



NORA L. HAMILTON

179 IBLA 132

Decided May 11, 2010



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

NORA L. HAMILTON

IBLA 2009-229

Decided May 11, 2010

Appeal of a decision of the Grand Junction Field Office, Bureau of Land Management, approving the construction of trails in the Bangs Canyon Special Recreation Management Area. DNA DOI-BLM-CO-130-2009-0040.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Generally

Preparing a “Documentation of Land Use Plan Conformance and NEPA Adequacy” (DNA) is an acceptable method to assess the adequacy of existing environmental analysis for a proposed action, but a DNA is not a NEPA document and may not be used to supplement existing environmental analysis or address site-specific environmental effects not previously considered. When a DNA relies upon a prior environmental assessment (EA) and finds that the direct and indirect impacts of the approved action are substantially unchanged from those identified in the EA, its validity depends upon the adequacy of the EA’s analysis of relevant environmental concerns. The DNA must provide appropriate supporting documentation showing that the existing environmental analyses assess the environmental effects of the proposed action and must evaluate whether new circumstances, new information, or changes in the action or its impacts may result in significantly different environmental effects than previously analyzed.

2. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Generally

When BLM issues a “Documentation of Land Use Plan Conformance and NEPA Adequacy” which relies upon a previously issued environmental assessment, the environmental

assessment must establish that BLM has taken a “hard look” at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant has the burden of showing that the environmental analysis does not support the decision being appealed and the decision is based upon a clear error of law or demonstrable error of fact or the analysis fails to consider a substantial environmental question of significance to the proposed action.

APPEARANCES: Nora L. Hamilton, Grand Junction, Colorado, *pro se*; Arthur R. Kleven, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HEATH

On March 2, 2009, the Field Manager of the Grand Junction (Colorado) Field Office (GJFO), Bureau of Land Management (BLM), signed a “Documentation of Land Use Plan Conformance and NEPA Adequacy” (DNA) (DOI-BLM-CO-130-2009-0040) for the “Bangs Area 1 & 4 Implementation” Project. Administrative Record (AR), tab 1.<sup>1</sup> The document addressed the construction or closure and rehabilitation of nine trail segments on public lands in the Bangs Canyon area south of Grand Junction, Colorado. DNA at unpaginated (unpg.) 2 & App. A (map). On June 9, 2009, the Board received from Nora L. Hamilton a “Notice of Intent to Appeal And Request for a Stay” (NA/Request) stating that she was appealing the DNA. BLM moved to dismiss the appeal as untimely.<sup>2</sup>

By Order dated November 5, 2009, this Board determined (1) that the DNA constituted an appealable decision because, despite the statement in its “Conclusion” that it was “an interim step in the BLM’s internal decision process” and not

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<sup>1</sup> BLM compiled a looseleaf notebook with documents separated by five tab dividers which it submitted as the AR. Copies of these documents were also received by the Board. BLM cites pages in the AR, but the documents are not sequentially paginated and the Board has been unable to ascertain the system BLM used to count them. In this decision, documents will be identified by tab number when first cited and subsequently cited by document name and page.

<sup>2</sup> The front of the AR notebook includes Hamilton’s June 19, 2009, “Response to BLM Motion to Dismiss” and a July 3, 2009, “Map Attachments for Appeal And Request for Stay” (Map Supplement).

appealable, there was no evidence that BLM had subsequently issued a written decision approving the Project or otherwise had informed the public of its decision to go forward with the Project, and (2) an eight-page letter from Hamilton to BLM dated May 6, 2009, challenging the DNA and requesting that BLM stop construction of a specific trail constituted a timely notice of appeal. Accordingly, the Board denied BLM's motion to dismiss the appeal and allowed BLM time to file an answer. The Board also denied Hamilton's request for a stay because she had failed to show there was a likelihood of immediate and irreparable harm if a stay was not granted.<sup>3</sup>

The appeal addresses only a limited portion of the decision. Although the DNA identifies, and in effect approves, the construction, closure, or rehabilitation of nine trail segments, Hamilton challenges the decision only with respect to a realignment of approximately 600 feet of a 0.9-mile trail segment in sec. 33, T. 1 S., R. 1 W., Ute Meridian, Mesa County, Colorado, identified in the DNA as "Trail X" and the name "Upper Gunny." DNA at unpg. 2; *see* DNA App. A (map). The trail is to be 18 to 30 inches wide and used for hiking, horseback riding, and mountain biking. DNA at unpg. 1-2. More specifically, Hamilton objects to what she claims is a redesign of a portion of Trail X which places what she calls "switchbacks" onto a north-facing meadow directly across from a private residential area where she and others have homes. NA/Request at 1, 10; *see* Map Supplement at 2 and attached maps 2 and 4. For the reasons explained below, we affirm.<sup>4</sup>

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<sup>3</sup> The Board understood that construction of the trail Hamilton challenged was underway when she submitted her May 6, 2009, letter and apparently had been completed. *See* Nov. 5, 2009, Order at 5. In a filing received on Nov. 12, 2009, Hamilton informed the Board that she had requested a stay because construction had not been completed and that "[t]he part of the trail most in dispute . . . has not been constructed and is unfinished today." She renews her request for a stay. The request is denied because this decision resolves her appeal on the merits.

<sup>4</sup> We note that in the "Conclusion" section of the Mar. 2, 2009, DNA, the Field Manager apparently neglected to mark a paragraph concluding that "this proposal conforms to the land use plan and that the NEPA documentation previously prepared fully covers the Proposed Action and constitutes BLM's compliance with the requirements of NEPA." The next paragraph, also not marked, states that the Field Manager concludes "that either the proposal does not conform with the land use plan, or that additional NEPA analysis is needed." In view of the substantive content of the DNA, it is clear that the Field Manager found that the proposal conforms to the land use plan and previous NEPA documentation covers the proposed action. Thus, he could only have intended the former paragraph to apply. BLM defends the decision as so construed. Oddly, Exhibit A to BLM's motion to dismiss the appeal provides both a different, unsigned "Conclusion" and the signed version. We also

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### *Background*

In August 1999, BLM issued the Bangs Canyon Management Plan (BCMP). AR, tab 4. It addressed the Bangs Canyon Special Recreation Management Area (SRMA), a 58,106-acre area which had been identified in 1987 by the Grand Junction Resource Management Plan (RMP) as requiring further, more detailed planning to identify recreational opportunities while protecting unique scenic, geologic, and cultural resources, as well as other resource values. BCMP at 1, 5.<sup>5</sup> The Bangs Canyon SRMA lies five miles south of Grand Junction, Colorado, bounded by the Gunnison River on the northeast, the Colorado National Monument on the northwest, East Creek to the southeast, and Glade Park (Pinon Mesa) to the southwest. *Id.* at 1, 7 (map).

The BCMP divided the Bangs Canyon SRMA into six areas for the purpose of planning recreation trails and travel routes. *Id.* at 7-11. Area 4, where Trail X is located, is triangularly shaped, generally bounded by the Little Park Road on the west, Billings Canyon along the south, and the Gunnison River to the northeast. *Id.* at 7 (map). It includes 4,476 acres, 8 percent of the SRMA, and is used most frequently by bicyclists, hikers, and off-highway vehicle (OHV) users. AR, tab 3 (EA). A map of Area 4 in the BCMP identifies Little Park Road, the private land on both sides of it, and the Little Park Staging Area. BCMP at 25. A motorized route (or road) is shown to extend from that area, initially east and then northeast for approximately one mile. *Id.* Shortly before the road ends, a trail branches from it to the north and then continues to the northeast. *Id.* As elsewhere identified, this is the Gunny Loop Trail which is used for hiking, horseback riding, and mountain biking. *Id.* at 10. The trail crosses the Little Park Road near the northern tip of Area 4 and connects into a system of trails in Area 1. *See id.* at 22, 25. The map is plain, without topographic information, and shows there was a network of routes below the motorized route which were to be closed. *Id.* at 25. In regard to Area 4, The BCMP states, *inter alia*:

- Where it currently exists as a singletrack trail, the Gunny Loop will remain a singletrack trail with the emphasis on mountain bike, foot,

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<sup>4</sup> (...continued)

note that the signed “Conclusion” indicates that the signature page was printed on Mar. 3, 2009, the day after the handwritten signature date.

<sup>5</sup> The Grand Junction RMP and Record of Decision (Jan. 1987) and Grand Junction RMP and Final Environmental Impact Statement (Nov. 1985) are not part of the record BLM submitted to the Board, but are included in a notebook in the IBLA library which contains various documents for the Grand Junction District.

and horse travel, with no expansion for jeep or ATV [all terrain vehicle] travel.

– Reroute existing crossing of Gunny Loop and Little Park Road to address grade and safety issues. Discourage public parking at this site.

*Id.* at 10.

On April 5, 2006, the GJFO issued a Decision Record and Finding of No Significant Impact for the “Bangs Canyon Management Plan Implementation” Project (DR/FONSI) based upon the review undertaken in an environmental assessment (EA) (CO-130-2004-018-EA) prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006). AR, tabs 2, 3; *see* 40 C.F.R. §§ 1501.4, 1508.9. The EA addressed management actions to implement the BCMP in all six of the Bangs Canyon areas. The EA noted the increase in population of Grand Junction and Mesa County, EA at 3, 62, and that Areas 1 through 4, located closest to Grand Junction, had “become, or are becoming heavily used urban interface areas.” EA at 7. To address the increased use, the EA reviewed three alternatives and a no-action alternative. EA at 15-21.

In generally describing the proposed action and alternatives, the EA stated: “The goal of each of the alternatives is to repair and reroute the existing trails to bring them up to sustainable standards, as well as develop new routes to provide high-quality recreational trail experiences.” *Id.* at 10. The EA further explained that Area 4 “would be managed primarily as a community-based recreation site for its designated trail systems. The north portion of Area 4 would be managed for mountain bike, hiking, trail running and dog walking trail opportunities.” *Id.* at 11.

The three alternatives varied as to proposed changes for Area 4, including the opening and closing of various trails. The only specific mention of the Gunny Loop Trail in the descriptions appears in relation to alternative two, which included a proposal to: “Construct a connection from the Tabeguache Trail to the Gunny Loop and Ribbon Trails for hikers and mountain bikers.” EA at 18. For each alternative, BLM prepared a map (dated August 22, 2005) and also a “Bangs Map 4: Existing Routes” (dated August 31, 2005).<sup>6</sup> The maps lack clear detail because they show the entire Bangs Canyon SRMA, but the Gunny Loop Trail can be seen on the Bangs Map 4 in the northwest portion of Area 4. The same trail appears in green on the map for each alternative, and each of the three alternatives shows a “proposed trail” in purple that would extend the Gunny Loop Trail to the west toward Little Park Road from the

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<sup>6</sup> The version of the map on the disc provided by BLM is titled “Bangs Existing Routes” and is also dated Aug. 22, 2005. One notable difference is that it depicts all of Area 4 as a night-time closure area. The legends on the maps also differ.

point where the short portion of the trail extending north from the motorized route turns to the northeast. The map for each alternative also has a red line along the short portion of the trail that extends north from the motorized route and along the part of the motorized route, designating a route that was to be closed.

After circulating a draft of the EA and receiving about 3,000 comments, BLM developed a Revised Agency Proposed Action (RAPA) as a fifth alternative. EA at 21-22. For Area 4, the RAPA adopted the proposed alternative 2 with three modifications which are not relevant to the appeal. *Id.* The Gunny Loop Trail and the proposed extension and closure are the same on the “Bangs Map 5: RAPA Map/Alternative Five April, 2006” as on the maps for the three alternatives. The April 5, 2006, DR/FONSI approved the RAPA as the selected alternative. AR, tab 2 at 1.<sup>7</sup>

Relevant to this appeal, the DR/FONSI states, as part of a list of actions applicable to all or multiple areas in the Bangs Canyon SRMA:

13. All newly constructed trails will conform to the “Criteria for the Placement of Trails”. Some existing designated trails will require reroutes or major maintenance to be brought up to this standard. Existing designated routes will remain open until reroutes, replacements, or reconstruction is completed.

14. The location of proposed trails as shown on the accompanying maps represent GPS (global positioning system) and GIS (geographic information system) data from preliminary trail design and layout work. Site-specific cultural [resource], T&E [threatened and endangered] species, and paleontological surveys will be conducted prior to surface disturbing activities. If resource conflicts are identified, minor relocation of the proposed actions may occur without additional analysis.

DR/FONSI at 5. The EA contains very similar statements. EA at 14 (items 17 and 18).

The DNA states that the proposed action was “substantially the same action and at the site specifically analyzed” in the EA “with the exception of site specific

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<sup>7</sup> The Colorado Environmental Coalition and others appealed the decision in IBLA 2006-179. On June 8, 2006, the Board granted a partial stay of the decision and by Order dated March 31, 2008, affirmed the decision in part and reversed and remanded in part. The reversal concerned the addition of two ATV trails in Area 5, and is not relevant to this appeal.

cultural, T & E species and paleontological clearances of each proposed trail corridor.” DNA at unpg. 4. In addition, the DNA finds that the EA had reviewed a reasonable range of alternatives considering current “environmental concerns, interests and resource values”; that the information and circumstances on which the EA was based remained valid for the current proposed action; that the EA’s “methodology and analytical approach” continued to be appropriate; that the “direct and indirect impacts of the proposed action are substantially unchanged from those identified” in the EA; and that the “cumulative impacts that would result from the construction, relocation and closure of trails in Bangs Area 1 [sic] will remain substantially unchanged” from those analyzed in the EA. DNA at unpg. 4-5.

### *Analysis*

#### *I. The Documentary Reference Errors Are Not a Sufficient Basis on which to Reverse or Set Aside the Decision.*

Hamilton first points out that, although the DNA uses the correct number for the EA, it states that the EA was approved “6/2005.” NA/Request at 3; see DNA at unpg. 3. This date, she claims, is when the draft EA was published for public comment, and she argues this shows that BLM used the wrong document when it issued the DNA. The final EA was published in March 2006, and consequently, Hamilton asserts, BLM is not acting in compliance with the Bangs Canyon Management Plan Implementation approved in 2006. NA/Request at 3, 5. Hamilton also notes that the DNA states that the proposed action would be in compliance with the EA because that document calls for the “[c]onstruction, relocation and closure of trails as shown on Map 2.” DNA at unpag. 4. She argues that the reference to Map 2 establishes that BLM is relying on the “wrong map” because the “Bangs Map 5” showed the trails approved under the RAPA alternative. NA/Request at 5-6, 14.<sup>8</sup> In addition, Hamilton points out that the DNA states that the proposed action “will take place in Area 1” and refers to an attached map, but the map shows parts of both Area 1 and Area 4 and Trail X is in Area 4. *Id.* at 6.<sup>9</sup> She further notes that the two have

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<sup>8</sup> Hamilton incorrectly refers to the DR/FONSI and EA as having been issued in June 2006 rather than April. NA/Request at 5. The error is inconsequential. The NA/Request is 11 pages with a number of attachments. Page 14 is part of Hamilton’s 8-page May 6, 2009, letter which is attached to the appeal as providing “additional important points” and was the basis for finding that she had filed a timely notice of appeal.

<sup>9</sup> Hamilton acknowledges that the DNA identifies the project name as “Bangs Area 1 & 4 Implementation” but states that the copy James Cooper, her husband, obtained during the week of May 4, 2009, did not have the same name. NA/Request at 6. The  
(continued...)

different management standards and that the differences are not mentioned in the DNA. *Id.*

BLM argues that the RAPA Map 5 on which Hamilton relies “is relevant only to the closure of routes in Area 4” and that the trails to be developed, as approved by the DR/FONSI, are those shown on the “Bangs Map 7: Recreation Trail System April 2006.” Answer at 6-7.

Hamilton is correct in pointing out that the DNA identifies the wrong EA document. As part of the record, BLM has provided a compact disc with a number of documents. Although the file name for the EA on the disc is “BangsEAFinal,” it is the draft EA, not the final EA. BLM included the final EA in the notebook in the AR.<sup>10</sup> It does not follow, however, that BLM incorrectly relied upon “Map 2” as Hamilton asserts. The RAPA alternative adopted alternative 2 for Area 4, so the portrayal of trails in Area 4 on the Bangs Map 5 for the RAPA alternative should be the same as on the map for alternative 2, with exceptions noted in the EA that are not relevant to this appeal. *See* EA at 21. BLM is correct that the DR/FONSI adopted the Bangs Map 7, rather than the Bangs Map 5, as controlling the location of trails, but we are unable to discern any difference in the position of the proposed extension of the Gunny Loop Trail shown on those maps. *See* DR/FONSI at 7.

For these reasons, it is apparent that the documentary reference errors do not amount to a legal error in the decision, and do not constitute a reason to overturn it.

*II. The Asserted New Impacts of Rerouting the Short Trail Segment at Issue Are Within the Impacts of Trail Construction Addressed in the EA.*

*A. The Realignment of a Small Portion of the Trail*

Hamilton argues that the statement on page 5 of the DR/FONSI (item 14) about the use of GPS and GIS data in plotting the location of the proposed trails “confirms” that the trail routes shown on Map 5 “are not ‘conceptual,’ but rather, each alignment was precisely recorded with electronic hardware (GPS) because each

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<sup>9</sup> (...continued)

Board notes that Jim Cooper, now retired, is described in the EA as holding the position of travel management specialist and his area of responsibility in regard to the EA was “Access and Transportation.” EA at 66.

<sup>10</sup> The difference is apparent from not only differences in the text which appear on each page but also the draft’s failure to mention the RAPA, the alternative which BLM developed after receiving comments on the draft and selected in the DR/FONSI as the preferred alternative.

one was evaluated for sustainability, soil, slope, ROW, and site-specific VRM [visual resource management] compliance” and that the locations of the trails on the map “each complied with the Criteria for Placement of Trails.” NA/Request at 7. Thus, she contends, “[t]he lines on that map show exactly where the trail will be placed.” *Id.* Hamilton asserts that the portion of Trail X with the “switchbacks” is not same as the Trail X reviewed in the EA, and she argues that BLM cannot rely on the existing EA and DR/FONSI because the environmental impacts will be different. *Id.* at 7-8, 14, 15 (“Bicycle Trail X is in a *completely different drainage* than the trail that was analyzed for the Gunny Loop rehabilitation” (emphasis in original)), 17. Hamilton also argues that the relocated trail does not conform to the “Criteria for the Placement of Trails” that BLM adopted and included in Appendix A of the EA and Appendix B of the DNA. NA/Request at 8, 10, 14, 17-18. To illustrate her argument, Hamilton has provided two photographs showing the hillside the realigned portion of the trail would cross, and two on which she has placed red dots depicting the location of small flags which, she infers, mark the intended course of the trail.<sup>11</sup>

BLM does not dispute the fact that the route of this portion of the trail was changed. In a response to Hamilton’s May 6, 2009, letter, the GJFO acknowledges: “The final alignment for Trail X (Upper Gunny Reroute) differs from the preliminary alignment along roughly 600 feet of trail.” SOR Ex. A at 3.<sup>12</sup> As discussed further

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<sup>11</sup> Because most of the maps prepared for the EA portray the entire Bangs Canyon SRMA, they are not sufficiently detailed to ascertain the precise position of a small portion of a proposed trail on the ground. The electronic versions of the maps for the three alternatives which BLM has provided can be enlarged in computerized view, but the trails are drawn using lines that give the trails a considerably greater width than they will have on the ground. Both the Bangs Map 5 and the Bangs Map 7 have the same limitations due to their scale. However, the “Bangs Map 6: Detail Map of Areas 1&4 April, 2006” (attached to the EA) portrays the trails in a more limited area and provides a better topographic picture. It depicts the route which runs south from the Gunny Loop Trail and is to be closed (presumably the motorized route). Notably, the portion of the trail extending west to a blue drop (designating a range pond) is a short curved line rather than a more jagged line. To the extent the topography can be discerned on the map, this portion of the trail appears to run behind (on the south side), rather than in front of a small high point or knoll which lies to the west of the hill top. In contrast, as portrayed on the map labeled “Bangs Area 1 & 4” attached to the DNA as appendix A, the realigned portion of Trail X runs in front (on the north side) of the knoll.

<sup>12</sup> This document is undated but bears a Colorado State Office date received stamp of June 1, 2009. In a response dated Jan. 2, 2010, Hamilton states that she did not see the letter until receiving it as an attachment to BLM’s Answer.

below, the GJFO explained: “That section of trail was realigned because it was not adhering to the sustainable trail layout guidelines.” *Id.*

The DNA—which addressed the construction or closure and rehabilitation of nine trail segments in Areas 1 and 4 of the Bangs Canyon SRMA, including the 0.9-mile Upper Gunny/Trail X construction—concluded that the EA provides the required environmental review because it “thoroughly reviewed the many specific potential environmental impacts to the affected environment” and “[t]he direct and indirect impacts are substantially unchanged from those identified.” DNA at unpg. 4.

*B. The Applicable Standards and Burden of Proof*

[1] The Board and the Federal courts have held that a DNA is an acceptable method for BLM to assess the adequacy of existing environmental analysis for a proposed action, but a DNA is not a NEPA document and may not be used to supplement existing environmental analysis or address site-specific environmental effects not previously considered. *Colorado Environmental Coalition*, 173 IBLA 362, 372 (2008) (citing, *inter alia*, *The Coalition of Concerned National Park Service Retirees*, 169 IBLA 366, 370 (2006), and *Pennaco Energy Inc. v. U.S. Department of the Interior*, 377 F.3d 1147, 1151, 1162 (10th Cir. 2004)). Consequently, the question is whether the documents the DNA relies on adequately considered the environmental impacts of the proposed action, including the realignment of the portion of the proposed trail involved here. If the EA does not adequately address a relevant environmental concern, or if significant new circumstances or information have arisen to require that the EA be supplemented, BLM cannot rely on a DNA. See *Southern Utah Wilderness Alliance*, 177 IBLA 29, 34 (2009); *Center for Native Ecosystems*, 174 IBLA 361, 366-67 (2008) (quoting *Colorado Environmental Coalition*, 173 IBLA at 372).

Under NEPA and the Department’s implementing regulations at 43 C.F.R. Part 46, BLM must determine, with appropriate supporting documentation, that the existing environmental analyses assess the environmental effects of the proposed action and reasonable alternatives, and the supporting record must include an evaluation of whether new circumstances, new information, or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects. If BLM fails to do so, the decision that relied upon the inadequate documentation will be set aside and remanded for compliance with 43 C.F.R. § 46.120.

*Montana Trout Unlimited*, 178 IBLA 159, 171 (2009); see *Center for Native Ecosystems*, 170 IBLA 331, 346-47 (2006).

[2] When, as in this case, the DNA relies upon an EA, the EA must show that BLM has taken a “hard look” at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. *Oregon Chapter Sierra Club*, 176 IBLA 336, 346 (2009), and cases cited. The fact BLM relied upon a DNA, however, does not change the appellant’s burden to show that the environmental analysis in the preexisting documents does not support the decision being appealed and the decision is based upon a clear error of law or demonstrable error of fact or the analysis fails to consider a substantial environmental question of significance to the proposed action. *Wilderness Watch*, 176 IBLA 75, 87 (2008), and cases cited; *Western Watersheds Project*, 175 IBLA 237, 246 (2008), and cases cited.

The initial focus of our inquiry, therefore, is whether Hamilton has identified any new impacts from the realignment of the short portion of the trail that were not adequately considered in the EA for the management plan implementation.

C. *Analysis of Alleged Impacts*

1. *Soils*

Hamilton argues that the soil in the area of the realigned trail segment is “highly erosive” and that mountain bicyclists who do not stay on the trail as it crisscrosses the hillside will create undesirable trail “braiding” and “spider webbing” that will be subject to erosion from heavy summer rains and slow melting winter snow on the north-facing slope. NA/Request at 8; *see id.* at 2, 10 (soils), 18. She claims this can occur because the area is an open, grassy slope, without natural restrictions from topography or vegetation to restrict where bicyclists can go and the topography will also not deflect the sights and sounds of the trail users. *Id.* at 8, 16. She avers that this portion of the trail is in “deep, slow-draining soils.” *Id.* at 18.

In describing the affected environment, environmental consequences, and mitigation with respect to soils, the EA explained:

The water erosion hazard is high. Concerns for trail construction and recreational use include areas with steep slopes, soils with high clay content, and with stones and boulders on the surface. Construction of well-planned trails and continued use of well-placed existing trails or roads would have little additional impact in terms of erosion or sediment production. . . . In any area, motorized vehicles, bicycles, horses, and hikers cause impacts to the surface that result in changes in density, structure, and particle cohesion. These changes often result in accelerated erosion and sediment transport during runoff-producing

precipitation events. . . . Results from impacts depend on the location and severity of impact. Occasional, minor impact most often heals itself. However, impacts on too steep a slope for example, do have the potential to create new gully systems and increased sediment transport. Judicious trail placement and construction, particularly across some of the steeper terrain, would actually reduce erosion by stabilizing the trail and reducing sideslope disturbance. Where appropriate, small water bars or runoff diversions would assist in directing water away from creating ruts or channels which accelerate erosion and sediment production. . . . Appendix A lays out the criteria for trail/road development and management in the proposed management area, and would help to assure beneficial soils management with acceptable impacts.

EA at 42-43. BLM noted that there are no changes to the analysis under Alternative 5, the RAPA. *Id.*

Appendix B to the EA articulated trail management objectives for trails in each of the six Bangs Canyon areas. For Area 4, it stated: “All routes would be evaluated for compliance with the ‘Criteria for Placement of Trails’ [found in Appendix A]. Routes that do not meet the criteria would be closed or reworked to meet the criteria.” EA at 72. The “Criteria for the Placement of Trails” included the so-called “half rule” or “50 percent rule,” *i.e.*, that a trail’s grade should not exceed half the grade of the hillside or sideslope (cross slope) that the trail traverses. (Trails of a steeper grade are considered fall-line trails and water will run down, rather than across, them.) *See* EA at 69 (criterion 4). The criteria also included a guideline to “[l]ocate trails in stable soils.” *Id.* It explained:

Avoid clays, deep loam and soils that do not drain rapidly. Consider season and type of use. A trail on a south aspect will have greater usability and sustainability for winter use. . . . Trails that are less likely to be used when wet may be located in less-desirable soils if necessary.

*Id.* (criterion 5). Criterion 8 advised to “[a]void switchbacks” because they are, among other things, “expensive to construct, and require regular maintenance” and “[u]sers often cut them, causing avoidable impacts. Utilizing curvilinear design principles eliminates the need for most switchbacks.” EA at 70.

As summarized above, Hamilton argues that the soil on the hillside is highly erosive and mountain bikers will leave the designated path and make new unauthorized cuts. It is possible that some bicyclists may do so. In any event, the approximately 600-foot segment that Hamilton is concerned about contains only two serious curves on the hillside. The photographs Hamilton submits, as well as the

topographic maps (particularly the “Bangs Area 1 & 4” map attached to the DNA), show that while the hillside is open and has some grasses, it is not particularly steep.<sup>13</sup> Whether bicyclists will cut the curves frequently is speculative. But even if they do, the EA, as quoted above, acknowledges the high potential for soil erosion from these activities and discusses mitigation. The explanation in the EA encompasses the potential effects that Hamilton asserts.

As noted above, Hamilton characterizes the soil on the north-facing slope where the realigned portion of the trail is located as “deep.” NA/Request at 18. However, the photographs she has submitted do not bear out this description. Contrary to Hamilton’s argument, the realigned portion of the trail route appears to be generally consistent with the “Criteria for Placement of Trails” in Appendix A of the EA and Appendix B of the DNA.

## 2. *Visual Effects*

Hamilton notes that the EA states that most of Area 4 is designated as Class II under BLM’s Visual Resource Management (VRM) guidelines, and she argues that the original position of the Upper Gunny Trail “was walked with a GPS recording device” and BLM “placed natural topography between the homes and the trail.” NA/Request at 9, 11. In particular, she claims that the RAPA Map 5 “placed the trail behind a ‘shoulder’ of the main ridge, in a dry, rocky sub-canyon” and “[o]nly a tiny part of the new trail would be visible to any of the residents on Little Park Road, because it would connect to the existing trail behind this ridge, and be concealed by boulders and vegetation.” *Id.* at 10. She claims that none of the alternatives considered in the EA considered the DNA’s route for Trail X

[b]ecause such a trail would encroach on the viewshed and privacy of the adjacent private property owners. A substantial portion of the public comment received on the 2005 Plan was submitted by residents on Little Park Road, and trail placement near private property was their issue. *Nothing has changed.* The current interests (the adjacent property owners) still do not want trails in the viewshed.

*Id.* at 15 (emphasis in original); *see id.* at 6. She contends that BLM has “moved the trail to a location where it not only alters the natural appearance of the landscape, [but] the trail also becomes unavoidably and very obviously visible to every resident on the west side of the canyon.” *Id.* at 10; *see* July 3, 2009, Map Supplement at 2 and attached maps 2 and 4.

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<sup>13</sup> Indeed, it is not clear that either of the two curves will amount to what is commonly thought of as a “switchback.”

As Hamilton acknowledges, the EA notes that most of Area 4 is classified as VRM Class II. EA at 57; NA/Request at 7. The EA quotes the Class II definition:

The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.

EA at 58; see *BLM Manual* H-8480-1 § V.B.2. The EA noted that “[a]ll alternatives are similar enough that an analysis by area and alternative is not necessary.” *Id.* The EA then stated:

The proposed area 1, 2, 3, and 4 trails would not dominate the landscape from Little Park Road or Monument Road or neighboring private lands. *The short portion of Gunny Loop that is proposed in area 4 may be visible to the neighboring residences along Little Park Road.* Users of the trail systems would be visible from these locations, but would move through these areas and not be a long term visual impact.

*Id.* (emphasis added).

Hamilton is clearly disturbed by the fact that this realigned portion of the Gunny Loop will be visible to the residents on Little Park Road. As quoted above, however, the EA expressly acknowledged that “[t]he short portion of Gunny Loop that is proposed in area 4 may be visible to the neighboring residences along Little Park Road.” A somewhat higher proportion of it may be visible as a result of the realignment than would have been the case with the route as originally contemplated, but the general effect was acknowledged. Moreover, the area is in the VRM Class II category, in which management activities may be seen. Although the realigned portion of the trail is visible, the existing character of the landscape is retained. The level of change to the characteristic landscape is low, and the realigned trail segment would not dominate the landscape.<sup>14</sup>

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<sup>14</sup> Hamilton appears to exaggerate when she asserts that a “substantial portion” of the public comments on the 2005 Plan were submitted by residents of Little Park Road, for whom “trail placement near private property was their issue.” NA/Request at 15. BLM received over 3,000 comments. Hamilton’s own Map Attachment (Attachment #4) shows less than 15 homes on both sides of Little Park Road.

III. *The DR/FONSI and EA Do Not Prohibit the Realignment of the Portion of the Trail at Issue.*

As quoted above, Hamilton emphasizes that the original proposed alignment of the relevant portion of the Gunny Loop was contemplated at the time the EA was issued. She appears to argue that, beyond the allegations of new or different impacts from the realigned route, the route shown on the RAPA map became the fixed and unalterable route of every part of the Gunny Loop, and BLM was prohibited from adjusting any part of it.

BLM argues that “[t]he Upper Gunny Reroute is depicted on Map 7 . . . and is therefore clearly authorized by the DR/FONSI.” Answer at 7. BLM argues that the DR/FONSI (at 5, item 14) authorizes the rerouting of approximately 600 feet of the trail because the accompanying maps “portray preliminary trail design and layout work of proposed trails and that relocation could occur in accordance with that document.” *Id.*; *see id.* at 14. Further, BLM asserts that the “preliminary layout of the Upper Gunny Reroute did not meet” one of the “Criteria for the Placement of Trails,” specifically, that the trail grade should not exceed 50 percent of the grade of the hillside or cross slope that it traverses. *Id.* at 13. BLM asserts that it realigned the section “to meet important Trail Criteria and provide greater resource protection” and that the DR/FONSI “allows for minor readjustments from the preliminary layout to meet resource needs.” *Id.* at 14.

As quoted above, the DR/FONSI specifically states that the “location of proposed trails as shown on the accompanying maps represent . . . data from preliminary trail design and layout work.” DR/FONSI at 5 (item 14). It then notes that “[s]ite-specific cultural, T&E species, and paleontological surveys will be conducted prior to surface disturbing activities.” *Id.* It further states that “[i]f resource conflicts are identified, minor relocation of the proposed actions may occur without additional analysis.” *Id.* Though the last sentence immediately follows the reference to cultural, T&S species, and paleontological surveys, we do not read the reference to “resource conflicts” and consequent adjustments to be strictly limited to those three categories. The term “resource conflicts” can also refer to other problems with preliminary trail location, including a segment being located on a slope steep enough to be inconsistent with the “half rule” guideline.<sup>15</sup>

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<sup>15</sup> The inconsistency between the “half rule” guideline and the relevant segment’s preliminary location on the south of the knoll was not explained until BLM’s June 1, 2009, response to Hamilton’s May 6, 2009, objection letter—which Hamilton apparently did not receive until much later. However, Hamilton has not alleged that BLM’s explanation is not factually accurate.

We agree with BLM that the DR/FONSI does not prohibit minor adjustments in the exact route of trails to address problems that become apparent as preparation and construction proceed. The maps accompanying the DR/FONSI do not “cast in stone” (excepting only conflicts with T&E species or cultural or paleontological resources) every foot of every trail course insofar as it can be discerned from the maps.

*Conclusion*

For the reasons explained above, Hamilton has not identified any impacts from the realignment of the short portion of the trail that were not adequately considered in the EA for the management plan implementation. Nor has she shown that the DR/FONSI is based upon a clear error of law or demonstrable error of fact, or that the EA fails to consider a substantial environmental question of significance to the proposed action.

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 March 2, 2009, decision by the Grand Junction Field Office is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
Geoffrey Heath  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge