



THE WILDERNESS WORKSHOP, ET AL.

175 IBLA 124

Decided July 10, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

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IBLA 2007-228, 2007-229

Decided July 10, 2008

Appeal from a Finding of No Significant Impact and Decision Record of the Glenwood Springs, Colorado, Field Manager, Bureau of Land Management, authorizing the Colorado Army National Guard to continue high altitude aviation training on public lands in the Colorado Rocky Mountains at existing levels. CO-140-2005-143-EA.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Permits--Public Lands: Special Use Permits--Special Use Permits

BLM may indirectly regulate helicopter flights by conditioning the grant and continuing validity of landing permits on compliance with restrictions on routes, altitudes, and other aspects of the flights.

2. Federal Land Policy and Management Act of 1976:
Permits--Rules of Practice: Burden of Proof

To successfully challenge a discretionary decision issued pursuant to FLPMA, the burden is upon an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

3. Environmental Quality: Environmental Statements--
National Environmental Policy Act of 1969:

Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision to proceed with a proposed action, absent preparation of an EIS, will be upheld under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), where the record demonstrates that BLM has considered all 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. The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

4. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969:
Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

NEPA regulations accord flexibility to agencies to involve environmental agencies, applicants, and the public in preparing EAs, specifying that they may be involved to the extent practicable. Where the record demonstrates that BLM accorded multiple opportunities for public involvement throughout an environmental review process and responded to comments made by members of the public, BLM has complied with NEPA.

5. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969:
Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. Appropriate alternatives are those that would accomplish the intended purpose of the proposed action,

are technically and economically feasible, and will avoid or minimize adverse effects. A “rule of reason” governs the selection of alternatives, both as to which alternatives an agency must discuss and the extent to which it must discuss them.

6. Federal Land Policy and Management Act of 1976: Land Use Planning

A BLM decision to implement a preferred alternative considered in an environmental assessment that conforms to the restrictions set forth in the applicable land use plan will be affirmed.

APPEARANCES: Peter Hart, Esq., Carbondale, Colorado, for the Wilderness Workshop, Colorado Wild, Colorado Environmental Coalition, and the Wilderness Society; Thomas Phillips, Littleton, Colorado, *pro se*; and Jennifer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Wilderness Workshop, Colorado Wild, Colorado Environmental Coalition, The Wilderness Society (organizations), and Thomas Phillips¹ have appealed a Finding of No Significant Impact and Decision Record (FONSI/DR) issued by the Glenwood Springs, Colorado, Field Manager, Bureau of Land Management (BLM), determining to implement the no action alternative (also referred to as the selected or preferred alternative) as described in the *Final Environmental Assessment of Increased Aircraft Operations at the Colorado Army National Guard High-Altitude Army Aviation Training Site* (EA), issued in March 2007. BLM’s FONSI/DR authorizes the Colorado Army National Guard (COARNG) to continue present training operations for military helicopter pilots under high altitude conditions on and over Federal lands managed by BLM in the Colorado Rocky Mountains. COARNG’s High-Altitude Army Aviation Training Site (HAATS) is located primarily on land within the White River National Forest, which is managed by the U.S. Forest Service (FS or USFS), and, to a lesser extent, on public land managed by BLM. The FS participated in the

¹ All parties except Phillips filed a joint appeal, docketed by the Board as IBLA 2007-228. Phillips’ appeal was docketed as IBLA 2007-229. BLM filed a Motion to Consolidate the appeals on July 7, 2007; opposing parties did not object. As the appeals involve the same BLM decision and share common issues of fact and law, BLM’s Motion to Consolidate is granted.

environmental review process and issued a separate FONSI/DR based upon the EA.² Our review is concerned primarily with the validity of BLM's FONSI/DR, and extends to FS' FONSI/DR only as needed in discussing key sections of the EA. For the following reasons, we affirm BLM's FONSI/DR.

I. BACKGROUND

COARNG prepared Draft and Final EAs³ in October 2005 and March 2007, with BLM and FS participating as cooperating agencies. BLM and FS each issued a separate FONSI/DR. The FONSI/DRs are included in the beginning pages of the EA. The agencies considered the impacts of substantially increasing aircraft training operations, but they both selected the no action alternative as the preferred alternative. Implementation of "the no action alternative would still involve landings in the training areas, [so] COARNG-HAATS would need to update and replace existing agreements with a permit and authorization from the USFS and BLM for continued use of the public lands administered by these agencies." EA, Executive Summary at 5.

A. The HAATS Program

COARNG began training military helicopter pilots at its training center, based at the Eagle County Regional Airport near Gypsum, Colorado, in 1985. EA at 1-3. In 1987, COARNG, FS, and BLM entered into a Memorandum of Understanding (MOU) containing guidelines to be observed by the three agencies "in furtherance of COARNG's training mission." MOU at 1.⁴ HAATS activities increased significantly over the years, and in November 2003, COARNG, FS, and BLM began discussions regarding expansion of the flight training program. The demand for training increased due to U.S. military operations in Afghanistan and Iraq. However, in 2004 the facility denied training to "nearly 200 aircrews due to a lack of flight hours." EA at 1-4. COARNG therefore developed the proposal that the agencies formally presented in the 2005 Draft EA, which would increase annual training from 3,001 to up to 6,000 hours, annual night operations from 120 to up to 500 hours, and would "proportionately increase flights over and landings" in training areas. EA at 1-24.

² Both the BLM and FS FONSI/DRs were made available to the public on Mar. 5, 2007.

³ Unless otherwise noted, references to the EA in this opinion are to the Final EA.

⁴ The Secretary of the Interior is authorized to enter into cooperative agreements or otherwise issue permits to other Federal agencies to use the public lands under sections 302(b) and 307(b) of FLPMA, 43 U.S.C. §§ 1732(b) and 1737(b) (2000), respectively.

According to the EA, the HAATS program provides “one-of-a-kind training . . . using the unique terrain and conditions offered in the mountains of Colorado.” EA at 1-3. COARNG considers dense, high-altitude mountainous terrain (between 6,500 and 14,000 feet above mean sea level (MSL)) characterized by a broad range of wind and weather patterns to be essential to its training mission. EA at 2-28. The EA emphasizes that the training is invaluable to pilots who must fly in dense mountainous territory. EA at 1-24. In order to provide quality training, COARNG maintains it must “offer an abundance, density, and variety of rugged terrain, including ridgelines, pinnacles, saddles, cliffs, and confined areas, within an accessible area.”⁵ EA at 2-30.

Operations are generally conducted within a 1.1-million-acre, 25-nautical-mile radius of the Eagle County Regional Airport, but most training takes place within 11 areas encompassing approximately 443,847 acres of FS and BLM lands. EA at 1-9, 1-20, Table 1-3. BLM administers 29.3 percent, or 129,906 acres, of the total land in the 11 training areas. EA at 3-29, Table 3.6-2. Table 2-1 indicates that 23,188 acres of that total are managed by BLM as Special Recreation Management Areas (SRMAs), including 1,950 acres in the Deep Creek SRMA. EA at 2-7 to 2-8. Deep Creek, located in the Flat Tops training area, is also eligible for designation as a wild and scenic river. EA at 3-30, Table 3.6-3. The remaining BLM acreage is managed for multiple uses. *Id.*

Within the training areas, COARNG has identified optimal landing sites for training, designated as either “frequently used landing areas” (FLAs) or “other suitable landing areas” (OSLAs). EA at 1-23. FLAs consist of “1/8th-mile diameter areas (about 8 acres) encompassing multiple terrain features that support realistic landing and take-off” scenarios within a variety of contexts. EA at 1-23. There are 82 FLAs scattered over the 11 training areas, encompassing 640 out of the total 443,847 acres, or about .14 percent of the total training area. *Id.* OSLAs are used less frequently but are more complex sites, providing pilots with opportunities to experience visual cues not present in FLAs. EA at 1-24. OSLAs cover nearly 34,500 acres, or 7.8 percent of the total training acreage. According to the EA, within that area, repetitive landings on any one area within an OSLA would be “almost impossible.” *Id.*

⁵ For example, “aircrews in Afghanistan must deliver troops, supplies, and close air support at altitudes up to 16,000 [MSL] and at or above the basic limit of the helicopter.” EA at 1-24. “[Combat] aviators must fly helicopters loaded to their maximum gross weight, at night and in bad weather, at high altitudes with rugged terrain, and under enemy fire.” EA at 1-25. According to one source, crews trained at COARNG-HAATS out-perform other combat helicopter crews.

B. The COARNG-HAATS EA

The Draft and Final EAs prepared by COARNG, in participation with FS and BLM, evaluated in detail the environmental impacts of two alternatives, the proposed action and the no action alternatives. In accordance with requests during the scoping process, the EAs also considered a variety of alternative locations, but did not carry any of those alternatives forward for detailed analysis, as they were found to be unsuitable for training needs. EA at 2-27 to 2-43.

The proposed action would (1) more than double the annual flight training hours over Federal lands (increasing them from less than 3,001 hours to up to 6,000 hours); (2) more than triple night training operations (from less than 121 to up to 500 hours); and (3) double the allowable number of landings, increasing them from 7,200 to 14,400. EA at 1-24 and 2-46, Tables 2-6, 2-7. The proposed action would double the allowable time in training areas, increasing it from 2,400 to 4,800 hours per year, and “would involve continued landings in the training areas, so COARNG would update existing land use agreements and permits with the USFS and BLM.” FONSI/DR at 2; *see* EA at 2-46, Table 2-7.

Under the no action alternative, the only other alternative subject to extensive analysis, “operations are the same as existing operations.” EA at 2-49. Existing operations involve up to 3,000 annual flight hours and 1,200 annual sorties,⁶ which are distributed across the 443,847 acres in the training areas and an additional 34,500 acres of OSLAs. EA at 2-5. Sorties currently expend 2,400 of the 3,000 flight hours, and the remaining 600 are used in and around the airfield and in transit to and from training areas. EA at 2-46, Table 2-6.

In their separate FONSI/DRs, COARNG, BLM and FS each adopted the no action alternative as the selected alternative. The EA explained that “[w]hile HAATS training remains essential and important, COARNG-HAATS concluded that the number of training hours (*i.e.*, 1 to 3,000 annually) and configuration of training activities under the no-action alternative meets mission requirements for the foreseeable future.” EA at 2-49. Further, the EA stated that “the no-action alternative would not result in significant impacts to the environment,” so that an EIS was not required. *Id.* Appellants timely appealed from BLM’s decision.

⁶ A “sortie” is “a take-off from an installation, a flying mission, and a landing back at the installation.” EA at 1-6.

II. ARGUMENTS ON APPEAL

A. Appellants' Contentions

Appellants argue on a myriad of bases that the EA is deficient under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000). They contend, *inter alia*, that the public notice and comment procedures were “highly irregular” and not in accordance with NEPA requirements (Phillips’ Statement of Reasons (SOR) at 2-3, 6-7); that most of the alternatives put forward were rejected prior to analysis in the EAs, resulting in an inadequate range of alternatives and precluding “true comparative analysis” (Phillips’ SOR at 2, 4, 5); that the EA fails to adequately address potentially significant environmental impacts, *i.e.*, particularly, the noise and visual impacts resulting from overflights, take-offs, and landings on wilderness areas, potential wilderness and potential wild and scenic river areas, special recreation management areas, non-motorized recreation areas, and other special interest areas (Organizations’ SOR at 4-17, 19-20); that the commitment of resources to the “baseline” level of activity that the EA also calls “the no action alternative” occurred as the result of an incremental expansion of the program approved by the 1987 MOU without NEPA analysis, and that the EA invalidly assumes that the current level of training operations is insignificant, and lacks scientific rigor (Organizations’ SOR at 24-25, Phillips’ SOR at 2, 3, 5, 6-7); and that the potentially cumulative impacts of a long-term training program were ignored, and should have been addressed in an EIS (Phillips’ SOR at 2, 5-7).

The appellant organizations further contend that BLM’s decision violates section 302(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712(a) (2000), because aspects of the training program are inconsistent with provisions of the Glenwood Springs Resource Area Resource Management Plan (Glenwood Springs RMP), issued in 1984. Organizations’ SOR at 29-30. Specifically, they argue that the FONSI/DR fails to comply with the 1984 requirement to manage the Deep Creek SRMA as “primitive and semi-primitive non-motorized ROS [Recreation Opportunity Spectrum] classes”; and that the FONSI/DR does not comply with the 1984 RMP visual resource management (VRM) objectives for the Deep Creek ACEC, which specify that the area is managed “for preservation of the landscape character,” and prohibit “management activities that alter the landscape character.” *Id.* at 30.

B. BLM’s Response

BLM maintains that its FONSI/DR and supporting EA meet the requirements of NEPA. BLM denies that it failed to provide meaningful opportunities for public participation during the environmental review process. With respect to the range of

alternatives, BLM points out that “[t]he EA provides a comprehensive explanation for why . . . alternatives were considered but not analyzed further in detail.” Answer at 16, n.17. Regarding the potential for significant environmental impacts, BLM asserts that appellants misconstrue the nature of the HAATS program and the scope of its impact on BLM lands, and ignore the restrictions that the agencies require in the EA, including best management practices and specific design criteria which address appellants’ concerns. *Id.* at 4-7. BLM points out that of all the special interest categories appellants discuss, BLM lands are involved only in one eligible wild and scenic river designation, one ACEC, and some special recreation management areas, and the impacts to those areas are fully explored in the EAs. *Id.* at 16-18. BLM contends that appellants’ arguments regarding noise and visual impacts of COARNG’s program on special interest, recreation, wild and scenic rivers, and proposed wilderness areas have no basis in law or fact. *Id.* at 12-16. BLM asserts that appellants’ argument that BLM did not adequately consider impacts of the flight training program on wildlife is not supported by the record. *Id.* at 19.

With regard to appellants’ contentions regarding FLPMA, BLM responds that appellants misconstrue the Glenwood Springs RMP in arguing for elimination of COARNG’s activities in “primitive and semi-primitive areas,” stating that there is only one FLA in the Deep Creek ACEC.⁷ *Id.* at 18. BLM concludes that the “continued authorization of COARNG’s use of the public lands fulfills BLM’s multiple-use mandate” under FLPMA, and that appellants failed “to establish error in BLM’s decision or in the NEPA analysis that preceded it.” *Id.* at 19.

III. ANALYSIS

[1] While the Department of the Interior has no jurisdiction to regulate overhead helicopter flights, it does have the authority to take certain actions that may indirectly restrict the routes, altitudes, and other aspects of the flights, in accordance with the following parameters:

[The Department] has no direct authority to determine the routes, altitudes, or other aspects of the flights. . . . However, the exercise of Secretarial discretion to issue special use permits also includes the authority to set permit conditions. *Patrick G. Blumm*, 121 IBLA 169, 171 (1991); *Four Corners Expeditions*, 104 IBLA 122, 125 (1988); *Don Hatch River Expeditions*, 91 IBLA 291, 293 (1986); *Osprey River*

⁷ As discussed *infra*, based upon BLM’s FONSI/DR, we assume this FLA in the Deep Creek area is located on FS land.

Trips, Inc., 83 IBLA 98 (1984). Under 43 C.F.R. § 8372.5(b)[⁸], a [land use authorization] should contain stipulations the authorized officer considers necessary to protect the lands and resources and the general public interest. Thus, the Bureau may indirectly regulate flights by conditioning the grant and continuing validity of landing permits on the permittees' compliance with restrictions on routes, altitudes, and other aspects of the flights.

Haines Borough Assembly, 145 IBLA 14, 19 (1998).⁹

[2] To successfully challenge a discretionary decision issued pursuant to FLPMA,

[t]he burden is upon an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Wiley F. and L'Marie Beaux, 171 IBLA 58, 66 (2007), quoting *International Sand & Gravel Corp.*, 153 IBLA 293, 299 (2000); *Utah Trail Machine Association*, 147 IBLA 142, 144 (1999). The record supports our conclusion that BLM properly exercised its discretionary authority in approving the continuance of COARNG-HAATS activities on BLM-administered lands at current training levels.

A. *The DR/FONSI Complies with NEPA*

[3] A BLM decision to proceed with a proposed action, absent preparation of an EIS, will be upheld under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), where the record demonstrates that BLM has considered all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts,

⁸ Currently at 43 C.F.R. § 2920.7(a).

⁹ The Board recently affirmed a DR/FONSI authorizing helicopter wildland firefighting training exercises within the Rogue National Wild and Scenic River corridor. *James W. Rotruck*, IBLA 2007-215 (Order dated Apr. 24, 2008). BLM has also authorized helicopter search and rescue training exercises by the Las Vegas Metropolitan Police in the Red Rock Canyon National Conservation area. An appeal of that authorization is currently pending before this Board in *Wilderness Watch*, IBLA 2008-52. The Board denied a request for stay of that authorization by Order dated Mar. 14, 2008.

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. *E.g.*, *Santa Fe Northwest Information Council*, 174 IBLA 93, 107-108 (2008); *Las Vegas Valley Action Committee*, 156 IBLA 110, 117-18 (2001); *Southern Utah Wilderness Alliance*, 152 IBLA 216, 220 (2000). An appellant seeking to overcome such a decision must carry its burden to demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA. *E.g.*, *Santa Fe Northwest Information Council*, 174 IBLA at 107; *Southern Utah Wilderness Alliance*, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993). Unsupported differences of opinion provide no basis for reversal. *Las Vegas Valley Action Committee*, 156 IBLA at 117-19; *Haines Borough Assembly*, 145 IBLA at 22.

1. *BLM's public notice and comment procedures complied with NEPA.*

[4] BLM is required under section 102(2)(C) of NEPA and its implementing regulations to encourage and facilitate public involvement in the NEPA process. In discussing NEPA's purpose, 40 C.F.R. § 1500.1(b) states that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." Further, in discussing NEPA's policy, 40 C.F.R. § 1500.2 states that "Federal agencies shall to the fullest extent possible . . . [i]mplement procedures to make the NEPA process more useful to decisionmakers and the public," and "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." In preparing EAs, agencies are directed to "involve environmental agencies, applicants, and the public, to the extent practicable . . ." 40 C.F.R. § 1501.4(b). Under 40 C.F.R. § 1506.6(b), Federal agencies are required to "[p]rovide public notice of . . . the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." Finally, 40 C.F.R. § 1506.6(d) mandates that Federal agencies "[s]olicit appropriate information from the public."¹⁰

NEPA regulations nonetheless accord significant flexibility to agencies to involve "environmental agencies, applicants, and the public" in preparing EAs, specifying that they may be involved *to the extent practicable*. 40 C.F.R. § 1501.4(b). Where BLM has engaged in some type of public process and an appellant alleges that public notice and comment procedures were inadequate, this Board will scrutinize that process on a case-by-case basis to determine its adequacy. *Lynn Canal*

¹⁰ Part 1506 of 40 C.F.R., which is entitled "Other Requirements of NEPA," includes 40 C.F.R. § 1506.6, which is entitled "Public Involvement." Under 40 C.F.R. § 1506.6(a), Federal agencies are directed to make diligent efforts to involve the public in "implementing their NEPA procedures."

Conservation, Inc., 169 IBLA 1, 7 (2006), *clarifying Lynn Canal Conservation, Inc.*, 167 IBLA 136 (2005).

In this case, the agencies conducted environmental scoping from February 18 to April 3, 2003, for COARNG's proposal to expand the training program. EA at 1-24, Appendix 1, A-1 to A-2. A week prior to the February scoping meeting, notices of the meeting were published in five local newspapers. *Id.* at A-2. Eight persons attended the meeting held in Eagle on February 18, and a total of 35 comments were received during the scoping process. *Id.* at A-4. Public notice of the Draft EA's release was printed in the local newspapers. FONSI/DR at 2. Copies of the Draft EA and proposed FONSI were mailed to agencies and interested members of the public and were otherwise made available to the public at 17 local public libraries from October 19 through December 23, 2005. FONSI/DR at 2; Final EA at ES-1 to ES-2. A public information meeting on the Draft EA was held on November 10, 2005, in Eagle. *Id.* Four members of the public attended. Twenty-four written comments on the Draft EA were received during the public review period. Final EA at ES-1 to ES-2. The Final EA was made available for public review. Two comments were received on the Final EA and proposed FONSI. *Id.* Thus, it is clear that COARNG, BLM, and FS made extensive efforts to involve the public during the NEPA process.

Phillips nevertheless argues that procedures leading up to issuance of the FONSI/DR were "highly irregular" and did not follow NEPA rules for public notice and comment because, *inter alia*, participants' comments were either ignored or misrepresented by BLM in the EA. Phillips SOR at 2-3. However, we see nothing in the record upon which to find that BLM was not responsive to Phillips' efforts to participate in the environmental review process. The EA lists, at Table 2-9, public scoping comments by subject, and the section in the EA where those comments are addressed. *See* EA at 2-52 to 2-53. Appendix F of the EA, entitled "Issues and Responses on the Draft EA," lists by subject public comments made pertaining to the Draft EA, and responds to each comment. The Draft and Final EAs respond by subject to comments Phillips and others made during scoping and after the Draft EA was released. *Compare* Letters of Thomas Phillips dated Mar. 28, 2004 ("Scoping Comments . . ."), and Dec. 28, 2005, "HAATS EA Comments," found in the Final EA at Appendix A, *with* Final EA at Table 2-9 and Appendix F.

The record demonstrates that BLM met its obligation to provide meaningful public participation in the environmental review process. That BLM chose to consolidate and address comments by subject matter is no basis for a finding that comments were not considered.

2. *The EA included a reasonable range of alternatives.*

[5] BLM is required by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), to consider “appropriate alternatives” to a proposed action, as well as their environmental consequences. See 40 C.F.R. §§ 1501.2(c) and 1508.9(b); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972); *Santa Fe Northwest Information Council, Inc.*, 174 IBLA at 116, and cases cited. Appropriate alternatives are those that are reasonable alternatives to the proposed action, will accomplish its intended purpose, are technically and economically feasible, and yet have a lesser or no impact. 40 C.F.R. § 1500.2(e); 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981); *Headwaters, Inc. v. BLM*, 914 F.2d at 1180-81; *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d at 834; *Biodiversity Conservation Alliance*, 174 IBLA 1, 24-25 (2008); *Santa Fe Northwest Information Council, Inc.*, 174 IBLA at 116. This ensures that the BLM decisionmaker “has before him and takes into proper account all possible approaches to a particular project.” *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971). As the Board recently stated, “[t]o show a failure to consider sufficient alternatives, an appellant must posit an alternative that would meet the test described above.” *Biodiversity Conservation Alliance*, 174 IBLA at 25.

Phillips contends that the EA did not consider an adequate range of alternatives, and that the agencies dismissed “a broader range of reasonable alternatives . . . without serious consideration.” Phillips SOR at 4. However, as the following summation of the EA’s alternatives analysis makes clear, the agencies considered a number of the suggestions made during public scoping, but rejected them because they failed to satisfy the purposes and needs of the training program.

The EA systematically evaluated, in three phases, several alternative locations in terms of whether they offered the topography and expanse necessary to fulfill COARNG’s purpose and need to efficiently conduct realistic high-altitude aviation training. EA at 2-27.

In the first phase, COARNG considered DOD lands in the western United States to see if they contained a suitable range of elevations and compatible airspace. It identified 66 DOD training ranges in the western states from Washington to New Mexico, but none of those training ranges met the purpose and need of the training “due to their lack of high-altitude, mountainous terrain” with sufficient density and variation to provide satisfactory training conditions. EA at 2-28.

In the second phase of examining possible alternatives, COARNG considered whether the training program could be moved to another high altitude site on public lands. To identify possible alternative high altitude sites, COARNG used the

Geographic Information System to apply five training criteria “to conduct a screening analysis of public lands in the western states.”¹¹ EA at 2-30. Only two areas met all five criteria: (1) two locations in California’s Sierra Nevada Mountains, and (2) the “central mountainous portion of Colorado.” COARNG rejected the areas in the Sierras because they contained “only 519,000 acres combined, far less than that associated with the COARNG HAATS site,” and, moreover, over 40 percent of that area conflicted with military training routes. EA at 2-31. Thus, the search narrowed to the Colorado mountains. *Id.*

COARNG then considered whether another airport within the same range as the Eagle County Regional Airport would offer more environmentally suitable training areas. EA at 2-31 to 2-33. Out of six potential airports, only one, the Aspen-Pitkin County Airport, met “the criteria to lie within an area that contains terrain and altitude variation covering more than 50 percent within a 50 NM diameter circle,” while possessing no commercial or technological limitations that would be detrimental to the training program. *Id.* at 2-33. However, COARNG ruled out the Aspen-Pitkin airport because it was poorly situated *vis-a-vis* an available area of suitable terrain. *Id.*

In the third phase of alternatives review, COARNG considered whether citizen-proposed wilderness (CPW) areas and areas considered eligible for wild and scenic rivers could be eliminated from training areas. The EA rejected two alternatives related to CPW areas: (1) removing all FS-proposed wilderness from training areas (*see* EA at 2-38 to 2-42); or (2) eliminating all CPW areas, including BLM-managed land within the wild and scenic river proposal for Deep Creek. *See* EA at 2-42 to 2-45. The EA reports that the CPW at Deep Creek would encompass almost 21,000 acres surrounding Deep Creek, and states that elimination of that acreage would “preclude use of nearly 57 percent of the FLAs” and “just over 11 percent” of OSLAs in the Flat Tops training area, “most of which comprise unique sites.” *Id.* at 2-43. COARNG determined that no other locations outside of Flat Tops “offer FLAs and OSLAs with identical characteristics; . . . so, if eliminated, they could not be replaced.” The EA concluded that, collectively, the elimination of CPW areas “would not fulfill the

¹¹ The criteria (1) excluded consideration of Congressionally designated wilderness areas, wild and scenic rivers, wildlife refuges, and National Park Service units; (2) required a full range of geographical features of rugged terrain between 6,500 to 14,000 feet MSL as well as substantial altitude variation; (3) excluded areas that did not manifest “terrain and altitude variation covering more than 50 percent within a 50 NM [Nautical Mile] diameter circle”; (4) provided opportunity for exposure to a variety of challenges during a single sortie; and (5) was free of “low-altitude special use airspace used by fast-moving military jets,” also known as “military training routes.” EA at 2-30. COARNG deemed all five criteria essential.

training needs for COARNG-HAATS,” and therefore the proposal could “not be considered a reasonable alternative warranting future analysis.” *Id.*; see also Table 2-4, “COARNG-HAATS Training Areas, FLAs and OSLAs Affected by Citizen-Proposed Wilderness.”

We find that the record describes in detail why BLM rejected the proposed alternatives. We cannot find that appellants have carried their burden to demonstrate that their preferred alternatives would accomplish the intended purpose of the proposed action, are technically and economically feasible, and yet have a lesser or no impact. *Biodiversity Conservation Alliance*, 174 IBLA at 24-25; *Santa Fe Northwest Information Council, Inc.*, 174 IBLA at 116.

3. *The EA adequately addresses potentially significant environmental impacts.*

A review of the EA belies appellants’ assertions that the agencies failed to address the environmental impacts of continuing the HAATS program at current levels. Chapter 3, entitled “Affected Environment,” provides a detailed analysis of the areas and resources affected by the proposed alternative and the no action alternative. The objective of the EA was to focus “on those resources that would be affected by increased flying hours and increased use of training areas for flight operations, as well as landings and take-offs within the unique high-altitude environment.” EA at 3-1. Chapter 4, entitled “Environmental Consequences,” engages in an extensive impacts analysis related to, *inter alia*, noise, air quality, recreation, and visual resources. Chapter 4 further defines the consequences by means of an overlay of the project elements described in Chapter 2 onto the affected environment provided in Chapter 3. “A comprehensive matrix comparing the no-action alternative and the proposed action by resource and potential impacts is summarized in Chapter 6.” EA at 4-1.

Appellants are most concerned about the noise impacts of the HAATS training program. The EA provides an extensive analysis of those impacts, beginning with a general explanation of how sound is measured, including sound generated by aircraft, and reporting results from studies measuring how populations and individuals are impacted by flight noise, including individual overflights in sparsely populated areas. EA at 3-6 - 3-8. It then discusses noise specific to the Eagle County Regional Airport, as documented by a 2002 noise study undertaken to insure compliance with Federal Aviation Administration (FAA) regulations (EA at 3-10 to 3-11); and describes properties specific to helicopter noise, as opposed to noise created by other types of aircraft. EA at 3-13. It lists sound exposure levels (SELs)¹² for each type of helicopter

¹² SEL measures “variations in air pressure” to arrive at the “total acoustic energy of an event.” EA at 3-6. SEL “accounts for the maximum sound level and the duration of the sound,” measured in “A-weighted” decibels. A-weighted decibels “characterize
(continued...) ”

used at COARNG-HAATS, by model number, distance, and speed. See EA at 3-13, Table 3.3-4, “SELS for COARNG-HAATS Helicopters.” The EA analyzes the environment affected by noise from the training program at sections 3.3 and 4.3. See also EA at 3-15.

The environmental consequences of implementing the proposed action and the no action alternative are described at Section 4.3.2 of the EA. That discussion emphasizes four points. First, design criteria (also set forth in the FONSI/DR at 4-5) would attenuate noise impacts in wilderness areas, congested areas, and campgrounds, and would restrict the use FLAs and flight hours in Deep Creek and other sensitive areas. EA at 4-6. Second, while visitors to designated wilderness areas near several of the training areas expect solitude and primitive conditions, and many “react negatively to hearing aircraft or helicopter noise” (EA at 4-7), the following factors would ameliorate noise impacts to insignificant levels: “dispersal, over time, of sorties across the 444,000 acres of training areas”; “variations in the use of FLAs and OSLAs in response to weather, training requirements, and safety”; “no use of fixed routes or flight corridors”; and “adherence to flight restrictions and design criteria, as well as the overall training program,” in which HAATS does not fly “one-third of the days each year.” EA at 4-8 to 4-9. Third, the likelihood of being “overflowed” would vary “on a day-to-day basis, depending upon training needs, weather, and trainee experience,” and the need for “variation and realism in training would continue to foster dispersal of flights and minimization of noise levels over any one point.” In addition, “required awareness of the situation ensures that . . . aircrew avoid persons on the ground.” EA at 4-9. And fourth, noise from the flight operations and landings “would remain transitory, and not affect the underlying lands in any permanent way.” EA at 4-9.

Our review confirms that, with respect to the noise and other impacts of overflights, take-offs, and landings on, *inter alia*, visual resources, socio-economic resources, wildlife, and geological and vegetative resources, the EA provides the required “hard look” at the potential impacts, and makes a convincing case that either no significant impacts will result, or that impacts will be reduced to insignificance by required mitigation measures. See EA at 3-25 to 3-72, 3-76 to 3-78; 4-13 to 4-39, and 4-41 to 4-42.

¹² (...continued)

sound levels that the human ear responds to especially well by emphasizing the mid-frequencies and de-emphasizing the low and high frequencies.” “Sound levels are on a logarithmic decibel scale; a sound level 10 dB higher will be perceived as twice as loud.” *Id.*

4. *Flight Training in the Deep Creek SRMA Complies with NEPA.*

That conclusion applies to the more specific arguments advanced by appellants regarding COARNG's helicopter training activity in the Deep Creek SRMA. Deep Creek Canyon is described as a "narrow steep-walled canyon that contains geological, ecological, and scenic resources of high value." Glenwood Springs RMP at 70; *see also* EA at 1-27 (Conformance with [Management] Plans). The HAATS EA acknowledges that the Glenwood Springs RMP prohibits motorized activity within the Deep Creek SRMA. EA at 3 to 47. But Deep Creek, which lies at the eastern end of the large Flat Tops training area, also provides training opportunities for COARNG-HAATS that are unique and cannot be duplicated,¹³ as the following description of the Flat Tops training area illustrates:

As the largest and most diverse of the 11, Flat Tops represents the premier training area, offering a unique set of terrain and topographic attributes. As its name suggests, this area contains large tracts of relatively flat land, allowing winds to reach maximum speed. Uninterrupted by significant topographic relief, the wind enters the canyons such as Deep Creek and Grizzly Creek from their open ends as well as cascading over their rims like a waterfall. This benefits training since the collision of these currents with the vertical walls of the canyons and with each other creates violent turbulence and wind zones requiring aircrews to identify and negotiate them. . . . The steep walls of Deep Creek offer incredible visual challenges and wind problems as trainees attempt to land on pinnacles and ridges jutting from the canyon sides or in confined areas in the bottom of the drainage. This particular portion of the Flat Tops cannot be duplicated in other areas available for training in the region. Due to its large size, Flat Tops can accommodate four helicopters training simultaneously.

EA at 2-13; *see also* EA at 2-15 (Fig. 2-7).

In evaluating possible alternatives for the COARNG-HAATS location, the EA concluded that the existing locations "offer[] immediate access to training areas, flexibility in sortie completion, and realism." EA at 2-36. The EA considered the overlap of the training location with FS-recommended wilderness areas and BLM WSAs and, as for the latter, stated: "Although BLM WSAs lie near some training areas, no overlaps exist and they affect no FLAs or OSLAs. As such, they do not influence the

¹³ According to Table 1-4 of the EA, the Flat Tops training area contains 23 FLAs, which are described as "represent[ing] the hallmark areas, which provide the best results on a repeatable basis for the majority of students." EA at 1-23.

screening analysis. COARNG-HAATS may fly over these lands, but it would not conduct any landings on them.” *Id.*

We interpret the FONSI/DR to mean that *all* FLAs and OSLAs within the Deep Creek SRMA on BLM land have been eliminated. *See* EA at 5. Moreover, BLM’s FONSI/DR imposes conditions of approval on other facets of training activity in the Deep Creek area. Flyover hours are limited to 500 annually, the amount permitted under the existing plan. FONSI/DR at 4-5, “Conditions of Approval.” COARNG-HAATS will avoid campgrounds by “a radius of 0.5 miles horizontally (slant range); within that area, “COARNG-HAATS will not conduct overflights below 500 feet.” *Id.* In addition, with respect to noise and visual intrusion impacts from HAATS in the Deep Creek SRMA, the EA states that “there would not be an increase” because use under the existing plan “would not increase above baseline levels.” EA at 4-23. It states that there would be no impacts “during seasonal training avoidance periods . . . , which extend from mid-March through late-July in some areas, and from May through June in aspen groves, when at least half of summer recreation use is most likely to occur.” *Id.*

In general, the EA’s conclusion that noise generated by helicopter training flights over a 1.1-million-acre expanse of land is a short-term impact with no lasting environmental effects is a reasonable one. More specifically, the record demonstrates that BLM has eliminated or restricted, to the extent practicable, COARNG’s training activity on land it administers in the Deep Creek area.

B. The HAATS Program Is Consistent with the Glenwood Springs RMP.

[6] Finally, we reject appellants’ argument that BLM’s FONSI/DR violates FLPMA on the basis that continued helicopter training, even at current levels, does not conform to the Glenwood Springs RMP. Appellants are concerned primarily with impacts in the Deep Creek area. The Board recently set forth the following standards that govern whether a BLM action conforms to applicable land use planning documents:

Section 202(a) of FLPMA, 43 U.S.C. § 1712(a) (2000), directs the Secretary of the Interior to “develop, maintain, and, when appropriate, revise land use plans,” which govern in part the use of the public lands, and section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000) requires him to manage public lands “in accordance with” such land use plans. *See Forest Guardians*, 168 IBLA 323, 328 (2006). BLM’s implementing regulations also require all resource management authorizations and actions to conform to the approved land use plan. 43 C.F.R. § 1610.5-3(a). The regulations define “conformity or conformance” as meaning “that a resource management

action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.” 43 C.F.R. § 1601.0-5(b); *Great Basin Mine Watch*, 159 IBLA 324, 340 (2003).

Tom Van Sant, 174 IBLA 78, 91 (2008).

BLM’s FONSI/DR reflects an awareness of Deep Creek’s designation in the Glenwood Springs RMP as both ACEC and SRMA. Our previous discussion of the restrictions imposed on the HAATS training program shows that BLM conditioned COARNG’s activity in the Deep Creek area so as to comply with the Glenwood Springs RMP. We conclude that BLM’s decision conforms with that planning document.

IV. CONCLUSION

We conclude that appellants have failed to carry their burden to show that BLM’s decision to implement the no action alternative, analyzed in the Final EA, is deficient under NEPA or FLPMA. Our conclusion applies to the COARNG-HAATS training program in general, and to the Deep Creek SRMA specifically.

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

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge