

STATE DIRECTOR'S PROTEST ANALYSIS

PLAN: CLEAR CREEK MANAGEMENT AREA (CCMA)

Protest No.: PP-CA-ClearCreek-05-07

Post marked:

Individual &/or Organization: Sierra Club

Address: 85 Second St., Second Floor
San Francisco, CA 94105-3459

State Office Evaluation Results:

- a) After review of all planning record, the protesting party **has standing** through participation in the planning process.
- b) Although not all of the issues/comments were raised during the planning process, we are providing responses to all issues/comments raised in the protest.
- c) Although some of the issues/comments raised may not be germane, we are providing responses to all issues/comments raised in the protest.

List of Issues/Comments Raised:

1. Closed Routes; definition of and use of.
2. Inadequacy of protection for *Camissonia benetensis* (CABE), including types of impacts, monitoring, enforcement, and in the expanded San Benito Mountain Research Natural Area (SBMRNA).
3. Failure to discourage illegal riding because of inadequate deterrents: ie; the plan's failing to impose consequences for not obeying route closures.
4. Inadequate protection for soil standards.
5. Stopping an d parking.
6. Need for a carrying capacity study and limitations on visitors.

State Office Detailed Analysis of Identified Issues/Comments:

Issue/Comment 1:

“Under definitions, **Authorized Use** lists organized events requiring a recreation permit as **one** class that would be authorized to use closed route. The problem is that including recreational permittees as an exception to use of closed routes allows a great an undefined, maybe virtually unlimited amount of use on closed routes! This could open up thee closed routes to the already presently scheduled Enduro rides plus others. Virtually any rider on a closed route could claim to be preparing for an upcoming Enduro; it would make it even more difficult for BLM to prevent others from using such closed routes.”

Response: Not protestable – Pursuant to 43 CFR 8340.0-5(h), “*Closed area* means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.” Also, designations for OHVs do not apply to “any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved (43 CFR 8340.0-5(a)(3).”

By regulation, closed routes and areas may be authorized for use, after appropriate environmental review, by the BLM Field Manager. Permittees may be required to post a bond to ensure that corrective maintenance activities take place following the authorized use. I have got to tell you that this issue of including recreational permittees in the potential uses that can be Authorized by the BLM seems to be problematic from my view. If we have all these rules for using routes why do we have a definition that allows the rules to be completely circumvented. I am not trying to be a nay sayer but this puts the field manager in a spot where precedents can be set by one manager that the next mgr down the line will have to live with. It also opens us up for future legal problems, you can't have it both ways.

Issue/Comment 2:

Inadequacy of protection for *Camissonia benitensis* (CABE): (Comments here regarding protection for CABE,...include concerns for other sensitive species, and the whole broader natural ecosystem of interrelated flora and fauna for which CCMA is noted...

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- (a) “Types of impacts. On page 2-3 General Policies and Guidance, the FEIS discusses CABE monitoring, and refers to disturbances to sites. This implies that OHV impacts are the only disturbances to watch out for; this should be expanded to include foot traffic. CABE sites can be very sensitive (especially in the spring) even to trampling by human feet, although in general such impact is minor compared to OHV. In addition, grazing has a significant effect on both the survival of CABE in occupied sites and the likelihood of establishment in potential habitat.”
- (b) “Monitoring and enforcement. The FEIS states that BLM and FWS will evaluate the intensity and extent of disturbances annually. Then it states that the two agencies will get together when BLM notices damage and they will decide what to do. Each of these points, and especially taken in combination, makes the entire CABE monitoring plan suspect and of negligible value. It is simply not enough to do annual evaluations and then figure something out. Monitoring of CABE sites, meaning occupied sites as well as CABE habitat sites, need to be much more frequent. And, as far as enforcement, or deciding what to do to prevent more problems, by getting together after damage is noted, that is useless, as it will be after the fact.” Reference; CNPS: ““There must be automatic thresholds that close trails, sub-watersheds, or the whole CCMA when damage occurs.’ Automatic, of course, means pre-determined, (by consultations and probably an MOA between the agencies)”.

- (c) “CABE protection could be amplified by the expansion of the SBMRNA, and it is good that BLM expanded the boundary. However, this expansion is likely to remain little more than a potential benefit to the CABE habitat, and there is nothing to assure that OHV riders will respect the new, expanded boundary, and stop illegally using the area. The FEIS, Appendix E, states BLM will ‘Continue ORV compliance monitoring and increase enforcement as necessary to halt unauthorized vehicle use in the SBMRNA.’ Sounds good but what kind of monitoring is done now and how often? And HOW is BLM increasing enforcement?”

“It is also unclear how much OHV use will be allowed in the expanded SBMRNA, or how the expanded RNA boundaries will be marked. The FEIS, p. 2-8 states, ‘The boundaries will be delineated using identifiable landmarks such a routes to the extent possible-...’ That sounds like delineation of questionable value, as what is an identifiable landmark to one person may not be so to all. Also, what is really needed to keep illegal OHV use out of the expanded SBMRNA is fencing, and I am unable to find reference to fencing as a way to deter illegal activity. (My comments on the DEIS urged attention to fencing as a needed management action, but I cannot see that has been done at all in the FEIS.)”

Response: (a) Not protestable – Outside the scope of the Proposed Plan Amendment and Final EIS. [Can we elaborate on this?](#)

(b) Protestable – Section 2.3, General Policies and Guidance, of the FEIS states, “Compliance monitoring will be conducted for the protection of the San Benito evening – primrose (CABE) to document the condition of the species, habitat, and the protective measures in place. Monitoring [\(how often??\)](#) will record direct disturbance to CABE, CABE habitat, and CABE potential habitat by off-highway vehicle use, including but not limited to tire tracks, trampling of plants, soil compaction, soil displacement, seed displacement, and soil erosion and sedimentation. Biologists will visit occurrences [\(of what?\)](#) monthly from October to May and on a less frequent [\(can we be specific?\)](#) basis during the off-season. Additional BLM staff will monitor integrity of protective measures on a more frequent basis [\(how often??\)](#). The intensity and extent of disturbance at each occurrence will be evaluated annually with FWS to determine adaptive management. BLM will coordinate with FWS in revising the compliance monitoring plan to promote the long-term conservation of the primrose. Annual population census monitoring will be conducted and reported to FWS.”

Therefore, the CABE monitoring plan, provides for much more frequent monitoring of occupied and potential CABE habitat and protective measures than the protestants claim; [\(We say that monitoring will take place, but how often?? It sounds like the monthly visits will only take place on “occurances” which I assume are damaged areas, not all CABE sites. If we wait for the yearly meeting with the FWS won’t we loose a lot of plants before we can develop adaptive management??\) Don’t we have some sort of trigger point, perhaps # of plants impacted, when reached automaticly mandates a meeting with](#)

FWS?? and when viewed in its entirety, the Proposed Plan Amendment goes above and beyond the Section 7 consultation requirements of the Endangered Species Act, by committing the BLM and USFWS to annual evaluations of disturbances to determine adaptive management necessary to promote the long-term conservation of the primrose.

With regard to automatic thresholds for closure of areas in the CCMA, BLM maintains the authority to implement Special Rules on public lands in accordance with 43 CFR 8341.2.

(c) Protestable – With regard to delineation of the expanded SBMRNA boundary, Appendix E of the FEIS states, “The BLM policy for its Research Natural Areas is to ‘Permit natural processes to continue without interference.’ and to ‘Determine the boundaries for all vegetation series representatives. In order to preserve the greatest diversity possible, the boundaries will include a variety of slope exposures and elevational features, and should follow natural boundaries.’” Therefore, the proposed delineation of the expanded SBMRNA boundary based on identifiable landmarks is consistent with BLM policy; and as described on page 2-8 of the Proposed Plan:

“The San Benito Mountain RNA will be expanded to 4147 acres as shown on the Map 1-1. This boundary incorporates areas containing unique vegetation communities, habitats, and species into the Research Natural Area, benefiting their long-term protection. Expansion of the boundaries of the SBMRNA will be based on:

- o Protection of the San Benito evening primrose (*Camissonia benitensis*), sensitive species, potential, and occupied habitat,
- o Inclusion of the unique vegetation communities (forest, T&E, and sensitive species),
- o Inclusion of watersheds/sub-watersheds to the extent possible, for protection of riparian habitat,
- o Inclusion of the transition zone between the serpentine and non-serpentine soils,
- o Delineation using identifiable geographical landmarks (routes, trails, ridges, etc.),
- o Reducing the impacts of OHV use and other conflicting uses,
- o Authorizing only those trails and areas, as determined by the authorizing officer, which will not adversely affect the natural, scenic, esthetic or other values for which established.”

Delineation of the boundaries of the expanded SBMRNA will include signage, as described in Appendix C, p. 5: Sign Implementation Plan, 7. “Identification of route designations, open play areas, and Research Natural Area boundaries.”

With regard to fencing, page 2-8 of the Proposed Plan includes the following management action, “Fences and barriers will be constructed to preclude OHV access into the SBMRNA.”

In consideration of all these factors, the BLM's proposed interim management strategy for the expanded SBMRNA boundary will avoid impacting the area in ways which could adversely affect the natural, scenic, or ecological values for which it was established.

Issue/Comment 3:

"I am unable to find any discussion of deterrents. That is to say, effective deterrents that will discourage riders from illegal activity. At the moment there's nothing that happens if an ORV rider uses a "closed route". Well, he can be fined, but that depends on being caught, and then the fine is likely to be small; and the size of the CCMA is such and law enforcement presence so limited that likelihood of actually being caught is small."

Response: Not protestable – Law enforcement and criminal penalties are beyond the scope of the Proposed Plan Amendment and Final EIS.

Appendix C, p. 3 addresses implementation of patrols for law enforcement.

Pursuant to 43 CFR 8340.0-7, "Any person who violates or fails to comply with the regulations of subpart 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than \$1,000 or imprisonment for not longer than 12 months, or both."

Issue/Comment 4:

(a) "The types of soils within the CCMA are extremely erodible on disturbance, and while this is of concern everywhere in the CCMA, it is a particular concern on the barrens which are such a special feature of the area. Since BLM appears to have no baseline study on which to document pre dirt-bike conditions, it is impossible to know how much soil has already been lost from barrens? I still affirm that no barrens should be designated as "open" until an adequate soil-depth and organic layering surveys and a vegetation protection plan are prepared."

(b) "One provision of the CA State Soil Loss Standards is "evidence of unauthorized use of designated route." Motorcycle tracks provide such evidence, and can be used for soil loss monitoring and as well as to offer deterrents to illegal activity."

(c) "Monitoring as proposed by the FEIS is inadequate. On p. 2-6, the FEIS states that State Soil Loss Standards will be monitored on an annual basis-...." **Reference; CNPS,** "This is completely inadequate. Not only do the state standards require monitoring for unauthorized use they also require monitoring for 9 other items. Monitoring once a year will not catch damage before it is too late. Monitoring once a year cannot tell if there has been – or how many times there has been – unauthorized use. Monitoring must be done at least every two months during the high-use season and interested parties must be able to submit documented reports."

Response: (a) Protestable - Chapter Three, Affected Environment, describes the soil conditions in the CCMA. On page 3-4, the FEIS states "The [serpentine] soils are

extremely sensitive to manmade disturbances, such as OHV use. The properties of serpentine soils (low calcium/ magnesium ratio, high Ph, low organic matter and the presence of toxic elements such as nickel, cobalt, mercury, chromium, and lead) are such that plant growth is stunted or inhibited, resulting in the barren slopes, common to the CCMA. In [these areas], serpentine soils are being physically removed faster than they are being naturally replenished.”

Furthermore, on page 2-12 of the FEIS, BLM describes the barren designation methodology, which was partially based on the Geomorphic Field Evaluation of Serpentine Soil Barrens, CCMA (Dynamac, 1998):

“The objectives of this field evaluation were: to determine the degree of soil erosion and sedimentation taking place within the barrens; to evaluate natural and human influences on sedimentation and erosion within the barrens; and to develop a barren inventory and ranking system. Key information from this study used in this designation process include; stream orders present, hydrographic position, vegetation cover, vegetation boundary/buffer, amount of gullying, slope, armoring present, sediment trapping features, and contribution of sediment to sub-watersheds with high erosion rates.”

BLM has considered the issues raised by the protestant with regard to the soil types that make up “the barrens” [and incorporated the appropriate soil information with other data to meet the soil loss standards developed jointly by BLM and California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division.](#)

(b) Protestable – Section 2.3, General Policies and Guidance, of the FEIS states, “BLM will continue to monitor water quality, soil erosion, and sediment conditions within the watersheds of the CCMA. [Best Management Practices] will incorporate the soil loss standards for OHV areas, developed jointly by BLM and California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division.”

Therefore, the provision of the California State Soil Loss Standards for motorcycle tracks as “evidence of unauthorized use of designated route”, identified by the protestant, will be incorporated into BLM soil loss monitoring surveys.

(c) Protestable – The reference to “California State Soils Loss Standards and Monitoring” and “surveys completed on an annual basis”, as described on page 2-6 of the FEIS is specific to “open routes” and includes ALL the standards that apply to soil loss monitoring requirements, not just monitoring for unauthorized use (ie; tracks). The determination to conduct surveys on an annual basis for “open routes” is consistent with the guidance outlined in the California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division’s 1991 Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (a.k.a.; California State Soil Loss Standards). In particular, Sections C, D, and G of the 1991 Standards/Guidelines address monitoring needs:

Section C: Monitoring Plan for New Projects

I. “Establish and maintain a Monitoring Plan file for each specific off-highway vehicle project. The purpose of the Monitoring Plan is to provide for timely inspection and maintenance of every off-highway vehicle area.”

IV. “Annually submit a monitoring report prepared by qualified personnel trained in the use of the Erosion Hazard Rating System (Section F) and the Monitoring System (Section G). This report is to evaluate the status of all off-highway vehicle use areas (roads, trails, tracks, hillclimbs, open ride areas, staging/parking/camping areas or any other) using both the Monitoring System and the Erosion Hazard Rating System

Section D: Design Criteria and Monitoring/Maintenance Requirements

I. Roads/Trails/Firebreaks/Fuelbreaks; Management/Monitoring:

A. Follow Erosion Control/Vegetation Management Plan (Section B) and the Monitoring Plan (Section C).

B. The Monitoring System (Section G) shall be used and followed annually.

Section G: Monitoring System

“The intent of these guidelines is to provide a process to collect data to meet onitoring needs, prioritize maintenance, program funds, and give Land Managers information for use in making decisions on how off-highway areas will be managed and maintained.”

“All areas rated Yellow must be repaired before the next annual monitoring. All areas rated Red must initiate action to repair, close and rehabilitate within six months and a new monitoring evaluation entered into the file stating the status of the segment.”

Therefore, BLM’s proposed soil loss monitoring system, as outlined in Chapter 2, is adequate and will “provide for timely inspection and maintenance” of the designated OHV use areas in the CCMA.

Issue/Comment 5:

“It is difficult to interpret the FEIS’s statement (on p. 2-7, under 2.4 management actions) that “Stopping and Parking will be allowed within 40 feet of the centerline of an open or limited route” as not leaving a wide [80]-foot swath of open area available to ORV users.”

Reference Brian LeNeve; “This is contrary to BLM’s stated goals of reducing air and water pollution, erosion, sedimentation, and protection of CABA as well as other sensitive plants and animals. I do not believe the FEIS analyzed a single-track trail 80 foot wide and I am sure the 2005 Biological Opinion did not analyze such wide sources of sedimentation. There is no way BLM can maintain a route 80 feet wide with rolling dips and other needed erosion control measures.”

Response: Protestable – (We are changing this as I remember, Please put the appropriate answer here) Page 2-7 of the FEIS states, “Stopping and parking will only be allowed within 40-feet of the centerline of an open or limited route except for within the SBMRNA and specifically restricted areas (sensitive habitat, mines, private lands, etc.).

As stated in the Appendix K, Comments and Responses, “This decisions allows parking to occur throughout the area without vehicles blocking roadways. It is expected that this provision will have no appreciable effect on trail width area wide.” This determination still applies because vehicles stopped and/or parked near open routes must allow enough

space for other vehicles to pass safely. This is consistent with BLM's goal to reduce erosion and sedimentation because it will allow OHV's to stay on designated routes when passing stopped or parked vehicles.

Furthermore, the potential impacts of stopping and parking would be negligible, because OHV riders would be required to return to the designated route of travel once they begin operating the vehicle after stopping and parking. In addition to the exception for limited parking in "sensitive areas", the preference of OHV riders to maintain narrow (ie; single-track) routes and trails, and the requirement for OHV's to travel on designated routes, would preclude the stopping and parking provision from having any major adverse impacts on air and water pollution, erosion, sedimentation, and protection of CAGE habitat.

Issue/Comment 6:

"For a longer term view of the sustainability of ORV recreation within the CCMA, it is desirable to develop a carrying capacity study. How many ORV users can the area sustain, under some differing scenarios of use-intensity, over 5, 10, 20, or more years? Also, How may other types of recreational activity fit into the CCMA as well?"

BLM claims there is other, non-motorized recreational use within the CCMA. [FEIS, p.1-1, states, "A variety of other recreation activities also occur with CCMA including hunting, rock-hounding, wildlife watching, and hiking."](#) I take issue with this comment, as I doubt there is much of these activities occurring, since, in practice..., OHV use tends to drive out all quiet recreation. If BLM wishes to encourage quiet recreation activity, something else is going to have to change."

Response: Not protestable – Outside the scope of the Proposed Plan Amendment and Final EIS. These issues were addressed in the 1995 Final EIS and 1999 ROD.

Issue/Comment 6:

"In consideration of a new asbestos study by EPA expected out soon, the results of which are likely to alter quite a few route determinations, etc. of the Proposed Action in the FEIS, it would be prudent for BLM to delay a Record of Decision until after the availability of that study. Otherwise, you may have to go to immediate great new expense (of taxpayer funds) to prepare an amendment to this plan. Please let me know how you will address this issue."

Response: Not protestable – Outside the scope of the current EIS. Chapter 1, Section 1.11 "Human Health Risks and Naturally Occurring Asbestos" describes BLM's agreement with EPA to incorporate the results of the EPA's health risk study into future CCMA management decisions.

[What about the last comment about the maps? Shouldn't we quote the comment and then say comment noted?](#)