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May 2, 2005

Director, Bureau of Land Management (210)
Attention: Brenda Williams
P.O. Box 66538
Washington, D.C. 20035

Via Certified Mail, Return Receipt Requested

Re: Protest of Route Designations and NEPA Compliance in West Mojave Plan,
January 2005

Dear Director:

This is a protest, pursuant to 43 C.F.R. 1610.5-2, of the off road vehicle (“ORV”) route designations, and the National Environmental Policy Act documentation, for the West Mojave Plan, a California Desert Conservation Area Plan Amendment, dated January 2005.

This protest is brought on behalf of the Alliance for Responsible Recreation and each of its member groups. The Alliance for Responsible Recreation works to protect both public lands and private property in the California desert from damage caused by the irresponsible use of dirt-bikes, ATVs, and all other off-road vehicles. The Alliance promotes policy solutions that advance our goals through public education, advocacy, and grassroots activism. The mission and membership of each of the groups making up the alliance is set out below, and the designated representative and contact information for each is included at the end of this protest.

Certain of these groups, including the Friends of Juniper Flats, have submitted separate protests. Those protests, and the factual information contained in them, are incorporated into this protest in full by reference.

Community ORV Watch is composed of local residents and property owners who are responding to the crisis of unlawful Off-Road Vehicle (ORV) use in the Morongo Basin. Community ORV Watch was formed in response to ORV lawlessness causing widespread and frequently permanent damage to private property and public lands.

Friends of Juniper Flats is a non-profit corporation whose members value the resources offered by the Juniper Flats area which include archaeological, biological and recreational resources. Members are a diverse mix of nearby residents, landowners and people who enjoy recreating in the area. Recreation includes family outings, picnics, hiking, horseback riding, OHV touring, photography, wildlife watching and camping.

The Western San Bernardino County Landowners Association has 50 members, all private landowners in the El Mirage area. The organization was founded in 1997 in order to combat rampant OHV trespass on private lands. Members have submitted written comments on the West Mojave Plan Draft EIS and participated in numerous West Mojave Plan public meetings.

The California Wilderness Coalition is a statewide, non-profit organization that was founded in 1976. CWC defends the pristine landscapes that make California unique and provide clean air and water, a home to wildlife, and a place for spiritual renewal. CWC is the only organization dedicated to protecting and restoring California's wild places and native biodiversity on a statewide level.

The Wilderness Society is a national organization committed to delivering to future generations an unspoiled legacy of wild places, with all the values they hold: biological diversity; clean air and water; towering forests, rushing rivers, and silent deserts. In particular, the Wilderness Society is committed to protecting public lands, including the Western Mojave, from the impacts of poorly controlled offroad vehicle use.

The California Native Plant Society is a non-profit group dedicated to the conservation and protection of California's native plant life. CNPS has participated in the West Mojave Plan process both formally and informally, and submitted extensive comments on the 2003 Draft Environmental Impact Statement on the plan.

Each of the parties listed above, either as an organization or through their individual members, participated in the Western Mojave route designation process. That participation included submission of comment letters, participation in public meetings, and direct communication with BLM employees with respect to route designation. The issues set out below were raised by the protesters, their members or others in commenting on the DEIS or otherwise communicating with the Bureau of Land Management. These issues were raised, among other places, in the comments noted in the following portions of Chapter 6 of the FEIS: Page 6-10, et seq. – Topical Comment 5; Comments and Responses to Comments No. 11, 39, 67, 83, 85, 127, 129, 184, 188, 190, and 229

EFFECTS ON PUBLIC LANDS RESOURCES OF OFF ROAD VEHICLES

It is well documented that poorly controlled off road vehicle use causes significant and often severe resource damage, including soil erosion and compaction, and destruction of vegetation. Perhaps the most easily identified impacts of ORV abuse are soil erosion and soil compaction. These impacts are clearly identified in the FEIS, e.g.,

FEIS 4-8, and this conclusion is fully supported by the relevant literature.¹ Direct soil erosion, or "mechanical erosion," occurs when ORV tires dig into the soil, resulting in soil being thrown downslope in a "rooster tail" behind the machine, and in some instances causing the complete removal of soil to the underlying bedrock layer. Indirect soil erosion happens when wind or rain strike a denuded slope, and the soil migrates downslope or is moved large distances by strong winds. Similarly, soil compaction occurs when the upper layers of soil are loosened by ORV travel, and the lower soil layers are deeply compacted. Soil compaction generally refers to increasing soil density and impermeability related to ORV travel.

ORVs have an equally significant destructive impact on vegetation.² Particularly

¹ See e.g., Belnap, J. and D.A. Gillette. 1997. Disturbance of biological soil crusts: impacts on potential wind erodibility of sandy desert soils in SE Utah. Land Degradation and Development 8: 355-362. Belnap, J. 1995. Surface disturbances: their role in accelerating desertification. Env'tl. Monitoring and Assessment. 37: 39-57. Wilshire, H.G. 1992. The wheeled locusts. Wild Earth 2:27-31. Wilshire, H.G.. 1983. The impact of vehicles on desert soil stabilizers. Pp. 31-50 in Webb, R.H. and Wilshire, H.G., (eds.), Environmental Effects of Off-Road Vehicles. Springer-Verlag, New York. Wilshire, H. G. 1980 Human causes of accelerated wind erosion in California's deserts. Pp. 415-433 in: D. R. Coates and J. B. Vitek (eds.), Thresholds in geomorphology. George Allen & Unwin, Ltd., London. Webb, R.H.. 1983. Compaction of desert soils by off-road vehicles. Pp. 51-79 in: Webb, R.H. and Wilshire, H.G., (eds.), Environmental effects of off-road vehicles. Springer-Verlag, New York. CEQ (Council on Environmental Quality). 1979. Off-road vehicles on public land. Council on Env. Quality, Washington, DC. PrEX 14.2: V53. Webb, R.H., Ragland, H.C., Godwin, W.H., and D. Jenkins. 1978. Environmental effects of soil property changes with off-road vehicle use. Env'tl. Management 2: 219-233.

² See e.g., Belnap, J. and D.A. Gillette. 1997. Disturbance of biological soil crusts: impacts on potential wind erodibility of sandy desert soils in SE Utah. Land Degradation and Development 8: 355-362. Belnap, J. 1995.

when taken cross-country or off established routes in arid desert environments like the Mojave, ORVs cause harmful impacts to crypto-biotic crusts. These crusts are largely responsible for maintaining soil stability, retaining critical moisture, reducing wind erosion, and increasing soil fertility. In short, by stabilizing the environment around them, these crusts form the basis for the existence of other plant and animal species. Even a single pass of an ORV is sufficient to destroy crypto-biotic crusts, and recurrent ORV travel causes irreplaceable damage. The negative impacts of ORVs on annuals, perennials, and woody species is equally significant, with the mortality of even mature trees being directly linked to ORV damage.

Perhaps most important for the West Mojave, ORV use through soil disturbance, erosion and associated vandalism can damage or completely destroy cultural and archaeological sites. This impact is repeatedly recognized throughout the DEIS, as is the recognition that existing ORV routes are causing ongoing damage, often severe, to cultural sites. E.g. FEIS at 4-129.

LEGAL STANDARDS UNDER NEPA

Surface disturbances—their role in accelerating desertification. Environmental Monitoring and Assessment. 37: 39-57. Johansen, J.R. 1993. Cryptogamic crusts of semiarid and arid lands of North America. J. Phycology 29:140-147. CEQ (Council on Environmental Quality). 1979. Off-road vehicles on public land. Council on Env. Quality, Washington, DC. PrEX 14.2: V53. Webb, R.H.. 1983. Compaction of desert soils by off-road vehicles. Pp. 51-79 in: Webb, R.H. and Wilshire, H.G., (eds.), Environmental effects of off-road vehicles. Springer-Verlag, New York. Wilshire, H.G., Shipley, S. and J.K. Nakata. 1978. Impacts of off-road vehicles on vegetation. Transactions of the 43rd North American Wildlife and Natural Resources Conference, reprinted by the Wildlife Management Institute. Bury, R.B. 1977. Effects of off-road vehicles on vertebrates in the California desert. Washington, DC: Dept of the Interior: USFWS pub.

As discussed in the later sections of this protest, the NEPA documentation for the Western Mojave Plan is glaringly insufficient in several respects. Three of the most important are the lack of discussion of cumulative impacts, the failure to use the correct no-action alternative, and the failure to consider an adequate range of alternatives.

a. Impacts That Must Be Considered, Including Cumulative Impacts

In determining the impacts of a project and discussing them in an EIS, the agency is required to take into account all of the environmental effects of the project, including direct, indirect and cumulative effects. CEQ's NEPA implementation regulations define the "effects" to be considered in NEPA documentation. They include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. [] Effects include 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. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

40 C.F.R. 1508.8 (emphasis added).

CEQ's NEPA implementation regulations describe "cumulative impact" as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes

such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. 1508.7.

Furthermore, NEPA requires that a cumulative impacts analysis provide “some quantified or detailed information” because “[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide.” Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1378-80 (9th Cir. 1998); see also Klamath Siskiyou Wildlands Center v. Bureau of Land Management, 387 F.3d 989, 994 (9th Cir. 2004). General statements about possible effects and some risk are inadequate. Id.

Of course, as with all other aspects of NEPA analysis, the agency must explain the factual basis and rationale for its findings. As the Ninth Circuit Court of Appeals has explained, “[w]hile NEPA empowers neither the plaintiffs nor this court to second-guess the [agency’s] management decisions, it does require the [agency] to articulate, publicly and in detail, the reasons for and likely effects of those management decisions, and to allow public comment on that articulation.” Kern v. Bureau of Land Management, 284 F.3d 1062, 1073 (9th Cir. 2002). Without this on-the-record explanation, the public is deprived of the opportunity for comment that is one of the key safeguards of NEPA.

b. Choice of No Action Alternative

The no-action alternative serves a critical function in NEPA analysis, since it is the baseline against which the public can measure the environmental effects of the proposed agency action. The situation of the West Mojave Plan – that of changes to ongoing agency land management practices – is a common one, and the rules governing

the choice of the no-action alternative in this circumstance are clear. The Council on Environmental Quality has stated the following with respect to the choice of the no action alternative:

No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's

National Environmental Policy Act Regulations. Obviously, the "current course of action" is the one that the agency is – or at least should be, consistent with governing law - implementing on the ground at the time the NEPA documentation is prepared. In the case of the route designations in the West Mojave FEIS, BLM has instead chosen a no action alternative that reflects a hypothetical state of management that has never been implemented, and which in effect legitimizes a state of management in violation of the law.

c. Adequate Range of Alternatives

It is clear that an agency must consider a reasonably full range of alternatives, Mucxkleshoot Indian Tribe v. United States Forest Service, 177 F. 3d 800, 813 (9th Cir. 1999), and the choice of alternatives is in part informed by the agency's statutory mandates. While, an agency is not required to "consider every possible alternative to a proposed action, nor must it consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives," Seattle Audubon Society v. Moseley, 80 F.3d 1401, 1404 (9th Cir. 1996), it is arbitrary and capricious to fail to consider an alternative more consistent with the agency's basic policy objectives than the ones chosen. Id. In the case of the route designations in the Western Mojave DEIS, no consideration has been given to alternatives using smaller route systems which would better fulfill the BLM's mandate, discussed in the next section, to minimize impacts to public lands resources from ORV use.

EXECUTIVE ORDERS AND REGULATIONS MANDATE THAT ROUTES MINIMIZE DAMAGE TO OTHER RESOURCES FROM ORV USE

Citing the growing use of ORVs and attendant environmental damage, President Nixon signed Executive Order 11644 in 1972. That order mandates that ORV use shall only be permitted on public lands in accordance with the following criteria:

- (a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.
- (b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.
- (c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

37 Fed. Reg. 2877 (1972).³

The BLM's ORV designation criteria regulations incorporate the terms of Executive Order 11644 almost verbatim. See 43 C.F.R. § 8341.2. Further, the Executive Order and the BLM regulations provide that the designation of ORV trails must be accomplished with full public participation. See id. § 8342.2.

In National Wildlife Federal v. Morton, 393 F. Supp. 1286 (D.D.C. 1975), the court stuck down BLM's initial regulations implementing Executive Order 11644 because they included a blanket "open" designation for all lands that were not otherwise specifically designated as restricted or closed. The court reasoned that it was critical for the BLM to apply the Order's minimization criteria to every tract of BLM land before permitting ORV use:

While it may be argued that the various criteria will be employed in making subsequent 'restricted' or 'closed' designations, the Order manifestly contemplates evaluation of the land not only for purposes of restricting ORV use but also for designation of areas 'on which the use of off-road vehicles may be permitted . . . Moreover, the Order speaks of designating 'specific areas and trails on public lands' for use or non-use of ORV's. Here, BLM has engaged in wholesale designation unrelated to any specific tract of land.

Id. at 1292 (emphasis added). See also American Motorcyclist Assoc. v. Watt, 543 F. Supp. 789, 797 (C.D.Cal. 1982) (overturning BLM decision to allow ORV race without minimization of environmental impacts as required by Executive Order 11644).

As set out below, the use of the "Decision Tree" process in permitting route closures, as well as BLM's decision to de facto legitimize thousands of illegally created

³Executive order 11644 was amended by Executive Order 11989 which gave the BLM the authority to close areas of the public lands that were suffering "considerable adverse affects" from ORV use. 42 Fed. Reg. 26959 (1977).

routes, violates the mandate of the Executive Orders as incorporated in 43 C.F.R. § 8341.2.

I. THE DECISION TREE PROCESS VIOLATES BLM'S SUBSTANTIVE OBLIGATION TO CONSIDER ALL RESOURCE IMPACTS AND MINIMIZE DAMAGE FROM OFF ROAD VEHICLE ROUTES

The process through which the ORV route designations in the plan amendment were made is at best opaque. According to the FEIS, the process is set out in the flow chart found in Appendix R, which reflects a process commonly called the "Decision Tree." However, it is not clear whether additional spreadsheets, computer software or other means of analysis are used in carrying out the Decision Tree analysis. What is clear is that the Decision Tree itself, as reflected in the flow chart in Appendix R, is inconsistent with the governing legal authorities in a number of respects.

The flow chart in Appendix R starts with the assumption that any route, whether illegally created or not, and regardless of where it is found, is properly considered for open status. In effect, the flow chart legitimizes all of the illegal routes that have been created over the years within the West Mojave area. Taken together with the limited set of factors considered in the Decision Tree process, this results in an assumption that any existing route, whether illegal or not, should remain open. This directly contradicts the governing law.

As set out above, the Executive Orders governing ORV route designations, as incorporated in 43 C.F.R. § 8341.2, require the BLM to consider and minimize impacts to a number of different resources when designating ORV routes. These resources include soil, air, vegetation, water cultural and other resources. BLM is also required to consider and minimize conflicts with other uses of public lands and with populated areas.

The Decision Tree, rather than dealing with the resources the Executive Orders and the regulation set out, instead asks the same set of five questions (occasionally with slight variations) for every route that is evaluated through each “branch” of the Tree. The five questions relate to:

- (1) Whether the route is officially recognized or maintained or represents a principal means of connectivity within a subregion?
- (2) Whether the route will impact sensitive species or sensitive species habitat?
- (3) Whether any impacts to sensitive species or sensitive species habitat can be mitigated or avoided?
- (4) Whether there is any public benefit (e.g. recreation, connectivity, etc) from the route?
- (5) Whether the route is redundant, ie is there an alternate route?

It is immediately apparent that this set of questions does not even address most of the resources to which BLM is supposed to minimize impacts. These include soil, air, water, cultural resources, other forms of recreation and conflicts with populated areas. Because the Decision Tree process effectively rewrites the regulation to consider only access issues and a very limited subset of other resources, it is in conflict with the governing regulations.

It is not possible to tell from the FEIS and its supporting documents whether the Decision Tree process, with its limited emphasis on access and sensitive species, was actually followed. The FEIS states, for example, that with respect to route designation:

The process would consider: (1) the level of impact of each route; (2) the number, density and intensity of use of each route and its relationship to habitat fragmentation and cumulative effects; and (3) ways to minimize the number and

intensity of conflicting land uses (e.g. urban interface, noise, dust, visual impacts).

FEIS at 2-139. At page 2-152 the FEIS states that the following “background data” was

“available” during the route designation process:

- T&E and sensitive species and their habitats,
- Sensitive cultural sites,
- Highly erosive soils,
- Private property (to assess access needs as well as potential land use conflicts), and
- Commercial operations (e.g. ranching, mining and utility sites).

At page 2-154, the FEIS states that “environmental issues” were taken into account in the

Decision Tree process:

The decision tree was applied to each of about 5,200 enumerated vehicle routes within the redesign area. For each route, the decision tree poses a series of questions, which fall sequentially into the five following categories: (1) legal easements and rights-of-way; (2) T&E species; (3) other environmental issues; (4) the special qualities of a route, including safety concerns, recreational qualities and user conflict; and (5) route redundancy. The manner in which each question is answered determines which decision tree “limb” or pathway is followed.

While these references indicate that some other factors were taken into account, the language used in the Decision Tree does not provide for consideration of “other environmental issues,” and there is no record of such issues being considered or documented. According to Appendix R, all information concerning the decisions made on routes was recorded in an Access database. The parties submitting this protest have carefully reviewed this database and found no information which reflects any consideration of or attempt to minimize impacts of ORV use on resources. Rather, the database reflects that routes were closed if they were felt to be redundant or did not

provide any recreational access.⁴ As explained in later sections of this protest, the result is that routes causing significant resource damage were left open without explanation or indeed any attempt to minimize impacts.

To the extent that sensitive species and other resources were considered, despite the language of the Decision Tree, the Decision Tree's structure is in conflict with the law. The Executive Orders and section 8341.2 require that the BLM minimize impacts to resources from ORV route locations. This necessarily implies that access cannot be uniformly treated as having equal or greater weight than resource protection. The Decision Tree effectively mandates, however, that access needs of any kind will always trump resource impacts.

This is particularly true for the far-right branch of the tree. Under this branch of the Decision Tree the route under consideration has already been determined to be a route that is not officially-recognized, does not cross subregions or provide major connectivity, or provide commercial or private property access. Yet even if closing the route would lead to increased conservation of sensitive species, if it is not redundant it will always remain open. This turns the intent of the Executive Orders and the regulation on its head.

The omissions from the Decision Tree process are particularly significant with respect to cultural resources. There is simply no place in this process for damage to cultural resources to be considered. There are numerous instances in the DEIS in which final routes are acknowledged to be causing serious damage to cultural sites, yet the routes remain open. FEIS at 4-125 et seq. This outcome cannot be squared with the

⁴ The sole exception to this rule is in the revised network for the Juniper Subregion. The table reproduced in Appendix R reflects that several routes were closed to protect riparian resources, or due to concerns

requirement that impacts to other resources be minimized, and the route designations should be revisited for a new determination in compliance with the Executive Orders and the regulation.

II. THE WESTERN MOJAVE DEIS VIOLATES BASIC NEPA PRINCIPLES

At least in part as the result of use of the Decision Tree Process, the Western Mojave DEIS does not meet basic NEPA requirements.

a. Failure to Consider Relevant Impacts, Including Cumulative Impacts

In assessing the potential environmental consequences of an action, NEPA requires that BLM assess the direct, indirect and cumulative impacts of that action. The cumulative impacts of an action include the effects of that action (such as designation of a road) when added to other past, present, and reasonably foreseeable future actions (such as the other roads being designated for use). With respect to route designations, however, the Western Mojave FEIS contains no assessment of direct, indirect or cumulative impacts analysis on most of the resources that will be affected. Rather, the document simply ignores most impacts, or simply contains general, boilerplate language.

The lack of consideration of impacts seems to be the result of the fact that the Decision Tree does not take into account most public lands resources, and does not take into account cumulative impacts of route designation for those resources it does consider. Rather, the Decision Tree looks at each route in isolation, except for the fact that it considers whether the route is part of network that would provide access for ORV users.

As a consequence, direct, indirect and cumulative impacts of route designation on

vegetation, water resources, and riparian resources are not even mentioned with respect to the chosen alternative in the FEIS. This is true despite the fact that many of the routes left open are in washes and riparian areas. Other cumulative impacts of route designation will include conflicts with private property owners resulting from routes being designated that cross or terminate on private property, encouraging pioneer routes and trespass in wilderness areas, noise pollution, increased road density as a factor in habitat fragmentation, risk of spreading non-native species, erosion, and impacts to the experiences of non-motorized recreationists. These cumulative impacts are amply documented in comments, in the literature and even in parts of the FEIS itself, e.g., FEIS at 4-281 (discussing potential for routes spreading invasive weeds in the context of the no action alternative) but none are even mentioned, let alone analyzed in connection with the chosen alternative.

Impacts on cultural resources deserve special attention, since the document appears to defer all analysis of impacts to cultural resources until some future date. E.g., FEIS 4-141. This is a violation both of the substantive mandate to minimize resource impacts from ORV routes, and also of NEPA's procedural mandate that these cumulative impacts be discussed, and that discussion made available to the public. Although the single paragraph on cumulative impacts to cultural resources found at page 4-141 states that the total number of sites being affected is unknown, it is certainly possible to inform the public of the nature of the destruction and the magnitude of the loss. The discussion of the impacts of ORV route designation is particularly important, since the designation and legitimization of routes facilitates vandalism and the illegal collection of artifacts from public lands.

The potential of route designation to encourage illegal cross-country use, or private lands trespass also deserves attention. Literally dozens of routes that are on “checkerboard” lands abruptly end at privately owned parcels, and begin again on the other side. Other routes designated as open end abruptly at private residences.

b. Failure to Designate a Proper No Action Alternative

The 2003 Draft EIS for the West Mojave Plan used the 1985/87 route designations as the no action alternative for route designation. This was and remains the correct no action alternative, since no other set of routes has yet been validly implemented.

In the FEIS, however, the no action alternative for route designation was defined as “those adopted by the BLM on June 30, 2003.” FEIS at 2-225. However, because these route designations have never been implemented, as a consequence of the need for Endangered Species Act compliance, the proper no action alternative is those routes which were designated during the various ACEC and other planning processes in the 1980’s. As the Council on Environmental Policy has stated, “the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed.” Forty Questions, supra.

The routes proposed as Alternative A represent a large increase in mileage over the previous designations, and represent a legitimization of many illegally created routes.

Use of the unimplemented 2003 network as the no action alternative also makes it extremely difficult for the public to determine how the proposed alternative is actually changing the mileage of routes designated, and to compare the impacts.

At best, use of this unimplemented route system as the no action alternative

presents a serious misleading picture to the public. The true no action alternative would reflect BLM management using the original route designations and not assuming that BLM would continue to sanction illegally created, unauthorized routes. Using a route network that has never been approved or authorized by the BLM, save in an unimplemented and unimplementable decision, in effect assumes that illegal creation of routes is the status quo.

c. Failure to Consider an Adequate Range of Alternatives

With respect to route designations, the FEIS does not actually consider any alternatives at all. All alternatives consider the same set of route designations set out in Alternative A. The only modifications are in potential restrictions on the number of vehicles found in Alternative D, which would only allow “street legal” vehicles. This has the same practical effect as defining the purpose and need of the action as maintaining the mileage of routes set out in the preferred alternative. Such a purpose and need is, of course, inconsistent with the Federal Land Policy and Management Act, as well as the Executive Orders and BLM’s ORV regulation.

Failure to consider any alternatives concerning route mileage, density or restrictions is a plain violation of the requirement that BLM consider a reasonable range of alternatives. This is particularly so since a smaller network would plainly assist in BLM’s mission of protecting other resources on public lands.

III. SPECIFIC INSTANCES OF FAILURE TO CONSIDER
IMPACTS RESULTING FROM ROUTES

The analytical failings in the Decision Tree process, as outlined above, have led

to the designation as open of many routes causing significant resource damage, without any balancing of this damage against the need for additional motorized access. Examples are included in the photographs and observation logs included as Appendix 1 to this protest. Specific examples include the following:

a. Routes Encouraging Trespass into Wilderness Areas

Included on the compact disc which is Appendix A to this protest is a set of photographs and an observation log prepared by Mr. Mark Heuston. Each of these photographs, and the accompanying narrative, demonstrate specific impacts of routes left open. These impacts are not documented or considered at any point in the record of this FEIS. For example, photographs in the 2005041005 series, as Mr. Heuston's log notes, demonstrate repeated trespass into a wilderness area from a route which terminates at its border. This is rather graphically illustrated by the tire tracks leading past the "wilderness" sign.

Another example is Route SC04435, on the northern boundary of the Coso Wilderness, east of Upper Centennial Spring and east of SC0419. The northern end of this route ends at the top of Black Canyon and appears to have no connection to anything there. The southern end of this route is at the boundary fence of the China Lake Weapons Center where there is no legal entry for the public. There is no discussion in the FEIS, however, of impacts of route designation on wilderness resources.

b. Routes with Conflicts with Residences or Private Property

Appendix A documents numerous routes designated as open which dead end at, or end in close proximity to, occupied residences. Other routes in checkerboard areas leave “marooned” segments which begin and end in private land. Again, the Decision Tree process does not consider or evaluate these impacts to residents, despite the requirements of the regulations.

c. Routes Fragmenting Native Plant Habitat

By letter dated September 11, 2003 the California Native Plant Society provided information on numerous routes which directly impacted or fragmented habitat for rare or sensitive native plant species. Many of these routes were left open, without discussion of direct, indirect or cumulative impacts.

d. Routes Damaging Cultural Sites

As noted above, the FEIS omits any consideration of mitigating damage to cultural sites by ORV's. However, FEIS 4-129 states that RM 1184, a route which bisects a recorded site, would be closed under the 2002 designations. It is noted that use of the route may have already affected the site. However, according to the Access database provided to the protesters, this route is open. The sole note indicates that it is an “important connector route.” Red Mtn. MAZ 1 & 2, Database. This is a clear cut example of the problems with the Decision Tree process. There is no discussion of why continued access for motorized use trumps even preservation of cultural sites.

e. Routes Damaging Other Resources

Although there are numerous examples of routes that are located in riparian areas and washes that were left open, despite damage to these resources, three that illustrate the problem particularly well are RJ 1057, RJ 1059, and J1299 in the Juniper Flats subregion.

All of these routes cross sensitive riparian areas, and all were the subject of public comment and proof regarding ORV impacts. E.g. FEIS 2-162. RJ 1057 and 1059 were originally proposed for closure, but in the final designations in Appendix R were left open in order to provide access to National Forest lands. However, it is the protesters understanding that the National Forest area in question is closed to vehicles. Again, there is simply no detailed explanation of why a particular route is left open. For J1299, a route that crosses an ACEC and documented cultural site, the FEIS simply states that the decision to leave the route open reflects “all facets of the controversy and need for recreational access.” FEIS 2-162. This is apparently the most explanation on the record for any route designation, but it still does not explain the BLM’s finding with respect to impacts on other resources and minimizing those impacts, as the regulation requires.

IV. CONCLUSION

For the reasons set out above, the route designations in the West Mojave Plan Amendment to the California Desert Conservation Area Plan should be vacated, and route designations should be revised to reflect the mandate to minimize impacts of ORV’s to public lands resources. Further, the NEPA documentation should be revised to take into account all effects of the action, including cumulative effects.

Alliance West Mojave Protest

5/2/2005

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The protesting parties appreciate the opportunity to review this plan, and to work with the BLM to improve it. If you have any questions concerning this plan, please let me know.

Very truly yours,

Robert B. Wiygul

cc: All clients

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