

Editor's note: Reconsideration denied by Order dated June 14, 1983

UTAH WILDERNESS ASSOCIATION ET AL.

IBLA 81-648

Decided April 18, 1983

Appeal from decisions of Utah State Office, Bureau of Land Management, denying protest of the elimination of all or portions of 27 units from consideration as wilderness study areas and granting protests concerning two units designated as wilderness study areas. UT-020-037 et al.

Affirmed in part; affirmed as modified in part; reversed and remanded in part; set aside and remanded in part; and appeal dismissed in part.

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

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the unit's naturalness qualities and whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

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

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

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

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to

sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite naturalness or outstanding opportunities for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusions on those criteria.

APPEARANCES: George W. Pring, Esq., Denver, Colorado, and Wayne McCormack, Esq., Salt Lake City, Utah, for the appellants; Paul Smyth, Esq., Assistant Solicitor, Land Use, and Barbara I. Berschler, Esq., Office of the Solicitor, Washington, D.C., and David K. Grayson, Esq., Office of the Solicitor, Salt Lake City, Utah, for the Bureau of Land Management; Ann M. Stirba, Assistant Attorney General, and Carolyn L. Driscoll, Esq., Special Assistant Attorney General, State of Utah, for amicus curiae State of Utah; James A. Holtkamp, Esq., Salt Lake City, Utah, for intervenor Plateau Resources, Ltd.; Richard K. Sager, Esq., and James A. Holtkamp, Esq., Salt Lake City, Utah, and Herbert I. Zinn, Esq., Phoenix, Arizona, for intervenors Malapai Resources Company (formerly Resources Company), Mono Power Company and New Albion Resources Company; H. Michael Keller, Esq., Salt Lake City, Utah, for amicus curiae Blue Pool Water Users, Inc.; Robert G. Pruitt, III, Esq., Salt Lake City, Utah, for intervenor Pine Grove Associates; Thomas L. Wright, Esq., El Paso, Texas, for amicus curiae El Paso Natural Gas Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Utah Wilderness Association and 13 other organizations ^{1/} have appealed from various decisions of the Utah State Office, Bureau of Land Management (BLM), denying their protest of the elimination of all or portions of 27 units from further consideration as wilderness study areas (WSA's). Appellants also have appealed two other BLM decisions granting third-party protests concerning units designated as WSA's. See Appendix A.

On November 14, 1980, the BLM State Office published its final intensive inventory decision in the Federal Register with respect to the designation of areas of the public land as WSA's. 45 FR 75602 (Nov. 14, 1980). On December 15, 1980, appellants filed their protest regarding the elimination of all or portions of 30 units from further consideration as WSA's. See 45 FR 86556 (Dec. 31, 1980). On March 5, 1981, the BLM State Office published its final decision with respect to the protest. 46 FR 15332 (Mar. 5, 1981).

^{1/} The appellants are: Utah Wilderness Association, Public Lands Institute, Southern Utah Residents Concerned About the Environment, Utah Chapter of the Sierra Club, Sierra Club Cache Group, Utah Audubon Society, Slickrock Country Council, Slickrock Outdoor Society, Southwest Resource Council, Wasatch Mountain Club, Natural Resources Defense Council, American Wilderness Alliance, Friends of the Earth, and The Wilderness Society.

Appellants have appealed from the denial of their protest with respect to 27 of the units. In addition, appellants have appealed from a change in the WSA status of two other units, Mill Creek (UT-060-139A) and Middle Point (UT-060-175), made in response to other protests. The area involved in this appeal is approximately 925,000 acres.

The November 1980 BLM State Office decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), which provides, in relevant part, that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 [16 U.S.C. § 1131 (1976)]." From time to time thereafter, the Secretary is required to report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the BLM State Office pursuant to section 603(a) of FLPMA, supra, has been divided into three phases by BLM: Inventory, study, and reporting. The BLM State Office decision marks the end of the inventory phase of the review process and the beginning of the study phase.

The key wilderness characteristics assessed during the inventory phase of the review process are size, naturalness, an outstanding opportunity for either solitude or a primitive and unconfined type of recreation. Wilderness Inventory Handbook (WIH), dated Sept. 27, 1978, at 6.

Before proceeding further, we must consider an argument raised by several of the intervenors and amici curiae, Plateau Resources, Ltd., El Paso Natural Gas Company, and Malapai Resources Company. ^{2/} They contend that the Board can consider the voluminous evidentiary submissions, including photographs, affidavits, documents, and maps presented by appellants on appeal, and not previously considered by BLM, only for the limited purpose of determining whether a factual issue remains to be resolved; any such issue, they maintain, should be remanded to BLM. They suggest, however, that no remand is necessary, and that BLM properly inventoried the units. They argue that appellants' submissions cannot be considered for the purpose of demonstrating BLM's failure "to follow proper guidelines or procedure" (Response of Malapai Resources Company at 18).

^{2/} The following is a list of the various intervenors and amici curiae and the particular units of interest to each: State of Utah -- all units; Plateau Resources, Ltd. -- unit UT-050-248; Malapai Resources Company (formerly Resources Company), Mono Power Company and New Albion Resources Company -- units UT-040-076, UT-040-078, UT-040-079, UT-040-247, and UT-040-248; Blue Pool Water Users, Inc. -- unit UT-040-247; Pine Grove Associates -- unit UT-040-204B; and El Paso Natural Gas Company -- units UT-040-076, UT-040-077, UT-040-078, UT-040-079, UT-040-247, and UT-040-248.

In this case appellants have submitted substantial documentation in support of their arguments. Certainly these documents may be examined by the Board to determine whether BLM followed proper procedures, and ultimately to determine whether BLM reached a result which is supported by the record. We do not find any of the Board cases cited by intervenors as limiting our review in this regard. In fact, in Sierra Club, Utah Chapter, 62 IBLA 263 (1982), we considered submissions on appeal and found that the appellant had raised substantial questions concerning the adequacy of BLM's assessment of a wilderness criterion, and the record did not support adequately BLM's conclusion on that criterion. Therefore, in this case we have studied carefully the submissions of all parties, intervenors, and amici curiae in arriving at our decision.

[1, 2] We have held on many occasions that where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of an area's naturalness qualities and its subjective determinations whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference. National Public Lands Task Force, 66 IBLA 340 (1982); The Wilderness Society, 66 IBLA 287 (1982); Kennecott Corp., 66 IBLA 249 (1982); Ruskin Lines, 61 IBLA 193 (1982). Such judgments and determinations may not be overcome by expressions of simple disagreement. Mitchell Energy Corp., 68 IBLA 219 (1982); City of Colorado Springs, 61 IBLA 124 (1982). The Board has pointed out, however, that considerable deference is not tantamount to complete deference. Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981). Yet, one challenging a BLM decision has a particularly heavy burden.

In conducting the wilderness inventory, BLM has been guided by the WIH and various organic act directives. As we stated in Sierra Club, 61 IBLA 329, 334 (1982), the WIH and its amendments are guidelines which are binding on BLM. The inventory in that case, however, was part of an accelerated inventory process. Thus, BLM had completed its reports prior to the dissemination of Organic Act Directive (OAD) 78-61, Change 3, dated July 12, 1979. In that context the Board stated:

The ultimate question is not whether BLM employees flawlessly follow every direction contained in the WIH; rather, the real question is whether or not the BLM decision correctly applies the statutory criteria. The mere fact that BLM employees were not sufficiently prescient to anticipate that future actions by the BLM Directorate might prohibit actions they were then taking is insufficient, in the absence of an affirmative showing by appellant that a differing determination would result if the subsequent directions were implemented, to invalidate an evaluation process which has already occurred.

Id. at 334.

Subsequently, the Board made the following statement in Committee For Idaho's High Desert, 62 IBLA 319, 322 (1982), citing Sierra Club: "However, appellant's burden is not merely to show that BLM's procedures were faulty, but that its conclusions were wrong."

The rationale in the Sierra Club case was directed to a situation where guidelines are announced after a decision has been made. In such a situation, one challenging the decision cannot rely solely on a new interpretation to invalidate the decision. That person must show that if the new guidelines were followed, a differing determination would result. The appellant in Sierra Club failed to make the necessary showing.

The standard set forth in Sierra Club and in Idaho High Desert properly may be referred to as that which would require reversal of a BLM decision. Where an appellant establishes that BLM failed to follow its guidelines, and the appellant also affirmatively shows that such failure caused BLM to reach an incorrect conclusion, reversal of the BLM decision is required.

[3] There is, however, another possibility. Suppose an appellant establishes that BLM failed to follow its guidelines, or otherwise creates doubt concerning the adequacy of BLM's assessment, and the record does not adequately support BLM's conclusions. In such a situation, the BLM decision must be set aside and the case remanded for reassessment. See Sierra Club, Utah Chapter, supra. We must point out that evidence of failure to follow guidelines alone is insufficient to require reassessment. An appellant must also point out how the errors affect the conclusions and show that a different determination might result from reassessment.

In its statement of reasons, appellant raises various arguments concerning the 29 units in question. These arguments are: (1) erroneous findings as to naturalness; (2) failure to consider factors other than screening with respect to the solitude criterion; (3) failure to document opportunities for a primitive and unconfined type of recreation; (4) negligent fieldwork by BLM or the lack of fieldwork; (5) unexplained internal disagreements in BLM; (6) modified or altered documents in the unit files; (7) BLM employee conflict of interest; (8) improper boundary adjustments; (9) erroneous exclusion of areas or units because of constricted boundaries; (10) improper comparisons; and (11) misstated or ignored public comments. Appellants made one or more of these arguments for each of the units.

The Office of the Solicitor, on behalf of BLM, contends that BLM properly assessed the wilderness characteristics of each of the units on appeal, and that BLM's actions concerning all of the units should be affirmed. It also alleges that certain issues raised on appeal were not included in appellants' protest, as it related to individual units, and that, therefore, the Board is foreclosed from considering those issues (Answer at 13). Appellants dispute this charge, both as to whether the issues were raised, and even assuming they were not, the authority of the Board to rule on them. Although this Board has on occasion refused to consider issues raised for the first time on appeal, Monty Cranston, 67 IBLA 365 (1982); Henry A. Alker, 62 IBLA 211 (1982), we do not find that under the circumstances in this case the Board is barred from consideration of such issues.

We will proceed to consider all arguments raised on appeal. For the sake of clarity, we will consider each of the units separately.

Newfoundland Mountains (UT-020-037)

This unit consists of 23,266 acres and encompasses the Newfoundland Mountains which are located in northwest Utah about 80 miles from Salt Lake

City. The unit was eliminated from consideration as a WSA because BLM concluded that it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. In assessing solitude, BLM concluded that the unit was "never more than a single, exposed ridgeline," lacking in significant topographic or vegetative screening and that "man's evidences are continually in view" (Final Decision on Wilderness Study Areas -- Utah (November 1980) (Final Decision) at 27). Despite its relatively large size (23,266 acres), the "long and narrow" configuration of the unit detracts from the opportunity for solitude (Decision on Protest (Decision) at 2). ^{3/} BLM also states that the area is traversed by low-level military overflights on a daily basis. BLM concludes that the "sights and sounds" of such flights are "extremely imposing" (Decision at 2). The parties agree that the unit meets the naturalness criterion (Decision at 1).

Appellants argue that outstanding opportunities for solitude are available in the unit because of the sudden rise of the mountain range, the length of the range, the jagged topography along the ridgeline, the isolation of the area, and the tremendous scenic vistas available within the unit (Statement of Reasons (SOR) at 370).

The WIH provides guidelines to BLM state offices regarding the assessment of the key wilderness characteristics. With respect to outstanding opportunities for solitude, the WIH states at page 13:

In making this determination, consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit.

Factors or elements influencing solitude may include size, natural screening, and ability of the user to find a secluded spot. It is the combination of these and similar elements upon which an overall solitude determination will be made.

It may be difficult, for example, to avoid the sights and sounds of people in a flat open area unless it is relatively large. A small area, however, may provide opportunities for solitude if, due to topography or vegetation, visitors can screen themselves from one another.

In addition, OAD 78-61, Change 3 at pages 3-4, states:

It is erroneous to assume that simply because a unit or portion of a unit is flat and/or unvegetated, it automatically lacks an outstanding opportunity for solitude. It is also incorrect to automatically conclude that simply because a unit is relatively small, it does not have an outstanding opportunity for solitude.

^{3/} A separate decision was made with regard to each of the units protested even though appellants submitted a single protest. Citations to the "Decision" with respect to each of the units will refer to the particular decision on the protest made with respect to that unit.

Consideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude.

In its Decision, BLM states at page 2:

Your protest also states that "Several factors contribute to the outstanding solitude in this unit. The isolation, size, and rugged terrain are just a few of them." We agree that isolation and size contribute to the opportunity for solitude. Rugged terrain may contribute. On the other hand, the configuration of this unit detracts from the opportunity for solitude. It is over 23,000 acres, but it is long and narrow. It is about 19 miles long and narrows to only one mile in width in two places. Also, the topography reduces the opportunity for solitude as the range is one, single, exposed, narrow ridge. There are no side ridges or canyons of any consequence to increase opportunities for solitude. The lack of vegetation also reduces the opportunity for solitude. These factors in combination make the opportunity for solitude less than outstanding.

The fact that this unit is "long and narrow" does not necessarily preclude it from having outstanding opportunities for solitude. See Sierra Club, Utah Chapter, 62 IBLA at 271. Narrowness may, however, expose the unit to sights and sounds outside the unit.

OAD 78-61, Change 3 at page 4, provides guidance on the proper consideration of outside "sights and sounds":

Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

The record contains no evidence that the "sights and sounds" outside the unit are "so extremely imposing," by virtue of the narrow configuration of the unit, that the unit should be considered to lack outstanding opportunities for solitude. In fact, BLM states that the unit is the most isolated of the Salt Lake District's intensive inventory units (Wilderness Intensive Inventory at 4). Therefore, it does not appear that the narrow configuration of the unit precludes outstanding opportunities for solitude.

BLM also raises the problem of military overflights. The record contains a copy of a letter from Major General John J. Murphy, USAF, Commander of the Hill Air Force Base, dated January 9, 1980, in which he indicates the level of use of the airspace above unit UT-020-037. He states that in 1978

there were "approximately 4,700 individual aircraft sorties," which "equates to approximately 18 sorties per day." Id. at 2. The flights usually operate "at low altitudes and high speeds." Id. The area, generally, is within "restricted airspace." Id.

Appellants, on the other hand, point out that four units which receive approximately the same amount of use, as identified in the Murphy letter, were, nevertheless, designated as WSA's. These units are: Cedar Mountains (UT-020-094), Deep Creek Mountains (UT-050-020/UT-020-060), Swasey Mountains (UT-050-061), and Fish Springs Range (UT-050-127). In fact, the final decision on three of the units makes no mention of military overflights. See Final Decision at 39, 187 and 193. In response to a protest regarding unit UT-050-061, the BLM State Office stated: "The military aircraft flights are not of a frequency o[r] duration that would seriously affect the opportunities for finding solitude" (SOR at 1994).

The Wilderness Intensive Inventory for this unit states at page 7 that "[i]ntrusions into the unit's air space by overflights were recorded by inventory personnel for each day of a two-week stay" in July 1979. There was no discussion of the nature of those flights or their effect on opportunities for solitude. The Wilderness Intensive Inventory merely directs attention to the Murphy letter.

BLM has provided no evidence to distinguish the units which were designated as WSA's from unit UT-020-037, in terms of the effect of military overflights on opportunities for solitude. We note that unit UT-020-094, as identified in the Murphy letter, experienced, in 1978, approximately 7,300 aircraft sorties, or approximately 30 sorties per day. We are unable to conclude because of the inconsistent application of the Murphy letter that the letter may be used as support for concluding that this unit lacks outstanding opportunities for solitude. In addition, although overflights apparently were observed by BLM personnel, the record does not reflect their impact within the unit.

In assessing recreation, BLM concluded that while the unit offers opportunities for a primitive and unconfined type of recreation in the form of hiking, rock climbing, backpacking, hunting, photography, and sightseeing, such opportunities are not "outstanding." BLM noted that "access is restricted" (Final Decision at 27). In the Wilderness Intensive Inventory, at page 8, the BLM wilderness specialist states that "[i]n the estimation of the wilderness inventory crews 'outstanding' opportunities for a primitive and unconfined type of recreation would exist in the Newfoundlands if it were not for the restrictive access." The unit is "surrounded by a sea of mud or by the Eagle Bombing and Gunnery Range or by private land." Id. In response to appellants' protest, BLM stated that "opportunity" is defined in the WIH at page 13 as a "favorable time or occasion" and that "[i]f the 'favorable time or occasion' is not controlled by the recreator, but is determined by physical reasons and the private landowner or the Air Force provost marshall, the opportunity is restricted and cannot be considered outstanding" (Decision at 2).

However, OAD 78-61, Change 3, makes clear that access considerations should not dictate whether or not a unit has outstanding recreation opportunities. It states at page 4, "[t]he absence of a trail system or convenient

access is not a valid basis for concluding that an outstanding opportunity for primitive and unconfined recreation does not exist." It appears from the record that considerations of access directly affected BLM's determination on this criterion.

We must conclude that appellant has established errors in BLM's assessment of this unit, which if reassessed in light of our discussion herein might result in a changed determination concerning the outstanding opportunities criterion. For that reason, we must remand this unit to BLM for a reassessment of the outstanding opportunities criterion. BLM should take into consideration the documentation submitted on appeal with respect to this unit.

Dugway Mountains (UT-020-129/UT-050-130A)

This unit encompasses the Dugway Mountains which lie approximately 90 miles southwest of Salt Lake City. The unit totals 20,638 acres, and it was eliminated from consideration as a WSA because BLM concluded that it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants have appealed the deletion of 18,000 acres of the 20,638 acres. In assessing solitude, BLM stated that the unit was characterized by "steep, rocky terrain enclosing broad, relatively unscreened valleys" (Final Decision at 49). BLM further found that the unit lacks significant topographic or vegetative screening.

In response to appellants' protest, BLM stated:

The unit does have size, naturalness, and solitude; however, the qualifier "outstanding" cannot be applied to the marginal opportunities found in the Dugway Mountains. As stated in the Intensive Inventory rationale, the unit consists of broad even valleys, less than sharply separated, which shows little vegetative screening to separate or isolate visitors, or to abridge line-of-sight perspective.

(Decision at 2).

BLM also concluded that low level daily military flights over the unit were "so extremely imposing that it definitely makes the opportunity for solitude less than outstanding" (Decision at 1).

With respect to recreation, BLM stated:

Outstanding opportunities for a primitive and an unconfined type of recreation do not exist in the Dugway Mountains. The protest, in a single line, states that they do. No additional information is provided. Hiking or backpacking are the best recreational opportunities. As found in the intensive inventory, "Hiking and backpacking might be pursued by those wishing to explore for a day or two; beyond that timeframe the experience might be restricted by unit size, lack of water, topographic diversity, or challenge." Because of the complete absence of water, any kind of recreation activity would be almost impossible to sustain for more than a day or two. The opportunity is clearly not outstanding.

(Decision at 2).

Appellants direct our attention to OAD 78-61, Change 3 at page 3, which states that "[i]t is erroneous to assume that simply because a unit or portion of a unit is flat and/or unvegetated, it automatically lacks an outstanding opportunity for solitude." The Wilderness Intensive Inventory states at page 8 that "[s]ize alone cannot provide an outstanding opportunity for solitude if the majority of the unit is open and poorly screened." Appellants point out that OAD 78-61, Change 3 at page 4, requires that in assessing outstanding opportunities for solitude "[c]onsideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude."

BLM appears to rely principally on lack of screening and military overflights in finding no outstanding opportunity for solitude. Although BLM also notes that the unit does not have a "totally compact configuration" (Decision at 2), the Wilderness Intensive Inventory states at page 1 that "generally the range is 10 miles long and 5 miles wide." Appellants state that they are excluding from their appeal the extreme north of the unit where configuration could have an adverse influence on solitude.

With respect to military overflights, the BLM record contains no support for the "extremely imposing" conclusion other than the Murphy letter discussed under unit UT-020-037. As we stated for that unit, the Murphy letter itself, because of its inconsistent application, cannot be used as support for the conclusion that the unit lacks an outstanding opportunity for solitude. Thus, there is no support in the record for the "extremely imposing" conclusion.

OAD 78-61, Change 3 at page 4, requires that BLM give consideration to the interrelationship between size, screening, configuration, and other factors that influence solitude. BLM did discuss certain factors; however, since the degree to which BLM's consideration of the Murphy letter influenced its determination on solitude is not apparent from the record, we find that remand for reassessment is appropriate.

In assessing recreation, BLM concluded that outstanding opportunities for a primitive and unconfined type of recreation are lacking. It found hiking and backpacking to be restricted by "unit size, lack of water, topographic diversity, or challenge" (Final Decision at 49; Decision at 2).

OAD 78-61, Change 3 at page 4, provides that, "[t]he absence of water in a unit is not a valid basis for concluding that an outstanding primitive recreation opportunity does not exist." Moreover, it provides that "'[c]hallenge' and 'risk' are appropriate for consideration under this criterion. However, their presence is not necessary in order to conclude that a unit does qualify under this criterion." *Id.* In addition, it is difficult to determine how "unit size" affects opportunities for a primitive and unconfined type of recreation, given the large size of the unit.

Thus, it is unclear whether BLM properly assessed the opportunities for primitive and unconfined recreation or gave consideration to whether there is a diversity of recreational opportunities available in the unit. The WIH provides at page 14 that "[a]n area may possess outstanding opportunities for a primitive and unconfined type of recreation either through the diversity in the number of primitive and unconfined recreational activities possible

in the inventory unit or the outstanding quality of one opportunity." (Emphasis added.) BLM made no finding on whether there was a diversity of activities.

Despite the deference we accord to BLM wilderness determinations, we find that the BLM record does not support adequately its conclusions on the outstanding opportunity criterion. We have highlighted the deficiencies above. Reassessment could result in different conclusions; therefore, we set aside the BLM decision and remand the unit to allow reassessment of the outstanding opportunities criterion.

Horse Spring Canyon (UT-040-075)

This unit contains 32,203 acres and is located in south-central Utah near the town of Escalante. The unit was eliminated from further wilderness review because of a lack of outstanding opportunities for either solitude or a primitive and unconfined type of recreation.

On appeal, appellants state that BLM correctly found the majority of the unit to be affected primarily by the forces of nature. They believe approximately 30,000 acres meet the naturalness criterion. They assert that certain impacts in the unit are not "substantially noticeable" as characterized by BLM in the Final Decision at page 59. They also challenge BLM's conclusion on the outstanding opportunities criterion. ^{4/} Counsel for BLM

^{4/} In response to appellants' protest, BLM stated, concerning solitude:

"The protest states that opportunities for solitude are outstanding because there are a 'number of canyons dissecting the unit; the walls of the canyons are steep, 150 to 200 feet in height', 'ridges between the canyons are moderately thick, with pinyon-juniper cover, and toward the western side of the unit and in the washes there are groves of ponderosa', and 'areas of intimacy are found in upper Canaan Creek and Willow Creek where there are a few narrow sections of 40 to 50 feet width with walls of 150 feet and some confined passageways'. The protest is a description of the topography and vegetation, but it does not document how these features affect screening opportunities. The protest does not explain how the screening opportunities would be outstanding [emphasis added] under the directives of the Wilderness Inventory Handbook. Some of the canyons or portions of canyons have high, steep walls, but in general, the canyons are wide and shallow. Photographs UT-040-075-39, 48, 51, 60, 86, 87, 89, 91, 92, 94, 100, 101, 105, 107, and 108 in the Cedar City District file document this fact. The protest agrees that the canyon floors are 'valley-like, being mostly of an open, flat nature'. Obviously, the screening opportunities available in the canyons are much reduced. The November 1980 decision correctly states that 'the topography and vegetation do provide some opportunities for solitude, but the opportunities are not considered to be outstanding.'"

(Decision at 2-3). BLM concluded in its Final Decision at page 59:

"2. PRIMITIVE AND UNCONFINED RECREATION: The unit does not offer outstanding opportunities for primitive, unconfined recreation. Recreational activities such as horseback riding and hiking are possible, but the opportunities are not outstanding. No prominent sightseeing or recreational features have been identified in the unit using the BLM's Recreation Information System. The average scenery, lack of prominent recreational features, absence of challenge or risk, and lack of diversity in the number of activities precludes outstanding opportunities for primitive, unconfined recreation."

characterizes appellants' objections as simple disagreement. For naturalness, we agree; for outstanding opportunities, we do not.

The record supports BLM's conclusions concerning substantially noticeable imprints. Appellants have merely presented a difference of opinion. They have established no errors in BLM's assessment of naturalness.

However, appellants have pointed out specific errors in BLM's assessment concerning outstanding opportunities. Appellants allege that BLM's assessment of solitude was too restrictive in that BLM failed to consider factors other than screening. The record supports this allegation. BLM's protest response indicates that BLM was equating outstanding screening with outstanding opportunities for solitude. See note 4, supra. OAD 78-61, Change 3 at 4, mandates that in assessing solitude BLM must give consideration to "the interrelationship between size, screening, configuration, and other factors that influence solitude." Although we accord considerable deference to BLM's wilderness determinations, appellants have established a failure to follow guidelines in assessing solitude, and they have made a showing that a different determination might result from reassessment.

Appellants also challenge BLM's conclusion on opportunities for recreation. Appellants state:

BLM claims Horse Spring contains only average scenery and lacks prominent recreational features. At BLM's Escalante Area Office there is a picture of Horizon Arch and an arrow showing its location within the unit. In the supplemental values section of the November 1980 Decision BLM states:

Archaeological values include petroglyphs, pictographs, granaries, cave habitation sites, and open campsites. Geological features include Horizon Arch, petrified wood, and fossil localities. One fossil locality is reported to contain dinosaur bone.

Aside from these recreational values, various unnamed arches and high cliffs constitute excellent unit scenery. See Macfarlane and England photos. There is no reason why geological and archaeological sightseeing opportunities are labeled "supplemental values" rather than opportunities for primitive recreation. These values make hiking and backpacking in the unit an outstanding experience. BLM's contention that the unit lacks scenic and recreational features is unfounded and erroneous.

(SOR at 51).

The WIH at 13 sets forth examples of primitive and unconfined types of recreation. Sightseeing for geological features is given as an example. Clearly, those items set forth under the supplemental values section for this unit should have been considered under recreation. Appellants assert that consideration for all the recreational activities available in the unit -- hiking, horseback riding, backpacking, rock climbing, geological sightseeing, botanical sightseeing, archaeological sightseeing, and photography -- establish outstanding recreation opportunities because of the diversity of activities.

Appellants have established error in BLM's assessment of recreation opportunities, and they have made a showing that a different determination might result from reassessment.

For the reasons stated above, we must set aside the BLM decision and remand the case for reassessment of the outstanding opportunities criterion for this unit.

Carcass Canyon (UT-040-076)

The Carcass Canyon unit is located 2 miles south of Escalante, Utah, in the northeast section of the Kaiparowits Plateau. The BLM Final Decision at 61 included a WSA of 46,711 acres and excluded the remaining 29,699 acres of this 76,410 acre unit. Appellants protested the exclusion of 12,180 of those acres between Straight Cliffs and the Hole-in-the-Rock Road. BLM denied the protest. Appellants' appeal relates to the same acreage. The acreage in question was eliminated from further wilderness review because it lacks outstanding opportunities for either solitude or a primitive and unconfined type of recreation.

OAD 78-61, Change 3 at page 3, provides authority for a BLM state office to adjust the boundaries of a unit under certain circumstances on the basis of the outstanding opportunity criterion. In addition, the state office may request an exception from the Director, BLM, in order to adjust a boundary under other circumstances on the basis of that criterion. Id. 5/

5/ The full text of OAD 78-61, Change 3, regarding boundary adjustments reads: "As a general rule, the boundary of a unit is to be determined based on evaluation of the imprints of man within the unit, and should not be further constricted on the basis of opportunity for solitude or primitive and unconfined recreation. A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding criterion. Obviously, there must be an outstanding opportunity somewhere in the unit. "There may be unusual cases where due to configuration it may be appropriate to consider adjusting the boundary based on the outstanding opportunity criterion. There are several examples where this may occur:

"(a) When a narrow finger of roadless land extends outside the bulk of the unit;

"(b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);

"(c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation.

"The above cases are the only ones in which the boundary may be adjusted on considerations other than imprints of man. Any other exceptions to boundary adjustments must be approved by the Director (430)." (Emphasis in original.)

By memorandum dated September 30, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete acreage from unit UT-040-076 because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion. The exception was granted. 6/

By memorandum dated November 21, 1980, at page 2, the BLM State Office provided an explanation for the exception:

The 20,379 acres area below the Straight Cliffs lacks the intricate canyons and heavily forested vegetation of the area above and behind the Straight Cliffs. Although this area exhibits erosional features such as small buttes, ravines, and draws, the area obviously lacks the topographic dissection and canyon entrenchment imposed by the Right Hand and Left Hand Collet drainages west of the Straight Cliffs. Furthermore, the vegetative screening is a much more open pinyon-juniper forest cover or is lacking in forest cover at these lower elevations. There is thus a major contrast between the two landscapes. The natural screening factors present below the Straight Cliffs are clearly inferior to those elsewhere in the naturalness portion of the unit. The high degree of landscape character change is easily recognized and located and is the major factor in distinguishing an area of outstanding opportunities for solitude within the inventory unit.

Appellants raise a number of objections to BLM's conclusions concerning the deleted acreage. First, appellants charge that there was inadequate fieldwork. Appellants state that there are no field notes in the unit files relating to the appealed area, and they surmise because the unit files contain aerial photographs for the appealed area that no field evaluation took place. Appellants challenge is refuted adequately in the affidavit of Lawrence Royer, submitted by intervenor Malapai Resources Company (Intervenor's Affidavits at 1002-08). Royer is the BLM Wilderness Coordinator for the Cedar City District. In the affidavit he explained that use of a helicopter was exceptionally well-suited to the demands of the intensive wilderness inventory. Id. at 1002. He stated:

Thus the helicopter is essential to identifying the various areas within the unit to be examined on the ground. It is also the quickest and occasionally the only means of transporting the investigator to these areas. Most of the ground level observations by the Cedar City District were thus made using helicopter access. The usual method was to initially examine the unit with the helicopter and then determine which areas were to be examined on the ground. Pickup times and locations were scheduled and

6/ Appellants have challenged the Director's exception approval process with special attention given to the March 1980 exception approval for seven other units in this appeal (SOR at 34-37). See discussion, infra, under Mud Spring Canyon unit (UT-040-077). Appellants did not specifically question in their Statement of Reasons the granting of the exception for this unit. We will review the record, however, to determine if it supports the action taken by BLM.

two-man ground crews were then carried to each of the respective areas by helicopter. In practice, a crew was deposited on the ground to hike a canyon, ridgeline, or plateau and then another crew would be picked up. As many as three crews would be on the ground at one time. The ground level investigations thus proceeded in a sort of leap-frog fashion. Although the helicopter was essential to the ground inventory, flight time probably constituted less than five percent of the total time devoted to ground inventory.

Id. at 1004-05.

While appellants may disagree with the amount of fieldwork or question the exact location of the ground evaluations, the record does not support their charge of inadequate fieldwork.

Appellants also argue that there is insufficient justification for the boundary adjustment exception. They contend that BLM put improper emphasis on screening to the exclusion of other factors in determining opportunities for solitude.

A statement in the decision rejecting appellants' protest supports appellants' position. On page 6 of the Decision, BLM states, "[t]he Explanation [November 21, 1980, Memorandum] explains clearly why the area in question does not offer outstanding screening opportunities." (Emphasis added.) This statement exhibits a certain confusion concerning the outstanding opportunities criterion. OAD 78-61, Change 3 at page 4, stated that in assessing solitude "[c]onsideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude." While certainly outstanding screening opportunities would indicate the availability of outstanding opportunities for solitude, it does not follow automatically that lack of outstanding screening opportunities equates with a lack of outstanding opportunities for solitude. Assessment of solitude dictates more than consideration of screening.

Appellants also assert that BLM improperly assessed the outstanding opportunities criterion because it failed to consider vistas. In support of their position, appellants cite a January 30, 1981, letter from the Acting Chief, Division of Wilderness and Environmental Areas, BLM, to a member of the Public Lands Institute which states that "scenic vistas" are to be treated much like outside "sights and sounds" (SOR at 1167). He states that "[i]n such cases, the presence of a vista may be considered in determining whether outstanding opportunities exist either for solitude or for a primitive and unconfined type of recreation."

This letter was issued after the WIH and the relevant organic act directives and after BLM issued its Final Decision for Utah. There is no evidence that it was communicated to BLM personnel as any type of policy directive; therefore, there could be no error in failing to follow it. However, where a unit is remanded to BLM for reassessment of the outstanding opportunity criterion, BLM may consider scenic vistas as another factor in its assessment equation.

Appellants further assert that there was staff disagreement concerning this unit which should have been documented in accordance with OAD 78-61, Change 3 at page 1, which states: "In cases where staff, District Manager, and/or State Director recommendations do not agree, a narrative explanation of the changed recommendations must be included in the intensive inventory documentation file, in all summary narrative documents, and in any other information available to the public."

Appellants point to the 8-page intensive inventory form for this unit and state that wilderness specialist, Rex Wells, signed off on the parts of the report relating to size, naturalness, and supplemental values, while Lawrence Royer signed off stating that solitude and recreation were not outstanding (SOR at 64). Merely because two different individuals sign parts of the intensive inventory report does not compel a finding of staff disagreement. There is no supporting evidence of disagreement in the record.

Finally, appellants challenge BLM's conclusion on outstanding opportunities for recreation. We find no error in BLM's consideration of recreation. Appellants have expressed only a difference of opinion.

BLM's explanation of the elimination of the acreage in question was based on its conclusion that outstanding opportunities were not available in that area. Appellants have established, however, that BLM improperly assessed the opportunities for solitude in the appealed area because of its narrow focus on the availability of screening. BLM equated outstanding screening with outstanding opportunities for solitude. Reassessment of the solitude criterion based on the interrelationship of size, screening, configuration, and other factors could result in a changed determination. Therefore, we set aside the BLM decision and remand this unit to BLM for reassessment of the solitude criterion as to the acreage appealed. Consideration should be given to all the documents filed on appeal.

Mud Spring Canyon (UT-040-077)

A portion of this Kaiparowits Plateau unit was eliminated from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. In so doing, BLM deleted 26,935 acres out of a total of 65,010 acres in the unit. Appellants have appealed the BLM decision denying their protest of the deletion of 18,065 acres in the southeastern portion of the unit.

By memorandum dated March 6, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete acreage from unit UT-040-077 because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion (SOR at 1199). The exception was granted by memorandum dated March 13, 1980 (SOR at 1200).

Appellants argue that BLM's application of the Director's exception for boundary adjustments provided for in OAD 78-61, Change 3 at page 3, violated guidelines, express orders of the Director, BLM, and decisional requirements of administrative law (SOR at 34-37, 70). In general, appellants contend that the Director's exception provision in the OAD is fatally flawed because it provides for "approval actions by an agency official without specifying any guidelines, definitions or limitations upon the official's discretion"

(SOR at 36). Appellants characterize the exception as a carte blanche grant of arbitrary authority. More specifically, appellants charge that the State Director did not submit any information in support of the request. They state that not even a map was provided showing specific boundary adjustments. Appellants argue that the Director's approval was clearly arbitrary and capricious because it was based on a mere request unsupported by any evidence.

Moreover, appellants allege that BLM failed to comply with the requirements placed on the Director's approval. The Director stated in the March 13, 1980, memorandum:

Approval is granted for the requested exception with the following conditions:

1. The boundary adjustment must not have the effect of detracting in any (significant) way from the wilderness values of the inventory unit. For instance, this adjustment should not eliminate supplemental values within the original unit. Additionally, it is extremely important that the eliminated acreage not reduce the overall size of the unit in a manner that detracts from the extent or quality of opportunities for solitude and recreation that would otherwise exist. As you recognize, overall size has an important bearing on the quality of wilderness experiences in a unit.

2. The narratives for each affected unit shall clearly point out that your proposed decision represents a variation from the general policy, and will fully discuss and document the rationale for your proposal, including the special points referred to above in item 1.

Appellants argue that elimination of the acreage in question does, in fact, detract from the extent and quality of the opportunities for solitude, and that the narrative for the unit does not discuss or document the rationale for the proposal.

In response to these arguments, counsel for BLM states:

Yet Appellants' argument really amounts to a difference of opinion. In their opinion insufficient information was provided by the Utah State Director to support the request for the exception and the Washington office acted without sufficient information. However, it is not enough for Appellants to question the amount of information provided. Because Appellants may not simply substitute their opinion for that of BLM as to what is adequate information, they must show that the action taken by BLM was unreasonable. This they have failed to do.

(Answer at 7).

Appellants have raised serious questions which are not addressed by BLM in its answer. The OAD states only that "other exceptions to boundary adjustment must be approved by the Director." It provides no guidance concerning the approval process. In this case a single page memorandum was

transmitted from the Utah State Director to the Director, BLM, requesting the exception. No supporting information accompanied the request such that the Director could exercise independent judgment on whether or not to approve the exception. Counsel for BLM states that "it was reasonable for the Director of BLM to grant the boundary exceptions in this case provided he had the assurance that, in the opinion of the State Director, important wilderness values would not be jeopardized" (Answer at 8).

The logical conclusion to draw from this statement is that the State Director should get an exception any time it is requested. In this case, the Director had no way to judge the reasonableness of the request. If the Director is to assume the request is supportable, there would never be a basis for denying a request. No proper evaluation of whether or not to grant approval could be made. Nevertheless, in this case approval was granted. Approval, however, was conditional. Appellants argue that the conditions were not met. BLM contends that the necessary documentation to support its action is contained in the unit files.

Even assuming the Director had adequate information to make an informed decision to approve, BLM's support for the exception granted by the Director, BLM, falls far short of "fully discuss[ing] and document[ing]" the basis for deleting the lands under appeal. The only discussion consists of conclusory statements that outstanding opportunities do not exist in the southeastern portion of the unit. ^{7/} The apparent justification is that there is a change in topography and vegetative screening in the southeast.

We cannot find that the record supports BLM's conclusions on the outstanding opportunity criterion. The record does not reveal that BLM gave consideration to the interrelationship between size, screening, configuration, and other factors that influence solitude for the acreage in question. See OAD 78-61, Change 3 at 4.

Appellants again allege a failure to document staff disagreement because the unit files contain two intensive inventory reports each bearing the same date, February 29, 1980, yet the one signed by Ken Mahoney finds outstanding opportunities for recreation "throughout most of the natural area" (SOR at 1201), while the one signed by Lawrence Royer adds a sentence to the narrative

^{7/} The decision on appellants' protest refers to the final intensive inventory decision as providing the supporting rationale for the exception (Decision at 3). The topography of the unit is described as "diverse" ranging from high-walled canyon in the west to badlands in the northeast (Final Decision at 63). The vegetation "varies from ponderosa pine at higher elevations to pinyon and juniper, and low growing shrubs." *Id.* BLM concludes that "[s]creening provided by topography and vegetation or the combination of each offers an outstanding opportunity to avoid the sights and sounds of other people in all but the southeastern portion of the natural area." *Id.* Likewise, BLM states that while most of the unit offers outstanding opportunities for a primitive and unconfined type of recreation by virtue of the "diversity and quality" of recreational activities, the "southeastern portion of the area" lacks such opportunities. Id.

stating that outstanding opportunities do not exist in the southeast portion of the unit. BLM states that although the Royer report used the February 29, 1980, date, it was prepared after the Director, BLM, approved the exception on March 13 (Answer at 27). BLM admits that it may have been a mistake not to date the Royer report properly, but it states that "the language used by Kenneth Mahoney in expressing his opinions on opportunities for solitude and recreation in the unit are consistent with the position later expressed by Lawrence Royer" (Answer at 28). What BLM fails to address, however, is the fact that Mahoney's statement relating to recreation opportunities would have supported inclusion of all of the natural area of the unit because as stated in OAD 78-61, Change 3 at page 3: "A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit."

The Royer statement, made after the exception was granted, was directed toward supporting the exception. We do not find undocumented staff disagreement, rather we find inadequate justification for the exception.

Lack of support in the record for BLM's conclusions on the outstanding opportunities criterion dictates that we set aside BLM's decision and remand this unit to BLM to allow a reassessment of the outstanding opportunities for solitude and a primitive and unconfined type of recreation for the acreage under appeal. BLM should consider all documentation submitted on appeal during its reassessment.

Death Ridge (UT-040-078)

The Death Ridge unit is also on the Kaiparowits Plateau. It contains 65,040 acres. The whole unit was eliminated from consideration as a WSA because it was found to lack outstanding opportunities either for solitude or a primitive and unconfined type of recreation. In assessing solitude, BLM concluded that the southern portion of the unit lacks "sufficient topographic and vegetative screening" and that north of the upper part of the Escalante Canyon "topography and vegetation * * * are commonplace and are not exceptionally rough or dense in terms of their capacity to screen visitors from one another" (Final Decision at 65).

Appellants contend on appeal that BLM failed to assess adequately the wilderness characteristics of the unit because BLM relied extensively on aerial reconnaissance of the unit. The record does not support appellants' contention. The Royer affidavit, supra (under Carcass Canyon unit (UT-040-076) discussion), explains BLM's inventory procedures involving both aerial and ground level observation. Appellants' argument amounts to disagreement with the proper methodology for assessment. We cannot find error in the methods adopted by BLM.

Appellants argue that BLM indulged in improper comparisons in evaluating the outstanding opportunities criterion for this unit. Appellants cite language used by BLM to evaluate the screening and topography of the area and the quality of the recreation. BLM points out that what is prohibited by the guidelines (OAD 78-61, Change 3 at 2) is comparison among units. The

basis for this prohibition was that it was not the purpose of the wilderness inventory to establish any ranking system for wilderness units.

BLM argues that there were no improper comparisons. It states that the Utah State Director interpreted the guidelines as allowing comparisons among elements considered in assessing outstanding opportunities. Such an interpretation was proper. In *Catlow Steens Corp.*, 63 IBLA 85 (1982), this Board held that assessment of wilderness characteristics necessarily involves a comparative process because of the relative nature of the term outstanding. The record does not support a finding that BLM made improper comparisons concerning this unit.

Appellants again claim that undocumented staff disagreement is disclosed because two different individuals signed sections of the wilderness inventory report (SOR at 92). As stated previously under the discussion for Carcass Canyon (UT-040-076), such a fact alone does not establish that there was staff disagreement. The record for this unit contains no supporting evidence of disagreement.

With respect to the solitude criterion, appellants argue that BLM failed to consider the interrelationship of size, screening, configuration, and other factors that influence solitude, as required by OAD 78-61, Change 3 at page 4. Appellants cite BLM's response to its protest as support for this argument. They state that BLM improperly ignored size. In its decision, BLM states that consideration of the interrelationship "clearly refers to the sentence discussing relatively small units" (Decision at 4). BLM also stated that the "'size' reference at page 4 refers to situations involving 'relatively small' units" (Decision at 6).

It is correctly pointed out by appellants that BLM misconstrued OAD 78-61, Change 3 at page 4. The relevant language is:

It is erroneous to assume that simply because a unit or portion of a unit is flat and/or unvegetated, it automatically lacks an outstanding opportunity for solitude. It is also incorrect to automatically conclude that simply because a unit is relatively small, it does not have an outstanding opportunity for solitude. Consideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude.

This language was written to clarify the following statements in the WIH at page 13: "It may be difficult, for example, to avoid the sights and sounds of people in a flat open area unless it is relatively large. A small area, however, may provide opportunities for solitude if, due to topography or vegetation, visitors can screen themselves from one another." BLM is assessing solitude for this unit ignored the "consideration of interrelationship" requirement because it felt that that requirement referred only to "relatively small" units. It is clear that such a limited interpretation was not justified. The intent of the language in OAD 78-61, Change 3, quoted above, was to indicate the difficulty in assessing the solitude criterion and to indicate that, even in the two extreme examples given, a conclusion could not be reached simply or automatically. Thus, the OAD stated that consideration must be given to the interrelationship of various factors, including size.

Where the record expressly indicates, as it does for this unit, that BLM did not assess the solitude criterion properly, and appellants have shown that reassessment of the solitude criterion based on the interrelationship of size, screening, configuration, and other factors might result in a changed determination, the BLM decision will be set aside and the case remanded for reassessment. On remand, consideration should be given to all documents filed by appellants and intervenors.

Appellants also challenge BLM's conclusion on outstanding recreation opportunities. We find no error in BLM's conclusion. Appellants have expressed only a difference of opinion.

Burning Hills (UT-040-079)

The Burning Hills unit is located on the Kaiparowits Plateau. It encompasses 70,080 acres. There are two north-south ranges in the unit, Smokey Mountain on the west and Burning Hills on the east. The ranges are divided by a number of canyons. This unit was eliminated from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

BLM concluded in its Final Decision that "while the terrain and vegetation in this unit provide some opportunities for solitude, they are not considered to be outstanding" (Final Decision at 67). BLM also concluded that the unit neither provided a diversity of recreation opportunities nor an outstanding opportunity for any individual recreational experience. Appellants protested the elimination of 61,550 acres. BLM denied their protest, and they have appealed the same acreage.

Appellant has raised again the issue of improper comparisons. The record does not support a finding of improper comparisons. BLM did not compare units. See discussion, supra, for Death Ridge (UT-040-078). Appellants also assert that BLM applied a consensus criterion by indicating that the public comments exhibited a lack of consensus as to outstanding opportunities. See Final Decision at 67. BLM adequately dealt with this assertion in its protest response when it stated that "[t]he intent of the Bureau statement about 'consensus' was clearly to describe the content and substance of public comment. The statements do not state or imply that 'consensus' was considered a criterion for decision" (Decision at 11).

Appellants complain, concerning recreation, that BLM failed to document fully the recreation opportunities in the unit. BLM correctly points out, however, that actually appellants are in disagreement with the selection of activities documented by BLM (Answer at 36). We find no error in BLM's assessment of recreation opportunities.

Appellants cite as error the following statement by BLM in its protest response:

The protest contends that because "the BLM Final Decision did not evaluate the effect that size of the area -- over 96 square miles -- has in giving the area an outstanding opportunity for solitude," the decision is a violation of directives. The protest is correct in stating that size of the unit was not evaluated in

the decision. There is no directive or guidance requiring that the effect of large size be evaluated.

(Decision at 7). On appeal counsel for BLM admits that such a statement was incorrect (Answer at 36). Counsel asserts that nevertheless consideration of size is inherent. It would be easier to accept this assertion if the record were silent on whether size was considered. However, it is not. See discussion of size under Death Ridge unit (UT-040-078), supra.

We find that where the decision appealed from expressly indicates, as it does for this unit, that BLM did not assess the solitude criterion properly, and appellants have shown that a different determination might result from reassessment of the interrelationship of size, screening, configuration, and other factors, the decision must be set aside and the unit remanded for reassessment. During reassessment, BLM should consider all documentation submitted on appeal by appellants and intervenors.

Mountain Home Range (UT-040-104)

This unit lies in southwestern Utah's Beaver County, approximately 5 miles from the Nevada border. It consists of 19,019 acres of public land. BLM eliminated this unit from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants seek WSA status for the approximately 19,000 acres found by BLM to be natural. BLM concluded that in the western portion of the unit the land is a "long gentle slope to Hamlin Valley," with vegetation which is "not sufficiently dense to offer natural screening" (Final Decision at 93). The opportunities for solitude in the remainder of the unit, which is "composed of either steep timbered slopes or a limestone escarpment and outcroppings immediately below the summit plateau," are not "outstanding." Id. It also concluded that none of the recreation opportunities are outstanding and that the unit lacks a diversity of opportunities.

Appellants allege error in BLM's assessment of solitude because of a failure to consider scenic vistas. Appellants direct our attention to a letter dated January 30, 1981, from the BLM Acting Chief, Division of Wilderness and Environmental Areas, to a member of the Public Lands Institute which explains that scenic vistas are to be treated like "outside sights and sounds" (SOR at 1167). The letter explained that scenic vistas may be considered for determining outstanding opportunities during the inventory phase when they are adjacent to a unit and so extremely imposing that they cannot be ignored. As we stated in our discussion of this issue for the Carcass Canyon unit (UT-040-076), supra, there is no evidence that the substance of this letter was communicated to BLM personnel as any type of policy directive, and, in fact, the letter itself is dated subsequent to BLM's Final Decision in Utah. Failure to consider scenic vistas was not error.

Appellants contend that the unit files exhibit a lack of on-the-ground knowledge and thus inadequate field evaluation. Appellants' contention is not supported by the record. Disagreement with the proper methodology for assessment does not establish error in that assessment. See discussion, supra, Carcass Canyon unit (UT-040-076).

Other challenges to BLM's assessment of the outstanding opportunities criterion have been made by appellant, including allegations of distortion of public comments and failure to document conclusions. We find no support in the record for appellants' allegation that BLM distorted public comments. In addition, the record provides support for BLM's conclusions. Appellants have provided information which supports conclusions different from those reached by BLM; however, appellants have not established record errors. Thus, the record discloses merely a difference of opinion. Our function is not to substitute our judgment for that of BLM. We give considerable deference to BLM's determinations of whether a unit possesses outstanding opportunities. National Public Lands Task Force, supra. Where appellants fail to establish record errors, and the record supports BLM's determinations, the BLM decision will be affirmed. BLM's decision denying appellants' protest is affirmed.

Central Wah Wah Range (UT-040-204B)

BLM excluded this unit from WSA status because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. The unit covers 37,238 acres in the central area of the Wah Wah Mountain Range in southwest Utah. In assessing solitude, BLM concluded that topography is the "major influence" on the opportunities for solitude (Final Decision at 149). In particular, the range is "characterized by one long (12.3 miles) and extremely narrow ridge," which is "essentially level," with no lateral ridges or entrenched canyons. Id. BLM states that "any visitors could easily be observed on the slopes below or on the ridge itself." Id. BLM also concluded that the unit has no outstanding opportunities for a primitive and unconfined type of recreation, nor a diversity of recreational opportunities.

Appellants believe that in assessing solitude BLM performed inadequate fieldwork and relied too heavily on aircraft. The proper mix of on ground and aerial survey necessary to assess wilderness characteristics is subject to debate; however, the affidavit of Lawrence Royer (see discussion, supra, under Carcass Canyon unit (UT-040-076)) adequately supports BLM's inventory techniques involving aircraft. The record does not support the charge of inadequate fieldwork.

Appellants challenge BLM's conclusion that the unit lacks outstanding opportunities for primitive and unconfined types of recreation. Part of appellants' concern focuses on methods of evaluation which we have discussed above. Appellants also believe that BLM improperly compared inventory units in concluding that this unit does not have superior mountain scenery. Appellants attribute BLM's conclusion only to an analysis of elevation numbers. Appellants charges are not supported by the record. There is no evidence of prohibited comparison of units. BLM has made a subjective determination, supported by elevation figures, topographic features and vegetation, that the unit does not exhibit outstanding mountain scenery. Appellants have a different opinion. Likewise, BLM's conclusion on recreational opportunities is supported by its findings that the unit lacks significant flora and fauna and has no noteworthy geological features. Concerning the diversity of opportunities, appellants merely express their opinion that the list of opportunities is more extensive than stated by BLM.

Appellants argue that in assessing solitude, BLM relied entirely on topographic features and that its conclusion is, therefore, erroneous. BLM's Final Decision at page 149 indicates that topography is the primary influence on the solitude factor for this unit. However, it does not follow necessarily that BLM limited its assessment to topography. BLM considered topography and vegetation during the public comment period. BLM's response to appellants' protest indicates an awareness of the possibilities of vegetative screening. While BLM's analysis of vegetative screening could have been more definitive, it is obvious that BLM did not find that vegetative screening enhanced the possibilities for finding outstanding opportunities for solitude in this unit. Appellants further contend that BLM dismissed size as a factor citing BLM's Analysis of Public Comments which stated that "[l]arge size was identified in seven comments as conveying outstanding opportunities for solitude. These comments cannot be verified because the WIH criteria do not directly address size." BLM's statement is inaccurate. The WIH at page 13 states "[f]actors or elements influencing solitude may include size." OAD 78-61, Change 3 at page 4, expanded on this stating that "[c]onsideration must be given to the interrelationship of size, screening, configuration and other factors that influence solitude."

Since the record expressly indicates that BLM did not consider size during its assessment, we must conclude that BLM did not comply with the directive of OAD 78-61, Change 3 at 4, which required consideration of the interrelationship of factors. If there were some factor which independently provided outstanding opportunities for solitude, there would be no necessity for considering interrelationship. However, when that is not the case, and the record expressly indicates, as it does here, that one of the mandatory factors was eliminated from consideration, remand for reassessment of the solitude factor is the proper course of action. Appellants have established that the record does not adequately support the conclusion on solitude and that reassessment might result in a changed determination. Therefore, the BLM decision concerning this unit is set aside and the case is remanded to BLM for reassessment of the solitude criterion. Consideration should be given to all the documentation filed on appeal.

Parunuweap Canyon (UT-040-230)

The Parunuweap Canyon unit contains 47,696 acres and lies on the east boundary of Zion National Park in southeastern Utah. A portion of this unit (30,800 acres) was designated a WSA. Appellants challenge only the cherrystemming of a "dune buggy trail," which bisects the WSA.

In its final decision regarding the unit, BLM concluded that approximately 4.5 miles of the dune buggy trail were substantially noticeable and should be cherrystemmed (Final Decision at 157). The remainder of the trail, 3 miles, was determined to be not substantially noticeable, owing to "active sand dunes." Id. The unit map appearing at page 158 of the Final Decision appears to indicate cherrystemming of the entire 7.5 miles.

Appellants filed a protest pointing out the discrepancies between the April 1980 proposal narrative which found the entire 7.5-mile trail to be substantially unnoticeable and the Final Decision and the map. In its protest response, BLM acknowledged the discrepancies stating:

The discrepancy between narrative and map in the November 1980 Decision is the result of an editing error that occurred during the preparation of that document for publication by the Utah State Office. Upon review of the comments submitted during the intensive inventory public review period, the State Director requested the Solicitor to give a verbal opinion of a court case mentioned in the Kane County comment. The case dealt with access through the Barracks Ranch on the east side of the inventory unit and established a ". . . public highway . . . dedicated to the use of the public for travel thereupon by wagons, automobiles, jeeps, and other vehicles and the driving thereon of cattle and other livestock . . .". The Solicitor was asked to determine if the court's decree established a road fitting the definition in House Report 94-1163.

The Solicitor stated the decree inferred that the "public highway" did not end at the private property line but continued on across public land. The Solicitor stated that since the use of this "public highway" was guaranteed by the court's decree, maintenance might be necessary to keep the "public highway" open on the public land portion as well as on the private property. This opinion provides the basis for "cherrystemming" what the protest refers to as a "dune buggy trail." [Emphasis in original.]

(Decision at 2-3). BLM denied the protest indicating that even though the cherrystemming cuts across the width of the unit, the unit would continue to be considered as one WSA for purposes of study.

The first question is whether the dune buggy trail is a road. Section 603(a) of FLPMA directs the Secretary to review only roadless areas of 5,000 acres or more. Accordingly, before a unit may proceed to study, BLM must draw the boundary of the unit to exclude roads. Jacqueline L. McGarva, 60 IBLA 278 (1981). BLM has adopted the definition of "road" suggested by the legislative history of FLPMA at H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), wherein it is stated: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." There is no evidence that the dune buggy trail "has been improved and maintained by mechanical means to insure relatively regular and continuous use." In fact, BLM has already determined that a portion of the trail (3 miles) is not substantially noticeable.

Under section 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477 (repealed by section 706(a) of FLPMA), a state court was the proper forum to decide ultimately whether a "public highway" under R.S. § 2477 had been created pursuant to state law. Nick Dire, 55 IBLA 151, 154 (1981), and cases cited therein. The record is unclear, however, whether the state court in the cited case was making a R.S. § 2477 determination that would be applicable to public land involved in this appeal. If it were applicable, the record does not disclose whether the entire length of the trail was affected. Therefore, it does not appear that the state court decision itself supports the cherrystemming of the 7.5-mile "trail."

Appellants also object to the cherrystemming of the 4.5-mile portion of the dune buggy trail on the basis that it is substantially noticeable. There is no question that the trail bears evidence of use. Appellants allege that the way appears to consist only of "tire tracks" and "old grading" (SOR at 130). Trails are specifically identified as imprints of man which may be allowed within a unit without affecting a particular area's naturalness (WIH at 12). Also, appellants assert that BLM failed to consider whether it is "reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor" (WIH at 14; OAD 78-61, Change 3 at 5). Appellants state that this area of the dune buggy trail is apparently "reverting back to a natural state" in the absence of use (SOR at 130).

We conclude that no part of the dune buggy trail meets the wilderness definition of a road because there is no evidence that it has been constructed and maintained by mechanical means. We also conclude, however, that the record supports BLM's finding that the 4.5 mile portion of the trail is substantially noticeable. Since it is substantially noticeable, it may be considered to automatically disqualify a portion of the unit from WSA status. That portion is the trail itself. It was properly cherrystemmed. OAD 78-61, Change 3 at page 5, prohibits consideration of rehabilitation potential in such a situation.

We affirm the BLM decision to cherrystem 4.5 miles of the trail because it is substantially noticeable, not on the basis of the State court decree. The extent to which the State court decree may have established a "public highway" on the other 3 miles of this trail should be addressed by BLM during the study phase.

Paria-Hackberry (UT-040-247)

The Paria-Hackberry unit covers 196,431 acres on the Kaiparowits Plateau in south-central Utah. BLM designated 135,822 acres as a WSA and eliminated 60,609 acres. Appellants have challenged the elimination of two portions of the unit: (1) an area described as the "Boot," comprised of 12,000 acres in the southeastern part of the unit, and (2) nine areas described collectively as the "Benches," comprised of 12,726 acres in the northern and western parts of the unit.

The Boot area was eliminated from further consideration as a WSA because it lacks naturalness. BLM concluded that the "cumulative effect" of certain imprints of man within the Boot detracts from the area's naturalness (Final Decision at 165). These imprints of man are "a 69 KV powerline, a 230 KV powerline and access, access ways to mineral exploration work, a water tank and pipeline, small powerline (unknown KV), [and] the abandoned roadbed of U-89" (Wilderness Intensive Inventory at 2).

The WIH at page 13 contains the following guidance concerning imprints: "Imprints of man's work within the inventory unit must be described. Only significant imprints that will influence the decision as to the area's degree of naturalness should be documented. If several minor impacts exist, summarize their cumulative effect on the area's degree of naturalness." Further guidance is contained in OAD 78-61, Change 2 at pages 5-6, which states:

When major imprints of man, which are substantially noticeable, are located within a roadless area, consideration must be given to adjusting the unit boundary to exclude that imprint of man. Major imprints of man which are substantially noticeable should not be carried forward as part of an inventory unit receiving further wilderness review. Minor imprints of man must be evaluated as to whether individually they are substantially unnoticeable in the overall unit. Such minor imprints must also be evaluated as to their cumulative effect on an overall unit, both in connection with major imprints or by themselves.

Boundary adjustments are not appropriate for individual, minor imprints which are determined to be substantially unnoticeable. Careful judgment must be used in deciding if close groupings of minor imprints and how much intervening land are appropriate for exclusion from a unit. Obviously, when boundary adjustments are made as discussed above, a decision must be made on whether the remaining portion of the unit is still of sufficient size to qualify for further consideration.

When a boundary adjustment is made due to imprints of man, the boundary should be relocated on the physical edge of the imprint of man. When this is not possible, the boundary should be a legal description. In this case, the boundary must eliminate the imprint of man and as little adjacent land as possible. The adjusted boundary must not be drawn on a "zone of influence" around the imprint for these reasons: (1) consistency between inventory teams in locating this "zone of influence" would be difficult to achieve; (2) it would involve implementation of the "sights and sounds" doctrine; and (3) future impacts would in effect be able to encroach on a unit creating a new "zone of influence."

When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of those intrusions from the unit, caution must be used in relocating the boundary. Natural portions of the unit which are located between the individual imprints of man must not be automatically excluded. This would depend on the proximity of the individual imprints, their overall cumulative impacts, the kind of impact and severity.

Powerlines are treated like other significant impacts. When a powerline or other developed right-of-way is located within a unit and the decision has been made to eliminate that substantial impact on naturalness from the remainder of the unit, the boundary should be drawn on the edge of the developed ROW. 8/

8/ OAD 78-61, Change 2, was directed to the initial inventory; however, OAD 78-61, Change 3 at page 1 specifically stated that the guidelines for naturalness set forth in Change 2 were to be applicable during the intensive inventory.

There is confusion in the record concerning the impact of the powerlines. In appellants' protest they argued that the 69 KV and 230 KV powerlines were not substantially noticeable. In response to the protest, BLM stated that "[t]he Bureau agrees in general with these [protestants'] findings. The Bureau's finding, however, is that these individual intrusions have cumulative impact" (Decision at 5). On the other hand, counsel for BLM stated in the Answer at page 52:

BLM found the powerlines to be substantially noticeable. (See, Substantially Noticeable Intrusions overlay in unit file). Following guidance in OAD 2, p. 5, the boundary of the WSA was drawn along the northern powerline, a developed right of way, which cuts completely across the unit. This separated the Boot from the rest of the inventory unit.

Despite the contradiction in the protest response, the record supports a finding that the 69 KV powerline is a substantially noticeable imprint, and BLM properly separated the Boot from the rest of the inventory unit along that powerline right-of-way. ^{9/}

BLM concluded that the Boot lacked naturalness in its entirety because of the cumulative impact of the identified imprints. Such a conclusion is not supported by the record. Appellants submitted a copy of a map prepared by the BLM Cedar City District indicating the sites of the imprints (SOR at 1447). It is evident from that map that, except for the 69 KV and 230 KV powerlines, the imprints of man are located close to the southern and western boundaries of the Boot.

The 69 KV powerline was used as the northern dividing line between the WSA and the Boot. The 230 KV powerline runs along the eastern boundary of the Boot, at most points a considerable distance within the Boot. Appellants point out that even making this powerline the eastern boundary of the Boot and eliminating the acreage to the east of the 230 KV powerline and eliminating the acreage due to boundary adjustments around the minor imprints, 10,000 acres remain within the Boot.

It does not appear that BLM explored the possibility of eliminating the imprints by boundary adjustment. Instead it relied on the cumulative impact of the imprints. It then concluded that because the unit lacked naturalness in its entirety, it was not necessary to determine whether the Boot area itself contained outstanding opportunities for solitude or a primitive and unconfined type of recreation (Final Decision at 165; Decision at 7).

From the map it appears that there is considerable distance between the imprints. The record does not support a finding that their presence is so imposing as to require that the entire Boot be considered to lack naturalness. This is especially true since there is no evidence that BLM considered

^{9/} Appellants acknowledge the implication of OAD 78-61, Change 2 at page 5, that powerlines are per se a significant imprint. They argue, however, that such an interpretation would be inconsistent with the direction to field check imprints and assess their impact on "apparent naturalness" (SOR at 145-46). As indicated, the record in this case supports a finding that the 69 KV powerline is substantially noticeable.

eliminating through boundary adjustment those areas physically affected by the imprints. BLM apparently eliminated the entire area as a "zone of influence." See OAD 78-61, Change 2 at 5.

Therefore, we find that the Boot properly was separated from the WSA along the 69 KV powerline; that the record does not support BLM's conclusions that the entire Boot lacks naturalness because of cumulative impacts; and that BLM failed to consider eliminating the impacts by boundary adjustment. On remand BLM should investigate the feasibility of adjusting the boundaries to eliminate the imprints. 10/ If a natural area of 5,000 or more acres remains in the Boot, BLM should consider whether the Boot area independently may qualify for consideration as a WSA.

BLM eliminated the "Benches" from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. The nine areas which make up the Benches range in size from 19 acres to 4,397 acres.

By memorandum dated September 30, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete 13,000 acres from unit UT-040-247 because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion. 11/ The exception was granted October 1, 1980 (Respondent's Exh. 3).

Appellants contend that the exception approval process constituted arbitrary and capricious action by BLM because the September 30 memorandum was the only information transmitted to the Director, BLM. As previously discussed under the Mud Spring Canyon unit (UT-040-077), a request which is not accompanied by any information provides the Director with no reasonable basis upon which to make an informed judgment on whether to approve or disapprove the request.

BLM's response is that because ultimate responsibility for evaluating the quality and presence of wilderness characteristics was committed to the State Directors, it was reasonable for BLM Washington to grant the requested exception (Answer at 56). Thus, while designated a Director's exception, as implemented in Utah, the exception was a State Director's exception. Regardless, the question is whether there is adequate justification in the record for the action taken.

By memorandum dated November 21, 1980, the BLM State Office provided an explanation for the exception, noting that "[m]any benches and portions of other benches above the White Cliffs do not exhibit exposed rock or a dissected topography. These areas thus exhibit a marked landscape change from the remainder of the unit" (Respondent's Exh. 8 at 2). BLM described the benches as "flat with a vegetative cover of pinyon-juniper forest with shrubby

10/ If the imprints are, in fact, substantially unnoticeable, the boundary need not be adjusted. See OAD 78-61, Change 2 at page 5, par. 3.

11/ BLM originally requested an exception for 10,000 acres for this unit in March 1980. That exception was granted, but BLM did not exercise that exception in its proposed decision issued in April 1980. In September 1980 BLM made another request this time for 13,000 acres.

openings and isolated stands of ponderosa pine." Id. BLM stated that opportunities for solitude were limited to areas with vegetative cover and opportunities for a primitive and unconfined type of recreation were limited by the nature of the terrain, which offers "few objectives for exploration." Id. at 3. The opportunities for hiking were "minimal" because the land is not dissected and lacks landmarks. Id. In general, BLM concluded that, "[t]his type of landscape is inherently inferior to the canyonlands landscape found in other portions of the unit" in terms of offering opportunities for solitude or primitive, unconfined recreation. Id.

Appellants argue that they were deprived of the opportunity to submit comments on the basis for the exception because the explanation for the exception was not placed in the unit file until November 24, 1980 (SOR at 148). Counsel for BLM admits that the supporting memorandum was not placed in the unit file until that date; however, counsel refutes appellants' contention that public comment was foreclosed. Counsel states that Utah's Final Decision was published November 14, 1980, and that the decision did not become final until 30 days after publication. Counsel points out that appellants had notice of the exception upon publication and that the explanation was available 20 days before the decision became final. We find no procedural error.

We have reviewed the explanation for the exception and appellants' comments concerning its substance. Appellants complain that it does not accurately reflect on-the-ground conditions. Appellants' objections amount to a disagreement with BLM concerning its conclusions on the outstanding opportunities criterion. Appellants have failed to establish errors that would require reassessment of the outstanding opportunities criterion. Therefore, BLM's decision concerning the Benches area of the Paria-Hackberry unit is affirmed.

Wahweap (UT-040-248)

This unit is located on the Kaiparowits Plateau north of Glen Canyon City. It contains 137,980 acres of public land. BLM eliminated the entire unit from consideration finding that it lacks both outstanding opportunities for solitude and a primitive and unconfined type of recreation. In assessing solitude, BLM admitted that because of its "relatively large size" (137,980 acres), the unit "inherently possesses opportunity for solitude" (Final Decision at 169). It then proceeded to discuss that opportunity in relation to "different topographic forms," concluding that the "upper bench areas" have "limited" opportunities because of a flat terrain and inferior vegetative screening. Id. It noted that the canyon areas possess "wide and open floors," with "little vegetative cover." Id. BLM stated that:

[T]he opportunity for the user to find a secluded spot or to screen himself from other users is not as great as in nearby areas where the canyon systems include more entrenched and meandering canyons and heavily vegetated canyon bottoms. Although an opportunity for solitude is present, it is judged to be the equivalent of opportunities in other topographies of its kind. The solitude opportunity could not be considered to be superior to other similar opportunities.

Id. Outstanding opportunities for solitude are lacking in the lower portions of the unit because vegetative cover is "extremely sparse," the terrain is "not sufficiently rough and dissected to provide other than moderate topographic screening" and, in the case of the Dakota sandstone formations, the area is "too limited." Id. Finally, for the western portion of the unit, described as a linear ridge and valley, BLM stated "in most places visitors would be aware of other visitors." Id.

Appellants charge that BLM used improper comparisons by comparing certain features of this unit with those in other units and in other areas in violation of BLM guidelines. The record does not support this charge. See discussion under Death Ridge unit (UT-040-078), supra. While it is clear that BLM compared features of this unit with similar features in other areas, it does not follow that BLM made a direct comparison of this unit with another unit and rated another unit higher. We have stated that assessment of wilderness characteristics necessarily involves a comparative process because of the relative nature of the term "outstanding." Catlow Steens Corp., supra.

Appellants assert, concerning the solitude criterion, that BLM failed to consider the interrelationship of size, screening, configuration, and other factors that influence solitude, as required by OAD 78-61, Change 3 at page 4. Appellants cite BLM's response to their protest as support for their assertion. BLM stated in that response:

The "consideration given to the interrelationship" sentence clearly refers to the previous sentence discussing relatively small units. In its citation of the paragraph, the protest deleted the "relatively small units" sentence and incorrectly referenced the third "interrelationships" sentence to the first sentence which discusses "flat and/or unvegetated" landscapes. The first sentence stands alone, however, and it refers neither to relatively small units nor the interrelationships between factors influencing solitude.

(Decision at 6).

This discussion reveals that BLM misread the requirement of OAD 78-61, Change 3 at page 4. The requirement that consideration must be given to the interrelationship of factors is not limited to units of relatively small size. The guidelines under solitude in the OAD posed two extreme situations (a flat and/or unvegetated unit and a relatively small unit) in which it would be improper to assume automatically that an outstanding opportunity for solitude was lacking. The implication is that in assessing solitude in all situations, BLM must consider the interrelationship of factors. One could not conclude from a fair reading of the paragraph that consideration of the interrelationship was limited to units of "relatively small" size. See decision under Death Ridge unit, UT-040-078, supra.

In assessing recreation, BLM concluded that the unit lacks a diversity of recreational opportunities and that individual opportunities are not outstanding (Final Decision at 169). Appellants believe there are other possible activities available in the unit which were not assessed by BLM. These included bird watching, cross-country skiing, and snowshoe opportunities.

However, the quality and, to a lesser degree, the variety of activities available are subjective determinations. The record shows that BLM considered opportunities for hiking, backpacking, sightseeing for botanical, zoological, or geological features, and photography. BLM found no diversity of activities nor any individually outstanding opportunity. In its reply brief at page 39, appellants admitted that "[w]ith regard to cross-country skiing and snowshoe opportunities, appellants' affiants may indeed have overreached their own personal knowledge." We give considerable deference to BLM's subjective determination of whether a unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation. National Public Lands Task Force, supra. The record supports BLM's conclusion concerning recreation.

Appellants further contend that BLM used an improper "consensus" criterion in determining whether to designate this unit a WSA. They point to the sentence in the November 1980 decision which states, "[n]o consensus about opportunities for solitude or for primitive recreation existed in the comments" (Final Decision at 169). Appellants argue that since this sentence appeared under "Rationale for Decision" rather than under the "Summary of Comments" section, BLM improperly sought to consider the degree of public support in assessing the outstanding opportunities criterion. BLM denied this in its response to appellants' protest (Decision at 16). We find no error. As explained by BLM, this statement was meant merely to describe the content and substance of public comment.

Appellants have established that BLM failed to consider the interrelationship of factors in assessing the solitude criterion. Thus, we must conclude that BLM did not comply with the mandate of OAD 78-61, Change 3 at page 4, which dictated such consideration. Likewise, appellants have pointed out how this error affected BLM's determination, and they have established that reassessment might result in a changed determination when BLM considers the interrelationship of size, screening, configuration, and other factors which influence solitude in the unit. Thus, the BLM decision must be set aside and the case remanded for reassessment.

During reassessment BLM should consider OAD 78-61, Change 3 at page 3, which states that "[a] unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion." Attention is drawn to this guideline because, as correctly pointed out by appellants (SOR at 165), BLM made an erroneous statement in its response to appellants' protest. It stated that "[a]n aggregation of canyons is only as outstanding as is its lowest common denominator member canyon or canyons" (Decision at 15 quoting from the Final District Manager Recommendation Rationale at 2). This statement is wrong. It indicates that BLM may have been applying an improper standard in assessing solitude in this unit.

East of Bryce (UT-040-266)

This unit was eliminated from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined

type of recreation. It is contiguous with lands in Bryce Canyon National Park which formally have been determined to have wilderness values. The unit, however, contains only 887 acres of public land.

On appeal, appellants raise a number of arguments concerning BLM's assessment methods and its conclusions on the outstanding opportunity criterion. The threshold question for WSA designation, however, is size. As the Board pointed out in Tri-County Cattlemen's Association, 60 IBLA 305, 314 (1981), an area of less than 5,000 contiguous acres of public land cannot qualify as a WSA under section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976). That section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. The fact that this unit adjoins Bryce Canyon National Park does not alter this limitation. See The Wilderness Society, 66 IBLA 287, 290 (1982); ASARCO, Inc., 64 IBLA 50, 61 (1982).

Therefore, we must conclude that even if BLM found that this unit exhibited the necessary wilderness characteristics, it would be precluded from designating this unit a section 603(a) WSA. We did state in Tri-County Cattlemen's Association, *supra* at 314, that even though an area of less than 5,000 acres would not qualify as a WSA under section 603(a), BLM was not precluded from managing such an area in a manner consistent with wilderness objectives. The unit in that case, however, had been determined by BLM to exhibit wilderness characteristics. For this unit, BLM concluded that it did not meet the outstanding opportunity criterion. We have reviewed appellants' arguments and the case record concerning this unit, and we find no error in BLM's determination. BLM's decision denying appellants' protest is affirmed.

Fremont Gorge (UT-050-221B)

The Fremont Gorge unit originally contained 18,500 acres of public land. During the intensive inventory BLM divided the unit into two subunits -- UT-050-221A and UT-050-221B. All of subunit B was eliminated from consideration as a WSA. Appellants' appeal is limited to two noncontinuous areas in subunit B. They seek to have those areas designated as WSA's. The two areas are described by appellants as being in the Fremont Gorge and Miner's Mountain areas "next to" the Capitol Reef National Park (SOR at 306).

While the two areas aggregate 5,500 acres, neither of the areas individually contain 5,000 acres or more. An area of less than 5,000 contiguous acres of public land cannot qualify as a WSA under section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976). Tri-County Cattlemen's Association, *supra* at 314. The fact that these two areas are adjacent to Capitol Reef National Park does not alter the 5,000-acre limitation. See The Wilderness Society, *supra* at 290; ASARCO, Inc., *supra* at 61. BLM's decision denying appellants' protest is affirmed.

Mt. Ellen (UT-050-238)

This unit derives its name from Mt. Ellen, the highest peak in the Henry Mountain Range of southeast Utah. In its Final Decision at page 200, BLM designated 58,480 acres of this 156,102-acre unit as a WSA. The remainder

of the unit was eliminated from consideration as a WSA because it lacks naturalness or outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants have appealed the deletion of 30,000 acres in six areas of the unit: South Caineville Mesa, Wildcat Mesa, Thompson Mesa, Upper Sweetwater Creek, Oak Creek Ridge, and Cedar Creek.

BLM states that in appellants' protest they argued for inclusion of the areas of South Caineville Mesa, Wildcat Mesa, and Thompson Mesa, comprising approximately 20,000 acres. BLM asserts that there was no mention in the protest of Upper Sweetwater Creek, Oak Creek Ridge, and Cedar Creek and thus, appellants should be foreclosed from raising issues in connection with these new areas. We agree. While appellants' protest does not cite an acreage figure, the discussion in the protest is limited to only three areas, South Caineville, Wildcat, and Thompson Mesas. Appellants state in their appeal that these three areas "comprise approximately 20,000 acres between Capitol Reef National Park to the west and the Mt. Ellen WSA to the east" (SOR at 318). Appellants, having limited their protest to 20,000 acres, cannot expand that acreage on appeal. Since there was no protest of the remaining approximately 10,000 acres (Upper Sweetwater Creek, Oak Creek Ridge, and Cedar Ridge), the BLM decision as to that acreage became final.

By memorandum dated March 6, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete 50,000 acres from unit UT-050-238 because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion. The exception was granted by memorandum dated March 13, 1980. See discussion, supra, under Mud Spring Canyon unit (UT-040-077). The mesa areas were part of that acreage.

In its Final Decision at page 200, BLM states that the South Caineville Mesa lacks naturalness because man's presence is evidenced by "the remains of a two-story stone house in the center of the mesa." In the Wilderness Intensive Inventory at page 5, BLM characterized the area as follows: "The mesa top covers about 4,000 acres and has remained natural; here the only sign of man is the remains of an old stone cabin." There is no explanation in the record for this change, and there apparently is none. BLM admits as much in its protest response when it states that the "primary reason" for deletion is lack of outstanding opportunities. In its answer on appeal BLM states that the "area was deleted not because of a lack of naturalness" but because of a lack of outstanding opportunities (Answer at 135). South Caineville Mesa meets the naturalness criterion.

BLM concluded that opportunities for solitude on the mesas were not outstanding because there is little topographic or vegetative screening (Decision at 1). In its Wilderness Intensive Inventory at page 5, BLM notes that "[w]ays which allow people and vehicles to reach most parts of the mesa tops reduce the opportunities for solitude considerably. Overall, there is an opportunity for solitude only because the area is seldom visited." The author found the opportunities for solitude "less than outstanding." BLM concludes that opportunities for primitive, unconfined recreation are also not "outstanding" (Final Decision at 200). The "relative flatness and sparse, low-growing vegetation provides low quality opportunities." *Id.* Rock climbing is considered to be "an extremely hazardous undertaking" (Decision at 1). Sightseeing for archaeological features is "not considered to be an outstanding recreational opportunity." *Id.*

There is a lack of evidence in the record to support BLM's deletion of the three mesas in question on the basis of the outstanding opportunities criterion. With respect to solitude the sole basis for BLM's conclusion appears to be sparse vegetation and relatively flat terrain combined with easy access to the mesa tops. BLM states that on South Caineville Mesa "[i]t would be extremely difficult to avoid the sights and sounds of any other recreationists on this mesa top" (Decision at 1). Appellants, however, argue that the size of this mesa (4,000 acres), its configuration (horseshoe shape with 1 to 2 miles between horseshoe legs), topographic screening and some vegetative screening combine to provide outstanding opportunities for solitude (SOR at 321). Appellants assert that with the configuration of this mesa recreationists on one side of the mesa are isolated from those on the other side. In addition, they state that the size of the mesa affords the opportunity to find secluded spots. Further, appellants contend that the canyon which splits this mesa also offers outstanding opportunities for solitude because it exhibits badlands topography which provides natural screening. Appellants assert that the topography in this canyon's lower reaches is identical to the topography in other portions of the unit which BLM concluded did have outstanding opportunities for solitude.

Appellants also believe outstanding opportunities for solitude are available on the other two mesas. Appellants argue that Thompson Mesa provides both vegetative and topographic screening. In addition, they assert that this mesa also is incised by a canyon which almost cuts the mesa in half and isolates people on one side of the mesa from those on the other.

On Wildcat Mesa, appellants argue that vegetative and topographic screening and configuration afford outstanding opportunities for solitude. Appellants state that three canyons cut into the mesa's eastern rim dividing the area and adding to the seclusion factor. They contend that Geological Survey maps for the area show dark green on the mesa top, and they interpret this as establishing that 50 percent of the mesa contains dense forest. They also state that basins, interior ridges, and a conical peak on this mesa contribute to provide outstanding opportunities for solitude.

BLM dismisses these assertions by appellants as mere "differences of opinion" (Answer at 132). Rather than differences of opinion, it is apparent that appellants have pointed out physical factors which the record fails to reveal were considered by BLM in its assessment. OAD 78-61, Change 3 at page 4 requires that BLM give consideration to the interrelationship between size, screening, configuration, and other factors that influence solitude. In this case it is unclear from the record whether BLM considered all the necessary factors. If it had, and the record revealed that it had, then appellants' contentions could be explained as differences of opinion. However, here appellants have raised considerable doubt whether BLM properly assessed the solitude criterion. We note also that there is a significant lack of documentation in the record to support an exception based on the outstanding opportunities criterion.

Concerning recreation opportunities, BLM states in the Wilderness Intensive Inventory at page 6 that opportunities "are limited in the southwest section of the unit, primarily due to the ways which give vehicular access to the three mesas in this area."

In its protest response BLM stated:

Recreational activities, such as hiking and back-packing, would be less than ordinary on this barren, flat mesa. Rock climbing could only be engaged in along the sides of the mesa, and the geologic material and structure would make this an extremely hazardous undertaking.

You reference archaeological activities as a recreational opportunity. Although there is evidence of archaeological resources on South Caineville Mesa in the form of lithic scatters and rock shelters, recreational activities would be limited to observation since all archaeological sites are protected by law. This is not considered to be an outstanding recreational opportunity.

(Decision at 1).

The fact that there are ways leading to the mesas does not in itself limit opportunities for recreation. Just as the lack of a trail system or convenient access is not a valid basis for concluding that an outstanding opportunity for primitive and unconfined recreation does not exist (OAD 78-61, Change 3 at 4), the fact that there is access should not dictate whether outstanding opportunities are available in the absence of evidence that access in some way interferes with the opportunities for recreation.

It appears also that BLM incorrectly discounted opportunities for rock climbing. BLM described rock climbing on the sides of the mesa as an extremely hazardous undertaking. Under OAD 78-61, Change 3 at page 4, "challenge" and "risk" are appropriate factors for consideration under the recreation criterion. In addition, appellants submitted a sworn statement in which it is stated: "As any climber could attest to, the mesa walls, composed of erosion resistant Mesa Verde sandstone and well defined crack systems, offer some of the finest rock climbing anywhere in the region" (SOR at 1844).

With regard to sightseeing for archaeological features, BLM admits the existence of archaeological resources on South Caineville Mesa, but it implies that since recreational activities would be limited to observation such an activity cannot be considered to be an outstanding recreational opportunity. This is an erroneous conclusion. Apparently no consideration was given to opportunities for merely observing or photographing archaeological features. Sightseeing for archaeological features is comparable to sightseeing for botanical, zoological, or geological features, all of which are listed in the WIH at page 13 as examples of primitive and unconfined types of recreation. Appellants have raised considerable doubt whether BLM properly assessed the recreation criterion.

BLM's determination as to South Caineville Mesa, Wildcat Mesa, and Thompson Mesa must be set aside and the case remanded to BLM for reassessment of the opportunities for solitude and a primitive and unconfined recreation in these three areas. Appellants' appeal as it relates to Upper Sweetwater Creek, Oak Creek Ridge, and Cedar Creek is dismissed.

Fiddler Butte (UT-050-241)

The Fiddler Butte unit contains 101,310 acres. During the intensive inventory, BLM divided the unit into two subunits, approximately along the north/south line of the Dirty Devil River, because the unit was virtually bisected by the Glen Canyon National Recreation Area (NRA) at this point, leaving 2 miles between the NRA boundary and the unit boundary, and because of the "definite topographical difference" between the east and west sides of the Dirty Devil River (Wilderness Intensive Inventory at 1). The west side (subunit UT-050-241A) has "many southwesterly draining slickrock canyons and extremely rough terrain." Id. The east side (subunit UT-050-241B) has "broad canyon bottoms and flat mesas." Id. The actual dividing line was the "canyon rim east of the Dirty Devil River." Id. at 2. This was based on the fact that the National Park Service (NPS) Wilderness Proposal for the Glen Canyon NRA recommended all NPS land west of the Dirty Devil River for wilderness designation "while on the east only that portion below the Dirty Devil Canyon rim is felt to meet the wilderness characteristics criteria." Id. at 1.

UT-050-241A, the western subunit, contains approximately 56,000 acres of which 27,000 acres have been designated a WSA. The eastern subunit, UT-050-241B, contains approximately 45,000 acres, none of which has been accorded WSA status.

Appellants protested all the acreage excluded (approximately 74,000 acres). The protest was denied. Appellants have appealed 62,500 acres -- approximately 17,500 acres in subunit A and all 45,000 acres in subunit B.

Appellants challenge the division of unit UT-050-241 into two subunits. The WIH at page 10 provides that inventory units "may be divided or grouped to accommodate local circumstances or conditions as long as all of the qualifying area is inventoried and the wilderness integrity is not compromised." Similarly, OAD 78-61, Change 2 at page 8, states:

The division of roadless areas into two or more units may only be done in exceptional situations and is acceptable only if the integrity of the wilderness characteristics contained within the area are not compromised and where such a division will not affect the final decision of whether wilderness characteristics are present in any portion of the roadless area. [Emphasis in original.]

The question is whether the division of unit UT-050-241 compromised the wilderness integrity of either subunit. It does not appear that the division compromised the integrity of subunit UT-050-241A. Approximately 9,000 acres were deleted because they lack naturalness. The rest of the deleted acreage (20,000 acres) was dropped pursuant to a Director's exception because it lacks outstanding opportunities (see discussion, infra). Both actions are in essence boundary adjustments which the BLM State Office could have undertaken regardless of whether the unit was divided.

The 9,000 acres deleted from subunit UT-050-241A, known as the Cedar Point area, were eliminated because they are "surrounded by extensive intrusions which left a natural area of less than 5,000 acres" (Decision at 1).

This reference is to "intrusions" outside the boundaries of the unit. The area itself contains "recently rehabilitated drill pads and numerous seismic lines" and an access way (Wilderness Intensive Inventory at 4). BLM, however, is mistaken in its decision to exclude all of the Cedar Point area because the "natural area" is less than 5,000 acres. There is no requirement that each "natural area" within an inventory unit must be 5,000 acres. Rather, section 603(a) of FLPMA, supra, requires that the unit itself must be 5,000 acres or more. The proper course for BLM would have been to exclude, by means of boundary adjustments, those portions of the Cedar Point area where the impact of man was considered to be substantially noticeable.

Moreover, the record does not support BLM's conclusion that the Cedar Point area is "surrounded by extensive intrusions." In addition, even assuming there are extensive intrusions, BLM has failed to explain how such intrusions, outside the area, are "so extremely imposing" as to affect the naturalness of the area. See OAD 78-61, Change 3 at 4.

By memorandum dated March 6, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete 20,000 acres from unit UT-050-241, all in subunit UT-050-241A, because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion. The exception was granted by memorandum dated March 13, 1980. See discussion, supra, under Mud Spring Canyon unit (UT-040-077). Appellants challenge the deletion of approximately 8,500 acres, particularly in Poison Spring Canyon and its side branches, pursuant to that exception.

There is almost no support in the record for BLM's conclusion that the acreage in question, deleted pursuant to the Director's exception, lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation. BLM states in its Final Decision at page 204 that the deletion is due to "distinct topographic differences within the subunit." With respect to the Poison Spring Canyon area, BLM notes the "similarity" in topographic features between those canyons and "those included in the WSA," but concludes that the former are "much shorter in length" (Decision at 2). While initially relying on topographic differences, BLM later admitted the similarity of features and apparently relied entirely on the relative "shortness" of canyons in the Poison Spring Canyon. This is insufficient documentation to support the deletion of the 8,500 acres challenged by appellants on appeal. The exception was granted purportedly because of a "high degree of character change within the unit," yet BLM admits the similarity of topographic features between the canyons in the WSA and in the lands excluded. The record lacks an explanation for this important inconsistency.

Subunit UT-050-241B was eliminated from further consideration as a WSA because it lacks outstanding opportunities (Decision at 1). Part of BLM's basis for separating the Fiddler Butte unit into two subunits was because of "a definite topographic difference between the portion of the unit east of the Dirty Devil River and that on the west side" (Answer at 137). The canyon rim east of the Dirty Devil River was the dividing line between the subunits -- subunit A to the west and subunit B to the east. However, the BLM inventory map shows that acreage east of that dividing line was included in the WSA which BLM suggests contains only acreage in subunit A. In fact, in response to appellants' protest BLM stated that "Hatch Canyon itself is entirely in subunit 241A and is included in the WSA" (Decision at 1). Reference to the

inventory map indicates that this statement is incorrect. Hatch Canyon lies east of the dividing line and therefore must be considered part of subunit 241B.

BLM has included acreage in a WSA that it had indicated was different from areas west of the river, yet it has relied on those differences in subdividing the unit. Since the record indicates that BLM found that certain lands east of the dividing line exhibited wilderness characteristics, and the record shows those lands to be located in subunit B, it was improper for BLM to eliminate subunit B from further consideration as a WSA. While the boundaries of subunit B were subject to adjustment based on the imprints of man, outstanding opportunities in the area east of the dividing line are sufficient, absent one of the three examples on page 3 of OAD 78-61, Change 3, or an exception from the Director, to qualify all of subunit B as a WSA. This is true because OAD 78-61, Change 3 at page 3, states:

A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit. [Emphasis in original.]

See City of Colorado Springs, 61 IBLA 124 (1982); Tri-County Cattlemen's Association, *supra*.

Appellants also state that BLM improperly relied on the NPS wilderness proposal to exclude lands above the eastern rim of the Dirty Devil Canyon as support for excluding subunit B from wilderness study. The NPS proposal is cited in the recommendation approved by the BLM Utah State Director, dated November 10, 1980. BLM states that the NPS proposal did not form the basis for BLM's conclusion, but merely confirmed BLM's conclusions concerning the distinctions between the topography along the Dirty Devil River.

Appellants argue that the NPS proposal, relating to a NPS decision made during the study phase of the NPS wilderness process, properly was based on resource values. Appellants assert that BLM cannot rely on the NPS decision because comparison of wilderness values with other values is prohibited during the BLM intensive inventory (SOR at 347). Appellants' statement concerning comparisons is correct. The WIH at page 6 makes clear that comparison of wilderness values with other resource values is not part of the wilderness inventory process. It is not clear, however, from the record whether BLM used the NPS proposal as support for its conclusion that subunit B lacked wilderness values.

The BLM decision on this unit must be set aside and the case remanded for reassessment of naturalness with regard to the Cedar Point area in subunit A and for reassessment of the opportunities for solitude or a primitive and unconfined recreation in the Poison Spring Canyon area in subunit A. BLM should also reassess the wilderness characteristics of subunit B. In light of our discussion herein, BLM should also reconsider the division of this unit into two subunits.

Mt. Pennell (UT-050-248)

This unit is east of Capitol Reef National Monument and includes part of the Henry Mountain chain. This unit contains 159,650 acres of public land. During the intensive inventory, BLM divided the unit into two subunits, approximately along the north/south line of Bullfrog Creek, because two roads which parallel the creek, one from the north and the other from the south, are separated "by less than two miles of public lands" at their ends (Decision at 1). Subunit A (west half) was dropped from wilderness consideration; 27,300 acres of subunit B were designated a WSA. Therefore, 132,350 acres of 159,650 acres were eliminated from consideration as a WSA. In response to appellants' protest BLM explained that subunit A was dropped because it lacked outstanding opportunities, and parts of subunit B were eliminated pursuant to a BLM Director's exception (Decision at 2).

Appellants have appealed approximately 60,000 acres of the excluded acreage. These include approximately 45,000 acres in subunit A described as Swap Mesa, Swap Canyon, Cave Flat, Cave Point, and the Muley Creek drainage. Appellants also appeal 15,000 acres just south of the Mt. Pennell WSA in subunit B.

Counsel for BLM asserts that appellants protested only those areas listed in subunit A and that since the acreage in subunit B was not protested, the appeal should be dismissed as to subunit B. Appellants stated in their protest: "We protest the State Director's decision and recommend that the portion of subunit 248A containing Swap Mesa and Upper Muley Creek drainage as well as lands surrounding No Man's Mesa be added to the WSA." No Man's Mesa is in subunit B. Thus, although there is a lack of specificity in the protest, appellant's did, in fact, protest acreage in subunit B and on appeal that acreage is identified as 15,000 acres just south of the Mt. Pennell WSA.

BLM's response to the protest was that acreage in subunit B was eliminated pursuant to a Director's exception. The exception has been discussed previously. See Mud Spring Canyon, UT-040-077, supra. Review of the record reveals a complete lack of explanation for excluding the acreage under appeal in subunit B. The request for an exception merely stated that the Mt. Pennell unit (and other listed units) exhibited a high degree of character change in regard to the outstanding opportunities criterion. The November 1980 Final Decision at page 214 stated only that: "NOTE: Because of these distinct differences in both topography and vegetative cover found with the unit, only portions actually meet the outstanding opportunities criteria. In view of this, the Director has authorized boundary adjustments of the WSA proposal which retain for further study only those portions which meet these criteria." No further explanation appears in the record, despite the fact that the exception was conditioned upon a full discussion and documentation of the rationale for the requested deletion. 12/

12/ Intervenor, Plateau Resources Ltd., asserts at page 35 of its Response to Appellants' Statement of Reasons that the condition to fully discuss and document was "accomplished on page 214 of the November, 1980 decision and in the unit file." The record, however, does not support this claim.

Appellants' assert that the 15,000 acres in subunit B contain outstanding opportunities for solitude because the Mancos shale badlands contain extremely rugged topography which provides natural screening (SOR at 355). They contend that the same area offers scenic hiking, excellent photographic opportunities, and excellent opportunities for geological study (SOR at 358). Appellants also state that the Mt. Pennell unit is known for its diversity of life zones, and they argue that the diversity is degraded by exclusion of the badlands formation (SOR at 365).

Appellants have established errors in BLM's assessment of subunit B, and the record does not support the decision to delete the acreage in question. BLM's determination, as it relates to the 15,000 acres in subunit B under appeal, must be set aside and the case remanded to BLM for reassessment of the outstanding opportunities criterion.

Subunit A was eliminated from consideration as a WSA because it lacks outstanding opportunities (Decision at 2). BLM concluded generally that subunit A lacks outstanding opportunities for solitude because "[t]he flatness of the mesa and the scattered vegetative cover provide little opportunity for avoiding the sights and sounds of others" (Final Decision at 214). BLM also stated with respect to the Bullfrog and Muley Creek drainage that "[t]hese broad, open, sparsely vegetated canyons would not allow one to avoid either the sights or sounds of others" (Decision at 2). BLM indicated that photographs in its unit file supported its conclusion.

BLM also concluded that opportunities for primitive and unconfined recreation are not outstanding because of "the lack of topographic and vegetative variety" (Final Decision at 214). In response to appellants' protest, BLM explained that the list of recreational activities available in the unit "could apply equally to most of southern Utah" (Decision at 2). BLM also stated: "As to diversity, your list of recreational activities is misleading. Hiking, exploring, and back-packing are similar activities. Wildlife observation, birdwatching and observation of bison are virtually the same activity. In actuality, the diversity of recreational activities is much less than you indicated" (Decision at 2).

BLM's observation concerning diversity is not entirely correct. The WIH provides a listing of some examples of primitive and unconfined types of recreation. That list is: "hiking, backpacking, fishing, hunting, spelunking, horseback riding, mountain or rock climbing, river running, cross country skiing, snowshoeing, dog sledding, photography, bird watching, canoeing, kayaking, sailing, and sightseeing for botanical, zoological, or geological features" (WIH at 13). Although BLM states that hiking and backpacking are similar activities, they are listed separately in the WIH. In addition, bird watching and sightseeing for zoological features are also distinct categories. BLM's attempt to dismiss these activities as similar or virtually the same does not comport with the WIH. This is important because "an area may possess outstanding opportunities for a primitive and unconfined type of recreation * * * through the diversity in the number of primitive and unconfined recreational activities * * *" (WIH at 14).

Based on our examination of appellants' submissions and the record in this case, we find that appellants failed to establish that BLM improperly assessed the opportunity for solitude in subunit A. The record supports BLM's

conclusion on solitude. However, for recreation BLM's protest response indicates that it improperly lumped together certain activities thus limiting its consideration of whether the area offered outstanding opportunities through its diversity of types of primitive and unconfined recreation activities. Appellants have established that consideration of all these activities might result in a changed determination on the recreation criterion.

Appellants challenge the division of unit UT-050-248 into two subunits, contending that the subdivision compromises the wilderness integrity of both subunits and that the roads are, in fact, ways. The definition of road adopted by BLM for the wilderness inventory is taken from the legislative history of FLPMA. See H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976). Therein, it stated: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road" (WIH at 5); National Outdoor Coalition, 59 IBLA 291, 298 (1981). Appellants question whether these "roads" actually meet the definition. Appellants provide the affidavit of an individual familiar with the unit who states:

I can state positively that from the summer 1977 through summer 1980, the way south through Turn of Bullfrog to Cave Flat was completely impassable to all but specially built and equipped vehicles. The only exception came in 1979 when the way was bladed for a short distance. I can also state no 4-wheel drive vehicle of any sort could force passage from Cave Flat to Bullfrog Canyon since 1977, and it is obvious the way was unusable long before that.

(SOR at 1922, affidavit of Dirk Van Vuren).

Our review of the record indicates that while there is some support for BLM's conclusion that these are "roads" -- e.g., photographic slides of "Bullfrog Creek Road" -- this support apparently is limited only to certain segments of those "roads." If the entire length of these "roads" has not been improved and maintained by mechanical means to insure relatively regular and continuous use, then those parts not so improved and maintained properly should be classified as "ways." The improved and maintained parts, assuming they begin at the unit boundaries, could be "cherrystemmed." See National Outdoor Coalition, supra at 296.

Since there is not adequate support in the record for BLM's conclusion concerning these "roads," we must set aside the BLM decision and remand the case. If BLM concludes upon reexamination that the entire length of these "roads" has been improved and maintained by mechanical means to insure relatively regular and continuous use, unit UT-050-248 properly may be divided along such roads. In addition, BLM should reassess whether subunit A possesses outstanding opportunities for primitive and unconfined recreation.

If, on reexamination, BLM determines that part of the roads may be eliminated by "cherrystemming," BLM should determine whether it still would be proper to subdivide the unit. If the unit is not subdivided and BLM concludes in its reassessment of subunit A that no outstanding opportunities for recreation exist, it also must consider whether the 45,000 acres should be included

in the WSA. According to OAD 78-61, Change 3 at page 3, outstanding opportunities need not exist in all parts of the unit.

Desolation Canyon (UT-060-068A)

This unit is located north of Green River, Utah, in the Book Cliffs and Roan Cliffs formations in east central Utah. The unit contains 340,880 acres of public land. The Final Decision at page 255 established a WSA of 217,130 acres. Following appellants' protest, which related to over 100,000 of the excluded acres, BLM increased the WSA acreage by 33,630 acres to a total of 250,760 acres. On appeal, appellants have challenged the deletion of approximately 70,000 acres in nine areas of the unit: Horse Bench, Maverick Canyon, Rock House Creek, Jack Creek Canyon, Cedar Ridge, and Big Swale in the northern part of the unit; Turtle-Xmas Canyons and Big Horn Benches in the central area; and Suluar Mesa in the south. Grounds for exclusion of these areas were lack of naturalness and/or lack of outstanding opportunities.

By memorandum dated March 6, 1980, the BLM State Office requested an exception from the Director, BLM, in part to delete 50,000 acres from this unit because of the "high degree of character change within the unit" in relation to the outstanding opportunity criterion. The exception was granted by memorandum dated March 13, 1980. See discussion under Mud Spring Canyon unit (UT-040-077).

We will examine the record to determine if it supports the action taken. The March 13 memorandum specifically conditioned the grant on the following requirements:

1. The boundary adjustment must not have the effect of detracting in any (significant) way from the wilderness values of the inventory unit. For instance, this adjustment should not eliminate supplemental values within the original unit. Additionally, it is extremely important that the eliminated acreage not reduce the overall size of the unit in a manner that detracts from the extent or quality of opportunities for solitude and recreation that would otherwise exist. As you recognize, overall size has an important bearing on the quality of wilderness experiences in a unit.

2. The narratives for each affected unit shall clearly point out that your proposed decision represents a variation from the central policy, and will fully discuss and document the rationale for your proposal, including the special points referred to above in item 1. [Emphasis added.]

We have examined the record and we can find no support for the exception. First, there is confusion, which is not clarified in the record, over the exact areas covered by the exception. The request for the exception did not specifically delineate areas, nor did the grant of the exception. The April 1980 proposed decision by BLM indicates that certain areas are covered

by the exception. However, the Final Decision at page 255 issued in November 1980 appears to cover some of those areas, but not others. BLM's response to appellants' protest states that the exception was applied erroneously to the Beckwith Plateau area (Decision at 1). BLM included the Beckwith Plateau in the WSA in response to appellants' protest (Decision at 8).

Review of the record reveals the following rationale for deletion of the areas covered by the exception:

Certain areas in the northern and southern portions of the unit do not offer vegetative or topographic screening conducive to outstanding opportunities for solitude or features conducive to primitive and unconfined recreation. In accordance with OAD 78-61, Change 3, an exception was granted by the Director to exclude these areas from the proposed WSA. This affects about 49,290 acres, and includes Horse Bench and the Jack Creek drainage in the northern end of the unit; the Cedar Ridge and Big Swale area in the northwestern portion of the unit; and the Butler Canyon and Suluar Mesa area in the southern portion of the unit. A total of 170,260 acres were found to not meet WSA criteria and are recommended to be dropped from further study.

This rationale is included in the Wilderness Intensive Inventory Summary Sheet at page 4. The summary sheet was approved in February and March 1980. This rationale was quoted in BLM's protest response (Decision at 7).

We can find no further explanation for the exception. Thus, the rationale is limited to BLM's finding that the areas lack vegetative and topographic screening. We cannot find that this satisfies the direction in the March 13 memorandum that "narrative * * * will fully discuss and document the rationale." (Emphasis added.) This is especially true for this unit where there was so much confusion over which areas of the unit were covered by the exception.

BLM eliminated the Big Horn Benches area because of a lack of naturalness. BLM stated in its Final Decision at page 255 that "[t]he ways on the Big Horn Benches are numerous and substantially noticeable despite their current inaccessibility." The Wilderness Intensive Inventory states at page 2(c):

South of the Turtle Canyon road and Xmas Mountain, a series of interconnecting ways extending west to Water Canyon and totalling 41 miles run along the Big Horn Benches, one way extends west to the head of Trail Canyon, about 4 miles. About 9 seismograph lines totalling about 8 miles and about 5 drill sites are associated with these. A pack trail of about 9 miles leads up Trail Canyon and west to the edge of the Book Cliffs; a way leads about 5 miles east of Little Park Wash to a reservoir. The cumulative effect of the many ways and other imprints has caused a general loss of naturalness on the Big Horn Benches west to the east rim of Water Canyon and north to Turtle Canyon road. The remainder of the impacts to the west of this are somewhat noticeable but probably do not constitute a substantial impact.

The area which is no longer substantially natural is about 13,000 acres.

Although the ways on the Big Horn Benches are numerous, BLM has concluded that they do not meet the wilderness definition of roads and that they are inaccessible. Appellants argue that the ways are subject to rehabilitation. The WIH states at page 14 concerning the rehabilitation potential:

d. Possibility of the Area Returning to a Natural Condition. -- An inventory unit or portion of an inventory unit in which the imprint of man's work is substantially noticeable, but which otherwise contains wilderness characteristics, may be further considered for designation as a Wilderness Study Area when it is reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor.

Rehabilitation potential was restricted significantly by OAD 78-61, Change 3, at page 5. ASARCO, Inc., *supra* at 57-58. BLM stated in response to appellants' protest that it would not be practical to rehabilitate the ways by hand labor because cuts and fills would require recontouring; 16- to 20-foot wide strips were cut through pinyon-juniper stands; soils were disturbed; and revegetation would reflect a "somewhat different plant mix" (Decision at 8).

We cannot find that appellants have established error in BLM's conclusion concerning the Big Horn Benches area.

Appellants have also challenged the deletion of the Maverick Canyon and Turtle-Xmas Canyons areas. There is no indication in the record as to the basis for BLM's decision to delete these areas. To the extent that they are covered by the Director's exception, the same considerations as discussed, *supra*, apply. In the absence of that exception, there is no evidence that the areas were otherwise subject to deletion on the basis of either naturalness or the outstanding opportunities criterion.

BLM's decision as it relates to the 13,000 acres appealed in the Big Horn Benches area is affirmed. The decision concerning the other 57,000 acres under appeal is set aside and the case is remanded to BLM for reassessment of the outstanding opportunities for solitude criterion.

Floy Canyon (UT-060-068B)

The Floy Canyon unit, located in Grand County, Utah, was eliminated from consideration as a WSA. BLM found that it lacked outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants have challenged the elimination of 75,100 acres out of a total of 82,300 acres in the unit.

BLM concluded in its Final Decision at page 258 that three roads "essentially split the unit into 4 parcels." Appellants do not challenge the elimination of the southwestern parcel. Therefore, we will focus on the remaining three parcels.

The first road, located in the central portion of the appealed area, extends up Floy Canyon, north from the southern boundary of the unit. This "road extends about 7 miles into the unit; about 1 mile of this falls on State lands. 'Ways' continue up the branches of Threeforks at the head of Floy Canyon" (Decision at 3). The second road, located in the eastern portion of the appealed area, extends north up Thompson Canyon, from the southern boundary of the unit. Approximately 2 miles into the unit, the road branches into a way which continues northwest for another 1-1/2 miles. The road continues north, passing through a State section and becoming a way which ends within 1 mile of the northern boundary of the unit. Lying between the Floy Canyon Road and Thompson Canyon Road are two State sections touching at their northeast and southwest corners, respectively. The third road is the Coal Canyon Bench Road which separates the southwestern part of the unit from the remaining acreage under appeal.

In assessing solitude, BLM concluded that "the pattern of permanent human imprints, in-held non-Federal land and boundary configurations limits opportunities for solitude in about 30% of the unit" (Final Decision at 258). The eastern parcel between the eastern boundary of the unit and Thompson Canyon is constricted by a road and ways, two State sections, and a parcel of private land, such that it "averages less than 2 miles wide" (Wilderness Intensive Inventory at 3). BLM also found the northeast portion of the unit to be constricted by roads and ways, State sections, and the unit boundary. In responding to appellants' protest, BLM states that "opportunities for solitude would be adversely affected when a constriction of a mile or less occurs due to the difficulty of persons traveling about within a unit to avoid sights and sounds of one another in such an area" (Decision at 8-9).

The other areas of the unit were described as follows:

Areas not influenced by the pattern of inheld non-Federal land and permanent imprints include the parcel between Renegade-Thompson Canyon and Floy-Dry Fork Canyon, containing approximately 15,500 acres, the parcel between Floy-Left Hand Threeforks and Right-Hand Tusher-Showerbath Canyons, containing approximately 35,800 acres, and the parcel between Horse Bench road and the southwestern boundary, containing approximately 7,200 acres.

Wilderness Intensive Inventory at 3a.

These areas were found "not [to] exhibit outstanding opportunities for solitude due to lack of extensive topographic and/or vegetative screening" (Final Decision at 258). See Wilderness Intensive Inventory at 3a-3b.

Appellants challenge the presence of "roads" in Floy and Thompson Canyons, contending that the "roads" show signs of "tire tracks" but little or no evidence of grading or other construction (SOR at 197-98). In responding to appellants' protest, BLM stated that its field personnel had driven over the roads, that the roads showed evidence of construction and/or maintenance, and that the roads provided access to livestock improvements (Decision at 3). In the face of BLM's statements and the record evidence, we cannot conclude that appellants have presented sufficient evidence to overcome BLM's assessment of the presence of roads.

Appellants also argue that BLM indulged in an inappropriate analysis of non-Federal inholdings and that the analysis resulted in an incorrect conclusion on the outstanding opportunities criterion.

A unit file intrusions map bears the following legend:

[heavy green lines]	Unit boundaries
[heavy green lines]	"Cherrystemmed" roads
[black cross-hatching]	Loss of naturalness
[red oblique lines]	Areas with limited oppt'ys for solitude (as per OAD 78-61, Ch.3)
[red dots]	Constricted areas
[red vertical lines]	Areas severed by a road

The map shows how BLM considered the pattern of roads and inholdings to create "constrictions." BLM differentiated these constrictions from those areas with limited opportunities for solitude under OAD 78-61, Change 3.

The assessment process utilized by BLM for this unit involved using cherrystemmed roads and the boundary adjustment provision of OAD 78-61, Change 3, to create "constrictions" which divided the unit into separate parcels which were then eliminated from WSA consideration because of a lack of outstanding opportunities. We will analyze this assessment procedure step-by-step. As indicated above, BLM properly cherrystemmed the roads. The boundary adjustment provision of OAD 78-61, Change 3 at page 3, provides:

(2) Boundary adjustment. As a general rule, the boundary of a unit is to be determined based on the evaluation of the imprints of man within the unit, and should not be further constricted on the basis of opportunity for solitude or primitive and unconfined recreation. A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit.

There may be unusual cases where due to configuration it may be appropriate to consider adjusting the boundary based on the outstanding opportunity criterion. There are several examples where this may occur:

- (a) When a narrow finger of roadless land extends outside the bulk of the unit;
- (b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);
- (c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made

with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation. [Emphasis in original.]

This boundary adjustment guideline is narrowly drawn. Although not expressed, BLM must have been operating pursuant to (c) in designating the areas on the intrusion map referenced above.

OAD 78-61, Change 3 at page 8, specifically addresses the effect of state inholdings, such as the state sections involved in this unit:

6. How do private and State inholdings affect the intensive inventory decision? The impact of State and private inholdings will be assessed during the intensive wilderness inventory only when they have an effect on the wilderness characteristics of the surrounding BLM land under inventory. Inholdings only affect the intensive inventory decision when they contain such extreme imprints of man that they cannot be ignored (see sights and sounds discussion), or in unusual cases when they affect the boundary configuration as previously discussed in this OAD.

Thus, for purposes of the intensive inventory decision, the effect of inholdings is assessed in only two circumstances -- when they contain extreme imprints of man or "in unusual cases" when they affect the boundary configuration. There is no evidence in the record that the inholdings in this unit contain extreme imprints of man. Therefore, we will look at the effect of the state sections on boundary configuration.

Examination of the map discussed above reveals that only in the extreme eastern section of the unit is there a State section which is both less than a mile from a cherrystemmed road and less than a mile from the unit boundary thus arguably creating "a very congested and narrow boundary area." This area could easily be eliminated from the unit by adjusting the boundary. In no other situation in this unit could the location of the State sections within the unit reasonably be considered as creating "a very congested and narrow boundary area."

We note also that the guideline involved refers to "boundary adjustment"; however, the record contains no evidence that BLM considered at any time in the intensive inventory realigning the boundaries to eliminate the state sections.

BLM next found that the configuration caused by the State sections created "constricted areas." The two "constricted areas" on the map were used to divide the unit into separate parcels. The "constricted areas" are approximately 1 mile wide, one lying between a State section and a cherrystemmed road, the other between the unit boundary and a different State section. In its protest response BLM stated: "We also feel that opportunities for solitude would be adversely affected when a constriction of a mile or less occurs due to the difficulty of persons traveling about within the unit to avoid the sights and sounds of one another in such an area" (Decision at 8-9).

This general statement, however, does not address specifically the situation in this unit. There is no evidence that the "constricted areas" in this unit preclude outstanding opportunities for solitude. BLM has not stated that these areas are such that all people traveling from one part of the unit to another must follow the same access routes through these areas. In fact, appellants have alleged that such is not the case. See SOR at 206-207. That allegation is unrefuted by BLM.

BLM's conclusion based on its assessment of "configurations and constrictions" is that "the pattern of permanent human imprints, inheld, non-Federal land and boundary configurations limits opportunities for solitude in about 30% of the unit" (Final Decision at 258). It also concluded that "[t]he pattern of permanent imprints, in relation to patterns of inheld non-Federal land and boundary configurations, constricts opportunities for primitive and unconfined recreation" (Final Decision at 258). In response to appellants' protest, BLM stated:

In summary, while the BLM has documented that there are opportunities for both solitude and primitive and unconfined recreation within the unit, these are not seen as being outstanding in any one area or throughout the unit as a whole. The pattern of non-Federal lands and the roads up Floy and Thompson Canyons are major factors in this assessment. [Emphasis added.]

(Decision at 10).

Appellants have established that BLM erred in its assessment of this unit, and that reassessment might result in a changed determination. BLM improperly applied the boundary adjustment guideline of OAD 78-61, Change 3. It also adopted a "constrictions" theory which is not supported by the record. It admits that these were "major factors" in its assessment. In addition, even accepting that certain areas could be characterized as constricted, such a fact does not, without more, justify a conclusion that outstanding opportunities are unavailable. See Sierra Club, Utah Chapter, 62 IBLA at 271.

The BLM decision must be set aside and this unit remanded to BLM for reassessment of the outstanding opportunities criterion in light of our discussion. BLM should reassess the 75,100 acres of the unit involved in this appeal.

Diamond Canyon (UT-060-100B)

This unit is located in the Book Cliff and Roan Cliff ranges of Grand County, Utah. The unit contains 54,540 acres of public land. BLM designated 48,240 acres in this unit as the renamed Flume Canyon WSA. Appellants filed a protest challenging 4,500 acres of the 6,300 acres excluded from the WSA. In response to the protest, BLM included an additional 200 acres in the WSA.

On appeal, appellants seek inclusion of 4,300 acres in three areas of the unit: The area between Long and Diamond Canyons in the south, the Diamond Ridge area in the west, and the Rough-Westwater Canyons area in the north. BLM points out that the Diamond Ridge area, although part of the appealed

acreage, was not part of the acreage included in appellants' protest (Answer at 83).

BLM deleted certain portions of the Rough-Westwater Canyons area in the north because of the presence of a 5 1/2-mile pipeline paralleling the northern boundary and 2 miles of way running up Rough Canyon to a drill site. BLM concluded that these imprints of man are "substantially noticeable" (Wilderness Intensive Inventory at 2a). The pipeline was used as the northern boundary of the WSA and the way and drillsite were cherrystemmed (Decision at 3).

Appellants argue that it is not clear that BLM drew the WSA boundary to the "physical edge" of the imprints, as required by OAD 78-61, Change 2 at page 5, or that the pipeline is substantially noticeable.

It is impossible to determine from the record the precise location of the northern boundary. BLM states that it was drawn along the physical edge of the imprints of man (Decision at 3). Appellants have not presented persuasive evidence that the boundary was drawn improperly. Moreover, it is evident that BLM considered whether the imprints are substantially noticeable.

BLM deleted 3,200 acres in the area between Long and Diamond Canyon in the south because a "road" and a State section "tend to isolate" that area (Wilderness Intensive Inventory at 3). Opportunities for solitude are thereby "restricted" (Final Decision at 276). The "road" extends north up Long Canyon from the southern boundary of the unit, ending in a State section. BLM stated that "[s]ince this State section is within a mile of the western boundary of the unit" formed by another State section, "a constricted boundary occurs" (Decision at 3).

BLM justification for deletion of this area is apparently based on its constrictions theory. However, the record does not support elimination of this acreage on such a theory. BLM's authority to make boundary adjustments based on the outstanding opportunity criterion is limited by OAD 78-61, Change 3 at page 3. None of the listed exceptions is applicable in this case. Although BLM is concerned about the internal State section, we note that Flume Canyon runs north and south in the mile wide corridor between the internal State section and the boundary State section. The location of the State sections does not appear in any way to impinge on access through the canyon. We cannot find that there are extensive inholdings in this area that create a very congested and narrow boundary area such as to justify a boundary adjustment under OAD 78-61, Change 3 at page 3.

Even if this area does not independently possess an outstanding opportunity for solitude or a primitive and unconfined type of recreation, it still may be made part of the WSA because a unit is not required to possess outstanding opportunities in all areas of the unit. All that is required is that there be an outstanding opportunity somewhere in the unit.

In this unit, BLM has determined that both outstanding opportunities for solitude and for recreation exist; therefore, there is no bar to including in the WSA the acreage in this area. Elimination of this acreage would be proper only under one of the boundary adjustment exceptions. We have

found that those exceptions are not applicable to the circumstances existing in this unit.

BLM's decision as it relates to the Long-Diamond Canyons area is set aside, and this part of the unit is remanded to BLM in order to redraw the WSA boundaries to include this acreage. BLM should "cherrystem" the Long Canyon "road" if, in fact, it meets the inventory definition of a road. It initially was noted as a 3-mile way by BLM.

Appellants' appeal as it relates to the Diamond Ridge area is dismissed. That acreage was not part of the acreage included in their protest. See SOR at 83. For that reason, they are precluded from raising questions concerning its status on appeal. We note that the record does, in fact, support elimination of this area under one of the boundary adjustment exceptions.

As discussed above, BLM's decision as to the Rough-Westwater Canyons area is affirmed.

Cottonwood Canyon (UT-060-100C)

This unit contains 85,240 acres of public land. In its Final Decision at page 280, BLM divided the unit into two WSA's along Cottonwood Canyon. BLM created the Spruce Canyon WSA, containing 19,580 acres north of Cottonwood Canyon, and south of the canyon, the Coal Canyon WSA encompassing 43,320 acres. Following appellants' protest, BLM revised the acreage in the WSAs. The Spruce Canyon WSA now contains 20,650 acres and the Coal Canyon WSA includes 44,020 acres.

BLM deleted 20,570 acres from the unit based upon a lack of naturalness or "a limitation on opportunities for solitude because of configuration, in accordance with OAD 78-61, Change 3" (Decision at 2). Appellants have challenged the deletion of two areas of the unit: the Sagers Canyon area in the southwest, totaling about 20,000 acres, and an area at the mouth of Halfway Canyon in the northeast, totaling approximately 1,470 acres. ^{13/} Appellants also have argued that BLM improperly divided the unit into two subunits.

BLM divided the unit along the line of an east-west road in Cottonwood Canyon, which comes "within a mile" of the western boundary of the unit (Final Decision at 280). The route was determined to be a "road" on the basis that it has been periodically maintained.

Appellants argue that the route is a way for much of its 9-1/2-mile length. They contend that although the route has been periodically maintained for a portion of the distance, where it parallels a pipeline, the remainder of the route is rapidly disappearing due to lack of use and revegetation (SOR at 226).

^{13/} We noted that there is an acreage discrepancy in that BLM indicates 20,570 acres were deleted; yet appellants challenge the deletion of approximately 21,470 acres.

BLM responds that appellants did not raise the division of the unit in its protest of the Final Decision. BLM argues that appellants are foreclosed from raising the issue on appeal. Regardless of whether the issue was raised previously, the record supports BLM's action in subdividing the unit. We will not disturb that action.

We next turn to the deletion of the Sagers Canyon area. In its Final Decision at page 280, BLM states that the area "has been isolated by permanent human imprint patterns and two sections of state land" and lacks "effective topographic and vegetative screening." BLM states further that the area is "almost severed" from the remainder of the unit by those two State sections which join at their respective northeast and southwest corners and a road in Nash Wash (Decision at 5). The distance between the State sections and eastern and western boundaries of the unit is respectively 1 mile and approximately 3/4 mile. The road in Nash Wash lies midway between the State section and the eastern boundary. BLM concluded that there was a limitation on outstanding opportunities in this area due to "configuration" (Decision at 2).

The boundary of a unit may be adjusted on the basis of the outstanding opportunity criterion only in certain limited circumstances. See OAD 78-61, Change 3 at 3. One of these circumstances is where "extensive inholdings occur and create a very congested and narrow boundary area." *Id.* Appellants argue that notions of isolation and congestion are not supported by actual experience. They assert that this portion of the unit is entered most commonly from the south and east sides, i.e., up the canyons, and that, therefore, the adjoining State sections do not affect outstanding opportunities for solitude or recreation. Appellants charge that BLM has used its constrictions theory to eliminate approximately 20,000 acres from WSA status.

Appellants' arguments are well taken. The mere presence of the State sections does not necessarily justify the conclusion that "a very congested and narrow boundary area has been created." Disregarding the State sections, corridors of between 3/4 mile and 1 mile exist between the Coal Canyon WSA and the Sagers Canyon area. Without supporting evidence, these corridors cannot be considered as being very congested and narrow in the face of appellants' uncontested allegation that logical access to the canyons in this area is from the south and the east. ^{14/}

^{14/} In its response to appellants' protest, BLM stated:

"We also feel that opportunities for solitude would be adversely affected when a constriction of a mile or less occurs due to the difficulty of persons traveling about within a unit to avoid sights and sounds of one another in such an area. This is especially true when terrain is such that lines of sight are not shielded or when the constriction occurs between an inholding and a road. OAD 78-61, Change 3, recognizes this problem in its discussion of configuration, quoted above. Similarly, opportunities for primitive and unconfined recreation, when based on hiking, hunting, or other dispersed activities, would be adversely affected when possible travel routes (within the unit) are constricted, especially on terrain where routes would either be exposed or channeled."

(Decision at 6). As a general proposition this response is correct; however, its applicability to this particular unit is suspect because of the practical and logical travel routes pointed out by appellants and confirmed by examination of file maps.

Moreover, BLM has stated that there is a "limitation on opportunities for solitude in this area because of configuration." Thus, even assuming a very congested, narrow boundary area, the implication is that the limitation on opportunities would exist only in that area. Yet, the acreage eliminated based on the boundary adjustment was approximately 20,000 acres.

BLM apparently considered this part of the unit separately after determining that configuration removed it from the remainder of the unit. Thus, BLM addressed the outstanding opportunities criterion in its response to appellants' protest (Decision at 6). Therein, it discussed why outstanding opportunities for solitude and primitive and unconfined recreation were lacking in the area (Decision at 7). Appellants argue that outstanding recreation opportunities are available, and for that reason the boundary adjustment provisions of OAD 78-61, Change 3, may not be used. This assertion, however, is based on appellants' conclusions that such opportunities exist. This represents a difference of opinion. Although appellants contend there is a lack of evidence in the record to support BLM's conclusion, our review of the record reveals that there is support for BLM's position concerning recreation opportunities. In such a situation, this Board gives considerable deference to BLM's determinations. Kennecott Corp., 66 IBLA 249, 256 (1982). Despite that, BLM's decision as it relates to this area must be set aside. The reason is the unsupported use of the boundary adjustment exception to eliminate this area. Therefore, even if this area does not contain outstanding opportunities, if the boundary adjustment exception is not viable, the area still may qualify for inclusion in the Coal Canyon WSA because it is not necessary that an outstanding opportunity be available in all parts of the unit. What is required is an outstanding opportunity somewhere in the unit. OAD 78-61, Change 3 at 3.

BLM also deleted about 1,470 acres in the vicinity of Halfway Canyon. Appellants argue that BLM accumulated minor unnoticeable impacts in an effort to justify exclusion of the acreage (SOR at 232). In response to appellants' protest concerning this acreage, BLM stated:

The cumulative effect of drill locations, fences, and an abandoned road up Halfway Canyon was felt to cause a generalized loss of naturalness at the mouth of the Canyon. The road, which is benched into the side of the canyon, leads into a State section (Sec. 16, T. 18 S., R. 22 E., SLM). If the road and State section were "cherrystemmed," a 1/2 to 3/4 mile wide finger would be isolated between the State section and the boundary road. This area, north and east of the State section, was excluded from the WSA in accordance with OAD 78-61, Change 3.

(Decision at 3).

This explanation supports the action taken. BLM identified impacts. It indicated that "cherrystemming" the road and State section would create a "narrow finger" of land which was excluded pursuant to the boundary adjustment exception. Appellants have failed to establish error in BLM's action.

BLM's decision concerning this unit is set aside and remanded as to the Sager Canyon area and affirmed as to the acreage around Halfway Canyon.

Granite Creek (UT-060-122/CO-070-132A)

The Granite Creek unit straddles the Utah-Colorado border. It lies approximately 30 miles northeast of Moab, Utah, and 33 miles southwest of Grand Junction, Colorado. BLM eliminated all 7,920 acres in this unit from consideration as a WSA because it lacked outstanding opportunities for either solitude or a primitive and unconfined recreation.

Appellants argue that BLM's conclusions are not supported by the record. Specifically, appellants assert that there is the lack of a factual basis in the record for BLM's conclusions principally because of inadequate field investigations by BLM personnel. Appellants also allege that the record reflects staff disagreement that was not documented as required by OAD 78-61, Change 3 at page 1.

Review of the record reveals that BLM's conclusions are supported by the record. In response to appellants' protest as it related to the outstanding opportunities criterion, BLM stated:

The BLM acknowledges in unit files that both topographic and vegetative screening are present in certain areas and that the unit presents some opportunities for both solitude and primitive and unconfined recreation. Vegetative screening is greatest in the mesa uplands in Colorado and topographic screening is greatest in the entrenched meanders in the western end of Granite Creek Canyon in Utah. The remainder of the canyon bottom is flat and broad and the narrow riparian zone does not compensate for the open character. The BLM stated that the meandering portion of the canyon is limited in size, not that the unit was too small, as your protest states. The lack of side canyons, short length and narrow character tends to concentrate use; it would be difficult to avoid sights and sounds of others moving through the unit. Based on careful evaluation of the unit, it was determined that opportunities for solitude are less than outstanding.

The narrow configuration of both the unit and the western end of the canyon constrains recreation opportunities, with recreational opportunities primarily centered around day hiking. Again, due to the short length of this segment of the canyon, the one way nature of possible travel patterns and lack of side canyons (alternate travel routes) it is felt that the hiking experience, while perhaps very good, is less than outstanding. The canyon is small for extensive backpacking. The presence of the stream does not add diversity as there are no pools for swimming and trout populations are marginal. Game is not varied enough to provide above average hunting. Rock climbing and scrambling opportunities are present to some degree but are not outstanding. (Decision at 2-3).

Appellants contend that BLM has confused the size criterion with the outstanding opportunities criterion, citing Sierra Club, Utah Chapter, 62 IBLA at 270 (Reply Brief at 56). This contention is directed to BLM's

statement in the Final Decision at page 291 that Granite Canyon is "limited" in size. That statement is explained in the protest response quoted above. There is no evidence that BLM confused the criteria.

In addition, BLM has submitted the affidavit of C. DeLando Backus, BLM Area Manager, Grand Resources Area, from March 1977 to November 1980 in which he outlines the BLM staff visits to this unit. Appellants point out "that 6 of the 13 trips involved non-wilderness, general personnel in the unit for non-wilderness purposes (and the files show no contribution from them to the wilderness inventory). Furthermore, 5 of the remaining 7 visits were fly-overs" (Reply Brief at 57). Despite appellants' criticism of BLM's field investigation process, we cannot find that there was insufficient field investigation by BLM. Although more on ground visits may have been desirable, BLM appears to have had the field data necessary for a proper assessment of wilderness characteristics. This is true even though some visits were not made as part of the inventory or by wilderness specialists.

Likewise, appellants have failed to establish that there was staff disagreement such as would require documentation in the record. Although the field notes of one of the BLM field teams to visit the area reflected that opportunities for solitude were outstanding, and the final staff recommendation differed from that, this is not the type of disagreement that is required to be documented by OAD 78-61, Change 3 at page 1. That guideline states: "In cases where staff, District Manager, and/or State Director recommendations do not agree, a narrative explanation of the changed recommendation must be included in the intensive inventory documentation file, in all summary narrative documents, and in any other information available to the public."

Thus, the documentation guideline is directed to differences in recommendations. The field notes in question represent conclusions based on observation by one BLM staff team. The final staff recommendation obviously represents a consensus opinion based on observations by a number of staff members. Personal disagreement among observers is to be expected; documentation of that disagreement was not required. However, if the District Manager had disagreed with the staff recommendation concerning this unit, OAD 78-61, Change 3 at page 1 would have been applicable. Under the circumstances reflected in the record, it did not apply in this situation. BLM's decision concerning the Granite Creek unit is affirmed.

Mill Creek (UT-060-139A)

This unit, consisting of 17,820 acres of public land, is located 3 miles east-southeast of Moab, in Grand County, Utah. A portion of the unit, totaling 10,320 acres, was originally designated a WSA by BLM in its final decision. Appellants did not protest any of the deleted acreage; however, a protest was filed concerning the acreage included in the WSA. ^{15/} In response to the

^{15/} The protest stated in its entirety:

"This letter is in protest to your decision to name unit No. UT-060-139A as a Wilderness Study Area.

This unit as proposed, with its long, narrow fingers of proposed wilderness, large tracts of state and private lands clustered within it and its

protest BLM eliminated the entire unit from further consideration as a WSA because it lacked naturalness and outstanding opportunities either for solitude or a primitive and unconfined type of recreation. 16/ Appellants have appealed that decision, and seek reinstatement of the 10,320-acre WSA.

BLM concluded that there is "general loss of naturalness" in the central portion of the unit due to the presence of ways and roads (Decision at 1). These routes are located in secs. 12 and 13, T. 26 S., R. 22 E., and secs. 17-20, T. 26 S., R. 23 E., Salt Lake meridian, Utah. It should be noted that many of these routes, although within the unit boundaries, are not located within the area which was designated a WSA. BLM stated further that some of the routes constricted the unit along portions of its southern and western boundaries and, in combination with a state section on each of the opposite boundaries, the "resulting configuration" limited opportunities for solitude or a primitive and unconfined type of recreation. *Id.* BLM also found that to the north, in the North Fork Mill Creek Canyon, the unit is "less than a mile wide" and that "additional imprints" on the Wilson and South Mesas on the eastern boundary of the unit further constrict portions of the unit. *Id.*

Appellants argue that BLM failed to document staff disagreement in violation of OAD 78-61, Change 3, at page 1. Appellants state that in a memorandum to the Utah State Director from the Assistant District Manager, Moab, prepared in response to the protest, the District Office recommended excluding part of the area from the WSA, but not exclusion of the entire unit. The memorandum dated December 31, 1980, stated: "We have reviewed the protest on inventory unit UT-060-139A, Mill Creek, from Mr. George

fn. 15 (continued)

being devoid of any large tracts of wilderness core area, should be disqualified for these reasons.

The boundary of this unit in Sec. 12-13-18-17-20-19 takes in roads that were constructed prior to 1976 and have been used for oil and gas exploration, ORV's and hunting."

16/ Appellants note that one of the BLM employees involved in considering the protests with respect to the Mill Creek (UT-060-139A) and Middle Point (UT-060-175) units, Diana Webb, is the wife of George Schultz, the protestant in both cases. Appellants also assert that Schultz, in turn, is an employee of the Cotter Corporation, a uranium mining concern. Appellants argue that Ms. Webb participated in decisionmaking with respect to units which were known Cotter-Schultz interest areas, presumably including the Mill Creek and Middle Point units, and that BLM knew of the conflict of interest. Appellants contend that Ms. Webb should have disqualified herself and, in view of her participation, this conflict of interest adversely affected the credibility of the BLM decisions.

The Office of the Solicitor has informed the Board that the matter has been referred to the Office of the Inspector General of the Department for review. BLM stated in its answer that at that time no action had been taken.

Appellants have raised serious allegations, including possible violations of the Department's standards of employee conduct. In any case, Ms. Webb's failure to disqualify herself is highly questionable at best.

Schultz, and recommend that WSA boundaries be adjusted to exclude constructed roads in the central portion. We recommend denial of his request to drop the unit from further study" (SOR at 1701).

That recommendation was not accepted and on February 26, 1981, the Acting State Director issued his protest response. Nowhere in the record is there an explanation of that disagreement. Appellants have established that BLM failed to include a narrative explanation of the changed recommendation as required by OAD 78-61, Change 3 at page 1.

In its Answer at page 102, counsel for BLM states that appellants appear to be questioning the authority of the State Director to reverse an earlier decision and that clearly final decisions may be amended on the basis of new information received during the comment period. Counsel has mischaracterized appellants' concern. There can be no question that the State Director has authority to change a decision. The issue which appellants have raised is whether there was documentation of the internal disagreement so as to support the action of the Acting State Director in this case. The District Office considered the "new information" and reached one result, and the Acting State Director another. No explanation was given. There was a failure to comply with OAD 78-61, Change 3 at page 1.

The Acting State Director found a "general loss of naturalness" because of roads and ways and "additional imprints" (Decision at 1). There was no attempt to distinguish which routes were ways and which were roads. Nor is there any particular explanation of why there is a "general loss of naturalness." The intensive inventory unit file and the information submitted by appellants on appeal raise considerable doubt whether any of the identified routes, in fact, meet the inventory definition of roads.

In its Final Decision at page 301 BLM found opportunities for both solitude and primitive and unconfined recreation to be outstanding in the 10,320-acre WSA. In response to the protest BLM stated:

The proximity of imprints to the canyon edge, and a reexamination of the configuration of the unit occasioned by the State Section 2, referenced above, which cuts North Fork Mill Creek Canyon about a mile and a half into the unit, indicates that opportunities for solitude or primitive and unconfined recreation, while still present, would be less than outstanding. (Decision at 2).

Although configurations of a unit can affect boundary adjustments as provided for in OAD 78-61, Change 3 at page 3, configuration will not justify elimination of an entire unit where the record does not support a finding of lack of outstanding opportunities. In fact, this was recognized when counsel for BLM stated that: "BLM acknowledges that the Protest Response provides insufficient documentation to support findings that the entire unit lacked outstanding opportunities because of the constricted boundary configurations in parts of the unit" (Answer at 103-04).

While admitting that the protest response was insufficient, counsel for BLM attempts to justify exclusion of the unit on another ground stating:

"However, the finding of non-naturalness in the eastern part of the unit would be sufficient authority to adjust the boundaries. The remaining portion of the unit appears to amount to less than 5,000 acres and, therefore, does not meet the section 603 minimum size requirement" (Answer at 104).

There is no support in the record for this statement. Even assuming there was justification for eliminating "non-natural areas," there is no evidence that elimination of the areas identified in the protest response as having "a general loss of naturalness" would result in a WSA of less than 5,000 acres.

Appellants have shown that the decision of the Acting State Director is not supported by the record and that his conclusions were wrong. Therefore, we reverse that decision and direct the reinstatement of the Mill Creek WSA. The boundaries of that WSA should encompass the 10,320 acres identified in BLM's Final Decision, although if any of the routes in that area identified during the investigation of the protest meet the wilderness definition of a road, those roads should be "cherrystemmed."

Sweet Alice Canyon (UT-060-171)

This unit, which contains 9,880 acres, is located in San Juan County, Utah, about 34 miles west of Monticello, Utah. It was eliminated from consideration as a WSA because BLM concluded that it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants appeal the elimination of the entire unit.

In assessing solitude, BLM concluded that opportunities for solitude are not outstanding because "neither topography, vegetation, nor the two in conjunction, provide natural screening" sufficient for that purpose (Decision at 1). The unit is made up primarily of five canyons running east-west across the width of the unit. BLM stated that because of the short length of the canyons, from 1-1/2 to 3 miles, opportunities were further limited. *Id.* The canyons average 200 feet in depth. In addition, the size of the unit (9,880 acres) is "insufficient to provide a feeling of vastness" (Decision at 2).

Appellants charge that BLM conducted inadequate fieldwork. They state that the record establishes that BLM field crews only entered two of the canyons in the unit and that the remainder of the inventory consisted of driving boundary roads and aircraft fly-overs. In response counsel for BLM submitted the affidavit of Edward R. Scherick, Area Manager, San Juan Resource Area, Moab District, BLM, dated May 20, 1982, which documents visits by BLM staff to the Sweet Alice Canyon area. Appellants replied to the affidavit stating that it supported their position. They point out that the majority of trips into the unit were by BLM personnel other than wilderness specialists and that information from these individuals does not appear in the unit files. Appellants stated of the four trips in the affidavit listed as wilderness, two involved helicopter flights.

Although BLM's on-ground assessment of the unit appears to be limited, Scherick does state in his affidavit that resource specialists in other disciplines were not unaware of wilderness inventory requirements, and that they shared information with wilderness personnel.

Appellants argue that BLM violated guidelines in failing to perform adequate fieldwork. Appellants direct attention to the WIH requirement of gathering information in the field and the direction in OAD 78-61, Change 3 at page 1, to document decisions on wilderness characteristics with "as much objective and descriptive data as possible." We find no violation. BLM gathered information in the field. Although more trips to the unit by BLM may have been productive, we cannot find that appellants have established error in the methodology pursued by BLM in its inventory of this unit.

Appellants also argue that BLM erred in its conclusions concerning outstanding opportunities. They assert that because BLM's fieldwork was limited, it could not make a proper assessment for the entire unit. In support of their position, appellants have submitted affidavits of individuals asserting the presence of outstanding opportunities in the unit. We have addressed the fieldwork question above. Therefore, we are left with a dispute over whether opportunities are outstanding. In such a situation we give considerable deference to the conclusions of BLM. There is adequate support for those conclusions in the record for this unit. BLM's decision on this unit is affirmed.

Middle Point (UT-060-175)

This unit, totaling 5,990 acres, is located in San Juan County, Utah, 43 miles west of the town of Monticello, Utah. BLM in its final decision designated the entire unit of WSA. In responding to a protest, however, BLM decided to eliminate the entire unit from further consideration as a WSA because it lacks naturalness and outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants have appealed that action. They seek reinstatement of the WSA status for this unit.

In assessing naturalness, BLM originally noted the presence in the northern portion of the unit of a well-used road, extending 3-1/2 miles to a 300-acre chained area and a cleared drill site. BLM concluded that while the imprint of man is substantially noticeable within the chained area, it "will become substantially unnoticeable through natural processes" (Final Decision at 315). The area was chained and seeded in 1957 and the drill site was built in the 1960's. BLM cherrystemmed the road.

The only documentation in the record to support the changed determination is an undated memorandum to the file from Diana Webb, a BLM wilderness specialist. The memorandum obviously was written after the protest for this unit was filed because the protest is mentioned in the last paragraph of the memorandum. However, the memorandum recounts an October 8, 1980, trip in which Ms. Webb accompanied George Schultz to the unit. Schultz is the individual who subsequently protested the WSA status of the unit.

In the memorandum Ms. Webb stated that the drill site "is still substantially noticeable." With respect to the chained area she stated "[t]he chaining is large and has not revegetated with p/j [pinyon/juniper]. The area presents an open grassy area. Portions are still littered with dead wood. The area looks like a chained area, i.e., a man-made intrusion, and is not 'substantially unnoticeable.'" She concluded that all the impacts in the chained area result in "a generalized loss of naturalness more pronounced than indicated in unit files." The record does not show whether

Ms. Webb communicated her October 1980 observations to other BLM staff prior to the Final Decision in November 1980 designating this unit as a WSA.

Appellants argue that the BLM decision was tainted because Ms. Webb was involved in consideration of the protest by her husband (See SOR at 276, 1739-40). They charge conflict of interest. Our response to this charge is set forth in our discussion of the Mill Creek unit, supra note 16.

Appellants also argue that BLM failed to document the lack of wilderness characteristics. We agree. The entire case record, except for the Webb memorandum and the protest response, supports the conclusion that the unit has the requisite wilderness characteristics.

The protest response merely states that "re-examination of the topography and vegetation in the unit indicates that the unit itself does not possess outstanding opportunities for either solitude or primitive and unconfined recreation" (Decision at 1). There are no specific reasons given for the changed result on outstanding opportunities.

Counsel for BLM argues with reference to the drill site and chainings that BLM may not consider rehabilitation potential where an imprint of man is determined to be "substantially noticeable," citing ASARCO, Inc., supra (Answer at 110). Counsel has misconstrued our holding in ASARCO. In that case we held that BLM may consider rehabilitation potential unless the imprint of man is so significant as to automatically disqualify a unit or portion of a unit, in accordance with guidance provided by OAD 78-61, Change 3 at page 5. ASARCO, Inc., supra at 58. Thus, BLM has the latitude to consider rehabilitation potential where an imprint of man is substantially noticeable, but the imprint cannot be considered so significant as to automatically disqualify the unit or portion thereof.

The record supports a finding that rehabilitation potential properly was considered for imprints in this unit because there is nothing in the record which establishes that the imprints are so significant as to automatically disqualify the unit or portion of the unit from consideration as a WSA.

Counsel for BLM further attempts to dismiss appellants' arguments concerning lack of support for BLM's conclusion as being a difference of opinion. Such is not the case. Appellants correctly have pointed out that BLM failed to provide adequate support for its changed position. This unit must be returned to WSA status. Appellants have established that the conclusions in the protest decision were wrong.

The BLM decision appealed from is reversed. The Middle Point WSA is reinstated. The boundaries should be those set forth in the Final Decision at 315. The protest response states that the road through the chainings was found to extend a mile and a half further than originally noted. This was disputed by appellants. If this extension of the road meets the wilderness definition of a road, it should be cherrystemmed.

Mancos Mesa (UT-060-181)

This unit is located in western San Juan County, Utah, about 50 miles west of the town of Blanding, Utah. The unit contains 51,440 acres of public

land. BLM eliminated the entire unit from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. Appellants' protest was denied by BLM, and appellants have appealed the elimination of the entire unit, although they admit that the southwest portion of the unit shows some imprints of man (SOR at 279).

Appellants allege that there was staff disagreement concerning this unit and that such disagreement was not documented. Appellants point to the Wilderness Intensive Inventory report which contains the signature of Peter Viavant on the summaries, dated variously January 3 or February 15, 1980, indicating the presence of certain wilderness characteristics and the signature of another person, Paul Happel, at a later date (March 19, 1980) on the negative summaries for outstanding opportunities for solitude and primitive and unconfined recreation (SOR at 1765-71). Appellants also submitted a two-page document purported to be a draft for the April 1980 BLM proposed decision on WSA's. That document concluded that both outstanding opportunities for solitude and recreation existed in the unit, and it recommended a WSA of 49,670 acres (SOR at 1763-64).

With its reply brief appellants submitted the affidavit of Glen J. Lathrop, the spokesman for the Slickrock County Council in Moab, Utah, who stated that he had obtained the two-page document from Peter Viavant, who prepared it in February 1980. The document was apparently to have been part of the intensive inventory file. The record contains no explanation of why the Viavant recommendation was changed. Moreover, to rebut appellants' contention of lack of fieldwork, counsel for BLM submitted the affidavit of Edward R. Scherick, BLM Area Manager for the San Juan Resource Area, Moab District. This affidavit shows a number of visits to the Mancos Mesa unit from 1967 through 1980. The visits were conducted either on the ground or by aircraft over-flights. Between 1967 and November 16, 1979, there are 32 documented visits to the unit. Presumably, based on the unit file and discussions with staff, Viavant prepared his recommendation in January and February 1980. There is only one visit to the unit listed in the Scherick affidavit between November 16, 1979, and March 19, 1980, the date on the negative outstanding criterion summaries. That trip was "3/18/80 -- McClure; wilderness, helicopter." There is no explanation in the record of the results of that trip. Thus, the conclusion must be that Viavant and Happel reached different results based on the same record. No explanation appears in the record for these different recommendations.

We note another serious discrepancy in the record. The unit file contains the "Wilderness Intensive Inventory Summary Sheet" for this unit. That sheet contains various questions concerning the results of the wilderness characteristics analysis. Each question is followed by two blanks, one marked "Yes," the other "No." The question "Does the unit offer outstanding opportunities for solitude or a primitive and unconfined type of recreation?" is followed by an "X" typewritten in the "No" space. However, close inspection indicates that a mark in the "Yes" box is whited out. The same is true under the recommendation section of the summary sheet. An "X" is typewritten in front of the statement "Unit does not qualify for wilderness study." In front of the statement "A portion of the unit should be approved as a WSA * * *" a mark is whited out. OAD 78-61, Change 3 at page 1 states that the original intensive inventory form is not to be modified through erasures, deletions, or additions.

The approval section of the summary sheet is signed by the Resource Area Manager and dated "2/14/80" and signed by the District Manager and dated "2/19/80." The State Director's signature carries the date "Mar. 20, 1980." Therefore, the Resource Area Manager and District Manager signed the summary sheet at a time when the Wilderness Intensive Inventory report had not been completed. Happel's negative conclusions on the outstanding opportunity criterion are dated March 19, 1980, only one day before the State Director approved the summary sheet.

Given these discrepancies, some explanation was required. Did the Resource Area Manager and District Manager approve a summary sheet that indicated opportunities were outstanding and a portion of the unit should be a WSA? They certainly could not have approved Happel's negative determinations, since they bear a date that is a month later. If the State Director's decision was different from the others, it should have been documented.

Appellants have raised grave questions concerning the reliability of BLM's assessment of this unit. In addition, appellants have presented evidence that at least part of this unit has outstanding opportunities for both solitude and a primitive and unconfined recreation. 17/

We have disregarded appellants' arguments concerning the unit's proximity to the wilderness proposal area in the Glen Canyon National Recreation Area since each unit must be assessed on the characteristics within the unit itself. Don Coops, 61 IBLA 300 (1982).

Based on the state of the record, we are compelled to set aside the BLM decision and remand this unit for reassessment of the outstanding opportunities criterion.

Cheese Box Canyon (UT-060-191)

This unit is located in the southwest portion of San Juan County, Utah, approximately 32 miles west of Blanding, Utah, and 40 miles southwest of Monticello, Utah. The unit contains 27,520 acres of public land. BLM created a WSA of 15,410 acres. The remainder of the unit was eliminated from consideration as a WSA. Appellants protested the exclusion of the 12,110 acres. BLM denied the protest.

17/ Appellants submitted the affidavit of Janet Ross, a BLM seasonal wilderness specialist from March to September 1979 (SOR at 1741-45). Ms. Ross was a member of a three-member BLM field team that visited the Mancos Mesa unit. In her affidavit she states that "the field study team all agreed for the writeup that with boundary changes from the initial inventory recommendations, Mancos Mesa met all the criteria for WSA." Id. at 1744 (emphasis in original). Page 8 of the Intensive Wilderness Inventory report is the "Photo Log" containing narrative descriptions of photos "taken by Paul Happel, Bobbie Cleave, Janet Ross, Date August 1979." However, in the Scherick affidavit filed by counsel for BLM the only trip to the unit involving these three individuals is listed as having taken place "6/12/79."

Ross swears that all three members of the field team agreed that the unit with boundary modifications satisfied the wilderness criteria. Paul Happel was part of that team. Happel signed the negative determination on outstanding opportunities dated Mar. 19, 1980.

Appellants state that they are appealing all the eliminated acreage; however, they specifically address two portions of the unit: (1) The upper area of Hideout Canyon and (2) the lower area of White Canyon.

BLM made boundary adjustments in the eastern and western portions of the unit. In response to appellants' protest BLM stated that "[i]n both of the areas identified in your protest, the boundary adjustments were based on the effect of combinations of non-Federal land and intrusion patterns" (Decision at 3).

BLM's protest response stated with respect to those two areas:

This state section encloses over a mile of Hideout Canyon, effectively isolating a BLM-administered segment of the canyon. The state section also ties into the concentration of human impacts on Deer Flats.

The isolated segments of Hideout Canyon contain a total of only about four miles of BLM-administered canyon. The longest segment is only about two miles long. Because of the canyon's fragmentation in this part of the unit the opportunities for solitude and primitive and unconfined recreation are less than outstanding. The rest of the excluded area either contains obvious man-caused impacts and has lost its natural appearance; or, is within the constricted areas that are isolated by combinations of impacted areas, non-Federal land boundaries, and the unit boundaries. It was this combination of factors, not simply the presence of the State land, that had to be considered when the eastern boundary of the proposed WSA was located.

* * * * *

In regard to the second area protested, the area was excluded because it is effectively isolated by a combination of roads and a State land section. The roads connect the south boundary road and the southern end of the State section (Section 16, T.36S., R.16E.). The State section, in turn, expands to within less than 1/8 mile of the northern boundary in this part of the unit. Since the extremely narrow neck of land between the state section and this boundary is all that connects the main body of the unit with the White Canyon portion, this portion is considered to be effectively isolated.

(Decision at 4). The Wilderness Intensive Inventory report at page 2 documents the intrusions in these areas.

Appellants contend that BLM improperly adjusted the boundaries of the unit, that BLM's field investigations were inadequate, and that BLM improperly assessed or failed to assess wilderness characteristics in these areas.

Appellants have failed to establish error. The record supports the action taken by BLM. OAD 78-61, Change 3 at page 1, which references

OAD 78-61, Change 2 at page 5, allows for adjustment of boundaries to eliminate imprints of man. BLM invoked that guidance in making the boundary adjustment in the eastern part of the unit. The western portion was deleted in accordance with OAD 78-61, Change 3 at page 5 because the imprints of man and the state section created a very congested narrow boundary area. The only logical boundary adjustment was to draw the WSA boundary on the eastern edge of the state section.

Appellants direct our attention to Sierra Club, Utah Chapter, supra, and argue that intersection of White Canyon by the State section does not justify the failure to inventory the complete unit. Sierra Club, Utah Chapter, is not applicable in this fact situation. Although the State section intersected the canyon in that case, it did not create a narrow boundary area. The creation of the narrow area in this unit justifies the adjustment.

Counsel for BLM admits that for the White Canyon area BLM did not reach "a conclusion" on the outstanding opportunities criterion. However, such a conclusion is not necessary. The narrow boundary area justifies a boundary adjustment. The boundary adjustment eliminated the western-most lands in the unit. Those lands, being less than 5,000 acres, could not independently qualify for consideration as a WSA. BLM did not err in failing to set forth a conclusion on outstanding opportunities in that area. The BLM decision is affirmed.

Arch Canyon (UT-060-205A)

The Arch Canyon unit contains 7,500 acres of public land. The unit is located in the south-central portion of San Juan County approximately 30 miles southwest of Monticello, Utah. BLM eliminated the entire unit from consideration as a WSA because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

In its Final Decision at page 335, BLM stated concerning outstanding opportunities:

1. SOLITUDE: The configuration of this unit limits its potential for solitude. A State section lies across Arch Canyon, the principal topographic feature of the unit. Although the topography in this canyon provides good screening, the intruding State section divides it, leaving only two short segments of the canyon under BLM management. Natural screening is found in the flats to the east and south that make up the rest of the unit, but is less than outstanding.

2. PRIMITIVE AND UNCONFINED RECREATION: The flat, open terrain in the south and east of Arch Canyon provides very limited opportunities for primitive and unconfined recreation. The opportunities in Arch Canyon are limited by the short segments of the canyon remaining on either side of the intruding State section.

The configuration of this unit is such that the western, southern, and eastern borders of a State section form part of the northern boundary of the unit. That State section lies across Arch Canyon in the center of the unit. The southwestern corner of the State section is approximately one-fourth mile from the southern boundary of the unit.

Appellants protested the deletion of this entire unit. Their protest was denied and they have appealed all the acreage. Appellants argue that it was improper for BLM to rely on the presence of the State section to justify excluding the whole unit. Appellants cite language from OAD 78-61, Change 3 at page 8, concerning inholdings and claim that BLM improperly utilized the boundary adjustment provisions of that OAD based on the presence of the State section. Appellants argue that none of the boundary adjustment exceptions are applicable.

Counsel for BLM points out, however, that no boundary adjustments were made because the State section is not an inholding and, therefore, the adjustment guidelines were not applicable. Counsel is clearly correct. The State section forms part of the border of the unit. It is not an inholding.

Appellants contend that BLM's reliance on "constrictions" is misplaced, citing Sierra Club, Utah Chapter, supra. In that case the Board stated that "[m]erely because the canyon * * * is intersected by state land does not prevent opportunities from being outstanding." Id. at 271. In that case the state section also formed part of the boundary of the unit. However, that section did not adversely affect the configuration of the unit. Thus, the statement in Sierra Club, Utah Chapter, while generally true, is not controlling in this case because here the state section adversely affects the configuration of the unit.

Appellants have failed to establish error in BLM's assessment of this unit. The record supports BLM's conclusions that the unit lacks outstanding opportunities. In assessing solitude, BLM properly gave consideration to the interrelationship between size, screening, configuration, and other factors. The BLM decision is affirmed.

Winter Ridge (UT-080-730)

The Winter Ridge unit contains 43,963 acres of public land and is located 70 miles south of Vernal, Utah. BLM eliminated the entire unit from consideration as a WSA because it lacks naturalness. BLM states in its Final Decision at page 389 that the major imprints of man are "two producing natural gas wells, a State of Utah wildlife field station at Pine Springs, a 1,000-acre pinyon-juniper chaining, five ways that intrude the southern boundary and a 4-inch steel pipeline that runs along the northern boundary." These imprints are located along the "sides" of the unit (Decision at 1). In the Wilderness Intensive Inventory at page 6, the BLM wilderness specialist states that: "Though the central portion of this unit retains its natural character with little human impact, the unit overall does not appear to be natural." BLM concluded that outstanding opportunities for solitude exist in the unit.

Appellants appeal deletion of the entire unit and contend that BLM improperly assessed naturalness in the unit. Appellants state that BLM failed to make clear how the imprints of man, located near the boundaries of the unit, could be substantially noticeable in an area 12 miles long by 5 miles wide (SOR at 395).

Counsel for BLM responded that BLM found that the imprints affected the condition of naturalness throughout the unit and that appellants merely offered a difference of opinion (Answer at 154). We cannot agree.

OAD 78-61, Change 3 at page 1, states that during the intensive inventory the guidelines in OAD 78-61, Change 2, apply to assessment of the naturalness characteristics. OAD 78-61, Change 2 at page 5, specifically provides that: "When major imprints of man, which are substantially noticeable, are located within a roadless area, consideration must be given to adjusting the unit boundary to exclude that imprint of man." There is no evidence that BLM considered adjusting boundaries to eliminate imprints from the unit. It would appear that boundary adjustments would be proper for this unit where the imprints are located near the periphery of the unit and the central portion of the unit retains its natural character.

In its protest response BLM stated that:

The detailed field inventory conducted by BLM listed 13 imprints within the unit that are substantially noticeable, which impinged upon the naturalness of the unit. Inholdings of five State sections exist, three of which are located in key areas that affect movement within the unit. When considering our findings as well as the information provided by the public, the conclusion was that, overall, the Winter Ridge unit lacked naturalness.

(Decision at 2).

As discussed, there is no evidence that BLM considered boundary adjustments to eliminate those imprints. In addition, the inholdings do not support deletion of the unit on the basis of lack of naturalness. Inholdings are addressed in OAD 78-61, Change 3 at page 3. There is no evidence in the record that the State sections contain "such extreme imprints of man that they can not be ignored."

Appellants also contend that BLM erred in its assessment of outstanding opportunities for primitive and unconfined recreation. BLM adequately explained the rationale for its conclusion in the protest response. We find no error. The BLM decision as it related to naturalness must be set aside and the unit remanded to allow BLM to reassess naturalness with special attention to whether boundary adjustments might eliminate imprints.

To the extent any of appellants' arguments have not been addressed directly in our discussions of individual units, those arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part; affirmed as modified in part; reversed and remanded in part; set aside and remanded in part; and the appeal is dismissed in part. See Appendix B.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

APPENDIX A

<u>UNIT NO.</u>	<u>UNIT NAME</u>	<u>BLM NOV. 1980</u>	<u>ACREAGE</u>	<u>DECISION</u>
UT-020-037	Newfoundland Mts.	23,266	All Excluded	
UT-020-129/	Dugway Mts.	20,638	All Excluded	UT-050-130A
UT-040-075	Horse Spring Canyon	32,203	All Excluded	
UT-040-076	Carcass Canyon	76,410	46,711 WSA	
		29,699	Excluded	
UT-040-077	Mud Spring Canyon	65,010	38,075 WSA	
		26,935	Excluded	
UT-040-078	Death Ridge	65,040	All Excluded	
UT-040-079	Burning Hills	70,080	All Excluded	
UT-040-104	Mountain Home Range	19,019	All Excluded	
UT-040-204B	Central Wah Wah Range	37,238	All Excluded	
UT-040-230	Parunuweap Canyon	47,696	30,800 WSA	
		16,896	Excluded	
UT-040-247	Paria-Hackberry	196,431	135,822 WSA	
		60,609	Excluded	
UT-040-248	Wahweap	137,980	All Excluded	
UT-040-266	East of Bryce	887	All Excluded	
UT-050-221B	Freemont Gorge	18,500	2,540 WSA	
		15,960	Excluded	
UT-050-238	Mt. Ellen	156,102	58,480 WSA	
		97,622	Excluded	
UT-050-241	Fiddler Butte	101,310	27,000 WSA	
		74,310	Excluded	
UT-050-248	Mt. Pennell	159,650	27,300 WSA	
		132,350	Excluded	
UT-060-068A	Desolation Canyon	340,880	217,130 WSA	
		125,030	Excluded	
UT-060-068B	Floy Canyon	82,300	All Excluded	
UT-060-100B	Diamond Canyon	54,540	48,240 WSA	
		6,300	Excluded	
UT-060-100C	Cottonwood Canyon	85,240	62,900 WSA	
		22,340	Excluded	
UT-060-122/	Granite Creek	7,920	All Excluded	CO-070-132A
UT-060-139A	Mill Creek	17,820	10,320 WSA	
UT-060-171	Sweet Alice Canyon	9,880	All Excluded	
UT-060-175	Middle Point	5,990	5,990 WSA	
UT-060-181	Mancos Mesa	51,440	All Excluded	
UT-060-191	Cheese Box Canyon	27,520	15,410 WSA	
		12,110	Excluded	
UT-060-205A	Arch Canyon	7,500	All Excluded	
UT-080-730	Winter Ridge	43,963	All Excluded	

<u>UNIT NO.</u>	<u>UNIT NAME</u>	<u>ACREAGE</u>	<u>BLM DECISION</u>	<u>PROTESTED</u>	<u>ON PROTEST</u>
UT-020-037	Newfoundland Mts.	All	Denied		
UT-020-129/	Dugway Mts.	18,000	Denied	UT-050-130A	
UT-040-075	Horse Spring Canyon	All	Denied	UT-040-076	Carcass Canyon
UT-040-104	Mountain Home Range	All	Denied		
UT-040-204B	Central Wah Wah Range	All	Denied		
UT-040-230	Parunuweap Canyon	Approx.			

		180	Denied	UT-040-247	Paria-Hackberry
		24,726	Denied		
UT-040-248	Wahweap		All	Denied	
UT-040-266	East of Bryce		All	Denied	UT-050-221B
		5,500	Denied	UT-050-238	Mt. Ellen
		20,000	Denied		
UT-050-241	Fiddler Butte		Approx.		
		74,000	Denied	UT-050-248	Mt. Pennell
		45,000	Denied		
UT-060-068A	Desolation Canyon		Over	33,630	WSA
		100,000	70,000	Denied	
UT-060-068B	Floy Canyon		75,100	Denied	
UT-060-100B	Diamond Canyon			200	WSA
		4,500	4,300	Denied	
UT-060-100C	Cottonwood Canyon			1,770	WSA
		All	600	Out	
			20,570	Denied	
UT-060-122/	Granite Creek		All	Denied	CO-070-132A
UT-060-139A	Mill Creek		All	Granted	
		3rd party	10,320		
			Excluded		
UT-060-171	Sweet Alice Canyon		All	Denied	
UT-060-175	Middle Point		All	Granted	
		3rd party	5,990		
			Excluded		
UT-060-181	Mancos Mesa		All	Denied	UT-060-191
		12,100	Denied		Cheese Box Canyon
UT-060-205A	Arch Canyon		All	Denied	
UT-080-730	Winter Ridge		All	Denied	

APPENDIX B

ACREAGE

<u>UNIT NO.</u>	<u>UNIT NAME</u>	<u>APPEALED</u>
UT-020-037	Newfoundland Mts.	23,266
UT-020-129/ 050-130A	Dugway Mts.	18,000
UT-040-075	Horse Spring Canyon	Approx. 30,000
UT-040-076	Carcass Canyon	12,180
UT-040-077	Mud Spring Canyon	18,065
UT-040-078	Death Ridge	65,040 180 ("Cherry- stemmed" road)
UT-040-247	Paria-Hackberry	24,726
UT-040-248	Wahweap	137,980
UT-040-266	East of Bryce	887
UT-050-221B	Fremont Gorge	5,500
UT-050-238	Mt. Ellen	30,000
UT-050-241	Fiddler Butte	62,500
UT-050-248	Mt. Pennell	60,000
UT-060-068A	Desolation Canyon	70,000
UT-060-068B	Floy Canyon	75,100
UT-060-100B	Diamond Canyon	4,300
UT-060-100C	Cottonwood Canyon	21,470
UT-060-122/ CO-070-132A	Granite Creek	7,920
UT-060-139A	Mill Creek	10,320
UT-060-171	Sweet Alice Canyon	9,880
UT-060-175	Middle Point	5,990
UT-060-181	Mancos Mesa	51,440
UT-060-191	Cheese Box Canyon	12,110
UT-060-205A	Arch Canyon	7,500
UT-080-730	Winter Ridge	43,963

<u>UNIT NO.</u>	<u>UNIT NAME</u>	<u>BOARD'S DECISION</u>
UT-020-037	Newfoundland Mts.	Set aside and remanded
UT-020-129/	Dugway Mts.	Set aside and remanded 050-130A
UT-040-075	Horse Spring Canyon	Set aside and remanded
UT-040-076	Carcass Canyon	Set aside and remanded
UT-040-077	Mud Spring Canyon	Set aside and remanded
UT-040-078	Death Ridge	Set aside and remanded
UT-040-079	Burning Hills	Set aside and remanded
UT-040-104	Mountain Home Range	Affirmed
UT-040-204B	Central Wah Wah Range	Set aside and remanded
UT-040-230	Parunuweap Canyon	Affirmed as modified
UT-040-247	Paria-Hackberry	Affirmed in part; set aside and remanded in part
UT-040-248	Wahweap	Set aside and remanded
UT-040-266	East of Bryce	Affirmed
UT-050-221B	Fremont Gorge	Affirmed
UT-050-238	Mt. Ellen	Set aside and remanded in part; appeal dismissed in part
UT-050-241	Fiddler Butte	Set aside and remanded
UT-050-248	Mt. Pennell	Set aside and remanded
UT-060-068A	Desolation Canyon	Affirmed in part; set aside and remanded in part
UT-060-068B	Floy Canyon	Set aside and remanded
UT-060-100B	Diamond Canyon	Affirmed in part; set aside and remanded in part; appeal dismissed in part
UT-060-100C	Cottonwood Canyon	Affirmed in part; set aside and
UT-060-175	Middle Point	Reversed and remanded
UT-060-181	Mancos Mesa	Set aside and remanded
UT-060-191	Cheese Box Canyon	Affirmed
UT-060-205A	Arch Canyon	Affirmed
UT-080-730	Winter Ridge	Set aside and remanded

