



("TMP") EA. The Oregon Natural Desert Association also participated in this decision-making process by submitting a wilderness inventory report and recommendations in September and November 2002, as well as periodic revisions thereto; providing detailed transportation and travel planning comments during the Steens Mountain Cooperative Management and Protection Area Resource Management Plan ("CMPA RMP") planning process; providing a road inventory report and road closure recommendations on January 22, 2003; providing transportation planning recommendations and GIS information in November 2006; and providing further transportation planning recommendations data and analyses delivered by hand to BLM at the May 17, 2007 Steens Mountain Advisory Council meeting.<sup>1</sup> Finally, the Oregon Natural Desert Association also has participated in the TMP planning process by communicating by email and telephone with BLM extensively during the process.

Similarly, appellants The Wilderness Society, American Hiking Society, Sierra Club, and Oregon Wild, participated in BLM's transportation planning process, both during the CMPA RMP process and during the separate TMP process, by submitting comments, and by meeting and communicating with BLM staff. We incorporate by reference all appellants' protest points into this appeal.

The **Oregon Natural Desert Association** is an Oregon non-profit public interest organization of approximately 1,000 members. It has offices in both Bend and Portland, Oregon. ONDA's mission is to protect, defend, and restore forever, the health of Oregon's native deserts. ONDA actively participates in Department of the Interior proceedings and decisions concerning the management of public lands in eastern Oregon, including Steens Mountain and surrounding public lands on the Burns District. ONDA has been active in monitoring wilderness values and ecological conditions on Steens Mountain since ONDA was established in 1987.

The Oregon Natural Desert Association played a significant role in passage of the Steens Mountain Cooperative Management and Protection Act of 2000 in Congress. ONDA was involved in crafting the language of the Steens Act with other key stakeholders, and was the primary conservation representative making final wilderness boundary adjustments, along with final amendments to the myriad land exchanges that were integral to the Steens Act. See Marlett Decl. at ¶¶ 5, 7.

The **Wilderness Society** ("TWS"), founded in 1935, works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. TWS's goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. TWS and its more than 200,000 members and supporters, including close to 5,000 members in Oregon, have a long-established history of involvement and interest in public lands including designation and protection of Wilderness and

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<sup>1</sup> The Steens Act established the Steens Mountain Advisory Council to advise BLM in management of the CMPA and to promote cooperative management of the area. 16 U.S.C. § 460nnn-51(a). Its members are drawn from a variety of "stakeholder" interests. *Id.* § 460nnn-51(b).

other units of the National Landscape Conservation System. TWS was directly involved with the legislation resulting in the Steens Mountain Cooperative Management and Protection Act and continues to work to insure that the wilderness values in the Steens area are protected for current and future generations. TWS views the Steens Mountain Cooperative Management Area as a flagship landscape in BLM's National Landscape Conservation System deserving of the strongest stewardship efforts of the BLM.

With a strong membership base of individual hikers and hiking clubs, the **American Hiking Society** promotes and protects foot trails and the hiking experience. Founded in 1976, American Hiking represents more than half a million outdoors people and serves as the voice of the American hiker. Steens Mountain is an area of particular interest to our constituency and is important to us and hikers nationwide. It is a "Gem of the West," and for many years American Hiking Society has conducted week-long Volunteer Vacations in the Steens to assist BLM personnel in rehabilitating hiking and equestrian trails, removing invasive species and performing significant habitat restoration work.

The Oregon Chapter of the Sierra Club has been involved actively engaged in advocating for and protecting Oregon's desert wildlands for nearly 20 years. The **Sierra Club** is the nation's oldest and largest environmental organization. Its mission is to: (1) explore, enjoy and protect the wild places of the earth; (2) practice and promote the responsible use of the earth's ecosystems and resources; (3) educate and enlist humanity to protect and restore the quality of the natural and human environment; and (4) use all lawful means to carry out these objectives. The Sierra Club is primarily a volunteer run organization with over 1.4 million members and supporters nationwide including nearly 25,000 members in Oregon.

Over the course of this time, volunteers with the Chapter's High Desert Committee ("HDC") have explored and inventoried BLM Wilderness Study Areas, commented on numerous proposals and plans regarding wildlands management decisions, lead countless trips and outreach activities to expose Oregonians to the High Desert, and participated in consensus based advisory councils. The mission of the HDC is to protect the ecological integrity of Oregon's desert wildlands and to advocate for the eventual designation of some of these lands as wilderness. The Club was a core partner with other environmental groups involved with the process to protect Steens Mountain, eventually resulting in the Steens Mountain Cooperative Management and Protection Act, and members have continued such involvement by serving on the Steens Mountain Advisory Council, writing comments on various land use decisions, and participating in service projects on Steens.

**Oregon Wild**, formerly known as Oregon Natural Resources Council, is an Oregon non-profit corporation, headquartered in Portland, Oregon, with approximately 7,000 members. Oregon Wild's goals are: (1) to protect and restore Oregon's wildlands, wildlife, and waters, including the state's remaining old-growth forests and roadless areas, and (2) to protect and restore fully-functioning terrestrial and aquatic ecosystems with a full complement of native species. Oregon Wild brings this appeal on its own behalf and on behalf of its members, many of whom regularly enjoy and will continue to enjoy the public lands on and surrounding Steens Mountain, for educational, recreational, and scientific activities, including hiking, camping, photography, and observing wildlife. The widespread motorized access, at the expense of non-

motorized use and access, that BLM proposes in the challenged decision, adversely affects Oregon Wild's goals, and Oregon Wild's members and staff therefore are injured by the mismanagement of the public lands at issue in this action.

Appellants bring this appeal on their own behalf and on behalf of their members and staff, many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of this proposed action for educational, recreational, spiritual, and scientific activities. See, e.g., Marlett Decl. at ¶¶ 4, 9, 25. Appellants believe BLM's final decision is in error and not in accordance with the Steens Act, the Federal Land Policy and Management Act, and the National Environmental Policy Act. Appellants and their members are injured by BLM's final decision because it is contrary to their interests and will adversely impact public and natural resources on Steens Mountain.

### **BACKGROUND**

In this appeal, the Oregon Natural Desert Association, The Wilderness Society, the American Hiking Society, the Sierra Club, and Oregon Wild (hereafter collectively referred to as "ONDA") seek relief to address BLM's decision adopting the Steens Mountain Travel Management Plan.

Steens Mountain is a nearly 10,000-foot elevation, fault-block mountain in the northern Great Basin in southeast Oregon. It is a spectacular area with a rich diversity of wildlife habitat, geological wonders, recreation opportunities, and wilderness values. Ranging from aspen and juniper woodlands to sagebrush shrublands and grassland communities, and from windswept high-elevation plateaus to vitally-important riparian areas and wetlands, the area provides habitat for hundreds of fish and wildlife species. Steens Mountain and the surrounding area is habitat to wildlife as diverse as pronghorn antelope, pygmy rabbit, California bighorn sheep, California wolverine, Greater sage-grouse, ferruginous hawk, peregrine falcon, yellow-billed cuckoo, sage sparrow, Columbia spotted frog, northern sagebrush lizard, and desert horned lizard. These species depend both on native sage-steppe uplands and the infrequent but essential perennial and intermittent streams, springs and riparian areas that breathe life into this arid, high desert landscape.

Steens Mountain features world-class non-motorized recreational opportunities that draw recreationists nationwide into economically depressed Harney County. Many unique trails like the Wildhorse Lake Loop and the Little Blitzen Gorge trail offer unmatched opportunities to engage in healthy non-motorized recreation with little investment in infrastructure or maintenance.

Steens Mountain is one of the crown jewels of the public lands managed by the Bureau of Land Management in the West. BLM has included Steens Mountain in its National Landscape Conservation System, which was established to "conserve, protect and restore these nationally significant landscapes that have outstanding cultural, ecological, and scientific values." See [www.blm.gov/nlcs/](http://www.blm.gov/nlcs/) (last modified June 6, 2007).

In 2000, Congress enacted the Steens Mountain Cooperative Management and Protection Act of 2000 (“Steens Act”), 16 U.S.C. §§ 460nnn to 460nnn-122, to protect Steens Mountain. The Steens Act created the 170,000-acre Steens Mountain Wilderness; added 29 miles to the federal Wild and Scenic River System; withdrew 1.1 million acres from mining and geothermal development; established a Wildlands Juniper Management Area for experimentation, education, interpretation and demonstration of juniper management and restoration of native vegetation on the Steens; and designated the nation’s first Redband Trout Reserve. 16 U.S.C. §§ 460nnn-61, -71, -72, -91, -81.

The Act also established the Cooperative Management and Protection Area (“CMPA”), a 496,000-acre area managed by the BLM on the Steens. 16 U.S.C. § 460nnn-11(a). According to the Steens Act:

The purpose of the Cooperative Management and Protection Area is to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.

Id. § 460nnn-12(a). The Steens Act directs the BLM to prepare a management plan for the CMPA no later than October 30, 2004. Id. § 460nnn-21(b). The “management plan shall include, as an integral part, a comprehensive transportation plan for the Federal lands includes in the [CMPA], which shall address the maintenance, improvement, and closure of roads and trails as well as travel access.” Id. § 460nnn-22(a).

In 2002, BLM issued to the public a scoping notice indicating the agency was beginning the planning process for a Resource Management Plan to govern BLM’s management of about 1.6 million acres of public land within BLM’s Andrews Resource Area and the Cooperative Management and Protection Area on Steens Mountain.<sup>2</sup> The RMP planning process continued over the next several years. In July 2005, BLM issued two counterpart Records of Decision approving the “Andrews Management Unit Resource Management Plan” and the “Steens Mountain Cooperative Management and Protection Area Resource Management Plan.” See 70 Fed. Reg. 50,401 (Aug. 23, 2005) (notice of availability of ROD).

The final RMP for the Cooperative Management and Protection Area (the “CMPA RMP”) contains a skeletal “Transportation Plan” in Appendix M of that document, intended to satisfy the Steens Act’s “comprehensive” requirements. The RMP states that further inventories and other work required to “complete the comprehensive requirements [of the Steens Act]” would be completed by December 31, 2005. CMPA RMP at 62. On June 8, 2007, a federal district court ruled that BLM’s purported Transportation Plan in Appendix M of the CMPA RMP violates the Steens Act:

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<sup>2</sup> BLM analyzed these two areas under a single NEPA process. At the conclusion of this process, BLM adopted two separate RMPs: the Andrews Management Unit RMP (“AMU RMP”) and the Steens Mountain Cooperative Management and Protection Area RMP (“CMPA RMP”). When referred to collectively, they are called the “Andrews-Steens RMP.” This appeal deals with BLM’s Travel Management Plan for the CMPA.

The Steens Act plainly and unambiguously imposes a mandatory duty on BLM to complete a “comprehensive” transportation plan as an “integral” part of the RMP by October 2004. Though BLM claims that its transportation plan “provides details on the various components of the transportation management system,” it merely includes a goal, an objective, designation of certain known routes, a list of 35 “Best Management Practices,” and a glossary of terms to guide management of transportation aspects over 496,000 acres of federal land. It does not include a comprehensive management system for travel over roads, ways, and trails.

Ore. Natural Desert Ass’n v. Shuford, 2007 WL 1695162, at \*18 (D. Or. June 8, 2007). The district court ruled that BLM’s Transportation Plan was not “comprehensive” or “integral” and that “the transportation plan fails to address travel on hiking trails as is unambiguously required by the statute.” Id. at \*19.<sup>3</sup>

BLM announced it had begun work on a “Travel Management Plan” intended to “implement” the Transportation Plan, issuing a scoping notice under NEPA in January 2007. See Shuford, 2007 WL 1695162, at \*20. The agency received more than 9,000 public comments in response to the notice, including comments from ONDA. The comments were overwhelmingly in support of reducing use of motorized vehicles on Steens Mountain.

On April 15, 2007, BLM issued an environmental assessment (“EA”) and unsigned Finding of No Significant Impact (“FONSI”) for the TMP, allowing a 30-day comment period ending on May 21, 2007. At that time, ONDA provided detailed written comments as well as its full transportation planning recommendations data and analyses, including further, updated route inventory information. BLM this time received approximately 9,872 public comments on its EA. FONSI/DR at 2. BLM then issued a final decision on May 31, 2007, just seven business days after receiving those nearly 10,000 comments from the public.

On June 8, 2007, the federal district court issued its opinion finding that BLM’s Transportation Plan was unlawful under the Steens Act. Shuford, 2007 WL 1695162, at\*19. Then, by letter dated June 13, 2007, BLM “rescinded” its final TMP decision. See Exhibit 1. BLM stated that it would “take into account” the Court’s decision and a new TMP decision. Id.; see also FONSI/DR at 2. Finally, on November 28, 2007, BLM issued its new TMP decision, which is the subject of this appeal. The new TMP decision is almost entirely unchanged from the rescinded decision (and the April 15, 2007 EA remains unchanged) originally issued prior to the district court’s ruling that BLM’s CMPA Transportation Plan is unlawful under the Steens Act.

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<sup>3</sup> The federal district court also ruled against ONDA on other claims not relevant in this appeal, concerning BLM’s adoption of the Andrews-Steens RMP. Shuford, 2007 WL 1695162 (D. Or. June 8, 2007).

## **STANDARD OF REVIEW**

To prevail on a petition for stay, the appellant must show sufficient justification based on the relative harm to the parties if the stay is granted or denied, the likelihood of appellant's success on the merits, the likelihood of immediate and irreparable harm if the stay is not granted, and whether the public interest favors granting a stay. 43 C.F.R. § 4.471(c)(2).

To achieve success on the merits, the appellant must meet its burden to demonstrate, by a preponderance of the evidence, that the Final Decision is unreasonable or does not substantially comply with NEPA, FLPMA, or the provisions of the federal grazing regulations found at 43 C.F.R. Part 4100. See 43 C.F.R. § 4.480(b); Eason v. BLM, 127 IBLA 259, 262 (1993). A BLM decision is arbitrary, capricious, or inequitable if it is not supported by any rational basis. Wayne D. Klump v. BLM, 124 IBLA 176, 182 (1992).

In balancing the likelihood of movant's success against the potential consequences of a stay on the other parties it has been held that it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus more deliberative investigation.

Wyo. Outdoor Council Inc., 153 IBLA 379, 388 (2000) (internal quotes omitted).

## **STATEMENT OF REASONS**

BLM's TMP decision violates the Steens Act, the Federal Land Policy and Management Act and the National Environmental Policy Act. In particular, BLM's final decision: (1) violates the Steens Act, FLPMA and NEPA because it fails to include or analyze non-motorized travel and recreation opportunities; (2) violates the Steens Act and FLPMA, including BLM's Interim Management Policy ("IMP") for Lands Under Wilderness Review, because it designates new routes in existing Wilderness Study Areas; (3) violates the Steens Act, FLPMA and NEPA because it fails to reconsider closures on routes on Steens Mountain shown to be obsolete, redundant or causing resource damage; and (4) violates the Steens Act and FLPMA by leaving open to motorized use more than 500 miles of motorized vehicle routes on Steens Mountain.

On top of these violations of law, BLM's decision is arbitrary and capricious—and should be stayed pending a decision on the merits of this appeal—because, as a practical matter, once BLM formalizes this travel plan, it will “lock” in the motorized designation of these routes (many of them little more than two-track “ways” through the sagebrush) as being officially open to motorized vehicle use. If BLM's unlawful decision is permitted to stand, it is extraordinarily unlikely that BLM can or will change the designation of any of these routes in any future NEPA process. With 500 plus miles of officially sanctioned, motorized vehicle routes carving up existing and proposed Wilderness Study Areas on Steens Mountain, Appellants' long-term efforts to secure any of the 500,000 acres of recommended (future) wilderness on Steens Mountain will be seriously crippled.

Accordingly, BLM's final decision adopting the Steens Mountain Travel Management Plan should be stayed and, ultimately, reversed and remanded to the agency with an order to prepare a new transportation plan that complies with the Steens Act and other requirements of federal law.

**I. BLM's Decision Violates the Steens Act, FLPMA, and NEPA Because it Fails to Include Non-Motorized Travel and Recreation Opportunities.**

In the EA, BLM limits its decision to motorized transportation, failing to address non-motorized travel and recreation opportunities. See EA at 2, 3; FONSI/DR at 4 (stating the TMP "focuses on motorized travel routes" and that a future "Comprehensive Recreation Plan" will deal with non-motorized use and routes). This violates the Steens Act, 16 U.S.C. § 460nnn-22 (providing for a "comprehensive" transportation plan that addresses "roads and trails" and "travel access"), FLPMA, 43 U.S.C. §§ 1701(a)(7) & (8) (providing for multiple use management of the public lands and protection of multiple use resource values in a manner that "will preserve and protect certain public lands in their natural condition"), 1732(a) (multiple-use mandate and land use plan consistency requirement), and NEPA, 42 U.S.C. § 4332(2)(C), (E) (requirement to consider reasonable range of alternatives).<sup>4</sup> Just as its transportation plan in the CMPA RMP violated the Steens Act's unambiguous requirement that the plan be "comprehensive," so does BLM's TMP decision violate the Act.

**A. Steens Act Violations.**

The Steens Act provides that BLM shall address both motorized and non-motorized issues and uses in its transportation plan:

Transportation plan. The management plan shall include, as an integral part a comprehensive transportation plan for the Federal lands included in the Cooperative Management and Protection Area, which shall address the maintenance, improvement, and closure of roads and trails as well as travel access.

16 U.S.C. § 460nnn-22(a) (emphasis added).<sup>5</sup> In the EA, BLM limits its decision to motorized transportation, refusing to address non-motorized travel and recreation opportunities. EA at 2, 3; FONSI/DR at 3 (stating, in response to comments that non-motorized travel should have been

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<sup>4</sup> See also 16 U.S.C. § 460nnn-21(a) (directing that Secretary shall manage CMPA pursuant to FLPMA and other applicable provisions of law).

<sup>5</sup> In addition to Congress's use of the term "comprehensive" in Section 112 of the Steens Act, the term "trail" unmistakably refers to non-motorized trails. For example, elsewhere in the Act, Congress expressly exempts construction or maintenance of "trails" from its general prohibition on construction of new roads within the CMPA. 16 U.S.C. § 460nnn-22(d)(2) ("Trails. Nothing in this subsection is intended to limit the authority of the Secretary to construct or maintain trails for nonmotorized or nonmechanized use.").

included in the TMP EA, that “[t]he RMP identified the need for a [Comprehensive Recreation Plan] to ascertain the types and amounts of recreation activities for the CMPA (RMP-67.). Snowmobile use and additional hiking trail designation may be part of the CRP[.]”.<sup>6</sup> Thus, BLM admits that the “TMP Environmental Assessment (EA) was completed to analyze potential effects of motorized access through implementing the various alternatives.” FONSI/DR at 1 (emphasis added).

BLM’s interpretation of the Steens Act is at odds with the plain language of the statute. The federal district court confirmed this on June 8, 2007, ruling that the transportation plan issued with the CMPA RMP violates the Steens Act because, among other things, it “fails to address travel on hiking trails as is unambiguously required by the statute.” ONDA v. Shuford, 2007 WL 1695162, at \*19 (emphasis added). Thus, as it did when it issued the transportation plan with the CMPA RMP, BLM once again has violated the express requirements of the Steens Act by refusing to address non-motorized travel and recreation within the Cooperative Management and Protection Area.

BLM intends to prepare a separate “Comprehensive Recreation Plan” in 2008 that will deal with non-motorized uses and recreation, among other things. See FONSI/DR at 1, 3, 4; see also id. at 1 (“[f]ull nonmotorized trail inventories have not yet been completed, and are expected to be completed during development of the [CRP]”).<sup>7</sup> This fails to satisfy the “unambiguous[]” terms of the Steens Act. ONDA v. Shuford, 2007 WL 1695162, at \*19 (citing 16 U.S.C. §§ 460nnn-21(b), 460nnn-22(a)). Nothing in the Steens Act allows BLM to defer its mandatory duty to prepare a comprehensive, integral transportation plan for Steens Mountain. Nor does the fact that the TMP maps purportedly “show[] many,” FONSI/DR at 1 & 4, hiking trails does not satisfy the Steens Act. According to the district court, “comprehensive” means comprehensive:

While BLM is correct that it can, and must, supplement its transportation plan with future relevant information, see 16 U.S.C. § 460nnn-21(b), I find that the Steens Act requires BLM to do more than simply describe the components or criteria of a future plan and defer development of the transportation plan to a later planning process. BLM’s approach violates the express intent of Congress, as set forth in the Steens Act, that BLM complete a comprehensive transportation plan integral to the CMPA RMP by the statutory deadline.

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<sup>6</sup> In the original TMP decision issued May 31, 2007, BLM stated that “Snowmobile use and hiking trail designation will be part of the CRP.” Now, it appears BLM is attempting to further water down the Steens Act’s unambiguous requirement that the agency comprehensively and integrally plan for non-motorized use and recreation in concert with motorized uses.

<sup>7</sup> See also Exhibit 2 (Dec. 2007 scoping notice for BLM’s “Comprehensive Recreation Plan”). The list of issues to be addressed in the Comprehensive Recreation Plan includes items that unmistakably fall within the Steens Act’s “comprehensive” requirements, including dispersed recreation, non-motorized winter recreation and trails, “Trails/Trailheads,” and off-highway vehicle management. Id. at 5–9. BLM also acknowledges that the SMAC

Shuford, 2007 WL 1695162, at \*19 (emphasis added). Accordingly, BLM's decision to omit non-motorized use and trails from the EA is arbitrary, capricious, and in violation of the Steens Act.

## **B. FLPMA Violations.**

This also violates FLPMA's multiple-use, land use plan consistency, and unnecessary or undue degradation requirements. 43 U.S.C. §§ 1701(a)(7) & (8), 1732(a). FLPMA requires BLM to manage the public lands consistent with the "principles of multiple use and sustained yield." 43 U.S.C. § 1732(a); see also id. § 1702(c) (defining "multiple use"). The Board of Land Appeals has interpreted the multiple use balancing duty to require that BLM:

engage in [a] reasoned or informed decisionmaking process concerning grazing in the canyons in the allotment. That process must show that BLM has balanced competing resource values ensure that the public lands [at issue] are managed in the manner that will best meet the present and future needs of the American people.

Nat'l Wildlife Fed'n v. Bureau of Land Mgmt., 140 IBLA 85, 101 (1997) (emphasis added). Citing Sierra Club v. Butz, 3 Envtl. L. Rept. 20,292, 20,293 (9th Cir. 1973), the IBLA explained that "the multiple-use principle 'requires that the values in question be informedly and rationally taken into balance.' . . . [A]n agency is required to engage in such a balancing test in order to determine whether a proposed activity in the public interest." 140 IBLA at 99 (emphasis added). Finally, under FLPMA, BLM also is obligated to manage implementation-level actions such as this consistently with the land use plan. 43 U.S.C. § 1732(a).

Here, BLM adopted a Transportation Plan found by a federal court to be in violation of the Steens Act, in part because it failed to address both motorized and non-motorized transportation and recreation. ONDA v. Shuford, 2007 WL 1695162, at \*18-\*19. In the CMPA RMP, BLM states that "[a]n EA/Travel Plan based on specific field inventories and need determinations of all other routes within the CMPA will complete the comprehensive requirements and be completed by December 31, 2005." CMPA RMP at 62 & App. M at 1 (emphasis added); see also ONDA v. Shuford, 2007 WL 1695162, at \*17 (quoting same).

By once again refusing to address non-motorized travel and recreation in the TMP EA, including expressly deferring non-motorized issues to yet another subsequent planning process (the Comprehensive Recreation Plan, see Exhibit 2), in violation of the express terms of the Steens Act, BLM has failed to properly balance multiple uses of the federal lands within the Steens Mountain Cooperative Management and Protection Area. By focusing exclusively on motorized designation and use, at the expense of non-motorized use, the EA contains no evidence of a "reasoned or informed decisionmaking process" that "show[s] that BLM has balanced competing resource values" or uses in accordance with the multiple use mandate. NWF v. BLM, 140 IBLA at 101. And where the effects of motorized use unquestionably exert a greater impact on the environment than those of non-motorized use, this in turn means the required balancing process cannot be said to "conserve, protect, and manage the long-term ecological integrity" of Steens Mountain. 16 U.S.C. § 460nnn-12(a). Finally, insofar as the

CMPA RMP expressly states that this Travel Management Plan “will complete the comprehensive requirements” of the Steens Act, CMPA RMP at 62, BLM’s failure to include non-motorized designation and use in the EA’s analysis runs afoul of FLPMA’s requirement that this implementation-level action be consistent with the land use plan. 43 U.S.C. § 1732(a).

### C. NEPA Violations.

Finally, BLM’s decision to limit the TMP to motorized transportation, and to not address non-motorized travel and recreation opportunities, violates NEPA’s “hard look” and alternatives requirements. 42 U.S.C. § 4332(2)(C), (E) (requirement to consider reasonable range of alternatives); 40 C.F.R. §§ 1502.14(a), 1500.2(f) (alternatives).

NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The statute’s twin objectives are to ensure that BLM “consider[s] every significant aspect of the environmental impact of a proposed action” and to “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” Earth Island Inst. v. U.S. Forest Serv., 442 F.3d 1147, 1153–54 (9th Cir. 2006) (citing Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1066 (9th Cir. 2002)); Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983). See also 40 C.F.R. § 1500.1(b), (c). “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” Id. § 1500.1(b).

NEPA requires BLM to consider reasonable alternatives to the proposed action in an EA. 40 C.F.R. § 1508.9(b); see also Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228–29 (9th Cir. 1988) (consideration of alternatives critical to NEPA’s goals even where proposed action does not trigger EIS); Akiak Native Cmty. v. U.S. Postal Serv., 213 F.3d 1140, 1148 (9th Cir. 2000); Idaho Sporting Cong. v. Alexander, 222 F.3d 562, 565 n.2 (9th Cir. 2000); Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1152 (9th Cir. 1998) (all noting that an EA must consider a reasonable range of alternatives). The range of alternatives requirement is critical to serving NEPA’s primary purposes of insuring fully informed decision-making and providing for meaningful public participation in environmental analyses and decision-making. See 40 C.F.R. § 1500.1(b), (c). See also Southern Utah Wilderness Alliance, 157 IBLA 150, 170 (2002) (discussing NEPA’s purpose of fully-informed decisionmaking and requirement to take “hard look” at environmental consequences of proposed actions).

The available reasonable alternatives for a given project are determined by the purpose and need of the project. City of Carmel-by-the-Sea v. U.S. Dep’t of the Interior, 123 F.3d 1142, 1155 (9th Cir. 1997). In the Ninth Circuit, an agency’s selection and discussion of alternatives is reviewed under a “rule of reason,” asking “whether the agency described those alternatives necessary to permit a reasoned choice.” City of Angoon v. Hodel, 803 F.2d 1016, 1020 (9th Cir. 1986); see also Native Ecosystems Council v. U.S. Forest Serv., 428 F.3d 1233, 1246–7 (9th Cir. 2005).

To satisfy NEPA, BLM must demonstrate it has taken a “hard look” at the environmental consequences of the proposed action. Ocean Advocates v. U.S. Army Corps of Eng’rs, 402 F.3d 846, 864 (9th Cir. 2005); Idaho Sporting Cong. v. Rittenhouse, 305 F.3d 957, 973 (9th Cir. 2002)

(quoting Marsh v. Ore. Natural Res. Council, 490 U.S. 360, 374 (1989)); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989). By focusing agency and public attention on the environmental effects of proposed agency action, “NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” Marsh, 490 U.S. at 371 (quoting 42 U.S.C. § 4321 and 40 C.F.R. § 1502.9(c)).

Here, because BLM refused to consider non-motorized designation and use, the agency necessarily violated NEPA’s alternatives requirement, in that it examined **no alternatives** involving designation of hiking or other non-motorized trails and likewise failed to analyze the impacts of non-motorized recreation alongside motorized recreation, and the impacts of the agency’s motorized use decisions on non-motorized uses and values. Accordingly, BLM cannot show it has taken a “hard look” at negative impacts to non-motorized recreation and users on Steens Mountain. (Likewise, since even hiking, for example, has impacts on the environment, BLM has failed to consider and plan for the impacts that non-motorized recreation will have on the ecological values of the CMPA.)

According to the EA, the objectives for developing the TMP include “how to best manage travel in the CMPA while protecting resources including wilderness characteristics, providing for ‘reasonable’ access to private lands, providing for sustainable livestock grazing, [and] providing recreation opportunities.” EA at 3. “Recreation opportunities” reasonably includes both motorized and non-motorized use (and does so expressly, under Section 112 of the Steens Act); yet BLM has limited the EA and its final decision to the designation and analysis of motorized vehicle routes only, with no discussion of non-motorized recreation use. FONSI/DR at 1. This precludes any meaningful resolution of potential conflicts of motorized use on non-motorized recreation users and uses.

This is particularly egregious because, as ONDA and others pointed during the public comment period, the overwhelming majority of motorized use of Steens Mountain is in fact **recreation-oriented**. Whether by trucks, dirt bikes or ATVs, most of the motorized use on Steens is in pursuit of recreation-related activities. Thus, under the guise of travel management, BLM’s final decision makes commitments to motorized recreation at the expense of non-motorized uses and users. The EA simply dismisses concern about this oversight by stating that “these activities will be addressed in a comprehensive recreation plan which is scheduled to start in 2007.” EA at 2; see also FONSI/DR at 3–4 (stating same). As explained above, however, the District of Oregon already has determined that this rationale is legally flawed. ONDA v. Shuford, 2007 WL 1695162, at \*18–\*19.

BLM in fact contradicts its decision to not analyze non-motorized use in its discussion under the “Purpose and Need” by detailing decision factors for selecting the preferred alternative, which ask how well the preferred action addresses: (1) “[t]ravel opportunities for primitive camping, hunting, fishing, hiking, and other recreation activities including driving for pleasure”; and (2) “[p]reventing impairment of the WSAs[.]” EA at 4. See also City of Carmel-by-the-Sea, 123 F.3d at 1155 (available reasonable alternatives are determined by the purpose and need of the project). In the EA and Decision Record, BLM never explains how it can omit non-motorized travel and recreation issues from the TMP planning process when two of the very

decision criteria included in the agency's Purpose and Need statement involve non-motorized uses and users.

Moreover, by failing to address non-motorized travel and uses now, BLM has made its TMP decision based on flawed, inaccurate, or incomplete information. See, e.g., EA at 56 (noting that BLM's current inventory of trails is incomplete); FONSI/DR at 1 ("Full nonmotorized trail inventories have not yet been completed"). Under NEPA, the baseline for "environmental analysis that is the heart of the EIS" must "be accurate and complete." Ctr. for Biol. Diversity, 422 F.Supp.2d at 1163 (citing Vermont Yankee Nuclear Pwr. Corp. v. Natural Res. Def. Council, 435 U.S. 519, 553 (1973)). See also Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988) ("without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA"). In explaining the importance of alternatives analysis in fulfilling NEPA's statutory scheme and underlying purpose, the Ninth Circuit in one leading case has noted that "[i]nformed and meaningful consideration of alternatives . . . is thus an integral part of the statutory scheme." Bob Marshall Alliance, 852 F.2d at 1228.

In addition to failing to collect its own accurate and complete inventory of nonmotorized trails and routes, BLM also ignored the Oregon Natural Desert Association's exhaustive route inventory data, provided to BLM during both the CMPA RMP process as well as the TMP process. See Marlett Decl. ¶¶ 16–22 (explaining ONDA's wilderness inventory, route inventory, and road closure recommendations to BLM); Miller Decl. ¶¶ 4–5 (also describing ONDA's wilderness and route inventory information, including attached maps showing overview of ONDA findings and recommendations). The two maps included as Attachment A to the Miller Declaration, for example, show ONDA's proposed wilderness areas and, most importantly for this appeal, proposed route closures throughout the TMP planning area. In the TMP EA, BLM fails to consider non-motorized uses in these areas.

Attachment B to the Miller Declaration is ONDA's 242-page route inventory report and recommendations. It provides georeferenced photographic evidence, along with GIS mapping, showing routes that are overgrown, rocky, rutted, impassable, and sometimes virtually nonexistent on the ground. These are the types of routes BLM should have considered closing to motorized use. Yet, because BLM arbitrarily limited its analysis to motorized use only, the agency failed to do so in the TMP EA.

In short, preparation of the TMP in piecemeal fashion separate from the transportation plan, comprehensive recreation plan and other transportation-related portions of the CMPA RMP, combined with incomplete inventory information and a failure to evaluate detailed inventory information and route closure recommendations provided to it by the public, violates the express terms of the Steens Act, runs afoul of FLPMA's multiple-use and land use plan consistency requirements, violates NEPA's "hard look" and alternatives requirements—and is simply backward in that it will impair and irreparably harm non-motorized recreation opportunities and uses on Steens Mountain.

## II. BLM's Decision to Designate "Obscure Routes" in Wilderness Study Areas Violates the Steens Act, FLPMA and BLM's Interim Management Policy.

BLM's final decision includes identifying "Obscure" and "Historic" routes in existing Wilderness Study Areas ("WSAs") that would permit motorized access, allowing for any motorized use that existed at the time FLPMA was enacted. EA at 17; FONSI/DR at 12. Neither of these categories of routes are mentioned in the Steens Act or elsewhere; rather, they are self-defined designations BLM has created during this decision-making process. Obscure Routes, according to BLM, are "hard to locate on-the-ground." EA at 12. This is an understatement, as many of these routes no longer exist and cannot be found. See, e.g., EA at 11 (noting that these routes "were hard to locate or were not found").<sup>8</sup> See also Miller Decl. ¶ 6 & Attachment C (email from BLM TMP project leader to ONDA, admitting that BLM "could not find [the Obscure Routes] to actually GPS [map] them during the TMP route inventory process").

Approximately 36 miles of Obscure Routes are identified in the EA, with most (27 miles) falling within Wilderness Study Areas. Many of these Obscure Routes are not accurately portrayed on BLM's maps because they could not even be found in the field. According to ONDA's communications with BLM staff, most of the Obscure Routes shown in the north portion of the Blitzen River WSA have been digitized freehand rather than created by GPS ("Geographic Positioning System") because they simply could not be located and recorded in the field with a GPS. See ONDA Comments at 5; Miller Decl. ¶ 6 & Attachment C. Under BLM's final decision, 35 miles of these "routes" will be shown on BLM maps and designated as "open" to the public. FONSI/DR at 12; EA at 17.<sup>9</sup>

### A. Steens Act Violations.

BLM's decision to designate and open to motorized traffic 35 miles of "Obscure Routes" violates the Steens Act's purpose, its express prohibition of off-road motorized vehicle use, and its express prohibition on new road construction. 16 U.S.C. §§ 460nnn-12(a), -22(b)(1)(A), -22(d)(1). The single purpose Congress assigned to the CMPA "is to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations." *Id.* § 460nnn-12(a); see also *ONDA v. Shuford*, 2007 WL 1695162, at \*1 (observing same). "Ecological integrity" means:

a landscape where ecological processes are functioning to maintain the structure, composition, activity, and resilience of the landscape over time, including—

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<sup>8</sup> The EA provides no evidence of the "manner and degree" of use on "Historical Routes" that was occurring on October 21, 1976, when FLPMA was passed. See EA at 12, 13, 18.

<sup>9</sup> BLM offers no documentation that any such motorized use existed at the time FLPMA was enacted, other than someone's verbal recollection. ONDA will support such historic uses as recollected by current livestock permittees, but needs proof that such use extended to the public at large. Without hard documentation, BLM must abide by its Wilderness EIS, including map boundaries and ways identified during that inventory. See also EA at 3 (noting that "accurate identification of routes is necessary to properly manage" OHVs in the CMPA).

- (A) a complex of plant communities, habitats and conditions representative of variable and sustainable successional conditions; and
- (B) the maintenance of biological diversity, soil fertility, and genetic interchange.

16 U.S.C. § 460nnn(5).

BLM's decision to designate and open to motorized traffic 35 miles of routes that cannot even be located clearly on the ground contravenes this fundamental purpose of the Steens Act. There is no question that the presence of roads adds to habitat fragmentation and other ecological damage to the values and resources that this area is statutorily designated to protect.<sup>10</sup> The EA concludes that "road density and habitat fragmentation do not appear to be a current or expected future adverse effect to habitat or wildlife populations in the CMPA," EA at 37, and applies this conclusion to all of the alternatives. BLM bases this conclusion on three reasons, none of which are based on scientific studies on Steens Mountain. The reasons include lack of expressed concern by the Oregon Department of Fish & Wildlife, seasonal road closures, and a lower road density than in "other areas." EA at 37.

Habitat fragmentation analyses usually use 1- to 3-mile radial buffers, but this EA only uses ½-mile buffers. Using a half-mile buffer, 45–46% of public lands within the CMPA would qualify as core area<sup>11</sup> for Alternatives A, B, and D, whereas 67% would be core under Alternative C. The spread would be even more pronounced if a standard 1-mile buffer was used. Similarly, road densities are approximately 1 mi/mi<sup>2</sup> for Alternatives A, B, and D, but 0.66 mi/mi<sup>2</sup> for Alternative C. Despite the dramatic decrease in road density and increase in core area, the EA appears to conclude there would be no significant benefit to wildlife under Alternative C. Not only is this counterintuitive, it has no scientific basis. See, e.g., Trombulak & Frissel (2000). This runs counter to the Steens Act's express purpose of protecting the long-term ecological integrity of the CMPA.

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<sup>10</sup> The negative impacts of wildland roads on wildlife and wildlife habitat have been well documented. See, e.g., M.J. Wisdom et al, "Source habitats for terrestrial vertebrates of focus in the interior Columbia basin: Broad-scale trends and management implications," Volume 1 – Overview. Gen. Tech. Rep. PNW-GTR-485, Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station (2000), available at [www.fs.fed.us/pnw/pubs/gtr485/gtr485v1.pdf](http://www.fs.fed.us/pnw/pubs/gtr485/gtr485v1.pdf); S.C. Trombulak & C.A. Frissel, Review of ecological effects of roads on terrestrial and aquatic communities, 14 Conservation Biology 18 (2000). Further, appellant The Wilderness Society, in its January 22, 2007 comments, provided to BLM numerous citations and studies discussing the well-known negative impacts of roads on wildlife. See, e.g., The Wilderness Society, "Habitat Fragmentation from Roads: Travel Planning Methods to Safeguard BLM Lands" (available at [www.wilderness.org/Library/Documents/upload/TravelBriefFinal.pdf](http://www.wilderness.org/Library/Documents/upload/TravelBriefFinal.pdf)). See also Miller Declaration at ¶ 7 (summarizing the "benefits of large tracts of roadless areas").

<sup>11</sup> The term "core area" generally means the area of unfragmented habitat, free of edge effects, where use by native species is concentrated.

The decision also violates the Steens Act's prohibitions on use of vehicles off-road and on construction of new roads. The Act prohibits use of vehicles "off-road." 16 U.S.C. § 460nnn-22(b)(1)(A).<sup>12</sup> It also prohibits construction of new roads. *Id.* § 460nnn-22(d)(1).<sup>13</sup> Because these Obscure Routes essentially do not exist on the ground, "re-establishing" them via designation and permitting motorized users to establish them via their "open" designation, is tantamount both to allowing "off-road" vehicle use and to constructing new routes.

BLM's Obscure Routes certainly do not meet any relevant definition of the term "road." The legal definition of a road for BLM public lands is found in FLPMA's legislative history, as described in BLM's 1978 Wilderness Inventory Handbook

The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by passage of vehicles does not constitute a road.

1978 Handbook at 5 (citing H.R. Rep. No. 94-1163 at 17 (1976)); see also *ONDA v. Shuford*, 2007 WL 1695162, at \*8 (quoting same definition). In the federal regulations, the Department of the Interior has defined the term "road" as "[a]n improved road that is suitable for public travel by means of four wheeled, motorized vehicles intended primarily for highway use." 43 C.F.R. § 19.2(e). And in its Instruction Memorandum No. 2006-173, concerning transportation management issues, Interior defines a road as "[a] linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use."

Because the BLM-designated Obscure Routes at issue here are difficult or impossible to even locate on the ground, they cannot be said to be routes "improved and maintained" by "mechanical means" to "insure relatively regular and continuous use." Although BLM provides no photographs of these Obscure Routes in its EA (because it cannot even locate them on the ground), the very fact that they cannot be located on the ground suggests they necessarily cannot be driven by "low-clearance vehicles" or "motorized vehicles intended primarily for highway use." At best, these "routes" must travel cross-country over rocks, sagebrush and other native vegetation (not to mention essentially undisturbed wildlife habitat due to current non-use).<sup>14</sup>

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<sup>12</sup> The Act provides an exception only if the Secretary determines that such use is needed for administrative purposes or to respond to an emergency, or is "appropriate for the construction or maintenance of agricultural facilities, fish and wildlife management, or ecological restoration projects." 16 U.S.C. § 460nnn-22(b)(2). BLM has not invoked this exception for its decision to designate and open Obscure Routes.

<sup>13</sup> Again, there also is a "public safety or protection of the environment" exception here. 16 U.S.C. § 460nnn-22(d)(1). BLM has not invoked this exception for its decision to designate and open the Obscure Routes.

<sup>14</sup> One example of a BLM "Obscure Route" is shown at page 14 of the Donner und Blitzen section of ONDA's route inventory report. Miller Decl., Attachment B (Donner und Blitzen section, Route "SFDB7," Photo HX-40). The photograph shows that the "Obscure Route" is

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As a result, because these Obscure Routes are not “roads,” BLM’s decision to designate these routes and open them to motorized use is a decision to allow off-road vehicle use and to create new roads, both of which Congress has expressly prohibited in the Steens Act. 16 U.S.C. §§ 460nnn-22(b)(1)(A), -22(d)(1). Moreover, BLM admits in the EA that, due to the difficulty in even finding these routes on the ground (and because they will only be shown on a map and not marked in the field), “multiple routes might be established by those seeking to find and drive an Obscure Route.” EA at 22. BLM claims this is unlikely because “these impacts have not yet been observed.” EA at 22. But this assumption is undermined by BLM’s concession that “[w]ith the aging population of America, OHV use has accelerated” and that “[p]ublic use of improved and primitive routes is recognized and expected to increase on public lands in the future.” EA at 2, 57. In other words, once these routes are designated and opened to the public, they are immediately susceptible to use and establishment—meaning areas previously undisturbed by motorized vehicle use will now be negatively impacted by such use.

As a result, it is reasonable to expect that motorized recreation in the CMPA will increase as time goes on, which would include all routes identified as open to motorized use in this Travel Management Plan decision. Accordingly, BLM’s decision to establish Obscure Routes and to permit other users to “re-establish” them or very potentially create new routes (because they cannot find the actual route on the ground) violates the Steens Act’s CMPA purpose and its express prohibitions on off-road use and creation of new roads.

## **B. FLPMA Violations.**

BLM’s decision to designate and open to motorized vehicles the Obscure Routes identified in the EA also violates FLPMA’s multiple-use and unnecessary or undue degradation requirements, as well as the Act’s wilderness nonimpairment standard and BLM’s Interim Management Policy implementing that standard.

### **1. *Multiple-use and unnecessary or undue degradation violations.***

As explained above, FLPMA requires BLM to manage the public lands consistent with the “principles of multiple use and sustained yield.” 43 U.S.C. § 1732(a); see also *NWF v. BLM*, 140 IBLA at 101 (explaining BLM’s multiple use balancing requirements). BLM must manage the public lands “without permanent impairment of the productivity of the land or quality of the environment.” 43 U.S.C. § 1702(c). The cornerstone of FLPMA’s multiple-use framework

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simply nonexistent. Likewise, Pages 18 (Route “SFDB8,” Photo HT-68) and 19 (Route “SFDB8,” Photo HT-71) of the Donner und Blitzen section show another Obscure Route, again simply evaporating into sage brush, tall grass and rocks. Other examples of Obscure Routes in this area include Page 34 (Route “SFDB4,” Photo HT-88), and Pages 42–47 (Route 8244-0-G0, Photos 6, 9, 10, 13, 14 & 96, where route is barely visible where it begins and is nonexistent by the time it reaches the portion mapped as “Obscure” by BLM on agency’s “CMPA Travel Management Plan Decision Map”). Data such as this is completely lacking from the TMP EA. For ease of reference, these photographs, which appear in Attachment B to the Miller Declaration, are attached as Exhibit 3 to this appeal.

requires that BLM “shall . . . take any action necessary to prevent unnecessary or undue degradation of the lands.” Id. § 1732(b). Accordingly, “BLM is obligated to consider in its [NEPA document] whether there will be any unnecessary or undue degradation to the lands as a result of” the proposed action. Soda Mtn. Wilderness Council v. Norton, 424 F.Supp.2d 1241, 1269–70 (E.D. Cal. 2006).

The “unnecessary or undue degradation” standard evinces a clear intent on the part of Congress: “Interior is to prevent, not only unnecessary degradation, but also degradation that, while necessary to mining [the land use at issue in that case], is undue or excessive.” Mineral Pol’y Ctr. v. Norton, 292 F.Supp.2d 30, 43 (D.D.C. 2003); Sierra Club v. Hodel, 848 F.2d 1068, 1075 (10th Cir. 1988) (“unnecessary or undue degradation” is an enforceable duty and provides “law to apply”). See also Ctr. for Biol. Diversity v. Bureau of Land Mgmt., 422 F.Supp.2d 1115, 1167–68 (N.D. Cal. 2006) (BLM land use plan decision violated FLPMA when decision was based on “outdated and inaccurate” inventory information); Soda Mtn., 424 F.Supp.2d at 1270–71 (BLM violated “unnecessary or undue degradation” standard where proposed land use plan amendment was based on contradictory and inconsistent grazing decisions that “fail[] to draw rational connections between the facts found and the decisions made) (citing Low, 109 F.3d at 526; 5 U.S.C. § 706(2)(A)).

Here, BLM’s decision will cause “unnecessary or undue degradation” by allowing the new creation or re-establishment of routes that have all but been entirely reclaimed (due to lack of use) by natural processes since FLPMA was enacted in 1976. Opening these routes to new motorized use, as well as the very real threat of newly-created routes where users cannot find the mapped-but-unmarked Obscure Routes, is both unnecessary degradation and undue degradation within the Steens Mountain CMPA.

Because there are literally hundreds of additional miles of routes available for use within the CMPA, there is no argument that opening 35 additional miles of Obscure Routes is “necessary.” For example, since these Obscure Routes cannot be located on the ground, they clearly are not part of any “reasonable” access to private lands, or necessary to provide access to historic recreation opportunities. See EA at 3 (stating among objectives for TMP: “providing for ‘reasonable’ access to private lands” and “providing recreation opportunities”). Instead, allowing them to remain in their reclaimed (by nature) state does meet the EA’s objective of protecting wilderness characteristics within the CMPA. EA at 3. This is necessary to satisfy the Steens Act’s purpose of protecting the “long-term ecological integrity” of Steens Mountain. 16 U.S.C. § 460nnn-12(a).

Even if BLM could point to a reason why “return[ing these routes] to the route network,” FONSI/DR at 6, was “necessary,” the potential degradation from the decision to designate and open them to motorized use still would be “undue” based on the 555 of miles of routes already left open under BLM’s final decision. This, in turn, leads to the inexorable conclusion that BLM’s decision to re-establish 35 miles of virtually non-existent routes runs afoul of both the procedural and the substantive elements of the agency’s multiple-use duty. 43 U.S.C. § 1732(a). As highlighted in the previous section, this is all the more apparent in light of the Steens Act’s express prohibition on off-road vehicle use, prohibition on construction of new roads, and

singular purpose of protecting the “long-term ecological integrity” of Steens Mountain within the CMPA. 16 U.S.C. § 460nnn-12(a).

## 2. *Interim Management Policy violations.*

BLM’s decision with respect to Obscure Routes also is inconsistent with FLPMA’s “nonimpairment” standard, 43 U.S.C. § 1782(c), and BLM’s Interim Management Policy (“IMP”) for Lands Under Wilderness Review (BLM handbook H-8550-1). The IMP requires that Wilderness Study Areas are managed to protect their wilderness values. Under FLPMA, until Congress acts on Interior’s and the President’s WSA recommendations

the Secretary shall continue to manage [Wilderness Study Areas] . . . in a manner so as not to impair the suitability of such areas for preservation as wilderness . . . [and] in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.

Id. See also EA at 9 (reiterating the IMP requirements). According to the IMP, the “overriding consideration . . . must be that the preservation of wilderness values within a WSA is paramount and should be the primary consideration when evaluating any proposed action or use that may conflict with or be adverse to those wilderness values.” IMP at 8 (emphasis in original). Thus,

wilderness resource management objectives within a WSA should take precedence over all other resource management program objectives. In other words, the wilderness resource will be dominant in all management decisions when a choice must be made between preservation of wilderness suitability and other competing uses.

Id. In short, neither Congress nor the Department of the Interior could have used stronger words in expressing this fundamental resource policy for public lands with recognized outstanding wilderness values.

Again, the disappearance of the Obscure Routes has improved the wilderness characteristics of these Wilderness Study Areas by improving their naturalness. EA at 19–20. Allowing these “routes” to continue to be reclaimed by nature will also improve opportunities for solitude and primitive and unconfined recreation.<sup>15</sup> According to the EA, “[c]losure of Obscure

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<sup>15</sup> “Wilderness” is defined legally by (1) size (at least 5,000 contiguous acres of public land), (2) naturalness (the area “generally appears to have been affected primarily by the forces of nature” and “imprints of man’s work” are “substantially unnoticeable”), and (3) either outstanding opportunities for solitude or for a primitive and unconfined type of recreation. 16 U.S.C. § 1131(c) (Wilderness Act definition); 43 U.S.C. § 1702(i) (FLPMA adopting same definition). Wilderness also may contain “supplemental values” such as ecological, geological, or other features of scientific, educational, scenic, or historical value. 16 U.S.C. § 1131(c). BLM’s 1978 Wilderness Inventory Handbook and its 2000 Wilderness Inventory & Study Procedures handbook both contain detailed discussions and definitions of these wilderness criteria.

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Routes would potentially increase chances of an individual finding solitude from sites and sounds of others and motorized vehicles.” EA at 2. This is essential in an area already criss-crossed with literally hundreds of other miles of routes available for motorized use.

Conversely, designating Obscure Routes is likely to not only reestablish whatever use may have occurred 30 years ago, but also is likely to increase that use and increase the resulting impact to the wilderness resource in these WSAs. And, as discussed above, the EA’s conclusion that increased use of Obscure Routes is unlikely based on historic use, flatly contradicts its own predictions of increased use for the CMPA. Furthermore, the EA acknowledges that the proposed action could lead to creation of multiple new routes, which would unquestionably impair wilderness values. In short, designation of Obscure Routes as open to motorized use is likely to increase damage to wilderness values in WSAs and cause unnecessary or undue degradation, in violation of FLPMA and the IMP.

### **III. BLM’s Refusal to Reconsider Closures on the Indian Creek, Cold Springs and Fish Creek Routes in the Steens Mountain Wilderness Area Violates the Steens Act, FLPMA, and NEPA.**

During the NEPA process, ONDA and others asked BLM to consider closing portions of open routes in the Steens Mountain Wilderness. In particular, ONDA asked that the Indian Creek, Cold Springs, and Fish Creek routes be partially closed because they are redundant or unnecessary and because closure would protect and conserve the “long-term ecological integrity” of Steens Mountain. 16 U.S.C. § 460nnn-12(a). The Oregon Natural Desert Association provided to BLM inventory information, including photographs of the routes in question, to support its argument to BLM that these routes are redundant, obsolete, causing ongoing resource damage, and so forth.

Each of these three routes is a “cherry-stem”<sup>16</sup> route into the Wilderness area. See FONSI/DR, “CMPA Travel Management Plan Decision Map” (showing these three routes’ locations within the Wilderness area). For example, in its 2003 road closure recommendations submitted to BLM, appellant Oregon Natural Desert Association explained (along with supporting photographic evidence) that the Fish Creek route

is a cherry-stem into the Steens Mountain Wilderness. The road is infrequently used and difficult to distinguish except by those who are aware of its existence. We recommend that the road be permanently closed to avoid resource damage (erosion) and degradation of the wilderness character of the area.

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<sup>16</sup> BLM has recognized the concept of “cherry-stemming” in the agency’s 2001 *Wilderness Inventory Study and Procedures Handbook* (p.10): “A dead-end (cherry-stem) road can form the boundary of an inventory area, and does not by itself disqualify an area from being considered ‘roadless’.”

ONDA, Steens Mountain CMPA Road Closure Recommendations (Jan. 22, 2003). In its extremely detailed transportation recommendations submitted in Spring 2007 during the TMP NEPA process, ONDA provided further evidence that, after only a short distance into the Wilderness area, these routes (and many others) become rocky, rutted, eroded, and show little sign of actual use. See Miller Declaration, Attachment B (242-page report with geo-referenced, color photographs and GIS maps showing route condition and closure recommendations for more than 100 routes throughout the planning area).<sup>17</sup> BLM never disputed this evidence and provides no evidence to the contrary in the EA or FONSI/DR.

In the EA, BLM refused to consider any partial closures of the Indian Creek, Cold Springs, or Fish Creek routes, each of which lies within the designated Steens Mountain Wilderness. See EA at 18 (listing this under “Issues Considered but not Fully Analyzed”); FONSI/DR, “CMPA Travel Management Plan Decision Map.” BLM explained that because it had left these routes “open” in the Transportation Plan issued with the CMPA RMP, they were “not considered for closure in this EA.” EA at 18. In its final decision, BLM states, “The Indian Creek Road was left open in the Steens Act legislation and in the Steens RMP, therefore, changing these wilderness ‘cherry stem’ routes was not analyzed in the EA.” FONSI/DR at 2. In other words, BLM elected not to consider partially closing any of these routes simply because it had already “decided” to leave them open in the Transportation Plan.

This decision is arbitrary, capricious and not in accordance with law for several reasons. First, it violates the Steens Act’s transportation planning provision. As discussed above, Section 112 requires that BLM prepare a “comprehensive transportation plan” which addresses, among other things, “closure” of roads. 16 U.S.C. § 460nnn-22(a). The Act specifically directs that use of motorized vehicles “is limited to such roads and trails as may be designated by BLM. *Id.* § 460nnn-22(b)(1)(B) (emphasis added). Congress expressly provided that decisions whether to close or otherwise restrict access along existing routes within the CMPA “shall be made in consultation with the [Steens Mountain Advisory Council] and the public.” *Id.* § 460nnn-22(c).<sup>18</sup>

BLM’s decision to refuse to consider in the TMP EA, under any alternative, partial closure of these three routes in the Steens Mountain Wilderness Area, is contrary to the Steens Act’s requirement that the transportation plan (and its “implementing” parts such as the Travel Management Plan) be “comprehensive” and that road closure decisions (and by default, decisions to retain roads as open) be made in consultation with the public. ONDA and others specifically asked BLM to consider closing these routes based on evidence that the routes are

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<sup>17</sup> Like ONDA’s 2003 transportation planning report and recommendations, this detailed set of inventory data and recommendations should be in the administrative record for this appeal. ONDA provides excerpts of its 2007 recommendations here to highlight particularly relevant information ignored by BLM.

<sup>18</sup> Note that the Steens Mountain Advisory Council (“SMAC”) has “recommended that BLM look at all recreation issues on the Steens Mountain in a comprehensive manner, rather than by planning for piecemeal activities.” Exhibit 2 at 2 (BLM’s Comprehensive Recreation Plan scoping notice).

rarely used and are in poor condition—and, as a result, would adversely impact Congressionally-recognized wilderness values and ecological integrity if left open.

BLM's refusal to consider partial closure of these routes in the Travel Management Plan is, of course, exacerbated by the fact that the agency's Transportation Plan issued with the RMP has been determined to be unlawful by the federal district court. ONDA v. Shuford, 2007 WL 1695162, at \*16–\*20. Therefore, BLM's reliance on its unlawful Transportation Plan decision to leave these routes open is misplaced because it is based on an unlawful plan and prior decision. For the same reasons that the Transportation Plan was found to not be "comprehensive" as required under the Steens Act, this Travel Management Plan also falls short of that statutory requirement.

Even if BLM may have retained some degree of discretion on the final decision whether to partially close these routes or not, the agency's complete refusal to even consider closure during the NEPA process is unsupportable in the administrative record. The only evidence of the current condition of these routes and of the current apparent use levels of these routes, is provided by ONDA's route inventory and recommendations report. See Miller Decl., Attachment B. BLM provides no countervailing evidence because it flatly refused to even consider the issue. EA at 18; FONSI/DR at 2. Accordingly, this violates not only the Steens Act's transportation planning provision, but also NEPA's "hard look" and range of alternatives requirements, 40 C.F.R. §§ 1502.14(a), 1500.2(f), Ocean Advocates, 402 F.3d at 864, as well as FLPMA's multiple use and unnecessary or undue degradation requirements, 43 U.S.C. §§ 1732(a), (b). To the extent BLM has indicated in its CMPA RMP that the Travel Management Plan will "implement" the Transportation Plan issued with the RMP, this insufficient TMP also violates FLPMA's consistency provision. 43 U.S.C. § 1732(a) (site-specific or implementation-level actions must be consistent with the land use plan); Ore. Natural Resources Council Fund v. Brong, 492 F.3d 1120, 1128 (9th Cir. 2007) (holding that BLM project components "are inconsistent with the Plan and, consequently, violate FLPMA"). See also EA at 3 (stating purpose of the TMP EA to "further refine the motor vehicle route network within the CMPA") (emphasis added).

#### **IV. BLM's Decision to Leave Open More than 500 Miles of Motorized Vehicle Routes Violates the Steens Act and FLPMA.**

The single greatest threat to the ecological integrity of Steens Mountain is the invasion and spread of noxious weeds. Indeed, this is a highest priority problem throughout the public lands in the West. More than a decade ago, the Department of the Interior recognized that the spread of noxious weeds is "reaching epidemic proportions." USDOI-BLM, Noxious Weed Strategy for Oregon/Washington, 3 (1994). More recently, the Department of Agriculture observed that on the western ranges and wildlands, "[t]he foremost issue in most restoration or rehabilitation projects is the establishment of seeded [noxious weed] species." USDA Forest Service, Restoring Western Ranges and Wildlands, RRS-GTR-136-vol. 1, at 62 (2004). And in its recent environmental report concerning vegetation treatments throughout the West, BLM estimated that nearly 36 million acres of public lands were infested with weeds in 2000, and that noxious weeds are spreading at a rate of 2,300 acres a day. USDOI-BLM, Vegetation Treatments on Bureau of Land Management Lands in 17 Western States, Grammatic Environmental

Report(Draft), at 3-39 (2005) (also noting that Oregon is one of three states with the largest weed infestations on public lands). Indeed, weeds are spreading so rapidly in Oregon that they have been declared a “menace to the public welfare.” Andrews-Steens RMP FEIS, Vol. 1, at 3-17 (2004) (citing Ore. Rev. Stat. 570.505).

Noxious weeds are present throughout the Steens Mountain area, and the “vast majority of noxious weed sites in the CMPA occurs [sic] along roads or around reservoirs.” EA at 50. BLM admits in the RMP (to which the TMP EA is tiered) that “road networks provide a major vector for introduction and spread” of weeds.” Andrews-Steens RMP FEIS, Vol. 1, at 3-17. In the EA, BLM explains that “[r]oads and travel corridors are typically the likely place for new introductions of weeds” and that the presence of maintained roads “exponentially increase[es] sites susceptible to new weed introductions.” EA at 50. In the arid, high desert environment on Steens Mountain, “unimproved roads or trails typically remain visible and road-like for many years even without maintenance or much traffic”—therefore further increasing the potential for new or further weed infestation along these types of routes. EA at 50–51.

Yet, BLM has selected an alternative that will leave 555 miles of routes open to motorized vehicles (in addition to the 35 miles of Obscure Routes being “returned to the route network” even though they cannot be located on the ground today). FONSI/DR at 11–12. BLM’s justification for this decision is that the road network is a “high priority for monitoring noxious weeds.” EA at 50. According to BLM, “Once roads are closed, they will likely receive less monitoring for weeds . . . . Conversely, open routes are more easily monitored for new weed infestations but they are also more apt to have weed seeds introduced.” EA at 51. Based on this, BLM concludes that there “are no differences in impacts to weed management” among the alternatives. EA at 51.

There are two significant flaws with this analysis. First, as BLM admits, there would be no need for continued weed “monitoring” if the primary vector for the spread of weeds—i.e., motorized vehicle use—was eliminated from a given route. As appellants explained at length in their comments, the scientific literature has overwhelmingly shown that habitats near roads and off-road vehicle routes are typically dominated by invasive weed species. See, e.g., ONDA May 21, 2007 Comments, at 9–10, n.10, 11 & 12. Conversely, roadless habitats are most often refuges for native species. Id. And an ever-increasing number of studies has documented the ability of roadside weed infestations to spread into and across neighboring lands, including otherwise natural ecosystems. Id. The simple fact is that more routes closed equals less exposure to noxious weeds, a decreased likelihood of new weed infestations, and a decreased likelihood of existing infestations spreading.

The second significant flaw with BLM’s analysis is the agency’s assumption that closed routes will lead to less monitoring for weeds (and therefore, according to BLM, further, uncontrolled spread of weeds). EA at 51. This assumption is directly inconsistent with the express terms of the Steens Act, which provides that off-road motorized travel is prohibited **except** where it is “needed for administrative purposes or to respond to an emergency” or “is appropriate for . . . fish and wildlife management, or ecological restoration projects.” 16 U.S.C. § 460nnn-22(b)(2). In other words, there is no reason why BLM cannot close additional routes within the CMPA while retaining the agency’s authority to conduct key weed monitoring or

treatment where necessary. Because BLM's entire support for the "negative consequences," EA at 51, of closing roads is tied to this fundamental misinterpretation of the Steens Act, it necessarily follows that only the "positive" consequences of less weed introductions and spread, and increased habitat quality, will result.

With this in mind, BLM's decision to leave open 555 miles of routes based on flawed assumptions concerning the single most significant environmental threat on Steens Mountain, is arbitrary and capricious. Most importantly, BLM's decision runs counter to the singular purpose Congress assigned to the Cooperative Management and Protection Area: "to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations." 16 U.S.C. § 460nnn-12(a) (emphasis added). As ONDA's exhaustive route inventory report data show, the vast majority of the routes BLM proposes to leave open under this decision are overgrown, rocky, rutted, impassable, and sometimes virtually nonexistent. See Miller Decl., Attachment B. These are precisely the types of vulnerable high desert routes BLM should have closed in order to protect the long-term ecological integrity of Steens Mountain. Because weeds are the most significant threat to Steens Mountain's "long-term ecological integrity" BLM's decision to maintain the status quo, particularly in light of the evidence presented to it during the NEPA process, violates the Steens Act.

### **PETITION FOR STAY**

Pursuant to 43 C.F.R. § 4.21, ONDA hereby petitions for a stay of the challenged decision. ONDA hereby respectfully requests the IBLA to stay this contested decision until the appeal is resolved.

#### **I. The Likelihood of Irreparable Harm Favors Issuance of a Stay.**

The harm that will result from implementation of BLM's final decision is irreparable in that it will allow new and purposeful degradation of public resources, including further and more defined fragmentation of wildlife habitat and populations, the infestation and spread of noxious weeds to the detriment of native plant species, and the potential creation and expansion of new roads within Wilderness Study Areas. In turn, Appellants and their members will be deprived of the opportunity to enjoy thriving wildlife populations in intact natural habitats (i.e., "ecological integrity"), including healthy and thriving populations of special status species such as pronghorn, sage grouse, pygmy rabbits, and wolverine. Instead, ONDA and the public will be faced with the very real potential for additional acreages of flourishing exotic (plant) species invasions, declining wildlife populations as their habitat continues to become fragmented by increased weeds, and resource degradation causing long-term or permanent damage to wilderness values within existing Wilderness Study Areas. See, e.g., Miller Decl. at ¶¶ 7-9.

Implementation of this decision also will result in a violation of federal laws and regulations as documented in the Statement of Reasons. In particular, BLM's final decision: (1) violates the Steens Act, FLPMA and NEPA because it fails to include non-motorized travel and recreation opportunities; (2) violates the Steens Act and FLPMA, including the IMP, because it designates "Obscure Routes" in WSAs; (3) violates the Steens Act, FLPMA and NEPA because it fails to reconsider closures on specific routes on Steens Mountain shown to be obsolete,

redundant or causing resource damage; and (4) violates the Steens Act and FLPMA by leaving open more than 500 miles of motorized vehicle routes within the CMPA.

BLM's TMP decision runs directly counter to FLPMA's requirement that BLM manage the public lands in a manner "that will best meet the present and future needs of the American people" and "without permanent impairment of the productivity of the land and the quality of the environment." 43 U.S.C. § 1702(c) (emphasis added). It runs counter to the Congressionally-established purpose of the Cooperative Management and Protection Area of conserving, protecting, and managing the "long-term ecological integrity" of Steens Mountain. 16 U.S.C. § 460nnn-12(a). If BLM is permitted to proceed with its unlawful final decision, this would allow the agency to avoid its duty to "prevent unnecessary or undue degradation of the lands," 43 U.S.C. § 1732(b), as well as its procedural duties under NEPA. Davis v. Mineta, 302 F.3d 1104, 1115 (10th Cir. 2002) ("harm to the environment may be presumed when an agency fails to comply with the required NEPA procedure").

Under BLM's flawed decision, each of the 555 miles of Base Routes and the 35 miles of Obscure Routes will be susceptible to long-term or irreparable harm to the environment. The EA concedes that:

In this arid part of the world, unimproved roads or trails typically remain visible and road-like for many years even without maintenance or much traffic.

EA at 50. In other words, by electing to leave open more than 500 miles of routes throughout Steens Mountain, BLM's decision would leave all of these routes susceptible to near-permanent affixation on the landscape after only a few motorized trips. See also Miller Decl., Attachment B (showing countless overgrown routes that will be reclaimed by nature if closed to motorized use).

This in turn would have negative impacts to wildlife populations and habitat by fragmenting the unique "sky island" habitat that is Steens Mountain. See, e.g., ONDA Jan. 19, 2007 Comments, at 2 (referring to attached map showing how few acres of public land within the CMPA are located more than three miles away from open roads). Such use would result in disruption and degradation of critical sagebrush-steppe and higher-elevation habitat for important species such as sage grouse, pygmy rabbit, wolverine, California bighorn sheep, pronghorn antelope, and mule deer. For example, the EA explains that a "critical component" of wolverine habitat is the "absence of human activity or development" and that "[m]ost available habitat for wolverines on Steens Mountain is unroaded or has very low densities of roads." EA at 33. See also EA at 35 ("In general, the higher the standard of road and more use it receives, the more it is a barrier to wildlife movements and wildlife will increasingly avoid the disturbance.").

This is a serious threat because, as ONDA documented in its road closure report and recommendations, many, many miles of these routes are rocky, rutted, overgrown, and disappearing ways that should be permitted to continue to be naturally reclaimed in order to conserve the ecological integrity of Steens Mountain. See Miller Decl., Attachment B. At a minimum, the IBLA should stay implementation of BLM's TMP decision to avoid institutionalizing these routes and presenting them to the public on maps as being "open" for

motorized vehicle use. See Marlett Decl., ¶ 25 (explaining that BLM is in the process of preparing maps to release to the public that will show these hundreds of miles of open routes available for public motorized vehicle use); EA at 14, 23, 75 (also explaining that the “SMAC and BLM have started work on a visitor information strategy that will include route signage, information kiosks, mapping, brochures, and other tools to help familiarize the public with recreation opportunities on Steens Mountain”). To the extent that opening Obscure Routes would allow for or encourage increased use on those routes, or threaten the creation of new routes by users trying to locate the Obscure Routes, this also would violate FLPMA’s nonimpairment standard by allowing new use and impairment of Wilderness Study Areas—impairment that could potentially defeat those WSAs’ potential for future designation as Wilderness by Congress.

Losses of soil, native vegetation and native wildlife habitat—particularly, fragmentation of intact, core area habitat—are irreparable. By failing to consider reasonable alternatives to solve the problem at issue—how to manage the transportation network on Steens Mountain in order to “conserve, protect, and manage the long-term ecological integrity of Steens Mountain”—by failing to address non-motorized uses and recreation, and by designating and opening to motorized use Obscure Routes that cannot even be located on the ground, BLM’s decision harms ONDA and the public because it is made in contravention of key requirements under the Steens Act, FLPMA and NEPA. Only a stay will prevent direct harm to Appellants, their members and their interests because of the violation of federal statutory and regulatory provisions on which ONDA relies.

Moreover, in ignoring non-motorized uses and recreation throughout the CMPA, a key issue raised time and again by the public during the NEPA process, and required to be considered under the Steens Act, BLM fails to appreciate the consequences of designating motorized access routes in the TMP, which as a practical matter commits the agency to decisions that exclude or, at a minimum, prejudice non-motorized use. BLM will be highly unlikely to later change its mind (concerning routes designated as “open” or “closed” during the TMP process) during the subsequent “comprehensive recreation planning” process. See, e.g., Exhibit 2 at 5 (“It is not the intent of this [Comprehensive Recreation Plan] planning process to reconsider decisions already made in the CMPA RMP, unless compelling reasons become known.”).<sup>19</sup> BLM knows that while it has the legal right to reverse its decisions in the TMP at a future point in time, the reality is the public would not appreciate the agency flip-flopping on its route designations in a new planning process, and that the agency is extraordinarily unlikely to do so in a subsequent process. In short, by not addressing non-motorized recreation and uses here, in comprehensive fashion, BLM’s decision, if allowed to stand, will make irretrievable commitments to motorized travel on Steens Mountain without considering the needs and importance of non-motorized recreation use.

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<sup>19</sup> Because ONDA and other members of the public already have repeatedly raised issues such as BLM’s failure to include nonmotorized travel in this plan, and BLM’s refusal to reconsider closing specific routes shown to be obsolete, redundant or causing resource damage, it is unlikely BLM will find “compelling reasons” to “reconsider” these issues during the Comprehensive Recreation Plan process.

## **II. The Relative Harm to the Parties Favors Issuance of a Stay.**

Conversely to the long-term of permanent harm threatened to the environment and the harm incurred by ONDA via BLM's multiple violations of federal law, the relative harm to BLM, should a stay issue, is minimal to nonexistent. The agency would be precluded from implementing its Travel Management Plan decision, but would not be precluded from engaging in any necessary conservation or other management activities within the CMPA, as provided for by the Steens Act. See, e.g., 16 U.S.C. § 460nnn-22(b)(2) (administrative and emergency exceptions to the off-road vehicle prohibition).

Indeed, the agency has indicated it will conduct NEPA analysis on a "Comprehensive Recreation Plan" in 2008 that will address issues such as snowmobile use and hiking trail designation. FONSI/DR at 1; Exhibit 2. If BLM's TMP decision is stayed, part of the remedy for correcting the flaws ONDA has identified in the TMP may involve converting the recreation plan NEPA process into a process to, finally, undertake the "comprehensive" and "integral" transportation plan the Steens Act required to have been done in the first place (by October 31, 2004). 16 U.S.C. §§ 460nnn-21(b), 460nnn-22(a). Thus, there is no immediate or emergency need for BLM to implement its TMP decision during the time the IBLA takes to decide the merits of this appeal. Moreover, a stay would have the effect of causing BLM to hold off on thousands of maps showing the routes designated as open under this flawed decision—which in turn will save the agency and taxpayers undisclosed amounts of money on creating and distributing a map advertising a decision subsequently held to be illegal.

If a stay is not granted, BLM would be allowed to proceed with a project that has been developed and approved in contravention of federal law. This will cause potentially irreparable harm to the public lands involved, as described above. As the Tenth Circuit Court of Appeals has observed, "harm to the environment may be presumed when an agency fails to comply with the required NEPA procedure." Davis v. Mineta, 302 F.3d at 1115; see also Amoco Prod. Co. v. Village of Gambrel, 480 U.S. 531, 545 (1987) ("[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable . . . therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment").

At least some permanent alteration of these public lands and high desert landscapes would begin immediately if a stay is not granted. At most, a stay will require the agency to hold off on route designation and advertisement of its motorized route decisions until this appeal can proceed on the merits and potentially until the agency prepares a fully-informed, comprehensive analysis and decision as required by the Steens Act, FLPMA and NEPA.

## **III. Appellant's Likelihood of Success on the Merits Favors Issuance of a Stay.**

ONDA has established that it likely will succeed on the merits of this appeal based on BLM's: (1) decision to limit its decision to motorized transportation, failing to address non-motorized travel and recreation opportunities; (2) decision to designate Obscure Routes in Wilderness Study Areas; (3) refusal to consider appropriate closures along the Indian Creek, Cold Springs, and Fish Creek routes; and (4) decision to leave 555 miles of routes open to

motorized vehicles; each of which is arbitrary, capricious, and not in accordance with the Steens Act, FLPMA, and/or NEPA. By failing to satisfy mandatory statutory requirements as explained in the above Statement of Reasons BLM's decision violates the Steens Act's fundamental ecological purpose for the CMPA and key transportation planning requirements, very likely will result in "unnecessary or undue degradation" and "permanent impairment" of the public lands, fails to demonstrate the agency engaged in a balanced and informed multiple-use analysis, and fails to demonstrate the agency considered all reasonable alternatives and took the requisite "hard look" at the environmental impacts of its proposed action.

ONDA therefore has met its burden of showing it is likely to succeed on the merits of one or more of its claims, 43 C.F.R. § 4.471(c)(2), because BLM's final Travel Management Plan decision is unreasonable, does not substantially comply with the Steens Act, FLPMA and NEPA, and is arbitrary, capricious and not supported by any rational basis. See 43 C.F.R. § 4.480(b); Eason v. BLM, 127 IBLA at 262; Wayne D. Klump v. BLM, 124 IBLA at 182.

#### **IV. The Public Interest Favors Issuance of a Stay.**

Finally, the public interest favors granting the requested Stay. The Congressionally-recognized significance of Steens Mountain cannot be understated. As described at the outset, it is a spectacular area with a rich diversity of wildlife habitat, geological wonders, recreation opportunities, and wilderness values. The Department of the Interior too has recognized the significance of this place by including Steens Mountain in the National Landscape Conservation System. The Department is under a mandatory statutory duty to conserve, protect and restore this nationally significant landscape, including by preparing a comprehensive transportation plan. If BLM is allowed to implement its final TMP decision, it may cause long-term or irreparable degradation to sage-steppe and high-elevation habitat and special status species, and nationally significant wilderness values. This is not in the public interest.

Rather, conserving and recovering the health of these public lands and resources, and ensuring fully-informed, balanced multiple-use decisionmaking in compliance with the Steens Act, FLPMA and NEPA, is in the best interest of the public. Preserving the status quo so that BLM may achieve the mandate Congress laid before it—to "conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations"—is in the public interest. The public interest as expressed by Congress in the Steens Act, FLPMA and NEPA will be harmed if BLM is permitted to act in contravention of federal laws and regulations intended to protect public resources.

### **CONCLUSION**

ONDA believes the granting of a stay in this matter clearly serves the interest of the health of ecosystems, native biota and the public on Steens Mountain. Therefore, ONDA respectfully requests the IBLA to issue an order granting ONDA's Petition for Stay.

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