

MONA SINDELAR

IBLA 2002-470

Decided October 28, 2005

Appeal from a decision of the Billings, Montana, Field Office, Bureau of Land Management, approving the 2001 Pompeys Pillar Interpretive Center Activity Plan. EA MT-010-1-38.

Affirmed.

1. Environmental Quality: Environmental Statements

As a general rule, the Board will affirm a finding of no significant impact with respect to a proposed action when the record discloses that a careful review of environmental impacts has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. The burden of proof is on the challenging party to establish either an error of law or of fact and that burden must be satisfied by objective evidence. Mere differences of opinion provide no basis for overturning the decision.

APPEARANCES: Mona Sindelar, pro se; John C. Chaffin, Esq., Office of the Field Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been brought by Mona Sindelar from a July 12, 2002, Decision Record (DR) and Finding of No Significant Impact (FONSI) approving the activity plan for development of the Pompeys Pillar Interpretive Center. The DR was issued by the Manager, Billings Field Office, Bureau of Land Management (BLM). The DR selected alternative B, which includes construction of an interpretive center building and a day-use area adjacent to the Pompeys Pillar National Monument and removal of an existing visitor's center and toilet facilities located closer to the Monument than the new interpretive center. A new all weather entrance road and parking area were described in the DR as "phase-in components" which would be built if visitation to the facility warranted and funding became available.

An understanding of this appeal is aided by reference to the history of BLM's efforts to manage the lands around this landmark. Pompeys Pillar was recognized as a National Historic Landmark (NHL) in 1965 because of its association with the Lewis and Clark Expedition and, by Proclamation No. 7396, was designated a national monument on January 17, 2001, under the authority of section 2 of the Act of June 8, 1906, 16 U.S.C. § 431 (2000), known as the Antiquities Act. 66 FR 7351 (Jan. 22, 2001). ^{1/} Pursuant to that designation, 51 acres of Federally-owned land were set apart and reserved as Pompeys Pillar National Monument for the purpose of protecting the ethnographic, historic, and archeological values associated with the massive sandstone outcrop known as Pompeys Pillar.

Acquisition by BLM of 366 acres of land embracing and including the NHL in 1991 necessitated amendment of the Billings Resource Management Plan (RMP) to provide planning guidance for these newly acquired lands within a 473-acre management area. Accordingly, BLM prepared the Environmental Assessment [EA]/Amendment for the Billings Resource Management Plan, EA-MT 025-96-09 (1996) to incorporate management of the newly acquired acreage. This EA analyzed the impacts of land use planning options for the area. Designation of Pompeys Pillar as an Area of Critical Environmental Concern (ACEC) was also considered in the 1996 EA. The EA emphasized the need for protection of the values of the historic site, in light of the anticipated increase in visitation. (1996 EA at 6.) The EA specifically noted that, in 1992, after BLM's acquisition of the 366 acres of land, visitation was approximately 20,000, but doubled to 40,000 by 1995. BLM stated that visitation is likely to exceed existing facility capacity and management was required to accommodate it. Id. On August 1, 1996, the Montana State Director, BLM, issued a DR/FONSI approving the amendment of the RMP as set forth in alternative C analyzed in the EA. (DR, Aug. 1, 1996, at 1.) The DR also designated the area as an ACEC. (DR, Aug. 1, 1996, at 4.)

Under alternative C, about 90 acres, including the NHL and adjacent acreage, were designated an Historic Zone which "would be managed to approximate the historic setting of 1806." (EA-MT 025-96-09 (1996), at 17.) The Historic Zone objectives would be to "emphasize the recreation and historic setting of 1806 with a moderate level of facility development and visitor services * * *." Id. Under this alternative, BLM would construct a new visitor center, to provide "visitor access to Clark's signature and other historic inscriptions and rock art on the NHL," and to "enhance the visitor's experience through providing landscapes that appear similar to

^{1/} Section 2 of the Antiquities Act states that the "President of the United States is authorized in his discretion to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic and scientific interest that are situated upon the land owned or controlled by the Government of the United States to be national monuments * * *."

the natural setting Clark viewed in 1806.” (DR, Aug. 1, 1996, at 3.) A Historic Zone-Developed area comprising 110 acres would be located outside the Historic Zone “to provide visitor services with an adequate visitor center and a network of interpretive trails, picnic areas and other visitor amenities.” (EA-MT 025-96-09 (1996), at 17.) A 270-acre General Management Zone would provide a “flexible management situation for the Pillar’s future,” allowing farming, wildlife habitat enhancement, and recreation development. Id.

“[M]ost facilities would be placed” in the Historic Zone-Developed area. Any “[f]acilities would be designed to enhance visitor experiences through interpretation and visitor services” and “would include a visitor center, vehicle parking, picnic area, interpretive displays, [and] demonstrations.” (DR, Aug. 1, 1996, at 3.) Under the selected alternative, Alternative C, BLM would build a “moderate sized visitor center,” further described in the EA as “about half the size of the proposed Lewis and Clark Visitor Center in Great Falls, MT.” (EA-MT 025-96-09 (1996), at 18.)^{2/} In this alternative, BLM would manage Pompeys Pillar as a day-use site and staff the newly constructed interpretive center from May 1 to October 31. The existing access roads along the west boundary would be closed and reclaimed. An all weather entrance road would be constructed and the existing visitor center with toilets would remain as is within the “Historic Zone.” Id. at 17-18.

Prior to implementation of Alternative C, BLM published a notice of intent to prepare another EA for the construction of an interpretative center and related facilities at Pompeys Pillar in 1999. 64 FR 66489 (Nov. 26, 1999). In the notice, BLM stated:

The EA to be developed at this time will further analyze the location and visual aspects of the interpretive center, as well as that of additional facilities, including the possibility of a State of Montana Department of Transportation highway rest area at this location. Additional facilities to be addressed are an entrance road, trails, parking, restrooms, picnic area, sewage treatment, utilities, and employee housing. The possibility of providing a highway rest area is being considered because of potential cost savings to the public through sharing of development, and operation and maintenance of facilities.

64 FR at 66489.

^{2/} In a subsequent EA for the visitor center, this was stated as between 11,000 and 12,500 square feet. Pompeys Pillar Interpretative Center [EA]/Amendment for the Billings [RMP] and Activity Plan, EA Number MT 010-1-38 (June 2001), at 7.

Subsequently BLM developed the new 2001 EA (MT 010-1-38) for the visitor (interpretive) center and for the modification of the amendment to the RMP. In the introduction, BLM explained that the proposal to combine the interpretive center with a highway rest area was withdrawn after preliminary analysis, but that the process disclosed the need to revisit “other decisions that were made in the 1996 Pompeys Pillar EA/Amendment, including the size of the interpretive center, the season of operation, and whether to remove the existing visitor center and related facilities.” (EA MT 010-1-38 (2001) at 1.) BLM expressly considered in Alternative A the construction of the expansive visitor center addressed in 1996. Thus, Alternative A would be the construction of “a new interpretive center (approximately 11,000 to 12,500 square feet, which is about half the size of the Great Falls [Lewis and Clark] center) * * *.” *Id.* at 7. The preferred alternative (Alternative B), however, considered a smaller visitor center (approximately 5,700 square feet) with potential for future expansion. *Id.* Among the alternatives considered and rejected, BLM expressly addressed the no action alternative and the alternative of upgrading and expanding the existing visitor center. With respect to the former “maintain existing facilities” alternative, BLM explained that it rejected this option because “the existing facilities do not adequately meet the current demands of the visitors, and will not be able to accommodate the projected visitation level of 130,000.” *Id.* at 13. Because the existing facility was only 841 square feet and had only 2 vault toilets, BLM explained that the existing structure had no sewer line and inadequate power to meet anticipated user needs. *Id.* BLM rejected the alternative of expanding the existing facility because it “would require infrastructure improvements within the Historic Zone.” *Id.* BLM noted that this was inconsistent with the goals of the RMP amendment to ensure that “[m]odifications of the landscape would be the minimum necessary for visitor safety and protection of the signature and other rock art from further deterioration.” *Id.*

On July 12, 2002, BLM issued two decisions. In the first decision, the Montana State Director, BLM, determined to amend the Billings RMP as provided in Alternative B of the 2001 EA. (DR for Pompeys Pillar Interpretive Center EA/Amendment.) This decision, issued pursuant to the land use planning regulations at 43 CFR Subpart 1610, was subject to protest to the BLM Director.^{3/} 43 CFR 1610.5-2. The second decision, which is the subject of this appeal, is the DR for the Pompeys Pillar Interpretive Center EA/Activity Plan, EA Number MT 010-1-38. The DR for the interpretive center activity plan provides for implementing Alternative B as analyzed in the 2001 EA.

^{3/} Appellant filed a protest which was denied by the Assistant Director, Renewable Resources and Planning, BLM, on behalf of the Director, BLM, on Apr. 16, 2002. That decision on the RMP amendment was final for the department. *See* 43 CFR 1610.5-2(b). The Board of Land Appeals lacks jurisdiction over appeals from decisions amending RMP’s. *See Mary Lee Dereske*, 162 IBLA 303, 310 (2004).

Board jurisdiction is limited to decisions implementing approved plans. 43 CFR 1610.5-3(b). See High Desert Multiple Use Coalition, 142 IBLA 285, 289 (1998); Petroleum Association of Wyoming, 133 IBLA 337, 342 (1995). Accordingly, only an appeal from the 2002 DR for the Activity Plan is cognizable by this Board.

The activity plan DR calls for construction of a new interpretive center of approximately 5,700 square feet (Answer at 4) with potential phase-in components (depending on visitor demand and funding) including a new entrance road, parking area, and additional interpretation. (Activity Plan DR at 1.) Waste water management facilities will be placed in the most optimal location based on visual resource management (VRM) objectives. Id. The existing visitor's center and related facilities will be removed, preserving a more natural setting in the Historic Zone. Id. at 3.

In her appeal, appellant requests that a "full Environmental Impact Statement [(EIS)] be prepared by an independent resource." She questions "how an entity can prepare their own [EA] and be ethical." (Appeal at 1.) Appellant complains that BLM has not altered its plans for an interpretive center despite public opinion opposing the plan. She states that her opinions and the advice and opinions of the public "have not made any difference." Id. at 1. ^{4/} Appellant argues that there is no way to minimize the impacts of a sewage treatment facility. Id. at 2. She also disputes the ability of mitigation measures to reduce the impact of the view of the interpretive center. Id. Appellant opines that the center is located in the flood plain and, thus, is vulnerable to costly flooding. Id. Appellant also suggests that designation of Pompeys Pillar as a national monument requires preparation of an EIS. Id. ^{5/}

In its answer, BLM contends that appellant has presented no evidence why either the BLM action or monument status would constitute a major Federal action significantly affecting the environment requiring preparation of an EIS. (Answer at 3.) BLM notes that the entire site is within the flood plain, but states that the new center will be at a higher elevation within the development zone and will conform to flood plain regulations, while the existing facility would not be conforming. Id. at 4. With respect to the waste water treatment facilities, BLM points out that after completion a visitor will only see a "vegetated mound of soil." Id.

^{4/} Given the facts that the selected alternative reduced the size of the visitor center by half of what was proposed in the 1996 EA and Alternative A of the 2001 EA and BLM rejected the rest area component, this assertion is not supported by the record.

^{5/} Appellant also takes issue with certain parts of the DR for the amendment to the RMP issued by the BLM State Director. As noted above, the Board has no jurisdiction over the decision to amend the RMP. Accordingly, we do not address it.

The requirement to prepare an EIS is found in section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C) (2000), and requires Federal agencies to prepare an EIS for a major Federal action significantly affecting the quality of the human environment. In determining whether to prepare an EIS, an agency such as BLM frequently prepares an EA in order to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a [FONSI].” 40 CFR 1508.9(a)(1); see 40 CFR 1501.4(b).

[1] In Fredric L. Fleetwood, 159 IBLA 375, 382 (2003), the Board addressed the standard of review applicable to an appeal from a BLM decision to undertake an action which was analyzed in an EA and for which a FONSI has been issued. Such a decision

will be affirmed when the record demonstrates that BLM has considered the relevant matters of environmental concern, taken a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Southern Utah Wilderness Alliance, 158 IBLA 212, 219 (2003); see Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982); Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973); Wyoming Outdoor Council, 158 IBLA 155, 160 (2003). * * * As a general rule, the Board will affirm a FONSI with respect to a proposed action if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. Umpqua Watersheds, Inc., 158 IBLA 62, 67, 84 (2002); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 173-74 (1984). The record should therefore establish that the FONSI and decision to proceed were based on reasoned decisionmaking. However, the ultimate burden of proof is on the challenging party to demonstrate either an error of law or fact and that burden must be satisfied by objective evidence; mere differences of opinion provide no basis for reversal. Larry Thompson, 151 IBLA 208, 217 (1999); Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 263, 267 (1990).

Fredric L. Fleetwood, 159 IBLA at 382, quoted in In re Stratton Hog Timber Sale, 160 IBLA 329, 331-32 (2004).^{6/}

^{6/} Appellant’s challenge to the propriety of the EA on the ground it was prepared by BLM must be rejected. The identity of the preparer of an EA is not determinative or
(continued...)

As noted above, BLM has now prepared two separate EA's in considering the proposed interpretive center for Pompeys Pillar. The review and analysis undertaken in these documents has resulted in the rejection of alternatives embracing both a much larger facility and a more complex facility associated with a highway rest area. It is clear from the record that impacts to the environment were analyzed and mitigation measures were invoked to reduce environmental impacts. Thus, we find that a reasonable basis has been shown for the FONSI.

Appellant disagrees with the BLM decision, asserting that her opinion and public opinion have been ignored in the decision process. She also disagrees with BLM's finding that the visual impacts of the interpretive center and the waste water treatment plant will be effectively mitigated. Appellant also challenges the wisdom of building a new center in a flood plain. As the Board has held, "[i]t is simply not enough to pick apart a record with alleged errors and disagreements, without connecting those allegations to an affirmative showing that BLM failed to consider a substantial environmental question of material significance." In re Stratton Hog Timber Sale, 160 IBLA at 332. Yet, we find that this is what appellant has done. She clearly disagrees with the siting of the visitor center, and with the fact that a visitor center will be constructed at all.^{7/} Yet, she does not explain how BLM erred in concluding that the existing facility is incapable of handling the power and sanitation needs of expected visitation increases resulting from acquisition of the site by BLM of the NHL. She has not shown that its placement will generate environmental impacts that are not mitigated by BLM's adoption of appropriate flood plain management guidelines. Nor has she sufficiently demonstrated error in BLM's conclusion that location of a visitor center in compliance with such regulation will be an environmentally superior outcome to the maintenance of the existing facility which is not in compliance with flood plain guidelines; nor does she support the implication in her SOR that it would be somehow better to maintain or enhance the existing facility at the current site. Failing to acknowledge or address the express consideration and rejection by BLM of the alternatives of taking "no action," that is, maintaining the existing facility, or enhancing it, she does not show error in BLM's conclusion that moving the facility away from Pompeys Pillar and choosing a smaller one than originally anticipated would produce lesser effects to the site and the visitor experience. To the extent Sindelar suggests BLM should maintain the status quo in existence prior to BLM's acquisition of the NHL, this decision is not before us. We

^{6/} (...continued)

controlling in our review of a FONSI based on an EA. Appellant has not shown that BLM's role in preparing the EA should influence our review in this case.

^{7/} To the extent Sindelar objects to the citing of the visitor center within the flood plain, BLM has documented that, except for a small portion, nearly the "entire property" is below the 100-year flood elevation. (EA MT 010-1-38 (2001) at 30.)

find that her views constitute a clear disagreement with the wisdom of BLM's decision, reflecting that her choice would be to maintain the existing visitor center. They do not constitute an allegation of a particular environmental effect that will result from the project, which was not considered, and is so significant as to require an EIS.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge