To: stephanie_brady@fws.gov[stephanie_brady@fws.gov]; john_trawicki@fws.gov[john_trawicki@fws.gov]; todd_hopkins@fws.gov[todd_hopkins@fws.gov]
Cc: wendy_loya@fws.gov[wendy_loya@fws.gov]; Mitch Ellis[mitch_ellis@fws.gov]
From: Socheata Lor
Sent: 2018-06-16T11:52:03-04:00
Importance: Normal
Subject: Fwd: Air Quality and Visual & Noise whitepapers
Received: 2018-06-16T11:52:20-04:00
ATT00001.htm
Visual Resources and Noise_AKLNG-6020-REG-YPW-DOC-00006.pdf
FLAG AQRV_Rev0A_1-17-18.pdf
ATT00002.htm

Stephanie,
Stephanie,

I see in the string that you were working with Melissa on this. Can you connect with Wendy and provide any insight you might have?

Sent from my iPhone

Begin forwarded message:

From: "Colligan, Mary" <mary_colligan@fws.gov>
Date: June 15, 2018 at 7:46:44 PM AKDT
To: Socheata Lor <socheata_lor@fws.gov>, Mitch Ellis <mitch_ellis@fws.gov>
Subject: Fwd: Air Quality and Visual & Noise whitepapers

This is what I was referring to in my other e-mail.
---------- Forwarded message ----------
From: **Colligan, Mary** <mary_colligan@fws.gov>
Date: Fri, Feb 16, 2018 at 10:24 AM
Subject: Fwd: Air Quality and Visual & Noise whitepapers
To: Socheata Lor <socheata_lor@fws.gov>
Cc: Melissa Burns <melissa_burns@fws.gov>

Soch - We were just provided these documents and Greg has a briefing with Steve Wackowski on Tuesday. My first question was whether we (FES) had provided air quality or noise comments on this project and I am still trying to figure that out. In the meantime we received these documents which seem like their question is a larger one and one that is more appropriate for Refuges to address. Can you help?
---------- Forwarded message ----------
From: **Johnson, Philip** <philip_johnson@ios.doi.gov>
Date: Fri, Feb 16, 2018 at 7:49 AM
Subject: Fwd: Air Quality and Visual & Noise whitepapers
To: Herbert Frost <bert_frost@nps.gov>, Greg Siekaniec <greg_siekaniec@fws.gov>, Karen Mouritsen <kmourits@blm.gov>

Cc: "Cooper, Debora" <Debora_Cooper@nps.gov>, Brooke Merrell <Brooke_Merrell@nps.gov>, Mary Colligan <mary_colligan@fws.gov>, Melissa Burns <melissa_burns@fws.gov>, Ted Murphy <t75murph@blm.gov>, Serena Sweet <ssweet@blm.gov>, Grace Cochon <grace_cochon@ios.doi.gov>

Mr. Wackowski just provided a copy of the second attachment, on Federal Land Managers and air quality issues. In the interest of time, I am taking the liberty of copying some additional bureau managers and staff who may need to see this as soon as possible, in preparation for the 2:00 pm meeting on Tuesday, February 20.

Philip Johnson
Regional Environmental Officer - Alaska
U.S. Department of the Interior
1689 C Street, Suite 119
Anchorage, Alaska 99501-5126

907-271-5011 (Work Phone)
907-227-3783 (Work Cell)
907-271-5930 (Fax)

philip_johnson@ios.doi.gov

---------- Forwarded message ----------
From: **Wackowski, Stephen** <stephen_wackowski@ios.doi.gov>
Date: Fri, Feb 16, 2018 at 7:17 AM
Subject: Fwd: Air Quality and Visual & Noise whitepapers
To: "Johnson, Philip" <philip_johnson@ios.doi.gov>

here is the other attachment.

Steve Wackowski
Senior Adviser for Alaskan Affairs
Department of the Interior
4230 University Drive, Suite 300
Anchorage, AK 99508
907-271-5485

---------- Forwarded message ----------
From: **Ed Fogels** <EFogels@agdc.us>
Date: Tue, Feb 13, 2018 at 6:11 PM
Subject: Air Quality and Visual & Noise whitepapers

To: "Wackowski, Stephen" <stephen_wackowski@ios.doi.gov>

Steve—at our meeting last week, I also said I would send you the two whitepapers we developed: 1) Federal Land Manager's overreach on air permitting, and 2) our issues with federal agency comments on noise and visual impacts.

Ed

Ed Fogels | Environmental , Regulatory, and Lands Manager | Alaska Gasline Development Corporation | **T** (907) 330-6359 | **C** (907) 830-9107 | efogels@agdc.us

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Mary Colligan
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January 17, 2018

Redirect Overreach in Air Quality Regulation by Federal Land Managers

SUMMARY

The Clean Air Act gives authority to federal land management agencies (U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and U.S. Forest Service) to apply stringent air quality oversight to protect certain important federal lands, referred to as Class I areas. The Act defines other federal lands as Class II areas, which are not subject to the same oversight by these federal agencies. However, Federal Land Managers (FLMs) representing the aforementioned agencies developed guidance documents (FLAG 2010[1]; USDA, USDOI, and USEPA 2011[2]) that allowed them to apply stringent Class I oversight to Class II areas at their own discretion on a case-by-case basis, and to re-define certain federal lands as "Sensitive Class II areas" without any statutory basis for this designation. The FLMs have used the unauthorized designations of "Sensitive Class II areas" to obtain greater leverage in the National Environmental Policy Act (NEPA) process and in air permitting, requiring multiple unnecessary analyses and recommending expensive mitigation measures that exceed those required by the Clean Air Act. FLMs have also leveraged their opportunity as commenters during the NEPA and air permitting processes to demand consultation and submit adverse comments on the record when projects do not fully comply with FLM policies. In essence, the FLMs have substituted opinion for regulation, and in doing so have established a *de facto* regulatory program that unlawfully applies Class I regulation to many Class II areas of Alaska. This unwarranted oversight threatens to inflate project costs and delay timely NEPA action on the Alaska LNG Project, an important energy infrastructure project critical to providing access to affordable, low emission energy in Alaska that will also produce meaningful benefit to correcting the current United States trade deficit. The policies described herein introduce unnecessary delay and risk to the project and are in opposition to the Clean Air Act, and EO 13807 / DOI order 3355 relating to *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.* The inappropriate FLM action also undermines the intent of Secretarial Orders No. 3352, 3354 and 3359.

ACTION REQUESTED

The Alaska LNG Project requests that the Department of Interior (DOI) perform a critical review of FLM policies and comments on the Alaska LNG Project and determine whether FLMs are acting within legal boundaries regarding requirements for Class II areas, as well as following

[1] FLAG. 2010. Federal Land Managers' Air Quality Related Values Workgroup (FLAG). Phase I Report. December. U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service. Available online at: https://www.nature.nps.gov/air/Pubs/pdf/flag/FlagFinal.pdf

[2] USDA, USDOI, and USEPA. 2011. Memorandum of Understanding among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, regarding air quality analyses and mitigation for federal oil and gas decisions through the National Environmental Policy Act process. Available online at: https://www.epa.gov/sites/production/files/2014-08/documents/air-quality-analyses-mou-2011.pdf

current DOI Secretary guidance. The Project requests that measures be taken by DOI to ensure that NEPA and Clean Air Act processes based on FLM policies are consistent with federal law. Portions of FLM guidance documents and FLM comments to FERC regarding Class II areas for Alaska LNG that are inconsistent with federal law should be redacted. Specifically:

1. Rescind footnote 1 from a Federal Land Managers' Air Quality Related Values Work Group (FLAG) publication (FLAG 2010), which establishes the FLMs' policy to treat Class II areas with the same AQRV oversight as Class I areas.
2. Discontinue any FLM policies requiring analysis of AQRVs at any Class II areas during the NEPA process.
3. Terminate the 2011 Oil and Gas MOU among USDA, USDOI, and USEPA. (USDA, USDOI, and USEPA 2011)
4. Rescind the comments on Alaska LNG Resource Report 9 issued by the National Park Service Air Resources Division dated 12/22/17.
5. Align EPA and FLM methods, analysis, and mitigation on air quality issues during the NEPA process with Clean Air Act requirements consistent with the intent of 40 CFR 52.21(s).

1. WHAT IS ALASKA LNG?

The Alaska LNG Project is an important energy infrastructure project that is critical for delivering affordable, low emission, energy in Alaska and is a means of correcting the U.S. trade imbalance with Pacific Rim countries. The Project consists of an 807-mile-long pipeline, a gas treatment facility on Alaska's North Slope, and a liquefaction facility at the southern end of the route near tidewater. The Alaska LNG Project is committed to upholding air regulations appropriately established under state and federal law.

2. WHAT ARE CLASS I AND CLASS II AREAS?

The Clean Air Act (Act) establishes a hierarchy of three area designations and the statutory protections afforded to those area types.

- Class I areas - Class I areas are recognized as special and are provided the highest level of protections.
- Class II areas - Class II areas are those not designated as Class I; they are by default, Class II areas. These are still subject to most of the rigorous protections of the Clean Air Act.
- Class III areas – Class III areas have lower protections, but no Class III areas exist in the U.S.

The Clean Air Act allows the U.S. Environmental Protection Agency (U.S. EPA) to give permitting and regulatory primacy to states, and in Alaska this authority has been delegated to the Alaska Department of Environmental Conservation (ADEC). The Act also gives authority to federal land management agencies (US Fish and Wildlife Service, National Park Service, Bureau of Land Management, and US Forest Service) to apply stringent air quality oversight to protect certain important federal lands, described above as Class I areas. Pursuant to the Clean Air Act, the other federal lands proximal to the project are classified as Class II areas.

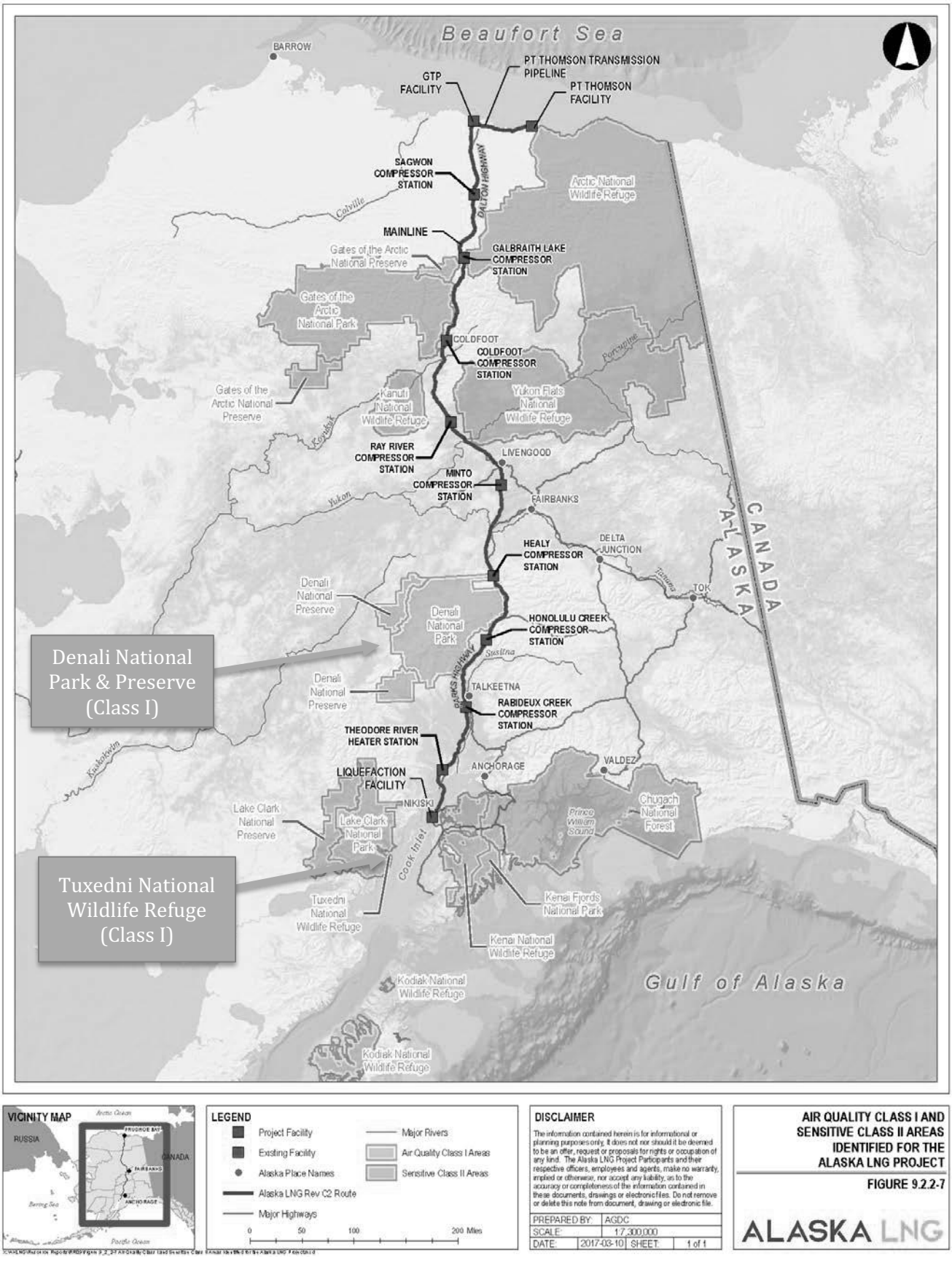
3. WHICH CLASS I AND CLASS II AREAS ARE PROXIMAL TO ALASKA LNG?

In Alaska, there are two Class I areas proximal to the Alaska LNG Project boundaries (i.e., within 300km): Denali National Park and Preserve, and Tuxedni National Wildlife Refuge (Figure 1). All other lands proximal to the Alaska LNG Project are Class II areas and should not be subject to this same oversight by these federal agencies.

4. WHAT IS THE STATUTORY BASIS FOR ESTABLISHING OR CHANGING A FEDERAL LAND DESIGNATION?

The statutory basis for establishing or changing a federal land designation is found in Section 164 of the Clean Air Act (42 U.S.C. 7474), which limits that power to states and federally recognized tribes only. The Clean Air Act does not provide rulemaking authority to FLMs, although FLMs may make recommendations (in consultation with states) to reclassify areas. To the knowledge of the Alaska LNG Project, this has not yet happened in Alaska.

Figure 1. Class I and Class II Areas within 300km of the Proposed Alaska LNG Project



5. FEDERAL LAND MANAGER OVERREACH

The FLMs in Alaska are authorized to apply stringent Air Quality Related Value (AQRV) oversight to Class I areas pursuant to Section 165 of the Clean Air Act (42 U.S.C. 7475) and U.S. EPA Prevention of Significant Deterioration (PSD) regulations in 40 CFR 52.21(p). However, through policy and guidance documents (e.g., FLAG 2010 – footnote 1; USDA, USDOI, USEPA 2011) FLMs have sought to extend a similar, stringent oversight to Class II areas under their management jurisdiction, without appropriate statutory authority.

The FLMs representing DOI agencies helped to develop the above-referenced guidance documents that are today being used to apply stringent Class I oversight to Class II areas at the discretion of the agencies on a case-by-case basis and to re-define certain federal lands as "Sensitive Class II areas" without a statutory basis for such a designation. In essence, the FLMs have substituted opinion for regulation, establishing a *de facto* regulatory program that requires Class I oversight for Class II areas of Alaska. Even more significantly, this "policy & guidance" from the FLMs for AQRVs[3] in Class II areas circumvents the requirement of Section 164 of the Clean Air Act (42 U.S.C. 7474), which grants the power to change Class designations of areas only to states and federally recognized tribes. In order to camouflage this serious regulatory overreach, the FLMs defend their action as not final agency action which should not be subject to standard judicial review. Table 1 provides a summary of the *de facto* regulatory program created by FLMs since AQRV analysis was authorized by Congress in the Clean Air Act Amendments of 1977.

The FLMs have inappropriately inserted "Sensitive Class II areas" into the federal environmental review processes via the National Environmental Policy Act (NEPA) and air permitting consultation processes. For instance, the EPA Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21 contain statutorily supported requirements for air permit issuing agencies (i.e., ADEC) to notify and consult with FLMs regarding potential adverse impacts to Air Quality Related Values (AQRVs) where there is the potential for impacts to **federal Class I areas**. However, as part of the Alaska LNG FERC application, NPS and USFWS have requested ADEC consult with them for "**Sensitive Class II areas**" as part of the air permitting process, which is unprecedented. Also, as part of a Request For Information on the Alaska Gasline Development Corporation's (AGDC's) Alaska LNG Project application, FERC required AGDC to consult with FLMs on AQRVs on Class I **and Sensitive Class II** AQRVs.

AGDC met with the FLMs in Fall 2017 to discuss AQRV issues associated with Alaska LNG, at which time USFWS and NPS provided the most comments. The NPS then provided several unsolicited adverse comments to FERC on the docket following these meetings, several of which pertained to Class II areas.

[3] Sec 169A of the Act (42 U.S.C. 7491) – "Visibility protection for Federal class I areas"- is the statutory basis for AQRVs.

Table 1. Protection of Air Quality Related Values *De Facto* Regulatory Program Created Subsequent to Clean Air Act Amendments of 1977

	Original AQRV Intent	*De Facto* FLM AQRV Regulatory Program
Statutory Authority:	Clean Air Act (1977)	Loosely based on various Park/Refuge Organic Acts
AQRV Protected Areas:	Class I Areas defined by Congress or redesignated by States or Tribes	"Sensitive" Class II Areas determined by FLMs case-by-case
Parks/Refuges Relevant to Alaska LNG:	2 Class I Areas	2 Class I + 11 Sensitive Class II Areas
Regulatory Structure:	EPA/ADEC regulations under CAA authority adopted pursuant to the APA process	"FLAG 2010" guidance issued by FLMs; MOU among EPA, USDA, and USDOI (2011); no APA-compliant process; subsequent precedent evolution
Implementation:	PSD and minor source permitting implemented by ADEC following EPA regulations; generally consistent implementation across the US	NEPA process implemented by Lead Agency considering FLM review and negotiation (often as cooperating agencies); inconsistent implementation even within the same geography
Regulatory Structure Stability:	Changes subject to APA; stable regulations	Evolutionary AQRV impact assessment; difficult to understand current FLM expectations for analytical methods and to agree on interpretation of results
Timeframe and Predictability:	Typically 6-18 months depending on complexity; predictable outcomes	Typically 2-5 years depending on negotiations; difficult to predict outcomes

5.1 FLM POLICY STATES THAT THE SAME PRINCIPLES REGULATING CLASS I AREAS SHOULD BE APPLIED TO CLASS II AREAS

The FLAG was established to develop a more consistent approach for FLMs to evaluate effects of air pollution (FLAG 2000). However, the FLAG has (subtly) stated through a footnote in a policy & guidance document that the same principles for Class I should be applied to Class II areas (FLAG 2010). This document is almost entirely about Class I areas; however, footnote 1 communicates the FLMs' position and internal policy on Class II area regulation, which is inconsistent with federal law.

5.2 A DESIGNATION OF "SENSITIVE" CLASS II AREAS HAS INCREASED THE REGULATORY BURDEN ON ALASKA LNG SUBSTANTIALLY

"Sensitive Class II areas" were created and defined by FLMs during the previous administration in a policy document known as the *Oil & Gas MOU* (USDA, USDOI, and EPA 2011 – cited above). Sensitive Class II areas were defined in this document as being "identified by the affected Agency on a case-by-case basis". The MOU defined the authoring agencies' position on what air quality analyses and mitigation decisions should be required under the NEPA process for oil and gas projects on federal lands. AGDC is concerned that this guidance could be applied to activities on other lands, including state lands, and that the Alaska LNG Project does not fall

within the stated scope of the MOU since the Project is not involved in "onshore oil and gas planning, leasing or field development, including exploration, development and production", as those stated activities would already be occurring upstream of the Project.

FLMs subsequently designated eleven Class II parcels in Alaska as "Sensitive Class II areas".

- USFWS FLMs designated as Sensitive Class II areas every Refuge within 300 km of the Project footprint (7 additional areas).
- USFS FLMs designated as a Sensitive Class 2 area the only National Forest within 300 km of the Project footprint (1 additional area).
- NPS FLMs designated as Sensitive Class 2 Areas Gates of the Arctic, Lake Clark, and Kenai Fjords National Parks (3 additional areas).

The effect of inclusion of Sensitive Class II areas into the application was an increase in the burden of AQRV analyses by more than six times what would be required for Class I (i.e., Alaska LNG was advised to analyze a cumulative total of 13 Class I and Sensitive Class II areas, rather than just the two Class I areas). These analyses became part of the Alaska LNG FERC application[4] on April 17, 2017. In pre-filing and in post-application meetings, FLMs also recommended expensive and unnecessary controls as mitigation for Alaska LNG that go beyond the Clean Air Act's requirement for Best Available Control Technology (BACT) for the proximal areas.

FERC, the lead federal agency overseeing the NEPA process for Alaska LNG, was not a signatory to the MOU that defined Sensitive Class II areas. In fact, FERC staff initially acknowledged to the Alaska LNG Project that the application of AQRVs to sensitive Class II areas had not been a part of other NEPA processes they oversaw; there was an initial reluctance by FERC to expand its NEPA analysis to Sensitive Class II areas. However, FERC's EIS will be scored by the USEPA, which was a signatory of the 2011 Oil and Gas MOU (referenced above), along with USDA and USDOI. This may be why, along with the potential for adverse FLM comment on the DEIS, FERC later counseled the Alaska LNG Project in 2015 to do what was necessary to appease the FLMs.

Alaska LNG noted that a regulatory basis for the designation and significance of Sensitive Class II Areas was lacking, and that the policy basis for this designation was unclear. Nonetheless, following guidance from FERC, the Project team[5] in 2015 and 2016 consulted with FLMs regarding a Class I and Sensitive Class II AQRV analysis approach and then carried out those recommended analyses in 3Q 2016.

5.3 FLM COMMENTS ON ALASKA LNG EMISSIONS

FLMs became aware of the Project's NEPA AQRV analyses on October 3, 2017 when the Project hosted a mini-workshop to provide a summary of the results of analyses and for FLM interpretation of potential environmental impacts. The Project requested that the FLMs provide their preliminary comments on impacts by October 26, 2017 to enable a Project response to a FERC information request. The Project initiated two additional follow-up call-in meetings with FLMs on November 3 and November 14, 2017 to facilitate discussion and comment on the scale of potential environmental impacts. The majority of comments in these meetings came from USFWS and NPS staff.

[4] Application filed under Section 3 of the Natural Gas Act

[5] Alaska LNG Joint Venture (JV) group

In early December, the Project responded to the FERC information request absent any interpretation received from the FLMs. NPS delivered 32 comments to the Project and also delivered these comments (unsolicited) to FERC on December 22, 2017. None of the comments offered by NPS addressed the request to provide interpretations related to potential environmental impacts. Comments were generally adverse regarding fine-grained methodology details, and insisted that the analysis needed to be redone; additional comments to FERC stated that the underlying FERC document, 'Resource Report 9' (which the FLMs previously had reviewed and commented on in the years leading up to filing) needed to be rewritten. Several of the comments were unrelated to AQRVs, such as the insistent comment regarding what emissions FLMs believe the control technology should be applied, even though Best Available Control Technology (BACT) is determined by the Permitting Agency (ADEC), not the FLMs. The Project is in the process of preparing responses to these "preliminary" NPS comments. It is not clear if or when additional comments will be sent to the Project or to FERC by the NPS, or other FLMs, such as USFWS.

5.3.1 FLMs Want Exorbitantly Expensive and Unnecessary Mitigation Controls

FLMs have made it clear to AGDC that they are interested in seeing additional mitigations (i.e., Selective Catalytic Reduction (SCR) NOx control) applied to project facilities that exist far away from Class I areas (see Figure 1), leveraging case-by-case NEPA requirements related to Class II ARVs. SCR controls are inconsistent with Project design and the Project's detailed analysis using the EPA prescribed "top-down" Best Available Control Technology (BACT) process. The Project is more than prepared to take steps necessary to protect Class I AQRVs through the Clean Air Act permitting process.

During the earliest consultations regarding AQRV analysis approach, the FLMs were vocal about design of facilities, particularly NOx control, and stated the Project should not bring forward any facilities that did not include SCR as the base case NOx control. SCR would not be required for any Project facility based on analysis of the BACT or New Source Performance Standards provisions of the Clean Air Act. BACT would be determined by ADEC (the permitting agency) based on the strength of the Project's analysis that is part of air permit applications for the Project's major facilities.

A recent FERC information request[6] directed the Project to propose mitigations that reduce modeled impacts on Sensitive Class II areas to below FLAG screening thresholds or obtain approval from FLMs for modeled impacts above FLAG screening thresholds. FLAG screening thresholds (a.k.a. DATs and VETs) are not intended as standards of acceptable impacts for NEPA or Clean Air Act permitting, and to date FLMs have not been willing to engage on the degree of environmental impact.

5.4 FEDERAL AGENCIES HAVE PRESSED ADEC FOR CONSULTATION RIGHTS

In a recent response to the required Clean Air Act Class I notification to FLMs by ADEC, the FLMs have pressed ADEC for consultation rights over Sensitive Class II areas during permitting. ADEC declined to provide Sensitive Class II area consultation rights as inconsistent with Clean Air Act requirements, and FLMs indicated their intent to provide comment (presumably adverse) during

[6] RFI-466-RR09-007 and -008

public comment periods for draft permits. Although the Project believes it made a very detailed and comprehensive AQRV analysis of impacts for the 13 Class I and Sensitive Class II areas, recent (12/22/17) comments by NPS insist that this analysis does not conform to their case-by-case requirements, and that additional analysis is required.

5.5 FLAG POLICY AND GUIDANCE SUBTLY ASSERTS AN AUTHORITY NOT GIVEN IN STATUTE

The FLAG published a final "Phase I Report" regarding AQRVs in 2000 (FLAG 2000)[7] and a "Phase I Report-Revised" in 2010 (FLAG 2010 – referenced above). The purpose of FLAG "policy & guidance" stated in FLAG 2010 is centered around Class I areas:

> *The purpose of FLAG is twofold: (1) to develop a more consistent and objective approach for the FLMs to evaluate air pollution effects on public AQRVs in **Class I areas**, including a process to identify those resources and any potential adverse impacts, and (2) to provide State permitting authorities and potential permit applicants consistency on how to assess the impacts of new and existing sources on AQRVs in **Class I areas**, especially in the review of Prevention of Significant Deterioration (PSD) of air quality permit applications. Under the Clean Air Act, the FLM formal "affirmative responsibility" role in the permitting process is limited to the extent a proposed new or modified source may affect AQRVs in a **Class I area**.[1]* (emphasis added)

However, footnote 1 to this FLAG 2010 purpose statement relays ambiguity of requirements for Class II areas, first evident in FLAG 2000:

> *Nevertheless, the FLMs are also concerned about resources in **Class II** parks and wilderness areas because they have other mandates to protect those areas as well. **The information and procedures outlined in this document are generally applicable to evaluating the effect of new or modified sources on the AQRVs in both Class I and Class II areas,** including the evaluation of effects as part of Environmental Assessments and/or Environmental Impact Statements under the National Environmental Policy Act (NEPA). However, FLAG does not preclude more refined or regional analyses being performed under NEPA or other programs.* (emphasis added)

Adverse public comment on the above footnote was provided to the FLMs, along with similar adverse comments from FLAG 2000, prompting the following comments from a FLAG 2010 'response to comments' document:

> *While the primarily focus of AQRV protection has been in Federal Class I air quality areas, **we are also responsible for protecting AQRVs in Class II areas**.*
>
> *In summary, Congress has given FLMs clear direction and several authorities—including but not limited to the CAA--to protect the areas they administer. Air pollution has the ability to significantly impact areas designated **either as Class I or Class II** under the CAA. Congress, in the CAA, recognized that federal agencies and departments have other statutes to comply with and specifically stated that the CAA shall not supersede or limit their authorities and responsibilities. It would be inconsistent with other federal law if FLMs did not consider and utilize other congressional authority to prevent air pollution impacts to all areas administered by their agencies, **including Class II areas**. Therefore, **it is proper and appropriate for FLMs to exercise their respective authorities in protecting Class II areas** from air pollution impacts.* (emphasis added)

Adverse public comment was also directed at both FLAG 2000 and FLAG 2010, in that the "Policy and guidance" provided in the FLAG documents had the same effect as regulation and was

[7] FLAG. 2000. Federal Land Managers' Air Quality Related Values Workgroup (FLAG). Phase I Report. December. U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service. https://www.nature.nps.gov/air/Pubs/pdf/flag/FlagFinal.pdf

contrary to the requirements of the Administrative Procedures Act (APA)[8]. The FLMs assert that they are exercising authorities under various statutes other than the Clean Air Act, but at the same time, by exercising those authorities they are not creating regulation. The FLMs don't specifically address in their response to APA adverse comments related to the action of extending Class I AQRV protections to Class II areas. It is unlikely APA would allow the development of regulations having that effect, which would contravene Sections 164(a) and (c) of the Clean Air Act. It seems even more unlikely APA would allow policy and guidance to contravene statute.

Although not directly related to the Alaska LNG Project, the March 2016 BOEM-proposed air quality regulations attempt to memorialize "Sensitive Class II areas" into regulation, further advancing the FLMs' agenda. While Congress provided DOI statutory authority for air quality rulemaking under section 5(a)(8) of the Outer Continental Shelf Act (OCSLA), that authority is limited to protecting National Ambient Air Quality Standards (NAAQS) and does not extend to AQRVs or PSD increment. The BOEM-proposed rule further dispels the notion that FLAG 2010 and related documents are just guidance not governed by the APA; FLMs seized on an opportunity to memorialize a "Sensitive Class II area" scheme in regulation, during the revision of another DOI entity's (BOEM's) air quality regulations. Adverse public comment was provided to the BOEM rulemaking which noted the limited statutory authority provided under OCSLA Sec 5(a)(8); a final BOEM air rule is pending.

6. CONCLUSIONS

A critical review of FLAG policy by DOI leadership is needed to determine whether FLMs are acting within Clean Air and Administrative Procedures Acts' boundaries regarding requirements for Class II areas. The Alaska LNG Project requests that measures be taken by DOI leadership (along with Agriculture / USFS) as appropriate to ensure that NEPA and Clean Air Act processes based on FLAG policy are consistent with federal law. Portions of FLAG guidance that establish a *de facto* regulatory program in Class II areas should be removed. Portions of FLM guidance documents and FLM comments to FERC regarding Class II areas on the Alaska LNG Project that are inconsistent with federal law should be rescinded.

In addition to this, and in consideration of EO 13807 and associated DOI order 3355 relating to *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, the Project further requests that the DOI establish FLAG guidance that is consistent with existing law, that minimizes "case-by-case" AQRV analysis requirements by relying on available information (i.e., existing AQRV monitoring), and that provides more objective criteria by which project-specific analyses are required. DOI should also determine from other NEPA actions best practices for participation by FLMs in NEPA reviews related to AQRVs. Specific actions to accomplish these goals are provided in "Action Requested" above.

[8] The lengthy response to APA comments from the FLAG 2010 Response to comments document available at: https://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_RtC_2010.pdf