Bureau of Land Management
St. George Field Office
345 E. Riverside Drive
St. George, Utah 84790

April 25, 2003

RE: EA for the Fort Pearce Ridge Trail Designation (UT-100-02-EA-04)
Via Facsimile 435-688-3252

Greetings:

Thank you for sending a copy of the Environmental Assessment for the Ft. Pierce Trail Designation (Trail). The comments we are providing are on behalf of our 2,500 members who use our public lands for a variety of purposes. Overall, we believe that the Trail represents a development that is in conflict with the Warner Ridge/Fort Pearce ACEC. We firmly believe that an OHV designated trail adjacent to and near a riparian habitat will have long-term negative impacts to riparian recovery and degradation. Therefore, it is in the best interest of the ACEC for the BLM to choose the no action alternative.

First and foremost, we believe that the Warner Ridge/Fort Pearce ACEC designation (St. George Field Office Record of Decision and Resource Management Plant, approved on March 15,1999) mandates that motorized travel is limited to designated roads and trails. This ACEC was designated to ensure the protection of the endangered dwarf bear-poppy, the threatened siler pincushion, important riparian values along the Fort Pearce Wash, historic sites, and highly-erodible soils, all of which are at risk from off-road travel, road proliferation, urban growth, and human encroachment.

Management prescriptions to facilitate such risks include, fencing, barricading, and signing to be employed as necessary to eliminate unauthorized vehicle access and impacts to protected resources. We believe that the prescriptions mandated by the Resource Management Plan should be implemented to protect the resources identified within the ACEC. Further, the livestock exclosure surrounding the riparian zone (to be completed in 2003)should remedy motorized encroachment into the riparian area. Designating an OHV path, with fencing will not lessen the impact from non-motorized traffic anymore than the livestock exclosure.

OHVs crush vegetation, run over small animals, erode streambanks, widespread soil erosion, introduce exotic, weedy plants, and provide easy access for poachers and pot hunters, especially adjacent to a riparian zone. The noise generated by an OHV can carry several miles in a quiet, natural environment. Furthermore, studies have shown that OHVs have dramatic effects on larger mammal species. Deer, for example, alter their feeding and behavior patterns when disturbed by OHVs, and such disturbances have been documented to cause decreased reproduction rates the following year. On study plots in the Mojave Desert, one expert estimated that there was more than a 75% loss of reptiles, birds and small animals in areas used by OHVs as compared to less disturbed control areas. Utah has 5.8 million acres of open land available to OHV use. Since this ACEC encompasses 4,281 acres, prohibiting OHVs would have a nominal effect on OHV users. However, this area was established as an ACEC because it plays such a major role in wildlife, endangered species, and riparian habitat.

While we agree that action is necessary to protect the resources of the ACEC, the BLM needs to take action that is both appropriate and necessary. This action is neither appropriate or necessary. The BLM's proposed action will violate the National Environmental Policy Act, the Clean Water Act, the Federal Land Policy and Management Act, and regulations implementing these and other laws. To avoid such violations, The BLM should implement the no action alternative.

I. The EA Needs to Take the Hard Look Required by NEPA.

A. Legal Background.

The National Environmental Policy Act (NEPA) requires each federal agency to prepare and circulate for public review and comment a detailed environmental impact statement prior to any major federal action that may have a significant effect on the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R.

§§ 1502.5, 1508.3; Robertson v. Methow Valley Citizen's Council, 490 U.S. 332, 336, 109 S.Ct. 1835, 1839 (1989); Foundation for North American Wild Sheep v. United States Dept. of Agriculture, 681 F.2d 1172, 1177-78 (9th Cir. 1982). When a federal agency is not certain whether an EIS is required, it must prepare an EA. 40 C.F.R. §§ 1501.3, 1501.4, 1508.9; see also North American Wild Sheep, 681 F.2d at 1178; Sierra Club V. Marsh, 769 F.2d 868, 870 (1st Cir. 1985). If the EA concludes that the proposed project will have no significant impact on the human environment, the agency may issue a "Finding of No Significant Impact" (FONSI), and proceed with the proposed action. If the agency concludes that there may be a significant effect, then it must prepare an environmental impact statement. See 40 C.F.R. § 1501.4; Greenpeace Action v. Franklin, 14 F.3d 1324, 1328 n.4 (9th Cir. 1992); Smith v. U.S. Forest Service, 33 F.3d 1072, 1074 n.1 (9th Cir. 1994).

Congress intended that requiring agencies to prepare these NEPA documents would help "prevent or eliminate damage to the environment and biosphere by focusing Government and public attention on the environmental effects of proposed agency action." Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 371 & n.14, 109 S.Ct. 1851, 1858 & n.14 (1989) (citations and quotations omitted); see also Robertson v. Methow Valley Citizen's Council, 490 U.S. at 349, 109 S.Ct. at 1844. Only in this way, Congress concluded, would an agency elevate the consideration of the environmental effects of its proposed actions to the same level as other, more traditional, factors. See North American Wild Sheep, 681 F.2d at 1177.

Federal courts have interpreted NEPA to require that when preparing an EA, agencies must take a hard look at the potential impacts of a project, and ensure that when a FONSI is made, that the EA convincingly concludes that no significant impacts will occur in order to forego an EIS. An agency must "supply a convincing statement of reasons why potential effects are insignificant." Save the Yaak Committee v. Block, 840 F.2d 714, 717 (9th Cir. 1988) quoting The Steamboaters v. FERC, 759 F.2d 1382, 1393 (9th Cir. 1985) (emphasis added).

The agency's statement of reasons, "'is crucial' to determining whether the agency took a 'hard look' at the potential environmental impact of a project." Save the Yaak, 840 F.2d at 717 quoting Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21, 96 S.Ct. 2718, 2730 n.21 (1976); see also Sierra Club v. U.S. Dep't of Transportation, 753 F.2d 120, 127 (D.C. Cir. 1985) (in preparing EA, agency must take "hard look" and make a "convincing case" for a finding of no significant impact). Reviewing courts must confirm that "the agency decision is founded on a reasoned evaluation of the relevant factors." Inland Empire Public Lands Council v. Schultz, 992 F.2d 977, 980 (9th Cir. 1993); Greenpeace Action, 14 F.3d at 1332 (citing Marsh, 490 U.S. at 373-74, 109 S.Ct. at 1859; Citizens to Preserve Overton Park, 401 U.S. at 416, 91 S.Ct. at 824 (1971)).

In addition, Council on Environmental Quality (CEQ) regulations recognize that intelligent decision making can only derive from high quality information. EAs must provide "evidence and analysis" for their conclusions that doing a FONSI or full EIS is required. 40 C.F.R. § 1508.9. Information included in NEPA documents "must be of high quality. Accurate scientific analysis ... [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). Where an agency has outdated, insufficient, or no information on potential impacts, it must develop the information as part of the NEPA process.

B. The EA Needs to Account Adequately for Impacts of the Trail on Riparian Areas.

OHV use damages riparian areas and riparian values in a number of ways. OHV uses tramples and displaces riparian channels. Removal of vegetation destroys streambank stability, causes erosion, removes shade from streams, and provides fertile seed beds for exotic plant species. Destruction of riparian vegetation also destroys riparian habitat for numerous species of wildlife that rely on such vegetation for food, cover, and nesting. In some Western states, up to 80% of wildlife species are associated with streams and their riparian zones, which are consequently considered major centers for biodiversity. As such, we believe that this project would have a significant impact on the human environment, which will require the BLM to complete an EIS.

Once again, the EA needs to take the required "hard look" required by NEPA.

C. The EA Needs to Account Adequately for Impacts of Trail on Water Quality

BLM needs to address water quality issues in its EA. The BLM must disclose these harmful effects in keeping with NEPA's "hard look" doctrine and the agency's guidance, and with the agency's regulations implementing the Clean Water Act. OHVs promote erosion and sedimentation in riparian areas, and springs. It also degrades water quality. There can be no doubt that the proposed Trail will cause a loss of streambank stability and erosion, increased turbidity and sedimentation, loss of shade, increased water temperature, loss of vegetation that can retain and retard streamflows, an increase in stream velocity, rapid downcutting, widening of the flood plain, and the elimination of pools. To avoid these water quality problems, the BLM should choose the no action alternative.

D. The EA Needs to Consider a Range of Reasonable Alternatives.

The requirements of NEPA and regulations implementing it clearly require agencies to consider all reasonable alternatives to an agency action in preparing environmental review documents, including EAs. NEPA requires agencies to:

> Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal, which involves unresolved conflicts concerning alternative uses of available resources.

42 U.S.C. § 4332(2)(E). These duties to consider reasonable alternatives are independent and have wider scope than the duty to complete an EIS. See Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989) ("Consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process"); Natural Resources Defense Council v. U.S. Dept. of the Navy, 857 F.Supp. 734, 739-40 (C.D. Cal. 1994) (duty to consider reasonable alternatives is independent and of wider scope than the duty to complete an EIS); Sierra Club v. Watkins, 808 F.Supp. 852, 870 (D.D.C. 1991) (same); Sierra Club v. Alexander, 484 F.Supp. 455 (N.D.N.Y. 1980) (same). It is intended to ensure that each agency decision maker identifies, evaluates, and takes into account all possible approaches to a particular proposal which would better address environmental concerns and the policy goals of NEPA.

Federal courts and CEQ regulations implementing NEPA make clear that the discussion of alternatives is "the heart" of the NEPA process. 40 C.F.R. § 1502.14. In order to "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decision maker and the public," environmental documents must explore and evaluate "all reasonable alternatives." Id.

The EA fails to rationally evaluate the alternatives it considers. In addition, it fails to consider its alternative to the proposed action that could be used to improve the ACEC and reverse the downward trends in its riparian areas.

II. BLM Needs to Address the Impacts of the Proposed Decision on Water Quality in Keeping With BLM's Regulations and Policy, and the Clean Water Act.

As noted above, BLM needs to account for the potentially significant harm to water quality caused by the continuation of OHV use in riparian areas. In addition, BLM needs to account for the damaging water quality impacts of the proposed action in keeping with the agency's own regulations, standards and guidelines, and wilderness policy.

First, BLM's regulations regarding "fundamentals of rangeland health" specifically state that the agency shall "ensure that the following conditions exist: Watersheds are in, or are making significant progress toward, properly functioning physical condition ... [including the maintenance or improvement of] water quality ...." 43 C.F.R. § 4180.1(a). BLM needs in its EA to evaluate water quality or to make the findings required by its regulations

Moreover, state and federal regulations include an "antidegradation" requirement, mandating that water quality must protect existing uses of surface water. See 40 C.F.R. § 131.12, and Utah Administrative Regulation 317-2-3. Given that OHV use degrades water quality, and that BLM has absolutely no data concerning how severely water quality is being degraded on this allotment, it cannot possibly guarantee that BLM's actions in approving continued OHV use would not violate the antidegradation standards of federal and state law.

BLM has absolutely no idea if the agency's chosen action will comply with state and federal water quality mandates, and it has admittedly measured none of the parameters addressed in the Standards and Guidelines.

Third, BLM's guidance on managing Wilderness Areas also requires the agency to analyze impacts to water quality. The IMP requires that changes in use, such as OHVs, analyze impacts to wilderness values, including the "quality of surface water [, which includes] dissolved solids, nutrient levels such as nitrates, and microbial concentrations." IMP at Ch. II.B.6.c.

The BLM needs to address these issues in accordance with the Clean Water Act, and its own regulations, standards, and wilderness policy, and needs to take the hard look required by NEPA.

III. General Ecological Costs

A. Endangered Species Act

According to the Endangered Species Act, if threatened or endangered species, or proposed threatened or endangered species 'may be present' within the proposed project area, or if a proposed action 'may affect' a listed or proposed species, the Forest Service is required to conduct a Biological Assessment to determine the effects of permit reissuance on such species [Section 7(a)(2), Section 7(a)(3)]. It is a violation of the Endangered Species Act to allow OHV use without conducting a Biological Assessment to determine the impacts of OHV use on federally listed species that may be present of affected by the proposed action. Allotments included in this proposed action either support listed or proposed species, support habitat where such species may be present, and or support habitat important to the recovery of such species. It is a violation of the Endangered Species Act to allow OHVs prior to consulting with the Fish and Wildlife Service regarding impacts of permit issuance on listed or proposed species.

Also according to the Endangered Species Act,

> 'It is...declared to be the policy of congress that all Federal departments and agencies shall Seek to conserve endangered species and threatened species and shall utilize their Authorities in furtherance of the purposes of this Act' [Section 2 (c)(1)]. 'All...Federal agencies shall...utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species...'[Section 7(a)1)]. 'The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, (and) to provide a program for the conservation of such endangered species and threatened species...'[Section 2(b)]. 'The terms "conserve", "conserving", and "conservation" means to use all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary' [Section 3 (3)].

You are therefore required to determine whether your proposed action will serve to conserve listed or proposed species and critical habitats, on or offsite of the project area. You must also determine whether lands within the proposed action area are important to the recovery of proposed or listed species. Recovery actions must be emphasized over recreation activities.

Conclusion.

BLM's proposed action violates NEPA, FLPMA, CWA, BLM's own standards and guidelines, and agency policy. While BLM must undertake the properly environmental reviews required by NEPA and FLPMA, and its own regulations and policies, and must comply with the Clean Water Act, we urge BLM to not develop this Trail..

Thank you for this opportunity to comment.

Sincerely,

Jim Matison
Forest Guardians