

COLORADO MOUNTAIN CLUB, ET AL.

IBLA 2003-229

Decided June 4, 2004

Appeal from an Environmental Assessment and Decision Record/Finding of No Significant Impact for the proposed Billings Canyon Jeep Trail located within the Bangs Canyon Special Management Area, issued by the Field Manager, Grand Junction Field Office, Bureau of Land Management. CO-GJFO-00-029.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally–Federal Land Policy and Management Act of 1976: Rules and Regulations–Federal Land Policy and Management Act of 1976: Land Use Planning--Public Lands: Generally

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any per se prohibition of particular types of off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 CFR Subpart 8340. The Board will not reverse under FLPMA a BLM decision to create a jeep trail in a recreation area, and to close others in nearby sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents.

2. National Environmental Policy Act of 1969:
Generally–National Environmental Policy Act of 1969:
Finding of No Significant Impact

When an appellant challenges a BLM finding of no significant impact on grounds that BLM failed to demonstrate that mitigation measures enumerated therein

can work, appellants' failure to identify a mitigation measure with which they quarrel defeats their case.

3. National Environmental Policy Act of 1969: Generally–National Environmental Policy Act of 1969: Finding of No Significant Impact

In order to establish a challenge based upon an alleged BLM failure to consider alternatives in an environmental assessment, an appellant must proffer an alternative that BLM should have considered which would accomplish the intended purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the proposed project.

APPEARANCES: Jeffrey C. Parsons, Esq., Boulder, Colorado, for appellants; D. Andrew Wight, Esq., Denver, Colorado, for intervenor; Kathleen C. Becker, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

The Colorado Mountain Club, the Wilderness Society, Colorado Environmental Coalition, High Country Citizens' Alliance, and the Western Colorado Congress (appellants) appeal from Environmental Assessment (EA) No. CO-GJFO-00-029, and the Decision Record/Finding of No Significant Impact (DR/FONSI), for a proposed jeep trail located within the Bangs Canyon Special Management Area. The DR/FONSI was issued on April 4, 2003, by the Field Manager, Grand Junction, Colorado, Field Office, Bureau of Land Management (BLM). The EA proposes development of the 1.2 mile Billings Canyon Jeep Trail, within management zone 4 of the Bangs Canyon Management Area (BCMA), in the Grand Junction Resource Area, near Grand Junction. The purpose of the jeep trail is to allow for what appellants call "extreme jeeping" and what BLM identifies as a particularly challenging jeep route, which would be so strenuous that it would preclude most off-highway vehicle (OHV) and motorcycle use.

In addition to their appeal, appellants submitted a petition for stay pending appeal. (Notice of Appeal and Petition for Stay Pending Appeal (NA/PS).) On May 15, 2003, the Colorado Off-Highway Vehicle Coalition (COHVC) submitted a Motion to Intervene and a Motion for Extension of Time to Respond to Appellants' Petition for Stay Pending Appeal. By order dated May 16, 2003, the Board permitted COHVC to respond to the petition. BLM filed an opposition to the petition for stay on May 16, 2003. COHVC submitted its opposition on May 29, 2003. BLM transmitted the record on June 2, 2003, and appellants filed their statement of reasons (SOR),

supplementing their extensive Notice of Appeal and Petition for Stay (NA/PS) on June 4, 2003, with allegations that trail construction had begun prematurely.

On June 12, 2003, the Board denied appellants' petition for stay. Subsequently, on July 7, 2003, COHVC submitted a document styled an "Answer to Appellants' Second Statement of Reasons." This document responded to appellants' SOR and consists of the Affidavit of Roy A. Joseph, a member of the Board of Directors of the Grand Mesa Jeep Club (Jeep Club). The affidavit discusses facts relating to Joseph's observation of possible "recent vandalism of the Billings Canyon." (Affidavit of Roy A. Joseph, June 11, 2003, at 7.)

On August 7, 2003, appellants submitted Appellants' Consolidated Reply to BLM's and Proposed Intervenor's Oppositions to Appellants' Request for Stay and Answers to Appellants' Statement of Reasons (Reply). In this document, appellants assert three fundamental errors in BLM's analysis.

Much of the following analysis of the facts is taken from the Board's June 12, 2003, order denying the request for stay. These facts are unrefuted by the parties.

The proposed jeep trail is governed by the 1987 Grand Junction Resource Management Plan (RMP). This 1987 RMP identified the 40,000-acre Bangs Canyon area, running from the Uncompahgre Plateau to the Gunnison River, as a Special Recreation Management Area and recommended future additional planning. In 1995, a group of concerned parties and recreation user groups formed the Bangs Canyon Citizens Advisory Group, in order to participate with BLM in the canyon's management. In 1999, BLM published the Bangs Canyon Management Plan (BCMP), which "contains the management objectives and management direction and actions agreed upon by [BLM] and the Bangs Canyon Citizens Advisory Group." (Aug. 1999 BCMP at 1 (Summary).) The BCMP addressed, in particular, trails and travel routes to be planned in the Bangs Canyon area for recreation.

The BCMP divided the Bangs Canyon area into six management "zones" or "areas." The proposed jeep trail is in management zone 4, bounded on the south by Billings Canyon. See Map, BCMP at 7. Management zone 3 is identified as the Rough Canyon Area of Critical Environmental Concern (ACEC). Bangs Canyon is located within zone 5. The BCMP established the following Management Objectives for the Special Recreation Management Area:

1. Provide semi-primitive motorized, mechanized, non-motorized recreation opportunities * * * and activities such as * * * trail oriented OHVs (motorcycles, ATVs and jeeps).
2. Provide for compatible uses within each discrete unit.

- 3. Resolve resource user conflicts that stem from abuse of the area.
* * * * *
- 5. Protect Rough, Ladder, Northeast Creek, and Bangs Canyon from surface disturbing activities.
* * * * *

(BCMP at 5.)

The BCMP proposed that off-road vehicle (off-road vehicle or OHV) use within the Bangs Canyon area (zone 5) be prohibited and the area along Rough Canyon (zone 3) be designated for foot travel only. For zone 4, BLM permitted motorized use; the BCMP proposed that “[n]ew singletrack and two track trail construction [in zone 4] is encouraged, and will be allowed in the future subject to existing BLM evaluation processes for trail design, construction, and implementation.” (BCMP at 10.) With respect to “administration and monitoring,” the BCMP specified that BLM should “encourage interested organizations and user groups to establish ‘adopt-a-trail’ programs for the patrol and maintenance of all areas and to help prevent irresponsible use, trash, and vandalism problems through a heightened presence and public education.” Id. at 18. The BCMP proposed a monitoring system to determine impacts from recreation and proposed that such data would “furnish baseline information for future land use decisions.” Id.

On November 2, 2000, BLM issued for public comment a draft EA for the Billings Canyon Jeep Trail. According to the draft EA, the need for the proposed trail stemmed from the fact that the BCMP had closed off-road vehicle use in the ACEC and in Bangs Canyon and that more trails were needed to meet demand in the Bangs Canyon area. The draft stated:

Due to the travel management decisions made in the Bangs Canyon Management Plan, some challenging routes previously used by jeepers were closed to motorized vehicle use. The purpose of this trail route is to provide an alternative area where jeepers can go to experience challenging terrain in a natural environment. The proposed trail route * * * is located in an area that has been identified as acceptable for off-road vehicle use (Area 4 in the [BCMP]). The route contains numbers of areas of extremely challenging terrain, where all but the most experienced jeepers would be unable to negotiate. This type of jeeping is becoming more and more popular as the capability of certain vehicles to negotiate challenging terrain increases. This trail

route is needed to provide increased opportunities for jeeping in close proximity to the city of Grand Junction.

(Nov. 2000 draft EA at 2.) The draft explained that the trail was proposed to BLM by the Jeep Club. The cover letter explained that the “jeepers” have been in search of alternate routes since closure of other areas in the Bangs Canyon Area. (Nov. 2, 2000, BLM public comment solicitation.) The draft addressed a number of impacts and stated that construction would be minimal.

BLM received 213 comments in favor of the proposal and 84 against. Over 150 of the favorable comments came from out-of-state vehicle clubs and groups. See Proposed Billings Canyon Jeep Trail - Public Comment Analysis. BLM reopened the comment period from November 6 to December 6, 2000, accepting more comments.

On November 15, 2001, BLM issued a proposed Decision Record for the EA. BLM expanded its monitoring plans and proposed that it would monitor the trail, with assistance from the Jeep Club, for 12 months. Following review of the resulting data, a new determination would be made at the end of the first year of use regarding whether the trail would be closed or remain open. This Decision Record notified the public that it could comment or seek review by the Colorado State Director, BLM, of the decision.

In a letter dated February 4, 2002, to the Grand Junction Field Manager, the State Director indicated that the Colorado State Office had received 186 comments. The State Director ordered the Field Manager to reconsider the Decision Record.

Although there is some ambiguity in the wordings of the [BCMP] the specific management direction in the plan does support your decision. However, there are weaknesses in the supporting documentation that should be corrected before a final decision is issued that allows for appeals to [IBLA].

The State Director ordered the Field Manager to take certain steps:

1. Initiate Native American Consultation. * * *
2. Correct the weaknesses in the supporting documentation. * * *
[T]his should include documenting other alternative routes considered and why they were not analyzed. A specific commitment to promptly clean-up fuel and oil spills, and description of how this will be done should also be included.

3. Request that the Northwest Resource Advisory Council participate in the one year review of the Jeep Trail to advise you whether the existing mitigation is effective, needs to be amended, or whether the trail should be closed.
4. Arrange a meeting with all members of the Bangs Canyon Advisory Committee so that you can better explain the reasons for your proposed decision * * * .
5. Draft responses to the comment letters. * * *
6. Finally, re-issue your decision based on the new information and documentation generated as a result of this review. * * *

(Feb. 4, 2002, letter from State Director at 2.)

On April 4, 2003, the Grand Junction Field Office issued an extensive response to the various comments received on the proposal, as well as a substantially enhanced Supplemental EA and a DR/FONSI. BLM more fully explained its purpose of opening the jeep trail: “By closing most trails in the Rough Canyon [ACEC] to motorized use, the agency has removed some of the harder four wheel drive routes from that environmentally sensitive area. By proposing the Billings Canyon Jeep Trail, BLM would displace that use to Area 4, which was identified [as] acceptable for off road vehicle use in the BCMP.” (April 4, 2003, BLM Response to Comments at 3.) BLM explained its desire to reduce the amount of use, including unauthorized use, occurring on other challenging jeep routes in the Bangs Canyon area and other places nearby, “such as Hunter Canyon north of Grand Junction and routes west of Montrose.” *Id.* at 5; *see also* Supplemental EA at 14. BLM explained that its need to funnel use to a particular planned site derived, in part, from the facts that other BLM offices report that “four wheel drive rock crawler use doubled between 2001 and 2002” and that, while such use represents a change in motorized use, it is becoming increasingly popular. (Supplemental EA at 10.) The Supplemental EA explained BLM’s decision to enter into an “adopt-a-trail” arrangement with the Jeep Club, which would allow BLM to reevaluate the trail at the end of a year. *Id.* at 15-16.

Appellants raise three “most prominent” arguments in their Reply. First, they argue that the Billings Canyon Jeep Trail decision violates the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (2000), in that the trail is inconsistent with the BCMP. Second, they argue that the decision violates section 102(2)(E) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(E) (2000), in that BLM allegedly failed adequately to consider alternatives to the proposed action. Finally, they argue that the DR/FONSI violates section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), in that it fails adequately “to assess the

effectiveness of mitigation measures.” (Reply at 9.) Appellants also raised a number of arguments under NEPA in their Petition for Stay to which COHVC and BLM have responded.

Before addressing the appellants’ individual arguments, it is important to identify the full nature of the BLM action here. Describing the action as a decision to construct a jeep trail notably disregards the elements of the decision that (1) foreclose OHV activity elsewhere within the ACEC and other areas covered by the BCMP and (2) rehabilitate lands formerly affected by OHV use, with the assistance of the affected public. It was this aspect of the BLM decision that was critical to the Board’s decision to deny the petition for a stay. As we stated:

BLM makes clear that four wheel drive rock crawler use is increasing dramatically and often in unauthorized areas. BLM explains its desire to direct this use into a carefully planned location of considerable interest to the “jeepers,” so that other areas less suitable for such use can begin to heal and unauthorized use will be less attractive. See EA at 3.

(June 12, 2003, Stay Order at 6.) We noted that, in “addressing the balancing of harms, appellants fail to analyze how the maintenance of the status quo that they request will impact on jeepers’ use of existing trails and unauthorized routes in the area. Nor do they address the increasing number of ‘extreme jeepers’ other than to clearly articulate their dislike for such activity.” Id. at 7. We concluded that

the record substantiates BLM’s views that some sort of engineered and planned use is preferable to the unplanned and potentially damaging, unauthorized jeep use which may occur in the absence of planned routes. Appellants’ failure to squarely address the impacts of the stay they request undermines their argument on this point.

Moreover, the record substantiates BLM’s view that the irreparable harm caused by the proposed trail will be less than it might be in other areas closed to ORV use or designated as ACEC’s. The EA is convincing in showing that the canyon receives minimal rain, that the trail will be constructed in areas where vegetation is low, and that current non-motorized recreational use of the relevant portion of Billings Canyon is low. BLM has devised the 1.2-mile trail to be a one-way route with no need for construction of additional access roads, and no need for “turn-around” areas that might create road spurs. Further, BLM has devised the road in a narrow canyon where “[m]oving outwards laterally from the trail is generally not possible, and if it

occurs is grounds for the BLM to consider closing the trail.” (April 4, 2003, BLM Response to Comments at 6.)

Id. at 7. Appellants have not responded in any subsequent pleading to the Board’s comments in that order.

We find that appellants’ failure to fully acknowledge the scope of BLM’s action undermines their arguments under FLPMA and NEPA. It is impossible to view BLM’s decisions regarding the Billings Canyon Jeep Trail without also viewing its decisions regarding protection of sensitive areas from OHV use elsewhere in deciding BLM’s compliance with the statutes.

[1] We find no support for appellants’ argument that the jeep trail is inconsistent with FLPMA, its implementing regulations, or the BCMP. Appellants generally object to BLM’s permitting in any way on the public lands the sort of vehicular use authorized for the jeep trail. Thus, they argue that BLM “fails to make a convincing argument that there is a need for this trail” and contend that it is “not BLM’s role to provide for every type of recreational opportunity.” (NA/PS at 22.) They assert elsewhere that BLM did a “poor job in documenting that * * * extreme jeeping trail is in fact a legitimate need.” Id. at 26.

We find no support in FLPMA for appellants’ contention that BLM should not permit off-road vehicle use in the Bangs Canyon area of the sort envisioned here. Contrary to appellants’ suggestion that BLM is not obligated to manage lands for particular public recreation purposes, FLPMA established, inter alia, that BLM will manage the public lands for multiple uses by the public including outdoor recreation. 43 U.S.C. § 1702(m) (2000). In Rocky Mountain Trails Association, 156 IBLA 64, 70 (2001), this Board had occasion to discuss BLM’s authority to permit or restrict off-road vehicle use under the statute:

BLM has the authority, pursuant, inter alia, to [FLPMA] to regulate the use and operation of ORVs on the public lands. See 43 CFR Part 8340 (Off-Road Vehicles); Robert P. Muckle, 143 IBLA 328, 332-33 (1998). BLM is authorized to “close portions of the public lands to use by off-road vehicles, except those areas or trails which are suitable and specifically designated as open to such use * * *.” 43 CFR 8341.2(b). Even in areas designated as open, departmental regulations grant BLM authority to close an area “where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, or other resources.” 43 CFR 8341.2(a).

BLM regulations at 43 CFR 8340-44 establish criteria for designating public lands as “open,” “limited,” or “closed” to use by off-road vehicles and for the use and operation of off-road vehicles in such areas. The broad definitions of “off-road vehicle use” and “open area” undercut the construction advanced by appellants that the rules intended to exclude from permissible uses off-road vehicle use that amounted to, what they call, “extreme jeeping” or “rock crawling.” Rather, an “off-road vehicle” is defined as “any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain * * *.” 43 CFR 8340.0-5(a). An “open area” is defined as “an area where all types of vehicle use is permitted at all times * * *,” while a “limited area” is one that is “* * * restricted at certain times, in certain areas, and/or to certain vehicular use.” 43 CFR 8340.0-5(f), and (g).

Accordingly, it is not possible to find in statute or regulation the per se prohibition on off-road vehicle use, even to the extent it may be characterized as extreme, that appellants would have us find in FLPMA. While the record supports appellants’ characterization of the sort of jeep use authorized here as incrementally distinct from other types of off-road vehicle use, in that BLM concedes that many such vehicle owners would not be capable of using the jeep trail, it is not possible to find a Congressional intent to prohibit such use or to draw a line between types of off-road vehicle use. Thus, even though appellants argue that the kind of jeeping authorized here is “new” and “more intensive” (NA/PS at 3), we cannot find in FLPMA or BLM regulations anything establishing different types of off-road vehicle use.

Rather, such protections as apply arise from general provisions in FLPMA governing all uses. The statute requires BLM, when managing public lands, to “take any action required to prevent unnecessary or undue degradation of the lands and their resources.” 43 U.S.C. § 1782(c) (2000). In the context of off-road vehicle use, BLM has ensured that such use may be limited to the extent it causes “significant, undue damage.” “No person shall operate an off-road vehicle on public lands * * * [i]n a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands * * *.” 43 CFR 8341.1(f)(4). Off-road vehicle use may be designated, however, so long as a determination has been made that the “* * * adverse effects have been eliminated and measures implemented to prevent recurrence.” 43 CFR 8341.2(a).

It is thus incumbent upon appellants, in challenging the Billings Canyon Jeep Trail as a violation of FLPMA, to establish a violation of the statute or regulation by the specific activity authorized here, rather than merely to assert that it is a permitted use they do not endorse. Appellants’ do not dispute BLM’s contention that this kind of activity is occurring at a fast-increasing rate in the Bangs Canyon area, even on an

unauthorized basis. BLM is attempting to grapple with a real-world situation in an effort to stop unauthorized use in more sensitive areas by attempting to direct traffic, literally, to a permitted and authorized location within a recreation area with little competing recreation use. Further, BLM has established with public input an adopt-a-trail program to obtain cooperation on the part of the jeepers in protecting the trail. BLM has chosen an area with little rainfall and sparse vegetation, on which to place a challenging trail where jeepers cannot turn around or strike out across other lands in an unplanned or unauthorized fashion. Appellants' overly narrow description of the situation fails to articulate a clear violation of FLPMA or its implementations.

Appellants argue that the Billings Canyon Jeep Trail violates the BCMP. FLPMA and BLM regulations require land use decisions and, in particular, off-road vehicle designations to conform to the relevant land use plans. 43 U.S.C. § 1712 (2000); 43 CFR Subpart 8342; see Southern Utah Wilderness Alliance, 159 IBLA 220, 232 (2003). Appellants argue that the BCMP prohibits new trail development. In their comments on the decision, they argued that the BCMP focused on "motorized use in appropriate areas" that would rely on "a designated OHV trail system [to] be developed from existing trails with refinements." They thus conclude that new trails cannot have been envisioned. (Reply, Attachment, Dec. 11, 2001, Request for Review at 2.)

As noted above, the BCMP expressly addressed permitting "new" one and two track trails in zone 4 with BLM design plans for, inter alia, motorized trail use. (BCMP at 10.) The express purpose of the BCMP was to channel OHV activity into zone 4 so that zones 3 and 5 could be afforded increased protection. The BCMP described

increasing regional use by campers, hikers, mountain bikers, and [OHV's]. The level of discovery and subsequent use is creating resource deterioration, user conflicts and visitor safety problems. This heavy undirected use has resulted in characteristic impacts such as unauthorized spur routes, scattered camping areas, [unauthorized] parking, driving cross-country, litter, and recreation use resulting in conflicts with other land uses * * *. The need for intensive management to preserve the outstanding qualities and recreation opportunities is evident.

Id. at 2. Thus, it appears that the sort of management envisioned by the BCMP is precisely what BLM's Billings Jeep Trail decision and EA intended to accomplish. We reject appellants' argument that the trail planning violates the BCMP.

[2] Before turning to appellants' specific challenges to the EA under section 102(2) of NEPA, 42 U.S.C. §§ 4332(2) (2000), it is worth reciting precedent

governing our review of EAs. In preparing an EA to assess whether an EIS is required under NEPA, an agency must take a “hard look” at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures. Southern Utah Wilderness Alliance, 159 IBLA 220, 235 (2003), citing Colorado Environmental Commission, 142 IBLA 49, 52 (1997); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 174 (1987).

Implementing regulations promulgated by the Council on Environmental Quality (CEQ) require that EAs include brief statements of the environmental impacts of a proposed action. 40 CFR 1508.9(b); Southern Utah Wilderness Alliance, 159 IBLA at 235. “Effects and impacts as used in these regulations are synonymous” and include “direct,” “indirect,” and “cumulative” effects. Id., citing 40 CFR 1508.8. “Indirect effects * * * may include growth inducing effects and other effects related to induced changes in the pattern of land use * * *.” Southern Utah Wilderness Alliance, 159 IBLA at 236, citing 40 CFR 1508.8(b). A cumulative impact is

[t]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time.

Southern Utah Wilderness Alliance, 159 IBLA at 236-237, citing 40 CFR 1508.7; Southern Utah Wilderness Alliance, 122 IBLA 165, 169-70 (1992).

In determining whether BLM has taken a hard look at the environmental consequences that would result from a proposed action, this Board indicated that it will be guided by a rule of reason:

An EA need not discuss the merits and drawbacks of the proposal in exhaustive detail. By nature, it is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises. If it were, there would be no distinction between it and an EIS. Because it is a preliminary study done to determine whether more in-depth study analysis is required, an EA is necessarily based on “incomplete and uncertain information. Blue Ocean Preservation Society v. Watkins, 767 F. Supp. 1518, 1526 (D. Hawaii 1991) * * *.” So long as an EA contains a reasonably thorough discussion of * * * significant aspects of the probable environmental consequences, NEPA requirements have been satisfied. Sierra Club v.

United States Department of Transportation, 664 F. Supp. 1324, 1338 (N.D. Ca. 1987), quoting Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974); 40 CFR 1508.9; Scientists' Institute for Public Information v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973); Missouri Coalition for the Environment, 124 IBLA 211, 219-20 (1992).

Bales Ranch, Inc., 151 IBLA 353, 358 (2000), quoting Don't Ruin Our Park v. Stone, 802 F. Supp. 1239, 1247- 48 (M.D. Pa. 1992).

The Board must ensure that the agency's conclusion in an EA and FONSI with respect to a lack of significant impacts is justified. The Board will approve a proposed action based on a FONSI "if the record establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination that no significant impacts will occur is reasonable in light of the environmental analysis." Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992) (citations omitted). The record must demonstrate that BLM has "made a convincing case that no significant impact will result therefrom, or that such impact will be reduced to insignificance by the adoption of appropriate mitigation measures." Robert W. Hall, 149 IBLA 130, 138 (1999), citing Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). An appellant challenging a FONSI must demonstrate an error of law or fact or that the EA failed to consider a substantial environmental problem of material significance. The ultimate burden of proof is on the challenging party and such burden must be satisfied by objective proof. Mere differences of opinion provide no basis for reversal. Rocky Mountain Trails Association, 156 IBLA at 71, citing Larry Thompson, 151 IBLA 208, 217 (1999).

Appellants argue primarily that BLM failed to assess the effectiveness of mitigation measures. (Reply at 9-11.) Without specifically identifying a "mitigation measure," we understand their argument to be that if we affirm BLM in this matter the Board will be "predecid[ing] the effectiveness of the proposed mitigation measures" without the benefit of factual evidence. (Reply at 11, citing position of intervenor.) We find no legal argument in this assertion; such an allegation is merely a restatement of the fact that the Board must consider mitigation measures in reviewing a FONSI/EA. To the extent appellants challenge BLM for failing to demonstrate that the mitigation measures can work, appellants' failure entirely to identify a mitigation measure with which they quarrel defeats their case.

In any event, "mitigation" is defined in the CEQ rules as including avoiding impacts; minimizing impacts by limiting the degree or magnitude of the action; rectifying impacts by repair, rehabilitation, or restoration; reducing or eliminating impacts by preservation and maintenance; and compensating for impacts by

substituting other resources. 40 CFR 1508.20(a) through (e). As noted above, the purpose of BLM's action was in large part to mitigate effects on areas of critical environmental concern by foreclosing off-road vehicle use in such areas. Appellants' generic claims that mitigation is bound to fail do not assert, let alone demonstrate, that these results cannot be achieved. Accordingly, appellants fail to meet their burden of showing by objective proof an error in consideration of or conclusion regarding any mitigation measure. Rocky Mountain Trails Association, 156 IBLA at 71.

Appellants raised a number of assertions in their NA/PS regarding impacts BLM allegedly did not consider. (NA/PS at 12-19.) They do not reassert these assertions in their Reply, focusing instead only on mitigation. (Reply at 9-11.) Thus, it is unclear whether they mean to maintain those arguments. In any event, we find that appellants' assertions do not allege with objective proof an impact BLM did not consider. Rather their assertions are more in the nature of objections to BLM's conclusions. Thus, they assert that BLM did not give "reasons or explanations" as to why the trail will not have impacts on bird and snake species, but do not otherwise even allege that the conclusion might be wrong. (NA/PS at 12.) Likewise, they argue that the EA is insufficient in discussing noxious weeds because it does not provide "the predicted rate of weed introduction under different scenarios," again failing to assert an actual error in this regard. Id. at 13; but see Supplemental EA at 5 (project is small enough to have minor impacts on spread of noxious weeds; area will be monitored for weed invasions and such will be reported to weed coordinator). Appellants argue that BLM failed to consider potential impacts on water, soils and wildlife from oil and petroleum spillage from broken fuel tanks and oil pans. (NA/PS at 13-15.) Yet, BLM addressed this point by noting that the jeeps used on such challenging jeep trails often contain metal plates beneath the vehicle to reduce such risk and that the monitoring plan is designed to address such problems. 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 FONSI. Appellants have failed to show anything other than that they disagree with the outcome.^{1/}

[3] Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires that a Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." This requirement has been held to apply to the preparation of an EA, even if no EIS is found to be required. Bob

^{1/} Similarly, appellants made assertions regarding cumulative impacts (NA/PS at 20-21), and impacts to visual resources, id. at 17-18. We find that appellants, rather than BLM, did not fully acknowledge the cumulative effects of the entire action envisioned by BLM, including closing certain areas to off-road vehicle use.

Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989); Powder River Basin Resource Council, 120 IBLA 47, 55 (1991); State of Wyoming Game and Fish Commission, 91 IBLA 364, 369 (1986). Thus, an EA must include a brief discussion of alternatives to the proposed action. 40 CFR 1508.9(b); Southern Utah Wilderness Alliance, 140 IBLA 341, 348 (1997).

A purpose behind the obligation of an agency to consider alternatives to a proposed action is to “[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects * * *.” 40 CFR 1500.2(e). An agency must consider alternatives that accomplish the intended purpose of the proposed action, are technically and economically feasible, and have a lesser impact than the proposed project. Bales Ranch, Inc., 151 IBLA at 363.

We find that appellants have fallen short of their burden of establishing that BLM failed adequately to consider alternatives. Appellants argue that BLM failed to consider alternatives, because it considered only the “no action” alternative and the proposed action. See NA/PS at 25-27; see also Reply at 7-9. As a matter of fact, this statement is not entirely accurate. BLM addressed other canyons in the Bangs Canyon area and another option for a road. It dismissed that option because it was in an area of significant pre-historic Native American cultural remains, and also had no access, requiring any trail in the location discussed to be a two-way jeep trail. (Supplemental EA at 2; April 4, 2003, BLM Response to Comments at 3.)

Further, appellants fail to assert any alternative BLM should have considered which would accomplish the intended purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the proposed project. At best, appellants assert that BLM might have considered “an alternative that proposes enhancement of existing opportunities in Montrose or in north Grand Junction, and an alternative that analyzes alternative locations.” (NA/PS at 26.) BLM explained its desire to reduce the amount of use, including unauthorized use, occurring in places nearby, “such as Hunter Canyon north of Grand Junction and routes west of Montrose.” See Supplemental EA at 14. Appellants fail to explain how their general comments about such non-specific locations amount to an alternative which would reduce impacts, and, therefore, which BLM should have considered. Thus, it does not follow, from their argument that BLM’s consideration of alternatives was unreasonable or arbitrary. BLM’s analysis is sufficient to meet its obligation to include a “brief” discussion of alternatives. Robert P. Muckle, 143 IBLA 328, 335 (1998).

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.

Lisa Hemmer
Administrative Judge

I concur:

David L. Hughes
Administrative Judge