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July 9, 2021

Bureau of Land Management
East Alaska RMP Amendment/EA
222 W 7th Ave., Stop 13
Anchorage, Alaska 99513

Re: 2007 East Alaska Resource Management Plan Draft Amendment/EA

Submitted via eplanning website

Dear BLM,

Established in 1947, Defenders of Wildlife is a national nonprofit conservation organization dedicated to the protection of flora and fauna in its native habitat. Defenders has 1.8 million members and supporters nationwide, including over 6000 in Alaska. Headquartered in Washington, D.C., Defenders has regional field offices throughout the country, including one in Anchorage, Alaska. We have long advocated for conservation of wildlife and habitat on Alaska's public lands, including BLM and national forest system lands. Defenders appreciates this opportunity to comment on the above-referenced draft RMP Amendment/EA.

Defenders submitted a scoping comment regarding this project that appears to have been ignored. The arguments therein remain relevant and instead of repeating them, the comment letter is attached.

The current state of affairs appears to be that 1) BLM has not completed the required Chugach Region Land Exchange Study and DOI is violating the Dingell Act because the Secretary is over nine months past the statutory deadline to report the Study's findings and make recommendations to Congress regarding options for at least one land exchange involving CAC; 2) notwithstanding this, BLM is proposing to amend the RMP specifically to make lands available for potential exchange with CAC, claiming that this action is "needed" to comply with the Dingell Act; 3) BLM asserts that the identified parcels are the only accessible and economically viable federal lands in the entire Chugach Region, citing the unfinished and unavailable Chugach Region Land Exchange Study for this proposition. Which is to say, citing nothing for this proposition.

The relevant Dingell Act provisions are as follows:

(b) CHUGACH REGION LAND EXCHANGE STUDY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act,¹ the Secretary, in coordination with the Secretary of Agriculture and in consultation with CAC, shall conduct a study of land ownership and use patterns in the Region.²

(2) STUDY REQUIREMENTS.—The study shall—

(A) assess the social and economic impacts of the program, including impacts caused by split estate ownership patterns created by Federal acquisitions under the program, on—

(i) the Region; and

(ii) CAC and CAC land;

(B) identify sufficient acres of accessible and economically viable Federal land that can be offered in exchange for CAC land identified by CAC as available for exchange; and

(C) provide recommendations for land exchange options with CAC that would—

(i) consolidate ownership of the surface and mineral estate of Federal land under the program; and

(ii) convey to CAC Federal land identified under subparagraph (B).

(c) REPORT.—Not later than 18 months after the date of enactment of this Act³, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the on Natural Resources of the House of Representatives a report describing the results of the study, including—

(1) a recommendation on options for 1 or more land exchanges; and

(2) detailed information on—

(A) the acres of Federal land identified for exchange; and

(B) any other recommendations provided by the Secretary.⁴

Had Congress wished to direct BLM to amend the East Alaska RMP to make lands available for exchange it could have done so, but clearly did not. Nor did it direct BLM to identify lands that it could potentially exchange. Instead, it directed the Secretary of the Interior to study land ownership and use patterns and report to Congress with details and recommendations regarding Federal land that could be offered in a potential exchange with CAC. The Dingell Act does not require any particular action with regard to BLM land.

¹ The date of enactment was March 12, 2019, so the Study was required by March 12, 2020.

² The Chugach Region “encompasses the lower Cook Inlet and Prince William Sound. It includes the communities of Cordova, Valdez, Whittier, and Seward, and the Alaska Native Villages of Eyak, Chenega, Tatitlek, Nanwalek (formerly known as English Bay), and Port Graham.” Draft EA at 2.

³ So the report was due by September 12, 2020.

⁴ Dingell Act, P.L. 116-9, § 1113.

We understand that the required Study remains in draft form and there is currently no timeline for its completion and submission to Congress or its public availability. We further understand that BLM considers the Study to be entirely independent from the proposed action.⁵ We find this bewildering because BLM claims at the outset that the proposed action

is needed to address Section 1113(b)(2)(B) of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act), which requires BLM to identify “sufficient acres of accessible and economically viable Federal land” within the Chugach Region that can be offered in a potential exchange with Chugach Alaska Corporation (CAC).⁶

The quoted language describes some of the Congressionally-required content of the Study - so the Study and the proposed action are directly and purposely linked, based on any rational reading of the Dingell Act and on the terms of the draft EA itself.

Further, the draft EA cites the incomplete and publicly unavailable Study for the otherwise-unsupported proposition that the two parcels subject to the proposed action are the only lands in the entire Chugach Region suitable for exchange:

An alternative suggested by public scoping comments asked the BLM to consider other lands for exchange instead of the two proposed sections under Alternative 2. The BLM manages relatively few public lands in the Chugach Region. The Dingell Act requires the BLM to identify lands it can make available for land exchange with CAC that are accessible and economically viable. The BLM was unable to identify any lands under its management in the Chugach Region Land Exchange Study which meet these requirements of the Dingell Act to analyze other than the two proposed sections under Alternative 2.⁷

The incomplete and unavailable Study cannot support this or any conclusion and until BLM provides some basis for it, the proposed amendment is arbitrary.

Additionally, it is inaccurate to say that the Dingell Act requires BLM to identify lands it can make available for exchange with CAC. The Dingell Act directs the Secretary of Interior, in coordination with the Secretary of Agriculture and CAC, to study land ownership patterns in the region and make recommendations to Congress, as discussed above. Even if BLM could support a finding that the two parcels are the only economically viable lands that it manages in the Chugach region, it would still be getting out in front of the required study, which is not limited to BLM lands. It could well turn out that realty actions involving BLM lands are not part of any

⁵ Dara Glass, Section Chief, Lands and Realty, pers. comm., describing the Study as “a separate, stand-alone project from the East Alaska RMP Amendment.” (June 23, 2021).

⁶ Draft EA at 2.

⁷ Draft EA at 13 (emphasis added).

recommended options regarding CAC or land exchanges, once the required Study and recommendations are completed.⁸

Instead of expediting the overdue Study's completion and informing and awaiting the Secretary's mandated and overdue recommendations to Congress on this very subject, BLM is further frustrating Congressional intent by proposing to make specific lands available for exchange with CAC. Putting the cart before the horse, if you will, even though Congress clearly intended the horse to go first.

Someone once said "if something looks amiss then it probably is." Or maybe we said that. In any event, this looks for all the world like some number of entities including BLM, CAC and the state have agreed to a land exchange involving these parcels and this farcical rationale and public process is a necessary afterthought.⁹

Speaking of the state, one cannot help but observe that it could simply take title to the two parcels, which it has selected under the Statehood Act, and then trade them to CAC. That is an entirely viable alternative and should be assessed as such in the EA. But it would count against the state's few million remaining acres available for conveyance from the federal government, and the state would presumably prefer that these lands come to CAC directly out of the federal estate to avoid that effect. BLM should be the one pointing this out of course, as the responsible steward of federal lands on behalf of all Americans - but see the "cahoots" issue noted in the preceding paragraph.

The "Cooperation and Coordination" section of the draft EA lists no federal agency other than BLM. Given the implications of the proposed action for the entire federal land estate in Alaska, all federal land managers should be specifically apprised of this proposal and afforded an opportunity to comment. An endless parade of state selections and conditional relinquishments to leverage direct privatization of federal lands would amount to a dereliction of federal agency duties and a grand abuse of the state land selection process under the Statehood Act. BLM should insist that if any exchange regarding these two parcels eventually occurs then it must go through the state, not directly to CAC or any private entity, for that reason.

In addition to failing to analyze a reasonable range of alternatives, the draft EA has other fatal shortcomings including the failure to support the conclusion that the two parcels (and only the two parcels) are economically viable and related failure to assess the impacts of making these economically viable parcels available for exchange to CAC, which can reasonably be expected to capitalize on that economic viability. Facilitating that eventuality is the very point of the proposed action, and if BLM has information to conclude that the parcels are economically viable then it must use that same information to address the likely impacts from CAC pursuing

⁸ Notably, "split-estate" situation on some CAC lands that the Study is directed to assess exists in the region impacted by the Exxon Valdez Oil Spill, which does not overlap much with BLM-owned lands.

⁹ This would be consistent with the fact that there has been much public discussion, including numerous hearings and proposed Congressional legislation directly on the topic of land exchange(s) involving CAC. See, e.g., H.R. 211, Chugach Region Lands Study Act (2017) and related hearings and testimony, e.g., https://republicans-naturalresources.house.gov/uploadedfiles/testimony_kompkoff.pdf

those economic options. Since the EA doesn't describe any of these potential impacts, it isn't possible to assess whether BLM should prepare an EIS instead.

But rather than revise the EA to try to comply with NEPA, BLM should abandon the proposal to amend the RMP at this time. The Secretary should complete the Chugach Region Land Exchange Study and make any recommendations based on it to Congress, as required by the Dingell Act. At that point, all interested parties will hopefully understand with much greater clarity the need, if any, for any federal land exchange with CAC; the viable options for pursuing any; the problems that a land exchange could address and/or cause; and any potential next steps, whether those entail BLM actions such as amending the RMP, or not.

Sincerely,

/s/

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