

INTERIOR BOARD OF LAND APPEALS

Rebecca S. Andersen, et al.

145 IBLA 206 (August 20, 1998)

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REBECCA S. ANDERSEN ET AL.

IBLA 95-19, et al.

Decided August 20, 1998

Appeals from a Decision Record/Finding of No Significant Impact of the Area Manager, Clear Lake Resource Area, California, Bureau of Land Management, approving the Knoxville Final Recreation Area Management Plan.

Appeal dismissed; BLM decision affirmed.

1. Environmental Quality: Environmental Statements– Federal Land Policy and Management Act of 1976: Land- Use Planning–National Environmental Policy Act of 1969: Environmental Statements–National Environmental Policy Act of 1969: Finding of No Significant Impact

BLM properly approves a comprehensive plan for developing a loop trail system for off-highway vehicle use and managing recreation use within a designated recreation area, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so, considered all relevant matters of environmental concern, and made a convincing case that, given appropriate mitigation measures, no significant impact will result therefrom. The decision not to prepare an EIS will be affirmed where no appellant demonstrates, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

APPEARANCES: Rebecca S. Andersen, pro se; Jeffrey R. Redding, Director, Conservation, Development and Planning Department, County of Napa, California, for the County of Napa; James F. and Jean G. Erasmy, pro sese; Richard and Nadine Calvert, pro sese; Devin B. and La Rue Davis, pro sese; Judith Sears, Napa, California, for Napa Greens; Norman C. Pease, pro se; Tracy Coppin, pro se; Joseph J. Erasmy, pro se; Renee Snyder, Area Manager, Clear Lake Resource Area, California, Bureau of Land Management, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Rebecca S. Andersen and others have appealed from a Decision Record/Finding of No Significant Impact (DR/FONSI), of the Area Manager, Clear Lake Resource Area, California, Bureau of Land Management (BLM), dated August 3, 1994, approving the Knoxville Final Recreation Area Management Plan (RAMP), and finding that no significant impact will result therefrom. 1/

BLM proposed, as part of the Knoxville Final RAMP, that it would develop a "loop trail system," consisting of 32 miles of newly constructed and 18 miles of renovated one- and two-track trails for the use of motorized off-highway vehicles (OHV), including dirt bikes, all-terrain vehicles, and four-wheel drive vehicles, within a 17,700-acre area of public lands, known as the "Knoxville Recreation Area." That area, which is situated between Clear Lake and Lake Berryessa in Lake and Napa counties, California, in relatively close proximity to the Sacramento and San Francisco Bay Area regions, had been designated as suitable for OHV use in the East Lake Resource Area Management Framework Plan (MFP), originally issued in 1973 and updated in 1984. 2/ (Environmental Assessment (EA) at 1.)

In addition, the MFP identified mineral development and off-road vehicle (ORV) recreation as the two management objectives to be emphasized in the Knoxville area, including "specific decisions to continue off-highway vehicle development in the form of trails and staging area facilities * * *." (EA at 5.) 3/ The RAMP is the activity level planning document that describes how the area is to be managed to implement the decisions made in the East Lake MFP. (EA at 5.) Thus, consistent with the MFP, the RAMP is designed to "enhance OHV recreational opportunities while minimizing resource use conflicts through trespass abatement, public safety programs, law enforcement, and natural resource protection." (EA at 2, 4.)

The landscape of the recreation area is described as follows:

It is characterized by rolling hills intersected by sharply defined drainage patterns, isolated long valleys, and occasional

1/ The appeals were docketed as follows: Rebecca S. Andersen (IBLA 95- 19); County of Napa, California (IBLA 95-29); James F. and Jean G. Erasmy (IBLA 95-30); Richard and Nadine Calvert (IBLA 95-31); Devin B. and La Rue Davis (IBLA 95-32); Napa Greens (IBLA 95-33); Norman C. Pease (IBLA 95-34); Tracy Coppin (IBLA 95-35); and Joseph J. Erasmy (IBLA 95-36).

2/ In 1979, BLM had, in order to protect sensitive wildlife habitat, closed 2,300 acres in the northwestern portion of the recreation area to OHV use. This left 15,400 acres open to OHV use. (EA at 1.)

3/ The decisions made by BLM, as set forth in its MFP (now called a resource management plan (RMP)), are beyond the jurisdiction of the Board. California Association of Four Wheel Drive Clubs, Inc., 108 IBLA 140, 141 (1989); Wilderness Society, 90 IBLA 221, 224 (1986).

sharply silhouetted ridge lines. The higher elevation slopes (ranging from 1,200 to 2,400 feet) are moderate and average approximately 30 percent. As the hills drop off into drainage the average slope increases to 60 percent or more.

Id. at 2. The area is principally crossed by the Morgan Valley/Knoxville Berryessa Road, a major paved county road that runs northwest-southeast along its northeastern boundary and brings traffic from Sacramento and the San Francisco Bay Area (both about 2 hours away). 4/ That road intersects with the Devilshead Road, a graded-dirt county road that runs generally south from the Knoxville Berryessa Road through the recreation area near its eastern boundary. Finally, the Devilshead Road intersects with the Hunting Creek Road, a BLM road that runs northwest across the public land of the recreation area to the Lower Hunting Creek campground, connecting with other roads that lead back to the Morgan Valley Road.

OHV use would be restricted to designated trails. Certain existing trails, which cannot be integrated into the loop trail system, would be closed (with barricades, if necessary) and ripped, water-barred, and revegetated. Natural and man-made barriers would be used, wherever possible, to keep OHV users on designated trails. Some of these trails will pass near private land, and associated improvements, but none will cross or dead-end near such land. 5/ OHV use is further prohibited on local roads. In addition, BLM would develop, upgrade, and/or maintain toilet, picnic, target shooting, and other facilities, particularly a campground/staging area along Lower Hunting Creek, for all recreational users. Also, BLM would provide for trail maps and signs and increased visitor services. It would also provide for additional law enforcement ranger patrols within the recreation area. Finally, BLM expected that trail and other improvements would increase OHV use of the entire trail system each year from 7,000 to, at most, 10,500, primarily during the fall, winter, and spring. 6/

4/ The Morgan Valley/Knoxville Berryessa Road is actually two roads. The Morgan Valley Road brings traffic in a southeasterly direction across Lake County into the recreation area, while the Knoxville Berryessa Road brings traffic in a northwesterly direction across Napa County into the area. The two roads link up at the County line. Both roads, according to the County, "receive light use." (Letter to BLM, dated Mar. 24, 1992, at 2.)

5/ The fact that the trails will not cross private land is not evident from the map depicting the location of the trails in the EA, at page 21 ("Map 3"). See Answer at 5 ("[M]aps are only rough depictions of trail layouts"). Rather, this is made clear by the EA itself. See EA at 13.

6/ BLM noted that, as of August 1994, an average of 10,000 visitors use the recreation area on an annual basis, with 70 percent being OHV users. (EA at 39, 40.) It projected an eventual 25- to 50-percent increase as a result of implementation of the RAMP. Id. at 50. This translates to an increase in the numbers of OHV users of from 1,750 to 3,500 each year. (BLM Answer at 15.)

BLM described the need for an RAMP as follows:

Recreational use of the Knoxville area, particularly for OHV use, has increased in the past 15 years due to its close proximity to the Sacramento and Bay Area regions, variety of terrain, and the existence of roads and trails in the area. [7/] In addition to OHV use, the public lands in Knoxville provide access for hunters and space for target shooters. The area also contains rare and sensitive plants due to the serpentine soils, and there are several private inholdings. However, the lack of a well planned trail system with an established loop route and designated use areas has resulted in trespass problems, concerns for visitor safety and concerns for natural resource protection.

Trespass has been a long standing issue with private landowners and lessees * * * at Knoxville. Private and leased land has inadvertently been used for staging and camping. Ranchers have had their livestock harassed. Fences and gates have been destroyed and there have been several confrontations between private landowners and members of the public.

Since the existing trail system was not originally designed for OHV use, some of the trails need to be re-routed and erosion control techniques are needed to allow sensitive areas to recover from past vehicular abuse. A looped, well-signed trail system will discourage traffic in riparian and wet meadow habitats, near populations of rare and sensitive serpentine plants, and near serpentine outcrops to minimize asbestos exposure.

The remoteness of the Knoxville area has historically made law enforcement difficult. Target shooting occurs randomly throughout the area. Recreational facilities have been vandalized. Law abiding citizens have at times been intimidated and run off by lawless visitors.

(EA at 4, 5-7.) BLM, thus, concluded that the purpose of the RAMP was to enhance OHV and other recreational opportunities, while minimizing conflicts between competing OHV and other users, adverse impacts on public land natural resources, and the incidence of trespass on private inholdings within the recreation area.

In order to assess the environmental consequences of approving the proposed RAMP, or alternatives thereto, including No Action, and thereby

7/ BLM stated that the existing trails consist mostly of "old mining roads, fire roads and old brush conversion projects," noting that they "were not all designed for vehicle use and many lead to sensitive resource areas, impacting soils, sensitive plants[,] and wildlife habitats." (EA at 1, 7.)

determine whether preparation of an environmental impact statement (EIS) was required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), BLM prepared an EA in August 1994. 8/

On August 3, 1994, the District Manager issued her DR/FONSI on the proposed action. After reviewing the EA contained in the land report, she determined that, if the approved mitigation measures were adopted, the proposed trail system would not have a significant effect on the human environment, and thus no EIS pursuant to section 102(2)(C) of NEPA would be required. Andersen and the other eight Appellants took timely appeals from that Decision.

By Order dated November 4, 1994, the Board granted petitions of six of the Appellants to stay the effect of the Area Manager's DR/FONSI, pending our determination of the merits of their appeals. We now decide the case. 9/

The basic thrust of these appeals is that BLM failed to comply with section 102(2)(C) of NEPA in that it did not adequately consider, in its EA, certain environmental impacts of approval and implementation of the RAMP, and did not prepare an EIS before deciding to go forward with that plan. Appellants' concerns include the potential impacts to hikers and other nonmotorized users, nearby private landowners, and wildlife from the increased OHV use on the trail system within the recreation area, and the potential impacts to travellers in the vicinity of the recreation area from increased traffic on local roads. 10/

8/ In addition to the proposed action (Alternative A), BLM considered three alternatives, including No Action (Alternative D). Alternatives B and C would involve the construction/renovation, respectively, of 45/25 miles and 11/18 miles of trails. Under the No Action alternative, OHV use would continue on existing trails, with construction only of a new 4.5-mile trail linking two existing trails.

9/ Before we proceed to address the merits of the instant controversy, there is one procedural matter. On Sept. 15, 1994, Andersen filed a timely appeal from the Area Manager's August 1994 DR/FONSI with BLM, stating only that she "intends to appeal the * * * RAMP." She offered, in her notice of appeal, no reasons for her appeal, and to date has failed to provide any reasons, despite being required by 43 C.F.R. § 4.412(a), to do so within 30 days after the notice of appeal was filed with BLM. Nor has she provided any explanation for this failing. In these circumstances, we will dismiss the appeal. Burton A. McGregor, 119 IBLA 95, 97 (1991).

10/ Certain Appellants also assert that BLM failed to provide sufficient opportunity for public comment on its proposed action. We note that BLM originally approved a RAMP on Nov. 21, 1991, immediately following preparation of another EA. However, in response to public objections, BLM rescinded its approval and revised the EA/RAMP. Following notification, BLM held two public hearings in Napa and Lake counties on Feb. 19 and 20, 1992, and afforded the public 30 days following the last hearing date for the submission of written comments on the draft EA/RAMP. It was also the subject of two meetings of an informal group composed of representatives of local private landowners, Napa and Lake counties, and environmental and

Appellants first assert that BLM failed to adequately consider the potential impact of increased OHV use on hikers and other nonmotorized users of the trail system within the recreation area. This is belied by the record. See EA at 12, 13, 39, 40, 50; Answer at 6, 7.

Next, Appellants argue that BLM failed to adequately consider the potential impact of increased OHV use on wildlife within the recreation area. They particularly point to the impact on resident populations of black bear and mountain lion. BLM considered the impacts of increased OHV use on wildlife, concluding that any adverse impact would be "minimal," especially since such use would be confined to designated trails and the trail system would generally avoid oak woodland and riparian areas that receive "considerable wildlife use" and provide "sensitive" wildlife habitat. (EA at 46, 49; see id. at 9, 11; Answer at 3.) Further, BLM committed itself to "promptly resolve [any] problems" should off-trail riding or other activity adversely affect wildlife or their habitat. (EA at 49.)

Appellants have not identified any potential impact to wildlife that may occur as a result of implementation of the RAMP which BLM did not adequately consider. It is apparent that BLM was aware of the existence of black bear in the project area (EA at 4), and subsequently acknowledged that mountain lions also exist in the project area. (Answer at 5.) In its response to the Statements of Reasons (SOR) filed December 19, 1994, BLM addressed each Appellant's allegations related to the impacts on wildlife. BLM states that the plan has been evaluated by the Clear Lake Resource Area Wildlife Biologist with input from the California Department of Fish and Game, which gathers information on numbers of animals. In discussing the issue in its Answer, BLM recognized that some impacts may result. It appears that more detailed information was not developed to determine if further trail development would adversely impact these species because neither black bear nor mountain lion are protected as endangered or threatened species. (Answer at 7.) BLM obviously considered the bear population in the area to be small and concluded that development and use of the trails would cause only the "temporary displacement" of bears, and no long-term adverse impact. (EA at 67; see also Answer at 3 ("Black bears * * * coexist with OHV use areas throughout the State * * *. California Department of Fish and Game was provided with copies of the [RAMP] and had no comments".))

In its Answer, BLM does not dispute Appellants' statements that black bears reside in the vicinity of that area. See Davis SOR at 2; Letter to Napa County (or County) from Coppin, dated Aug. 30, 1994, attached to SOR, at 4; Joseph Erasmey SOR at 2, 3. While BLM acknowledges that bears in the project area could be temporarily affected by OHV noise, it determined

fn. 10 (continued)

OHV organizations. We, thus, conclude that affected private landowners and other members of the public were afforded notice and an ample opportunity to provide their input during the environmental review process. In so doing, BLM has adequately complied with the public review requirements of section 102(2)(C) of NEPA, and its implementing regulations. Southern Utah Wilderness Alliance, 122 IBLA 6, 14 (1991).

that the effects on the bear population in the Knoxville area would not be significant. BLM now asserts that a long-term adverse impact on mountain lions is unlikely. (Answer at 5, 14.) Appellants have not shown that BLM failed to adequately assess the likely impacts of increased OHV use, and other activity under the RAMP, on black bears and mountain lions.

Next, Napa County and certain other Appellants argue that BLM failed to adequately consider the potential impact of increased OHV use, and thus the increased noise, within the recreation area, on nearby private landowners. 11/ The County, in particular, notes:

The RAMP did not include the results of any field noise measurements taken by the BLM, establish specific mitigation measures or provide for adequate monitoring of mitigation measure compliance or enforcement mechanisms for non-compliance. The RAMP does not contain sufficient data, field measurements or other empirical evidence to conclude that trail routes and existing vegetation will adequately protect existing residential uses in the area.

(SOR at 2-3.) Similarly, Joseph J. Erasmy argues that BLM lacks "verifiable test data" supporting its conclusion that "the proposed trail system configuration and surrounding vegetation will act as a buffer to minimize noise pollution to adjacent residences and private property." (SOR at 2.) Rather, he states that "the noise level emitted by a typical dirt bike should be measured at various distances and elevations from [trails within the recreation area]." 12/ Id.

BLM considered the impact of increased noise from OHV users on nearby residents, concluding that there will be no significant adverse impact since the 50-mile long trail system will disperse use over a large area, trails will be routed as far from residences as feasible, and the rolling topography and natural vegetation will buffer the dispersion of noise. (EA at 7, 12, 47, 69; Answer at 6.) It also provided for a noise monitoring/enforcement program that will periodically measure the noise generated by OHV's within the recreation area, issuing warnings/citations when current noise level regulations are exceeded. (EA at 17-18.)

11/ Coppin further asserts that BLM failed to consider the long-term impact on nearby landowners from disturbance of the naturally-occurring asbestos found along the trails, focusing instead on the short-term impact on OHV users. This is belied by the record. See EA at 11, 41, 47; Answer at 9.

12/ Erasmy also notes that BLM failed to consider the possibility that wildfires may eliminate the vegetative sound barrier that BLM relies upon in concluding that the noise impact of increased OHV use will be mitigated. BLM was well aware of the threat posed by fire. (EA at 6.) In its Answer, BLM explains that were a fire to occur, "vegetation will typically regrow after a few years, again serving as a natural barrier to noise." (Answer at 14.) No evidence to the contrary has been provided by Erasmy. See Response to BLM Answer at 5.

BLM, however, did not rely on any data derived from tests performed within the recreation area. It responds on appeal to the charge that it lacks site-specific data by referring to an August 1993 study, entitled "Sound Levels of Five Motorcycles Travelling Over Forest Trails," prepared by the Forest Service, U.S. Department of Agriculture (Response to Petitions for Stay, Attachment No. 4), which assessed the impacts of the noise produced by motorcycles in the Rock Creek ORV area of the Eldorado National Forest in northeastern California. BLM states that the study proves "the ability to minimize these impacts with proper trail placement and by ensuring compliance with noise standards," and that it has done so here. (Response to Petitions for Stay at 3.)

Coppin and the County challenge the applicability of the Forest Service's August 1993 study on the basis that the Rock Creek ORV area has "completely different" vegetation, i.e., trees versus scrub brush (Coppin Letter to BLM, dated Jan. 9, 1995, at 1; see Erasmy Response to BLM Answer at 3), and that the study focused on the noise impact on other recreational users, rather than on nearby landowners. (County Response to BLM Answer at 3.) Erasmy argues that the vegetative noise barrier in the instant area is "far inferior": "[M]uch of the proposed trail system will, in reality, be separated from private land and dwellings by only Manzanita, Scrub oak, and Chemise brush. This relatively low vegetation does a poor job of * * * noise screening when compared to a forested environment such as Rock Creek." (Response to BLM Answer at 4.) The County argues that the distinction between landowners and other recreational users is "important": "[R]ecreational users experience [noise] almost entirely out of choice, and as infrequently as one time, compared to neighboring residents who [ma]y experience noise on an ongoing, permanent basis." (Response to BLM Answer at 3.) Finally, the County challenges BLM's determination that the Forest Service's August 1993 study supports the conclusion that trail placement will generally mitigate the impact of OHV noise, and that it will do so in the present case. (Response to BLM Answer at 3.)

While some degree of buffering may depend on the kind of vegetation with respect to absorption of noise, BLM is relying on the study as support for the conclusion that the location of trails, coupled with enforcement of noise standards, can minimize impacts. Thus, the buffering afforded by vegetation is but one element of the overall strategy BLM has designed. We find that the record supports a finding that BLM took a hard look at the issue. BLM clearly does not know in advance the exact amount of noise that will be generated by OHV users at any particular time or place within the recreation area, given implementation of the RAMP, or the actual impact that such noise will have on nearby private landowners. This is understandable, since BLM cannot know precisely the number and mix of OHV users who will be found within the recreation area at any time; to require BLM to know more would be to mandate that it rely on pure guesswork or "crystal-ball inquiry," which is not required by section 102(2)(C) of NEPA. Howard B. Keck, Jr., 124 IBLA 44, 50 (1992) (quoting from Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).

In our view, BLM has provided an appropriate and adequate mechanism for measuring and responding to actual impacts as they become evident. In its Answer, BLM states that as the RAMP is implemented it is committed to phasing in a noise monitoring and enforcement program, and this includes sound testing of the OHV's and issuing warnings or citations to conform with current sound level regulations. (Answer at 13.) As a practical matter, the best that BLM can do is to design the trail system in such a way that it will minimize the dispersion of noise, through the recreation area and surrounding areas. This BLM has done. Moreover, it is expected that Appellants will play an important role in finalizing the design. BLM has also provided that, before constructing the new trails, it would flag the proposed trail routes and invite neighboring private landowners to provide input regarding final routes. (EA at 12, 13, 50; see also Response to Petitions for Stay at 3; Answer at 2, 3.) According to certain Appellants, this has not yet occurred, and, even if it does occur, it will only result in the token movement of a trail away from private land, and not the complete elimination or relocation of the trail. Nonetheless, the record shows that BLM has committed itself to consulting with landowners, and it has committed itself to "minimiz[ing] intrusions to landowners." (EA at 12; see also Answer at 3.) We, thus, have no doubt that such consultation will occur, and that the concerns of landowners will be properly taken into account. The result may, indeed, be the elimination or relocation of a trail where it is found necessary to minimize an intrusion.

Notwithstanding these elements of the plan, Appellants seek a guarantee of total elimination of potential impacts from noise. We reiterate that the RAMP is only an activity level planning document. Thus, to the extent Appellants' arguments are designed or intended to show that the designated use should be prohibited, they are untimely and appropriately dismissed.

Certain Appellants particularly contend that BLM violated its own policy, as enunciated in the EA, that "[a]ll new trails will be situated off of ridge tops," in order to minimize the dispersion of noise through the recreation area. (Pease Notice of Appeal (quoting from EA at 69); see also Erasmy SOR at 2.) They point out that BLM will place trails not only on ridge tops, but on the highest ones in that area, i.e., "Adams Ridge" and "Lone Pine Thicket," situated in secs. 25 through 27, T. 11 N., R. 5 W., and sec. 30, T. 11 N., R. 4 W., Mount Diablo Meridian, Napa County, California.

We cannot determine, by comparing the map depicting the location of the trails (EA at 21) and the topographic map of the recreation area (EA at 3), whether the trails will cross Adams Ridge and/or Lone Pine Thicket, or simply skirt the ridge tops. BLM clearly states, however, that no trails will cross any of the ridge tops. (Response to Petitions for Stay at 2, 3, 9, 13; Answer at 2.) We note, however, that BLM initially provided, in describing the "OHV Trail Design" under its proposed action, that new trails would be located off the tops of ridges "[w]herever practical." (EA at 12.) Thus, BLM is not precluded from having new trails cross ridge tops, including the two highest ones, so long as another alternative is not "practical," and as we observed earlier, Appellants will have the opportunity to participate in the final decision-making regarding the actual trail locations.

Appellants also assert that BLM failed to consider the possibility that increased OHV use within the recreation area as a result of implementation of the RAMP, particularly by motorcycles not properly equipped with spark arrestors, will lead to wildfires, thus causing damage to the homes and property of local residents.

BLM concluded that the risk of a wildfire within the recreation area will not be heightened due to increased OHV use arising from implementation of the RAMP. (Answer at 2.) BLM recognizes that fire is a "constant threat" (EA at 6), but notes that the area has not experienced a fire in the last 12 years, despite the fact that it has been subjected to continual OHV use for decades. (Response to Petitions for Stay, Attachment No. 1, at 1; see Answer at 7.) Moreover, BLM notes that establishment of the improved trail system/staging area "will decrease the risk of vehicle[s] riding in areas, such as meadows with tall grass, that might have [a] higher risk of starting wild fires." (Response to Petitions for Stay, Attachment No. 1, at 2.) BLM maintains that confining OHV use to designated trails "will eliminate all cross[-]country travel by motorized vehicles[,] thus reducing the possibility of vehicle[-]caused ignitions." Id.

In addition, BLM notes that OHV use would not be concentrated "during the summer, high fire danger, months"; rather, "[n]early all OHV related use is concentrated in the Autumn/Winter/Spring months." Id. Finally, BLM points out that motorcycles are required by Federal and State law to have spark arrestors. Id. at 1. This and other restrictions will be enforced by two full-time BLM rangers, who will patrol two to four times per week, and especially at times of high recreational use (weekends and holidays). (EA at 16, 22, 61; see also Response to Petitions for Stay, Attachment No. 2, at 1-2; Answer at 2, 15; "Criminal Violation Statistics, January 1 through August 15, 1993.")

Appellants have presented no evidence to substantiate allegations that BLM failed to adequately gauge the risk of wildfires posed by increased OHV use in the recreation area. Appellants simply say: "The risk of a major wildfire devastating this area will only be magnified with increased usage" (Erasmy SOR at 4), without making any effort to show that the specific actions planned by BLM to minimize the risk of fires will not succeed.

Further, certain Appellants who live adjacent to the recreation area contend that BLM did not adequately address the likelihood that OHV users will venture off the trail system, trespassing onto their private land. They assert that such activity will create dust and noise, and result in the vandalism of private property and littering.

Contrary to Appellants' contentions, it is clear that BLM considered the problem of trespassing by OHV users on private lands, concluding that creation of a designated/marked loop trail system, with the elimination of those trails crossing or dead-ending near private land, will discourage trespassing by OHV users on such land. (EA at 13-14, 50, 62; Answer at 5, 9.) In addition, BLM provided for increased patrols of the recreation area by law enforcement personnel, who will have the authority to issue

citations for "violations of all appropriate laws" (EA at 16), including, where necessary, State and county laws. (Answer at 4; see also Answer, Attachment No. 4 ("LE [Law Enforcement] Contacts in the Knoxville Recreation Area – CY [Calendar Year] 94 (As of 9/09/94)").) Patrols will take place from 2 to 4 days per week, and be concentrated at times of high recreational use. (EA at 22, 61.) It is expected that this will generally discourage (though probably not eliminate) acts of trespass. (EA at 50.)

Appellants have provided no evidence that BLM's design of the trail system and increased stepped-up patrols will not limit trespassing. They particularly have not shown that implementation of the RAMP will worsen what, admittedly, is already a serious problem of trespassing. Nor have they demonstrated the likelihood that uncontrolled OHV use will result from implementation of the RAMP or that increased adverse impacts on nearby private lands will occur. Indeed, BLM anticipates that its designated trail system for OHV use will alleviate (partially or perhaps wholly) the existing situation.

Next, Napa County and certain other Appellants contend that BLM has not adequately addressed the impacts on the County, local residents, and others from increased traffic on roads in the vicinity of the recreation area by the increased numbers of OHV users, attracted by the improved trail system, travelling to and from and within that area. The County generally argues that:

The RAMP does not contain an adequate analysis of the number of additional trips that might be expected from Plan implementation, or an adequate analysis of impacts on County roadways and intersections in the vicinity of the project. Further, the RAMP did not address how these impacts on the County road system would be mitigated or how any needed improvements [would be] financed and maintained.

(SOR at 2.) It argues that a detailed traffic analysis is especially important where regional traffic enters the recreation area at only two points, and, within that area, there are generally "narrow rural roads." Id. Joseph J. Erasmly particularly asserts that BLM failed to consider the fact that increased traffic may lead to increased numbers of accidents on the Knoxville Berryessa and Devilshead roads, since they are poorly aligned and not upgraded to modern standards. Erasmly also argues that BLM failed to consider the possibility that the close proximity of two trail crossings along the Devilshead Road will "encourage motorcycle/OHV users to 'short-cut' the trail system and use [the] County Road as a connector between the trails." (SOR at 4.) BLM concluded that this is not likely to occur: "The Knoxville RAMP will provide an adequate loop trail system which will not only remove the need for OHV riders to use this road, but will make it illegal." (Response to Petitions for Stay, Attachment No. 2; see also EA at 63; Answer at 1 ("[C]ompliance will be strictly enforced".)) Erasmly submits no evidence to the contrary. Alternatively, he argues that BLM failed to consider the burden that local taxpayers and communities may have to bear to pay for any necessary improvements.

BLM was well aware of the level of increased traffic expected as a result of implementation of the RAMP, including improvement of the trail system. It estimated that there would be an annual increase in the total number of OHV users, as well as other visitors, of from 25 to 50 percent. (EA at 50.) At the time of preparation of the EA, such users totalled 7,000 (70 percent of 10,000 (EA at 39, 40)), leading BLM to conclude that the total would rise, at most, by 3,500. (Answer at 15.) Thus, figuring vehicle occupancy at 2, BLM expected that, as a result of the increased OHV use, an additional 1,750 vehicles would travel each year to the recreation area, or 35 each week. Id. BLM concluded that this traffic would be evenly split between the Morgan Valley Road, which comes from the northwest, and the Knoxville Berryessa Road, which comes from the southeast. (Answer at 1, 10, 15.) Ultimately, BLM did not regard the traffic increase as significant. Id. at 1.

Joseph J. Erasmy challenges BLM's determination of the expected increase in vehicles. He calculates that a total increase of 2,500 vehicles, given an existing 5,000 vehicles in the project area (based on total visitor use of 10,000 and vehicle occupancy of 2), annually equates to 37-percent more vehicles per week than BLM's estimate. (Response to BLM Answer at 7 (citing EA at 40 and BLM Answer at 15).) Erasmy, thus, states that the increase in the number of vehicles would be 2,500 (rather than 1,750) per year, or 48 (rather than 35) per week. Id.

Plainly, the reason for the disparity is that BLM calculated the increase in the number of OHV users, rather than, as Erasmy did, the increase in the number of all visitors, expected to travel to the recreation area as a result of implementation of the RAMP. We note that Erasmy's increased vehicle figures were drawn from BLM's own information. Since BLM was aware of the increase, we are not persuaded that it contradicts or alters BLM's conclusion that there will be a minimal impact as a result of increased traffic, by either OHV users or all visitors. For its part, the County challenges BLM's estimate of the expected increase in the number of vehicles on the basis that "[f]here is no documentation * * * as to the source and accuracy of th[is] estimate[]." (Response to BLM Answer at 2.) It is clearly based on the considered opinion of BLM's experts. The County presents no evidence challenging the estimate, and indeed has not even provided its own estimate. Thus, it has failed to demonstrate error.

James F. and Jean G. Erasmy assert that BLM failed to consider that increased traffic on the Devilshead Road, as a result of implementation of the RAMP, will cause the road to become impassable during the winter, given existing conditions:

During normal winter rainfall, parts of the road are pass[a]ble only by using a four[-]wheel drive vehicle. Winters with heavy rainfall create a more serious problem. Springs appear and drain across parts of the road creating deep mud bogs. These conditions are aggravated with moderate traffic.

(Notice of Appeal; see also Calvert Notice of Appeal at 1.)

BLM was also well aware of the level of increased traffic expected on the Devilshead Road, concluding that the increase would occur only on the first 0.8 miles from the Knoxville Berryessa Road to the turn-off for the Hunting Creek Road. (Answer at 1, 3.) Such traffic thus would avoid the low-lying sections of roadway susceptible to flooding, which are thus likely to become impassable in winter. Appellants have provided no evidence to the contrary. BLM also provided, in its RAMP, that it would periodically grade the Devilshead Road. (EA at 67.) It later stated that it has, in fact, obtained permission from the Napa County Department of Public Works to perform that work. See Response to Petitions for Stay, Attachment No. 2; Answer at 1-2. We find no "amendment[]" of the RAMP. (County Response to BLM Answer at 2.) Further, the "assurance" that BLM will do the work is provided by the fact that the decision to grade the road constitutes part of the RAMP. Id. at 3.

Next, Napa County and certain other Appellants argue that BLM failed to adequately consider the impact that the influx of large numbers of OHV users to the recreation area and surrounding communities will have on the provision of public services, including law enforcement, emergency medical services, and fire suppression.

BLM basically concluded that the present level of public services it provides, together with State and local authorities, will be adequate to handle the expected influx of OHV users, and any increased demand for law enforcement, emergency medical services, fire suppression, and other public services on public and private lands in and around the recreation area. See EA at 50; Answer at 2; Response to Petitions for Stay at 1-2. None of the Appellants has provided any evidence to the contrary, and expressions of concern on this issue (County Response to BLM Answer at 4) are not sufficient to demonstrate that BLM failed to properly appreciate and plan for the potential impacts arising from implementation of the RAMP.

Finally, nearly all of the Appellants contend that BLM was required by section 102(2)(C) of NEPA to prepare an EIS before approving the RAMP.

Section 102(2)(C) of NEPA requires preparation of an EIS where an agency of the Federal Government proposes to engage in a "major" action that might "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1994). When BLM determines, on the basis of preparation of an EA, that there will be no significant impact from undertaking a proposed action, that determination will be affirmed where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a hard look at potential environmental impacts, and made a convincing case either that no significant impact will result therefrom or that any significant impact will be reduced to insignificance by adoption of certain mitigation measures. Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991). The burden of proof falls upon the party challenging a FONSI, Sierra Club, Inc., 92 IBLA 290, 303 (1986), to demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute. Red Thunder, Inc., 117 IBLA 167, 175, 97 I.D. 203, 267 (1990).

In the present case, the Area Manager concluded in her August 1994 DR/FONSI that no significant impact is likely to result from going forward with the proposal to construct/renovate 50 miles of OHV trails within the Knoxville Recreation Area, and to undertake other aspects of the RAMP, and thus no EIS was required. Though certain Appellants insist that an EIS is required, none of them has presented any evidence that a significant impact is likely to result from the proposed action. See, e.g., Erasmey SOR at 4 ("A full EIS should be required because the proposed project * * * will have a significantly negative impact on the human environment").

[1] A FONSI will be affirmed if the record supports a finding that all relevant areas of environmental concern have been identified and carefully reviewed, and that the final determination that no significant effects will occur is reasonable in light of the environmental analysis. See, e.g., G. Jon & Katherine M. Roush, 112 IBLA 293, 297 (1990); Hoosier Environmental Council, 109 IBLA 160, 172-73 (1989); Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985); Utah Wilderness Association, 80 IBLA 64, 78, 91 I.D. 165, 174 (1984). A party challenging a FONSI determination must show that it was premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Hoosier Environmental Council, 109 IBLA at 173; United States v. Husman, 81 IBLA 271, 273-74 (1984). The ultimate burden of proof is on the challenging party. G. Jon & Katherine M. Roush, 112 IBLA at 298. Appellants have not demonstrated that BLM failed to consider a relevant matter of environmental concern, or generally to take a hard look at potential environmental impacts. They have also failed to satisfy their burden of demonstrating that BLM, by relying on unreliable or inadequate mitigation measures, is not properly aware of the likely consequences of its proposed action. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351-52 (1989); National Wildlife Federation, 126 IBLA 48, 61, 62 (1993).

In general, we note that many of the Appellants, explicitly or implicitly, seek a "guarantee" that the various impacts to wildlife, private landowners, and other members of the public from implementation of the RAMP will not exceed those anticipated by BLM, and if it occurs, that BLM will take appropriate action, in every case, to diminish or curb the impact. Our view of the record persuades us that BLM intends to do just that, but note that this is beyond the scope of the procedural requirements of section 102(2)(C) of NEPA, which are not intended to ensure a particular substantive result. Robertson v. Methow Valley Citizens Council, 490 U.S. at 350. Rather, the record, as a whole, need only demonstrate that BLM has adequately considered the environmental impacts likely to result, under reasonably foreseeable circumstances, from its proposed action, as well as appropriate alternatives thereto. Hoosier Environmental Council, 109 IBLA at 173-74. We hold that BLM has fulfilled that duty.

Appellants have expressed a difference of opinion as to how the Knoxville Recreation Area should be utilized. We would point out that, to establish a violation of the procedural requirements of section 102(2)(C)

of NEPA, it will not suffice that an appellant, opposing BLM's development of the public lands for a particular use, prefers that the area remain pristine or untrammeled. San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).

Except to the extent that they have been expressly or impliedly addressed in this decision, all other errors of fact or law raised by any of the Appellants are rejected on the ground that they are, in whole or in part, contrary to the facts or law, or immaterial. See National Labor Relations Board v. Sharples Chemicals, 209 F.2d 645, 652 (6th Cir. 1954); Glacier-Two Medicine Alliance, 88 IBLA at 156.

We, therefore, conclude that BLM has, in deciding whether to approve the Knoxville Final RAMP, abided by section 102(2)(C) of NEPA. See, e.g., California Wilderness Coalition, 101 IBLA 18, 21-23 (1988). In the absence of any other showing of error, we hold that the Area Manager's August 1994 DR/FONSI is properly affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal of Rebecca S. Andersen (IBLA 95-19) is dismissed, and, with respect to the remaining appeals, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur.

T. Britt Price
Administrative Judge