



CALIFORNIA  
WILDERNESS  
COALITION

*The Voice for Wild California*



Conservation  
Lands  
Foundation

*Protecting America's Heritage*



CALIFORNIA  
NATIVE PLANT SOCIETY

June 14, 2018

Bureau of Land Management  
California Desert District  
Attn: WMRNP Plan Amendment  
22835 Calle San Juan de Los Lagos  
Moreno, Valley, CA 92553  
[blm\\_ca\\_wemo\\_project@blm.gov](mailto:blm_ca_wemo_project@blm.gov)

Via email and overnight Fed-Ex

**Re: Comments on WEMO Route Network Project 2018 California Desert Conservation Area Land Use Plan Amendment, Draft Supplemental Environmental Impact Statement, and Draft Travel Management Plans**

On behalf of The Wilderness Society (TWS), California Wilderness Coalition (CalWild), Friends of the Inyo, Conservation Lands Foundation, and California Native Plant Society, please accept and fully consider these comments on the West Mojave (WEMO) Route Network Project, including the draft California Desert Conservation Area (CDCA) land use plan amendment, draft supplemental environmental impact statement (DSEIS), and draft travel management plans (TMPs).

TWS is the leading conservation organization working to protect wilderness and inspire Americans to care for our wild places. Founded in 1935, and now with more than one million members and supporters, TWS has led the effort to permanently protect 109 million acres of wilderness and to ensure sound management of our shared national lands. TWS has a longstanding investment in the protection and conservation of public lands in the California Desert, including as a plaintiff in the lawsuit overturning BLM's 2006 WEMO route network for failure to adequately protect those lands and their unique and sensitive natural and cultural resources.

CalWild is a nonprofit public benefit corporation organized under the laws of the State of California in 1976 and composed of conservation organizations, businesses and individual members. Through advocacy and public education, CalWild works to protect and restore California's wildest natural landscapes and watersheds on public lands.

Friends of the Inyo (FOI) is a grassroots nonprofit conservation organization based in Bishop, California, dedicated to the stewardship, exploration and preservation of the Eastern Sierra and West Mojave's public lands and wildlife. Over its 30-year history, FOI has become an active partner with federal land management agencies, including the BLM. FOI completed extensive route inventories in the Coso Range and Darwin Hills and Argus and Slate Range foothills within Inyo County to inform these comments.

Conservation Lands Foundation is the only nonprofit in the country solely dedicated to protecting the National Conservation Lands- 36 million acres of National Monuments, National Conservation Areas, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers and National Historic Trails. Our mission is to protect, restore and expand the National Conservation Lands through education, advocacy and partnerships.

The California Native Plant Society ("CNPS") is a non-profit environmental organization with nearly 10,000 members in 35 local chapters. CNPS' mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed and environmentally friendly policies, regulations, and land management practices.

We appreciate the difficulty of BLM's task in designating a travel and transportation network that appropriately balances motorized and non-motorized recreational uses and protects important desert resources. We also understand that the agency is not able to turn back the clock and simply undo decades of damaging route propagation. Nevertheless, the approach and proposed route network alternatives articulated in the DSEIS and draft TMPs remain highly problematic in a number of respects. While we appreciate that BLM revisited its unacceptable 2015 DSEIS to address consistency with the Desert Renewable Energy Conservation Plan (DRECP), we remain deeply concerned that BLM's latest product suffers from the same fundamental flaws, which are addressed in detail in the following comments. In particular:

- Data and information errors and omissions plague the DSEIS and severely frustrate the public's ability to comprehend and provide meaningful comments on the proposed route networks.

- BLM's proposed plan and various route network alternatives continue to prioritize motorized access over resource protection and opportunities for quiet forms of recreation, in violation of the agency's substantive obligation to ensure its route designation decisions minimize damage to sensitive desert resources and conflicts with other recreational uses.
- The DSEIS continues to suffer from a variety of NEPA violations, including an inadequate range of alternatives.
- BLM's proposals to expand the motorized route networks in the newly established Mojave Trails and Sand to Snow National Monuments is unacceptable and contrary to clear requirements to conduct separate monument planning processes and limit motorized use to existing, established roads.
- BLM's proposals to expand the motorized route networks in designated conservation areas such as Areas of Critical Environmental Concern and California Desert National Conservation Lands is inconsistent with the DRECP and the requirement to management those areas to protect their significant conservation values.
- BLM has not demonstrated compliance with the Clean Air Act or the National Historic Preservation Act.

We remain eager to work with BLM to correct these significant deficiencies and designate a travel network for the West Mojave that fairly balances recreational uses, protects important desert resources, and honors the conservation commitments made in the DRECP and in the proclamations establishing the Mojave Trails and Sand to Snow National Monuments.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	6
II.	BARRIERS TO MEANINGFUL PUBLIC REVIEW & INFORMED DECISION-MAKING .....	8
A.	Legal and Policy Framework .....	8
B.	BLM Has Failed to Provide Adequate Data and Information.....	10
C.	The DSEIS Suffers from Significant Data Discrepancies, Irregularities, and Errors .....	11
D.	Inaccurate No Action Alternative .....	12
E.	Baseline Route Inventory.....	13
F.	Other Barriers to Meaningful Public Review and Informed Decision-making.....	14
G.	BLM has Issued an “Incomprehensible” Plan and Failed to Facilitate Meaningful Public Engagement.....	14
III.	TRAVEL & TRANSPORTATION MANAGEMENT .....	15
A.	Executive Order Minimization Criteria .....	15
1.	Background.....	15
2.	BLM has Failed to Demonstrate Compliance with the Minimization Criteria .....	17
B.	CDCA Plan Amendments .....	20
1.	Plan Amendment I: Limiting Route Network to 1980 Baseline .....	20
2.	Other Plan Amendments .....	21
C.	Implementation and Draft TMPs .....	22
D.	Quiet Recreation .....	24
E.	Street Legal Only .....	25
IV.	NATIONAL ENVIRONMENTAL POLICY ACT .....	27
A.	BLM Must Supplement or Revise the draft EIS .....	27
B.	The DSEIS Fails to Facilitate Meaningful Public Input and Informed Decision-making .....	28
C.	The DSEIS Improperly Relies on an Inflated and Inaccurate Baseline .....	28
D.	The DSEIS May Not Utilize the Illegal 2006 Route Network as the No Action Alternative.....	29
E.	Range of Alternatives.....	30
F.	The DSEIS Fails to take a Hard Look at the Direct, Indirect, and Cumulative Impacts of the Proposed Route Network .....	33
G.	The DSEIS Relies on Uncertain Mitigation Measures and Fails to Assess their Effectiveness .....	34
H.	Climate Change.....	35
V.	NATIONAL MONUMENTS .....	37
A.	National Monuments Require Individual Monument Management Plans and Should Not be Included in the WEMO Route Network Project .....	38
B.	BLM’s Proposed Action Fails to Protect National Monuments .....	39
1.	Mojave Trails National Monument.....	39
2.	Sand to Snow National Monument .....	41

C.	National Monuments Must be Managed According to their Proclamations .....	41
1.	BLM has failed to demonstrate protection of Monument Objects.....	41
2.	BLM may not designate new routes in the Monuments .....	43
D.	Proposed Route Designations Fail to Satisfy BLM Policy for Overlapping Special Area Designations.....	44
E.	BLM Must Fully Address and Incorporate Field Data, Route-Specific Comments, and the Proposed Citizen’s Alternative for the National Monuments. ....	45
VI.	CONSISTENCY WITH THE DESERT RENEWABLE ENERGY CONSERVATION PROJECT	46
VII.	OTHER SPECIAL AREA DESIGNATIONS .....	48
A.	Areas of Critical Environmental Concern.....	50
B.	California Desert National Conservation Lands and Other National Landscape Conservation System units .....	52
C.	Wilderness Study Areas .....	54
D.	National Monuments.....	55
E.	Lands with Wilderness Characteristics .....	55
VIII.	AIR QUALITY .....	56
IX.	CULTURAL RESOURCES .....	57
X.	CONCLUSION.....	62

## I. INTRODUCTION

Southern California’s Mojave Desert is a remarkable landscape. The stark contrast between its extreme heat and bitter cold, primitive beauty, and surprisingly varied and rich ecosystems make the desert unlike any other natural area in the country. It is home to a host of unique and fragile resources, including imperiled desert tortoise, rich archaeological resources, and sensitive crypto-biotic soils and desert plant communities. In its 1976 designation of the CDCA, Congress recognized that these resources are “extremely fragile, easily scarred, [ ] slowly healed,” and “seriously threatened” by growing and poorly managed recreational use, including off-road vehicle (ORV)<sup>1</sup> use. 43 U.S.C. § 1781(a).

Several primary legal authorities guide BLM’s management of the public lands and resources within the CDCA. Under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, BLM is obligated to identify and protect the many natural and cultural resources found on public lands governed by resource management plans. FLPMA requires BLM to inventory its lands and their resources and values, “including outdoor recreation and scenic values,” *id.* § 1711(a), and to account for that inventory when preparing land management plans through principles of multiple use and sustained yield, *id.* § 1712(c)(1) & (4). Through its management plans, BLM can and should protect wildlife, scenic values, recreation opportunities, wilderness character, and other resources and values present, including by limiting or excluding certain uses of the public lands. *See id.* § 1712(e). With respect to off-highway vehicle (OHV) use, a pair of 1970s executive orders require the agency to designate areas and trails where OHV use is permitted based on protection of resources and other recreational uses. Exec. Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11989, 42 Fed. Reg. 26,959 (May 24, 1977). Under the executive orders and BLM regulations promulgated pursuant to those orders, BLM must locate areas and trails designated for OHV use to “*minimize*” damage to natural and cultural resources and conflicts with other existing or proposed recreational uses. *Id.* § 3(a); 43 C.F.R. § 8342.1.

The Omnibus Public Land Management Act of 2009 (Omnibus) added to the newly established National Landscape Conservation System (NLCS) “[a]ny area designated by Congress to be administered for conservation purposes, including . . . public land within the [CDCA] administered by the [BLM] for conservation purposes.” 16 U.S.C. § 7202(b)(2)(D). Unlike other CDCA lands managed under multiple-use principles, these areas are to be managed “in a manner that protects the values for which [they were] designated.” *Id.* § 7202(c)(2); *see also* 43 U.S.C. § 1732(a) (FLPMA requires that public lands be managed under multiple use principles “*except* that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law” (emphasis added)). Thus, all NLCS lands within the CDCA must be managed to prohibit discretionary uses that are incompatible with the conservation, protection, and restoration of their landscapes. *See* 16 U.S.C. § 7202.

The approximately 12 million acres of public land within the 25-million-acre CDCA are managed pursuant to BLM’s 1980 CDCA Plan. The WEMO Plan Area encompasses approximately 9.4 million acres in the CDCA, of which approximately 3.1 million acres are

---

<sup>1</sup> ORV and OHV (off-highway vehicle) are used interchangeably throughout these comments.

public land under BLM jurisdiction. Since 1980, BLM has made numerous amendments to the 1980 CDCA Plan, including a 2006 amendment for the WEMO Plan Area, which, among other things, included a travel plan that designated an approximately 5,098-mile OHV route network (generally referred to in these comments as the “2006 WEMO Plan”). Eleven conservation groups, including TWS, sued over the 2006 WEMO Plan, alleging, among other claims, violations of the executive order “minimization criteria” and the National Environmental Policy Act (NEPA).

In 2009, the federal court invalidated the 2006 WEMO Plan, finding that BLM had failed to apply the minimization criteria and improperly prioritized OHV use when designating its route network. *Ctr. for Biological Diversity v. Bureau of Land Mgmt. (CBD v. BLM)*, 746 F. Supp. 2d 1055, 1073-83 (N.D. Cal. 2009). The court also held that the route network violated the CDCA Plan provision restricting OHV travel to routes that existed at the time the plan was approved in 1980. *Id.* at 1083-86. Finally, the court found multiple NEPA violations, including failure to consider any alternatives that would result in a smaller route network, a faulty no action alternative, and an inadequate impacts analysis with respect to several types of resources. *Id.* at 1086-99. In a 2011 order addressing remedy, the court directed BLM to prepare a revised route network that complies with the minimization criteria and NEPA by March 31, 2014. *CBD v. BLM*, No. C 06-4884 SI, 2011 U.S. Dist. LEXIS 11764, at \*5-9 (N.D. Cal. Jan. 28 2011). The court vacated portions of illegal route network but left other environmentally protective provisions of the plan in place during the remand. *Id.* at \*9-15. Due to “significant deficiencies” in BLM’s implementation of required mitigation measures, the court also ordered the agency to take certain protective actions including monitoring, maintenance, and enforcement during remand. *Id.* at \*26-31.

Following numerous extensions of the court deadline, BLM released a DSEIS in March 2015. BLM’s preferred alternative proposed to designate a network of over 10,000 miles of mostly illegal, user-created OHV routes – twice the mileage in the 2006 WEMO Plan that was invalidated by the court. TWS and CalWild submitted detailed comments and recommendations on the 2015 DSEIS on June 4, 2015 and January 25, 2016, as well as supplemental scoping comments on July 17, 2017. Those submissions are included in Appendix I<sup>2</sup> to this comment letter and hereby incorporated by reference.

On February 12, 2016, shortly after the close of the supplemental comment period on the 2015 WEMO DSEIS, President Obama signed proclamations designating the 1.6-million-acre Mojave Trails and the 154,000-acre Sand to Snow National Monuments, both of which overlap with the WEMO plan area. Mojave Trails is to be managed by the BLM, while Sand to Snow is to be managed jointly by the BLM and the U.S. Forest Service. The monument proclamations, described in further detail throughout these comments, require BLM to protect these iconic desert landscapes, rich cultural resources, and important wildlife habitat.

Then, in September 2016, following years of stakeholder participation and environmental analysis, BLM completed Phase I of the Desert Renewable Energy Conservation Plan (DRECP) by issuing a ROD adopting the DRECP Land Use Plan Amendment (LUPA). The DRECP LUPA spans approximately 11 million acres of public lands in the CDCA, including the 3.1

---

<sup>2</sup> An index of all appendices and attachments is included at the end of this letter.

million acres of public lands in the WEMO plan area. This innovative, landscape-scale planning effort was “designed to both provide effective protection and conservation of important desert ecosystems, while also facilitating the development of solar, wind and geothermal energy projects in those unique landscapes.” DRECP LUPA ROD at 1. To achieve that balance, the DRECP designated lands with nationally significant cultural, ecological, and scientific values as part of the California Desert National Conservation Lands (CDNCLs) and required that those lands be managed for conservation purposes. The DRECP also designated new and expanded Areas of Critical Environmental Concern (ACECs) to protect important wildlife habitat, cultural resources, and other conservation values. Under the DRECP, ACECs and CDNCLs are subject to various Conservation Management Actions (CMAs) and disturbance caps to give resources in the planning area meaning and protection where needed. Finally, the BLM identified approximately 1.2 million acres of lands with wilderness characteristics (LWC) in the DRECP planning area and determined to manage approximately 546,000 of those acres to protect their wilderness values. Implementation-level decisions, such as the WEMO Route Network Project, must be consistent with the DRECP LUPA.

Recognizing that the 2015 DSEIS was inconsistent with the DRECP, BLM in September 2016 sought additional time from the court to prepare and issue a new DSEIS to replace the 2015 DSEIS. BLM subsequently agreed to implement certain measures to improve its OHV monitoring and to consider implementing a temporary street legal only (SLO) vehicle limitation on 148 miles of county-maintained routes. The court granted BLM’s request to extend the deadline to release a new DSEIS until January 2018, as well as a subsequent request to extend the deadline by a further six weeks. BLM published a notice of availability of the new DSEIS on March 16, 2018, initiating a 90-day public comment period, which closes on June 14, 2018. 83 Fed. Reg. 11785 (Mar. 16, 2018).

The following comments describe numerous serious deficiencies in the 2018 DSEIS, proposed route network alternatives, draft land use plan amendment, and draft TMPs, and make recommendations for how BLM must cure those deficiencies prior to finalizing the plan. Comment letters submitted by other conservation groups, including Center for Biological Diversity, California Native Plant Society, Defenders of Wildlife, and Friends of Juniper Flats, also address these and other deficiencies. Unfortunately, these deficiencies are serious enough to warrant preparation of yet another DSEIS, or potentially an entirely revised EIS.

## **II. BARRIERS TO MEANINGFUL PUBLIC REVIEW & INFORMED DECISION-MAKING**

As an initial matter, the data and information associated with the DSEIS suffers from numerous and significant errors, irregularities, and omissions that severely frustrate meaningful public review and informed decision-making.

### **A. Legal and Policy Framework**

BLM is obligated to use quality data and scientifically acceptable methods of analysis, disclose all necessary information to the public, and facilitate meaningful public review and comment. NEPA’s hard look at environmental consequences must be based on “high quality” and “[a]ccurate scientific analysis.” 40 C.F.R. § 1500.1(b). The agency must also ensure the



professional and scientific integrity of an EIS. *Id.* § 1502.24. Essentially, NEPA “ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The Data Quality Act expands on this obligation, requiring that agencies “ensur[e] and maximiz[e] the quality, objectivity, and integrity of information.” Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515(a). OMB direction implementing the Data Quality Act and corresponding direction in the Safe Water Drinking Act Amendments of 1996, 42 U.S.C. 330g-1(b)(3), requires that agencies utilize best available science and data. 67 Fed. Reg. 8452, 8458 (February 22, 2008); *see also* Bureau of Land Management, Information Quality Guidelines, *available at* <https://www.blm.gov/documents/national-office/public-room/guidebook/blm-information-quality-guidelines>.

BLM’s internal guidance also emphasizes the importance of using sufficient, high quality data and analytical methods, and making those available to the public. The agency’s Land Use Planning Handbook commits the agency to “mak[ing] decisions using the best information available.” Land Use Planning Handbook H-1601-1 at 2. Appendix H of the Handbook also directs: “The data and resultant information for a land use plan must be carefully managed, documented, and applied to withstand public, scientific, and legal scrutiny.” Appendix F-1 of the Handbook emphasizes the importance of providing a clear explanation of how analysis was conducted, stating: “Regardless of its source, sufficient metadata (data about data) should be provided to clearly determine the quality of the data, along with any limitations associated with its use.” In other words, appropriate analysis of data is as important as the accumulation of sufficient data. The agency’s NEPA handbook further specifies that BLM “[u]se the best available science to support NEPA analyses, and give greater consideration to peer reviewed science and methodology over that which is not peer-reviewed.” National Environmental Policy Act Handbook H-1790-1 at 6.8.1.2.

Further, both data and analyses must be disclosed to the public, in order to permit the “public scrutiny” that is considered “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). To achieve its “primary purpose” of “allow[ing] for informed public participation and informed decision making,” the language of an EIS must be “clear” and “supported by evidence that the agency has made the necessary environmental analyses.” *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9th Cir. 2006); *accord* 40 C.F.R. § 1502.1. More broadly, NEPA requires BLM to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(d). Thus, an EIS must “be written in plain language” and presented in a way that “the public can readily understand.” *Id.* § 1502.8; *see also Or. Env’tl. Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987) (“an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS”).

An EIS that fails to enable meaningful public review and understanding of the agency’s proposal, methodology, and analysis of environmental consequences violates NEPA. *See, e.g., California ex rel. Lockyer v. U.S. Forest Serv.*, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006) (“incomprehensible” national monument management plan and corresponding EIS violated NEPA where it failed to explain its reliance on certain laws and regulations and contained

conflicting and confusing statements regarding applicable standards for management). Refer to Section IV(B) below for more information.

## **B. BLM Has Failed to Provide Adequate Data and Information**

BLM has delayed providing or entirely failed to provide information necessary for the public to effectively review and comment on the DSEIS and draft TMPs. First, in anticipation of the release of the DSEIS, on March 13, 2018, TWS submitted an expedited request under the Freedom of Information Act (FOIA) for the GIS data for the baseline route network and the route networks that would be designated under each alternative in the DSEIS (all FOIA requests and agency responses included in Appendix II). Having access to the shapefiles for the baseline and proposed route networks under each alternative is critical to TWS's and other organizations' ability to effectively evaluate and comment on the many thousands of miles of routes being considered for designation. *See, e.g.*, Appendices IV, V, VIII, IX, X, XI, and XII, which provide analysis that would not have been possible to produce absent the GIS data. Unfortunately, TWS did not receive the requested data until April 11, nearly a month into 90-day public comment period.<sup>3</sup> During our efforts over the following weeks to utilize the GIS data to analyze the baseline route network and route network alternatives, we discovered that it was compromised by significant errors and irregularities. These data issues are discussed in detail in the following subsection.

Second, BLM has provided no documentation of how it applied the minimization criteria to individual routes or its rationale for individual route designation decisions in each alternative. Presumably this information is housed in the "access database" referenced at pages 2-18 to 2-19 of the DSEIS and the individual route designation forms therein. Without this information, the public lacks information on route-specific analysis that formed the basis for the draft alternatives and cannot meaningfully assess and comment on whether BLM has properly applied the minimization criteria. TWS therefore submitted another FOIA request on April 23, 2018 (included in Appendix II) for the access database, including individual route designation forms, as well as other critical information necessary to facilitate meaningful public review and comment. Despite FOIA's requirement to provide a determination within 20 business days, which expired on May 21, BLM has yet to release any responsive records.

Third, BLM has failed to provide critical information about whether and how thousands of route-specific comments submitted by the public on the 2015 DSEIS were considered and incorporated into the 2018 DSEIS alternatives.<sup>4</sup> Without this information, the public is forced to slowly comb through each route in each alternative using a combination of BLM's geo-referenced pdf maps and online mapping tool to determine if or how their prior comments influenced the DSEIS alternatives and what route-specific comments need to be resubmitted.<sup>5</sup> For instance, CalWild Assistant Policy Director Linda Castro painstakingly reviewed the proposed route designation

---

<sup>3</sup> TWS also requested additional GIS data in an April 5, 2018 expedited FOIA request (attached in Appendix II) and received some of the requested data and a final response from BLM in late April.

<sup>4</sup> While we appreciate that BLM prepared an appendix to the DSEIS responding to comments on the previous DSEIS, those responses address only high-level comments, not route-specific comments. *See* DSEIS Appx. I; *see also id.* at 2-27 (explaining that Appendix I responds only to generic and non-route specific comments).

<sup>5</sup> While BLM is instructing the public to resubmit their prior comments, many ordinary members of the public who are not associated with a professional organization have no records of the comments they made in 2015.

decisions under each action alternative using the online interactive mapping tool for three areas that were previously inventoried by CalWild and TWS and for which we made route-specific recommendations in early 2016. *See* Appendix I(b) & associated reports for previous recommendations and inventory data.<sup>6</sup> The results of that review are included in Appendix III to this comment letter, as well as in separate comments on the Middle Knob area submitted on June 13, 2018 by CalWild, TWS, California Native Plant Society, Conservation Lands Foundation, and Native American Land Conservancy.<sup>7</sup> Due to its time-intensive nature, Ms. Castro was only able to complete the exercise for three of the ten previously inventoried areas.

To attempt to address this deficiency, TWS conducted the analysis included in Appendix IV. That analysis demonstrates that, of the over 11,000 known route-specific comments, BLM incorporated about 2/3 of the recommendations into its 2018 preferred alternative.<sup>8</sup> With respect to the recommendations submitted on January 25, 2016 by CalWild and TWS on 137 different routes that were inventoried in the field in late 2015, the analysis similarly shows that around 2/3 of those recommendations are reflected in the preferred alternative. We appreciate BLM's clear attempt to incorporate many of the route-specific recommendations into its preferred alternative. Unfortunately, without the route designation forms from the access database or more information from the agency about how it addressed particular route-specific comments, we have no way of knowing BLM's rationale for the remaining 1/3 of the recommendations it did not adopt in the preferred alternative. Moreover, due to limited capacity, we were not able to conduct the same analysis across all the action alternatives. Therefore, we have no way of knowing if or how previous route-specific comments were addressed in Alternatives 2 or 3. Interestingly, the analysis in Appendix IV also shows that, of the known route-specific comments, 89% sought additional restrictions on motorized use, while only 8% requested increased motorized access. In all, more than 10 times as many comments were collected seeking restrictions on OHV access than seeking increased motorized access.

Finally, BLM's online mapping tool does not display important sub-designations such as motorcycle or street legal only vehicle restrictions that are important for meaningful analysis of the alternative proposals. And neither the online mapping tool (and its source GIS data) or the geo-referenced pdfs maps display whether motorized routes are being designated as roads, primitive roads, or trails, as required by BLM's Travel and Transportation Management Manual 1626 at § 4.3. Having this information available is critical to the public's ability to review and comment on the proposed alternatives. For instance, as discussed in Section V below, BLM may only designate existing roads under the proclamations establishing the Mojave Trails and Sand to Snow National Monuments. Yet TWS has no way of verifying whether the proposed motorized routes in the monuments would be designated as roads, primitive roads, or trails.

### **C. The DSEIS Suffers from Significant Data Discrepancies, Irregularities, and Errors**

---

<sup>6</sup> TWS's pending April 23, 2018 FOIA request also seeks records related to BLM's treatment of these and other route-specific comments and proposals submitted by TWS, CalWild, and Friends of Juniper Flats.

<sup>7</sup> The June 13, 2018 Middle Knob comments also built upon Ms. Castro's subsequent inventory work and on-the-ground knowledge in that area, as well as the Non-Motorized Conservation Vision proposal submitted in July 2017 by CalWild, TWS, and Backcountry Horsemen of California (included in Appendix I(d)).

<sup>8</sup> Preferred alternative and proposed action are used interchangeably throughout these comments to refer to Alternative 4 in the 2018 DSEIS.

Following receipt on April 11, 2018 of the GIS shapefiles for the route network alternatives, TWS and other conservation groups attempting to utilize the data discovered numerous and highly significant irregularities. These irregularities are documented in detail in two attachments – one prepared by a GIS expert at TWS and another by a GIS expert at the Center for Biological Diversity – that are included in Appendix VII and generally encompass: (1) mileage discrepancies between the data and the figures articulated in the DSEIS, (2) duplication of routes and route segments, and (3) discrepancies among data sources, including between BLM’s geo-referenced pdf maps and online mapping tool (the latter is consistent with the GIS data provided to TWS). For instance, the preferred alternative alone contains more than 20,000 duplicated route segments averaging 1/20<sup>th</sup> of a mile in length, which has significant corresponding impacts on route mileage figures because the same routes are being accounted for multiple times. *See* pp. 5-9 of the “WEMO Data Irregularities” attachment in Appendix VII. Indeed, the Alternative 4 shapefile’s mileage may be off by over 1,000 miles. *Id.*

These data irregularities severely frustrate the public’s ability to understand the alternatives in the DSEIS and provide useful route-specific comments. For instance, when we subtract the duplicate route mileage from the GIS data, we are left with figures that do not match those in the DSEIS. And in at least several instances, neither the GIS data nor the figures in the DSEIS match the route networks depicted on BLM’s geo-referenced PDF maps. It is as if BLM is articulating a proposal that is blue in one place, red in another, and yellow in a third, and then asking the public to respond.

The data irregularities also raise significant questions about BLM’s ability to accurately track and respond to route-specific comments. For instance, a member of the public may comment on one of multiple identical route segments, each with a unique WEMO Route ID number, using BLM’s online mapping tool and suggest that the route segment be closed or limited due to significant resource impacts. Yet that comment would not apply to the identical/duplicate route segment(s). Thus, even if BLM agreed that closure of the route segment was warranted based on the public comment, the identical/duplicate route may not reflect that decision and remain open.

#### **D. Inaccurate No Action Alternative**

The no action alternative is deficient in a number of respects, including multiple instances where the DSEIS does not accurately reflect the 2006 plan that BLM is utilizing for as the no action alternative. For instance, the DSEIS incorrectly states “motorized vehicle use in washes is currently permitted under the No Action Alternative.” *See* DSEIS at 4.3-23. Under the 2006 plan, motorized vehicle use is permitted “only in those washes that are designated as ‘open routes’ and signed as appropriate.” 2006 FEIS at 2-156. This was one of several important protective measures included in the 2006 ROD designed to protect desert tortoise and other at-risk species. Indeed, the WEMO Biological Opinion explicitly relies on the closure of desert washes. *See* Biological Opinion at 31 (“On public lands, motorized vehicle travel in washes will be allowed only in those washes that are designated as ‘open routes’ and signed as appropriate.”); *id.* at 132 (“The closure of 117 miles of navigable washes within desert wildlife management areas will reduce the adverse effects to a great degree.”). Without these measures in place, the Biological Opinion would not be valid.

We also identified deficiencies in the depiction of the no action alternative on BLM's geo-referenced pdf maps, which are addressed in the subsection immediately above.

Finally, we are deeply concerned that the no action alternative includes an increase of nearly 1,000 miles over the 5,098-mile route network that was authorized in the 2006 plan. *See* DSEIS at 2-120, Table 2.4-2 (no action alternative includes 6,074 miles of motorized routes). The DSEIS claims that “[t]he preliminary No Action route network (5,098 miles) was adjusted by certain decisions issued by the court, and include[s] valid existing rights (e.g., those authorized/administrative routes) to total 6,074 miles.” *Id.* at 1-8. BLM has not provided additional information about what court decisions and valid existing rights apply, where these routes are located, or why they were not included in the 2015 DSEIS. Accordingly, we performed the GIS analysis included in Appendix V to try to better understand these significant additions to the no action alternative. That analysis reveals that, of 989 miles of new motorized routes in the 2018 no action alternative, over 600 are in DRECP-designated ACECs, CDNCLs, or both. Of those routes overlapping DRECP conservation designations, 295 miles are designated for authorized or permitted use and another four miles for street legal only vehicle use, leaving 313 miles of new routes open to public motorized use in designated conservation areas have been added to the no action alternative. This is unacceptable and raises serious questions about the accuracy and integrity of BLM's data and analysis. More broadly, including new motorized routes in conservation areas directly contradicts the values that the areas were designated to protect. *See* Sections VII & V(C) for further analysis of special area designations. BLM must address this issue and provide route-specific information and rationale about each route segment added to the no action alternative.

We suspect there may be additional errors with the no action alternative that we have not had time to identify.

### **E. Baseline Route Inventory**

We remain concerned with the quality of BLM's baseline route inventory. Under NEPA, agencies are required to “describe the environment of the areas to be affected . . . by the alternatives under consideration.” 40 C.F.R. § 1502.15. As the Ninth Circuit has explained, “without establishing the baseline conditions . . . , there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). FLPMA separately requires BLM to inventory its lands and their resources and values, “including, but not limited to, outdoor recreation and scenic values,” and to account for that inventory in its land use planning decisions. 43 U.S.C. §§ 1711(a), 1712(c)(4).

We appreciate that the agency has continued to refine its baseline route inventory based on public comment, field observation, and elimination of washes. *See* DSEIS at 2-25. For instance, TWS and CalWild's January 25, 2016 supplemental comments and associated reports included field data documenting numerous routes included in the baseline and being proposed for designation that do not exist on the ground or are merely desert washes. This was likely due to the fact that BLM relied primarily on inaccurate satellite imagery to identify its baseline route network. Given our previous findings, we are concerned and perplexed that the baseline inventory continues to expand rather than shrink. Indeed, the 2018 baseline inventory of 16,003

miles is approximately 1,000 miles larger than the 2015 DSEIS baseline. It is unclear to us what accounts for that expansion. Additionally, it is unclear the extent to which BLM has ground-truthed its baseline route inventory. Our pending April 23, 2018 FOIA request seeks records related to any such efforts. We are also perplexed by statements in the DSEIS regarding the baseline route inventory such as: “route inventory corrections identified between January 31, 2013 and the Draft SEIS will be identified in the Final SEIS.” DSEIS at 2-46.

In addition to our concerns about the accuracy and integrity of the baseline route network, we have serious concerns with BLM’s assertion that,

[b]ased on a sample review of the aerial 2005 data and the current aerial (2013) data, the additional miles of primitive routes in the inventory has not changed since 2005. BLM’s sample review of the recent and earlier route inventories indicates that these additional routes are not the result of an expansion of the route inventory since the 2006 WEMO Plan ROD.

*Id.* at 1-7. In short, BLM claims that the approximately 8,000-mile discrepancy between the 2006 plan baseline and the 2018 baseline was due to mapping errors and the inclusion of short spur routes and access roads to private lands and rights-of-way, such that in fact those 16,000 routes existed on the ground as of 2006. *Id.* at 1-7 to 1-8. Presumably, BLM intends to rely on this rationale to justify a route network that is similar to or larger than the illegal 2006 plan currently in place and claim that illegal route propagation is not a significant issue in the WEMO plan area. This rationale does not withstand scrutiny. The only support BLM has provided is its “sample review” of 2005 and 2013 aerial data included in Appendix E to the DSEIS. Our review of the photographs provided in Appendix E does not support BLM’s conclusion. To the contrary, many of the sample areas depicted in Appendix E show significant increases in routes between 2005 and 2013. *See* Appendix VI, which annotates the sample review photographs in BLM’s Appendix E, depicting new routes that appear in 2013 photographs but not in the analogous 2005 photograph highlighted in bold/blue. In short, BLM’s conclusion is contrary to the information currently available in the record.

#### **F. Other Barriers to Meaningful Public Review and Informed Decision-making**

BLM has specifically requested submission of route-specific comments. In order to provide these comments, the public must reference route data depicted in either BLM’s geo-referenced PDF maps or online, interactive mapping tool. Simply learning how to navigate and utilize these tools requires significant time and effort, and the functionality of the tools and cumbersome data frustrate efficient and effective public engagement. For instance, the online mapping tool includes 300,000 individual route segments averaging 1/20 of a mile in length, each with its own unique WEMO Route ID number. To effectively evaluate and comment on a single route using the tool, a member of the public needs to click on dozens of route segments.

#### **G. BLM has Issued an “Incomprehensible” Plan and Failed to Facilitate Meaningful Public Engagement**

The information omissions, data irregularities, and technical deficiencies discussed above severely frustrate the public’s ability to understand and comment on the alternatives in the DSEIS and provide useful route-specific comments. Indeed, courts have invalidated such “incomprehensible” agency plans and environmental analyses that contain conflicting and confusing information. *See, e.g., California ex rel. Lockyer*, 465 F. Supp. 2d at 948-50. Accordingly, on May 10, 2018, TWS and other plaintiffs to the litigation over the 2006 WEMO Plan submitted a formal request (included in Appendix VII) that BLM correct the identified deficiencies and then reissue a corrected DSEIS for a new 90-day public comment period.

Based on our discussions with other WEMO stakeholders – including representatives of non-conservation NGOs – we determined that the same issues identified in our May 10 request were compromising the ability of others to meaningfully review and comment on the DSEIS and route network alternatives. Thus, we joined a May 30, 2018 request to extend the comment period by an additional 90 days, until September 12, 2018 (also included in Appendix VII). That request was based on the voluminous, complex, and often confusing nature of the agency data, analysis, and information that the public is being asked to review and comment on; the data discrepancies and errors that frustrate the public’s ability to discern what BLM intends to propose across alternatives; and the lack of sufficient data for the public to understand the rationale behind the route designations in the alternatives and whether or how the agency considered and incorporated route-specific comments submitted by the public in response to the 2015 DSEIS. Because TWS and other signatories to the May 30 request spent much of the first two months of the public comment period identifying these barriers to efficient and meaningful public review of and comment on the DSEIS and associated data, we requested additional time to attempt to provide meaningful route-specific comments and information.

In a June 7 discussion with BLM and its attorneys, Field Manager Katrina Symons informed TWS that State Director Perez had denied our requests. We did not receive a formal denial of our requests until June 13, 2018 (included in Appendix VII) – one day before the close of the public comment period.

**Recommendations:** BLM must correct all data errors, irregularities, and inconsistencies and ensure that the data and information on which it is relying is of high quality and scientific integrity. BLM must also remedy critical information gaps, including making publicly available, among other things, route designation forms from the access database that demonstrate the agency’s rationale for individual route designation decisions across alternatives. After addressing these issues, BLM should release a corrected DSEIS and associated data for a new 90-day public comment period.

### **III. TRAVEL & TRANSPORTATION MANAGEMENT**

#### **A. Executive Order Minimization Criteria**

##### **1. Background**

Executive Orders 11644 and 11989 impose a substantive obligation on the BLM to *locate* designated routes to *minimize* damage to natural and cultural resources and conflicts with other existing or proposed recreational uses. These “minimization criteria” are codified at 43 C.F.R. §

8342.1. Federal courts have repeatedly made clear that federal agencies must meaningfully apply and implement – not just identify or consider – the minimization criteria when designating each area or trail, and to demonstrate in the administrative record how they did so. *E.g.*, *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920, 929-32 (9th Cir. 2015); *CBD v. BLM*, 746 F. Supp. 2d at 1071-81.

Despite its long-standing legal obligation, BLM has struggled to properly apply and implement the minimization criteria in its travel management decisions. Beginning with the 2009 ruling invalidating the 2006 WEMO Plan, federal courts have repeatedly sent BLM, Forest Service, and Park Service travel management plans back to the agencies for failure to satisfy their obligation to minimize resource damage and user conflicts.<sup>9</sup> In the meantime, irresponsible and mismanaged OHV use continues to degrade soil, air, and water quality, threaten imperiled wildlife species and sensitive cultural resources, impair climate change adaptation, and diminish the experience of the majority of public lands visitors who enjoy the natural landscape through non-motorized forms of recreation. Perhaps nowhere is this more evident than in the WEMO plan area, where BLM’s ongoing failure to designate and enforce a travel network that complies with the law has resulted in the proliferation of illegal, user-created routes, damage to sensitive desert resources, and conflicts with non-motorized recreationists.

The court invalidated the 2006 WEMO plan in part due to BLM’s failure to satisfy its obligation to locate routes to minimize resource damage and user conflicts. First, the court found that the agency’s decision tree approach permitted designation of routes in the redesign areas without minimization of impacts and skewed decision-making in favor of ORV use. *CBD v. BLM*, 746 F. Supp. 2d at 1076-77. Nothing in the record showed that the agency in fact applied the minimization criteria when designating those decision tree routes. The court also found that BLM failed to identify “any factual basis in the record to support the assertion that OHV routes outside the redesign areas were designated in compliance with the minimization criteria” and that “what information is in the record suggests otherwise.” *Id.* at 1082. The court clarified that “[m]inimize’ as used in the regulation . . . refers to the *effects* of route designations, i.e. the *BLM is required to place routes specifically to minimize ‘damage’ to public resources, ‘harassment’ and ‘disruption’ of wildlife and its habitat, and minimize ‘conflicts’ of uses.*” *Id.* at 1080-81 (internal footnote and citation omitted, and emphasis added).

Despite this clear direction (and as explained in detail below), BLM’s proposed route network on remand still fails to satisfy the court’s 2011 remedy order “to reconsider the OHV route designation process and network . . . and issue a revised decision that complies . . . with BLM’s

---

<sup>9</sup> *WildEarth Guardians*, 790 F.3d at 929-32; *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at \*37-52 (D. Idaho Mar. 11, 2015) (Forest Service’s conclusory statements failed to show how it selected motorized routes with the objective of minimizing their impacts); *The Wilderness Soc’y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at \*22-32 (D. Idaho Oct. 22, 2013) (remanding travel plan where Forest Service relied on unsupported conclusion that route closures and elimination of cross-country travel minimized impacts); *Defenders of Wildlife v. Salazar*, 877 F. Supp. 2d 1271, 1304 (M.D. Fla. 2012) (record failed to demonstrate how Park Service decision to reopen trails was made with the objective of minimizing impacts); *Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2012) (Forest Service failed to show that it actually aimed to minimize environmental damage when designating ORV routes); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011) (record did not reflect whether or how the Forest Service applied the minimization criteria); *CBD v. BLM*, 746 F. Supp. 2d at 1071-81 (record provided no indication that BLM considered or applied minimization criteria).



regulations that establish ‘minimization criteria’ for OHV routes, 43 C.F.R. § 8342.1.” *CBD v. BLM*, 2011 U.S. Dist. LEXIS 11764, at \*8. To satisfy the court’s orders and the executive order minimization criteria, BLM must correct these deficiencies before issuing its revised decision.

The following sources, each of which are attached, include information and recommendations designed to assist the BLM with satisfying its obligations under the minimization criteria:

- A May 2016 white paper by The Wilderness Society entitled, “Achieving Compliance with the Executive Order ‘Minimization Criteria’ for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations.” The white paper provides detailed policy framework, as well as a series of recommendations based on recent case law and ten case studies from the Forest Service, the BLM, and the National Park Service that demonstrate both agency failures to comply with the minimization criteria and good planning practices that could be incorporated into a model for application of the criteria.
- A set of joint recommendations and associated press release by The Wilderness Society and the BlueRibbon Coalition on implementing the minimization criteria. Many of the joint TWS/BRC recommendations are consistent with the recommendations in TWS’s white paper.
- A published, peer-reviewed article in the *Journal of Outdoor Recreation and Tourism* by Adam Switalski entitled, “Off-Highway Vehicle Recreation in Drylands: A Literature Review and Recommendations for Best Management Practices” (hereinafter “Switalski BMPs”). The review compiles the best available scientific information on OHV impacts to soils, vegetation, wildlife, other recreational uses, and archaeological and cultural resources in arid and semi-arid landscapes and, for each resource category, articulates BMPs (*see* Tables 1-2 & 4-6) for (a) minimizing impacts through appropriate system design, and (b) further reducing impacts associated with a designated system through appropriate mitigation measures and management strategies.

We encourage BLM to carefully review these materials and implement relevant recommendations. This is particularly important given that the WEMO Route Network Project continues to suffer from deficiencies in terms of minimization criteria compliance, as described below and throughout these comments.

## **2. BLM has Failed to Demonstrate Compliance with the Minimization Criteria**

While BLM has made some improvements in documenting its application of the minimization criteria, the information included in the DSEIS and currently available to the public is still insufficient to demonstrate compliance.

First, BLM relies on an articulation of the general *process* it used to apply the minimization criteria and develop the route network alternatives. *See generally* DSEIS at 2-17 to 2-36. Yet without any information about how that process was applied to individual routes, the public has no way of knowing or verifying whether or how it resulted in particular route designation

decisions that satisfy the substantive requirement to *locate* routes to minimize impacts. Presumably this information is housed in the access database and individual route designation forms therein. *See, e.g., id.* at 2-18 to 2-19 (referencing the access database as documenting BLM’s route-specific analytical process and describing the results of alternative development and minimization analysis). As described above in Section II(B), the information in the database must be provided at the draft stage so the public has adequate information to assess and comment on the proposed route network alternatives and BLM’s application of the minimization criteria.

The omission of the access database and route designation forms is exacerbated by the fact that BLM has not provided any record of if or how it responded to route-specific comments that documented resource impacts or conflicts that would require route closure, relocation, limitation, or other actions to ensure minimization. *See* Section II(B) above. Importantly, we have identified numerous instances where our previous route-specific comments that identified resource impacts or conflicts were not addressed in the preferred alternative, suggesting that those route designation decisions would not comply with the minimization criteria. *See* Appendices III & IV for examples. But without the route designation forms, we again have no way of knowing BLM’s rationale for those route designation decisions and how they satisfy the minimization criteria. Thus, despite pages of explanation about the complicated process it apparently utilized, BLM continues to rely on the common pitfall of making unsupported conclusions about minimization criteria compliance without actually documenting how the criteria were applied and implemented on a route-by-route basis. Unfortunately, this approach continues to suffer from the same problem the court identified in 2009, which is that nothing in the record demonstrates how BLM actually applied the minimization criteria. *See CBD v. BLM*, 746 F. Supp. 2d at 1078-80.

Second, BLM continues to rely heavily on potential future actions and implementation strategies to minimize or mitigate impacts. While monitoring and adaptive management are an important and required component of travel and transportation management planning, BLM may not satisfy its obligation to designate a travel network that complies with the minimization criteria *now* by relying on potential future actions that may or may not occur. For instance, Table 2.1-3 includes numerous resource-specific minimization and mitigation actions that provide a good menu of options – from route closure to re-routing to various mitigation strategies – that are largely consistent with the Switalski BMPs cited above and attached hereto. But those actions are “potential” and “may be implemented on a case-by-case basis as determined appropriate by the BLM.” DSEIS at 2-28; *see also id.* (“The minimization measures listed below are examples of potential actions that may be taken when determined appropriate for the particular location and resource/concern that is present along with determined cause(s).”). This approach improperly treats minimization criteria compliance as something that is accomplished via implementation strategies rather than initial system design. And it confuses *mitigation* of impacts associated with the designated route network with the agency’s threshold obligation to designate the system to *minimize* impacts in the first place. *See also* Section IV(G) below. Moreover, given the agency’s limited resources and ongoing enforcement difficulties across the vast WEMO plan area, an approach that requires significant and ongoing adaptive management to ensure legal compliance is simply infeasible. In short, it is unclear if, when, or how additional minimization or mitigation measures would in fact be implemented.

Third, past and recent field data and GIS analysis demonstrate that many of BLM's proposed route designation decisions fail to satisfy the minimization criteria. For instance:

- Appendix I(b) includes detailed reports documenting the results of GIS analysis and field inventory conducted in late 2015 in ten important conservation areas. The reports document that many proposed routes in the 2015 DSEIS are located in key conservation areas protected under the DRECP or in sensitive plant or wildlife habitat, are rarely used, barely exist on the ground, appear to serve no public purpose, are causing resource damage, and/or are facilitating unauthorized and damaging activities including off-route travel, trash-dumping, and trespass into designated wilderness. While approximately 2/3 of our route-specific recommendations were incorporated into the 2018 DSEIS preferred alternative, others were not, and BLM has not demonstrated how those routes have been located to minimize impacts. *See* Appendices III & IV.
- As documented in Appendix XI, BLM is proposing to significantly increase the mileage in sensitive areas designated and managed to protect their conservation values. Indeed, the preferred alternative would designate 500 miles of new motorized routes in ACECs and CDNCLs – areas where anything but a significant reduction in route mileage suggests a serious failure to apply and implement the minimization criteria.
- Route inventory conducted in spring 2018 documented numerous instances of off-route cross-country travel, extensive illegal route proliferation, motorized incursions into designated Wilderness and Wilderness Study Areas, and human safety concerns. Inventory also revealed numerous instances of routes included in BLM's baseline inventory that do not exist on the ground in any form and do not meet the definition of transportation linear feature for route inventory purposes, as defined by BLM Manual 1626. Instances of these and other impacts are documented in Appendix IX.

Finally, on remand from a court decision invalidating a 5,098-mile route network for failure to minimize adverse environmental impacts, BLM's proposal to expand the route network by more than 1,000 miles is unacceptable. This approach sanctions decades of illegal and damaging OHV use and route propagation and improperly prioritizes motorized use over other recreational uses. *See* Section III(D) below. Additionally, it is particularly inappropriate given the intervening establishment of national monuments and the conservation land designations made in the DRECP. If anything, the route network should be significantly reduced. The fact that routes – and other “linear features” – exist on the ground in no way obligates the agency to consider designating them. To the contrary, the executive order minimization criteria require BLM to close those routes to avoid additional resource damage and conflicts between recreational uses.

A few examples from the DSEIS help highlight the agency's faulty approach. For instance, BLM explains that, “[f]or routes which have multiple user conflicts, the initial designation deferred the designation to the motorized user over the non-motorized or non-mechanized user under Alternative 3, consistent with the minimization criteria.” DSEIS at 2-97. Prioritizing motorized use in the face of user conflicts is patently inconsistent with the agency's substantive obligation to locate routes to minimize such conflicts. BLM goes on to explain that, even within disturbance hotspots in sensitive areas, Alternative 3 would leave open routes “needed to maintain connectivity of the network or to access key resource and recreational sites.” *Id.* at 2-98. Again,

this is directly contrary to the executive order minimization criteria, which does not provide an exception to the duty to minimize resource damage where a route is needed to maintain connectivity or access. The corresponding direction in the DSEIS for multiple user conflict and disturbance hotspot/sensitive area routes in the preferred alternative is largely identical, except that route designation would be subject to “route-specific review.” *Id.* at 2-110. Yet without the route designation forms from the access database, the public has no way of knowing if or how that route-specific review affected the designation decision for those routes. Much like the illegal decision tree, BLM’s preferred alternative appears to “skew route designation decision-making in favor of ORV use.” *CBD v. BLM*, 746 F. Supp. 2d at 1077 (quotation and citation omitted).

**Recommendations:** BLM must provide route-specific information that demonstrates how it applied the minimization criteria to locate routes to minimize impacts. BLM may not rely on potential future minimization and mitigation measures that may or may not occur to satisfy its substantive minimization criteria obligation. BLM must fully address and respond to all field data, route-specific recommendations, and other analyses that document resource impacts or conflicts and should prioritize route closure or conversion to non-motorized or non-mechanized trails to address those impacts and conflicts – particularly in designated conservation areas.

## **B. CDCA Plan Amendments**

### **1. Plan Amendment I: Limiting Route Network to 1980 Baseline**

The DSEIS proposes to amend the 1980 CDCA Plan language limiting the WEMO route network to existing routes of travel as of 1980. The proposed amendment was prompted by the court’s 2009 order, which determined that designation of routes after 1980 was inconsistent with that plan limitation. *CBD v. BLM*, 746 F. Supp. 2d at 1083-86 (holding that “the WEMO Plan simply ignores the language capping OHV routes to those existing in 1980, and designates thousands of OHV routes, a significant portion of which did not exist in 1980”). The court ordered BLM to remedy this deficiency by either designating a route network that complied with the plan limitation, or by amending the plan language and providing “a reasoned explanation based on information and data in the record why post-1980 routes should be designated.” *Id.* at 1085.

Each of the action alternatives in the DSEIS would amend the 1980 CDCA Plan “to eliminate the current ‘Limited to existing routes’ language and replace it with language to reflect that use will be ‘restricted to designated routes of travel.’” DSEIS at 2-6. BLM’s explanation for the proposed amendment is that the existing plan language “creates an unmanageable situation 35 years after the approval of the CDCA Plan;” “no longer serves current transportation and travel management needs;” and “does not conform to the procedures required in BLM’s Travel and Transportation Management (TTM) Handbook (H-8342),” which “establishes procedures for making route designations, including establishing new routes, and makes no reference to restricting BLM from establishing new routes.” *Id.* at 2-7 to 2-8. This does not satisfy the court’s order to provide “a reasoned explanation based on information and data in the record why post-1980 routes should be designated.” *CBD v. BLM*, 746 F. Supp. 2d at 1085.

BLM’s explanation suggests the agency is treating the amendment as paving the way for it to designate the vast route networks contemplated in the action alternatives. It is irrelevant that the

TTM Handbook establishes procedures for designating new routes where BLM has failed to comply with the legal requirements for when and how it can designate such routes. A post-hoc plan amendment cannot be used to justify otherwise invalid route network proposals that sanction decades of damaging route propagation made in violation of the 1980 CDCA Plan. BLM must provide a reasoned explanation for *why* those post-1980 routes should be designated and demonstrate how they satisfy the executive order minimization criteria and other legal requirements and how they are consistent with management requirements for special designated areas.

Just as BLM may not rely on the proposed plan amendment to justify its current proposals to designate thousands of miles of user-created routes, the agency may not rely on the final plan amendment in future planning processes to continue expanding the OHV travel network in the California Desert. To satisfy the executive order minimization criteria and other legal requirements, BLM must take steps to freeze and reduce the damaging motorized footprint. Thus, BLM should also include a provision in the proposed plan amendment that prohibits the designation of any new motorized routes in conservation lands designated in the DRECP or during future planning processes or legislative actions.

Finally, by including the proposed plan amendment in each of the action alternatives, BLM has circumvented meaningful analysis of the impacts of the proposed amendment and effectively pre-determined the outcome. To satisfy NEPA, BLM must include at least one alternative that preserves the existing CDCA Plan limitation and designates a route network that is consistent with that limitation. Another reasonable alternative would be to retain the existing plan language but provide a targeted amendment that exempts new routes necessary to provide connectivity of the system. *See also* Section IV(E) below.

***Recommendations:*** To the extent that BLM amends the 1980 CDCA Plan language limiting OHV use to existing routes of travel as of 1980, it must provide a reasoned explanation for why post-1980 routes should be designated and how they satisfy the executive order minimization criteria and other legal requirements. To that end, BLM should include in any plan amendment a provision that prohibits designation of any new routes in conservation lands designated in the DRECP or through future planning processes or legislative action. BLM also must ensure that its NEPA analysis of the proposed plan amendment is adequate by including at least one alternative that would retain the existing plan limitation and designate a route network consistent with that limitation.

## **2. Other Plan Amendments**

Under Alternatives 3 and 4, BLM proposes to designate three dry lakebeds as open to motorized use. *See* DSEIS at 2-10. We do not support this proposed amendment, which would cause additional fugitive dust and other adverse impacts, resulting in an even less balanced plan that would effectively create new open areas.

BLM also proposes to modify stopping and parking limitations. We support Alternative 2's proposal to limit stopping and parking to fifty feet within all ACECs and CDNCLs – a measure which would help protect those areas' significant conservation values. *See* Section VII below. This amendment should also apply to routes within national monuments.

### C. Implementation and Draft TMPs

Travel and transportation management planning must look beyond route designations and address implementation actions. BLM's preferred alternative would designate nine Travel Management Areas (TMAs). We appreciate that BLM produced draft TMPs for each TMA and made them available for public comment. However, those draft TMPs are incomplete. As the DSEIS explains, “[c]oncurrent activity-level travel management implementation plans are being developed” and will “be finalized after consideration of additional public input” from the current planning process. DSEIS at ES-6. BLM must ensure that the public has an opportunity to review the draft implementation plans prior to the TMPs being finalized.

Overall, the DSEIS and draft TMPs lack sufficient detail and commitment to ensure effective implementation of the WEMO Route Network Project. For instance, BLM acknowledges that its implementation actions are contingent on funding. *See* DSEIS at Appx. G-14. While we understand the agency's desire to retain flexibility around implementation, particularly given reduced and shifting budgets, the TMPs must provide sufficient detail to ensure implementation actions will actually be carried out – particularly if BLM is going to rely on implementation to satisfy legal obligations such as the minimization criteria. *See* Section II(A) above (relying heavily on potential future actions to satisfy minimization criteria).

First, BLM is required to monitor the effects of OHV use and practice adaptive management to make necessary adjustments to its travel management decisions. Executive Order 11644, § 8(a); 43 C.F.R. § 8342.2; BLM Manual 1626, § 4.10 (TMPs must include protocols for monitoring and enforcement). BLM is also obligated to close areas and routes where OHVs “are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, over authorized uses, or other resources.” 43 C.F.R. § 8341.2(a). The DSEIS lists defining a “monitoring plan to evaluate the effectiveness of the WEMO Plan in achieving management objectives” as one of its goals. *See* DSEIS at ES-10. However, the DSEIS includes few details about what that monitoring program will look like, beyond general statements that it will evaluate compliance with designations and use restrictions, effectiveness of closure, signing, and rehabilitation efforts, etc. Appendix G includes more detail regarding frequency of monitoring for each TMA, but is still overly vague as it fails to define what monitoring will actually entail and does not contain specific triggers or thresholds. *See* DSEIS Appendix G.

The adaptive management process described in the DSEIS is similarly weak and non-committal, with qualifying language that is subject to budget and staffing constraints and that mitigation actions “may be modified based on monitoring results.” *See* DSEIS at 2-29. BLM states that an “adaptive management strategy” may include “integrat[ing] a monitoring program that is able to detect the necessary information for strategy evaluation” and “incorporat[ing] feedback loops that link implementation and monitoring to a decision-making process . . . that result in appropriate changes to management.” *Id.* at 7-5. However, the DSEIS fails to provide specific triggers to implement these actions. Absent a more detailed and robust monitoring and adaptive management plan with clearly defined and measurable questions and indicators, field protocols, information on the frequency and scope of monitoring, and defined thresholds and triggers for adaptive management, BLM cannot comply with its ongoing, affirmative obligations to monitor

the effects of OHV use, enact necessary closures, and make other adaptive changes to the TMPs. In addition, BLM should provide the public with all the baseline data it plans to use for monitoring purposes.

Second, BLM must include signing and outreach components, including “best management practices for signing and considerations in publishing maps and disseminating other information.” BLM Manual 1626, § 4.9. While we generally support BLM’s planned approach of signing major entry points and campgrounds outlined in Appendix G of the DSEIS, BLM should place more emphasis on making maps accessible and engaging in public education to reduce the burden on signing and enforcement. BLM has informed us that it intends to make geo-referenced pdfs of the final designated route network available for download on smartphones and other GPS-enabled devices, which will be a good start. The DSEIS mentions the use of GPS units to record the location of route signs, but BLM should also expressly articulate its intention to make this data available for download on smartphones and other outward-facing GPS-enabled devices. *See* DSEIS at 2-55.

Third, TMPs must address the process for decommissioning transportation linear disturbances, including through “site-specific reclamation actions, natural revegetation, or a toolset to complete reclamation should opportunities arise.” BLM Manual 1626, § 4.11. We appreciate the inclusion of “restoration priorities” within the TMPs. *See* DSEIS Appx. G, including restoration priorities for each TMA. However, the DSEIS and the restoration priorities included in Appendix G focus primarily on passive restoration. While passive restoration may be effective in some instances, active decommissioning is an important tool in minimizing environmental impacts and easing monitoring and enforcement obligations. BLM should, at a minimum, preserve its ability to conduct more active restoration where funding or partnership opportunities arise, or where necessary to address unauthorized uses or continuing environmental impacts such as erosion and sedimentation. Ideally, BLM should analyze and authorize more active restoration and set targets for physical decommissioning based on factors such as achieving route density thresholds in important wildlife habitat, reducing sedimentation in fragile soil types and on steep slopes, and addressing enforcement and safety issues. The decommissioning and restoration of routes is essential for BLM to begin to remedy existing and help to prevent future disturbance cap exceedances in ACECs and CDNCLs and to achieve conservation objectives and management within special designated areas more generally. *See* Sections VI and VII below for more analysis on this issue.

Finally, as stated in the DSEIS, law enforcement presents significant challenges in the WEMO plan area. The DSEIS outlines priorities for routine patrol areas, including: the unauthorized use of restored transportation linear disturbances, route proliferation issues, and wilderness, WSAs, and lands managed for wilderness characteristics that are adjacent to designated routes. *See* DSEIS at 2-58 to 2-59. The DSEIS fails to define what “routine” means or to provide specific triggers to alert law enforcement that more frequent patrol may be necessary. The DSEIS states, “[o]nce trends or needs are assessed, the Field Office Manager prioritizes resources and directs additional law enforcement patrol in specific subregions as needed.” *See* DSEIS at 2-58. Merely “assessing” trends or needs is not sufficient; there should be specific thresholds and triggers in place for personnel to be able to recognize when action should be taken. We can appreciate the challenge BLM faces in enforcing such a vast network of routes, but BLM must ensure its

planned enforcement actions are adequate. The DSEIS does not provide the necessary assurances.

**Recommendations:** BLM must articulate a meaningful monitoring and adaptive management program, with clearly defined and measurable questions and indicators, field protocols, information on the frequency and scope of monitoring, and defined thresholds and triggers for adaptive management. BLM’s implementation actions should place more emphasis on maps and public education to reduce signing and enforcement obligations. BLM should preserve its ability to conduct more active restoration where funding or partnership opportunities arise, or where necessary to address unauthorized uses or continuing environmental impacts such as erosion and sedimentation, and should analyze and authorize more active restoration and set targets for physical decommissioning based on factors such as achieving route density thresholds in important wildlife habitat, reducing sedimentation in fragile soil types and on steep slopes, and addressing enforcement issues. BLM should use this opportunity to decommission and restore routes in ACECs and CDNCLS that have exceeded their disturbance caps and in other special designated areas. BLM must establish specific timelines and triggers for patrolling and elevated action to ensure law enforcement is effective.

#### **D. Quiet Recreation**

The BLM’s comprehensive approach to travel and transportation management planning is designed to be “inclusive of all modes of transport. Planning should, therefore, address motorized use, non-motorized, and non-mechanical types of travel . . .” BLM Manual 1626 § 2.3. In short, BLM is charged with looking holistically at a travel network that includes both motorized and non-motorized recreational routes to ensure access for all user groups, including those seeking “quiet use” opportunities. Planning for non-motorized and non-mechanized travel is consistent with FLPMA, which requires BLM to develop land use plans that “consider the relative scarcity of values involved and the availability of alternative means and sites for realization of those values.” 43 U.S.C. § 1712(c)(6). It is also consistent with NEPA, which disallows “privileging one form of use over another.” *See Or. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1124 (9th Cir. 2010) (holding that BLM “must consider closures of significant portions of the land it manages” to OHV use, since “[c]losures, not just “limited” designations, must be considered to comply with NEPA”). Indeed, the federal court in 2009 rejected the 2006 WEMO plan in part because it “skew[ed] route designation decision-making in favor of ORV use.” *CBD v. BLM*, 746 F. Supp. 2d at 1077 (quotations and citation omitted).

BLM renewed its commitment to “identify, promote, and expand a system of [non-motorized] trails for hiker and equestrian use” in a 2015 Memorandum of Understanding with TWS and Back Country Horsemen of America (included in Appendix I(b)). Particularly in ACECs, National Conservation Lands, and other areas designated and managed to protect their conservation values and where solitude and quiet-use recreation draw visitors, BLM should prioritize identification and designation of non-motorized routes.

Unfortunately, all alternatives in the 2018 DSEIS clearly prioritize designation of motorized routes over non-motorized and non-mechanized trails. Indeed, as summarized in Appendix VIII addressing quiet recreation trails, the preferred alternative would designate less than 3% of the route system for quiet use: a paltry 183 miles of quiet recreation trails, compared to 6,299 miles



of motorized routes. Moreover, the number of quiet recreation trails is inflated, as a significant proportion of those miles are the Pacific Crest Trail (PCT) and are not reflected in the no action alternative. Appendix VIII at 2. While we wholeheartedly support the BLM promoting the PCT's outstanding quiet recreation opportunities by including it as a designated non-mechanized trail in the WEMO Route Network Project, the BLM may not rely on what appear to be significant increases in quiet recreation trails under the preferred alternative that simply reflect a change in data as opposed to any changes on the ground.

We appreciate that BLM, in some instances, adopted portions of citizen proposals for non-motorized trails. For instance, TWS, CalWild, and Backcountry Horsemen of California submitted such a proposal for the Middle Knob area (included in Appendix I(d)). As articulated in the June 13, 2018 comments submitted by CalWild, TWS, California Native Plant Society, Conservation Lands Foundation, and Native American Land Conservancy, BLM's preferred alternative adopts significant portions of that proposal. BLM also adopted some, but not all, of the hiking trails proposed by Friends of Juniper Flats, as addressed in the comments submitted by that organization on June 12, 2018. And the agency adopted some, but not all, of the recommendations for quiet recreation trails in the detailed route inventory reports submitted January 25, 2016 by CalWild and TWS and included in Appendix I(b). TWS and other organizations are submitting additional recommendations and proposals for non-motorized and non-mechanized trails as part of the June 14, 2018 Citizen's Alternative for the Mojave Trails and Sand to Snow National Monuments (attached as Appendix X) and in Appendix IX, which provides route-specific comments and field data for important conservation areas inventoried by TWS in 2018. These and any other quiet recreation trail proposals should be adopted in the final WEMO plan.

In addition, BLM should actively seek opportunities to convert existing motorized routes – whether legal or illegal – to non-motorized or non-mechanized trails, particularly in important conservation areas such as national monuments, ACECs, and CDNCLs. *See* Sections V-VII below. Being more proactive and deliberate in designing a route network that preserves and enhances quiet recreation opportunities will also assist BLM in satisfying its obligation to minimize conflicts between recreation groups.

***Recommendations:*** BLM must provide a balanced travel and transportation plan for a range of recreational visitors and uses. The agency must analyze and designate a travel network that does not disproportionately favor motorized recreation access over quiet-use recreational trails. BLM should convert some of its proposed motorized routes into non-motorized or non-mechanized trails, particularly in designated conservation areas. BLM should adopt citizen proposals for quiet recreation trails.

### **E. Street Legal Only**

TWS supports BLM's proposal to designate certain county-maintained and other routes as limited to street legal only (SLO) vehicles. Limiting routes to SLO is an appropriate management tool to prevent or mitigate adverse environmental and social impacts associated with OHV use on public lands – particularly in rural-residential, checkerboard, and other areas where trespass on private lands is an issue. BLM regulations and policies clearly permit the agency to restrict OHV use based on type of vehicle, among other limitations. *See* 43 C.F.R. §§ 8340.0-5(g),

8341.1(b), 8342.1, 8342.2(a); BLM Manual 1626, §§ 3.1(B), 4.2, 4.3, 7(5), 7(13)(b). The CDCA Plan echoes this authority, describing permissible route limitations to include, among others, “types of vehicles allowed” and “permitted or licensed vehicle use only.” CDCA Plan 1980, as amended, ch. 3, Motorized-Vehicle Access, pp. 77-78; *see also id.* at p. 82 (requiring monitoring and adaptive management, including “additional use limitations (season of use, limitations on the number or types of vehicles permitted, speed limits, etc.)” when needed to address impacts in sensitive areas or where compliance is unsuccessful). Indeed, the 2005 WEMO FEIS analyzed an alternative that would have imposed SLO restrictions. Similarly, the management plan for the Carrizo Plain National Monument imposes SLO restrictions on the vast majority of its motorized travel network. Approved Resource Management Plan, p. II-71. In short, imposition of SLO restrictions is a common management tool within BLM’s authority.

BLM should also immediately adopt its interim proposal for SLO restrictions on 148 miles of county-maintained routes pending issuance of the WEMO ROD. It has now been nearly 17 months since BLM committed to initiating a process to determine whether a temporary public land restriction order imposing interim SLO restrictions should be issued and over a year since BLM accepted comments on the proposal. *See* Appendix I(c), which includes TWS’s comments on that proposal. The DSEIS states that an EA on the interim SLO restriction proposal is expected this spring. DSEIS at 1-5 to 1-6. BLM has yet to issue an EA or decision for that proposal, which was designed to address an immediate interim need for protections during the WEMO planning process. Interim and permanent SLO restrictions are necessary to discourage illegal OHV trespass on private property and to ensure compliance with state and local laws. For instance, a county ordinance prohibits operation of OHVs on public or private property (excluding highways) without written permission. San Bernardino County, CA Code of Ordinances, Ch. 4: Off-Highway Motor Vehicle Use, § 28.0403, while state law generally prohibits OHVs from driving on publicly maintained roads, Cal. Vehicle Code §§ 38025, 38026, 38026.1, 360;<sup>10</sup> *see also* 43 C.F.R. § 8341.1(d) (prohibiting operation of OHVs in violation of relevant state laws and regulations).

The final WEMO plan should include permanent SLO restrictions on all county-maintained and county service area routes in rural-residential and urban-interface areas. It should also utilize SLO restrictions to address social and environmental impacts throughout the planning area, particularly in National Monuments, CDNCLs, ACECs, Lands with Wilderness Characteristics, and other special area designations. For any routes located in those areas or for which the agency or the public has identified real or potential resource impacts or other conflicts, at least one

---

<sup>10</sup> Under California law, OHVs are generally prohibited from driving on “highways” (which are defined to include all publicly maintained roads) except in very narrow circumstances which are not found for the road segments at issue in this proposal. *See* Cal. Vehicle Code § 360 (“‘Highway’ is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.”); Cal. Vehicle Code § 38025 (providing narrow exceptions to allow OHVs to cross highways (including county maintained roads) for emergency purposes and where crossings are designated); Cal. Vehicle Code § 38026 (providing for designation of portions of roads of less than 3 miles for combined use in narrow circumstances where the segment provides “a connecting link between off-highway motor vehicle trail segments, between an off-highway motor vehicle recreational use area and necessary service facilities, or between lodging facilities and an off-highway motor vehicle recreational facility and if it is found that the highway is designed and constructed so as to safely permit the use of regular vehicular traffic and also the driving of off-highway motor vehicles on that highway” and only after obtaining an opinion from the Commissioner of the Highway Patrol that the use will not create a traffic or safety hazard); Cal. Vehicle Code § 38026.1 (providing for a pilot project to allow for designation of dual use of County maintained roads in Inyo County only).

alternative should close the route and another should impose relevant limitations such as SLO, seasonal restrictions, etc. *See* Section IV(E), range of alternatives and Section VII, special area designations for further details on why this is necessary to satisfy NEPA and the designation criteria at 43 C.F.R. § 8342.1.

**Recommendations:** BLM should immediately implement the interim SLO proposal. The agency should also include in at least one alternative, including the preferred alternative, SLO restrictions on all county-maintained and county service area routes in rural-residential and urban-interface areas. It should do the same for routes located in designated conservation areas or where the agency or the public has identified resource impacts or conflicts.

#### **IV. NATIONAL ENVIRONMENTAL POLICY ACT**

The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, requires agencies to, among other things, take a “hard look” at the direct, indirect, and cumulative impacts of proposed actions, as well as mitigation measures; consider a range of reasonable alternatives, including a “baseline” no action alternative and an alternative that minimizes environmental impacts; and facilitate meaningful public involvement. The DSEIS for the WEMO Route Network Project fails in a number of ways to satisfy NEPA and disregards the court’s 2009 and 2011 orders to remedy the identified NEPA violations.

##### **A. BLM Must Supplement or Revise the draft EIS**

NEPA requires preparation of a supplemental draft EIS where the agency “makes substantial changes in the proposed action that are relevant to environmental concerns” or “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c). “If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” 40 C.F.R. § 1502.9(a). In either case, the agency must seek public comment on the revised or supplemental DEIS. *See* 40 C.F.R. §§ 1502.9(a) & (c)(4), 1503.1(a)(4); *see also California v. Block*, 690 F.2d 753, 771 (9th Cir. 1982) (“Only at the stage when the draft EIS is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment. No such right exists upon issuance of a final EIS.”).<sup>11</sup>

Remedying the numerous and significant deficiencies identified throughout these comments will necessarily result in substantial changes to the proposed action and the corresponding environmental analysis. The DSEIS alternatives are flawed both in terms of their inadequate range and because the proposed route networks do not comply with the minimization criteria or laws and policies governing special designated areas. Developing a route network to remedy those and other deficiencies will necessarily require at least one additional alternative and

---

<sup>11</sup> The Ninth Circuit Court of Appeals has adopted the Council on Environmental Quality guidance that supplemental NEPA is not required when: (1) the new alternative is a minor variation of one of the alternatives discussed in the draft EIS, and (2) the new alternative is qualitatively within the spectrum of alternatives that were discussed in the draft EIS. *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011). It is unlikely that these requirements would be satisfied with respect to a new alternative that remedies the identified NEPA and executive order minimization criteria deficiencies. Therefore, a supplement to the DSEIS would likely be necessary.

significant additional analysis, which in turn will require preparation of a supplemental or revised draft EIS. Moreover, the significant and numerous data quality and integrity issues and information gaps identified in Section II above render the DSEIS “so inadequate as to preclude meaningful analysis” and review by the public, and therefore necessitate a revised draft EIS. *See* 40 C.F.R. § 1502.9(a).

**Recommendations:** BLM must prepare a supplemental or revised draft EIS that remedies all the deficiencies identified throughout these comments.

### **B. The DSEIS Fails to Facilitate Meaningful Public Input and Informed Decision-making**

NEPA is designed to foster informed and transparent decision-making. *See* 40 C.F.R. § 1500.1; *Robertson*, 490 U.S. at 349. To achieve its “primary purpose” of “allow[ing] for informed public participation and informed decision making,” the language of an EIS must be “clear” and “supported by evidence that the agency has made the necessary environmental analyses.” *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9th Cir. 2006); *accord* 40 C.F.R. § 1502.1. More broadly, NEPA requires BLM to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(d). Thus, an EIS must “be written in plain language” and presented in a way that “the public can readily understand.” 40 C.F.R. § 1502.8; *see also Or. Env’tl. Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987) (“an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS”). “The information must be of high quality” because “[a]ccurate scientific analysis . . . and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

As explained in Section II above, the DSEIS for the WEMO Route Network Project generally fails to enable meaningful public review and understanding, and therefore violates NEPA.

**Recommendations:** BLM must correct each of the barriers to meaningful public review and understanding identified in Section II above and release a revised or supplemental draft EIS for public review.

### **C. The DSEIS Improperly Relies on an Inflated and Inaccurate Baseline**

As mentioned in Section II(B) above, BLM is required and has failed to establish accurate baseline conditions to determine the effect that the proposed action will have on the environment. *See* 40 C.F.R. § 1502.14; *Half Moon Bay Fisherman’s Marketing Ass’n*, 857 F.2d at 510. BLM may not rely on an inflated baseline inventory to justify its massive proposed route network. The fact that routes exist on the ground in no way obligates the agency to consider designating them. To the contrary, the executive order minimization criteria require BLM to close those routes to avoid additional resource damage and conflicts between recreational uses. *See* Section III(A) above. BLM’s attempt to more accurately inventory OHV routes that exist on the ground is an important step in identifying the damaging and chaotic baseline conditions that NEPA requires in order for the agency to make its route designation decisions.

**Recommendations:** To comply with NEPA, BLM should ground-truth and verify the accuracy of its inventory and disclose those baseline conditions in the DSEIS. BLM may not, however, sanction the damaging and chaotic status quo on the ground by designating user-created routes and other linear features as part of the official travel network.

#### **D. The DSEIS May Not Utilize the Illegal 2006 Route Network as the No Action Alternative**

NEPA requires agencies to include a no action alternative in every EIS. 40 C.F.R. § 1502.14(d). The purpose of the no action alternative is to “allow[ ] policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action.” *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633, 642 (9th Cir. 2010). In other words, the no action alternative “provide[s] a baseline against which the action alternative[s] are evaluated.” *Id.* (quotations and citation omitted).

Here BLM defined the DSEIS’s no action alternative based on the illegal 2006 route network. Specifically, the no action alternative consists of 6,074 miles (the 5,098 miles designated in the 2006 Plan, plus other authorized and administrative routes). *See* DSEIS at 1-8.<sup>12</sup> As the DSEIS properly recognizes, the network defined in the no action alternative “forms the basis for the comparison of impacts between alternatives.” *Id.* Yet that critical basis for comparison reflects an illegal route network that the court invalidated in 2009. The Ninth Circuit has rejected this approach.

In *Friends of Yosemite Valley v. Kempthorne*, the Ninth Circuit invalidated the no action alternative for a supplemental EIS that relied on a previously overturned management plan for the Merced Wild and Scenic River. 520 F.3d 1024, 1038 (9th Cir. 2008). The court found it “logically untenable” for the no action alternative to assume the existence of the illegal plan that was being revisited. The court instructed that the proper no action alternative “should have included the elements from” earlier plans, and that “including the [invalidated plan] – even those elements of the [plan] that we did not explicitly strike down – in the baseline predetermines [management decisions] based on a plan that was held invalid.” *Id.* The same is true here, where the DSEIS assumes that the 2006 route network (plus some) represents the baseline no action alternative, even though the court invalidated those route designation decisions for failure to comply with the executive order minimization criteria and NEPA. By assuming that the invalid 2006 route network would remain in place absent the current route designation project, BLM’s no action alternative skews the entire NEPA analysis and undermines the court’s order to reconsider its OHV travel network based on additional NEPA analysis and proper application and implementation of the minimization criteria.

The DSEIS attempts to justify its no action alternative by relying on the court’s 2011 remedy order. *See* DSEIS at 2-19 (“based on the Remedy Order, [the no action alternative] is the route network currently in use until a revised network is approved.”) However, neither the court’s 2009 merits ruling nor its 2011 remedy order support BLM’s approach. The merits ruling requires BLM to utilize a consistent, well-defined no action alternative that represents the status quo and serves “as the benchmark by which the various alternatives are compared.” *CBD v.*

---

<sup>12</sup> As discussed in Section II(D) above and Appendix V, we are deeply concerned with the significant increase in mileage between the 2006 plan and the current no action alternative.

*BLM*, 746 F. Supp. 2d at 1091. BLM’s explanation for not only using, but increasing, the previously invalidated number of approved routes is insufficient and does not reflect the status quo that the 2009 merits ruling requires. *Id.*

The court’s 2011 remedy order also does not support BLM’s approach. That order reiterates that BLM must “prepare a supplemental NEPA analysis that reconsiders the ‘no action’ alternative.” *CBD v. BLM*, 2011 U.S. Dist. LEXIS 11764, at \*8. That BLM left portions of the illegal route network in place *during remand* to avoid uncertainty and confusion does not somehow sanction use of the illegal route network as the no action alternative. *See id.* at \*15-20. Moreover, the court specifically vacated other portions of the invalid route network, including new routes adopted in the Rand Mountains/Fremont Valley, the Afton Canyon Natural Area, and the Stoddard Valley to Johnson Valley corridor. *Id.* at \*14-15. BLM may not assume that an illegal route network, portions of which have been vacated by the court, represents the status quo for purposes of the no action alternative. Instead, BLM should follow the direction in the court’s orders and define a consistent and transparent no action alternate that reflects the status quo prior to the illegal 2006 Plan.<sup>13</sup>

The no action alternative is deficient in other respects as well, which we address in Section II(D) above.

**Recommendations:** BLM may not rely on the illegal 2006 route network as its no action alternative. Instead, BLM must follow the direction in the court’s 2009 and 2011 orders and define a consistent and transparent no action alternative that reflects the status quo prior to the illegal 2006 Plan.

## E. Range of Alternatives

An EIS “shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. To that end, NEPA requires agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action. *Id.* § 1502.14(a); *see also* 42 U.S.C. § 4332(2)(E) (agencies must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning

---

<sup>13</sup> The situation is similar to other cases where the courts have left all or significant portions of invalid route networks in place during remand. For example, in *Idaho Conservation League*, the court invalidated the travel management plan for the Salmon-Challis National Forest but left all but a handful of the most damaging routes open pending completion of a supplemental EIS and designation of a new route network. *See* 766 F. Supp. 2d at 1079 (declining to vacate the illegal travel network because “the pre-decision status quo for travel management on the [forest] is not a tenable option”); *Idaho Conservation League v. Guzman*, No. CV 4:10-26-E-REB (D. Idaho Nov. 1, 2011) (attached) (remedy order remanding the travel plan without vacatur, but granting injunctive relief to close several particularly damaging routes). The Forest Service’s supplemental EIS did not, however, utilize the invalid route network as its no action alternative. Instead, it properly defined the no action alternative as “the authorized travel management situation” as of 2009 when the agency initially began its travel management planning process. *See* Salmon Challis National Forest Travel Planning and OHV Designation Project to Comply with District of Idaho Court Order, Final Supplemental Environmental Impact Statement, vol. 1, at 3-5 (Jan. 2014), *available at* [http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/85978\\_FSPLT3\\_1604999.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/85978_FSPLT3_1604999.pdf).

alternative uses of available resources”). The alternatives analysis is the “heart” of an EIS. 40 C.F.R. § 1502.14. “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997); *see also* 40 C.F.R. § 1508.25(c) (scope of an EIS dictated by its range of alternatives, including no action, “[o]ther reasonable courses of actions,” and mitigation measures). This includes more environmentally protective alternatives and mitigation measures, consistent with NEPA’s basic policy objective to protect the environment. 40 C.F.R. § 1500.2(e) (agencies must “[u]se the NEPA process to identify and assess reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment”); *see also, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1121-22 (9th Cir. 2002) (citing cases), *abrogated on other grounds by The Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178-80 (9th Cir. 2011) (en banc). “The existence of a viable but unexamined alternative renders an [EIS] inadequate.” *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted). The “touchstone” of the inquiry is “whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.” *Id.* at 1005 (quotations and citation omitted).

BLM nominally attempts to comply with the 2009 court order by altering the route mileage associated with its various alternatives. *See CBD v. BLM*, 746 F. Supp. 2d at 1086-90 (finding NEPA violation where there was “clearly a range of alternatives that could have been considered that would have reduced the OHV route network”). Yet each of BLM’s alternatives would result in a significant motorized route network of over 5,000 miles (and as many as 10,864 miles) of mostly user-created routes that have proliferated over decades of mismanagement. *See* DSEIS at 2-120, Table 2.4-2. The DSEIS fails to include an alternative with fewer than 5,231 miles of motorized routes, which is over 100 miles more than the illegal 2006 Plan. This is a clear violation of the court’s direction to analyze at least one lower-mileage alternative. Additionally, there is no alternative that excludes routes created by users since 1980. *See* Section III(B) above, covering CDCA plan amendment for further analysis of this issue.

Alternatives that range from 5,231 to 10,864 miles, with two intermediate alternatives of 6,074 and 6,313 miles, do not constitute a true range that satisfies NEPA: the bottom 48% of the range of reasonable alternatives is missing. *Compare California v. Block*, 690 F.2d 753, 765-67 (9th Cir. 1982) (range of alternatives that included allocating a maximum of 33% of available roadless lands to wilderness was unreasonable), *with Mont. Wilderness Ass’n*, 725 F.3d at 1004-05 (range of alternatives that included opening between 0 and 10 of 10 existing airstrips, with three intermediate options, was reasonable). This scenario is like the situation in *California v. Block*, where the Ninth Circuit invalidated an EIS that “uncritically assume[d] that a substantial portion of the [roadless] areas should be developed and consider[ed] only those alternatives with that end result.” 690 F.2d at 767. Here, the DSEIS assumes that a substantial portion of the routes that exist on the ground should be designated and considers only those alternatives with that result.

Per the court’s direction and NEPA, a reasonable range of alternatives for the WEMO Route Network Project must include one or more action alternatives that would designate between 0 and 5,098 miles of motorized routes. Such an alternative might exclude all or most routes created by users since the 1980 CDCA plan. Absent such an alternative, each of the action alternatives

generally prioritize OHV use and reward decades of damaging route propagation, thereby skewing the alternatives analysis.<sup>14</sup> Moreover, absent a lower-mileage alternative that excludes user-created routes, BLM has effectively predetermined its proposal to amend the CDCA plan language that limits the WEMO route network to existing routes of travel as of 1980. *See* DSEIS at 2-6, Table 2.1-1 (proposed plan amendment to be made under all action alternatives); Section III(B), above.

BLM also must analyze an alternative under which no routes would be designated as open to recreational OHV use.<sup>15</sup> This alternative is necessary to provide an accurate comparison for analysis of the impacts associated with the proposed route designations, including those that allow continued OHV use in existing areas or on existing routes. Unlike in a typical NEPA analysis where the no action alternative provides that baseline for comparison, here the no action alternative reflects the current management status quo, with an illegal travel plan that sanctions decades of damaging route proliferation. This is similar to the situation in *Western Watersheds Project v. Abbey*, where the Ninth Circuit overturned a BLM NEPA analysis that failed to analyze an alternative that would eliminate grazing in the Missouri Breaks National Monument. 719 F.3d 1035, 1050-53 (9th Cir. 2013). Absent such an alternative, and where both the no action and action alternatives permitted continued grazing, the court found that the agency was “operating with limited information on grazing impacts,” in violation of NEPA.<sup>16</sup> The same is true here, where an alternative that designates no routes as open to OHV use is necessary to facilitate informed decision-making and public participation about the impacts of the action alternatives. *See Mont. Wilderness Ass’n*, 725 F.3d at 1005. Absent this and another lower-mileage alternative, the required range of reasonable alternatives will remain missing.

As stated elsewhere in these comments, BLM should also analyze at least one alternative that closes nearly all routes located in special designation areas (except those that do not provide critical motorized access to popular destinations) and at least one alternative that imposes relevant limitations, such as SLO, seasonal restrictions, etc. on routes in special designation areas.

Finally, BLM must fully analyze in at least one alternative, including the preferred alternative, the proposed citizen’s alternative for the Mojave Trails and Sand to Snow National Monuments attached in Appendix X. This reasonable alternative would ensure protection of monument objects while preserving important and necessary motorized access to key destinations. *See also* Section V below. And to the extent that BLM failed to analyze elements of previously submitted citizen’s proposals, including for the Middle Knob and Juniper Flats areas, it must remedy that and ensure those proposals are fully analyzed in the range of alternatives. *See* Section II(B) above.

---

<sup>14</sup> As described above in Section III(A), the current alternatives also fail to satisfy BLM’s substantive executive order duty to locate designate routes to minimize resource damage and conflicts with other recreational uses.

<sup>15</sup> Specially authorized or permitted motorized uses to, for example, access valid existing rights would still be allowed. *See* Exec. Order No. 11,644, § 2(3) (describing exempted uses).

<sup>16</sup> *See also, e.g., New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 708-11 (10th Cir. 2009) (invalidating NEPA analysis that failed to analyze an alternative that would close the entire area to oil and gas development because, “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded”).



**Recommendations:** BLM must analyze a full range of reasonable alternatives, including one or more alternatives that would designate fewer than 5,231 miles of motorized routes and not prioritize OHV use over other uses. A reasonable range should include one alternative that would designate no routes as open to recreational OHV use, and at least one additional alternative that excludes all or a majority of routes created by users since adoption of the 1980 CDCA Plan. BLM should also analyze the proposed citizen’s alternative included in Appendix X, as well as all other reasonable citizen’s proposals that have been submitted as part of the planning process.

#### **F. The DSEIS Fails to take a Hard Look at the Direct, Indirect, and Cumulative Impacts of the Proposed Route Network**

NEPA dictates that BLM take a “hard look” at the environmental consequences of a proposed action, including its direct, indirect, and cumulative effects. *Robertson*, 490 U.S. at 348; 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. The required hard look encompasses effects that are “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

The court invalidated the 2006 WEMO Plan in part due to its failure to take a hard look at the impacts of the OHV route network on a variety of resources. *CBD v. BLM*, 746 F. Supp. 2d at 1094-99. The court found that, while the FEIS for the 2006 Plan described the impacts that OHV use in general may have on those resources, it failed to “provide the public with information about how to assess the particular impact of the proposed project.” *Id.* at 1094. While the DSEIS attempts to provide that analysis, it falls short as addressed elsewhere throughout these and other route-, area-, and resource-specific comments. For example, as described in Section IX below, the DSEIS fails to take a hard look at the impacts of the proposed route network to cultural and archaeological resources because BLM has not conducted the necessary inventory work to locate those resources. The DSEIS also fails to take a hard look at impacts to the management of conservation areas including ACECs, CDNCLs, national monuments, lands with wilderness characteristics, and wilderness study areas, as described in Section VII below. Further, the DSEIS fails to take a hard look at impacts to air quality and quiet recreation. *See* Section VIII below and Section III(D) above, respectively. Comments submitted by other groups to BLM through the current planning effort identify comparable deficiencies related to issues such as: hydrology and soils (*see* CBD comments) and rare plants (*see* California Native Plant Society comments).

The DSEIS fails to capture the significant adverse impacts associated with allowing continued use on existing routes included in the no action and other alternatives. Under the preferred alternative (as well as the other action alternatives), BLM would designate all or a significant portion of those routes. Yet, as the court held in 2009, most of those existing routes have never been subject to the minimization criteria or adequate NEPA analysis. To capture the ongoing impacts of designating those routes and provide an accurate basis for comparison, BLM should analyze an alternative that would designate no routes as open to recreational OHV use and another that would exclude all or a majority of routes created by users since 1980. *See* Section IV(E) above. Absent that comparison, the DSEIS “has deprived BLM of information on the environmental impacts of the unconsidered alternatives,” and the agency “is operating with limited information on [the] impacts” of sanctioning continued OHV use on existing routes. *See*

*W. Watersheds Project*, 719 F.3d at 1050 (NEPA required BLM to analyze alternatives that would reduce or eliminate grazing).

**Recommendations:** BLM must take a hard look at the direct, indirect, and cumulative impacts of its proposed route network, including but not limited to air quality, cultural resources, special designations, and impacts associated with continued use of routes in the no action alternative.

### **G. The DSEIS Relies on Uncertain Mitigation Measures and Fails to Assess their Effectiveness**

“Implicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ is an understanding that the EIS will discuss the extent to which such adverse effects can be avoided.” *Robertson*, 490 U.S. at 351-52 (quoting 42 U.S.C. § 4332(2)(C)(ii)). Accordingly, an EIS must discuss appropriate mitigation measures. 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b).<sup>17</sup> Those measures “must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (quotations and citation omitted).

BLM attempts to make improvements to its analysis of monitoring actions for various transportation and management issues in Appendix G to the DSEIS. However, the analysis still proves to be insufficient as there are no triggers for adaptive management. Monitoring must result in meaningful adaptive management with enforceable triggers to ensure these issues are addressed in a timely manner. Additional information on monitoring and mitigation is provided in Section III(A) above, covering minimization criteria.

Simply identifying mitigation measures, without analyzing their effectiveness violates NEPA. “A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Id.* (quotations and citation omitted). Rather, an “essential component of a reasonably complete mitigation discussion” must include “an assessment of whether the proposed mitigation measures can be effective.” *S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009). In addition, CEQ has instructed that the “possibility of mitigation” should not be relied upon to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*; see also *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002).

As described above, BLM relies heavily on potential mitigation measures to reduce the impacts of its proposed route network. The DSEIS presents lists of “potential” “resource-specific” and “network-wide” mitigation measures as well as designation changes to a route segment or entire route. DSEIS at 2-20; *id.* at 2-28 to 2-36, Table 2.1-3 (resource-specific measures); *id.* at 2-79 to

---

<sup>17</sup> 40 C.F.R. § 1508.20 defines mitigation to include:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

2-83, Table 2.3-1 (network-wide measures under no action alternative); *id.* at 2-89 to 2-90, Table 2.3-5 (network-wide measures under alternative 2); *id.* at 2-100 to 2-103, Table 2.3-8 (network-wide measures under alternatives 3); *id.* at 2-111 to 2-113, Table 2.3-9 (network-wide measures under the proposed action). The resource-specific measures listed “are examples of potential actions that *may be taken* when determined appropriate for the particular location and resource/concern that is present along with determined cause(s).” *Id.* at 2-28 (explaining that “[t]he mitigation measure(s) employed will be based on a case-by-case analysis, based on the implementation strategies in the travel management plans”). Yet the DSEIS fails to provide any meaningful assessment of the effectiveness of the listed measures. Chapter 4 of the DSEIS repeats the same, inadequate approach for each resource that will be adversely affected by OHV use on the designated route system. *See, e.g., id.* at 4.2-8 (simply repeating the list of resource-specific mitigation measures for air resources); *id.* at 4.3-8 (repeating the list of resource-specific mitigation measures for soil resources). As the Ninth Circuit has held, such “broad generalizations” and references to potential mitigation measures “do not constitute the detail as to mitigation measures that would be undertaken, and their effectiveness, that the [agency] is required to provide.” *See Neighbors of Cuddy Mountain*, 137 F.3d at 1381.

BLM’s approach is similar to *National Trust for Historic Preservation v. Suazo*, where the court invalidated a decision to allow recreational target shooting in the Sonoran Desert National Monument. There BLM had “propose[d] a list of administrative actions to mitigate damage to the Monument from recreational shooting,” including “a list of best management practices” and “the possibility” that BLM may impose additional restrictions or closures in the future. No. CV-13-01973-PHX-DGC, 2015 U.S. Dist. LEXIS 39380, at \*27-28 (D. Ariz. Mar. 27, 2015). The EIS failed, however, to evaluate the effectiveness of those measures and whether and how they would decrease the significant adverse impacts associated with recreational shooting. *Id.* at \*28-29. Instead, the mitigation discussion functioned as “a statement of what BLM hopes will happen,” which the court concluded “is not the kind of ‘hard look’ that NEPA requires.” *Id.* The court specifically rejected BLM’s reliance on the possibility of future closures, finding that “[t]his sort of wait-and-see approach undermines the purpose of NEPA.” *Id.* at \*31-32. Providing a laundry list of potential mitigation measures that BLM *hopes* will reduce the otherwise significant adverse impacts associated with the proposed WEMO route network is likewise inadequate. Instead, BLM must describe when and how it intends to implement and enforce those measures, and meaningfully assess their effectiveness. *See, e.g., Okanogan Highlands All. v. Williams*, 236 F.3d 468, 477 (9th Cir. 2000) (upholding EIS where “[e]ach mitigating process was evaluated separately and given an effectiveness rating”).

**Recommendations:** BLM must meaningfully assess the effectiveness of the mitigation measures relied upon in the DSEIS (importantly, reliance on those measures is insufficient to fully satisfy the executive order minimization criteria, as discussed above). Rather than providing a menu of “potential” mitigation measures that may be implemented in the future, the agency must describe when and how it intends to implement and enforce the measures it is relying on.

## H. Climate Change

The emerging and intensifying impacts of climate change are affecting ecosystems, natural resources, and communities across the nation and the world. As the DRECP acknowledges, “temperatures in California will rise significantly during this century as a result of the

[greenhouse gases] humans release into the atmosphere; this conclusion holds regardless of the climate model used to project future warming.” DRECP Proposed LUPA and Final EIS III.3-9, citing California Climate Change Center 2012. We appreciate the inclusion of “additional climate change analysis” to “provide current science and information to support management decisions” for the WEMO Route Network Project. DSEIS at 4.2-21.

Climate change effects must be integrated into the NEPA analysis as part of the environmental baseline. Agencies are required under NEPA to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. The affected environment sets the “baseline” for the impacts analysis and comparison of alternatives. As the Ninth Circuit has held, “without establishing the baseline conditions . . . there is simply no way to determine what effect the proposed [action] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fisherman’s Marketing Ass’n*, 857 F.2d 510. Excluding climate change effects from the environmental baseline ignores the reality that the impacts of proposed actions must be evaluated based on the already deteriorating, climate-impacted state of the resources, ecosystems, human communities, and structures that will be affected. Accordingly, existing and reasonably foreseeable climate change impacts must be included as part of the affected environment, assessed as part of the agency’s hard look at impacts, and integrated into *each* of the alternatives, including the no action alternative. Put differently, simply acknowledging climate impacts as part of the affected environment is insufficient. Rather, agencies must incorporate that information into their hard look at impacts and comparison of alternatives.

Chapter 3 of the DSEIS describes “sources, trends, and effects of the observed and projected climate changes on key aspects of the Affected Environment” and Chapter 4 “evaluates the effects of proposed alternatives and activities to global warming (greenhouse gas emissions and carbon sequestration), and effects to climate adaptation opportunities.” DSEIS 4.2-21. The DSEIS considers the effects of climate change to be a cumulative impact. *Id.* at 22.

The DSEIS acknowledges “motorized travel will likely have more [greenhouse gas] emissions than the other categories [of routes] . . .,” DSEIS at 4.2-27, and that “[m]otorized vehicle use can . . . impact carbon sequestration by the removal of vegetation and biological soil crusts . . . [which] is essentially irreversible” *id.* at 4.2-28. Yet BLM concludes that “[t]he alternatives being evaluated as part of the [WEMO Route Network Project] would not result in any increase or decrease in the total amount of direct motorized GHG emissions in the planning area.” *See id.* at 4.15-15. Further, the DSEIS concedes that “the configuration of the transportation network [in the DSEIS] did not consider [greenhouse gas] emissions as criterion in determining which routes would remain open and which would remain closed under the various alternatives” and “no alternative-specific mitigation measures were developed to address [greenhouse gas] emissions.” *Id.* at 4.2-27. Without considering how greenhouse gas emissions are impacted by route designation decisions under various alternatives, BLM’s conclusion that there is no increase or decrease in the total amount of emissions is unsupported.

We appreciate the BLM’s consideration of climate change impacts, but absent a meaningful analysis of how climate change is exacerbating the adverse effects of OHV use on the WEMO route network, BLM cannot make an informed decision about how much disturbance from OHVs the already-degraded ecosystem can withstand under changing conditions, or comply with

its substantive, executive order obligation to locate designated routes to *minimize* resource damage.<sup>18</sup>

Given that climate change and its impacts are here to stay, NEPA analyses also must address mitigation measures to facilitate adaptation and resilience. *See* 40 C.F.R. § 1500.2(e) (requiring agencies to “[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment”). For the WEMO Route Network Project, those measures might include, for example, closing or otherwise adjusting routes to promote landscape connectivity and facilitate new and changing wildlife migration patterns and habitat needs, or to limit vectors for the spread of invasive species.<sup>19</sup> Without a meaningful analysis of climate change effects as part of the environmental baseline, however, the DSEIS also fails to consider these opportunities and strategies.

**Recommendations:** BLM must meaningfully address and incorporate the effects of climate change – including the increased vulnerability of fragile desert resources to disturbance and other adverse impacts associated with OHV use on the designated route network – into the environmental baseline, the comparison between alternatives, and the analysis of impacts. BLM also must analyze and consider mitigation measures designed to foster climate change adaptation and resilience.

## V. NATIONAL MONUMENTS

Beginning with Theodore Roosevelt, Presidents have exercised their authority under the Antiquities Act to designate more than one hundred fifty national monuments throughout our country to protect landscapes of extraordinary beauty, as well as irreplaceable and exceptional objects and sites of scientific and historic importance. *See* 54 U.S.C. § 320301 (a), (b). A President’s national monument designation immediately confers enhanced protection for the “objects of historic or scientific interest” and the lands on which they are found. *Id.* § 320301(a). Once designated as a national monument, the lands must be managed to preserve and safeguard their objects of scientific and historic interest.

The WEMO Plan Area overlaps portions of two national monuments, Mojave Trails National Monument (referred to as “Mojave Trails”) and Sand to Snow National Monument (referred to as “Sand to Snow”). Both Proclamation 9395, 81 Fed. Reg. 8371, establishing Mojave Trails and Proclamation 9396, 81 Fed. Reg. 8379, establishing Sand to Snow were signed by President Obama on February 12, 2016. As mentioned above, actions proposed within the boundaries of Mojave Trails and Sand to Snow must substantially advance the proper care and management of the objects of interest as set forth in the respective monument proclamation. The WEMO route

---

<sup>18</sup> Uncertainty is not an excuse for the DSEIS’s failure to address climate change effects. “Reasonable forecasting and speculation . . . is implicit in NEPA.” *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1246 n.9 (9th Cir. 1984). Agencies must satisfy the requirements of 40 C.F.R. § 1502.22, yet NEPA’s hard look merely requires “a reasonably thorough discussion of the significant aspects of the probable environmental consequences” to “foster informed decision-making and informed public participation.” *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1194 (9th Cir. 2008) (quotations and citations omitted).

<sup>19</sup> Importantly, mitigation alone is not a substitute for a properly crafted environmental baseline and a hard look at impacts. *See N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1084-85 (9th Cir. 2011).

network alternatives in the DSEIS fail to meet these requirements, including by illegally proposing to designate new routes. More generally, the monuments should not be included in the WEMO Route Network Project. Route designation decisions for the monuments should be made in separate, monument-specific planning processes.

**A. National Monuments Require Individual Monument Management Plans and Should Not be Included in the WEMO Route Network Project**

BLM must remove the monuments from the WEMO Route Network Project. Under their proclamations, both Mojave Trails and Sand to Snow require individual monument management plans and, in the case of Mojave Trails, a separate transportation plan. Basic BLM policy specifies that transportation planning is meant to occur concurrently with or subsequent to resource management planning – in this case, preparation of a monument management plan. *See* BLM Manual 1626 § 3.6.

Proclamation 9395, 81 Fed. Reg. 8371 (Feb. 12, 2016), establishing Mojave Trails requires the development of a separate monument management plan in addition to a separate transportation plan:

[T]he Secretary, through the BLM, **shall within 3 years of the date of this proclamation prepare and maintain a management plan for the monument** and shall provide for maximum public involvement in the development of that plan including, but not limited to, consultation with tribal, State, and local governments. [emphasis added].

...

The Secretary **shall prepare a transportation plan** that designates the roads and trails where motorized or non-motorized mechanized vehicle use will be permitted. [emphasis added].

Proclamation 9396, 81 Fed. Reg. 8379 (Feb. 12, 2016), establishing Sand to Snow includes a requirement for a monument management plan:

For purposes of protecting and restoring the objects identified above, **the Secretaries [of Agriculture and the Interior] shall jointly prepare a management plan for the monument** and shall promulgate such regulations for its management as deemed appropriate. [emphasis added].

As explicitly outlined above, and as acknowledged in the DSEIS, both monument proclamations require separate management plans. Neither monument has completed – or even initiated - the monument management planning process. Lumping monument travel planning into the WEMO Route Network Project short-circuits that required planning process and the important programmatic direction that a monument management plan will include to guide implementation-level travel and transportation planning. Without that programmatic direction designed to ensure protection of monument objections, BLM’s route designation decisions are unlikely to comply with the proclamations. In short, BLM is doing the process backwards.

Moreover, it makes little sense to conduct travel planning in a piecemeal fashion for portions of the monuments that happen to be encompassed by the WEMO Route Network Project. The DSEIS specifies that “[a] separate plan will be prepared for the portion of the Mojave Trails National Monument that falls outside of the WEMO planning area.” DSEIS at 1-18 to 1-19. Creating *two* management/travel plans for one national monument conflicts with the monument’s proclamation and has the practical effect of dividing the monument into sections that will have disparate direction for transportation management.

As national monuments, both Mojave Trails and Sand to Snow require separate planning processes that must cover the *entire* protected area and focus on substantially advancing the proper care and management of the objects of interest as set forth in the respective monument proclamation. The monument planning process should begin with the development of a monument management plan and be followed by (or be completed in conjunction with) an individual travel planning process, where protection of monument objects is adequately considered and route designations are identified. *See* BLM Manual 6220 § 1.6(N)(1), p. 1-17 (“The BLM will complete a travel management plan and route identification for each Monument and [National Conservation Area].”). The Sand to Snow Proclamation does not explicitly require a travel management plan to be completed, but this does not absolve the BLM from engaging in a separate planning effort for the monument that covers travel and transportation management.

The DSEIS appropriately acknowledges that the WEMO Route Network Project only covers a portion of Mojave Trails National Monument, meaning a separate plan must be prepared for the remainder of Mojave Trails that is outside of the currently defined WEMO planning area. *See* DSEIS 1-18. However, the DSEIS fails to acknowledge BLM policy that the necessary and eventual monument management plans must supersede and not be constrained by any inconsistent decisions made prior to the monument-specific plans. *See* BLM Manual 6220 § 1.6(N)(1); BLM Manual 6100 § 1.6(C)(1). The public should be made aware that route designation decisions made through the current WEMO Route Network Project are subject to change once monument-specific planning occurs.

***Recommendations:*** It is against the clear intent of the monument proclamations for Mojave Trails and Sand to Snow to be included in the WEMO Route Network Project. BLM must remove the monuments from this planning process, prepare the required monument management plans, and conduct transportation planning concurrently with or subsequent to resource management planning.

## **B. BLM’s Proposed Action Fails to Protect National Monuments**

### **1. Mojave Trails National Monument**

According to the DSEIS, 341 miles of motorized routes are currently designated in Mojave Trails. *See* DSEIS at 4.11-2, Table 4.11-2. BLM is proposing to expand that to 375.2 miles in its preferred alternative and to as many as 443.1 miles in Alternative 3. *Id.* Notably, the figures in the DSEIS do not match BLM’s GIS data, severely frustrating public review of and comment on the proposed route network alternatives for the monuments:

**Table 1.** Route mileage by designation in Mojave Trails National Monument. Data acquired from FOIA request.

<b>Designation</b>	<b>Alternative 1 (miles)</b>	<b>Alternative 2 (miles)</b>	<b>Alternative 3 (miles)</b>	<b>Alternative 4 (miles)</b>
<b>Motorized</b>	295	267	382	327
<b>Translinear Disturbance</b>	218	249	136	190
<b>Non-Mechanized</b>	NA	1.4	NA	NA
<b>Non-Motorized</b>	NA	0.5	NA	NA
<b>Undesignated</b>	5	NA	NA	NA

**Table 2:** Route mileage by designation in Mojave Trails National Monument. Data acquired from DSEIS Table 4.11-2; Table 4.11-4; Table 4.11-6; Table 4.11-8.

<b>Designation</b>	<b>Alternative 1 (miles)</b>	<b>Alternative 2 (miles)</b>	<b>Alternative 3 (miles)</b>	<b>Alternative 4 (miles)</b>
<b>Motorized</b>	341.1	308.9	443.1	375.2
<b>Translinear Disturbance</b>	244.1	276.4	142.1	210.0

As displayed in Tables 1 & 2, the proposed action would result in 327 miles of motorized routes and 190 miles of translinear disturbances within Mojave Trails according to the GIS data. In contrast, the proposed action would result in 375 miles of motorized routes and 210 miles of translinear disturbance according to the DSEIS. Despite the serious difficulties posed by BLM’s inconsistent data sources, a great deal of effort has been put into reviewing and commenting on the proposed route designation decisions under each action alternative. *See* Appendix XI outlining recommended designations within Mojave Trails; Appendix X outlining route-specific comments and field data within Mojave Trails; and Appendices I(b), III, and IV highlighting CalWild, TWS, and other partners’ previously submitted route-specific comments and recommendations for areas within Mojave Trails. Additional inconsistencies in the BLM’s planning process as it relates to Mojave Trails are outlined throughout these comments and appendices.

According to the DSEIS, the available routes in the Mojave Trails subregion primarily connect private roads and provide commercial rather than casual OHV recreation. *See* DSEIS at 3.6-8, Table 3.6-1. The DSEIS acknowledges that “OHV travel to and from the ACEC campgrounds north of the WSA have resulted in route proliferation in various areas away from the [Mojave] river” and “[t]he lack of a loop route to the campground has resulted in campers creating loop routes on their own through the Afton Canyon ACEC.” *See* DSEIS at B-5. There is also evidence of motorcyclists crossing the river from the Afton Campground area and creating trails up steep canyons to the top of the peaks in the Cady Mountains WSA. *Id.* Illegal and destructive route usage, such as this, is completely unacceptable in a national monument, where protection of monument objects is the priority. *See* Section V(C)(1) below. BLM must ensure all routes facilitating illegal use or resource damage are closed and physically decommissioned. BLM has failed to make clear in DSEIS whether this damage is being addressed through route designation decisions. Past and recent field inventory in Mojave Trails has confirmed that this damage is



ongoing and must be addressed. *See* Appendices I(b) and IX.

## **2. Sand to Snow National Monument**

Sand to Snow currently has 36 miles of designated motorized routes. *See* DSEIS at 4.11-11, Table 4.11-2. BLM is proposing to expand that to between 40.3 and 70.1 miles. *See* DSEIS at 4.11-11 – 4.11.30. Under the DSEIS, even the conservation alternative proposes to add to the existing route network. *See* DSEIS at 4.11-18, Table 4.11-4.

The majority of routes within Sand to Snow are rights-of-ways and access to private holdings, in addition to OHV play, hunting, hiking, wildlife viewing, photography, and nature appreciation. *See* DSEIS Table 3.6-1, p. 3.6-8. While the routes in question within Sand to Snow are of less concern than those within Mojave Trails, they violate the clear direction of the monument proclamation to not expand the route network, as further explained in Section V(C)(2) below.

***Recommendations:*** BLM should correct any and all inconsistencies in its data regarding the number of designated routes within Mojave Trails and Sand to Snow National Monuments. BLM should incorporate other recommendations throughout Section V of these comments to ensure proper protection of national monuments.

### **C. National Monuments Must be Managed According to their Proclamations**

It is longstanding policy that BLM management of monuments is guided “by the purposes for which the lands were designated.” BLM Manual 6220. Any actions proposed within Mojave Trails and Sand to Snow should only substantially advance the proper care and management of the objects of interest as identified in the monument proclamations, as well as the applicable laws and policies described below. Merely following the laws and policies that typically apply to travel planning, including the designation criteria at 43 C.F.R. § 8342.1, is insufficient for the portions of the WEMO Route Network Project that overlap national monuments.

#### **1. BLM has failed to demonstrate protection of Monument Objects**

The Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands under multiple use principles unless an area has been designated by law for specific uses, in which case BLM must manage the land for those specific uses. 43 U.S.C. § 1732(a); BLM Manual 6100. In other words, BLM must manage national monuments not under the FLPMA multiple use mandate, but rather under the monument proclamation. This is expressly provided for in FLPMA itself:

*The Secretary shall manage the public lands under the principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.*

43 U.S.C. § 1732(a) (emphasis added).

Pursuant to the legal authority granted by Congress in the Antiquities Act of 1906, 16 U.S.C. §§ 431-433, President Obama designated Mojave Trails and Sand to Snow to protect and preserve identified historic and scientific objects. Accordingly, the standard approach to multiple use management does not apply to these monuments and adopting a management approach to the detriment of their natural and cultural objects and values would be in violation of the proclamations and the mandates of FLPMA. BLM must manage the monuments for the protection and preservation of their respective natural, cultural, historic, and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of the proclamations. While discretionary uses may be allowed to continue if compatible with that charge, BLM must limit or prohibit such uses if they conflict with the values that the areas were designated to protect.

Mojave Trails is “an invaluable treasure and will continue to serve as an irreplaceable national resource for geologists, ecologists, archaeologists, and historians for generations to come.” Proclamation 9395, 81 Fed. Reg. 8371 (Feb. 12, 2016). Mojave Trails is home to over ten special status species (desert tortoise, golden eagle, pallid bat, fringed myotis, Mojave monkeyflower, burrowing owl, Gray vireo Mojave fringe-toed lizard, southwestern pond turtle, and Nelson’s bighorn sheep) and provides “opportunity for further research on ecological connectivity in the Mojave Desert region, as it is among the most ecologically intact areas in southern California.” *Id.* According to the DSEIS, there are 93,209.7 acres of desert linkage networks within Mojave Trails. *See* DSEIS, Table 3.4-1.

“The unbroken expanse [of Sand to Snow National Monument] is an invaluable treasure for our Nation and will continue to serve as an irreplaceable resource for archaeologists, geologists, and biologists for generations to come.” Proclamation 9396, 81 Fed. Reg. 8379 (Feb. 12, 2016). The area is home to 12 federally listed threatened and endangered animal species (including: endangered peninsular bighorn sheep, San Bernardino Merriam’s kangaroo rat, Arroyo toad, Mountain Yellow-legged frog, unarmored threespine stickleback, the threatened Santa Ana sucker, Coachella Valley fringe-toed lizard, and desert tortoise). According to the DSEIS, there are 7,157.2 acres of desert linkage networks within Sand to Snow. *See* DSEIS, Table 3.4-1.

The DSEIS claims the Mojave Trails and Sand to Snow subregions were “created for the West Mojave Route Network Project to better manage the national monument[s] for the resources, objects and values that it was designated for by President Barack Obama in February 2016.” *See* DSEIS at B-5. BLM appropriately acknowledges this must be the management direction (*See, e.g.,* DSEIS at 4.4-2, 4.4-36, 4.11-1 (acknowledging that “special designations commonly carry management prescriptions to protect . . . [important species] . . ., including limitations on future land uses, and limitations on motorized vehicle use”)) but the DSEIS does not demonstrate how the proposed route designation decisions protect, or even seek to protect, the monument objects. *See* Section II(B), above, outlining that without route designation forms from the access database, the public cannot discern if or how BLM’s route designation decisions within the monument were designed to protect monument objects. *See also* Section III(A) covering the failure to comply with minimization criteria.

BLM cannot justify its failure to protect monument objects now by stating that it will refine the network in the future. *See* DSEIS at 2-26. While route designation decisions must be monitored

and periodically revisited to ensure compliance with governing legal obligations, it is not sufficient to retrospectively “refine” the travel network for national monuments. BLM must ensure all relevant legal obligations and management prescriptions are implemented as part of route designation decisions it makes now. Based on our review of the proposed route designations within the monuments — including substantial field work conducted in Mojave Trails in late 2015 and, again, over the last few months — the route designation decisions do not adequately protect monument objects. For instance, field work documented numerous instances of off-route cross-country travel, extensive illegal route proliferation, motorized incursions into Wilderness and Wilderness Study Areas, and human safety concerns. *See* Appendix IX. Inventory also revealed numerous instances of routes included in BLM’s baseline route inventory that do not exist on the ground. *Id.*

**Recommendations:** BLM must manage Mojave Trails and Sand to Snow for the protection and preservation of their respective monument objects (i.e., natural, cultural, historic and scientific values.) The DSEIS provides no evidence that the proposed route designation decisions adequately protect monument objects. BLM should abandon its attempt at route designation decisions within the monuments. To the extent it proceeds, it must design and fully analyze new route network alternatives that comply with the monument proclamations.

## 2. BLM may not designate new routes in the Monuments

Both Mojave Trails and Sand to Snow have identical language regarding motorized vehicle use within the monuments in their proclamations:

Except for emergency or authorized administrative purposes, motorized vehicle use in the monument shall be permitted only on roads **existing as of the date of this proclamation.**

*See* Proclamation 9395 and Proclamation 9396 (emphasis added).

BLM policy requires travel planning and route identification within National Monuments to be limited to “identified roads, primitive roads, and trails, except for authorized and administrative use and specific exceptions identified in the designating legislation or proclamation.” BLM Manual 6220. This makes clear that language within a monument’s proclamation that is specific to the identification of routes provides overarching direction for the management of the area. As outlined in a letter recently submitted on June 8, 2018 by Michael Degnan, former Associate Director for Land and Water at the White House Council on Environmental Quality, who was involved in drafting the language for the proclamations, “roads existing as of the date of this proclamation” means legally-created roads that were designated by the agency as of February 12, 2016. As further described in his letter, unauthorized, user-created routes, like those considered in the WEMO Route Network Project would not satisfy the definition of “road” as it was intended to be defined in the monument proclamations. *See* Attachment D.

Despite the intervening establishment of the monuments, BLM proposes to increase the mileage of designated motorized routes from the previous, and illegal, 2006 WEMO route network. Aside from Alternative 2, which proposes minor reductions in route mileage, all alternatives for the Mojave Trails subregion, including the proposed alternative, would increase the motorized route

network. In the Sand to Snow subregion, all alternatives, including the proposed alternative, would also increase the motorized route network. As mentioned above, national monuments are designated to conserve, protect, and restore monument objects. Designating more motorized routes in the DSEIS than existed at the time the monuments were established is against the clear intent of the monument proclamations, which require motorized vehicles to be limited to designated routes existing on the date the proclamations were signed by President Obama (February 12, 2016).

It should be noted that BLM's GIS data is inconsistent with the mileage figures in the DSEIS. This inconsistency must be addressed immediately to ensure the public is capable of sufficiently understanding and commenting on potential impacts in the area. Regardless of this inconsistency, both the GIS data and the information listed in the DSEIS reflect proposed increases in route mileage in the monuments, with the exception of alternative 2 for the Mojave Trails subregion.

Additionally, we have no way of knowing if the routes being proposed within the monuments are roads, primitive roads, or trails as defined in BLM Manual 1626. The GIS data provided for the WEMO Route Network Project does not include this information and makes it impossible to decipher which existing or proposed motorized routes would qualify as roads, as defined in the monument proclamations. BLM is not able to designate trails in the national monuments.

As highlighted above, Mojave Trails is threatened by route proliferation and illegal OHV use. Opening additional routes within Mojave Trails is a detriment to the monument values and in direct conflict with the language of the monument proclamation. In short, BLM should be focused on reducing the route network in the monuments and may not increase the network, as currently proposed.

***Recommendations:*** The expansion of the route network within Mojave Trails and Sand to Snow and inclusion of unauthorized, user-created routes that do not satisfy the definition of a "road" under BLM policy is inconsistent with the monument proclamations and required protection of monument objects. BLM must resolve all data irregularities and omissions regarding the mileage and classification (road, primitive road, trail) of routes in the national monuments. BLM should analyze and adopt the citizen proposals and route-specific comments for the monuments (see Section V(E) below).

#### **D. Proposed Route Designations Fail to Satisfy BLM Policy for Overlapping Special Area Designations**

Special area designations are administrative land designations made by the BLM and applied to areas with important natural or ecological characteristics and/or historical and cultural significance. Special area designations are further explained in Section VII of these comments and may include: ACECs, Lands with Wilderness Characteristics, California Desert National Conservation Lands, Desert Wildlife Management Areas, and Wilderness Study Areas, among others. BLM Handbook, H-1601-1, Appendix C. Special area designations often overlap with monument boundaries due to the magnificent nature of the landscapes. BLM's obligations regarding these special area designations exist in conjunction with the duties of the monument proclamation. BLM Manual 1626 § 6.5. As such, BLM may not overlook the need to protect these special area designations when planning for national monuments; the monument's travel

network should add another layer of complementary management to protect these special places. BLM has recognized that this type of layering is an important part of planning.<sup>20</sup>

As further outlined in Section VII(B) of these comments, National Monuments are included in the NLCS and must be managed to prohibit discretionary uses that are incompatible with the conservation, protection, and restoration of their landscapes. *See* 16 U.S.C. § 7202(a); *see also* Section I of these comments. As described throughout these comments, and specifically in Section VII(B), BLM has failed to adequately manage Mojave Trails and Sand to Snow for the conservation, protection, and restoration of their landscapes.

Additionally, the Cady Mountains WSA overlaps with Mojave Trails National Monument. This area requires layered protection and must be managed according to the laws and policies further described in Section VII(C) and Appendix XI of these comments.

**Recommendations:** BLM may not overlook the need to protect these special area designations when planning for national monuments; the monument’s travel network should add another layer of complementary management to protect these special places.

#### **E. BLM Must Fully Address and Incorporate Field Data, Route-Specific Comments, and the Proposed Citizen’s Alternative for the National Monuments.**

Significant time and resources were put into citizen inventory efforts to ensure use of updated, field-based information within the monuments. BLM must consider all citizen-obtained information for the monuments, including the proposed citizens alternative in Appendix X, the 2018 route inventory data in Appendix IX, and the information in Appendices I(b), Appendix III, and Appendix IV, which highlights CalWild, TWS, and other partners’ previously submitted route-specific comments and recommendations for areas within the monuments.

---

<sup>20</sup> For example, in the Monticello Field Office RMP, BLM stated:

“Layering” is planning. Under FLPMA’s multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn’t necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as “layering”. BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations.

Over the past two months, TWS conducted field work within the Mojave Trails National Monument to ensure updated field-verified best available scientific information and corresponding route-specific comments. BLM must full address all of that information, which is included in Appendix IX.

**Recommendations:** BLM must fully analyze all citizen-submitted inventory, including route-specific comments, throughout its planning efforts for the WEMO Route Network Project. This information is provided throughout these comments, specifically within Appendix I(b), Appendix III, Appendix IV, Appendix X, and Appendix XI.

## **VI. CONSISTENCY WITH THE DESERT RENEWABLE ENERGY CONSERVATION PROJECT**

As described in Section I above, BLM issued its ROD for the DRECP LUPA in September 2016. The landscape-scale plan was intended to balance conservation with renewable energy development, and included significant land designations, including CDNCLs, new and expanded ACECs, and LWC to protect a wide range of exceptional resources. Under the DRECP, ACECs and CDNCLs are subject to various Conservation Management Actions (CMAs) and disturbance caps to give resources in the planning area meaning and protection where needed.

The 2015 DSEIS acknowledged that the WEMO Route Network Project must “[c]onform to proposed and adopted DRECP route paramters [sic], in order to enhance conservation goals and objectives and provide consistent proposed management strategies[.]” 2015 DSEIS at 2-72. However, that draft was inconsistent with the draft DRECP Land Use Plan Amendment (LUPA) in numerous respects, including by proposing a massive network of motorized routes across lands with specific conservation-focused management and management prescriptions. If approved, the 2015 preferred alternative and other alternatives would have directly undermined the intent of the DRECP and had lasting consequences for implementation of conservation land designations. To address that risk, BLM included language in the DRECP ROD to make it absolutely clear that DRECP allocations, management prescriptions, and goals govern the WEMO Route Network Project:

The West Mojave Route Network Project (WMRNP) planning area is a subgeographic unit located within the DRECP LUPA Decision Area. . . .

The implementation decisions in the WMRNP including the travel management plans and associated route designations, will be considered in the context of the DRECP LUPA decisions, especially disturbance caps, and are being designed to conform with the DRECP LUPA. Because the WMRNP will be completed after the DRECP ROD is signed, the WMRNP Plan Amendment and any implementation decisions developed pursuant to it will be subject to the plan decisions in the DRECP LUPA.

The DRECP LUPA does not change the existing travel management plans within the DRECP LUPA Decision Area; however, future travel management planning, including within the WMRNP, will need to consider the land use planning goals

and objectives, and use allocations, and [conservation management actions] included in the DRECP LUPA.

DRECP ROD at 29-30.

As the DRECP ROD properly recognizes, subsequent management actions must conform to decisions in governing land use plans. *See* 43 C.F.R. § 1601.0-5 (b) (“*Conformity or conformance* means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.”); BLM Land Use Planning Handbook, 1601-1.VI.G (“[A]ny authorizations and management actions approved based on an activity-level or project-specific EIS (or EA) must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP.”).

To conform to the DRECP, WEMO route designations must be consistent with the allocations, management prescriptions, and goals of the DRECP. Conformance includes ensuring that route designations are consistent with, for instance, the stated management goals for CDNCLs, LWCs, and ACECs. Conformance also includes ensuring that route designations do not exceed disturbance caps and otherwise comply with CMAs that apply to the same lands. Indeed, the primary reason that the 2015 DSEIS was abandoned and replaced with the 2018 DSEIS was to address conformity with the DRECP, including the disturbance caps.

The 2018 DSEIS properly recognizes that route designation decisions must conform with DRECP CMAs and management objectives for special designation areas. DSEIS at 2-11 – 2-12. However, BLM does not actually apply any of the CMAs or disturbance caps to its route designation decisions because “[t]he designation of routes under the WMRNP does not authorize new ground disturbance. Thus, it does not conflict with any LUP or CMA requirements for the project area and would not require mitigation/compensation to be used for existing ground disturbance.” DSEIS at 2-12; *see also* Appendix H (addressing individual CMAs and finding that even CMAs that expressly apply to existing disturbance, such as LUPA-BIO-4 requiring seasonal restrictions to protect at-risk species, for instance, “do not apply, because species affected by route network have adapted to existing system”). In short, BLM’s position is that because it is not authorizing new ground disturbance, it need not ensure that its route designation decisions conform with DRECP CMAs. This is a faulty interpretation that effectively renders the DRECP’s conservation commitments and requirements meaningless. BLM’s decision to designate and thereby sanction motorized use on thousands of miles of illegal, user-created routes *does* authorize ground disturbance. Motorized use on the vast majority of the routes currently open under the illegal 2006 plan and on other routes being proposed for designation in the action alternatives has never been subject to adequate environmental analysis, application of the minimization criteria, or other legal requirements, and is the product of decades of inadequate management and enforcement of OHV use. Disturbance associated with the existing baseline route network is therefore entirely different from most other forms of existing disturbance associated with BLM permitted uses or activities.

BLM’s interpretation that its route designation decisions need not comply with DRECP requirements is particularly egregious with respect to the numerous protected areas, including CDNCLs and ACECs, for which BLM is already at or above the applicable disturbance cap. *See*

DSEIS Tables 3.11-3 & 3.11-4 (showing that BLM is generally very near or above the caps for CDNCLs and ACECs). DRECP disturbance caps are designed to protect sensitive and important areas in which BLM decided to prioritize resource protection and conservation over other intensive uses. Yet, as the analysis in Appendix XI documents, BLM is proposing to designate a staggering *500 miles of new routes* in CDNCLs and ACECs designated under the DRECP. Of those new motorized routes overlapping DRECP conservation designations, only 40 miles are designated as authorized/permitted, administrative, or street legal only. This is unacceptable and directly contrary to the purpose of designating those areas to protect their natural and cultural values from intensive or extractive uses such as motorized recreation. Moreover, as documented in Appendix V, even BLM's no action alternative inexplicably adds 572 miles of new routes in DRECP-designated conservation areas, 277 of which would be open to public motorized use.

BLM's approach severely undermines the designation and protective management of these areas. Instead, BLM should be utilizing the opportunity provided by the WEMO Route Network Project to designate as closed and provide for active decommissioning and revegetation of routes in these areas to help remedy existing and prevent future disturbance cap exceedances and ensure conformity with the DRECP. We understand that closure of routes through the WEMO Route Network Project will not lead to immediate changes in the baseline disturbance of an area and that adequate restoration will take time and resources. But BLM must take the initial step now of closing routes that are rarely used, serve no public purpose, are causing resource damage, are facilitating unauthorized and damaging activities, or otherwise conflict with the conservation-oriented management of special designated areas. Information, data, and recommendations in Appendices I(b) & (d), III, IV, IX, X, and XI are relevant to that necessary action.

***Recommendations:*** BLM must ensure conformity with DRECP allocations, management prescriptions, and goals and apply relevant CMAs and disturbance caps to its route designation decisions. BLM may not rely on an interpretation that its route designation decisions do not authorize new ground disturbance. BLM must close routes and provide for active decommissioning and revegetation of routes in special designated areas to help remedy existing and prevent future exceedances of disturbance caps.

## **VII. OTHER SPECIAL AREA DESIGNATIONS**

As described above, the WEMO Route Network Project has been developing simultaneously with a variety of other planning initiatives, including the now-final DRECP and the establishment of Mojave Trails and Sand to Snow National Monuments. While intended to provide compatible management strategies for sensitive desert resources and multiple uses, the DSEIS is generally inconsistent with and undermines the conservation commitments and requirements of the DRECP and the monument proclamations. *See* Sections V and VI above. Instead of implementing the new management requirements for these important conservation lands by making meaningful reductions in the already spaghetti-like motorized route network, the draft WEMO plan proposes unacceptable and significant mileage increases in that network. *See generally* Appendices IX, X, and XI.

Special designation areas are administrative land designations made by the BLM and applied to areas featuring important natural or ecological characteristics and/or historical and cultural significance. In the California Desert, these area designations may include Areas of Critical



Environmental Concern (ACECs), Desert Wildlife Management Areas (now referred to as Desert Tortoise ACECs), California Desert National Conservation Lands (CDNCLs), Wilderness Study Areas (WSAs), National Monuments, and Lands with Wilderness Characteristics (LWC). BLM Handbook, H-1601-1, Appendix C. Once designated, these areas are no longer managed pursuant to principles of multiple use, but rather to preserve the values for which they were designated. *See* 43 U.S.C. § 1732(a) (FLPMA requires multiple use management “except that where a tract of such public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law”); 16 U.S.C. § 7202(c) (Omnibus requires that special designation areas be managed “in a manner that protects the values for which [they were] designated”). To preserve the values of special designation areas, BLM develops site-specific management prescriptions to guide agency planning decisions affecting those areas. Those prescriptions also require BLM to “avoid approval of proposed actions that could degrade the values of potential special designations” and potentially disqualify the area from future special area designation. BLM Handbook, H-1601-1, Appendix C. Subject to valid existing rights, BLM must postpone, relocate, mitigate, or deny proposed actions that cannot meet this standard. *Id.*

The WEMO plan area contains a multitude of special area designations. While the BLM is not making land management planning decisions for these special designations as part of this process, the agency must conduct a thorough review of the foreseeable impacts of its route designation decisions and ensure consistency with governing laws, policies, and planning decisions. BLM acknowledges its obligation to ensure that the “route network support[s] landscape-level conservation and use goals and strategies.” *See* DSEIS at 2-115. However, the DSEIS fails to meet that obligation by proposing route network alternatives that do not adequately safeguard the areas’ values and by failing to adequately analyze the corresponding impacts to special area designations.

As documented in the analysis in Appendix XI and discussed in Section VI above, BLM’s preferred alternative would designate 500 miles of new routes in DRECP-designated ACECs and CDNCLs. As a result, the DSEIS recognizes that the proposed action would increase the magnitude of direct, adverse impacts to special designation areas, as well as the cumulative impacts, as compared to the no action alternative. *See* DSEIS at 4.16-12, Table 4.16-1. Given that the no action alternative itself is wholly insufficient to protect existing and newly designated conservation areas, BLM’s proposal to increase motorized routes in those areas is unacceptable.

We have attached a variety of maps and analyses to these comments outlining conflicts and inconsistencies with special area designations and their important values and resources. *See* Appendix I(b) (reports documenting results of 2015 field inventory in special designated areas and associated route-specific comments); Appendix I(d) (citizen’s proposal for A Non-Motorized Conservation Vision for Middle Knob); Appendix III (2018 CalWild route-specific comments for two conservation areas within the Mojave Trails National Monument); Appendix IV (analysis of BLM response to route-specific comments, including those submitted in 2015/2016 for routes within special designated areas); Appendix IX (route-specific comments and 2018 field data for several special designated areas); Appendix X (citizen’s alternative and route-specific recommendations for Mojave Trails and Sand to Snow National Monuments); Appendix XI (analysis of new motorized routes in special designated areas). As described in Section II(B), above, we appreciate that BLM incorporated many of our earlier route-specific recommendations in special designated areas into the proposed action. However, those earlier recommendations

were not comprehensive, due to time and resource constraints, and BLM failed to incorporate a significant proportion of our recommendations or respond to the field data and GIS analysis we provided. Moreover, BLM must look holistically at its management of special designated areas to ensure that its route designation decisions address the ongoing damaging impacts of motorized recreation in those areas. We believe BLM can do so while still maintaining motorized access to important destinations, but these areas are decidedly not appropriate places for the spaghetti network that covers other multiple use lands in the WEMO Route Network Project. Particularly with the enormous expanses of open play areas throughout the WEMO Route Network Project, providing a legally compliant and balanced travel plan necessitates that BLM make concerted efforts to reduce the motorized route network in areas specially designated to protect their conservation values.

### **A. Areas of Critical Environmental Concern**

Both FLPMA and the BLM's ACEC Manual 1613 highlight the agency's important obligation to protect ACECs. ACECs are the only special designations prioritized in FLPMA, and FLPMA obligates BLM to "give priority to the[ir] designation and protection." 43 U.S.C. § 1712(c)(3). Congress determined that ACECs are unique places "where special management is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes." *Id.* § 1702(a). As a result, planning impacts to ACECs are to receive careful consideration during the land use planning process. BLM Manual 1613 reaffirms the importance of ACEC designations:

...[P]riority shall be given to the designation and protection of ACEC's. The ACEC's are identified, evaluated, and designated through BLM's resource management planning process. An ACEC designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural and scenic resources or to identify natural hazards. Therefore, *BLM managers will give precedence to the identification, evaluation, and designation of areas which require "special management attention" during resource management planning.*

Manual 1613.06 (emphasis added).

BLM Manual 1613 provides additional criteria used in ACEC management decisions. BLM's general management prescriptions are considered insufficient to protect the unique values for which an ACEC is designated. As such, ACECs are afforded special management attention to ensure adequate protection for their relevant and important values. *See* BLM Manual 1613.12 (Special Management Attention). These prioritized and protective prescriptions must also be detailed and "fully developed" in the applicable resource management plan and adhered to in any supplemental plans, including travel and transportation management plans. *Id.* at 1613.12 and 1613.22.

BLM policies place ACEC designations and their protective management prescriptions as a high priority within the agency's mission. Their designations provide the agency with a valuable mechanism to actively conserve and rehabilitate threatened landscapes, species, and historical sites, among other values. Although the WEMO DSEIS is not proposing new ACECs or

changing ACEC management prescriptions, BLM's route designation decisions must consider all potential route network impacts to ACECs and take appropriate steps to minimize them within the affected areas.

The WEMO Route Network Project fails to protect ACECs. BLM's proposed route network would sanction a damaging spider web of motorized routes across the landscape that affords ACECs no real protection. This dense route network illustrates that BLM has chosen to treat existing ACECs like other BLM lands managed under a less protective, multiple use framework. BLM has therefore violated FLPMA and other BLM policies by not prioritizing protections for ACECs within the plan area.

Within the WEMO Route Network Project there are currently 63 designated ACECs. *See* DSEIS at 3.11-6, Table 3.11-3; *id.* at Figure 3.11-1. Many of these areas were designated due to their importance as critical habitat for threatened and endangered wildlife species, such as the Mohave ground squirrel and the desert tortoise. In addition, several of these ACECs include important historical places and archaeological resources, which are of great cultural and prehistoric significance. Regrettably, BLM's DSEIS alternatives each propose a motorized route network that would dismantle the protective features included in the management strategies for these important areas. Of the 63 designated ACECs within the WEMO Route Network Project, 47 contain new motorized routes under the proposed action. *See* Appendix XI. As such, BLM's proposed action would authorize over 3,000 miles of open/limited motorized routes within ACECs. *See* DSEIS at 4.11-27, Table 4.11-7. These proposed routes will fragment important and fragile desert wildlife habitats and degrade irreplaceable historic and archeological resources due to their overreaching and redundant designs.

The draft WEMO Route Network Project also includes four ACECs designed to protect California's desert tortoise population and its remaining habitat. Previously known as Desert Wildlife Management Areas (DWMAs) and now referred as desert tortoise ACECs (DT ACECs), these areas focus management on protecting high-quality habitat and are essential for long-term tortoise recovery in the desert. *See* DSEIS at 2-4 to 2-5. BLM's proposed action would authorize 2,154 miles of open/limited motorized routes within designated DT ACECs, which will result in damaged, disrupted, and disconnected tortoise habitat that will undoubtedly impede species recovery. *See* DSEIS at 4.11-27, Table 4.11-7; *id.* at 4.4-39 - 41 (acknowledging motorized vehicle use can have both direct and indirect effects on desert tortoises and their habitat).

We are particularly interested in the proposed route designations for the Middle Knob ACEC. Middle Knob area is truly unique and special. Designated in part to protect regionally significant habitat for the delicate and rare Kern Buckwheat, the area contains a host of significant biological, cultural, and recreational resources and values. The area is also designated as a CDNCL, included in BLM's LWC inventory, and encompasses a migration corridor through the Barren Range for Piute deer. Additional information about the area's nationally significant values and the BLM's proposed route network alternatives for the area are included in the Non-Motorized Conservation Vision for Middle Knob (included in Appendix I(d)), the June 13, 2018 comments submitted by CalWild, TWS, California Native Plant Society, Conservation Lands Foundation, and Native American Land Conservancy, and Appendix IV. Under the DRECP LUPA, BLM's overarching goal for the area is to "[p]rotect biological values, including habitat

quality, populations of sensitive species, and landscape connectivity while providing for compatible public uses.” DRECP LUPA, Appendix B, West Desert and Eastern Slopes Subregion, p. 743; *see also id.* at 744-746 (listing management actions and objectives for accomplishing this). The DSEIS properly recognizes that “designation of vehicle routes of travel [must] ensure compatibility with the purposes of the ACEC and with the Pacific Crest Trail.” DSEIS at 3.11-19. As documented in the June 13, 2018 CalWild et al. comment letter on Middle Knob, BLM’s preferred alternative that would designate 38.1 miles of motorized routes within the area is one of the only adequate proposals we have seen for a special designated area in the WEMO plan area. That said, the final plan must reflect the additional recommendations in that letter to ensure adequate protection of the area’s nationally significant values.

**Recommendations:** BLM must prioritize ACEC protection by ensuring that route designation decisions do not compromise the protective management prescriptions for each ACEC. The agency should consider and incorporate all ACEC- and route-specific comments and analyses submitted in these and other comments.

## **B. California Desert National Conservation Lands and Other National Landscape Conservation System units**

As previously mentioned in Section I, the Omnibus Public Land Management Act of 2009 (Omnibus) added to the newly established National Landscape Conservation System (NLCS) “[a]ny area designated by Congress to be administered for conservation purposes, including . . . public land within the [CDCA] administered by the [BLM] for conservation purposes.” 16 U.S.C. § 7202(b)(2)(D). As such, CDCA lands within the NLCS must be managed to prohibit discretionary uses that are incompatible with the conservation, protection, and restoration of their landscapes. *See* 16 U.S.C. § 7202(a).

Under the Omnibus, BLM must “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a); *see also* BLM Manual 6100, §1.6(A). The Omnibus also requires these areas to be managed “in accordance with any applicable law . . . relating to [the area]” and “in a manner that protects the values for which the [area was] designated.” 16 U.S.C. § 7202(c); *see also* BLM Manual 6100, § 1.6(A)(2) & (B)(1); BLM Manual 6220, § 1.6(A)(2) & (B)(1). Areas designated as part of the NLCS include: Wilderness, Wilderness Study Areas, National Monuments, National Conservation Areas, National Scenic Trails, National Historic Trails, and Wild and Scenic Rivers.

The Department of the Interior Secretarial Order 3308 reinforces the Omnibus by stating the NLCS “shall be managed as an integral part of the larger landscape, in collaboration with the neighboring land owners and surrounding communities, to maintain biodiversity, and promote ecological connectivity and resilience in the face of climate change.” Secretarial Order No. 3308, § 4(a) (Nov. 15, 2010). Pursuant to this direction, BLM has adopted policy guidance addressing its management of NCLs generally (BLM Manual 6100), and National Conservation Areas specifically (BLM Manual 6220). Under these mandates, BLM’s route network planning processes must prioritize conservation, protection, and enhancement of the NLCS’s extraordinary riparian, wildlife, and other natural and cultural resources. *See* BLM Manual 6100, § 1.6(C)(2) (“Land use plans addressing NLCS units . . . , including implementation plans, will

emphasize the conservation, protection, and restoration of the [] values [for which the area was designated]”).

Additionally, BLM policy states:

The BLM will only develop new facilities, *including roads*, within NLCS units where they are required under law, required for public health and safety, are necessary for the exercise of valid existing rights or other non-discretionary uses, prevent impacts to fragile resources, or further the purposes for which an area was designated.

BLM Manual 6100 at 1.6(I)(3) (emphasis added). This is a clear recognition that routes within the NLCS should be limited to the minimum network necessary for the management of the areas.

In addition to the National Monuments (discussed above in Section V) and Wilderness Study Areas (discussed immediately below), the WEMO plan area includes approximately 1.7 million acres of designated California Desert National Conservation Lands (CDNCLs). *See* DSEIS at 3.11-25 to 3.11-26; *id.* Table 3.11-4. For all units of the NLCS, the BLM must propose the minimum network necessary for management of the areas. The WEMO proposed plan utterly fails to satisfy that requirement, and instead proposes to *expand* the route mileage over the invalid 2006 plan. *See* DSEIS Table ES-1 at ES-22 (“The mileage of motorized routes in ACECs, CDNCL, DT ACECs, national monuments, wilderness, WSAs, and LWCs is slightly *higher* than [the 2006 WEMO plan].” (emphasis added)); Appendix XI (analysis documenting significant increases in proposed route mileage in CDNCLs); Section V (addressing proposed expansion of route network in the monuments). In short, the proposed route network in NLCS units, including Mojave Trails and Sand to Snow National Monuments, the WSAs, and the CDNCLs, is not the “minimum route network necessary for enjoyment and protection of the values” for which these areas were designated. As such, the proposed route network is contrary to the management direction of the NLCS.

More broadly, BLM’s route network in these areas must minimize impacts to CDNCLs and other units of the NLCS. Contrary to this obligation, the proposed action would designate over 2,000 miles of motorized routes within CDNCLs. Many of these routes are redundant, unnecessary, or causing damage. *See, e.g.*, Appendix IX (displaying route-specific comments and results of 2018 field work in NLCS units). BLM must address these deficiencies and identify a route network that constitutes the smallest system necessary to facilitate management, use, and enjoyment of the NLCS units, while ensuring adequate protection of their nationally significant values and resources. This will necessarily require new alternatives that would provide for closure of all but absolutely necessary motorized routes. *See* Sections IV(E) & VI above (addressing DSEIS’ inadequate range of alternatives and need to analyze additional route closures and restoration to ensure DRECP compliance).

To ensure the WEMO Route Network Project does not compromise the conservation values associated with the CDNCLs designated under the DRECP, we highly recommend that BLM withhold designating any new routes in the CDNCLs until the agency has finalized the applicable management for each component of the NLCS. As the umbrella planning document, finalized management for CDNCLs will better guide the BLM on developing an appropriate

travel and transportation route network.

**Recommendations:** BLM must revise its route designation proposals for NLCS units to ensure it is designating only the minimum route network necessary for enjoyment and protection of the units' values and minimizing impacts to those protected values.

### C. Wilderness Study Areas

Wilderness Study Areas (WSAs) are lands managed to protect wilderness characteristics until Congress designates the area as Wilderness or directs BLM to manage the area for other multiple uses. There are four designated WSAs in the WEMO plan area: Cady Mountains WSA, Soda Mountains WSA, Sacatar Meadows WSA, and Great Falls Basin WSA. *See* DSEIS at 3.11-3. FLPMA requires Congress to inventory public lands to determine whether wilderness characteristics exist. *See* 43 U.S.C. § 1782; *see also* DSEIS 3.11-3. Once designated as a WSA, the Secretary of the Interior must manage the areas to maintain, or to “not impair the suitability of these lands for preservation as wilderness” until Congress determines otherwise. 43 U.S.C. § 1782. Additionally, BLM’s policy is to “protect the wilderness characteristics of all WSAs in the same or better condition than they were in October 21, 1976 (or for Section 202 WSAs not reported to Congress, the date the WSA was designated), until Congress determines whether or not they should be designated as wilderness.” BLM Manual 6330, § 1.6(B).

Discretionary activities that would create an expectation of continued use, thereby impairing the suitability of the WSA for designation as wilderness, should not be authorized. *See* BLM Manual 6330 (“Certain temporary uses, such as motorized or mechanized recreation, are . . . allowed, but only if such uses can be terminated upon wilderness designation.”). As such, BLM must monitor and regulate the activities of OHV use in WSAs to ensure recreation does not compromise WSAs by impairing their suitability for potential future designation as wilderness. Additionally, BLM’s Off-Road Vehicle Regulations require that BLM establish OHV designations of areas and routes that meet the non-impairment mandate. 43 C.F.R. § 8342.1.

The DSEIS does not currently provide direction for this type of monitoring. *See* Section III(C) above. Additionally, BLM policy does not provide for motorized use of primitive routes or ways in WSAs unless continuous use and designation of that use has been established from 1976 onward. The DSEIS does not document whether the routes proposed for designation within WSAs were continuously used since 1976 (or when the relevant WSAs were created). This violates BLM policy and further highlights the extent of the inadequate information and lack of route designation forms from the access database that should be provided to ensure the public has access to critical route-specific information. *See* Section II(B) above for more information. In addition, once routes are eliminated from the travel network, they may not be established in the network again until Congress releases the land for other uses. In essence, BLM may not designate any new routes within WSAs.

Contrary to policy and well-established management prescriptions for WSAs, BLM’s proposed action “has the greatest impact [of all alternatives] on WSA[s].” *See* DSEIS at 4.15-40. The proposed action seeks to designate 75.8 miles of routes open to OHV use within WSAs. *See id.* at 4.11-27, Table 4.11-7. Of particular concern is the Cady Mountain WSA, which is also an

ACEC and overlaps with Mojave Trails National Monument. As demonstrated in Appendix XII, BLM is proposing to include 23 miles of new motorized routes within the Cady Mountains WSA. This is unacceptable and against BLM policy, as outlined in our comments above and Appendix XII. For additional route-specific information and field data on proposed routes within the Cady Mountains, see Appendices IX and X.

**Recommendations:** BLM must manage WSAs within the WEMO plan area to protect wilderness characteristics until Congress designates the area as Wilderness or directs the BLM to manage the area for other multiple uses. BLM must revise its proposed action to have a minimal impact on WSAs, including ensuring no new routes are designated within WSAs. BLM must monitor and regulate the activities of OHV use in WSAs to ensure recreation does not compromise WSAs by impairing their suitability for potential future designation as wilderness.

#### **D. National Monuments**

National Monuments are another subsection of NLCS that exist within the WEMO plan area. Issues pertaining to national monuments within the WEMO plan area are covered in detail in Section V of these comments.

#### **E. Lands with Wilderness Characteristics**

BLM is required to inventory and consider LWCs during the land use planning process. 43 U.S.C. § 1711(a); *see also Or. Natural Desert Ass'n*, 625 F.3d at 1122. BLM Instruction Memorandum 2011-154 and Manuals 6310 and 6320 contain mandatory guidance on implementation requiring BLM to “conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and *when analyzing projects under the National Environmental Policy Act*.” (emphasis added). Manual 6310 requires BLM to update its inventory including when the public has identified and submitted new information on wilderness characteristics, the public has identified wilderness characteristics as an issue, the agency is undertaking a land use plan amendment, the agency has new information on wilderness characteristics, or the BLM is undertaking a project that may affect wilderness characteristics. Manual 6320 requires BLM to consider LWCs in land use planning, both in evaluating the impacts of management alternatives on LWCs and in evaluating alternatives that would protect those values. When LWCs are identified, BLM must examine management options and determine the most appropriate use allocations for them. BLM may choose to: (1) emphasize other uses as a priority over protecting the LWCs, (2) emphasize other multiple uses while including management restrictions to protect the identified wilderness characteristics, or (3) protect wilderness characteristics as a priority over other multiple uses. *See* BLM Manual 6320; BLM Land Use Planning Handbook 1601-1, Appendix C; DSEIS at 3.11-4.

BLM has recent guidance explicitly requiring the agency to update its inventory of LWCs and to consider protection of those values. *See* BLM Manuals 6310 and 6320. BLM must use all updated inventory from the DRECP to protect those characteristics in making land use decisions. While BLM may take the position that identification of areas to be managed to protect LWCs is outside the scope of the WEMO Route Network Project, BLM must still use a current inventory of LWC (including citizen inventory), thoroughly analyze potential route impacts to inventoried

LWCs, and identify at least one alternative that minimizes negative impacts to their wilderness qualities. *See* BLM Manual 6320; *see also* IM 2011-154.

In the DRECP, BLM identified approximately 1.2 million acres of LWCs and determined to manage approximately 546,000 of those acres to protect wilderness values. Despite including this inventory in its DSEIS analysis, BLM fails to use this information to guide its route network planning decisions. The agency proposes 148.7 miles of routes across the 15 LWCs managed for wilderness characteristics. *See* DSEIS at 4.11-28, Table 4.11-7. As further explained in Appendix XI, we were unable to identify the extent to which these constitute new routes. Regardless, it is apparent that BLM is introducing motorized route designations within LWCs in the proposed action that are not in the no action alternative. *See* Appendix XI, Figure 6.

Further, as explained in Section III(A) above, BLM is obligated to minimize impacts on LWCs under its regulations and the applicable executive orders. In designating areas and trails, BLM is required to “minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.” 43 C.F.R. § 8342.1(a). As stated in both Manual 6310 and Manual 6320: “Managing the wilderness resource is part of the BLM’s multiple use mission.” Courts have also recognized this, stating: “In other words, wilderness characteristics are among the ‘resource and other values’ of the public land lands to be inventoried under § 1711.” *Or. Natural Desert Ass’n*, 625 F.3d at 1099 (9th Cir. 2010). BLM must use the updated inventory of LWCs and designate routes that minimize impacts to these values.

**Recommendations:** BLM must thoroughly analyze and minimize impacts of route designation decisions to LWC, utilizing up-to-date and complete LWC inventory (both agency and citizen). BLM should not be designating new routes in LWC and must consider alternatives that minimize negative impacts to LWC, including closure and rehabilitation of existing routes.

## VIII. AIR QUALITY

NEPA dictates that agencies take a “hard look” at the environmental consequences of a proposed action, including its direct, indirect, and cumulative effects. Significant impacts that must be fully analyzed and disclosed in an EIS include those that affect public health or would threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.27(b)(2) & (10). This includes compliance with the health-based National Ambient Air Quality Standards (NAAQS), prevention of significant deterioration (PSD) of air quality, and adverse impacts on air quality related values such as visibility under the Clean Air Act. *See* 42 U.S.C. §§ 7409(b), 7470-79, 7491-92. BLM is also obligated to locate motorized routes to minimize damage to air quality, 43 C.F.R. § 8342.1(a), and to prevent unnecessary and undue degradation of public lands, 43 U.S.C. § 1732(b). Absent a thorough analysis of the air quality impacts associated with the route designation and other LUPA and TMP decisions in the WEMO Route Network Project, BLM cannot demonstrate compliance with these legal obligations.

As explained in detail in the attached expert comments by air quality consultant Megan Williams (Appendix XII), BLM’s air quality analysis is deficient in many respects. Particularly given the severely degraded air quality in and around the WEMO Plan Area, including non-attainment



status and monitored NAAQS exceedances for ozone and PM<sub>10</sub>, BLM must not allow for any increases in emissions of ozone precursors or particulates that would contribute to continued and additional exceedances of the NAAQS.

In addition to the deficiencies described in Ms. Williams' report, the DSEIS fails to adequately analyze the numerous significant impacts associated with fugitive dust caused by OHV travel. These impacts are summarized in the scientific literature, including a new paper that addresses the role of vehicle disturbance on fugitive dust emissions and a 2010 paper suggesting that soils in the Mojave Desert remain relatively stable and resilient to wind erosion absent surface disturbance.<sup>21</sup> Nor does BLM analyze the various minimization and mitigation measures the agency can take to reduced fugitive dust and other air quality impacts, such as locating motorized routes on less erosive soils, actively reclaiming and revegetating transportation linear disturbances, and imposing speed limits and other limitations on use. *See* BLM Manual 1626, §§ 3.1(B), 4.2 (BLM has broad authority to impose relevant restrictions on motor vehicle use in limited areas). BLM must develop specific and enforceable mitigation measures that will ensure the WEMO Route Network Project complies with Clean Air Act and other legal requirements.

**Recommendations:** The BLM must conduct a comprehensive and updated air quality analysis that demonstrates compliance with the Clean Air Act, NEPA, FLPMA, and the minimization criteria. This will require changes to the current alternatives, including but not limited to development of specific and enforceable minimization and mitigation measures such as closure and revegetation of routes on sensitive and erosive soils and limitations on OHV use.

## IX. CULTURAL RESOURCES

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to “take into account the effect of [any] undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register [of Historic Places].” 54 U.S.C. § 306108. Federal courts have described section 106 as a “stop, look, and listen provision that requires each federal agency to consider the effects of its programs” on historic properties and cultural resources. *Mont. Wilderness Ass’n v. Connell (MWA)*, 725 F.3d 988, 1005 (9th Cir. 2013). It is well established that designation of routes in a travel management plan constitutes an “undertaking” subject to the requirements of section 106. *See* 36 C.F.R. §§ 800.3(a), 800.16(y) (undertakings include any permit or approval authorizing use of federal lands); BLM Instruction Memorandum (IM) 2012-067 (Feb. 10, 2012) (“BLM considers designations of travel areas, roads and trails to be undertakings for purposes of Section 106”).

For any undertaking, the federal agencies must: (1) “make a reasonable and good faith effort” “to identify historic properties within the area of potential effects,” “which may include background research, consultation, oral history interviews, sample field investigation, and field survey;” (2) determine whether identified properties are eligible for listing on the National Register of Historic Places; (3) assess the effects of the undertaking on any eligible properties; and (4) avoid,

---

<sup>21</sup> Nauman, T. W., M. C. Duniway, N. P. Webb, and J. Belnap. in press. Elevated dust emissions on the Colorado Plateau, USA: the role of grazing, vehicle disturbance, and increasing aridity. *Earth Surface Processes and Landforms*; Field, J.P. et al. 2010. The ecology of dust. *Front Ecol. Environ.* 8(8): 423-420 (both attached).

minimize, or mitigate any adverse effects. 36 C.F.R. §§ 800.1(a), 800.4(b), 800.5, 800.6, 800.8(c)(1)(v) & (c)(4).

BLM's Manual 8110.21 identifies three types of surveys that may be used to satisfy the agency's duty to make a reasonable and good faith effort to identify historic properties:

The BLM cultural resource inventory system is composed of three kinds of inventory: class I – existing information inventory; class II – probabilistic field survey; and class III – intensive field survey (see .21A-C). Each is designed to provide specific kinds of cultural resource information for various planning and resource management needs. The most frequently employed method of inventory is class III survey carried out for specific projects to enable BLM to comply with Section 106 of the [NHPA] before making decisions about proposed land and resource uses.

The inventory step is a critical prerequisite to the remainder of the section 106 process: “[i]t is simply impossible for an agency to take into account the effects of its undertaking on historic properties if it does not even know what those historic properties are in the first place.” 65 Fed. Reg. 77,698, 77,715 (Dec. 12, 2000) (Advisory Council on Historic Preservation describing inventory requirement). An intensive, class III field survey “is most useful when it is necessary to know precisely what historic properties exist in a given area,” such as with travel and transportation management decisions. BLM Manual 8110.21(C). Accordingly, the Ninth Circuit Court of Appeals has held that BLM is required to conduct class III surveys on all designated routes in a travel management plan. *MWA*, 725 F.3d at 1006-09 (“BLM is required to conduct Class III inventories for roads, ways and airstrips that have not been surveyed previously or were surveyed decades ago.”).

Conducting class III surveys for designated routes is necessary to ensure BLM has a complete inventory of cultural resources and historic properties and can accurately assess the impacts of route designations on those sites.<sup>22</sup> Particularly given the well-documented, adverse impacts of motorized use on cultural resources,<sup>23</sup> it is not possible for BLM to comply with the minimization criteria absent such inventory efforts. If BLM does not know where cultural resources are located, it cannot possibly locate designated routes to minimize impacts to those resources, as required under Executive Orders 11644 and 11989 and 43 C.F.R. § 8342.1.

The DSEIS defines the area of potential effects for route designations as “the area formed by the actual routes plus the 300-foot-wide corridor along each side of open routes that is available for pulling off and parking of vehicles.” DSEIS at 3.9-1 – 3.9-2. Yet the DSEIS does not acknowledge the requirement to conduct class III surveys within that area or suggest that BLM

---

<sup>22</sup> As part of its resource and travel management planning processes for the Ironwood Forest National Monument, BLM conducted cultural resources surveys along motorized routes and some non-motorized routes. That inventory information resulted in adjustments to proposed route designations “based on the need to protect cultural resources.” Ironwood Forest National Monument, Proposed RMP, at J-156.

<sup>23</sup> See Switalski BMPs at 92 (cataloguing best available scientific information on impacts to cultural heritage sites); DSEIS at 4.9-3 to -4 (describing host of adverse impacts associated with OHV use across or near archaeological sites).

intends to conduct those surveys to inform its route designation decisions.<sup>24</sup> This is despite the fact that only a tiny proportion of the WEMO plan area has previously been surveyed for cultural resources. Surveys conducted over three decades ago for the 1980 CDCA Plan cover less than 6% of the plan area (only about 180,000 acres), but identified over 14,000 cultural resources in those limited areas. DSEIS at 3.9-17. More recent inventories associated with OHV travel and ACECs cover another approximately 33,000 acres (or about another 1% of the plan area). *Id.* at 3.8-18.<sup>25</sup> Thus it appears that well over 90% of the plan area has not been surveyed and that most of the inventory work that has been completed may be extremely outdated. *See MWA*, 725 F.3d at 1007 (agency failed to make reasonable identification efforts where existing class III surveys conducted in the 1960s and 1970s covered only 8-16% of the plan area). In addition to the general lack of survey data in the WEMO plan area, few known sites have been evaluated for their significance or eligibility for listing in the National Register of Historic Places. *See DSEIS* at 3.9-28.

The DSEIS explains that BLM formulated route designation alternatives by “evaluat[ing] the location of each route with respect to *known* cultural resources” and “quantif[ying] the miles of motorized routes that could potentially impact *known* cultural resources” through a GIS-based evaluation. DSEIS at 4.9-2 (emphasis added); *see also id.* at 4.9-4. Absent class III surveys, however, this process failed to account for (or minimize impacts to) the potentially massive number of currently *unknown* cultural resources. The DSEIS recognizes that both authorized and unauthorized OHV travel “is impacting known sites and is likely to be occurring in sites yet to be identified.” *Id.* at 4.9-4. Those impacts include “travel through properties located adjacent to routes; camping and the construction of fire ring features within historic and prehistoric resources; looting; ‘scrapping’ of historic materials . . . ; and increased erosion and loss of vegetation.” *Id.* BLM anticipates that adoption and implementation of its route designation project will result in “similar and repetitive [impacts] across the entire plan area.” *Id.*

Even with respect to *known* cultural resources, BLM fails to demonstrate how its proposed route network minimizes impacts. BLM’s preferred alternative would designate over 500 miles of motorized routes within 300 feet of a known cultural resource, with over 400 of those miles located *within* the site itself. *Id.* at 4.9-21, Table 4.9-7 (emphasis added). BLM’s approach addressing the potentially significant adverse impacts associated with its proposed route network on both known and unknown cultural resources is to rely on a series of “possible” minimization and mitigation measures. *See id.* at 2-30 (Table 2.1-3); *id.* at 4.9-21. It is unclear if, when, or how those measures will be applied. As described above, this approach violates the agency’s duty to *locate* designated routes to minimize impacts in the first instance.

---

<sup>24</sup> Chapter 4 of the DSEIS does state that “BLM engaged two cultural resource field teams to conduct inventory to provide data for the analysis and for the predictive model, at substantial BLM expense.” DSEIS at 4.9-2. There is no further explanation of what that inventory work entailed and how it was utilized to locate routes to minimize impacts to cultural resources. Additionally, Table 1.9-1 (“Court Issues Addressed in the Draft SEIS) states that BLM will conduct “Class III surveys for specific undertakings that meet the requirements specified in the Programmatic Agreement”). *Id.* at 1-32. An intent to conduct certain class III surveys at some later date does not satisfy the agency’s obligation to conduct those surveys prior to making route designations and to use that information to locate designated routes to minimize impacts to identified resources. As the Ninth Circuit recently held, “the government’s promise to complete Class II and Class III surveys *in the future* . . . does not substitute for a more intensive survey now.” *MWA*, 725 F.3d at 1009.

<sup>25</sup> Chapter 4 of the DSEIS states that these subsequent inventories cover only 24,320 acres. *Id.* at 4.9-3. It is unclear which figure is correct or what accounts for this discrepancy.

Rather than conducting the surveys necessary to locate designated routes to minimize impacts to cultural resources and satisfy section 106 of the NHPA, BLM “has determined that compliance with 43 CFR 8342.1 and Section 106 of the [NHPA], and its implementing regulations at 36 C.F.R. Part 800 will be accomplished through the negotiation of a WEMO specific implementation of the Programmatic Agreement . . . for the [WEMO] Route Network Project [(PA)].” *Id.* at 3.9-30. Pursuant to the PA, BLM developed “a GIS-based sensitivity analysis and predictive modelling program (Model), and is currently working on field verification of the Model,” which will then “be used to inform the implementation of [a] Historic Properties Management Plan (HPMP).” *Id.*

The DSEIS includes conflicting language about whether the PA is final or still be negotiated. *Compare id.* at 1-26 & 3.9-30 (referring to September 2015 PA), *with id.* at 4.9-4 & 4.9-6 (suggesting the PA is still being developed). Presumably the latter statements are errors and BLM intends to rely on the September 2015 PA, which does not appear to be available on the WEMO project or e-planning pages, but which TWS had in its files. Unfortunately, the September 2015 PA perpetuates BLM’s improper approach of designating first and inventorying later – an approach that is contrary to the letter and intent of section 106, the minimization criteria, and NEPA, each of which require a look *before* you leap approach.

First, we disagree that the PA is authorized under the Advisory Council on Historic Preservation regulations, 36 C.F.R. § 800.14(b). The designation of a legally compliant travel and transportation management system in the WEMO Plan Area is a single undertaking and – while complex in nature – does not “warrant a departure from the normal section 106 process.” *Id.* § 800.14(b)(1)(v). BLM’s reliance on the circumstances articulated in section 800.14(b)(1)(i)-(ii) is misguided. *See* PA at 2. The similar, repetitive, multi-state, or regional effects described in section 800.14(b)(1)(i) are logically designed to permit PAs that govern larger programs or multiple undertakings. *See, e.g., CTIA – The Wireless Ass’n v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (upholding nationwide PA governing installation of wireless communication towers). By contrast, the WEMO Route Network Project is a focused effort to designate a system of roads, primitive roads, and trails across a particular geographic location that includes areas rich with cultural resources. Nor is the court-imposed deadline for producing a legally compliant plan a proper justification for BLM’s use of a PA under section 800.14(b)(1)(ii). *See* PA at 2 (“the effects on historic properties . . . cannot be fully determined prior to the approval of the Undertaking, ordered by the Court on a particular timeline”). BLM cannot use the deadline – which it has already succeeded in extending numerous times – to postpone required procedures for completing the court-ordered plan. Indeed, the approach contemplated in the PA to “designate first, inventory later” will result in yet another legally deficient route network.

Second, the content of the PA is flawed in a number of respects. Most significant, the PA fails to ensure that the required Class III inventory efforts will occur. Instead, the PA requires BLM to develop a “Historic Properties Management Plan” that will include, among other things, a strategy for prioritizing inventory work based on the results of a modelling exercise and recreation use levels. *See* PA at 10 (Phase 4 of the identification efforts). There is no suggestion that BLM intends to conduct Class III inventories of all designated routes, as the Ninth Circuit has held is required to satisfy the agency’s section 106 obligations. *See Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1006-09 (9th Cir. 2013). In fact, the PA suggests that BLM does *not*

intend to complete the required inventories and may limit its Class III efforts to “implementation actions associated with routine maintenance, restoration and rehabilitation activities, and classification of competitive routes.” *See* PA at 10-11 (Phase 5).

Moreover, the PA provides no assurance for when inventory efforts will occur. The result is that BLM will designate routes long before it has determined the effects of the undertaking. *See* 36 C.F.R. § 800.14(b)(2)(iii) (properly approved PA satisfies BLM’s section 106 responsibilities upon “[c]ompliance with the procedures established”); *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep’t of Interior*, 755 F. Supp. 2d 1104, 1110-11, 1119 (S.D. Cal. 2010) (enjoining BLM project that relied on a PA which failed to ensure consultation with Tribe *prior* to project approval). Compliance with the vague procedures in the PA that may require BLM to conduct some yet-to-be-determined degree of inventory efforts at some unspecified time during the potentially decades-long life of the PA does not satisfy the agency’s section 106 obligations.

The approach articulated in the PA and DSEIS also ensures that BLM’s route network will violate the executive order minimization criteria. While BLM’s “Resource-Specific Minimization and Mitigation Measures” listed in the DSEIS generally encompass a good menu of options for minimizing impacts to cultural resources, those measures would only “be applied and implemented based on” the PA and the yet-to-be-developed HPMPs. *Id.* at 2-30 (Table 2.1-3) & 4.9-9;<sup>26</sup> *see also id.* at 4.9-3 & 4.9-7 (claiming PA will address “[r]oute and area specific effects” and “specify how individual effects, once they are identified, will be addressed”). There is no indication or explanation of whether or how BLM applied any of those measures to its current proposed route designations. And even if it were permissible to analyze and minimize impacts *after* routes are designated (it is not), the PA does not specify a process for ensuring that will happen. For example, the yet-to-be-developed Historic Properties Management Plan will establish “a comprehensive list of Standard Protective Measures that can be applied to minimize and mitigate adverse effects to historic properties.” PA at 14 (Phase 6). Yet those measures will not be applied unless and until BLM conducts the inventory efforts necessary to identify the properties in the first place, and, as described above, the PA provides little assurance that those efforts will in fact happen. Instead, BLM must demonstrate *prior* to making its route designation decisions, how designated routes have been located to *minimize* impacts to cultural resources. As discussed above, BLM has not done so.

While we acknowledge that a phased approach to completing Class III inventories of all designated routes may be necessary, BLM may not rely on the fundamentally flawed approach to “designate first and *potentially* inventory later” that is articulated in the PA. Instead, BLM must determine the effects of the undertaking before or concurrent to the route designation process. If BLM lacks the necessary resources to complete Class III inventories prior to designating the route system, the extent of route designations should be limited until the inventories can be completed. In other words, the default approach should be to close routes unless or until BLM can complete the required Class III surveys and ensure compliance with the NHPA and the designation criteria. In particular, routes in high-potential or other sensitive areas (e.g., ACECs designated to protect their cultural resources) should be closed until inventories can be completed. To the extent that routes are designated as open in the interim, BLM must actively

---

<sup>26</sup> *See* Switalski BMPs, Table 6 at p. 93 (listing best management practices for minimizing impacts to cultural resources through system design and for mitigation and management strategies to further reduce impacts).

monitor them and implement its proactive closure authority under 43 C.F.R. § 8364.1 whenever agency staff determines that adverse effects may occur.

Any PA should articulate these basic principles, as well as an expeditious schedule and process for completing Class III inventories of all routes being considered for designation. The PA should also acknowledge that the phased inventory approach may necessarily result in route closures and other adjustments to the plan to satisfy the agency's substantive duty to minimize impacts to cultural resources. Closing routes that may adversely impact cultural resources (as opposed to implementing other protective or mitigating measures) is consistent with the executive order requirement to *locate* routes to minimize impacts, Exec. Order 11644, § 3(a), and the preferred method under the NHPA of avoiding historic properties, 36 C.F.R. § 800.1(a); PA at 16. BLM should also consider measures to limit the area of potential effects, both to reduce potential impacts to cultural resources and the burden on field staff of complying with section 106's inventory requirements. For example, BLM should consider eliminating or further reducing the width of corridors along designated routes available for pull-off, parking, and camping, particularly in sensitive areas, and utilizing street legal only vehicle restrictions to prevent illegal off-route travel.

Irrespective of the PA, BLM must conduct the necessary class III inventory work and utilize that information to locate routes to minimize impacts to cultural resources. It may be possible for BLM to phase and/or prioritize its class III inventory work in a way that satisfies the NHPA. In the meantime, routes must be closed unless and until BLM is able to complete the necessary surveys and demonstrate that designated routes are located to minimize impacts to cultural resources.

**Recommendations:** BLM must conduct Class III inventories for all designated routes and utilize the resulting information, along with other available resource data, to locate routes to minimize impacts to cultural resources. To the extent BLM intends to rely on a PA that provides for a phased approach, the PA must ensure that the required inventories will be completed as expeditiously as possible. In the interim, routes should be closed until BLM completes the required inventories and demonstrates compliance with the designation criteria. BLM must ensure the PA it is relying on is readily available to the public.

## X. CONCLUSION

We appreciate the significant task BLM faces in designating a responsible and sustainable travel network that fairly balances recreational uses, minimizes impacts to fragile desert resources, and honors the conservation commitments made in the DRECP and the proclamations designating the Mojave Trails and Sand to Snow National Monuments. Nevertheless, to comply with the law and avoid additional litigation, BLM must remedy the numerous and serious deficiencies identified in these comments. Unfortunately, this will require preparation of yet another draft supplemental EIS.

Sincerely,

Alison Flint  
Senior Policy Analyst  
The Wilderness Society  
303-802-1404  
alison\_flint@twsw.org

Sheara Cohen  
California Desert Public Lands Representative  
The Wilderness Society  
415-398-0534  
sheara\_cohen@twsw.org

Jora Fogg  
Policy Director  
Friends of the Inyo  
jora@friendsoftheinyo.org

Danielle Murray  
Senior Legal and Policy Director  
Conservation Lands Foundation  
danielle@conservationlands.org

Linda Castro  
Assistant Policy Director  
California Wilderness Coalition  
760-221-4895  
lcastro@calwild.org

Nicholas Jensen, PhD  
Southern California Conservation Analyst  
California Native Plant Society  
530-368-7839  
njensen@cnps.org

## **LIST OF ATTACHMENTS**

The following attachments, which are too voluminous to attach via email, are included at the following Dropbox link:

<https://www.dropbox.com/sh/2ian9aavd3r91gi/AABMN0bVQw1RhZewiGsmlwGga?dl=0>

. We expect that all attachments in the Dropbox will be included in the project record. For BLM's convenience, we have also compiled all the attachments on a thumb drive that is being sent via overnight Fed-Ex to the Desert District Office at the address listed in the Federal Register Notice and also to Project Coordinator Matt Toedtli in the Barstow Field Office.

Excel versions of the spreadsheets included in various appendices are available upon request.

### **Appendix I:** previously submitted comments

- a. TWS/CalWild June 4, 2015 Comments & Attachments
- b. TWS/CalWild January 25, 2016 Supplemental Comments & Attachments
- c. TWS May 12, 2017 Comments on Proposed Interim Street Legal Only
- d. TWS/CalWild July 17, 2017 Supplemental Scoping Comments, including A Non-Motorized Conservation Vision for Middle Knob

### **Appendix II:** TWS FOIA requests

- a. March 13, 2018 Expedited FOIA Request for GIS Data
  - i. March 22, 2018 Determination from BLM
- b. April 5, 2018 Expedited FOIA Request for Records
  - ii. April 26, 2018 Final Response from BLM
- c. April 23, 2018 FOIA Request for Records
  - iii. May 17, 2018 Status Letter from BLM
  - iv. June 7, 2018 Status Letter from BLM

**Appendix III:** 2018 CalWild write-ups on Ash Hill and Sleeping Beauty areas within Mojave Trails National Monument

**Appendix IV:** analysis of BLM response to route-specific comments

**Appendix V:** analysis of additions to no action alternative

**Appendix VI:** review of Appendix E aerial photos

**Appendix VII:** comment extension requests and supporting information

- a. TWS et al. May 10, 2018 request
- b. Defenders of Wildlife et al. May 30, 2018 request
- c. June 13, 2018 final signed response from BLM

**Appendix VIII:** analysis of proposed quiet recreation trails

**Appendix IX:** route-specific comments and 2018 field inventory results for: (a) Mojave Trails National Monument, (b) Coso Range and Darwin Hills in Inyo County, and (c) Argus and Slate Range foothills in Inyo County



**Appendix X:** citizens alternative for Mojave Trails and Sand to Snow National Monuments

**Appendix XI:** new preferred alternative motorized routes in ACECs, CDNCLs, and Cady Mountains WSA

**Appendix XII:** Expert Report on Air Quality by Megan Williams

**Additional attachments:**

- a. The Wilderness Society, “Achieving Compliance with the Executive Order ‘Minimization Criteria’ for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations” (May 2016)
- b. Joint recommendations by BlueRibbon Coalition and The Wilderness Society on Minimization Criteria (March 2017)
- c. Adam Switalski, “Off-highway vehicle recreation in drylands: A literature review and recommendations for best management practices,” 21 *Journal of Outdoor Recreation and Tourism* 87-96 (2018)
- d. June 8, 2018 letter from Michael Degnan to Director Perez
- e. Nauman, T. W., M. C. Duniway, N. P. Webb, and J. Belnap. in press. Elevated dust emissions on the Colorado Plateau, USA: the role of grazing, vehicle disturbance, and increasing aridity. *Earth Surface Processes and Landforms*.
- f. Field, J.P. et al. 2010. The ecology of dust. *Front Ecol. Environ.* 8(8): 423-420.