



RICK BADGLEY

186 IBLA 253

Decided October 21, 2015



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

RICK BADGLEY

IBLA 2014-33

Decided October 21, 2015

Appeal from a Decision Record of the Field Manager, Bakersfield (California) Field Office, Bureau of Land Management, approving acquisition of private lands and construction of related infrastructure for public access purposes. DOI-BLM-CA-C060-2013-0199-EA.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Generally--Federal Land Policy and Management Act of 1976: Acquisitions

Under section 205 of FLPMA, 43 U.S.C. § 1715 (2012), a decision to acquire private lands is discretionary and will be affirmed where the record shows the decision is supported by a rational and defensible basis that is set forth in the decision, and appellants have not shown error in the decision.

2. National Environmental Policy Act of 1969:  
Generally--National Environmental Policy Act of 1969:  
Environmental Assessments

The Board is guided by a “rule of reason” in assessing an EA’s adequacy, and an appellant seeking to overcome a decision based on an EA carries the ultimate burden of demonstrating, with objective evidence, that BLM failed to consider an environmental question of significance.

3. National Environmental Policy Act of 1969:  
Generally--National Environmental Policy Act of 1969:  
Environmental Assessments

In challenging reliance on agency technical experts, an appellant must demonstrate, by a preponderance of the evidence, error in the data, methodology, analysis, or conclusion of the agency experts. A mere difference of opinion will not suffice to show that BLM failed to fully comprehend the nature, magnitude, or scope of the likely impacts.

APPEARANCES: Rick Badgley, *pro se*; Janell M. Bogue, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE SOSIN

Rick Badgley (Appellant) has appealed from an August 29, 2013, Decision Record (DR) of the Field Manager, Bakersfield Field Office, Central California District, Bureau of Land Management (BLM), approving the acquisition of approximately 59 acres of private land, part of the “Craig Ranch,” and construction of related infrastructure, in central California. The DR and an August 9, 2013, Finding of No Significant Impact (FONSI) were based on an August 2013 Environmental Assessment (EA) (DOI-BLM-CA-C060-2013-0199-EA), which BLM prepared pursuant to the Council on Environmental Quality and Department of the Interior regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4375 (2012). *See* 43 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46.

As explained below, because Appellant has failed to establish any error in BLM’s analysis or that BLM’s decision is not supported by the record, we affirm the August 2013 DR.

#### *Background*

Starting in May of 2013, BLM notified the public of its intent to consider acquiring approximately 59 acres of private land situated in sec. 17, T. 17 S., R. 29 E., Mount Diablo Meridian, Tulare County, California, pursuant to section 205 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1715 (2012).<sup>1</sup> The tract of private land, part of the “Craig Ranch,” is located adjacent to BLM-administered public lands at Case Mountain, and within the Case Mountain Area of

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<sup>1</sup> BLM convened a public workshop on May 29, 2013; published news releases on June 7, 2013, and June 26, 2013; distributed public scoping materials in July 2013; and held a public information meeting on July 9, 2013.

Critical Environmental Concern (ACEC), designated by the governing land use plan, the 1997 Caliente Resource Management Plan (RMP). The ACEC is situated south-southeast of the community of Three Rivers, California, and is approximately three miles west of Sequoia National Park. It encompasses a total of 18,530 acres of public land that is valuable for geologic, wildlife, cultural, and recreational resources, and contains the only population of giant sequoia trees on public lands managed by BLM. As BLM explained in the EA and DR, however, “[a]lthough this wealth of resources and opportunities exist the area is largely unknown due to the challenges of access.” EA at 7; DR at 1.

The limited access to the area is a result of “the topography of the region and surrounding private property.” EA at 7. While there are three routes permitting access, including motorized access, for authorized and permitted users, only one of these routes (Skyline Drive) can be used by the public to enter Case Mountain. *Id.* That route is a public access easement that is a 1,200-foot long old roadbed (graded, but not paved) and that begins at the terminus of Skyline Drive. *Id.* As the EA states: “All public access [a]long this easement and into public lands has historically been non-motorized (e.g., equestrian, pedestrian and mountain bikes) and controlled by locked gates at both the terminus of Skyline Drive and at the boundary of the public lands.” *Id.* Because the route has long had locked gates at either end, and access has generally occurred by pedestrian and other non-motorized means, recreational users have parked their motorized vehicles along Skyline Drive, near its existing terminus, at times trespassing on private land, and creating traffic, safety, and other conflicts with individuals and vehicles. *Id.* at 7-8.

BLM therefore proposed the acquisition of the 59-acre tract of private land that encompasses the public easement for Skyline Drive, as well as an administrative easement for Craig Ranch Road that also provides access to the ACEC off of State Highway 198. The proposed acquisition would “provide safe, suitable public access for recreational use of the Case Mountain area while reducing the impacts of such access on authorized uses and activities, nearby residential areas, and ensuring the continued protection and enhancement of the Area of Critical Environmental Concern’s (ACEC) relevant and important values identified in the Caliente Resource Management Plan (RMP), approved [in] 1997.” EA at 10; DR at 2. In addition to the acquisition, and in order to facilitate public access and resolve existing resource conflicts, BLM also proposed the construction of new parking facilities and other infrastructure on the newly-acquired private lands along Skyline Drive and Craig Ranch Road, subject to the availability of funding. EA at 17; DR at 2-3. The proposed parking area at Skyline Drive would accommodate up to 10 vehicles (not trailers), while the proposed parking area at Craig Ranch Road would accommodate up to 10 vehicles and 5 vehicles with trailers. *Id.* In addition, for both Skyline Drive and Craig Ranch Road, BLM proposed constructing gates to restrict motorized access to the ACEC to authorized users while continuing to allow non-motorized access by members of the public. *Id.* BLM further

proposed, among other things, working with the County to install no parking signs along the segment of Skyline Drive that has historically been used for parking by members of the public, and working with residents along Craig Ranch Road to install no parking and 15 mile-per-hour speed limit signs. EA at 18; DR at 4.

BLM addressed the likely environmental impacts of the proposed acquisition and infrastructure development in its August 2013 EA. The EA considered five alternatives: (1) Alternative A – no action; (2) Alternative B – no acquisition, but construction of a parking facility on public lands along Skyline Drive; (3) Alternative C – acquisition and construction of infrastructure, including a turn-around along Skyline Drive and a 25-vehicle and trailer parking area along Craig Ranch Road; (4) Alternative D (BLM’s preferred alternative) – acquisition and construction of infrastructure, including a 10-vehicle parking area along Skyline Drive and a 15-vehicle and trailer parking area along Craig Ranch Road; and (5) Alternative E – acquisition but no infrastructure. See generally EA at 13-20, 38-53. In the August 2013 DR, BLM approved Alternative D.

Badgley timely appealed.

#### *Discussion*

Section 205 of FLPMA authorizes BLM, as the delegate of the Secretary of the Interior, to acquire, by purchase, exchange, donation, or eminent domain, private lands, provided that acquisition is “consistent with the mission of the department . . . and applicable departmental land-use plans.” 43 U.S.C. § 1715(b) (2012). Such acquired lands shall, upon the acceptance of title, “become public lands.” 43 U.S.C. § 1715(c) (2012).

[1] A BLM decision to acquire private lands pursuant to section 205 of FLPMA that is consistent with the Department’s mission and applicable land use plans is otherwise left to the discretion of the agency. Cf. *Bristlecone Alliance*, 179 IBLA 51, 57 (2010) (BLM decision to sell public land, pursuant to section 203 of FLPMA, 43 U.S.C. § 1713 (2012), is matter of discretion). A BLM decision made in the exercise of its discretionary authority “must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious.” *Continental Land Resources*, 162 IBLA 1, 7 (2004) (citing *Echo Bay Resort*, 151 IBLA 277, 281 (1999)). The burden is on 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. *Echo Bay Resort*, 151 IBLA at 281; *Wiley F. Beaux*, 171 IBLA 58, 66 (2007). This burden is not satisfied simply by

expressions of disagreement with BLM's analysis or conclusions. See, e.g., *Cascadia Wildlands*, 184 IBLA 385, 407 (2014); *Oregon Natural Desert Association*, 176 IBLA 371, 380 (2009); *Tom Cox*, 142 IBLA 256, 258 (1998).

Appellant raises three arguments in his appeal, as set forth in his single-page Statement of Reasons (SOR): (1) BLM improperly rejected Alternative B, which would have provided for construction of a parking lot on existing public lands along Skyline Drive, just inside the current public/private boundary; (2) BLM failed to adequately consider the detrimental impacts of increasing traffic on Craig Ranch Road by opening the road to public use; and (3) BLM failed to adequately notify the public of issuance of the DR. We will address each in turn.

#### *BLM Did Not Improperly Reject Alternative B*

Appellant argues that BLM erred by rejecting Alternative B, which BLM added to the EA after Appellant suggested it during the May 2013 public hearing. According to Appellant, BLM rejected the alternative because the BLM engineer concluded that the alternative was not feasible, even though Appellant states in his SOR that he has “been a builder in the area for 40 years, know[s] the land described, [and] totally disagree[s] with the engineer.”

[2] Although Appellant does not allege that BLM violated any law in its rejection of Alternative B, we construe Appellant's argument as a failure to adequately consider alternatives under NEPA. As we have explained, NEPA requires that an agency make an informed decision, but it does not require any particular result. See, e.g., *Bear River Development Corporation*, 157 IBLA 37, 49 (2002) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”); *National Wildlife Federation*, 150 IBLA 385, 396 (1999); *Wyoming Audubon*, 151 IBLA 42, 51 (1999); *Missouri Coalition for the Environment*, 124 IBLA 211, 223 (1992). To comply with NEPA, an EA must consider the impacts of a proposed action and alternatives to that action. See 40 C.F.R. § 1508.9(b) (an EA “shall include [a] brief discussion[] . . . of alternatives”); 43 C.F.R. § 46.310(a)(4) (an EA “must include brief discussions of . . . [t]he environmental impacts of the alternatives considered”); see also *Birch Creek Ranch*, 184 IBLA 307, 323 (2014). In assessing the adequacy of an EA, we are guided by a “rule of reason.” *Southern Utah Wilderness Alliance*, 185 IBLA 150, 156 (2014); *Peter J. Mehringer*, 177 IBLA 152, 166 (2009); *Shasta Coalition for the Preservation of Land*, 172 IBLA 333, 343 (2007). This means that an appellant seeking to overcome a decision based on an EA carries the burden of demonstrating, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action. *Birch Creek Ranch*, 184 IBLA at 317.

Here, BLM identified the need for the proposed action as “to resolve unsafe and problematic parking and public access situation occurring at the terminus of Skyline Drive.” DR at 2; EA at 10. After considering the environmental impacts of the various alternatives, including Alternative B,<sup>2</sup> BLM determined that Alternative D was the best choice to “address[] the long standing parking and access issues on Skyline Drive in an equitable fashion by providing a small amount of parking at Skyline Drive and a larger parking area suitable for trailers at Craig Ranch Road.” DR at 6; *see also* EA at 49 (“The provision of delineated parking areas at Craig Ranch Road and Skyline Drive would resolve access and parking issues”). In the DR, BLM acknowledged Appellant’s endorsement of Alternative B, which would have resulted in the construction of a parking area on existing public lands along Skyline Drive, including Appellant’s suggestion that the alternative should be modified to enlarge the parking area to accommodate horse trailers. DR at 11. BLM explained, however, that “[t]he size of this parking area is dictated both by the topography of the site and the long standing management concern for traffic and safety issues.” *Id.*; *see also* BLM Response to Public Scoping Comments at Response 8-1 (“The location of this proposed parking area [under Alternative B] was surveyed by the BLM engineer and [he] determined that a larger parking configuration was not feasible.”).

Appellant complains that BLM improperly rejected Alternative B, but offers nothing more than his contrary opinion regarding the feasibility of the alternative, based on his experience as a “builder . . . for 40 years” and familiarity with the land. While Appellant alludes in his SOR to the “complaints” of neighbors, and states that construction of Alternative B “would have ended the complaints,” he does not explain the nature of, or basis for, the complaints; nor does he provide any evidence that BLM failed to adequately consider any such complaints. In fact, the record amply demonstrates that BLM considered public input in reaching its decision, including acknowledging “complaints from residents” about parking along Skyline Drive. DR at 11.

[3] Appellant has provided no support for his assertion that BLM improperly rejected Alternative B. Nor does he offer any evidence that the parking provided by Alternative D will be inadequate to satisfy the parking needs of members of the public accessing the ACEC. He has therefore failed to meet his burden to show that BLM’s analysis was in error or that BLM’s decision is not supported by the record. In

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<sup>2</sup> The EA assessed the potential environmental impacts of Alternative B on various resources. *See* EA at 39 (air, soil, and water), 41 (ACEC), 42 (biological resources), 45 (cultural resources), 46 (Native American values), 47 (livestock grazing), 48 (recreation and visitor services), 50 (travel and transportation management), 52 (social environment), 53 (cumulative impacts).

addition, Appellant's contrary opinion about the feasibility of constructing a larger parking area is insufficient to overcome the opinion of BLM's experts, concerning a matter within the realm of their expertise, which is reasonable and supported by record evidence. See, e.g., *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 238 (1998), and cases cited; *Cascadia Wildlands*, 184 IBLA at 410 ("The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.") (quoting *Southern Utah Wilderness Alliance*, 152 IBLA 216, 224 (2000)); *Powder River Basin Resource Council*, 180 IBLA 1, 13 (2010) ("The fact that the appellant has a differing opinion about likely environmental impacts or prefers that BLM take another course of action does not show that BLM violated the procedural requirements of NEPA.") (citing *San Juan Citizens Alliance*, 129 IBLA 1, 14 (1994)).<sup>3</sup>

*BLM Adequately Considered the Impacts of Increased Traffic on the Private Residences Along Craig Ranch Road*

Appellant's second argument is that BLM failed to adequately consider the detrimental impacts that would result from opening Craig Ranch Road to public use. In his SOR, Appellant states that the increased traffic that would result from providing "full public access" to the ACEC will adversely impact Appellant and the other residents who live off of Craig Ranch Road: "Instead of zero to 5 cars going up and down the road, change that to 40-50 or more round trips." Appellant further states that such an increase in traffic will diminish the property values of residents who live off of the road.

Again, although Appellant does not allege that BLM violated any law, we construe the argument that BLM failed to consider the impacts of increased traffic as a failure to comply with NEPA. And just as with his first argument, we find that Appellant has not met his burden to show any error in BLM's analysis or decision.

In the EA, BLM considered the likely impacts to the private residents along Craig Ranch Road from opening it to public use. The EA noted that, while actual numbers are unknown, BLM estimates that between 8-15 vehicles currently park along Skyline Drive each day, and another 5-10 vehicles a day are unable to find suitable parking

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<sup>3</sup> In his SOR, Appellant also implies that BLM's rejection of Alternative B was flawed because "the cost of Alternative B would be far cheaper than Alternative D." Appellant, however, provides no basis for this assertion, even though BLM explained, in responding to Appellant's comments during the public scoping process, "that due to the amount of earthwork needed in Alternative B costs would be similar between the development alternatives." BLM Response to Public Scoping Comments at Response 8-2. In any event, neither NEPA nor FLPMA requires BLM to choose the least costly alternative.

along the road. EA at 34, 35. The EA determined that the two parking areas that would be constructed under the selected alternative, Alternative D, would allow for a higher level of visitation and would result in an increase of approximately 19 vehicles per day. *Id.* at 49, 51, 52. The EA concluded, however, that the impacts to residents from the increase in traffic “would be negligible,” since “most of the existing residences are further removed from the road, front on Salt Creek, and have vegetative screening.” *Id.* at 52. In the DR, BLM specifically acknowledged the concerns of residents along Craig Ranch Road:

It is acknowledged that this decision has been reached in light of specific and localized concerns expressed by residents along Craig Ranch Road who would be directly impacted by increased traffic passing their properties. The BLM analysis, however, finds that these impacts would be minimal based on the proximity of the homes to the road, the presence of vegetative screening, and the relatively minor increase in overall traffic anticipated as a result of this decision. . . . After considering the potential impacts to residents along Craig Ranch Road[,] . . . the resolution of parking issues and the overall benefits to recreational users overshadow the minimal disturbance to the atmosphere of the community along Craig Ranch Road.

DR at 6-7.

Appellant does not provide any evidence substantiating his bare assertion that implementation of Alternative D will result in “40-50 or more round trips” on Craig Ranch Road. Nor has he otherwise shown any error in BLM’s estimates.

Appellant makes a similarly unsupported argument with respect to the impacts of increased traffic on property values, stating only in his SOR that changing Craig Ranch Road from a private road to full public access “will reduce property values for the current residents.” Appellant does not provide any evidence supporting his position or any basis for showing error in BLM’s conclusion that Alternative D was likely to have either “negligible [adverse] impacts on property values” or beneficial impacts, by increasing property values from 10% to 20%, depending on the extent of recreational use in, and proximity of the private property to, the open space or park. DR at 11.<sup>4</sup> Rather, the DR shows that BLM acknowledged the concerns raised by

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<sup>4</sup> In support of its conclusion, BLM cited a 2001 article, “The Impact of Parks on Property Values: A Review of the Empirical Evidence,” which reviewed studies concerning the effects of open spaces and parks on nearby private property values. DR at 11. The article, by John L. Crompton and published by the National Recreation and Park Association in its *Journal of Leisure Research*, may be found at

(...continued)

private property owners along Craig Ranch Road, but concluded that the adverse effects would be minimal and outweighed by Alternative D's resolution of parking issues and benefits to recreational users. *See id.* at 6-7.

Appellant has therefore not met his burden to show an error in BLM's analysis or that BLM's decision is not supported by the record. Appellant's mere disagreement with BLM's findings related to the impacts increased traffic will have on the private property owners along Craig Ranch Road, without any supporting evidence, is insufficient to overcome the opinion of BLM's experts. *See, e.g., West Cow Creek Permittees*, 142 IBLA at 238; *Powder River Basin Resource Council*, 180 IBLA at 13.

*BLM Was Not Required to Publish the DR in a Local Newspaper*

Appellant's final argument is that BLM erred by failing to notify the public when it issued the DR. He states in his SOR that because BLM provided no notice in a local newspaper, "a broader public will not be informed of the decision until after it is too late to appeal if they wanted to." Appellant, however, points to no law requiring such notice. Nor could he, since neither NEPA nor its implementing regulations, at 40 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46, require that agencies publish notice of a DR in the *Federal Register*, a newspaper of general circulation in the area of the proposed action, or elsewhere. What the regulations require is that an agency preparing an EA provide for public notification and involvement, to the extent practicable. 40 C.F.R. § 1501.4(b); 43 C.F.R. § 46.305(a). This is what BLM did.

BLM provided for significant public involvement in its decision making process for the acquisition of a portion of the Craig Ranch. At key points in the process, BLM notified the public through news release, publication in a local newspaper, and letters to individual members of the public who expressed an interest in the issues. *See* DR at 8; EA at 54-55. In addition, BLM provided the EA to those who attended the public information meeting, and provided a 2-week public review and comment period. DR at 8; EA at 56. BLM also provided the DR to those who commented on the EA, and posted the DR on the agency's public website. *See Answer* at 7.

Appellant has failed to demonstrate that, given BLM's extensive efforts to involve the public, members of the public were not adequately informed regarding BLM's decision making process. Nor does he establish that the failure to publish notice of issuance of the DR in a local newspaper or otherwise violated any law.

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[http://www.actrees.org/files/Research/parks\\_on\\_property\\_values.pdf](http://www.actrees.org/files/Research/parks_on_property_values.pdf) (last visited Oct. 9, 2015). Although Appellant states that this article is "irrelevant," he provides no information that undermines its analysis or conclusions.

*Conclusion*

We therefore conclude that Appellant has failed to meet his burden to show that BLM's decision to approve the acquisition of a portion of the Craig Ranch and construction of related infrastructure violates NEPA or any other Federal law, or is not supported by the record.

Accordingly, 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/  
Amy B. Sosin  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
Christina S. Kalavritinos  
Administrative Judge