

**Editor's note: Reconsideration granted; decision vacated in part -- See 105 IBLA 196 (Nov. 2, 1988)**

CALIFORNIA WILDERNESS COALITION, ET AL.

IBLA 86-1032

Decided January 25, 1988

Appeal from a decision of the District Manager Ukiah District, approving a transportation plan for the King Range National Conservation Area.

Affirmed in part; reversed in part.

1. Administrative Procedure: Administrative Review! -Federal Land Policy and Management Act of 1976: Land Use Planning! -Federal Land Policy and Management Act of 1976: Wilderness

A BLM decision to designate certain roads within the King Range National Conservation Area as open to unrestricted or limited vehicle use by the general public will not be disturbed on appeal absent a showing of compelling reasons for modification or reversal. However, where a portion of the King Range has been designated a wilderness study area, relevant factors for consideration of whether to open the area to off-road vehicle use must include whether such activity will impair the area's suitability for wilderness preservation or whether unnecessary or undue degradation of lands and their resources will take place. Where the record does not support the road opening because it reveals the threat of unnecessary degradation of the natural and cultural resources, the decision will be reversed.

APPEARANCES: Jay Watson and Deborah S. Feams, Esq., San Francisco, California, for the California Wilderness Coalition, Northcoast Environmental Center, and The Wilderness society; Susie Van Kirk, Lym Ryan, Arcata, California, for the North Group, Redwood Chapter, Sierra Club; Cecilia Gregori and Sally R. Marcus, Garberville, California, for the Environmental Protection Information Center, Inc.; Burton J. Stanley, Esq., office of the Regional Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The California Wilderness Coalition et al. 1/ appeal the January 23, 1986 approval by the Ukiah District Manager, Arcata, California, Bureau of

Land Management (BLM), of the King Range Transportation Plan (transportation plan/plan). The plan designates 16 areas and roads as open to either unrestricted or limited vehicle use by the general public. The California Wilderness Coalition and the Environmental Protection Information Center, Inc. (EPIC), appeal from decisions by BLM to grade and repair several of the roads within the King Range National Conservation Area. The California Wilderness Coalition and EPIC request that their appeals be consolidated with the appeals of the transportation plan because the issues raised by their appeals are intimately related to the larger issues raised by the appeals of the plan.

The King Range National Conservation Area (King Range) encompassing approximately 54,000 acres of mountains and beaches is located along the coast of northwestern California, 60 miles south of Eureka and 230 miles north of San Francisco. Most of the King Range lies within Humboldt County, with only 3 percent located in Mendocino County. The area extends 35 miles north and south between the Mattole River and the Sinkyone Wilderness State Park, and up to 6 miles inland from the Pacific ocean. The King Range is one of the most remote areas on the coast, and is characterized by rugged, steep, and unstable terrain. King's Peak is the highest point in the area, with an elevation of 4,087 feet and is located only 3 miles from the ocean. Many short, steep mountain streams run directly into the sea. This abrupt rise is rarely surpassed on California's rugged coast and is seldom found in other parts of the world. The Act of October 21, 1970, P.L. 91-476, 84 Stat. 1067, which established the King Range, required that a study of the area be made and a management plan be developed by the Secretary of the Interior as a prerequisite to formal establishment as the King Range National Conservation Area. A preliminary draft of the Interior Department's management plan for area was submitted to Congress on May 31, 1974.

The King Range National Conservation Area Act requires that a management plan be written that indicates the primary or dominant uses which will be permitted on various portions of the area. *Id.* at 1068-1070. Therefore, the King Range National Conservation Area Management Program (management program) on September 21, 1974, divided the King Range into zones of primary use. Zones 1, 2, and 4 have recreation as their primary use; zones 3 and 5 are residential; zone 6 has timber production as the dominant use; and zone has wildlife and fish habitat as its primary use. The management program specifies that in zone 2, public vehicle use is only allowed on the Smith-Etter Road, Telegraph Ridge Road, and Saddle Mountain Road. This zone is also of a wilderness study area (WSA).

Off-road vehicle (ORV) use during the 1970's and earlier was minimal. Very little ORV use occurred off the beach area because of the steep and rugged terrain. Upon completion of the management program, vehicle use zones \_\_\_\_\_

1/ Appellants are the California Wilderness Coalition, Northcoast Environmental Center, The Wilderness Society, who filed a statement of reasons on June 27, 1986, and the North Group, Redwood Chapter of the Sierra Club, and the Environmental Protection Information Center, Inc., who filed a statement of reasons on Apr. 15, 1986.

were established for the beach area. At that time the northern boundary of the main block of the King Range was near Cooskie Creek, with zone 1, a small unit, located at the Punta Gorda Lighthouse. Although most of the beach from Cooskie Creek to the Mattole River was not publicly owned, the management program did call for vehicle use in zone 1, implying an open riding area from the mouth of the Mattole River south to the Punta Gorda Lighthouse. In 1976 the boundary of the area was extended to consolidate the lighthouse with the rest of the conservation area lying to the south.

In 1976, the Federal Land Policy and Management Act of 1976 (FLPMA) P.L. 94-579 was enacted into law. Section 603 of FLPMA, 43 U.S.C. § 1782 (1982), requires the Secretary of the Interior to review roadless areas of 5,000 acres or more and recommend to the President the suitability of such areas for preservation as wilderness. The final intensive inventory was published in 1979 which designated two WSA's within the King Range (see Wilderness Recommendations Draft Environmental Impact Statement). Preliminary Wilderness Recommendations and an environmental impact statement (EIS) were completed in 1985.

During the 1980's, evidence of ORV damage to archaeological sites south of the Mattole River led to BLM's consideration of a proposal to close the beach on an emergency basis. In 1984, some archaeological sites were fenced to prevent further ORV-caused deterioration. on August 9, 1985, BLM closed several additional roads within the King Range on an emergency basis "to protect people and property from hazardous conditions, prevent trespass on private property, protect resource values, and minimize potential impact to the wilderness study area." 50 FR 32914-32915 (Aug. 15, 1985). Portions of the Cooskie Creek Road, Johnny Jack Ridge Road, Whale Gulch Road, Smith-Etter Road and Spanish Ridge Road were affected.

On August 15, 1985, BLM released the first draft of the transportation plan with an environmental assessment (EA) for public comment. on January 13, 1986, BLM issued a supplement to the original EA and a decision record. on January 23, 1986, the final plan was signed by BLM Ukiah District Manager Van Manning, and on February 21, 1986, a "Notice of off-Road Vehicle Interim Designations" was published in the Federal Register. 51 FR 6323. These appeals followed.

In general, appellants contend that implementation of the transportation plan will result in significant environmental damage to soil, vegetation, cultural resources, and wilderness values. Appellants allege that the plan violates the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332 (1982) Exec. Order (EO) No. 11644, 42 U.S.C. § 4321 note (1982), and Departmental regulations promulgated under that order; the King Range National Conservation Area Act, supra; and section 603 of FLPMA, 43 U.S.C. § 1782 (1982).

The California Wilderness Coalition et al. requests that the Board

- (1) Declare the existing King Range Transportation Plan invalid;

(2) Order "closed" to vehicle use by the public those roads within the WSA, those roads providing access to archaeologically significant beach areas, and those roads bisecting areas containing raptor habitat;

(3) Compel preparation of an Environmental Impact Statement analyzing the environmental impacts of any future transportation plan created relative to the King Range National Conservation Area, and;

(4) Grant whatever additional relief it considers appropriate.

The North Group et al. requests that the transportation plan be remanded to the District Manager for revision and preparation of an adequate environmental document. These appellants request that the revision designate all roads and areas within and on the boundaries of the WSA closed to public ORV use pending resolution of the boundaries of the King Range WSA by Congress.

In response, BLM alleges compliance with all applicable statutes, regulations, and orders.

We will first consider whether the transportation plan has met requirements of NEPA.

NEPA requires that Federal agencies prepare an EIS prior to implementing any decision with potentially significant Environmental impacts. 42 U.S.C. § 4332(C) (1982), 40 CFR 1502.3, 1508-3. In determining whether or not a proposal may have significant environmental impact, agencies must prepare an EA briefly analyzing the impacts of and the alternatives to the proposal at issue. 40 CFR 1508.9. The California Wilderness Coalition et. al. assert that BLM failed to prepare an EIS for the transportation plan even though the plan was likely to result in significant impacts on erosion, wildlife, archaeological values, opportunities for primitive wilderness recreation, and suitability for wilderness designation. These appellants assert that the EA prepared by BLM relative to the transportation plan is inadequate to support the "Finding of No Significant Impact" in which it resulted. Appellants contend that BLM's cursory treatment of impacts in the EA falls short of the regulatory standard requiring that documents prepared in accordance with NEPA contain "high quality" information. 40 CFR 1500.1(b). Finally, appellants point out that NEPA demands an honest and thorough weighing of alternative proposals and that BLM has failed to meet this standard. Appellants assert that when compared with alternative proposals which would designate "closed" roads in environmentally sensitive areas, the transportation plan as drafted would result in substantial, statutorily "significant" environmental impacts.

BLM responds that the environmental impacts of roads and road use have been fully examined by an EIS prepared in 1974 and are further presently being considered in an EIS supporting BLM's wilderness recommendations for the King Range National Conservation Area. BLM points out that the transportation plan closes the King Range to ORV's with certain exceptions; it

designates certain roads already in existence as being open to the public on either a total or a limited basis and retains the open designation for a portion of the beach between Telegraph and Gitchell Creeks. BLM explains that the plan involves no new construction and closes more than 25 miles of existing roads to public use. BLM indicates that there are no significant impacts requiring the preparation of an EIS because it has proposed mitigation measures and has reduced impacts by closing the area to ORV use with certain exceptions.

An agency's decision not to prepare an EIS will be upheld unless the decision is unreasonable. *Vance v. Block*, 635 F. Supp. 163 (D. Mont. 1986) In determining the reasonableness of a decision not to order an EIS, it is necessary to consider whether BLM took the requisite "hard look" at the environmental effects of the transportation plan. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). We find that BLM did take a hard look at the environmental consequences of the plan and that preparation of an EIS for the transportation plan is not necessary.

In the EA for the draft plan, dated August 15, 1985, BLM examined the proposed action and four alternatives. BLM discussed the environmental and social impacts of the proposed action and the alternatives. It also considered mitigation of the impacts and monitoring of the closed areas. BLM made the following statement concerning the environmental consequences of the proposed action:

The environmental impacts caused by implementing the proposed action would be positive, because the potential for resource damage caused by ORV's would be reduced. Wilderness values in the King Range and Chemise Mountain WSA's would be more protected than the current situation. Soil erosion, and water and air pollution would be reduced. Road maintenance costs to the Bureau would be significantly reduced, as approximately 25 miles of road would no longer need to be maintained or repaired. Roads no longer being used would slowly recontour to the existing topography as soil and rock sluffed off the cutbanks, making them suitable as hiking and horseback trails. The fire hazard potential would be reduced because vehicles would be prohibited from riding off roads and onto fire prone grassy areas.

(EA at 3).

In August 1985 BLM distributed the draft transportation plan for public review and comment. After reviewing the public comments, the Arcata Resource Area Manager wrote a Supplemental EA. A new decision record was written on January 13, 1986, in which the Arcata Area Manager reached the following conclusion:

The decision to designate areas and trails in the King Range National Conservation Area as open, limited, or closed to vehicle use is based on the conclusion, as documented in the Supplemental EA, that with application of appropriate monitoring and mitigation, vehicle use can take place in this area without significant adverse impacts.

Based on the Environmental analysis of the proposed action and five alternatives cited above, I conclude that this action will result in no significant impacts to the human environment and therefore, conclude that an EIS is not necessary.

(Decision Record at 10). We find that the EA and Supplemental EA establish that BLM took a hard look at the environmental consequences and provide an appropriate basis for BLM's determination not to prepare an EIS. Generally, a determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the Environmental analysis. *Utah Wilderness Association*, 80 IBLA 64, 91 I.D. 165 (1984), decision vacated for procedural reasons, *Utah Wilderness Assn. v. Clark*, Civ No. 84-0472 J (D. Utah Dec. 16, 1985); *Southwest Resource Council, Inc.*, 73 IBLA 39 (1983). The decision on review meets those standards. Appellants have fallen short of their burden of establishing a demonstrable error in the decision below.

Appellants also contend that the transportation plan violates EO No. 11644 and the Departmental regulations promulgated thereunder. EO No. 11644 directs Federal agencies responsible for the management of Federal lands to develop regulations pertaining to the designation of specific areas and trails on which ORV's will be permitted and areas and tracts on which they will be prohibited. The EO requires that the regulations established thereunder be in accordance with criteria which provide for environmental protection. Appellants point out that Departmental regulations 43 CFR 8340 through 8344, specify that in addition to the criteria set forth in EO No. 11644, ORV-use designations are to consider impairment of wilderness suitability and must exercise care to protect endangered or threatened species. 43 CFR 8341.2. Appellants contend that under either the standard set forth in EO No. 11644 or the Departmental regulations, the plan is an inappropriate and illegal disposition of the Nation's wilderness resources.

Appellants assert that because much of the King Range has been designated a WSA, the transportation plan also violates the nonimpairment provision of 43 CFR 8342.1(a). Appellants contend that the plan threatens to substantially disrupt a significant number of wildlife species indigenous to the King Range area in violation of section 3(a)(2) of the EO and 43 CFR 8342.1(b). Also, according to appellants, the plan creates an almost absolute conflict between wholly incompatible recreational uses of the area in violation of EO No. 11644(a)(3) and 43 CFR 8342.1(c). Appellants contend that the plan endangers the soil, watersheds, and archaeological resources of an environmentally delicate area in violation of section 3(a)(1) of EO No. 11644 and 43 CFR 8342.1(a). Finally, appellants assert that the plan violates both the management program and the King Range National Conservation Area Act in its designation of "open" roads in zone 2 which embraces a WSA, and in its disregard of overall wildlife and watershed maintenance provisions.

In the brief filed in this appeal, BLM contends it has complied with EO No. 11644 by designating all areas of the King Range closed to ORV use,

except for the Black Sand Beach area between Telegraph Creek and Gitchell creek in zone 3 and well-maintained roads throughout the King Range, in an attempt to keep ORV's from going off the roads within the King Range. BLM explains that EO No. 11644 concerns itself with the location of ORV "area and trails." BLM asserts that the transportation plan, on the other hand, deals with roads which are already located, maintained, and in place. BLM asserts that by its commitment to maintain these established roads, it is in compliance with 43 CFR 8342.1(a), since the plan minimizes resource damage already present and prevents the additional impacts which appellants acknowledge would occur absent maintenance (BLM Brief at 9, 10).

Further, BLM responds that the plan is consistent with and supported by the management program. Concerning the roads in zone 2, BLM states that the Smith-Etter Road and Telegraph Ridge Road will not provide access to the beach. BLM notes that the acquisition of the Smith-Etter Road was specifically contemplated by the management program (at 36) and the final EIS for the program (at 18, 28, 106).

Following the zone concept established by the management program in accordance with the King Range National Conservation Area Act, BLM considered these roads in relation to the various zones. The transportation plan analyzed the problems and management situations related to vehicle use within each of the seven management zones. The advantages and disadvantages of leaving roads, trails, and areas open to vehicle use were listed to provide a rationale for each designation.

The primary uses for zone 1 are recreation and natural history study. BLM closed this zone to all vehicle use. The primary use for zone 2 is primitive types of recreation and the secondary uses are grazing and wildlife habitat management. The major land management objective for this zone is to retain the wild and scenic values of the steep mountainous slopes facing the ocean and to preserve the unique character of the beach. The beach area within this zone was previously designated "closed" to vehicle use. Of the seven roads in this zone, one road (Spanish Ridge Road) is designated closed to all vehicles, one road (Prosper Ridge Road) is open to all motorized vehicles, and the other five roads (Windy Point Road, Johnny Jack Ridge Road, Cooskie Creek Road, Smith-Etter Road, and Telegraph Ridge Road) are open to four-wheel drive vehicles, motorcycles, and all terrain vehicles (ATV's), with restrictions.

The primary use of zone 3 is residential. Public lands at Black Sand Beach receive the most intensive recreational use within the King Range and BLM is managing this area to promote safe and orderly recreation. The one road in this zone, Kaluna Cliff Road, is designated as open to all vehicles. The beach areas, Telegraph Creek to Gitchell Creek, continue the open designation and include the beach zone up to the high water mark of each year.

The primary use of zone 4 is primitive types of recreation and it has been officially designated as a "Primitive Area" as well as a WSA. All areas and trails within this zone are closed to vehicle use.

The primary use of zone 5 is residential. BLM designated the one road in this area, Whale Gulch Road, closed to all vehicle use because the bridge across Whale Gulch Creek began to collapse in 1985 presenting a significant safety hazard.

The primary use of zone 6 is intensive timber production. It also contains several watershed rehabilitation projects to improve fisheries habitat along Bear Creek, and four developed campgrounds providing visitors with overnight vehicle camping. This zone contains seven roads. King Range Road is open to all vehicles and Horse Mountain Ridge Road is closed to all vehicles. Horse Pasture Ridge Road and Finley Ridge Road are open to four-wheel drive vehicles, ATV'S, and motorcycles. Saddle Mountain Road is open in part and closed in part to all vehicles. Nooning Creek Access Road is open in part to all vehicles and open in part to motorcycles and ATV'S. Paradise Ridge Access Road is open in part to all vehicles and open in part to four-wheel drive vehicles, motorcycles, and ATV'S.

The primary use of zone 7 is management of wildlife habitat. Honeydew Creek is an important salmon and steelhead spawning area. There is backpacking along the King Crest and Lightning trails. King Range Road is designated open to all vehicles. The portion of Smith-Etter Road within zone 7 is open to all vehicles from April 1 to November 1 and closed from November 1 to April 1.

In making these designations, BLM considered the compatibility of the roads with the primary use of the zone and the safety of the roads. With the exception of the designation of roads in the King Range WSA, we find that BLM has provided a reasonable basis for its designations. Because certain of the opened roads are within the King Range WSA, we must determine whether the transportation plan violates section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1982). Under this section the Secretary is required to manage wilderness study lands so as not to impair the suitability of such areas for wilderness preservation, and to take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.

Thus, in managing WSA's BLM must comply with three statutory mandates under FLPMA: (1) preserving wilderness suitability, (2) preventing unnecessary or undue degradation, and (3) affording environmental protection.

Lands within a WSA are also subject to EO No. 11989, 42 FR 26959 (May 25, 1977), which governs ORV use in wilderness areas. The order provides:

[T]he respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trail to the off-road vehicle causing such effects, until such

time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

42 FR 26959 (May 25, 1977).

Finally, while an area is under wilderness review, and until such time as Congress acts on the WSA's, BLM is required to manage the WSA's pursuant to the Interim Management Policy and Guidelines for Land Under Wilderness Review (IMP) of December 12, 1979, as revised July 12, 1983, 44 FR 72014 (Dec. 12, 1979), 48 FR 31854 (July 12, 1983). Chapter III A. 3. of the IMP establishes guidelines for ORV use, stating:

Recreational use of off-road vehicles (ORV's) may be permitted on existing ways and trails and within "open" areas designated prior to approval of FLPMA (October 21, 1976). The BLM will cooperate with ORV organizations to achieve the least amount of new impact on lands under wilderness review. If impacts of ORVs, either on or off existing ways and trails, threaten to impair the area's wilderness suitability, the BLM may close the affected lands to the type of ORVs causing the problem. In some cases, time or space zoning, public education or a rest-rotation system may make a total closure unnecessary.

No lands will be designated as 'closed' solely because they are under wilderness review, but if increasing impacts threaten to impair wilderness suitability, the BLM will move to control those impacts and may designate the area as "closed" to the type of vehicles causing the problem, in order to control the impacts.

44 FR 72024 (Dec. 12, 1979).

The IMP also sets forth nonimpairment criteria at Chapter I.B. 2. Activity will be considered nonimpairing if:

(a) It is temporary. This means that the use or activity may continue until the time when it must be terminated in order to meet the reclamation requirement of paragraphs (b) and (c) below. A temporary use that creates no new surface disturbance may continue unless Congress designates the area as wilderness, so long as it can easily and immediately be terminated at that time, if necessary to management of the area as wilderness.

(b) Any temporary impacts caused by the activity must, at a minimum, be capable of being reclaimed to a condition of being substantially unnoticeable in the wilderness study area (or inventory unit) as a whole by the time the Secretary of Interior is scheduled to send his recommendations on that area to the President, and the operator will be required to reclaim the impacts to that standard by that date.

(c) When the activity is terminated, and after any needed reclamation is complete, the area's wilderness values must not have been degraded so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability or unsuitability for preservation as wilderness. The wilderness values to be considered are those mentioned in section 2(c) of the Wilderness Act, including naturalness, outstanding opportunities for solitude or for primitive and unconfined recreation, and ecological, geological or other features of scientific, educational, scenic or historical value.

44 FR 72018, 72019.

Appellants assert that the transportation plan will create impacts within the King Range WSA which are incapable of being reclaimed so as to be "substantially unnoticeable" at the time the Secretary of the Interior makes his recommendations to the President. Because of those impacts, they argue, and because of BLM's failure to adequately evaluate their compliance with the "non-impairment" standard, the plan is in violation of both FLPMA and the IMP. At a minimum, appellants contend that FLPMA section 603, as detailed in the IMP, requires that the EA for the project should evaluate the plan in light of the nonimpairment standard. Appellants contend that the EA prepared for the plan falls short of compliance with the requirements listed in the IMP. Appellants claim that the failure of BLM to adequately document the impacts of the transportation plan on the WSA is particularly significant given the substantial manner in which its provisions will result in the impairment of the WSA's wilderness suitability.

North Group et al. believe that the proposed transportation plan which designates roads on the west slope in the WSA and on its borders for public ORV use is not compatible with maintaining the area's primitive character and is inconsistent with previous management plans which designate the west slope for primitive recreation as a primary use and retention of its "wild and scenic values" and "unique character of the beach" as a major objective. Appellants note that although the proposed action does not designate the beach for public ORV use alone along zone 2, it does provide for such use to within one-quarter mile of the beach via the Smith-Etter Road, effectively opening the beach to illegal ORV use.

Appellants refer to public comment on the draft transportation plan to illustrate support for closing roads within the WSA. Appellants note that one letter contained the names of 86 people opposing vehicular use in the WSA and on the beach. Of the individual respondents, 83 percent or 53 people asked that all roads be closed and no vehicle use be allowed in the WSA. Only one person wanted to open all roads except Spanish Ridge to vehicles (Supplement to the EA for the Proposed King Range Transportation Plan at Appendix A).

Appellants contend that designation of roads as open or open with limits within the WSA will increase access to closed areas and the beach

resulting in significant impacts to soil, vegetation, cultural resources, and wilderness values. According to appellants, access to within one-quarter mile of the beach via the Smith-Etter Road will allow ORV's on the beach because barriers are no restraint of such use and there is no enforcement by BLM of the transportation plan.

In the draft transportation plan of August 1985, appellants note that the portion of the Smith-Etter Road between Telegraph Ridge Road and its terminus at the beach was designated "closed," because of increased safety hazards, increased vehicle traffic along the portion of the beach designated as closed to vehicle use, disruption of wilderness values, an increased potential for vandalism of archaeological sites, use conflicts between vehicle use and hikers' opportunities for solitude and primitive types of recreation, and increased road maintenance costs. In response to public comment supporting the closure, Bruce Cann, recreation planner for the Arcata area, recommended to the Area Manager in a memorandum dated September 20, 1985, that "we continue with the proposed designations, particularly to close the Smith-Etter Road from its intersection with Telegraph Ridge Road to the beach." The transportation plan, however, does not close this portion of the Smith-Etter Road but opens it to four-wheel drive vehicles, motorcycles, and ATV's from April 1 to November 1. Finally, on this issue appellants' point out that the rationale for road closure provided in the draft plan is the same as the rationale for opening the road in the final plan. 2/

BLM responds that no roads in zone 2 will give the public access to the beach. BLM insists that all roads will be blocked at least one-quarter mile from the beach area. BLM denies that the transportation plan will significantly affect opportunities for primitive wilderness recreation in zone 2. BLM does not now believe that its proposal to close all areas of zone 2 with the exception of two well-established and maintained roads which give access to private inholdings, will decrease opportunities for primitive wilderness recreation. BLM contends that by eliminating indiscriminate ORV use within the King Range, primitive and wilderness recreation values are preserved.

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2/ The pertinent language reads as follows:

"Vehicle use must be effectively managed along the King Range beach. The Smith-Etter Road terminates at the central portion of the beach designated 'closed' to vehicle use. Some vehicles that travel to the end of the road keep going south along the beach to Big Flat or north along the beach and grassy hillsides towards Randall Creek.

"Some minor resource damage has occurred and conflicts among backpackers and ORV enthusiasts have intensified. Wilderness values have decreased slightly because vehicles disrupt opportunities for people to find a quiet and secluded place along the beach.

"No physical constraints (natural or that BLM could construct) would work to contain vehicles to a parking area at Spanish Flat because the Smith-Etter Road ends on private property."  
(draft plan at 11-12; transportation plan at 11).

Concerning the wilderness characteristics of the King Range WSA, BLM observes that the draft EIS containing BLM's recommendations for the WSA proposes that the Smith-Etter Road be maintained as an intrusion within the wilderness area. BLM states that the only two roads within the WSA recognized by the transportation plan are the Smith-Etter Road and the Telegraph Ridge Road, both of which are in zone 2 of the King Range area. Both roads were constructed in the early 1960's and provide access to private inholdings. Both roads were in place at the time of the designation of the boundaries of the King Range WSA on January 7, 1980 (45 FR 1457). BLM states that because it does not plan to rehabilitate either road, the IMP provisions requiring a nonimpairment analysis are not relevant. BLM concedes that the roads do impair wilderness values, but asserts that the opening of the roads to the public will not further impair the wilderness character already impaired by the existence of the roads themselves.

The final EIS which is presently in the drafting stage proposes to maintain the Smith-Etter Road within the area recommended for wilderness designation (Final EIS on the Wilderness Recommendation for the King Range and Chemise Mountain WSA at 2-1 and 2-4). Telegraph Ridge Road will no longer be within the area recommended as suitable for wilderness (at 2-5) but will form a portion of the eastern boundary of the area recommended as suitable for wilderness.

[1] BLM has the responsibility of administering the public lands and must be accorded the discretion necessary effectively to discharge its duties. So long as BLM's management decision is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it, absent a showing of clear reasons for modification or reversal. See *Wilderness Society*, 90 IBLA 221, 232 (1986); *Oregon Shores Conservation Coalition*, 83 IBLA 1, 5 (1984); *Curtin Mitchell & STAND*, 82 IBLA 275, 277-78 (1984); *A.C.O.T.S.*, 60 IBLA 1, 4-5 (1981); *Magic Valley Trail Machine Association, Inc.*, 57 IBLA 284, 287 (1981).

We find that opening roads to the public within the King Range WSA is inconsistent with the management program. In discussing the zone 2 west slope, BLM states that the "major objective is to retain the wild and scenic values of steep mountainous slopes facing the ocean and to preserve the unique character of the beach" (management program at 36). The program, citing the primitive character of the area, recommended the establishment of areas "to maintain and enhance" the natural character of the zone:

- (1) A non-mechanized use area to include the entire beach in this zone.
- (2) A limited development area to minimize disturbance to the primitive values that now exist along the beach and slopes facing the ocean.
- (3) A visual or scenic area to protect the aesthetic values of the area viewed from the beach and to maintain the unique primitive character of the beach.
- (4) Cultural areas needed to protect significant cultural values identified by the contracted studies.
- (5) Areas where existing road and trail use will be permitted. (Emphasis added.)

(management program at 36-37).

An additional recommended action was to "[p]rohibit public motorized vehicle use along the beach and on west slope roads, except the Smith-Etter Road, Telegraph Ridge Road and Saddle Mountain Road" (management program at 38, is added).

North Group et al. note that subsequent documents have further defined the term "recreation" relative to zones 1 and 2 by adding the word "primitive" (transportation plan at 2). The King Range Recreation Management Plan, approved by District Manager Van Manning on October 2, 1984, stated that surveyed King Range hikers and backpackers favored closure of the entire beach to ORV use to protect archaeological, natural, aesthetic, and "primitive values." (Emphasis added.) The draft EIS and Preliminary Wilderness Recommendations document, March 1985, stated at page 3-2 that the "King Range WSA provides outstanding opportunities for primitive and unconfined recreation." (Emphasis added.) Information submitted by North Group et al. supports a finding that designation of roads as open or open with limits-within the WSA will increase access to closed areas and the beach resulting in significant impacts to soil, vegetation, cultural resources, and wilderness values.

Appellants point out that according to the King Range Coast Cultural Resource Management Plan, prepared by Kathleen Roscoe for BLM in December 1983, there are 63 identified prehistoric sites along the 25-mile stretch of beach from the mouth of the Mattole River to Shelter Cove. Some of these midden sites are said to be 2,500 years old. Appellants refer to the King Range Recreation Management Plan, 1984, which states: "Many visitors who have frequented the King Range know that BLM has limited law enforcement capability in the area \* \* \* Disregard for BLM regulations (i.e., ORV closure from mouth of Mattole to Gitchell Creek) can be damaging to resources and reduce opportunities for solitude and primitive types of recreation." Appellants also refer to an undated and untitled report on the King Range Extension Area (Cultural Resources file in the Arcata Area Office) which discusses in detail ORV impacts to cultural resources.

We find the record in this case does not support BLM's decision to open roads within the WSA. Section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1982), requires BLM to manage WSA's in a manner so as not to impair their suitability for preservation as wilderness and to take any action required to prevent unnecessary or undue degradation of the lands and their resources. EO No. 11989 provides that where ORV use in wilderness areas will cause or is causing considerable adverse effects on cultural or historic resources, the land in question should be immediately closed.

BLM's decision to permit ORV use within the WSA does not conform to the management objectives of the King Range, and will result in significant environmental impacts to natural and cultural resources. We are not convinced that BLM's monitoring system would afford the necessary protection. Of particular concern is BLM's designation of the Smith-Etter Road between Telegraph Ridge Road and its terminus at the beach. The draft transportation plan recited that this road should "close," but the final plan opened it to vehicle from April 1 to November 1 notwithstanding the advice of the outdoor recreation planner that it remain closed. BLM has not offered an explanation for

this change or for the rejection of the advice of Bruce Cam, its expert on this matter. Accordingly, BLM's decision to open roads within the WSA must be reversed. We find that section 3 of EO 11644, EO 11989, section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1982), and the IMP guidelines provide sound authority for closing the roads within the King Range VEA. However, we agree with BLM that private landowners with lands located within the WSA must have access to their property. See *Utah Wilderness Association*, *supra*.

Except for the roads within the WSA, we find that BLM's transportation plan is based on an EA which reflects an evaluation of the environmental impacts sufficient to support an informed judgment. See *Oregon Shores Conservation Coalition*, *supra*. In preparing the EA, BLM was acting in accordance with the management program to devise a transportation program to meet the needs of the various interests in the King Range. The management program was mandated by Congress in the King Range National Conservation Area Act. Appellants have failed to establish error in BLM's determination to allow limited ORV use in the King Range area. Appellants' arguments in this regard appear to be little more than a difference of opinion with BLM as to the effects of limited ORV use. Such a difference of opinion is insufficient to overcome BLM's determination which is supported by the record. *Oregon Shore Conservation Coalition*, *supra* at 6; see also *Magic Valley Trail Machine Association, Inc.*, *supra* at 287; *John Schandelmeier*, 56 IBLA 284, 287-88 (1981)

Finally, we turn to appellants' appeal from BLM's decisions to maintain certain roads within the King Range. The controversy over road maintenance began when BLM issued several Notices of Proposed IMP Action to maintain or repair several roads included in the transportation plan. Appellants filed objections to these notices with BLM which BLM treated as protests. BLM denied the protests. In this appeal of the transportation plan, appellants state that on April 28 and May 27, 1986, the California Wilderness Coalition and EPIC respectively filed appeals with this Board seeking reversal of BLM's decision to grade and repair roads. This Board, however, has no record of these appeals.

In the transportation plan appeal, appellants contend that these road grading programs suffer from the same environmental infirmities as the transportation plan and that the same arguments on appeal are applicable. Appellants state that two additional arguments support postponement of BLM's road maintenance program. The first is an absence of an adequate transportation plan covering the entire King Range area. Without such a plan, appellants reason, piecemeal maintenance of the region's roads can only exacerbate existing environmental problems and delay future restoration and recovery. Also, appellants assert that, under 43 CFR 4.21(a), the filing of a notice of appeal suspends implementation of the program which is the subject of this appeal. Appellants reason that because the road maintenance program presumes that the road status determinations set forth in the transportation plan will be upheld, and thereby represents effective implementation of a plan current under appeal, it violates 43 CFR 4.21(a). On October 5, 1987, the Wilderness Society, the California Wilderness Coalition, and the Northcoast Environmental Center filed a letter with the Board reiterating concern that the maintenance

activities are an indirect implementation of the transportation plan and are therefore a violation of 43 CFR 4.21(a).

Appellants request that the Board stay BLM's maintenance actions until the Board decides the transportation plan appeal. However, the Board has no record that such appeals were ever filed on April 28 and May 27, 1986, as appellants contend. Unless notices of appeal were timely filed, we would have no jurisdiction to review these decisions directly. See 43 CFR 4.411. Furthermore, because this decision resolves the issues presented in the appeal, the maintenance issues to which appellants refer are also necessarily solved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Franklin D. Arness

Administrative Judge

We concur:

John H. Kelly  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

