure these things will be avoided, BLM will need to develop an RMS using flexibility and creativity while keeping in mind the concerns and ideas presented by the stakeholders.

Sincerely,

Jeff Bruno, Associate Director, Office of Project Management & Permitting

Cc: