



OREGON NATURAL DESERT ASSOCIATION, *ET AL.*

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Decided February 19, 2009

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United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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Arlington, VA 22203

OREGON NATURAL DESERT ASSOCIATION, *ET AL.*

IBLA 2008-59

Decided February 19, 2009

Appeal from a Finding of No Significant Impact and Decision Record of the Andrews and Three Rivers (Oregon) Resource Areas, Burns District Office, Bureau of Land Management, approving the Steens Mountain Travel Management Plan. OR-05-027-021.

Affirmed in part; reversed in part.

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

Section 112 of the Steens Act, 16 U.S.C. § 460nnn-22 (2000), prohibits the “off road” use of motorized or mechanized vehicles on Federal lands in the Steens Mountain Cooperative Management and Protection Area (CMPA). BLM’s designation of “Obscure Routes,” characterized as difficult or impossible to locate on the ground, as open to motorized or mechanized use, amounts to allowing “off road” use of the CMPA, contrary to the Steens Act.

2. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

BLM violates the non-impairment standard of section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000), and the Interim Management Policy for Lands Under Wilderness Review, H-8550-1 (July 7, 1995), by providing for the motorized use of “Obscure Routes,” regardless of whether those routes are marked, since such use will likely impair the suitability of the wilderness study areas where they are located for designation as wilderness.

3. Federal Land Policy and Management Act of 1976:
Wilderness--National Environmental Policy Act of 1969:
Environmental Statements--Wilderness Act

BLM is required by section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), to take a hard look at the potential environmental impacts of a proposed Federal action and alternatives thereto, and, in order to justify a Finding of No Significant Impact, make a convincing case either that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. An assertion that BLM failed to take a hard look at the impacts of its proposed action on nonmotorized values and uses in the Steens Mountain Cooperative Management and Protection Area will be rejected where the record shows that BLM in fact adequately considered those impacts.

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

Under NEPA, Federal agencies are required to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, explore and objectively evaluate all reasonable alternatives, and for alternatives eliminated from detailed study, briefly discuss the reasons for their elimination. The requirement to discuss alternatives is subject to a construction of reasonableness, and alternatives that would not satisfy the purposes of the proposed action need not be further discussed. BLM is not required to assess, in an EA considering the environmental impacts of a travel management plan for the Steens Mountain Cooperative Management and Protection Area, an alternative providing for nonmotorized travel in the CMPA, since the purpose of the EA is to consider the environmental impacts of further defining the motorized vehicle route network within the CMPA, and to provide guidance on maintenance, improvement, and accessibility of these routes.

APPEARANCES: Peter M. Lacy, Esq., and Kristin F. Ruether, Esq., Portland, Oregon, for appellants; Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

The Oregon Natural Desert Association (ONDA), The Wilderness Society, American Hiking Society, Oregon Chapter of the Sierra Club, and Oregon Wild (collectively, appellants) have appealed from a joint November 28, 2007, Finding of No Significant Impact and Decision Record/Final Decision (FONSI/DR or Decision) of the Field Managers of the Andrews and Three Rivers (Oregon) Resource Areas (RAs), Burns District Office (DO) , Bureau of Land Management (BLM), approving the Steens Mountain Travel Management Plan (TMP). Appellants argue that adoption of the TMP violates section 112 of the Steens Mountain Cooperative Management Protection Act of 2000 (the Steens Act), 16 U.S.C. § 460nnn-22 (2006); section 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1703(c) (2000); and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000).

I. BACKGROUND

On October 30, 2000, Congress enacted the Steens Act, 16 U.S.C. § 460nnn to 460nnn-122 (2006), creating the Steens Mountain Cooperative Management and Protection Area (CMPA) in order “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.”¹ 16 U.S.C. § 460nnn-12(a). The CMPA, which is under the administrative jurisdiction of BLM,² is a high desert area ranging from aspen and juniper woodlands to sagebrush shrublands and grasslands, punctuated by perennial and intermittent streams, springs, and riparian areas. The CMPA encompasses nearly one-half million

¹ The Steens Act also created the 170,084-acre Steens Mountain Wilderness Area, included 29 miles in the National Wild and Scenic Rivers System, withdrew 1.1 million acres of public land from mining and geothermal development, established the Wildlands Juniper Management Area, and designated the Redband Trout Reserve. BLM had previously designated about 3,700 acres of public land in the CMPA as part of several Wilderness Study Areas (WSAs), pursuant to section 603 of FLPMA, 43 U.S.C. § 1782 (2000). Section 204 of the Steens Act, 16 U.S.C. § 460nnn-64 (2006), provides that most WSAs retain their WSA status, and continue to be subject to the non-impairment mandate of section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000). ONDA has also recommended that an additional 77,600 acres of public land in that CMPA be considered for designation as wilderness.

² Since the CMPA straddles a BLM jurisdictional boundary, administrative jurisdiction over the CMPA falls to both the Andrews and Three Rivers RAs.

acres of public, State, and private land (428,156 acres, 1,070 acres, and 66,910 acres, respectively) in the northern Great Basin in southeastern Oregon. The centerpiece of the CMPA is Steens Mountain, a nearly 10,000-foot high mountain that is designated for conservation, protection, and restoration under the National Landscape Conservation System.

Section 112 of the Steens Act, 16 U.S.C. § 460nnn-22 (2006), places substantial restrictions on the use of motorized and mechanized vehicles on Federal lands in the CMPA, prohibiting their use off-road and limiting their use to designated existing roads and trails, with certain exceptions. 16 U.S.C. § 460nnn-22(b) (2006). Construction of new roads or trails for motorized or mechanized vehicles is prohibited, unless the Secretary determines that the road or trail is necessary for public safety or protection of the environment. 16 U.S.C. § 460nnn-22(d)(1) (2006). Constructing or maintaining trails for nonmotorized or non-mechanized travel is not, however, prohibited. 16 U.S.C. § 460nnn-22(d)(2) (2006).

BLM was directed by the Steens Act to prepare “a comprehensive plan for the long-range protection and management of the Federal lands included in the [CMPA].” 16 U.S.C. § 460nnn-21(b) (2006). Such plan was to “describe the appropriate uses and management of the [CMPA],” and “incorporate, as appropriate, decisions contained in any current or future management or activity plan for the [CMPA] and use information developed in previous studies of the land within or adjacent to the [CMPA].” *Id.* Such plan was to be completed no later than October 30, 2004, and was to “include, as an integral part, a comprehensive transportation plan for the Federal lands included in the [CMPA], which shall address the maintenance, improvement, and closure of roads and trails as well as travel access.” 16 U.S.C. § 460nnn-22(a) (2006). To comply with the Steens Act directive, BLM began preparing two counterpart Resource Management Plans (RMPs).³ These two RMPs, the Andrews (or AMU) RMP and the Steens Mountain CMPA RMP, are collectively called the Andrews-Steens RMP. Pursuant to NEPA requirements, BLM released a Draft RMP/Environmental Impact Statement (EIS) in August 2004.

The Draft Andrews-Steens RMP included a Transportation Plan (TP) (Appendix M of the RMP), in accordance with the Steens Act, which generally provided guidance regarding the maintenance, improvement, use, and accessibility of roads and trails in the CMPA. The TP identified the need to conduct specific on-the-

³ The Burns District is divided into two RAs, the Andrews RA and the Three Rivers RA. The two RAs are further divided into land within the boundary of the Steens Mountain CMPA, and land within the Andrews RA but outside the CMPA boundary. The latter is called the Andrews Management Unit (AMU) and covers over 1,221,000 acres. The CMPA includes a total of 428,156 acres of public land within the Andrews RA and a portion of the Three Rivers RA in Harney County.

ground inventories, based upon which BLM would prepare a TMP, that would augment the TP and would further define the motor vehicle route/trail network within the CMPA. In sum, the TP stated that a further Environmental Assessment (EA) and related TP, “based on specific field inventories and need determinations of all other routes within the CMPA, will complete the comprehensive requirements of the Steens Act.” Appendix M at M-1.

ONDA protested the Proposed RMP and Final EIS, as allowed by 43 C.F.R. § 1610.5-2, and BLM denied the protest by letter dated June 10, 2005. On July 15, 2005, BLM issued an ROD adopting the final Andrews-Steens RMP. On February 22, 2006, ONDA filed suit in the U.S. District Court for the District of Oregon, alleging, *inter alia*, that in adopting the Andrews-Steens RMP, BLM had failed to adopt, as an integral part of the RMP, a comprehensive transportation plan as required by the Steens Act. *See ONDA v. Shuford*, No. 06-242-AA, Slip Copy, 2007 WL 1695162 (D. Or., June 8, 2007), discussed *infra*.

BLM’s preparation of the Steens Mountain TMP began with a January 2007 scoping notice. As a related matter, BLM completed EA OR-05-027-021, dated April 15, 2007, to consider the potential environmental impacts of the Proposed Action and various alternatives, including a no-action alternative.⁴ BLM grouped motorized routes into various categories defined by the nature and extent of existing use, as follows: Base Routes, Obscure Routes, Historical Routes, Private Landowner Access Routes, Permit Routes, All-Terrain Vehicle (ATV) Routes, and Special Use Permit Routes. *See EA at 12-13.* The Proposed Action involved leaving approximately 555 miles of Base Routes and most of the 36 miles of Obscure Routes open to public motorized travel. Of the Base Routes, 445 miles are considered primitive roads, and the remaining miles consist of the Steens Loop Road (55.7 miles), a main road, and 54 miles of secondary roads. *See id.* at 17.

On May 31, 2007, BLM issued a DR adopting the Proposed Action as set forth in the April 15, 2007, EA.

⁴ BLM considered Alternative A (Minimal Change), which would leave approximately 519 miles of Base Routes open to public motorized travel and close the 36 miles of Obscure Routes to public motorized travel. EA at 15. Alternative B (Maximize Use) would be similar to the Proposed Action, but would receive the minimum amount of work necessary to reestablish motorized vehicle passage in the case of most of the 36 miles of Obscure Routes. *Id.* at 16. Alternative C (Reduced Use), which was developed based on input from ONDA, would close 250 miles of Base Routes and all 36 miles of Obscure Routes to public motorized travel. *Id.*; *see* BLM Response at 9, 10; Appellants’ Notice of Factual Correction at 1-2. Alternative D was adopted as the Proposed Action, which is the “alternative most like the route network presently available in the CMPA.” EA at 17. BLM also briefly considered a no action alternative. *See id.* at 13.

On June 8, 2007, the District Court issued an Opinion and Order in *ONDA v. Shuford*, granting summary judgment on ONDA's Steens Act claim, *i.e.*, that the TP did not satisfy the Steens Act requirement to prepare a "comprehensive transportation plan" to address "the maintenance, improvement, and closure of roads and trails as well as travel access" within the CMPA. The District Court's rationale is set forth below:

Though BLM claims that its transportation plan "provides details on the various components of the transportation management system," it merely includes a goal, an objective, designation of certain known routes, a list of 35 "Best Management Practices," and a glossary of terms to guide management of transportation aspects over 496,000 acres of federal land. It does not include a comprehensive management system for travel over roads, ways, and trails. Further, the transportation plan itself provides that an additional Environmental Assessment and "Travel Management Plan" is required "to complete the comprehensive transportation plan" after further field inventories and need determinations are conducted.

ONDA v. Shuford, Slip Copy at 17. The Court found that the TP was not "comprehensive or integral under the ordinary meaning of those terms," and that "the Steens Act requires BLM to do more than simply describe the components or criteria of a future plan and defer development of the transportation plan to a later planning process." *Id.* at 17-18. "BLM's approach," stated the Court, "violates the express intent of Congress, as set forth in the Steens Act, that BLM complete a comprehensive transportation plan integral to the CMPA RMP by the statutory deadline." *Id.* at 18. Critical for our present review, the Court stated that because the TMP EA and FONSI were not final, having been issued on April 15, 2007, it would not address the question of whether the TMP would, together with the RMP and TP, satisfy the Steens Act. *Id.*

In response to the District Court's ruling on ONDA's Steens Act argument, BLM rescinded the TMP decision of May 31, 2007, and issued a new one on November 28, 2007.⁵ That November 2007 TMP decision is at issue in the present appeal before the Board. In the new DR, the Field Managers decided to adopt the Proposed Action, concluding that it conformed with the RMP and would serve the public interest by providing travel access into the CMPA for primitive camping, hunting, fishing, hiking, and other recreational activities. They decided to go forward with implementation of the TMP, noting that, given the closure of motorized travel routes in the wilderness

⁵ BLM initially issued a May 31, 2007, DR, approving the Proposed Action, but, following the District Court's June 8, 2007, opinion in *ONDA v. Shuford*, *supra*, finding that the RMP and Transportation Plan did not satisfy section 112(a) of the Steens Act, BLM rescinded the May 2007 DR on June 13, 2007.

area, many of the public comments favored keeping the remaining routes in the CMPA open to motorized travel. BLM agreed to keep them open because of the absence of conflicts between motorized and nonmotorized users and the fact that no significant resource damage was attributable to motorized travel. *See* DR at 16, 17. In the event that conflicts or adverse resource impacts should occur, BLM provided for changing the availability of routes. Response at 9, *citing* EA at 14 and DR at 4; *see* DR at 14, 15. The Field Managers also determined that implementation of the Proposed Action was not likely to significantly impact the human environment and that BLM was not required by section 102(2)(C) of NEPA to prepare an EIS.

The TMP issued by BLM was based upon an inventory, undertaken with input from ONDA and other members of the public, of existing motorized and nonmotorized travel routes in the CMPA. *See* EA at 11; DR at 1. The TMP “focused” on *motorized* travel in the CMPA, generally restricting such use to “previously established routes,” since “no cross-country vehicle travel is allowed within the CMPA[.]” DR at 4, 9. BLM noted that a full inventory of nonmotorized routes and decisions regarding their formal designation and management, as part of a comprehensive plan for managing recreation in the CMPA, would await preparation of a Comprehensive Recreation Plan (CRP). *See* EA at 2, 55-56; DR at 1, 3-4. However, the TMP provided for nonmotorized travel in the CMPA, noting that existing nonmotorized routes would remain available for continued use. DR at 4. BLM also provided that “BLM’s current management policy related to . . . [nonmotorized] trails . . . in the CMPA will remain in effect until completion of the [CRP].” EA at 2-3. BLM generally stated that “[i]mplementation of the decision [in the TMP] would not result in an appreciable change from current use of motorized and nonmotorized travel routes,” and, since circumstances “would not measurably deviate from current conditions,” it expected “no significant effect on recreational activities.” DR at 9.

Appellants filed a timely appeal from the Field Managers’ November 2007 DR, requesting the Board to stay the effect of the decision, and thus BLM’s approval of the Proposed Action, during the pendency of their appeal.⁶ They argued that they were likely to succeed on the merits of their appeal and that they satisfied the other criteria for a stay. They asserted that a stay was warranted since BLM was in the process of preparing maps for public distribution, delineating the motorized travel routes, as

⁶ Under 43 C.F.R. § 4.21(b)(1), a petition for a stay must show sufficient justification based on the relative harm to the parties if the stay is granted or denied; the likelihood of the appellant’s success on the merits; the likelihood of immediate and irreparable harm if the stay is not granted; and whether the public interest favors the granting of the stay. The party requesting the stay has the burden of showing that a stay is warranted by satisfying each of the criteria specified in the rule. 43 C.F.R. § 4.21(b)(2); *Wyoming Outdoor Council*, 156 IBLA 377, 383 (2002).

well as devising a visitor information strategy involving route signage, information kiosks, brochures, and “other tools to help familiarize the public with recreation opportunities on Steens Mountain.” Notice of Appeal, Statement of Reasons, and Petition for Stay (NA/Petition) at 26, *quoting* EA at 14. “Once this map is in circulation, the public will begin using the routes shown on the map as open to motorized vehicle use, even though there is serious doubt as to whether BLM has complied with the law[.]” Declaration of Bill Marlett, Senior Conservation Advisor, ONDA, dated Dec. 27, 2007 (Marlett Decl.) (attached to NA/Petition), ¶ 25, at 5.

Appellants presented four major claims under the Steens Act, *i.e.*, (1) that BLM violated section 112 of the Steens Act by limiting its decision to motorized transportation and by failing to address nonmotorized travel and recreation opportunities (NA/Petition at 8) and, as a related matter, that BLM violated section 102(2)(C) of NEPA by failing to consider reasonable alternatives in the form of nonmotorized travel routes in the CMPA (*id.* at 12); (2) that BLM’s designation of Obscure Routes as open to the use of motorized and mechanized vehicle use, particularly in the WSAs, violates section 12 of the Steens Act (*id.* at 14); (3) that BLM erred by failing to close three cherry-stemmed routes (Indian Creek, Cold Springs, and Fish Creek) in the Steens Mountain Wilderness Area (*id.* at 20); and (4) that BLM violated the Steens Act by leaving 555 miles of routes open to motorized and mechanized vehicles (*id.* at 24).

By order dated April 2, 2008, the Board granted in part and denied in part appellants’ petition for stay. The Board concluded that appellants had demonstrated a likelihood of success on the merits of their Claim 2, described above. However, the Board ruled that appellants had not shown a likelihood of success on the merits of their Claims 1, 3, and 4.

On July 30, 2008, appellants filed with the Board a pleading styled “Motion to Expand Stay Order” (Motion to Expand). Appellants base their Motion to Expand upon an order dated July 8, 2008, by the District Court in *ONDA v. Shuford*, and an opinion by the Ninth Circuit Court of Appeals in *ONDA v. BLM*, No. 05-35931, Slip Op. 8551, dated July 14, 2008. Appellants claim that their Motion to Expand “is warranted because ONDA is now likely to prevail on the merits of its Claims 1, 3, and 4, concerning BLM’s failure to address nonmotorized travel in the TMP and decision to leave open to motorized use all but 1 of the 555 miles of vehicle routes at issue in the TMP.” Motion to Expand at 2.

In reviewing appellants’ Motion to Expand, we have revisited our April 2, 2008, order granting in part and denying in part appellants’ petition for a stay, particularly as it relates to appellants’ showing of a likelihood of success on the merits of their appeal. As explained below, we remain in agreement with appellants’ Claim 2, *i.e.*, that BLM’s decision to designate as open to motorized travel nearly 36 miles of Obscure Routes violates the Steens Act. We further agree

with appellants that BLM's decision to open the 36 miles of Obscure Routes to motorized use also violates the non-impairment standard of section 603(c) of the FLPMA, 43 U.S.C. § 1782(c) (2000), and the Interim Management Policy for Lands Under Wilderness Review (IMP), H-8550-1 (July 7, 1995). However, we again reject Claims 1, 3, and 4. We find nothing in either the District Court's July 8, 2008, order in *ONDA v. Shuford*⁷ or in the Ninth Circuit's opinion in *ONDA v. BLM*⁸ to support their argument that they are likely to prevail on Claims 1, 3, and 4.

⁷ In this order, the District Court denied ONDA's petition for reconsideration of the Court's rejection of ONDA's claim that BLM's designation of wilderness areas violated NEPA and/or FLPMA. ONDA requested the District Court to vacate the TP to prevent BLM from achieving an "end run" around the Court's June 8, 2007, order by issuing the contested TMP. The District Court remanded the matter to BLM with instructions, though without vacatur. As framed by the District Court, ONDA premised its petition for reconsideration on the argument that the "TMP is legally flawed and that vacatur of the TP will necessarily render the TMP invalid, as the TMP incorporates and relies on information contained in the TP." Order at 8, *citing* Plaintiff's Opening Brief Regarding Declaratory and Injunctive Relief at 7.

The District Court stated that "whether the TMP is legally flawed is not the issue currently before the court; the issue is whether the TP must be vacated in order to remedy defendants' failure to complete a transportation plan as required by the Steens Act." Order at 8. The District Court ruled, in clear terms, that "whether the TMP violates the Steens Act, NEPA, and/or FLPMA are claims that must be raised in a separate proceeding," and that it would be "inappropriate for the court to make any findings as to whether the TMP adequately remedies the deficiencies in the TP." *Id.* at 9.

The matter currently before the Board involves whether the TP and TMP together constitute a comprehensive travel plan that complies with the Steens Act. The District Court expressly declined to address that question.

⁸ Appellants also argue that their Motion to Expand is warranted under the Ninth Circuit's decision in *ONDA v. BLM*, *supra*, which involved a challenge by ONDA to the 1995 Southeastern Oregon Management Plan (Southeast Oregon Plan) for the Andrews, Malheur, and Jordan RAs. See Notice of Availability of Proposed Southeast Oregon Plan and Final EIS, 66 Fed. Reg. 55,946 (Nov. 5, 2001). The Ninth Circuit ruled that the Southeast Oregon Plan and EIS violated NEPA, and remanded the Plan and the related EIS "to the district court with instructions to remand to the BLM for it to address in some manner, and to what extent wilderness values are now present in the planning area outside of existing WSA's and, if so, how the Plan should treat land with such values." Slip Op. at 8605. The Ninth Circuit further ruled that "BLM did not consider the impact of ORV designations on any lands with wilderness values in the planning area," Slip Op. at 8608, and concluded that on remand, "BLM must consider closures of significant portions of the land it

(continued...)

Accordingly, we proceed to decide this matter, as set out below, and deny appellants' Motion to Expand as moot.

II. ANALYSIS

As noted, the CMPA was created with the enactment of the Steens Act, 16 U.S.C. § 460nnn to 460nnn-122 (2006). BLM is required by section 112 of the Steens Act to prepare a comprehensive transportation plan for the CMPA, but the details are clearly left to BLM's discretion. Where a decision is committed to the sound discretion of BLM, acting within the limitations of its statutory authority, an appellant challenging the decision bears the ultimate burden to demonstrate an error of law or to establish, 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 that shows that BLM considered all relevant factors and acted on the basis of a rational connection between the facts found and the choice made," and, thus, acted in an arbitrary and capricious manner. *American Mustang & Burro Association, Inc.*, 144 IBLA 148, 150 (1998). That burden will "not [be] carried by mere expressions of disagreement with BLM's analysis and conclusions." *Id.*

A. *The TMP Meets the Requirements of Section 112 of the Steens Act*

1. *The TMP Adequately Addresses Nonmotorized Travel in the CMPA*

⁸ (...continued)

manages, including, if found appropriate on remand, lands with wilderness characteristics." Slip Op. at 8609.

Preparation of the Southeast Oregon Plan was initiated by the Vale and Burns Districts of BLM and initially included the Andrews RA. However, as a result of the subsequent passage of the Steens Act, the Burns DO deemed it appropriate to separate the Andrews RA from the Southeast Oregon Plan and to develop a separate plan in order to address changes in land management resulting from mandates of the Steens Act. The Steens-Andrews RMP provides the comprehensive framework for managing lands within the CMPA and the AMU, and, as previously noted, includes as Appendix M the TP the District Court found violated the Steens Act in *ONDA v. Shuford*. Thus, while the Ninth Circuit remanded the Southeast Oregon Plan for a consideration of closure of lands with wilderness characteristics, if appropriate, that Plan does not include the Andrews RA and does not involve the areas covered by the Steens-Andrews RMP. Thus, contrary to appellants' argument in its Motion to Expand, the Ninth Circuit's remand has no bearing on the Board's review of whether the TMP is deficient under the Steens Act, as argued in appellants' Motion to Expand.

As Claim 1, appellants argue that in deciding to approve the Proposed Action BLM violated section 112(a) of the Steens Act by limiting its decision to “motorized transportation,” and failing to address “non-motorized travel and recreation opportunities.”⁹ NA/Petition at 8. They state that such failure is directly contrary to the statutory directive to prepare “a ‘comprehensive’ transportation plan that addresses ‘roads and trails’ and ‘travel access[.]’” *Id.*, quoting 16 U.S.C. § 460nnn-22(a) (2006). Appellants argue that BLM’s failure to consider nonmotorized travel now may “exclude or, at a minimum, prejudice non-motorized use” in the future, since BLM will not be inclined to revisit its motorized travel route decision, and that, in any case, BLM will have made “irretrievable commitments to motorized travel on Steens Mountain without considering the needs and importance of non-motorized recreation use.” NA/Petition at 26.

BLM argues that it has, in fact, addressed nonmotorized travel in the CMPA: “Through the RMP Transportation Plan and the TMP Decision, BLM has detailed which routes in the CMPA remain available for motorized use and which are only available for nonmotorized use.” Response at 6. BLM explains that both motorized and nonmotorized travel routes were mapped, and that, by virtue of designating routes for motorized travel, BLM has effectively provided that “the remaining routes . . . are for nonmotorized use only.” *Id.*, citing EA at 55-56 and DR at 9; see DR at 1 (“The TMP maps include known nonmotorized trails”), 4 (“The decision map also shows many of the trails”). BLM notes that the 104 miles of routes that were closed to motorized travel are “available for hiking and horseback use.” Response at 6; see Appendix P to CMPA RMP at P-21. BLM also points out that motorized routes may be used for nonmotorized travel. *Id.*

BLM acknowledges that it had not fully inventoried nonmotorized travel routes in the CMPA at the time of issuing the TMP, focusing first “on a complete

⁹ Appellants also argue that BLM’s failure to consider nonmotorized travel in the CMPA violates its multiple-use management obligation under section 302(a) of FLPMA, to “balance competing resource values’ or uses” in determining whether motorized travel is in the public interest. NA/Petition at 10, quoting *National Wildlife Federation v. BLM*, 140 IBLA 85, 101 (1997). We conclude that BLM reasonably balanced the competing resource values at issue in connection with motorized transportation, and thus fulfilled the multiple-use mandate. As we said in *Friends of the Bow*, 139 IBLA 141, 143-44 (1997):

The thrust of the multiple-use mandate requires a choice of the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place fully on any given area of the public lands at any one time. Multiple use necessitates a trade-off between competing uses *Multiple-use management . . . does not dictate the choice or require that any one resource, or corresponding use, take precedence.* [Emphasis added.]

inventory of motorized routes.” Response at 7, *citing* DR at 1. It states that it will undertake “a detailed inventory of nonmotorized trails” as part of the CRP for the CMPA, and “may add to the nonmotorized trail system and possibly close motorized routes if changes are found to be in the public interest.” Response at 7, *citing* DR at 1, 4. Nonetheless, BLM was aware of nonmotorized routes in the CMPA when it issued the TMP. It also generally provided for their continued use, although it deferred any further decisionmaking concerning nonmotorized travel to the CRP. We find no violation of section 112(a) of the Steens Act.

Appellants argue that BLM’s failure to consider nonmotorized travel is violative of the “plain language” of section 112(a) of the Steens Act to the extent that it expressly directs BLM to promulgate a “comprehensive” transportation plan, which covers all “roads and trails” and all “travel access,” encompassing both motorized and nonmotorized roads and trails and travel access. NA/Petition at 9. We agree that section 112(a) of the Steens Act generally covers both motorized and nonmotorized travel routes to the extent that the transportation plan envisioned by the Act is to be “comprehensive,” and is required to cover “roads and trails” and “travel access.” Further, as appellants emphasize, the District Court in *ONDA v. Shuford* found the RMP and TP to be violative of the Steens Act “because [they] failed to address *both motorized and non-motorized* transportation[.]” NA/Petition at 10 (emphasis added). In the course of concluding that the RMP and TP violated the statutory directive, the District Court found that “essential elements” of a comprehensive transportation plan were missing from the RMP and TP, referring to the fact that they “do not describe or include *a plan for managing different types of travel* over specific areas, roads, routes or trails,” adding that they “fail[] to address travel on hiking trails as is unambiguously required by the statute.” *ONDA v. Shuford*, Slip Op. at 17 (emphasis added).

Section 112(a) of the Steens Act, however, does not specify the manner in which BLM is required to address motorized and nonmotorized travel routes, or, for that matter, travel access in the CMPA. Rather, it only generally directs BLM to promulgate a comprehensive transportation plan that addresses “the *maintenance, improvement, and closure* of roads and trails as well as *travel access*.” 16 U.S.C. § 460nnn-22(a) (2006) (emphasis added). In this regard, the Act does not expressly dictate exactly how BLM must address the means by which the public may utilize the roads and trails across the CMPA, so long as it generally provides for route maintenance, improvement, and closure, or even exactly how the public obtains travel access through the CMPA. We conclude that BLM’s decision to specifically designate and provide for the use and management of existing motorized routes and to generally leave existing nonmotorized routes open to nonmotorized travel, subject

to current management prescriptions, is consistent with the plain language of the statute.¹⁰

In this regard, we have noted that the primary purpose of the CMPA “is to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12(a) (2006). The TMP achieves this objective by providing a comprehensive inventory of routes and trails open to motorized use and providing for their management. Further, in the planning already completed, BLM discusses existing trails and trail heads, including the 10 nonmotorized trails designated in the Steens Mountain Wilderness and Wild and Scenic Rivers Plan as part of the Steens Mountain wilderness trail system. See TMP DR at 7; Appendix P at 6; EA at 55-56, Map TP-1; CMPA RMP Appendix P at 21. The TMP further highlights, through maps and other means, known nonmotorized trails. While BLM acknowledges the need for further on-the-ground inventory of nonmotorized trails, it determined that such inventory may be deferred and completed in connection with its planned CRP, given the broad overlap of issues involved. Such deferral is contemplated in the TMP and is consistent with the Steens Act. See TMP DR at 1, 3-5; Answer at 6-8.¹¹

2. The Designation of “Obscure Routes” as Open to Motorized Travel Violates the Steens Act

As Claim 2, appellants contend that BLM’s decision to designate as open to motorized travel nearly 36 miles of Obscure Routes “violates the Steens Act’s purpose, its express prohibition of off-road motorized vehicle use, and its express

¹⁰ Since we conclude that BLM has fulfilled the statutory directive to prepare a comprehensive transportation plan, we also conclude that it has satisfied the statement in the RMP that it will, with approval of the Proposed Action, “complete the comprehensive requirements” of the Act. NA/Petition at 11, quoting RMP at 62. We find no failure to conform to the RMP, and therefore no violation of the land-use plan conformance requirement of section 302(a) of FLPMA. NA/Petition at 11.

¹¹ In its November 2007 TMP DR, BLM did not incorporate the previous inventory of nonmotorized routes and trails completed by ONDA in May 2007. The EA prepared to study the environmental impacts of the TMP was completed in April 2007. ONDA notes that BLM requested that ONDA defer submitting its on-the-ground inventory of nonmotorized trails until BLM completed its EA. We find this to be reasonable on BLM’s part given the overlap of issues in the nonmotorized use plan and the proposed CRP. In the course of its additional review, BLM may consider ONDA’s inventory in connection with preparation of the CRP.

prohibition on new road construction.”¹² NA/Petition at 14. They note that, while these routes were said by BLM to exist at the time of the October 21, 1976, enactment of FLPMA, such routes could not be reliably located by BLM on the ground, and BLM provides no documentation that the routes are in public use. NA/Petition at 14, *citing* Declaration of Craig Miller, Geographic Information System Analyst, ONDA, dated Dec. 14, 2007 (Miller Declaration) (attached to NA/Petition), ¶ 6, at 2.

BLM designated approximately 36 miles of routes in the CMPA, both within (27 miles) and outside (9 miles) the WSAs, as Obscure Routes. EA at 12; DR at 12. BLM states that “Obscure Routes already exist and are continuing, under the TMP, to be part of the route network through the [DR].” Response at 11, *citing* DR at 6. Obscure Routes are, by BLM’s definition, only those routes that are “hard to locate or were not found on-the-ground[.]” Response at 10, *citing* EA at 11; *see* EA at 12, 21-22. The phrase encompasses routes where there is little physical trace of the route on the ground, as well as routes where no physical trace of the route remains on the ground. Such a route is deemed to be an Obscure Route because, even though it may not be discerned, or discernable, on the ground, there is other evidence of its existence. Such evidence may consist of written documentation, but it may also include simply the oral report of a private landowner or other reliable witness. *See, e.g.*, DR at 6 (“The inventory . . . discovered about 15 miles of WSA ways that were part of the WSA inventory but not included on public use maps”), 16 (“Obscure Routes although shown on maps have been difficult to locate for many years”). “BLM is not affirmatively maintaining or reconstructing these routes,” but instead it is “only continuing the status quo that the Obscure Routes remain open yet practically difficult to find or use.” Response at 11.

Appellants argue that designation of the Obscure Routes as open to motorized travel contravenes the fundamental purpose of the Steens Act “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain,” where such integrity is defined by the statute as

a landscape where ecological processes are functioning to maintain the structure, composition, activity, and resilience of the landscape over time, including--

¹² Appellants also argue that BLM’s decision to designate the Obscure Routes as open to motorized travel violates its duty under section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), “to prevent unnecessary or undue degradation of the [public] lands.” NA/Petition at 17-18. They assert that reopening the 36 miles of routes is both unnecessary and undue because there are 555 miles of other routes available for use in the CMPA and because, given their virtual elimination, they clearly are not needed for private or public access. NA/Petition at 18.

- (A) a complex of plant communities, habitats and conditions representative of variable and sustainable successional conditions; and
- (B) the maintenance of biological diversity, soil fertility, and genetic interchange.

16 U.S.C. §§ 460nnn(5), 460nnn-12(a) (2006). They assert that opening the Obscure Routes to motorized use will contribute to the fragmentation of wildlife habitat and otherwise damage the ecology of the area, thereby contravening the purpose of the Act.

We agree with appellants. In our view, there is an inherent incongruity in determining that routes are “obscure,” or difficult or impossible to identify on the ground, and concluding that opening them to motorized use is consistent with the Steens Act. In our April 2, 2008, order, we stated:

The Steens Act prohibits the “off-road” use of motorized or mechanized vehicles on Federal lands included in the CMPA. 16 U.S.C. § 460nnn-22(b) (2000). If the Obscure Routes are difficult or impossible to locate on the ground and 15 miles of those routes were included in the WSA inventory but never included on public use maps, now providing maps of such routes and allowing motorized and mechanized vehicles to hunt on the ground for such routes would appear to constitute “off road” use of the CMPA. Although BLM claims that “Obscure Routes will be monitored to ensure motorized use is confined to these designated routes” (DR at 15), it would be difficult to determine if use were confined to designated routes, if those routes previously had not been identifiable on the ground.

Apr. 2, 2008, Order at 9.

We remain convinced that our concern is well-founded. Appellants have substantiated their contention that opening the Obscure Routes to motorized or mechanized use will violate BLM’s general responsibility under the Steens Act to conserve, protect, and manage the long-term ecological integrity of Steens Mountain. They argue that opening the Obscure Routes to motorized travel violates two express prohibitions of the Steens Act on off-road vehicle use and the construction of new roads.¹³ They argue that, since the routes “essentially *do not exist* on the ground,”

¹³ Appellants argue that the effect of BLM’s decision to open the Obscure Routes to motorized travel will be to open a larger portion of the CMPA to off-road travel by motorized vehicles, contrary to the statutory prohibition. They assert that, while the routes will be designated on BLM maps, they will not be designated *on the ground*: “[M]ultiple routes might be established by those seeking to find and drive an

(continued...)

BLM's decision to designate them as open to motorized travel effectively permits off-road vehicle use of the public lands encompassed by the routes, or, in the alternative, provides for the construction of new roads. NA/Petition at 16. They further assert that the Obscure Routes "do not meet any relevant definition of the term 'road.'" NA/Petition at 16. They refer to the definition of roads used in determining what areas of the public lands qualify as "roadless areas" for purposes of WSA designation pursuant to section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (2000). They note that a road is defined as a route that "ha[s] been improved and maintained by mechanical means to insure relatively regular and continuous use," as compared to a "way," which is a route that has been "maintained solely by the passage of vehicles[.]"¹⁴ NA/Petition at 16, quoting *Wilderness Inventory Handbook*, dated Sept. 27, 1978, at 5. They conclude that the Obscure Routes cannot be considered to meet the WSA definition of a road where they are "difficult or impossible to even locate on the ground," and thus clearly have not been improved and maintained by mechanical means to insure relatively regular and continuous use. NA/Petition at 16. Rather, the routes provide for "cross-country [travel] over rocks, sagebrush and other native vegetation[.]" *Id.*

It bears repeating that section 112(b)(1) of the Steens Act, 16 U.S.C. § 460nnn-22(b)(1) (2006), provides, in relevant part, that "[t]he use of motorized or mechanized vehicles on Federal lands included in the [CMPA] . . . is prohibited off

¹³ (...continued)

Obscure Route." NA/Petition at 17, quoting EA at 22. BLM, however, concluded that this was unlikely, since most Obscure Routes were already disclosed on maps and no such activity had been observed. See EA at 22 ("Currently most Obscure Routes are shown on maps available to the public. No locations where such multiple routes have been established have been identified."); DR at 16 ("With a small number of documented exceptions, the BLM has been able to enforce the 'limited to designated routes' designation for the CMPA and believes visitors tend to stay on designated routes when provided with an adequate route network"). Appellants offer no evidence to the contrary.

¹⁴ Appellants also refer to two definitions of a road: (1) "[an] improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use," and thus is not permitted in a roadless area (43 C.F.R. § 19.2(e)); and (2) "[a] linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use" (Roads and Trails Terminology Report, dated April 2006 (Attachment 1 to Instruction Memorandum No. 2006-173, dated June 16, 2006), at 15). See NA/Petition at 16.

road[.]”¹⁵ Further, section 112(d)(1) of the Steens Act, 16 U.S.C. § 460nnn-22(d)(1) (2006), provides, in relevant part, that “[n]o new road or trail for motorized or mechanized vehicles may be constructed on Federal lands in the [CMPA][.]”¹⁶ We conclude that BLM’s decision to designate the Obscure Routes, which have, by reason of the passage of time and disuse, fallen into obscurity, as open to motorized travel violates section 112(b)(1) and (d)(1) of the Steens Act. We agree with appellants that “BLM’s decision will . . . allow[] the new creation or re-establishment of routes that have all but been entirely reclaimed (due to lack of use) by natural processes.” NA/Petition at 18. Appellants have demonstrated that the Obscure Routes do not, generally speaking, qualify as roads, under any definition. BLM has decided that these existing routes, which have become almost entirely (if not entirely) obliterated, will, in the future, be restored to use by motorized vehicles. Given that the Obscure Routes did not qualify as roads, under the WSA definition or any other definition, at the time of BLM’s decision, we fail to see how opening those Routes to motorized travel does not amount to permitting motorized travel “off road.” BLM’s decision to designate the Obscure Routes as open to motorized travel must be viewed as permitting off-road use by motorized vehicles, violative of the express prohibition of section 112(b)(1) of the Steens Act.

3. Refusal to Close Cherry-Stemmed Roads in Wilderness Area Is Consistent with the Steens Act

Appellants’ Claim 3 is that BLM’s refusal, despite their request, to close three cherry-stemmed roads (Indian Creek, Cold Springs, and Fish Creek), to the extent that they are situated within the Steens Mountain Wilderness Area, violates section 112(a) of the Steens Act. They argue that the portions of the roads in the wilderness area are “redundant or unnecessary” since they are infrequently and often not possible to use, but yet are likely to cause or are presently “causing ongoing resource damage” to the wilderness area. NA/Petition at 20.

Our review confirms that appellants are incorrect in their assertion that “BLM *refused to consider* any partial closures of the Indian Creek, Cold Springs, or Fish Creek routes[.]” NA/Petition at 21 (emphasis added). BLM briefly considered closing the three cherry-stemmed roads, but decided not to afford the proposal detailed analysis.¹⁷ See EA at 18; DR at 2, 9 (“Existing ‘cherry-stemmed’ routes

¹⁵ The statutory prohibition is subject to exceptions that are not at issue here. See 16 U.S.C. § 460nnn-22(b)(2) (2006).

¹⁶ The statutory prohibition is subject to exceptions that are not at issue here. See 16 U.S.C. § 460nnn-22(d)(1) (2006).

¹⁷ BLM’s brief consideration of the alternative of closing the cherry-stemmed roads was sufficient to satisfy section 102(2)(E) of NEPA, despite appellants’ assertion to

(continued...)

through wilderness . . . remain open to motorized and mechanized public travel”). It declined to do so because Congress, in designating the Steens Mountain Wilderness Area in the Steens Act, and BLM, in promulgating the RMP and TP, had not provided for closing these roads. Moreover, Congress clearly failed to close the three cherry-stemmed roads at issue in the Steens Act, despite the fact that they were situated within the very wilderness area created by the Act. In fact, Congress “closed approximately 104 miles of motorized routes upon designation of the Steen Mountain Wilderness.” RMP, Appendix M, at M-1.

In the TP, BLM provided for keeping these three cherry-stemmed roads open to use, so long as they continued to meet RMP objectives. Then, in the course of addressing the proposed TMP, BLM briefly considered the alternative of closing these roads, but, having decided that leaving them open continued to satisfy RMP objectives, determined not to afford the alternative detailed analysis. See EA at 2, (“The EA clarifies [that] routes specifically named in the RMP Transportation Plan that continue to meet RMP objectives are not subject to closure under this EA. This includes . . . Fish Creek, Cold Springs, . . . [and] Indian Creek . . . routes.”). As BLM properly says: “BLM did not need to revisit every decision in the RMP.” Response at 14.

As part of preparing a “comprehensive” transportation plan for the CMPA, BLM is required to consider “*designat[ing]*” roads as open or “*clos[ed]*” to travel, and any decision to close or restrict access “shall be made in consultation with the [Steens Mountain] [A]dvisory [C]ouncil and the public.” NA/Petition at 21, *quoting* 16 U.S.C. §§ 460nnn-22(a), (b)(1), and (c) (2006). However, we find nothing in any of the quoted statutory language that requires BLM to close any particular road, including the three cherry-stemmed roads at issue, or even to afford a proposal to close any road extended consideration. The decision whether to close any road is left to BLM’s discretion. Appellants have failed to establish that BLM’s decision not to close the cherry-stemmed roads lacks a rational basis, and is thus arbitrary and capricious. It is not violative of the Steens Act.

4. Leaving 555 Miles of Routes Open to Motorized Travel Consistent with the Steens Act

As Claim 4, appellants contend that BLM’s decision to leave 555 miles of routes open to motorized travel is contrary to the fundamental purpose of the Steens Act “to conserve, protect, and manage the *long-term ecological integrity* of Steens Mountain,” and thus violates section 102(a) of the Steens Act. NA/Petition at 24,

¹⁷ (...continued)

the contrary. See NA/Petition at 22; 40 C.F.R. § 1508.9(b) (“[An EA] [s]hall include [a] brief discussion . . . of alternatives”); *Biodiversity Conservation Alliance*, 171 IBLA 218, 238 (2007).

quoting 16 U.S.C. § 460nnn-12(a). They generally argue that the “most significant threat” to such integrity is posed by noxious weeds, which can only be thwarted by closing the routes, further noting that the “vast majority of the routes . . . are overgrown, rocky, rutted, impassable, and sometimes virtually nonexistent,” and are “precisely the types of vulnerable high desert routes BLM should have closed in order to protect the long-term ecological integrity of Steens Mountain.” NA/Petition at 24. Appellants take particular issue with BLM’s factual conclusion that closing the routes will result in less monitoring of the routes, and thereby promote the invasion and/or spread of noxious weeds.

In its EA, BLM considered the effects of various aspects of its Proposed Action, including leaving open the 555 miles of routes to motorized travel, from the standpoint of noxious weeds. It noted that noxious weeds were found at 361 sites in the CMPA, totaling 404.9 acres, mostly near roads or reservoirs. EA at 50. BLM recognized that leaving open the routes would render it more likely that noxious weeds would invade and/or spread through the CMPA, since motorized vehicles are a prime vector for the spread of noxious weeds, and that they were most likely to spread along roads and other travel corridors: “[O]pen routes are . . . more apt to have weed seeds introduced.” *Id.* at 51. BLM agreed that closing the routes would render it less likely that such invasion and/or spread would occur. *Id.* at 50-51. We find nothing in the EA at odds with appellants’ basic assertion that “more routes closed equals less exposure to noxious weeds, a decreased likelihood of new weed infestations, and a decreased likelihood of existing infestations spreading.” NA/Petition at 23. However, we are not persuaded that the likelihood that BLM’s decision to leave open 555 miles of routes to motorized travel will contribute to the invasion and/or spread of noxious weeds violates the Steens Act.

BLM noted that open routes are a “high priority for monitoring” and are “more easily monitored,” and that closing routes would render it less likely that they would be monitored for the invasion and/or spread of noxious weeds: “*Once roads are closed, they will likely receive less monitoring for weeds because of increased time and cost involved in traveling those routes on foot or horseback.*” (Emphasis added.) EA at 50 (emphasis added); *see* DR at 8. Appellants argue that BLM erred in this conclusion. They state that the use of motorized vehicles on Federal lands in the CMPA is, by virtue of section 112(b)(1) of the Steens Act, restricted to “such roads and trails as may be designated for their use as part of the management plan.” 16 U.S.C. § 460nnn-22(b)(1) (2006). However, they also note that the exception to this restriction, in section 112(b)(2) of the Steens Act, permits motorized vehicle use, even in the case of roads and trails not designated as open to such use, “for administrative purposes” and “for . . . fish and wildlife management[] or ecological restoration projects[.]” 16 U.S.C. § 460nnn-22(b)(2) (2006). Appellants state that this statutory exception allows BLM to use motor vehicles to monitor closed routes for the purpose of detecting the invasion and/or spread of noxious weeds: “[T]here is no reason why BLM cannot close additional routes within the CMPA while retaining the

agency’s authority to conduct key weed monitoring or treatment where necessary.” NA/Petition at 23-24.

We conclude that appellants have failed to demonstrate that BLM’s decision to leave the 555 miles of routes open to motorized travel will cause BLM to fail in its statutory mandate to conserve, protect, and manage the long-term ecological integrity of Steens Mountain, thereby violating section 102(a) of the Steens Act.

B. The Nonimpairment Mandate of Section 603(c) of FLPMA

[2] Appellants argue that BLM’s decision to designate and open the Obscure Routes to motorized use violates BLM’s IMP, H-8550-1 (July 7, 1995), and thus violates BLM’s nonimpairment duty under section 603(c) of FLPMA.¹⁸ NA/Petition at 7. They assert that BLM’s decision to “lock in” the motorized designation of the routes will render it “extraordinarily unlikely” that BLM will change the designation, and will thereby “seriously cripple” their long-term efforts to secure wilderness designation “of the 500,000 acres of recommended (future) wilderness on Steens Mountain[.]” *Id.*

Relevant to our consideration of BLM’s obligations under section 603(c) of FLPMA and the IMP is our discussion concerning wilderness resources in the CMPA in ONDA, 174 IBLA 341, 345-49 (2008), in which ONDA argued, *inter alia*, that BLM had failed under NEPA, 42 U.S.C. § 4332(2)(C) (2000), to take a “hard look” at the environmental consequences of the proposed action by failing to consider the wilderness resources.¹⁹ The Board reviewed the CMPA Proposed RMP/Final EIS,

¹⁸ The IMP was first published in the *Federal Register* on Dec. 12, 1979 (44 Fed. Reg. 72013). It was later amended in ways that are not pertinent to this case (48 Fed. Reg. 31854 (July 12, 1983)), and then incorporated in a Handbook (H-8550-1 (Rel. 8-36 (Nov. 10, 1987))), which is part of BLM’s Manual. See *Committee for Idaho’s High Desert*, 139 IBLA 251, 253 n.3 (1997). The current Handbook provision is H-8850-1 (Rel. 8-67 (July 5, 1995)).

BLM’s management of the CMPA lands is governed by the IMP, which sets forth certain nonimpairment standards. These criteria are designed to ensure that no activity will occur that will jeopardize or negatively affect Congress’s ability to find that a WSA has the necessary wilderness characteristics. See *Committee for Idaho’s High Desert*, 139 IBLA 251, 253 (1997).

¹⁹ At issue in ONDA, 174 IBLA 341, was ONDA’s challenge to the Burns DO’s decision to authorize implementation of the North Steens Ecosystem Restoration Project (Restoration Project) within the CMPA. That Project involved “multi-year, landscape-level vegetative treatments that are identified . . . as including western juniper treatment, prescribed fire, fencing and seeding, and planting.” 174 IBLA at 342. The Board affirmed BLM’s decision, rejecting a series of arguments

(continued...)

which described the work and findings of an Interdisciplinary Team (ID Team). That ID Team “determined that only one of the parcels identified by ONDA contained wilderness characteristics, [and that] the remaining parcels identified by ONDA were not analyzed further for management of wilderness characteristics during the CMPA RMP process.” 174 IBLA at 346. BLM concluded that “[b]ecause none of the WSA proposals within the North Steens Project Area were found to have wilderness characteristics, there is no requirement to further analyze or protect values the BLM has found not to be present.” *Id.*, quoting Final EIS at 241; see also *ONDA v. Shuford*, Slip Op. at 6-7; *ONDA*, 174 IBLA at 354-55.

Here, ONDA argues that the District Court’s ruling relates only to BLM’s obligations at the RMP level of land use planning and does not apply to the TP, which the District Court found deficient under the Steens Act. However, the Board rejected a similar argument in *ONDA*, 174 IBLA at 348, and affirmed BLM’s decision and the absence of a violation of section 302(c) of FLPMA, stating: “Because none of the WSA proposals . . . were found to have wilderness characteristics, there is no requirement to further analyze or protect values the BLM has found not to be present.” 174 IBLA at 346, quoting FEIS at 241. Likewise, the TMP can hardly be said to impair wilderness values determined not to exist.

We reject appellants’ argument that BLM’s designation of motorized travel routes in “proposed” WSAs violates the nonimpairment mandate of section 603(c) of FLPMA. We presume appellants refer to the 77,600 acres of public land encompassed by ONDA’s wilderness recommendation, since ONDA’s route closure recommendations concern public lands entirely within BLM-designated WSAs and within the areas of public land “ONDA has identified . . . as possessing wilderness character.” Miller Decl., ¶ 4, at 2. BLM, however, has no obligation under section 603(c) of FLPMA to ensure that activities on public lands recommended by a private party for wilderness designation do not impair the suitability of such lands for wilderness designation. See *Southern Utah Wilderness Alliance*, 163 IBLA 14, 25 (2004). We conclude that BLM correctly found no such impairment would occur in the case of the WSAs. See EA at 18-22, 71-73; DR at 7, 10, 11.

However, we agree with appellants that BLM’s designation of 27 miles of Obscure Routes running through the WSAs as open to motorized travel violates BLM’s duty under section 603(c) of FLPMA and the IMP to manage those lands so as not to

¹⁹ (...continued)

advanced by ONDA, including, *inter alia*, that BLM had violated section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000), and the IMP by extending proposed treatments to WSAs. The Board stated: “Given the goal of the Project - to restore a more natural ecological balance by addressing the encroachment of juniper - we find that the implementation of the Project in the WSAs . . . is consistent with the guidance of the IMP.” 174 IBLA at 354.

impair their suitability preservation as wilderness.²⁰ NA/Petition at 19. Appellants state that, in considering whether to permit any activity or use within a WSA, the “paramount” consideration is the “preservation of wilderness values” of the area. *Id.*, quoting IMP, I.B., at 8. “[I]n other words,” appellants argue, “the wilderness resource will be dominant in all management decisions where a choice must be made between preservation of wilderness suitability and other competing uses.” NA/Petition at 19. They argue that the routes at issue have almost entirely disappeared, and that the wilderness characteristics of naturalness and opportunities for solitude and primitive and unconfined types of recreation have been virtually restored, such that opening the routes to motorized travel will impair the wilderness suitability of the WSAs. NA/Petition at 19-20. Appellants favor allowing many, if not most, of the designated routes, which are described as “rocky, rutted, overgrown, and disappearing ways,” “to continue to be naturally reclaimed in order to conserve the ecological integrity of Steens Mountain.” *Id.* at 25.

BLM reports that, to the extent the Obscure Routes pass through the WSAs, BLM inventoried such routes as part of its “original WSA inventories conducted in the early 1980s.” DR at 4; see EA at 12. BLM states that such routes were considered to be “ways,” rather than “roads,” and that motorized use of those “ways” did not, at that time, impair the suitability of the WSAs for wilderness preservation. DR at 4. BLM further notes that “the IMP allows for motor vehicle or mechanical transport on existing ways” in WSAs. Response at 14, citing IMP, I.B.11., at 16; see DR at 9 (“Ways within WSAs, including Obscure Routes[,] remain available for public motorized and mechanized travel” (emphasis added)). Given our conclusion that designating the Obscure Routes as open to motorized use is contrary to the Steens Act, we must also question BLM’s position that officially designating these routes as open to motorized travel will not impair the suitability of the WSAs for wilderness preservation.

BLM states that it does not anticipate any increase in motor vehicle use, and that existing use has resulted in “[no] significant damage to resources[.]” Response at 11, quoting DR at 16; see EA at 22; DR at 4, 7, 9. BLM states that the routes “will not be marked on-the-ground or signed,” and that no effort will be made to “reestablish motorized passage.” Response at 11, citing DR at 11; see DR at 7 (“Route conditions would not change”). However, we see merit in appellants’ argument that the motorized use of those Routes, regardless of whether the Routes are marked, re-establishes motorized passage, and will likely impair the suitability of the WSAs for designation as wilderness. Response at 14, citing DR at 4. For the reasons previously given as to why BLM’s designation of the Obscure Routes as open

²⁰ BLM provided for designating a total of approximately 36 miles of Obscure Routes as open to motorized travel, but only approximately 27 miles were determined by BLM to cross WSAs. See EA at 11, 12; DR at 12.

to motorized use violates the Steens Act, we conclude such a designation also violates the nonimpairment standard of section 603 of FLPMA.

C. Compliance with NEPA

Appellants argue on two specific bases that the Proposed Action violates NEPA, *i.e.*, (1) BLM failed to consider the likely “negative impacts” of “motorized use . . . on non-motorized uses and values” contrary to section 102(2)(C) of NEPA; and (2) BLM failed to consider reasonable alternatives in the form of nonmotorized travel routes in the CMPA in violation of section 102(2)(E) of NEPA.²¹ NA/Petition at 12. They thus assert that BLM has, by not considering the interaction between motorized and nonmotorized travel in the CMPA, “preclude[d] any meaningful resolution of potential conflicts of motorized use [with] non-motorized recreation users and uses.” *Id.*

1. Effects of Motorized Travel on Nonmotorized Travel

[3] BLM is generally required by section 102(2)(C) of NEPA to take a “hard look” at the potential environmental impacts of a proposed Federal action and alternatives thereto, and, in order to justify a FONSI, make a convincing case either that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. 42 U.S.C. § 4332(2)(C) (2000); *see, e.g., Cabinet Mountains Wilderness v. Peterson*, 685 F.2d 678, 681-82 (D.C. Cir. 1982); *Nez Perce Tribal Executive Committee*, 120 IBLA 34, 37-38 (1991). We conclude that BLM met that standard in this case by adequately considering the likely effects of motorized travel on nonmotorized values and uses in the CMPA, and fulfilling the hard look requirement of section 102(2)(C) of NEPA. *See* EA at 55-57; DR at 3, 4.

We recognize that BLM has yet to complete its inventory of nonmotorized travel routes. EA at 56; DR at 1. Appellants argue that they have, since the EA was prepared, provided “exhaustive route inventory data[.]” NA/Petition at 13, *citing* Marlett Decl., ¶¶ 16-22, at 3-5, and Miller Decl., ¶ 5, at 2, Attachment B (Steens Transportation Plan Recommendations, dated May 17, 2007); *see* Notice of Factual Correction at 1 (“[T]he full report [provided to BLM on May 17, 2007,] contain[s] . . . extensive, route-by-route photographic evidence of actual, on-the-ground

²¹ Appellants also argue that BLM should have considered nonmotorized recreation opportunities in the CMPA. NA/Petition at 11. Since the Proposed Action covers transportation activities in the CMPA, we are not persuaded that BLM was required to consider recreation opportunities, whether motorized or nonmotorized, in the CMPA. These will, in any event, be addressed in the CRP. *See* DR at 3 (“The RMP identified the need for a CRP to ascertain the types and amounts of recreation activities for the CMPA (RMP-67[])”).

conditions warranting closure or non-motorized use of hundreds of miles of routes”). They suggest that BLM was not sufficiently informed regarding existing nonmotorized routes in the CMPA. However, appellants identify only a handful of routes overlooked by BLM. See Attachment B, Miller Decl., at Map of “Steens Transportation Plan Recommendations” (denoting “[Routes] not recognized in BLM inventory”). The record does not show that a substantial number of such routes remain to be inventoried. We do not think that any minor deficiency in the identification of such routes has undermined BLM’s analysis of the likely effects of motorized travel on nonmotorized values and uses in the CMPA.

Obviously, BLM will, when it further considers the question of nonmotorized travel, have to take into account its treatment of motorized travel in the TMP. In issuing the TMP, BLM stated that it saw no need to close motorized routes in order to promote nonmotorized travel, given the absence of any existing conflict between the two types of uses, but that it might, in preparing the CRP, decide to close motorized routes. DR at 4. BLM has indicated its willingness to revisit its motorized travel route decision. Further, BLM has not, by issuing the TMP, made an irrevocable “commitment[] to motorized recreation at the expense of nonmotorized uses and users” that will have the effect of excluding or even severely curtailing nonmotorized travel in the CMPA. NA/Petition at 26.

2. *Nonmotorized Travel Alternative*

[4] BLM is generally required by section 102(2)(E) of NEPA to consider, in an EA, “appropriate alternatives” to the proposed action, which will accomplish its intended objective, are technically and economically feasible, and have a lesser impact. 42 U.S.C. § 4332(2)(E) (2000); see, e.g., *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *Bales Ranch, Inc.*, 151 IBLA 353, 363 (2000). Most importantly, for our present purposes, “[t]he intended purposes of a proposed action ‘define[] the scope of the alternatives analysis . . .,’ since ‘[t]he range of alternatives is dictated by ‘the stated goal of a project,’ and only those alternatives that accomplish such purposes need be considered.” *Escalante Wilderness Project*, 163 IBLA 235, 240 (2004), quoting *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 812 (9th Cir. 1999).

BLM clearly considered Alternative C, under which an additional 250 miles of motorized travel routes would be closed to motor vehicle use. The effect of this would be to render these routes available for nonmotorized travel. BLM has already considered, in effect, an alternative which would provide a sizeable amount of nonmotorized travel routes in the CMPA.

However, BLM has not finally addressed an alternative for designating nonmotorized travel routes in the CMPA, since it has yet to fully inventory such routes, and has deferred the matter to the CRP environmental review and

decisionmaking process. *See* Response at 9, *citing* EA at 2-3. Nonetheless, we find no violation of the requirement of section 102(2)(E) of NEPA to consider reasonable alternatives to the Proposed Action. The alternative proposed by appellants must comport with the intended purpose of the Proposed Action, since, as they admit, “[t]he available reasonable alternatives for a given project are *determined by the purpose . . . of the project.*” NA/Petition at 11 (emphasis added). The purpose of the Proposed Action here was to provide routes for *motorized travel* in the CMPA, while generally leaving nonmotorized routes open to use. *See* EA at 3 (“The TMP will augment the CMPA Transportation Plan, . . . using an updated route inventory to further define the motor vehicle route network within the CMPA.”). Since an alternative that would provide for nonmotorized travel would not serve the intended purpose of the Proposed Action, BLM was not required to consider such an alternative in the EA.

IV. CONCLUSION

For the reasons given, we hereby reverse the Field Managers’ decision to open the Obscure Routes to motorized use as contrary to section 112 of the Steens Act, 16 U.S.C. § 460nnn-22 (2006), as well as section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000). We affirm BLM’s 2007 FONSI/DR in all other respects. And we deny appellants’ Motion to Expand as moot.

To the extent not addressed herein, all other errors of fact or law asserted by appellants are rejected as contrary to the facts or law, or immaterial to the disposition of the appeal.

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 Field Managers’ decision is affirmed in part and reversed in part.

_____/s/
James F. Roberts
Administrative Judge

I concur:

_____/s/
R. Bryan M^cDaniel
Administrative Judge