



Date: June 11, 2024

Bureau of Land Management, Monticello Field Office  
365 North Main Street  
Monticello, Utah 84535

RE: Bears Ears National Monument Resource Management Plan – Draft Environmental Impact Statement (Document #DOI-BLM-UT-Y020-2022-0030-RMP-EIS)

Dear BLM Planning Team,

Utah Public Lands Alliance (UPLA) is writing to provide public comment on the [Bears Ears National Monument Resource Management Plan Draft Environmental Impact Statement](#)<sup>1</sup>, hereto forward referred to with the acronym RMP. Many of our members and supporters live near and/or recreate throughout the 1.36 million acres of the Planning Area in Utah that will be impacted by the RMP. This letter of comment shall not supersede the rights of other UPLA agents, representatives, or members from submitting their own comments; the Bureau of Land Management (BLM) should consider and appropriately respond to all comments received for the RMP.

UPLA is a non-profit organization representing over 5,800 members; we champion responsible outdoor recreation, active stewardship of public lands, and encourage members to exercise a strong conservation ethic including “leave no trace” principles. We champion scrupulous use of public lands for the benefit of the general public and all recreationists by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with public land managers and other recreationists. Our members participate in outdoor recreation of all forms to enjoy federally and state managed lands throughout Utah, including BLM and US Forest Service managed public lands. UPLA members visit public lands to participate in motorized and human-powered activity such as off-roading, camping, hiking, canyoneering, horseback riding, sightseeing, photography, wildlife and nature study, observing cultural resources, and other similar pursuits on a frequent and regular basis throughout every season of the year. UPLA members and supporters have concrete, definite, and immediate plans to continue such activities in Bears Ears National Monument (BENM) throughout the future.

I, Rose Winn, am an avid outdoor recreation enthusiast and anthropologist; hiking, backpacking, backcountry horseback riding, camping, rock climbing, off-roading, fishing, forage of wild herbs and plants for medicinal uses, and exploration of cultural and archeological sites and artifacts on



public lands are among my core areas of activity and interest. I serve as the Natural Resources Consultant for Utah Public Lands Alliance (UPLA), a non-profit organization dedicated to keeping offroad trails open for all recreation users. While my profession allows me to advocate to protect public access to public lands for all stakeholders and multiple-uses, I also work as a volunteer on conservation, mitigation, and restoration projects on public lands.

As a joint writer of this comment letter, Loren Campbell is a Jeoper and UTV enthusiast from Virgin, Utah. Loren serves as the President of Utah Public Lands Alliance (UPLA). We share a strong interest in maximizing opportunities for offroad motorized recreation. Loren works full time as a volunteer advocate to protect access for all users, but also organize and works as a volunteer on projects on public lands. UPLA, Loren, and myself are also members of BlueRibbon Coalition. These comments are submitted on behalf of both myself and Loren Campbell, as well as our members and followers from within and without Utah.

Please note our support and agreement with the comments submitted by BlueRibbon Coalition.

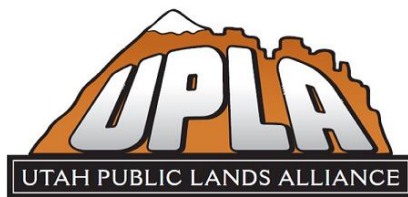
### **GENERAL COMMENTS**

UPLA recognizes the positive mental, spiritual, physical, and social benefits that can be achieved through outdoor recreation. We also recognize that outdoor recreation provides business owners and local communities with significant financial stimulus. Of foremost importance to our motivations for this comment letter: our members are directly affected by management decisions concerning public land use in BENM, including and especially, decisions that impact the scope and implementation of the multiple-use mandate, and related balance of public access and outdoor recreation with protection of monument objects.

Our members subscribe to the tenets of:

- Public access to public lands now, and for all future generations
- Active stewardship for the benefit of all US citizens who collectively own our public lands as part of our national endowment
- Effective management of public lands to ensure the safety of all who enjoy them
- Conservation of ecological, cultural, and archeological resources in balance with implementation of the Congressional mandate for multiple-use public land management

UPLA members as well as the general public desire access to public lands now and in the infinite foreseeable future. Restricting access today deprives the public of the opportunity to enjoy the many natural wonders of public lands. UPLA members and the general public are deeply concerned about the condition of the environment and public safety. They desire safe means to



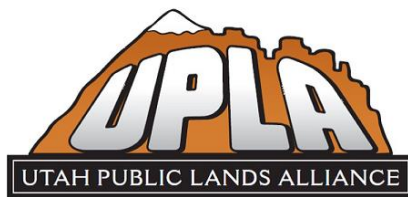
access public lands to engage in conservation efforts as well as outdoor recreation. UPLA supports the concept of managed recreation and believes it is prudent to identify areas where both motorized and non-motorized use is appropriate.

The [BLM manages 22.8 million acres of public land in Utah](#)<sup>2</sup>, and, the [US Forest Service manages 8.2 million acres](#)<sup>3</sup>. Collectively this represents 57% of the total land mass in this state. Utah's public lands offer the primary source for the public to enjoy outdoor recreation. Reduction or elimination of public access to BLM managed land thus bears the potential to increase user conflicts and resource damage by removing sufficient access to public lands for all forms of outdoor recreation.

As currently written, each the proposed alternatives presented in the RMP would negatively impact UPLA members, as well as all members of the general public who enjoy outdoor recreation on BLM managed lands, by significantly minimizing their ability to access public land. The RMP fails to provide a true recreation alternative as required by NEPA. While Alternative A would not change existing management practices, it would therefore also fail to optimize outdoor recreation as a high-value use across the 1.36 million acres that are encompassed within Bears Ears National Monument (BENM). Alternatives B, C, D, and E would all reduce public access to outdoor recreation in a variety of significant ways. The alternatives presented in the RMP serve to diminish (at best) or eradicate (at worst) the multiple-use mandate by which the BLM and US Forest Service are required to manage public lands.

We acknowledge that since BENM was established through presidential proclamation, the multiple-use mandate does not necessarily supersede management directives per the stipulations of the monument proclamation. However, the BLM and US Forest Service remain the federal agencies in designated charge of managing this gem of public land in Southeastern Utah. As designated managers, it is therefore the responsibility of the BLM and US Forest Service to optimize management protocol to balance preservation of monument objects with public access and enjoyment of all public lands within the monument boundaries. By the letter and spirit of the law in consideration of monument management directives, it is neither necessary nor prudent to restrict or eliminate public access to monument lands as the primary management tool; to do so, when alternative mechanisms for management that would effectively balance preservation of monument objects with public access, is both arbitrary and capricious.

While UPLA appreciates BLM efforts to inform the public through scoping and environmental assessment as to how the RMP may impact the public through implementation of the plan, we feel the scope of the RMP falls dramatically short of BLM minimum requirements to comply with legal standards for scoping and analysis of public land management plan revisions.



To these points of failure in compliance, UPLA has reviewed the RMP and believes that the BLM is legally and procedurally compelled to resolve issues in the following RMP components:

1. Congressional direction, Congressional intent, and BLM operational guidelines
2. FLPMA and the Antiquities Act
3. NEPA analysis
4. Alternatives Analysis
5. First Amendment violations
6. National Monument may not by default dictate restriction or closure of public access
7. Inaccurate maps
8. Outstanding multiple-use values and cumulative impacts
9. Legal & Procedural Violations Willfully Ignored Following Public Comments
10. Discrimination of members of the public with disabilities and impoverished communities
11. Conformity with Utah State law
12. Safety impacts leading to irreparable harm
13. Transparency and ease of submitting comments by public
14. False assertion of government ownership of federally-managed public lands

In summary reference to the items noted above, with additional detail for each following within this comment letter, we support any additional comments from individuals, groups, associations, and the general public that encourage the BLM to adhere to the Congressionally-mandated NEPA directive that requires a true recreation alternative as an additional option for public comment. We support any additional comments that encourage the BLM to uphold their mission and commitment to the public to manage public lands in BENM in a manner that maximizes public access, and sustains the health, diversity, cultural resources, and values of the land for the use and enjoyment of present and future generations. We strongly advocate against any components of the RMP that would diminish or eliminate public access to BENM.

### **VIOLATION OF CONGRESSIONAL DIRECTION, CONGRESSIONAL INTENT, BLM AND FOREST SERVICE OPERATIONAL GUIDELINES**

The BLM and Forest Service manage public lands and subsurface estate under jurisdiction granted by the United States Congress, in accord with the [Federal Land Policy and Management Act of 1976](#)<sup>4</sup> (FLPMA). The BLM and Forest Service are contracted public land managers, with direct accountability to the citizens of the United States for the method and outcomes of their management actions. Neither the BLM nor the Forest Service possess ownership of the public lands they are privileged to manage through Congressional directive. Neither does the BLM or the Forest Service possess sole discretion to exercise management authority that excludes the



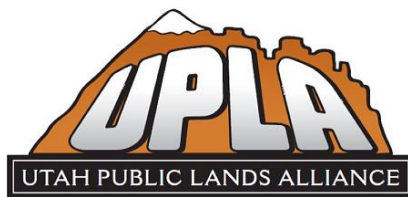
vested interests of the full citizenship of the USA. As elected leaders, the US Congress is the only entity which may direct the BLM's and Forest Service's management protocol. US citizens are protected from the risk of BLM and Forest Service overreach in management authority by the functions of congressional process, FLPMA, NEPA, as well as the broader framework of the US Constitution.

Since its inception as a federal agency, [the BLM and Forest Service have been explicitly, and very clearly, directed to manage public lands per the multiple-use mandate](#)<sup>5</sup>. Per the definition of multiple use within [U.S. Code § 1702 Title 43](#)<sup>6</sup>, the term “multiple use” means:

*“The management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”*

For the Forest Service specifically, the [2012 Planning Rule](#)<sup>7</sup> further strengthens the role of multiple uses as the core, active method of management in land management plans. Section 219.10 of the 2012 planning rule requires providing for integrated, sustainable multiple uses on the planning unit as mandated by the Multiple-Use Sustained-Yield Act and the [National Forest Management Act](#)<sup>8</sup>. Under the 2012 planning rule, recreation, timber production, grazing, and other uses and benefits will continue to provide jobs, income, and ways of life for many Americans. Land management plans under the 2012 planning rule will emphasize the importance of the continued delivery of sustainable multiple uses of National Forest System lands.

The RMP for BENM is problematic given that the alternatives presented serve to diminish or eradicate the purpose and implementation of the multiple-use mandate on BLM and Forest Service managed public lands. As set forth in law, the BLM's and Forest Service's mission and congressional management directive is to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of the people of the United States.

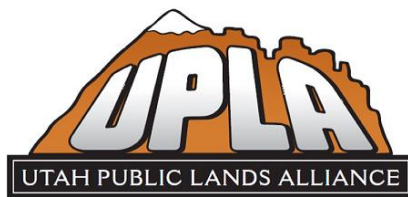


The BLM's and Forest Service's operational guidelines clearly state that the foundational framework for all management action is to uphold and expand the multiple-use objective, manage public lands for the benefit of the people (all citizens of the USA), to maintain transparency and accountability in all decisions and actions, to execute decisions in a way that is fair to the public, and most importantly – to follow the law and congressional intent.

Since its inception in 2014, UPLA has been an active, responsible partner of the BLM and Forest Service, with members continually engaged in volunteer service to advance conservation, trail and landscape maintenance, public education, public safety, and cooperative public land management. UPLA members have a longstanding history of visiting BLM and Forest Service managed lands as individuals, groups, and for organized outdoor recreation events. Casual use and organized events like ours bring public land visitors to public lands in an orderly and controlled manner. This ensures conservation of the landscape and wildlife habitat, while preventing overcrowding and user conflict. Our events and membership doctrines promote land use ethics, responsible camping, respect for natural resources, and public safety. The RMP will obstruct the membership of UPLA, as well as members of the general public, from accessing vital areas of BENM for organized, safe, conservation-centric recreation by eliminating access in full, or eliminating access via OHV routes, or eliminating access for a variety of outdoor recreation opportunities.

Elimination of public access and failure to adhere to the multiple-use objective is a violation of Congressional direction and Congressional intent for the scope of limitations by which the BLM and Forest Service are authorized to manage our public lands. It is critical for the RMP Planning Managers to bear in mind that the BLM and Forest Service do not own our public lands. BLM and Forest Service managed lands are a part of the public endowment, as all public lands are owned by the citizens of the USA (the public); the BLM and Forest Service are merely contracted to manage those lands within the defined scope of limited authority that is granted by Congress. The RMP for BENM demonstrates that the BLM and Forest Service are overstepping Congressional direction and Congressional intent such that the best interests and needs of the public are being overrun through restriction or elimination of public access to public lands within BENM through unnecessary, arbitrary, and capricious restriction or closure of access via designated OHV routes, designated OHV riding areas, and designated outdoor recreation areas. This constitutes a violation of the rights and legal protections of the American people through unjustified application of Congressionally-directed public land management authority.





## **REQUIREMENT TO BALANCE MULTIPLE-USES WITH CONSERVATION PER FLPMA AND THE ANTIQUITIES ACT**

We understand and acknowledge that national monuments may be managed with slight modification of the multiple use objective in order to optimize management protocol that adequately protects specific natural, cultural, or scientific resources that are expressly named within the monument’s designation. The [Antiquities Act of 1906](#)<sup>9</sup> grants authority for designation of national monuments via presidential proclamation. It is critical to note: per the stipulations set forth in FLPMA as well as the Antiquities Act, activities associated with multiple-use management, including recreation, can occur in national monuments. Incorporation of public land into national monument status does not in and of itself require, direct, nor authorize that recreation must be restricted or eliminated within the monument boundaries. Recreation remains a congressionally protected value of public lands within national monuments.

FLPMA remains intact as the overarching framework for all public land management, including the management of national monuments. For national monuments, FLPMA’s provisions ensure that monuments are managed in a way that conserves their unique values. National monument proclamations issued under the Antiquities Act contain specific directives and restrictions that must be incorporated into the monument’s management plans. FLPMA mandates that the management plan must comply with the legal requirements set out in the proclamations. By legal definitions set forth in FLPMA and the Antiquities Act, the management of national monuments requires that FLPMA’s multiple-use mandate are balanced with the specific conservation goals of the monument designation. Monument conservation does not eradicate FLPMA stipulations for public land management.

Designation of a national monument by presidential invocation of the Antiquities Act requires that monument objects, and authorized or prohibited uses, be specifically named within the proclamation. The proclamation thereby guides the monument planning managers in aligning the monument management plan with the express intent of the proclamation. Neither [Proclamation 9558](#)<sup>10</sup> (Obama, 2016) nor [Proclamation 10285](#)<sup>11</sup> (Biden, 2021) expressly prohibit outdoor recreation as an authorized use of land within BENM. Rather, both proclamations cite recreation as a high value resource of BENM. Multiple recreation activities are cited as:

*“World class recreation opportunities – including rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding – that support a booming travel and tourism sector that is a source of economic opportunity for local communities.”*



Headwaters Economics performs research to assess the economic performance of local communities adjacent to national monuments in the West, which includes assessment of public access and permitted uses of public lands within national monuments. A [study of permitted uses in 17 Western national monuments](#)<sup>12</sup> demonstrates precedent for definitions by which recreational and other uses are authorized, implied, or prohibited. Zero forms of outdoor recreation are cited within Proclamations 9558 and 10285 as expressly prohibited or limited. All forms of outdoor recreation are thereby expressly or impliedly authorized, including (but not limited to):

- Motorized and mechanized vehicle use on designated roads
- Off road use by mechanized or motorized vehicles
- Rights-of-way
- Rock climbing
- Hiking
- Horseback riding
- Canyoneering
- Whitewater rafting
- Mountain biking
- Hunting and fishing
- Access to in-holdings and other valid existing interests

While alternatives A, B, and C provide for some recreational opportunities in BENM, there are some unwarranted limitations and closures of public access for outdoor recreation in each of these three alternatives. Alternatives D and E impose broadscale restrictions and closures of public access for outdoor recreation that are both arbitrary and capricious in relationship to the stipulations for monument management as set forth in FLMPA and the Antiquities Act.

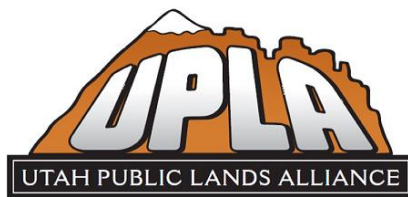
### **FAILURE TO COMPLY WITH NEPA ANALYSIS**

Within the Purpose and Need on page 1-4 of the RMP (Section 1.2: Purpose and Need)<sup>1</sup>, purpose seven states:

*“Provide for uses of Monument lands, so long as those uses are consistent with the protection of BENM objects.*

*Needs and challenges: Public land uses within BENM, such as livestock grazing and recreation, are important to the economic opportunities and quality of life of the local communities surrounding BENM. Although these two uses are not identified in Presidential*





*Proclamation 10285 as objects, these are discussed as important land uses in the area. Planning decisions should consider how to protect Monument objects with consideration of other uses of the landscape.”*

The statement that “Planning decisions should consider how to protect Monument objects with consideration of other uses of the landscape” is grossly misleading, given that designated OHV routes and OHV riding areas are slated for significant restriction or closure within all five alternatives of the RMP. Additionally, a multitude of other outdoor recreation uses will be negatively impacted through implementation of any of the five alternatives. RMP planning managers must also take into account that when any OHV designated route or OHV riding area is restricted or closed, all other forms of outdoor recreation are immediately and irreparably harmed in addition to OHV recreation specifically, given that OHV motorized access is the primary form of all public access to all outdoor recreation that lies beyond the trail-end and boundary lines of OHV routes and riding areas. To restrict or close any OHV route or riding area is to restrict or close access for all outdoor recreationists... for a vast swath of vested public land stakeholders and the general public.

NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to proposed actions or preferred alternatives analyzed during a NEPA process. 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9. “[A]gencies shall rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. The alternatives section is considered the “heart” of the NEPA document. 40 C.F.R. § 1502-14 (discussing requirement in [D]EIS context).

The legal duty to consider a reasonable range of alternatives applies to both EIS and EA processes. *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998) (citing *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) (“Alternatives analysis is both independent of, and broader than, the EIS requirement.”)).

A NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14 (EIS); *Id.* at § 1508.9 (EA); *Bob Marshall Alliance*, 852 F.2d at 1225 (applying reasonable range of alternatives requirement to EA). A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993).

The reasonableness of the agency’s choices in defining its range of alternatives is determined by the “underlying purpose and need” for the agency’s action. *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Methow Valley Citizens Council*



v. Regional Forester, 833 F.2d 810, 815-816 (9th Cir. 1987), reviewed on other grounds, 490 U.S. 332 (1989). The entire range of alternatives presented to the public must “encompass those to be considered by the ultimate agency decisionmaker.” 40 C.F.R. § 1502.2(e).

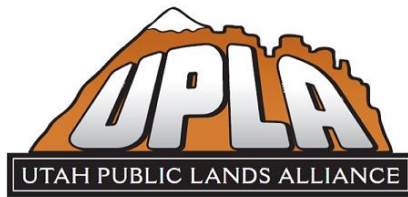
The agency is entitled to “identify some parameters and criteria—related to Plan standards—for generating alternatives....” Idaho Conservation League v. Mumma, 956 F.2d 1508, 1522 (9th Cir. 1992). However, in defining the project limits the agency must evaluate “alternative means to accomplish the general goal of an action” and cannot “rig” “the purpose and need section” of a NEPA process to limit the range of alternatives. Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664, 669 (7th Cir. 1997) (emphasis added).

An agency must perform a reasonably thorough analysis of the alternatives before it. “The ‘rule of reason’ guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative.” Surfrider Foundation v. Dalton, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998) (citing City of Carmel-by-the-Sea v. United States Dept of Transportation, 123 F.3d 1142, 1154-55 (9th Cir. 1997)). The “rule of reason” is essentially a reasonableness test which is comparable to the arbitrary and capricious standard. Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir. 1998) (quoting Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 377 n. 23 (1989)). “The discussion of alternatives ‘must go beyond mere assertions if it is to fulfill its vital role of ‘exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government.’” State of Alaska v. Andrus, 580 F.2d 465, 475 (D.C. Cir. 1978), vacated in part on other grounds, Western Oil & Gas Association, 439 U.S. 922 (1978) (quoting NRDC v. Callaway, 524 F.2d 79, 93-94 (2nd Cir. 1975)).

There are several items of critical import noted within the RMP statement of Purpose and Need (pages 1-3 and 1-4), including the imperative to acknowledge and incorporate into the RMP final decision:

- *“Recreational visitation is an important driver of the local economy, with the area becoming world famous for rock climbing and the increased popularity of off-highway vehicle (OHV) use, cultural tourism, and other forms of recreation.”*
- *“Planning decisions can define resource uses and land designations to help resolve conflicts between various uses and object protection.”*
- *“Provide for uses of Monument lands, so long as those uses are consistent with the protection of BENM objects.”*

Recreation as a core component of the multiple-use mandate for public land management is not adequately represented or accounted for within the RMP. While future project-specific NEPA



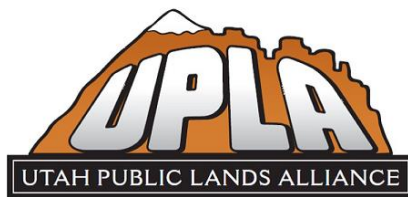
analysis and travel management planning will occur, and public comment will be provided during those phases of NEPA analysis, if the RMP does not preserve designated OHV routes, designated OHV riding areas, and designated outdoor recreation of other forms at the programmatic (RMP) level, the BENM planning team is subsequently, deliberately creating a framework to pit protection of monument objects against outdoor recreation at a point within the planning process wherein Recreation as a core use and resource will be grievously disadvantaged in having any reasonable opportunity to advocate to protect existing designated recreation areas.

There are five alternatives provided within the RMP. The Purpose and Need statement for the RMP prompts the public to assume that each of the five alternatives are the ONLY viable alternatives that the planning team may consider for implementation. However, the public has been grossly misled as an essential, viable alternative has been omitted from the RMP. The RMP is lacking inclusion of a true recreation alternative. Given the recent increase in motorized recreation, paired with increase in general outdoor recreation, a new alternative with a comprehensive Recreation Emphasis is essential to adequately address the Purpose and Need identified for the RMP. This alternative would preserve all existing public access, protect all existing mileage of designated OHV routes, reduce user conflict, improve user safety, and reduce the potential for resource damage by dispersing outdoor recreation enthusiasts more broadly across the land and eliminating high-concentration use areas. A Recreation Emphasis alternative would focus on comprehensively defining where current designated OHV routes, designated OHV riding areas, and designated areas for other outdoor recreation exist, and noting those designations as explicit exclusions for public access restrictions or closure.

Currently, Alternative A is the closest of all five alternatives presented in the RMP to a Recreation Emphasis alternative. Alternative B is the closest to a Recreation Emphasis action alternative, though even that alternative excessively prioritizes conservation over recreation. However, we call attention to the fact that based on historic precedent and agency preferences, that as with any NEPA proceeding, the no-action alternative (Alternative A) is purely a formality in proposition and is never seriously considered for adoption. It is therefore vital that the agencies consider an action alternative which emphasizes recreation as a positive good and uses active management rather than closures to manage recreation in effective balance with protection of monument objects. We therefore urge the agencies to add and fully analyze a Recreation Emphasis action alternative in the final RMP.

Elimination of a Recreation Emphasis alternative constitutes an explicit violation of the requirements of NEPA analysis in multiple ways:

- Agencies shall rigorously explore and objectively evaluate all reasonable alternatives
- Alternatives analysis is both independent of, and broader than, the EIS requirement



- The entire range of alternatives presented to the public must encompass those to be considered by the ultimate agency decisionmaker
- In defining the project limits the agency must evaluate alternative means to accomplish the general goal of an action and cannot “rig” “the purpose and need section of a NEPA process to limit the range of alternatives
- An agency must perform a reasonably thorough analysis of the alternatives before it; the “rule of reason” guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative
- The discussion of alternatives must go beyond mere assertions if it is to fulfill its vital role of exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government

**UPLA contests the absence of a Recreation Emphasis alternative based on the legal precedent that a NEPA analysis is invalidated by the existence of a viable but unexamined alternative. We subsequently assert the exigence that the RMP planning team must retract the proposed RMP in order to revise the RMP to include a robust, fair, and complete analysis of a Recreation Emphasis alternative.**

**Furthermore, UPLA contests the validity of the RMP based on the planning team’s failure to evaluate alternative means to accomplish the goal of the action, and, rigging of the purpose and need section of a NEPA process to limit the range of alternatives. The Purpose and Need, and the content of Alternatives A, B, C, D, and E are in direct conflict with one another. We subsequently assert the legal requirement for the planning team to retract the proposed RMP to rectify this issue.**

### **ALTERNATIVES ANALYSIS**

The common thread through all five proposed Alternatives in the BENM RMP is: recreation access is viewed as a threat to preservation of natural and cultural resources. Rather than evaluate how recreation can be managed to prevent and mitigate potential impacts on natural and cultural resources, closed or restricted access is the dominant strategy utilized. Unique characteristics of each alternative include:

**ALTERNATIVE A:** this is the “no action” alternative by which (most) existing management would continue. While this is called the no-action alternative, the designation of the Bears Ears National Monument does not permit a true no action alternative to be considered in this management process, as the agencies are legally obligated to protect the monument’s objects and values. Thus, some management changes will be included even in the no-action alternative, to



the extent that existing management is deemed incompatible with the monument's objects and values.

- **BLM lands:** eight special recreation management areas (SRMAs) and two extensive recreation management areas (ERMAs) would remain intact.
- **Forest Service lands:** management based on Recreation Opportunity Spectrum (ROS) categories of primitive, semi-primitive non-motorized, semi-primitive motorized, and roaded natural.
- **Travel management (OHV):** existing designated OHV routes would remain open (see table below)
  - 928,080 open to limited OHV access
  - 436,075 acres closed to OHV access
- **Areas of Critical Environmental Concern (ACECs):** existing ACECs would remain in place, no new ACECs would be created
- **Recreational shooting:** permitted
- **Recreational facilities:** existing facilities would remain open and intact

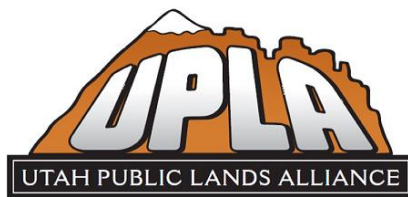
Overall, alternative A is fairly reasonable, and we urge the agencies to incorporate as many actions from it into other alternatives as possible. By and large, BENM is already effectively managed, with only minor adjustments needed to handle the increased visitation that comes with national monument status. Much of the monument is managed under the two management plans developed only four years ago for the two monument units created under the Trump administration. These management plans struck an effective and functional balance between protecting monument objects and maximizing recreational opportunities and other multiple uses that are compatible with the monument.

We fully support the existing decisions regarding recreation areas and facilities, and support keeping the entire monument designated as OHV limited except for areas which are already designated as OHV closed. We strongly support keeping the monument open to drone flying except in areas where that is currently prohibited.

We also support limiting lands managed for protection of wilderness characteristics to those currently managed for that purpose and not expanding them. Existing decisions on lands with wilderness characteristics and BLM Natural Areas were made for a reason, and the reasons for those decisions are still applicable today.

Most lands that previous management plans determined not to manage for wilderness characteristics are not roadless and are important for motorized and mechanized recreation, dispersed camping, and other recreational activities incompatible with wilderness status. Increasing the amount of lands managed for wilderness characteristics as BLM Natural Areas will, with certainty, come at the expense of lost recreational opportunities and road closures, and should be avoided at all costs.



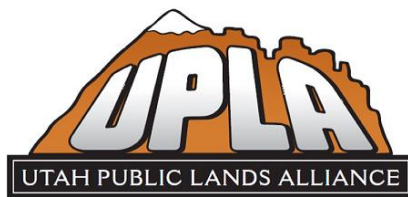


On the whole, we find many components of Alternative A reasonably acceptable. However, since the no action alternative is merely a formality included for comparison purposes, and is not going to be seriously considered for adoption in this process, we call on the legal and moral requirement for the agencies to add an additional recreation emphasis action alternative that includes most of the actions in Alternative A and additional active management techniques to promote sustainable recreation without closures, as described above.

**ALTERNATIVE B:** provides the most permissive management for recreation access considerations. However, conservation is still heavily prioritized over recreation and public access. This is the closest alternative to a pro-recreation action alternative, so of the action alternatives, we support this one the most, combined with some elements of alternative C. Alternative B maintains the most OHV-limited acreage, has the least amount of land managed for wilderness characteristics, and would allow at least some drone operation. It preserves motorized access to Arch Canyon and allows most other existing recreational opportunities to continue. Oddly, alternative B prohibits access to the interior of Moon House while the generally more restrictive alternative C continues to allow it. We oppose this aspect of alternative B and prefer the approach of alternatives A and C which continue to allow limited access to the interior corridor. Alternative B manages recreation primarily through a series of recreation management zones, which in some cases impose more restrictions than the preferred alternative E does. In that case, we prefer the less restrictive alternative.

- **BLM lands:** would be managed through four SRMAs and four ERMAs
- **Forest Service lands:** same as Alternative A
- **Travel Management (OHV):**
  - 797,525 acres open to limited OHV access
  - 566,627 acres closed to OHV access
- **Travel Management (aircraft):** landings and takeoffs would be limited to Bluff Airport and Fry Canyon Airstrip, with the potential for additional locations to be identified in future implementation level decisions.
- **ACECs:** BLM would designate the Indian Creek ACEC, Lavender Mesa ACEC, and Valley of the Gods ACEC. The San Juan River ACEC and Shay Canyon ACEC would not be designated as ACECs.
- **Recreational shooting:** permitted generally, with the exception of closures in the Indian Creek Corridor Recreation Management Zone (RMZ), San Juan River SRMA, and prohibitions in campgrounds, developed recreation facilities, climbing areas, existing and designated trails, parking areas, trailheads, across roadways, rock ES-7 writing sites, and structural cultural sites. If problems with recreational shooting occur in the future, the BLM would consider future restrictions or closures.





- **Recreational facilities:** may be developed as needed

Generally, Alternative B provides a pragmatic approach to managing recreational activities in BENM, supporting the best attempt among all alternatives to balance conservation goals and recreational interests effectively. This alternative allows for recreational diversity without overly restricting access, making it an appealing choice for promoting sustainable tourism and recreation in BENM. It provides some balance between protection and access, offering a balanced approach to preserving the natural and cultural resources of BENM while allowing for recreational activities that are important for local tourism and community engagement. By focusing recreation within designated areas and improving management controls, this alternative can help mitigate potential damages and conflicts caused by unregulated recreational activities while giving the agencies the most flexibility in management decisions. It also provides the best support for the local economy. Allowing motorized recreation and drone flying in designated areas can attract visitors and support local businesses dependent on tourism, without compromising the monument's integrity and values.

**ALTERNATIVE C:** similar to Alternative B, with additional restrictions to motorized aircraft and use of drones. Drone operations are particularly restricted to protect natural soundscapes, which as discussed below is completely nonsensical as much louder motorized vehicles will continue to be allowed while quieter drones cannot be flown even in otherwise motorized areas.

- **BLM lands:** same as Alt B
- **Forest Service lands:** same as Alt A
- **Travel Management (OHV):**
  - 700,122 acres open to limited OHV access
  - 664,030 acres closed to OHV access
- **Travel Management (unmanned aircraft / drones):** use of drones eliminated throughout most of BENM, with case-by-case exceptions through a permitting process
- **ACECs:** same as Alt B
- **Recreational shooting:** same as Alt B
- **Recreational facilities:** limited development of facilities with emphasis on maintaining natural conditions across the landscape

OHV access is largely the same as alternative B, and motorized access to Arch Canyon would continue. Importantly, alternative C is the only action alternative which would continue to allow access to the interior corridor of Moon House, which is the most popular archeological site in the monument and one of its principal attractions. The loss of access to the spectacular interior of the ruin in every other alternative is a severe blow to recreation and would significantly harm the visitor experience in the monument. We support alternative C's approach of continuing to allow



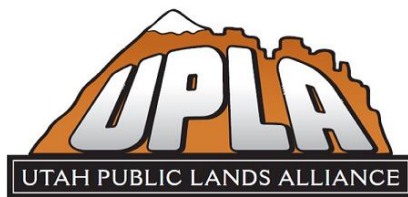
access to the interior corridor while maintaining the existing stipulation that only 4 persons are allowed inside at a time.

**ALTERNATIVE D:** imposes severe restrictions to recreation access; the primary management priority is for landscape conservation that is achieved through eliminating or heavily restricting recreation. This alternative is the strictest of the two conservation alternatives, carrying over all the worst features from Alternative E and adding additional layers of restrictions focused specifically on wilderness characteristics. As currently written, alternative D would be devastating to all forms of recreation, as it would eliminate the vast majority of recreational opportunities within the monument. Strict group size limits and permit requirements would prevent most casual users and families from engaging in even non-motorized recreation within the monument. Drone flying would be entirely banned within the monument as in alternative B.

- **BLM lands:** managed through creation of seven Management Areas
- **Forest Service lands:** same as Alt A
- **Travel Management (OHV):**
  - 381,239 acres open to limited OHV access
  - 982,914 acres closed to OHV access
- **Travel Management (aircraft):** same as Alt B
- **Travel Management (unmanned aircraft / drones):** same as Alt C
- **ACECs:** BLM would designate the Indian Creek ACEC, Lavender Mesa ACEC, Valley of the Gods ACEC, John’s Canyon Paleontological ACEC, and Aquifer Protection ACEC. The San Juan River ACEC and Shay Canyon ACEC would not be designated as ACECs.
- **Recreational shooting:** same as Alt B
- **Recreational facilities:** minimized development of recreational facilities and management in favor of emphasizing natural conditions

The worst effects of this alternative would fall on motorized recreation. This alternative proposes to manage all areas of BLM lands within the monument found to have wilderness characteristics as BLM Natural Areas managed for wilderness characteristics and closed to motorized use. This provision alone would have a devastating effect on motorized recreation within the monument, as it would mandate the closure of all existing primitive roads that were classified as “ways” within lands with wilderness characteristics rather than “roads”, which is largely a distinction without a difference.

Hundreds of miles of valuable roads would be arbitrarily closed, with the agencies having no discretion to keep open roads that access important destinations or provide exceptional



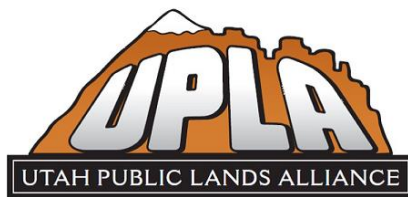
recreational experiences. Routes that were classified as “roads” and were thus excluded from inventoried lands with wilderness characteristics or cherry-stemmed through them would be spared from mandatory closure, but would likely be closed in subsequent travel planning because of alleged negative effects on adjacent lands managed for wilderness characteristics. And that is only in the BLM portions of the monument.

The wilderness characteristics allocations and concomitant OHV-closed area designations in Alternative D would guarantee the closure of many of the most valuable class D roads in the monument, including the end of the Chicken Corners Jeep Safari Trail, numerous spur routes off Lockhart Basin Road, all of the roads in the Imperial Valley area of Beef Basin including critical connecting routes that provide the sole access to designated motorized routes inside the Glen Canyon National Recreation Area, Moqui Canyon, Mike’s Canyon, Lavender Mesa, and many others. The popular Arch Canyon road would also be closed in this alternative.

The hundreds of miles of motorized route closures mandated by this alternative would not only affect OHV enthusiasts, but every other recreational group that depends on motorized access to reach recreation destinations and trailheads within the monument. With so many areas managed for wilderness characteristics and off limits to vehicles, the more remote parts of the monument would become basically inaccessible for all forms of recreation, as it would require backpacking dozens of miles over multiple days just to reach these areas. Day hikers, rock climbers, horseback riders, and mountain bikers would all have their ability to recreate within the monument severely curtailed.

No user group would be left unharmed by the decimation of the road network proposed in alternative D. Even the tribal groups that are pushing for the most restrictive management options would be severely harmed by this alternative, as they too ultimately depend on motorized vehicles to access most of the monument. Unless they were somehow exempt and allowed to drive on roads that had been closed and managed as de facto wilderness, they would be unable to access many cultural sites important to them.

The drastic restrictions on all forms of recreation proposed in Alternative D are simply not warranted and are utterly unnecessary to protect the monument’s objects and values. Indeed, these kinds of excessive restrictions are precisely what the opponents of the monument’s designation feared and are what made it so controversial in the first place. If Alternative D was adopted as the basis for the monument management plan, it would likely galvanize increased political opposition to the monument that could result in BENM either being re-shrunk by a future president or abolished altogether by Congress.



We urge the agencies to think long and hard about the potential consequences before incorporating any element of this extreme alternative into the final management plan. We request that the EIS fully analyze the impacts of this alternative on recreation opportunities within the monument, including specifying exactly how many roads would be required to be closed and what recreational opportunities would be lost as a result. We also note that as part of the basic requirement under NEPA to analyze all impacts on the “human environment,” the agencies must fully analyze the economic impacts to nearby communities from closing most of the monument to recreation.

**ALTERNATIVE E (the preferred alternative):** most recreation access would be eliminated throughout BENM; this alternative maximizes the considerations and use of Tribal perspectives on managing the landscape; emphasis is on resource protection and the use of Traditional Indigenous Knowledge and perspectives on the stewardship of the landscape. This alternative maximizes resource protection using Tribal perspectives, strictly controlling motorized recreation and drone usage, allowing them only when they support the protection of BENM objects. This alternative is most aligned with maintaining natural quiet and reducing disturbances, and is the second least friendly to recreation after Alternative D. The overarching principle of Alternative E is to take native American religious beliefs (what the RMP euphemistically calls “traditional indigenous knowledge”) and turn them into federal policy. Alternative E constitutes nothing less than the wholesale establishment of a state religion (at least for the purposes of this monument) in abject violation of the First Amendment.

- **BLM & Forest Service lands:** SRMAs and ERMAs would be eliminated; recreation managed based on a zoned approach. Four zones would be designated: Front Country, Passage, Outback, and Remote.
- **Travel Management (OHV):**
  - 794,181 acres open to limited OHV access
  - 569,971 acres closed to OHV access
- **Travel Management (aircraft):** same as Alt B
- **Travel Management (unmanned aircraft / drones):** same as Alt C
- **ACECs:** all existing ACECs would be carried forward, the John’s Canyon Paleontological ACEC and Aquifer Protection ACEC would also be designated.
- **Recreational shooting:** eliminated in full throughout all of BENM
- **Recreational facilities:** development allowed only in Front Country and Passage zones, when deemed an absolute necessity

Alternative E stands out by completely prohibiting recreational shooting, limiting public access for motorized and unmanned aircraft except through permits, and applying the most stringent



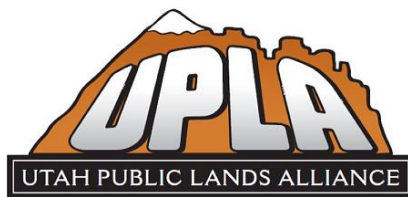
environmental protection measures, second only to alternative D’s emphasis on de facto wilderness management. It would close the most popular motorized route in the monument (Arch Canyon), would bar hikers from entering the interior corridor of the iconic Moon House ruin, and has the potential to severely limit dispersed camping opportunities depending on how restrictions regarding campsites near riparian areas are applied.

This alternative would allow nebulous and likely excessive seasonal closures to be imposed across the monument based on tribal religious beliefs regarding “land rest”, and even goes as far as allowing the Bears Ears Commission to nominate areas that would be closed to all public entry including hiking, again solely on the basis of tribal religious beliefs. And like alternative D, a massive amount of the monument would be managed as de facto wilderness, though at least unlike alternative D most of these areas are in fact roadless and do not include existing motorized routes.

While there are some aspects of alternative E that are relatively reasonable (such as dividing the monument into ROS like zones of Front Country, Passage, Outback, and Remote, which dictate the level of amenities offered), most aspects of this alternative are so extreme that it is astonishing this alternative has been labeled the agencies’ “preferred alternative”. The overall goal of this alternative is to manage the monument solely for the benefit of tribal groups to the significant detriment of the remainder of the American public.

This alternative is not balanced in any manner, and has clearly been crafted with the goal of rewarding the political allies of the Biden administration while punishing its enemies. If the BLM and Forest Service wish to ensure that Bears Ears National Monument remains a political football well into the future, being continuously shrunk and re-enlarged every time the White House changes hands, all they need do is adopt this alternative as the basis for the final management plan. If the agencies have any interest in a compromise which might bring some stability to the management of the monument, they should instead choose a more reasonable combination of alternatives like Alternative B with incorporation of critical modifications adopted from Alternative A.

Travel and Transportation Management	A	B	C	D	E
BLM Closed to OHV travel	389,645	389,645	487,048	805,932	392,989
BLM OHV travel limited	685,403	685,403	588,000	269,117	682,059
BLM Open to OHV travel	0	0	0	0	0
USDA Forest Service Closed to OHV travel	46,430	176,982	176,982	176,982	176,982
USDA Forest Service Limited to OHV travel	242,677	112,122	112,122	112,122	112,122

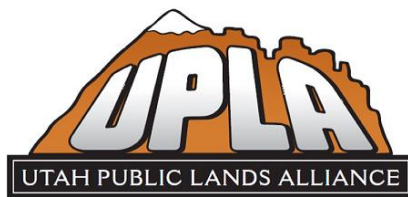


In Volume 1 of the RMP, on pages 2-1 to 2-5, Table 2-1, Comparison of Summary of Alternatives, provides the varied acreages of open, limited, and closed access for Resources, Resource Uses, or Special Designations. The table spans five pages in length and is thus cumbersome to include in this comment letter in full. However, an excerpt of the varied acreages of OHV recreation designations is revealing of the universal pattern impacting all public and recreational access across the five alternatives generally. Alternative A provides the greatest breadth of public and recreational access (though some restrictions on existing management are imposed). Alternatives B and C provide the greatest breadth of access for action alternatives, though the core impact of both alternatives serves to elevate conservation far above access as a value of BENM, and thus access is significantly impacted. Alternatives D and E are extreme in elevating conservation on a pedestal of policy supremacy that thoroughly tramples access underfoot; any remnant of access that is retained in both alternatives is pathetically meager in comparison to current use. To assert that Alternatives D and E function to balance protection of monument objects with public access and multiple uses is tragically comedic at best, and illustrative of premeditated, willful intent to exclude the American public from access, enjoyment, and use of BENM at work.

It is abundantly clear from the management guidelines proposed by each alternative that not one of the five alternatives presented is pro-recreation. A pro-recreation alternative would retain all existing recreation opportunities in the monument as open, including all currently designated motorized routes. A pro-recreation alternative would integrate public education, mitigation of potential resource damage, along with thoughtful and relevant means to increase public awareness, appreciation, and value for protection of cultural and natural resources into the management policy and protocol. It is critical to emphasize that *management by closure is not management*; rather, this method of “management” serves to banish the public from the opportunity to access and enjoy our public lands. There are many effective strategies to manage public lands, including BENM, by means other than zoned blocks for elimination of public access, road closures, activity bans, group size limits, and exclusion zones.

**We advocate for the BENM RMP planning managers to immediately halt any further advance of the current draft RMP, in order to create a new pro-recreation alternative (in collaboration with all BENM stakeholders) that would involve active management techniques such as constructing new infrastructure to sustainably handle increased visitation; this would include new trails, trailheads, parking areas, bathroom facilities, campgrounds, etc. Then after a pro-recreation alternative is drafted, release the revised RMP for public comment. This is an essential step to ensure that the RMP accurately aligns with the legal and procedural dictates that direct the BLM, Forest Service, and national monument public land planning. It is possible to manage the natural landscape in**





**a manner that protects monument objects, conserves the land and wildlife habitat, respects local indigenous history and heritage, and retains the rugged, wild characteristics of the landscape, while also creating appropriate places, structure, and guidelines for all public stakeholders to access, enjoy, and recreate throughout BENM.**

### **FIRST AMENDMENT VIOLATIONS**

Excluding access to public lands raises concerns related to the First Amendment rights of U.S. citizens, particularly the rights to freedom of speech and assembly. Public lands, especially those like parks and monuments, are considered traditional public forums. In these spaces, citizens have the highest level of protection for their First Amendment rights, including speech and assembly. Restrictions on access therefore impose a limitation of these rights.

The Supreme Court has established that any restrictions on speech in public forums must be narrowly tailored to serve a significant governmental interest and leave open ample alternative channels for communication (*Perry Education Association v. Perry Local Educators' Association*, 1983).

Public lands are frequently used for expressive activities, including protests, demonstrations, and rallies. Restricting access to these lands impedes citizens' ability to exercise their rights to free speech and peaceful assembly. For example, in *Clark v. Community for Creative Non-Violence* (1984), the Supreme Court held that while the government can impose reasonable restrictions on the time, place, and manner of expression in public forums, such restrictions must not be more extensive than necessary to serve a substantial government interest and must leave open ample alternative channels for communication.

Restrictions on access must be content-neutral, meaning they cannot favor one viewpoint over another. Content-based restrictions on speech are subject to strict scrutiny and are rarely upheld. For instance, in *Ward v. Rock Against Racism* (1989), the Supreme Court emphasized that content-neutral restrictions must be narrowly tailored to serve a significant governmental interest without unnecessarily limiting free expression.

Discrimination against specific groups in public forums constitutes viewpoint discrimination, which is subject to strict scrutiny and is rarely upheld by courts (*Stone, G. R., "Content-Neutral Restrictions," The University of Chicago Law Review*). The Supreme Court has made clear that any regulation that discriminates based on content or viewpoint is presumptively unconstitutional. This principle was reaffirmed in cases such as *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), where the Court struck down a town's sign code that imposed more stringent restrictions on signs related to certain subjects than on others, finding it constituted



impermissible content-based regulation. Excluding specific groups from national monuments likely constitutes content or viewpoint discrimination if it targets particular messages or ideologies associated with those groups (*Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995)).

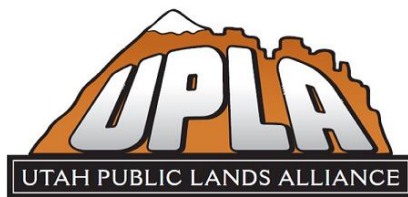
When access to national monument public lands is restricted to exclude specific groups, the result is viewpoint discrimination, as it targets specific groups based on the messages they convey or the identities they represent. Such actions can be challenged on the following grounds:

- **Content Neutrality:** The exclusion must be content-neutral. If it targets groups based on their speech, representative identity, or expressive activities, it is unconstitutional.
- **Narrow Tailoring and Significant Interest:** Even if the restriction serves a significant interest, it must be narrowly tailored. Broad exclusions that disproportionately affect specific groups do not meet this standard.
- **Alternative Channels:** Adequate alternative channels for communication must be available. If the exclusion effectively silences the group's message, it is unconstitutional.

The US Constitution and an extensive body of legal precedent clearly demonstrate that excluding access to specific groups on national monument public lands violates First Amendment rights by constituting unlawful content or viewpoint discrimination. The constitutional protections of free speech, assembly, and petition are robust, particularly in traditional public forums, and any exclusionary practices must meet stringent legal standards to be upheld. After reviewing the justifications presented in the draft RMP for broadscale exclusion of public access, use, and enjoyment of the public lands held within the borders of BENM – exclusions for all those who are not members of tribal nations – it is evident that implementation of such exclusion as federal agency land management policy would not withstand legal scrutiny.

The management approaches prescribed in the preferred alternative E emphasizing so-called “Traditional Indigenous Knowledge” violate the Establishment Clause of the First Amendment by expressly endorsing Native American religious beliefs and restricting or prohibiting recreational activities within the monument by non-Indians on the basis of those religious beliefs. As stated in the RMP (Section ES-4.6: Alternative E, page ES-9)<sup>1</sup>:

*“Alternative E maximizes the consideration and use of Tribal perspectives on managing the landscape of BENM. This alternative is meant to emphasize resource protection and the use of Traditional Indigenous Knowledge and perspectives on the stewardship of the Bears Ears landscape. This includes consideration of natural processes and seasonal cycles in the management of BENM and collaboration with Tribal Nations to incorporate those considerations into BENM day-to-day management.”*



Moreover, the RMP makes it clear that all alternatives are informed by so-called “traditional indigenous knowledge” (Section 2.1.1: Approaches Common to All Alternatives, page 2-5):

*“All action alternatives would give consideration to Traditional Indigenous Knowledge in the management of BENM and would include BENM-wide management to provide for the continued preservation not only of the physical landscape but also the cultural and spiritual landscape, including that which is visual and auditory. “*

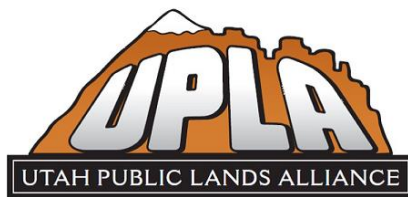
References in these and other passages to “Traditional Indigenous Knowledge” are tantamount with native religious beliefs. The reference to preserving the “cultural and spiritual landscape” makes the sanction of native religious beliefs as foundational justification for public land management policy explicit, as the agencies are directly indicating their intent to set policy based on Native American spiritual beliefs, specifically about visual and auditory aesthetics. The RMP is filled with heavy repetition of references to the BENM landscape as “sacred”, in accordance with the animistic religious beliefs of the relevant tribes which essentially worship the natural environment as divine.

Nowhere is the agencies’ endorsement of native religious beliefs clearer than the section on soundscapes in the Analysis of Management Situation document (Section 5.19.8)<sup>1</sup> published earlier in this planning process, which stated:

*“As identified in Bears Ears Inter-Tribal Coalition: A Collaborative Land Management Plan for the Bears Ears National Monument (BEC 2022), “Tribal Nations of the BEITC consider BENM to be a spiritual place and thus value the need for peace and quiet. Hopi people believe that the spirits of their ancestors still reside at BENM, and any disruption of peace will disturb them.””*

After quoting the BEITC’s proposed management plan describing the Hopi belief that any disruption of peace and quiet in the monument will disturb the spirits of their ancestors, the agencies then proposed to restrict certain recreational activities – primarily motorized recreation and drone flying – because they allegedly disrupt natural soundscapes. This management approach from the Analysis of Management Situation (AMS) document was carried forward into Alternative E in the RMP, which includes similar passages.

However desirable natural soundscapes may be, native religious beliefs regarding disturbing ancient spirits are not a valid basis for federal policy. Even aside from First Amendment concerns, ancient spirits are not a cognizable part of the “human environment” that the agencies



are required to analyze impacts to under NEPA, and are neither an appropriate nor legally or constitutionally justifiable element to include within a NEPA analysis.

The agencies have made it quite clear that they intend to manage BENM primarily, if not exclusively, for the benefit of native religious practitioners at the expense of all other stakeholders and the American public as a whole. Such blatant favoritism toward members of a certain religion in federal land management policy cannot hope to survive judicial scrutiny under the Establishment Clause of the First Amendment.

The repeated effusive language regarding the supposed sacredness of the BENM landscape and numerous references to native religious beliefs throughout both the RMP and the AMS document clearly advance religion and function as a direct endorsement of native religious beliefs. If Alternative E is adopted as the basis for the final management plan, it will almost certainly fail to withstand legal scrutiny.

The fact that the agencies have signed a co-management agreement with the BEITC and the RMP declares their intent to manage the monument according to Traditional Indigenous Knowledge -- a thinly veiled code word for native religious beliefs -- clearly results in an excessive government entanglement with religion. It a preposterous assertion within the view of common sense as well as legal precedent and clear Constitutional boundaries to claim that allowing practitioners of a specific religion to write federal policy based solely on their religious beliefs does not result in excessive entanglement with religion.

The RMP indicates a clear and undeniable intent by the agencies to manage BENM in a way which endorses and favors native American religious beliefs over all competing interests and views regarding how this landscape should be managed. While the agencies would almost certainly never consider signing a cooperative management agreement with the Church of Latter Day Saints, or churches of any Christian denomination, and subsequently state that a national monument would be managed in accordance with traditional Mormon or Christian beliefs, the BLM and Forest Service are doing precisely the equivalent through their proposed adoption of all alternatives within the RMP, and acutely so within Alternative E.

While tribal interests are important, the tribes are but one stakeholder in the management of BENM, which belongs to all Americans and should be able to be used and enjoyed by all members of the general public. Giving a privileged role in the monument's management to native religious practitioners, and especially giving them special access rights (beyond those required by treaties) to monument lands that the general public does not have, unconstitutionally endorses and favors one religion over all others in violation of the First Amendment. Unless the



agencies radically reverse course, the Monument Management Plan that is created through this process will be highly vulnerable to constitutional challenge on Establishment Clause grounds, and we urge the agencies to reconsider their approach.

**We urge the BLM and Forest Service to carefully assess all management actions proposed in the various alternatives to ensure they do not run afoul of the Establishment Clause, and to ultimately adopt a final alternative that does not explicitly favor native religious practitioners over the general American public. We also request that the agencies expressly address Establishment Clause concerns in the RMP and Record of Decision.**

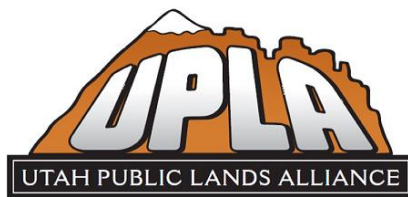
We are also concerned by the fact that some alternatives (including Alternative E) include harsh group size limits on almost all forms of recreation across the monument. Aside from the severe harm this would cause to long established events like Easter Jeep Safari and the Jeepers Jamboree (which currently use routes such as Chicken Corners, Lockhart Basin, Hotel Rock, and Arch Canyon), we believe that severely restricting group sizes unconstitutionally violates Americans' right to freedom of assembly under the First Amendment.

While the First Amendment permits some reasonable time, place, and manner restrictions on both expressive and non-expressive gatherings, such restrictions must generally satisfy strict scrutiny and be narrowly tailored to meet a compelling government interest. Radically restricting group sizes across the monument would not be narrowly tailored to meet any legitimate government interest, as what interest the government has in protecting the environment and visitor experiences could be met in other ways.

There is also a high likelihood that restrictions on group sizes and special use permits could violate the Free Exercise Clause of the First Amendment as well, when applied to religious groups. It is highly likely that any limitations on group sizes would not apply to tribal members, as the BEITC management plan proposes to exempt tribal members from these limits. If the same group size limits or prohibitions on organized events do not equally apply to say, a Mormon group visiting sites of historical significance to them and a native group gathering for a tribal religious ceremony, that would be unconstitutional religious discrimination and would violate the Mormon group's free exercise and freedom of assembly rights under the First Amendment. It would also likely be found to unconstitutionally discriminate based on race/ethnicity in violation of the 14th amendment.

**We therefore oppose the imposition of any arbitrary group size limits as currently proposed in multiple alternatives including Alternative E. The BLM and Forest Service must carefully evaluate any group size or special use permit regulations in the draft**





**management plan for constitutional compliance and ensure that all such limits are narrowly tailored to meet a compelling governmental interest. No alternatives, or combination of alternatives, should be adopted that would be likely to fail to withstand judicial scrutiny under the First Amendment.**

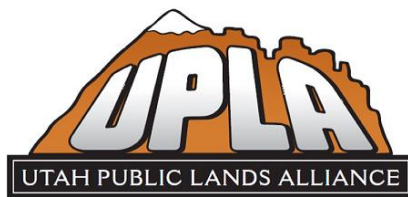
**NATIONAL MONUMENT STATUS MAY NOT BY DEFAULT DICTATE RESTRICTION OR CLOSURE OF PUBLIC ACCESS AND MULTIPLE-USES**

The designation of public land as a national monument can, at times, result in the restriction or closure of public access or multiple uses. However, by constitutional, congressional, and legal protections of public access and multiple uses, restrictions or closure of access must not constitute the default outcome of national monument resource management planning, travel management planning, and other monument planning projects. Any restrictions or closures imposed must depend on the terms of the designation and the management plans developed afterward. Management plans must strike a balance between protection of monument objects, public access, and multiple uses.

We are concerned that none of the five alternatives presented demonstrate intent or effort to achieve such balance. The overarching premise behind all five alternatives is that the presence and use of the land within BENM by the American public (excluding members of native American tribes) is inherently damaging to natural and cultural resources. The use of active management and mitigation as strategies to ensure effective balance between protection of monument objects, public access, and multiple uses is wholly insufficient across alternatives A, B, and C, and is essentially disregarded in full in alternatives D and E. Recreation and economic uses of the land are portrayed within the RMP as innately damaging to the landscape – a position of fundamental opposition is portrayed between public access and multiple uses, in relationship to protection of monument objects.

Any public access restrictions or closures that are imposed through management planning must be guided by the principles of the Antiquities Act<sup>9</sup> and are subject to the specific terms of the monument's designation and management plans. Restrictions and closures must be carefully considered and balanced with public and economic interests. The Antiquities Act grants the President of the United States the authority to designate national monuments to protect significant natural, cultural, or scientific features. However, this authority is not without limitations, particularly when it comes to restricting or closing public access to these lands. The scope of these limitations is shaped by both the statutory language of the Antiquities Act and judicial interpretations. The Antiquities Act mandates that the reservation of land for a national monument must be "confined to the smallest area compatible with the proper care and





management of the objects to be protected" (54 U.S.C. § 320301). This requirement limits the extent of land that can be set aside, aiming to prevent overly broad designations that unnecessarily restrict public access or multiple uses.

Judicial interpretation sets precedent to reaffirm that agencies may not leverage overly broad monument designations to impose broadscale restrictions and closures of public access within national monuments. In *Mountain States Legal Foundation v. Bush*, the DC Circuit Court determined that restrictions imposed by designations exceeded the President's authority under the Antiquities Act. Subsequent increased scrutiny and policy adjustments resulted in restoration of public uses where they were deemed compatible with the monument's primary conservation objectives. (*Mountain States Legal Foundation v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002)).

*Public Employees for Environmental Responsibility v. Hopper* challenged the BLM decision to close large areas of the California Desert Conservation Area to off-road vehicle use, which included lands within the newly designated Mojave Trails National Monument. The court found that the BLM did not adequately consider less restrictive measures and the economic impact on local communities. As a result, the BLM was required to revise its management plan, restoring ORV access across the monument while still protecting key environmental resources. (*Public Employees for Environmental Responsibility v. Hopper*, No. 2:15-cv-00243 (C.D. Cal. 2015)).

In *Western Watersheds Project v. Abbey*, the BLM's restrictions on grazing within the Grand Staircase-Escalante National Monument was challenged by ranchers and local communities who argued that the restrictions were overly broad and economically damaging. The court ruled that the BLM needed to reconsider its grazing restrictions and conduct a more thorough environmental impact analysis. This led to the restoration of some grazing permits, balancing environmental protection with economic uses. (*Western Watersheds Project v. Abbey*, 719 F.3d 1035 (9th Cir. 2013)).

The Antiquities Act, FLPMA, NEPA, and additional congressional mandates require that agencies conduct thorough environmental impact assessment and fully consider less restrictive alternatives when implementing management plans for national monuments. Judicial review has upheld the imperative for agencies to strike a balance between conservation goals and public access or multiple uses. Economic and social impacts on local communities must be accounted for in full, such that national monument management plans achieve balance between protection of monument objects, natural resources, and cultural values with sustainable public use.

The proposition and mandate for balance between conservation and public access is not a foreign concept for either the BLM or the Forest Service. Thus, it is preposterous to assert that either



agency is lacking in knowledge, skill, or practiced ability to effectively fulfill the method of environmental analysis, economic impact analysis, and comprehensive stakeholder integration that fully represents all vested parties among the general public – when conducting scoping, analysis, and other management planning efforts for the BENM RMP. There is ample evidence among the historical record for previous national monument and largescale public land planning. These include planning and implementation for [Berryessa Snow Mountain National Monument](#)<sup>13</sup>, and the [Desert Renewable Energy Conservation Plan](#)<sup>14</sup> (DRECP). Planning managers for Berryessa provided thorough consideration for all stakeholders, which included a sizable contingent of outdoor recreationists, including OHV enthusiasts. All stakeholders were invited to participate in the planning process in a meaningful way, the invitation was not just a formality to provide the appearance of compliance with NEPA, stakeholder input actively shaped the outcomes of scoping, development of alternatives, analysis, and final decision. A similar path was followed in the process and outcomes of planning for the DRECP, which involved public land management planning at a significantly vast scale of acreage and impacts.

If the BLM and Forest Service could manage balance of conservation goals with public access and multiple uses in the examples of Berryessa Snow Mountain National Monument and the DRECP (these are not isolated incidences, there are many other similar examples), then the agencies certainly have the capability to do so for the BENM RMP. However, we are gravely concerned that the agencies' actions throughout scoping, alternative development, and analysis for the BENM RMP has consistently demonstrated biased preference for a narrow set of special interest groups, with general disregard for the American public and existing vested stakeholders. The statements made by agency staff and Bears Ears Commission representatives during public meetings for this RMP have reinforced the obviously biased sentiments that have shaped the content of the five alternatives in the RMP. The questions, concerns, values, and constitutional rights of the American public and non-native-American stakeholders have been placated to through lip service, then functionally disregarded.

**The BENM RMP does not demonstrate that the BLM and Forest Service have made a sincere or adequate attempt to ensure that restrictions or closures were carefully considered and balanced with public and economic interests. We raise an alert to caution the agencies against implementation of an alternative, or combination of alternatives, that disproportionately elevate conservation policies while trampling public access, enjoyment, and ability to continue exercising multiple uses within BENM. RMP planning managers must ensure that the RMP complies with legal standards and comprehensively considers all stakeholders' interests.**



## **INACCURATE MAPS FOR PUBLIC REVIEW AND COMMENT**

Per the procedural guidelines that define and dictate NEPA analysis, the BLM and Forest Service are obligated to provide the public with sufficient data to allow the public to understand all of the essential factors that influence the planning process and final decision, in order to ensure that the public may contribute relevant, substantive comments within each phase of NEPA scoping, analysis, objection resolution, and final record of decision. Maps are a critical component of that essential data. In this RMP plan specifically, given the breadth of geographic scale within the BENM footprint, and the broad range of multiple-uses and public land resources that will be impacted by the plan, maps are a vital piece of the data required for public review.

Unfortunately, the maps that have been provided to the public are wholly inadequate to inform and equip members of the public to submit relevant and substantive comments.

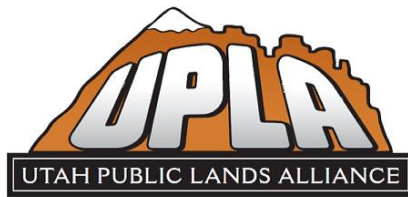
The static maps available in PDF format are too small to effectively convey the level of detail contained in them. Additionally, the shades utilized to demonstrate variance in open, limited, and closed zones among the five alternatives are monochromatic, making it nearly impossible to effectively distinguish the defined borders and scale of land within each respective zone.

Within the dynamic maps, the layers on the maps contain inaccurate and misleading data. Existing recreation routes, areas, and high-value recreation sites are omitted from the maps. This makes it impossible for members of the public to accurately evaluate and speak to the range of impacts they will experience through implementation of the alternatives presented in the RMP.

While the generalized impact of map inaccuracies as noted above create harm on members of the American public by disenfranchising them of the right and opportunity to conduct meaningful and relevant participation within the RMP planning process, the following specific inaccuracies constitute acute harm.

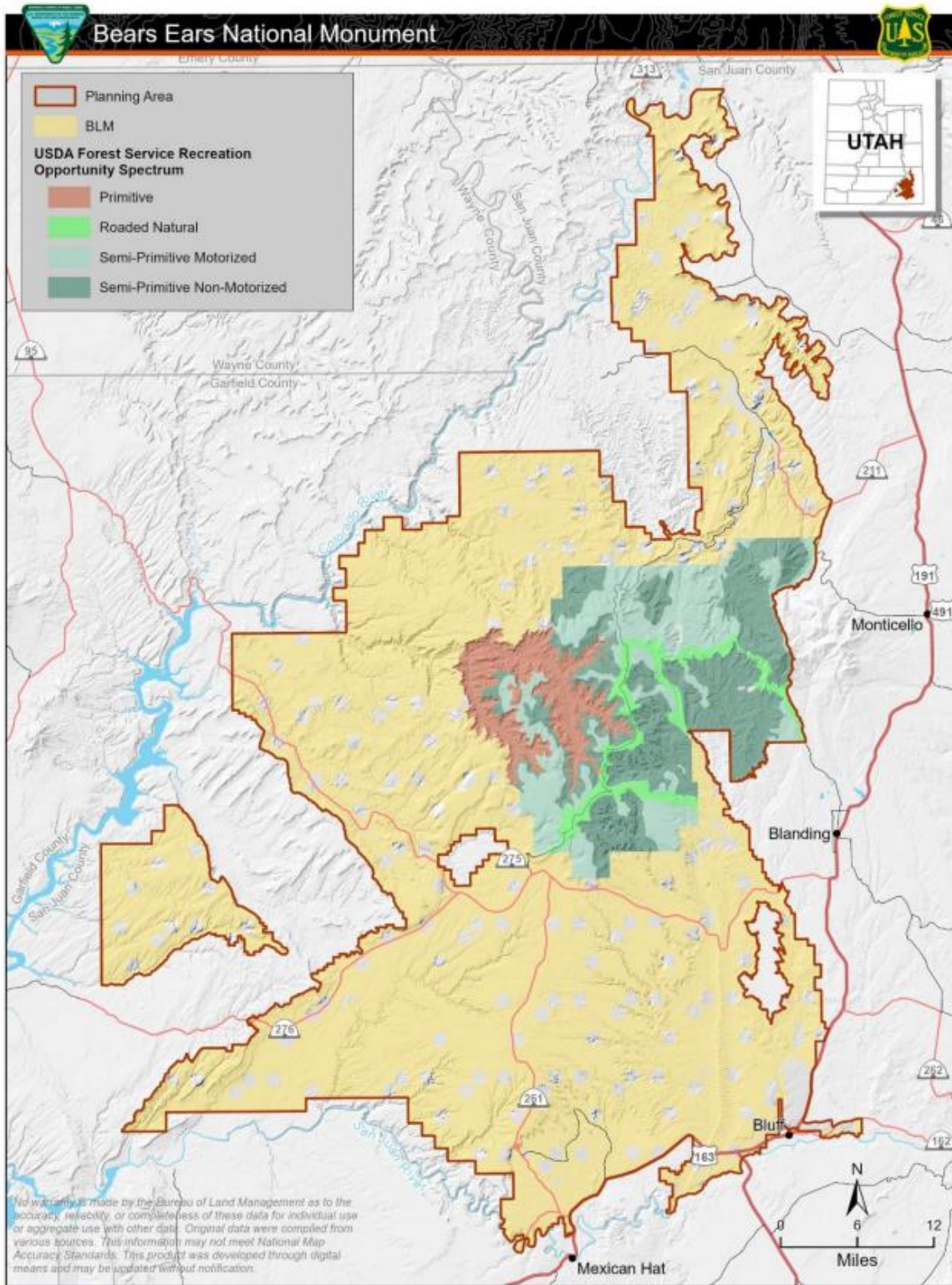
### **Figure 2-28 Recreation Opportunity Spectrum**

This map (located in Volume 2 of the RMP, Figure 2-28, Recreation Opportunity Spectrum, page A-31) shows non-motorized ROS zones covering far more of the forest than what is currently in place from the 1986 LMP of the Manti-La Sal National Forest. By not specifying an alternative, the map inaccurately implies that it's portraying the current ROS. In fact, in the text of the draft RMP, specifically Table 2-1 on Page 2-4 of Volume 1, it inaccurately reports these inflated non-motorized zones to be the current ROS in Alternative A. Further, our fellow advocates for protection of public access to public lands, Ride with Respect, clearly alerted monument planners to this inaccuracy in Part 8 on Page 4 of their [2022 Analysis of the](#)



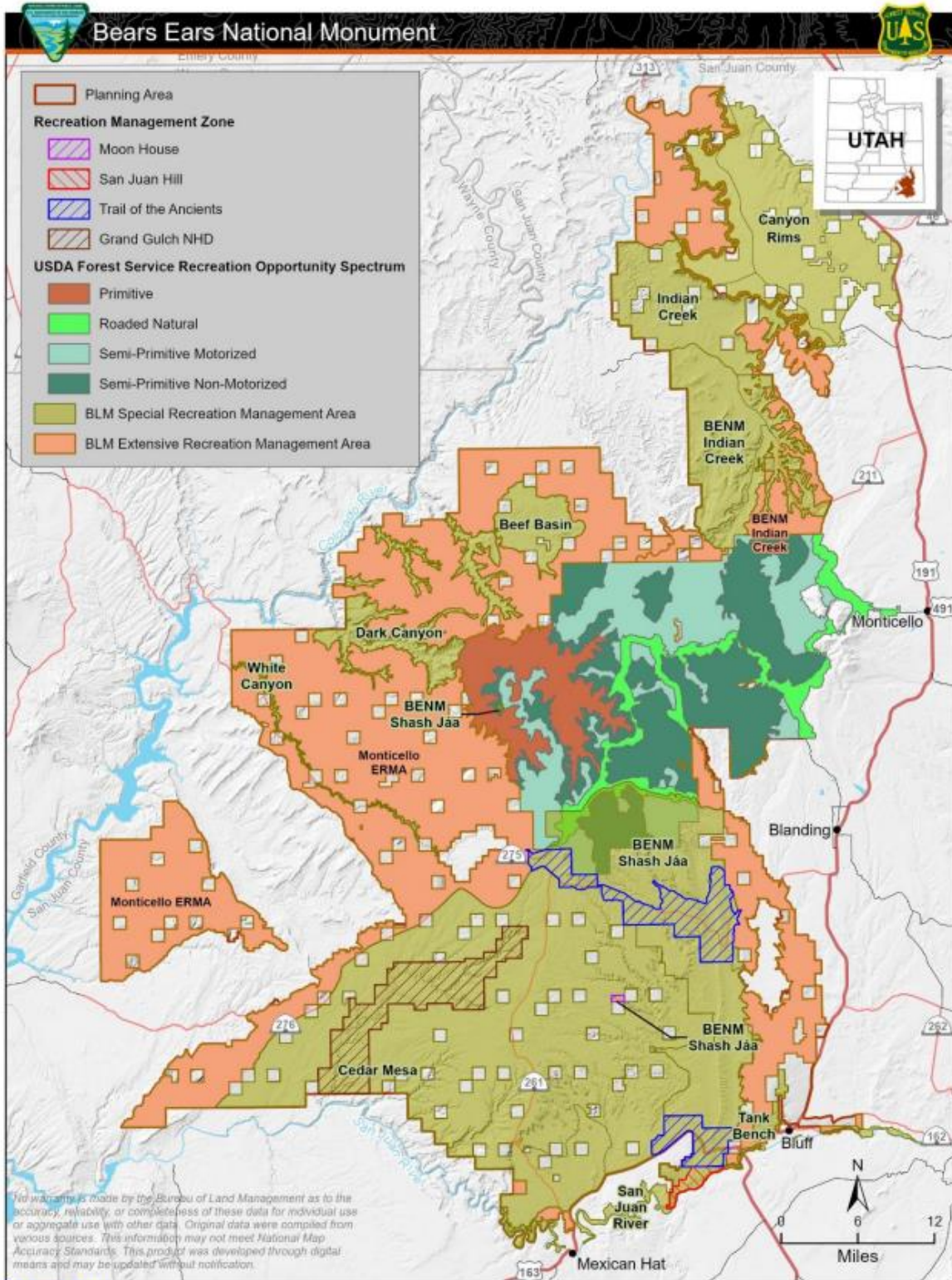
[Management Situation](#)<sup>15</sup> (AMS) comments. Yet the 2024 draft RMP continues to propagate the inaccuracy. Note that this same inaccuracy is found in Figure 3-39 (Volume 2, page A-88) and in the "FS BENM ROS Draft" layer of the BLM's interactive map. It gives the public a false impression that the ROS zoning would be unchanged, which undermines the public's ability to meaningfully participate in this planning process.





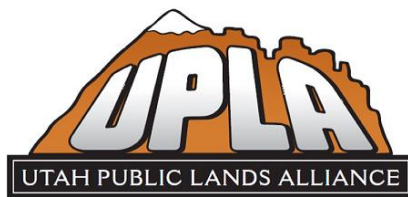
**Figure 2-28. Recreation Opportunity Spectrum.**





**Figure 3-39. Recreational lands categorization in the Monument.**





### **Figure 3-40 Current Travel System**

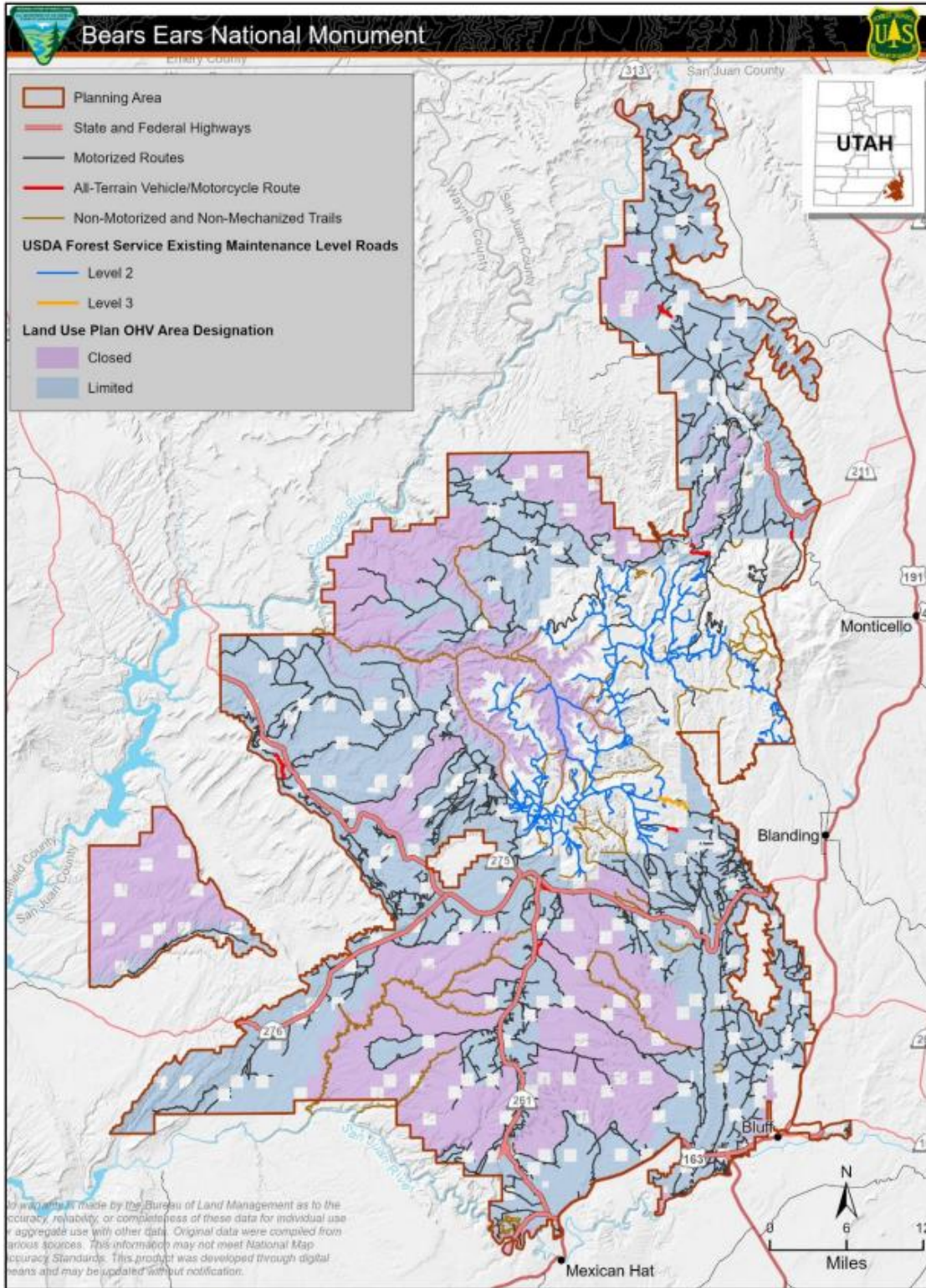
This map (located in Volume 2 of the RMP, Figure 3-40, Current travel system, page A-89) inaccurately portrays at least 15 motorized routes in the national forest as being non-motorized. In other words, it should show the routes in black instead of brown. The 15 routes are highlighted in green in the second image below. Note that this same inaccuracy is found in the "FS BENM Roads Draft" layer of the BLM's interactive map. In fact the interactive map is worse, as it omits over 40 motorized routes (these 40 routes are addressed in the next itemized point below).

Even though travel planning is supposed to occur after the RMP is approved, inaccurately portraying at least 15 motorized routes as being non-motorized obfuscates the public's ability to meaningfully participate in the planning process. For example, Trail 203 (which is the northernmost of the 15 motorized routes on Heifer Mesa) is in an Inventoried Roadless Area (IRA), so the presence of that motorized route could inform the public's comments on the IRA aspects of the draft RMP.

For this same reason, routes should not be hidden by the monument boundary on maps. Shay Ridge ATV Trail appears to be inside the monument within RMP maps as indicated by:

1. The BLM's interactive map (when using the "imagery" basemap)
2. The proposed OHV Closed Area boundary presumably following the Shay Ridge ATV Trail in figures 2-34 through 2-37
3. The black line that's barely visible (behind the red monument-boundary line) near the south end of Shay Ridge ATV Trail in Figure 3-40

If this is the case, then Shay Ridge ATV Trail (and any other motorized routes along the monument boundary) should be made visible in Figure 3-40 and the corresponding layer of the BLM's interactive map so that the public can view, understand, evaluate, and effectively comment on the complete travel system.

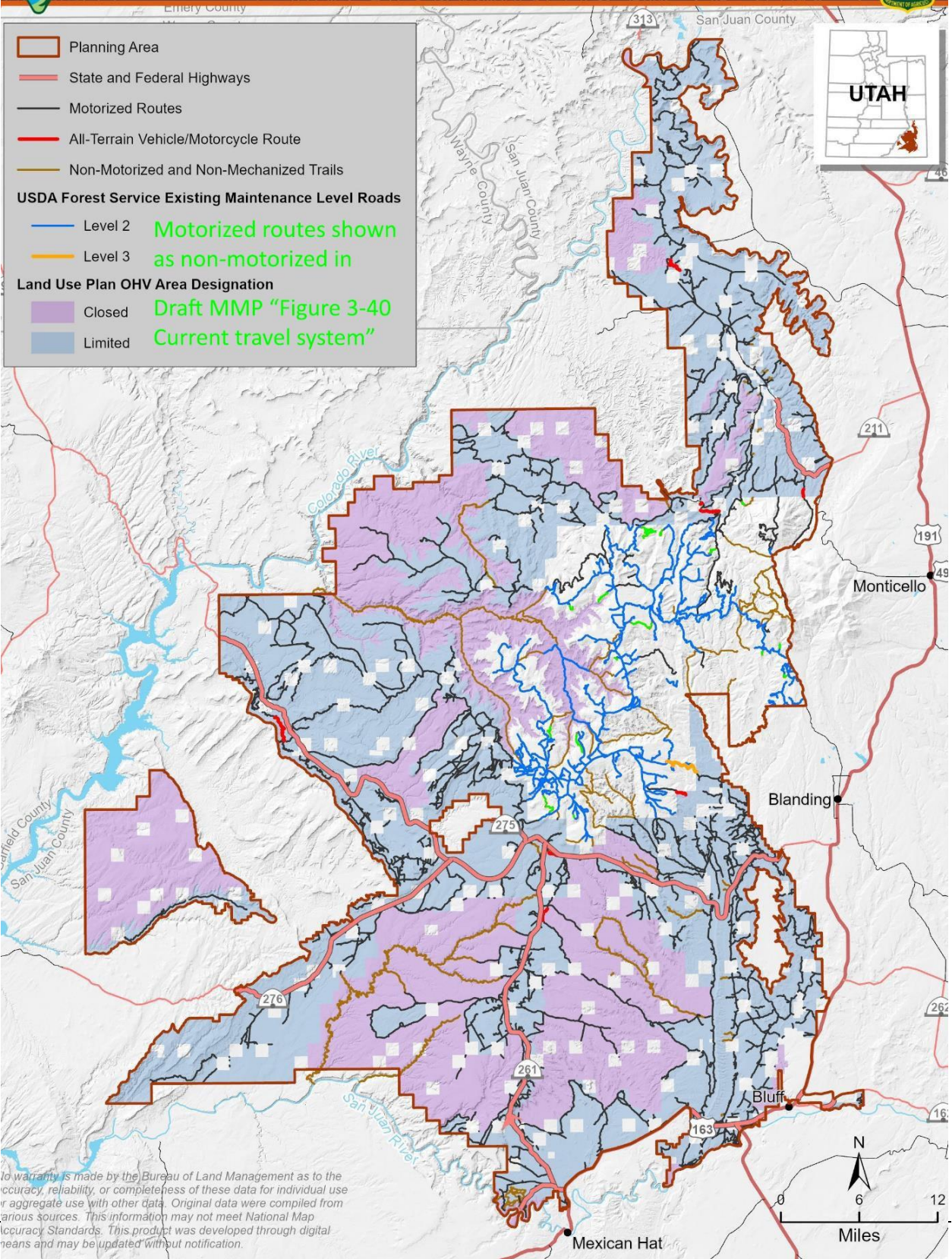


**Figure 3-40. Current travel system.**





# Bears Ears National Monument

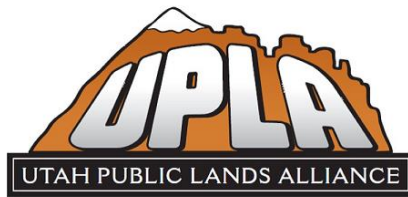


- Planning Area
- State and Federal Highways
- Motorized Routes
- All-Terrain Vehicle/Motorcycle Route
- Non-Motorized and Non-Mechanized Trails
- USDA Forest Service Existing Maintenance Level Roads**
  - Level 2
  - Level 3
- Land Use Plan OHV Area Designation**
  - Closed
  - Limited

**Motorized routes shown as non-motorized in Draft MMP "Figure 3-40 Current travel system"**

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

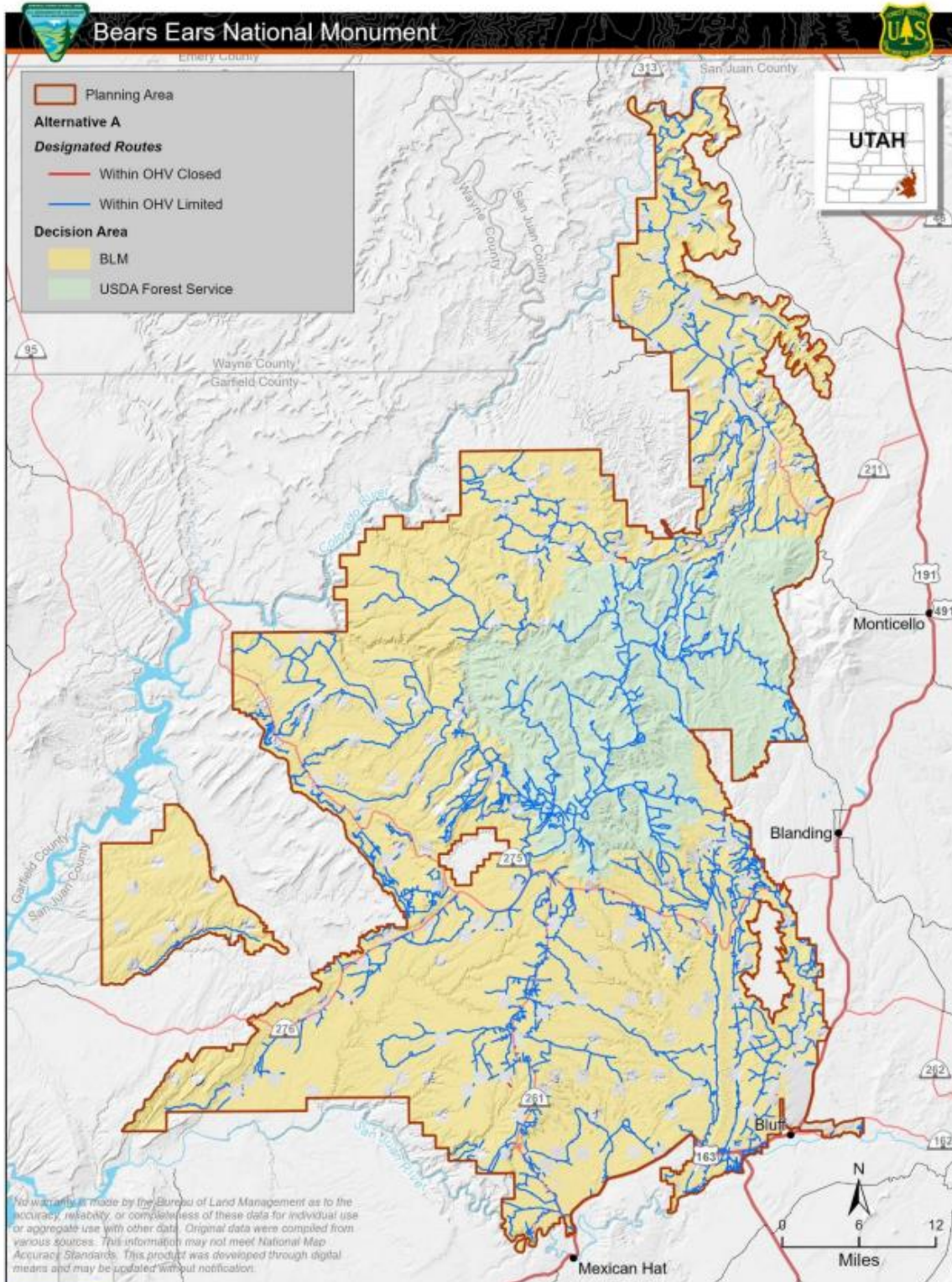




### **Figures 2-38 through 2-42: Routes within OHV Area Designation**

This set of maps (located in Volume 2 of the RMP, Figures 2-38 to 2-42, Alternative A/B/C/D/E, routes within off-highway vehicle area designation, pages A-41 to A-45) all omit over 40 motorized routes. Figure 2-38 is shown below for illustration. The same map is then shown below that with the 40 routes highlighted in green. Note that this same inaccuracy is found in the corresponding layers of the BLM's interactive map ("BENM Routes in OHV Areas Alt A Draft," "...Alt B Draft," "...Alt C Draft," "...Alt D Draft," and "...Alt E Draft"). Per our understanding and inquiry of BENM planning managers, we are not aware of any of these routes being in areas that are proposed to be designated as OHV Closed, in which case they should be shown in blue rather than red. However, the omission of these 40 routes from the five figures again obfuscates the public's ability to meaningfully participate in this planning process. For example, in all of the action alternatives (B through E), the proposed OHV Closed boundaries are adjacent to many of these omitted routes. The presence of these routes would inform the public's comments on the proposed OHV Closed boundaries given potential future needs such as rerouting.



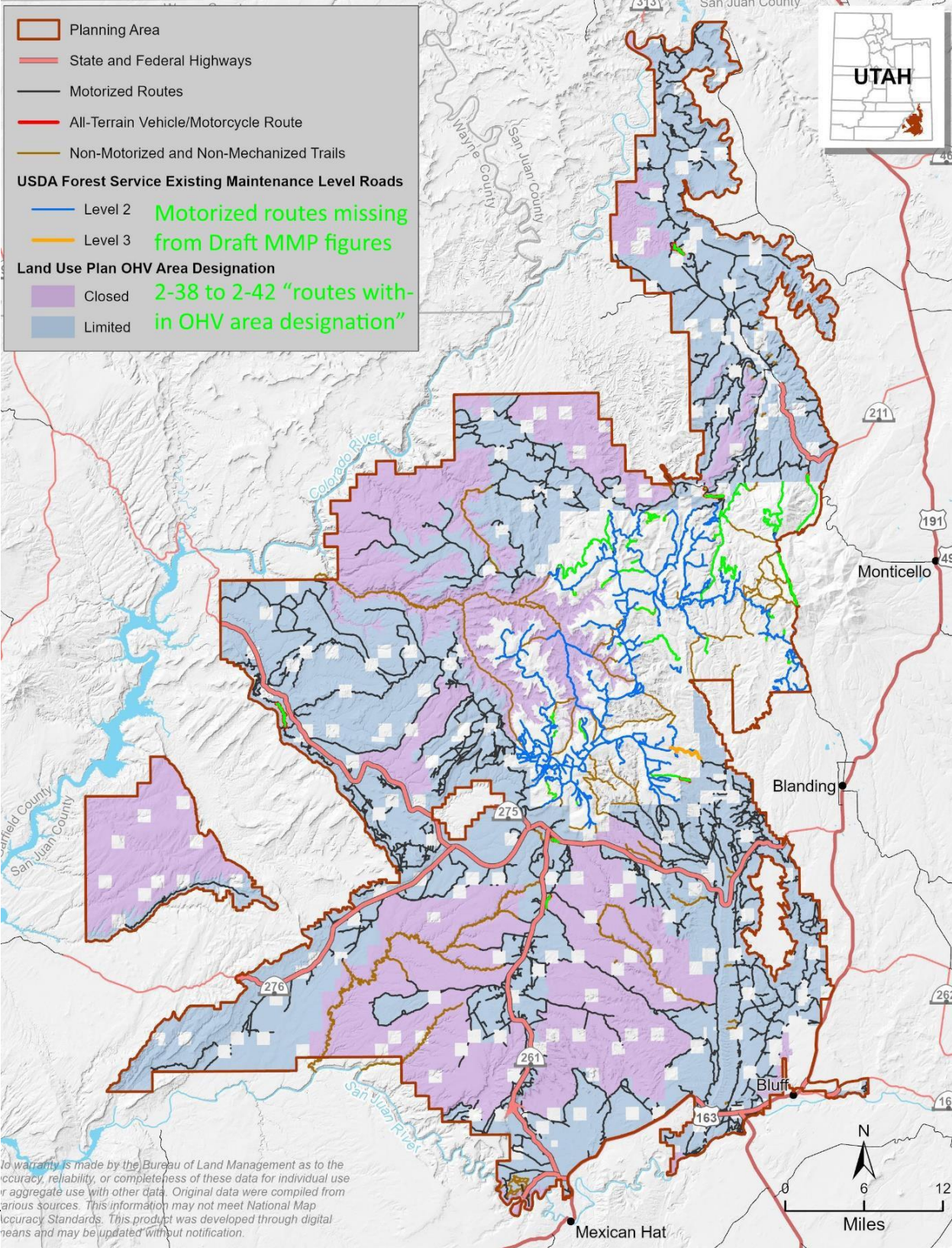


**Figure 2-38. Alternative A, routes within off-highway vehicle area designation.**

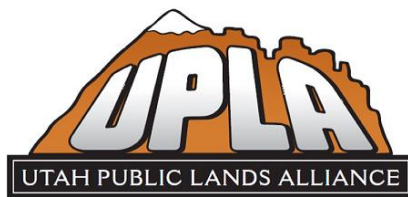




# Bears Ears National Monument







## **Backcountry Airstrips and Dispersed Campsites**

Neither the static nor dynamic maps provided for this RMP display backcountry airstrips or dispersed campsites. The impact of closures for both aircraft and camping is troubling because it is difficult to determine the impact of potential road closures on these uses.

For camping specifically, the scope of negative impact on the American public from omission of display of dispersed campsites within RMP maps is vast. The prevalent majority of visitors to BENM utilize camping as a primary and preferred mode of overnight accommodation. Eradication of dispersed camping will subsequently eliminate affordable and practical means for the American public to spend extended time exploring and appreciating the unparalleled beauty, unique cultural and natural resources, and internationally renowned outdoor recreation opportunities that are held within BENM. Restriction or closure of dispersed camping creates economic harm for members of the American public who cannot afford to pay for accommodations outside of BENM. Omission of dispersed campsites within RMP maps demonstrates intentional misleading by planning managers to accurately disclose and inform the public of the full range of impacts within each of the five proposed alternatives for the draft RMP, and thereby obfuscates members of the public from conducting accurate evaluation of the RMP, and providing relevant comments throughout the planning process.

## **RS. 2477 and Mining Claim Access Routes**

The RMP provides bearing on and addresses the validity of R.S. 2477 assertions. The plan reduces access or closes completely multiple routes that are the means of access to active mining claims. Rights of way that access mining claims are granted rights under R.S. 2477.

MS-1626 Travel and Transportation Management Section 6.2 states, “A travel management plan is not intended to provide evidence, bearing on, or address the validity of any R.S. 2477 assertions. R.S. 2477 rights are determined through a process that is entirely independent of the BLM's planning process.

In these proceedings, whether routes have existed historically and whether they currently exist on the ground are part of the evidentiary record for R.S. 2477 claims. Closure of an R.S. 2477 route through a TMP planning process provides bearing against the validity of any R.S. 2477 assertion by erasing the primary source of evidence upon which these assertions rely: the continued existence of the route itself. As such the closure of R.S. 2477 routes through the TMP process violates MS-1626 (6.2).



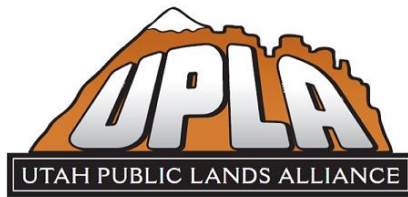
We recognize that RS 2477 claims cannot be adjudicated through an administrative process, but we also recognize that closing R.S. 2477 routes through an administrative process will bias any future adjudication, and closures of these routes should be avoided at all costs until any contested route can be thoroughly adjudicated. **At minimum, BLM should develop an alternative that keeps all of these routes open.**

The closure of R.S. 2477 routes also creates an undue burden on active mining operations, and BLM Manual 2801.8(G) requires BLM to “Recognize as an authorized use, any ROW facility constructed on public land on or before October 21, 1976, under the authority of any act repealed as to future authorization by FLPMA. No further authorization is required by the holder for [...] b. A ROW for a public highway constructed on public land under R.S. 2477.” During my (Loren Campbell) explorations in the area, I saw numerous mining claim stakes along routes proposed for closure in Alternative C. We believe the closure of routes that provide the sole access to valid mining claims is illegal.

**In order to provide substantive comments on routes that may be affected by R.S. 2477 claims after the adjudication is determined, Routes with R.S. 2477 claims must be included as a layer in the dynamic Interactive Map.**

BENM RMP planning managers from both the BLM and Forest Service have not been ignorant or uninformed of the map inaccuracies cited above. Members of Ride with Respect and UPLA raised all of the concerns above to RMP planning managers during in-person and virtual public meetings in April and May of this year. We are deeply disappointed, and concerned about the legal and procedural violations that have subsequently been willfully perpetuated by planning managers, since these errors have not been corrected in RMP documents or interactive maps.

**As remedy, in order to comply with NEPA requirements, the BLM and Forest Service must provide maps of sufficient quality to allow members of the public to identify landmarks, areas, and designations on areas that are contained within the full range of proposed changes and impacts to public access and multiple uses within BENM. We subsequently assert the legal and procedural requirement for RMP planning managers to retract the draft RMP to rectify this issue, and re-open the draft RMP / DEIS for a new public comment period after adequate maps have been developed and released for public review.**



## **UNNECESSARY, ARBITRARY, AND CAPRICIOUS NEGATIVE IMPACT ON OUTSTANDING MULTIPLE-USE VALUES, AND CUMULATIVE IMPACTS**

The [National Environmental Policy Act](#)<sup>16</sup> (NEPA) plays a critical role in preventing cumulative impacts from closures and restrictions to public access on public lands by ensuring comprehensive environmental reviews and public involvement in decision-making processes. NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. For less significant actions, an Environmental Assessment (EA) is prepared to determine whether an EIS is needed. Both documents must consider the cumulative impacts of the proposed action in conjunction with other past, present, and reasonably foreseeable future actions. Cumulative impact analysis ensures that the effects of land closures and restrictions are evaluated not in isolation, but in the context of other actions that might compound their environmental and social impacts.

NEPA mandates public involvement in the environmental review process. This includes public notices, comment periods, and public meetings. Through this process, stakeholders, including local communities, recreationists, and conservation groups, can provide input on potential cumulative impacts of proposed closures or restrictions on public lands. Engaging the public helps identify concerns and potential cumulative impacts that might not be apparent to the agencies alone .

NEPA requires the use of an interdisciplinary approach in preparing EIS and EA documents. This ensures that experts from various fields, such as ecology, sociology, economics, and recreation management, contribute to a holistic analysis of cumulative impacts. By involving diverse expertise, NEPA ensures a thorough assessment of how closures and restrictions may cumulatively affect environmental, economic, and social resources.

NEPA documents should include mitigation measures to address identified cumulative impacts. These measures can range from public education campaigns to inform and direct public land visitors to adhere to “leave no trace” and minimal impact best practices when recreating in public lands, to rerouting an OHV or hiking trail to avoid sensitive natural resources, to implementing monitoring programs to track potential impacts over time. Mitigation strategies are designed to minimize negative cumulative effects on public access and environmental quality, ensuring that the proposed actions in a resource, travel, or project management plan do not lead to significant long-term detrimental impacts through unnecessary and unwarranted restriction or closure of public access.



NEPA encourages the establishment of monitoring programs to assess the actual impacts of closures and restrictions over time. This adaptive management approach allows agencies to adjust management strategies based on monitoring results to address unforeseen cumulative impacts. Continuous monitoring helps in understanding the real-world implications of closures and ensuring that public access and environmental protection are balanced effectively.

The draft RMP states in Section ES-5.2.7: Recreation Use and Visitor Services (page ES-26):

*“Unmanaged or uncontrolled recreation can have definite impacts on and implications for the condition of Monument resources and objects. However, visitation can be a beneficial method of public and cultural education, if appropriate and culturally sensitive modes of thinking and visitation can be effectively communicated.”*

The Purpose and Need of the RMP (page 1-3) states that:

*“Recreational visitation is an important driver of the local economy, with the area becoming world famous for rock climbing and the increased popularity of off-highway vehicle (OHV) use, cultural tourism, and other forms of recreation.”*

*“Planning decisions can define resource uses and land designations to help resolve conflicts between various uses and object protection.”*

*“Increasing uses of the landscape such as rock climbing, OHV use, and cultural tourism, whether through an organized or commercial event with a Special Recreation Permit (SRP) or by the public, can impact various plant and wildlife communities and habitats. Planning decisions can help re-evaluate and balance the trade-offs for the desired uses of the landscape with the need to protect the Monument’s biological resources identified as objects.”*

While the RMP has remarked on the social, economic, and community benefits of OHV recreation and other forms of outdoor recreation, value and preservation of these recreational uses has been dramatically minimized, with correlating deference for the religious and cultural values of native American tribes have been elevated above the values of the American public and multiple uses. Likewise, environmental conservation is used as justification for minimization or elimination of public access and multiple uses. Both environmental and cultural resources are already protected throughout BENM via a litany of existing legal and congressional policies. These include NEPA, FLPMA, the Clean Water Act, Clean Air Act, Endangered Species Act, and National Historic Preservation Act, among many others.



As discussed earlier in this comment letter, none of the five alternatives presented in the draft RMP represent a pro-recreation emphasis. Neither to any of the alternatives represent a pro-multiple-use context. The draft RMP as currently written fails to address outstanding values other than environmental and cultural resources, and fails to address or prevent far-reaching negative cumulative impacts on social, economic, and recreational uses.

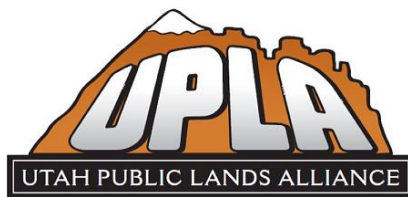
### **Outstanding Recreation Value: OHV Recreation**

UPLA is concerned that restrictions and closure of OHV access in BENM will bear insurmountable negative impact on OHV recreation. This negative impact will directly affect our members and the communities and economies that are situated near BENM and throughout the greater Southwest region of the United States. Closures and restrictions of access will displace OHV riders. This will drive OHV enthusiasts to seek recreation in other areas of Utah and the American Southwest. This will create a higher concentration of people off-roading in other OHV areas, which will create new negative impact on natural and cultural resources in those areas, thus jeopardizing the long-term viability of other OHV areas, and thereby inflicting a snowball effect of harm directly on the OHV recreation community.

While anti-motorized groups will no doubt emphasize in their comments the fact that recreation is not an identified object of the Bears Ears National Monument, we note that the proclamation specifically recognized that the monument is home to “world class outdoor recreation opportunities—including rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding—that support a booming travel and tourism sector that is a source of economic opportunity for local communities.” This coincides with a statement in the 2008 Monticello Field Office RMP recognizing the importance of recreation to the San Juan County economy:

*“The San Juan County economy is dependent upon recreation-based businesses. Commercial outfitters operating on BLM lands provide services for many activities including rafting, hiking, climbing, four wheel driving, ATVing, photography tours, horseback riding, ballooning, hunting, canyoneering, and mountain biking. Maintaining a wide variety of recreational opportunities is important to the local economy and the businesses that are dependent upon them and the Approved RMP provides these opportunities.”*

Though the 2021 monument proclamation avoided mentioning OHV recreation, its importance to the local economy is undeniable. Moreover, the motorized route network in the monument is what enables all other recreational activities to take place. Most of the monument is highly



remote, and many areas can be accessed only by primitive four-wheel-drive roads. Driving these roads is in itself a valued recreational experience for many people, while others use them to access hiking trailheads, climbing sites, campsites, or archaeological and cultural sites. A robust motorized route network is key to enabling all forms of recreation, whether those participating in a given activity appreciate that or not.

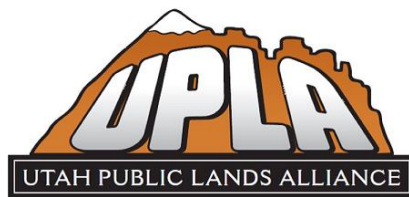
Despite this fact, there is no recognition in the DEIS of any positive impacts of the motorized route network in Bears Ears National Monument. Every mention of motorized routes and OHV use is negative, and motorized access is treated throughout the document as a threat to monument values or as a nuisance to be eliminated. Alternative D in particular would designate the vast majority of the monument as OHV closed in favor of managing for so-called “wilderness characteristics”, attempting to manufacture wilderness suitability by the mass closure of existing roads. This is utterly unacceptable. Any objective evaluation of motorized use in Bears Ears must recognize the positive aspects of motorized access as well as the negative impacts, which the agencies have not done. Such blatant bias against motorized recreation must not be allowed to form the basis of the new Bears Ears management plan.

While certain anti-motorized interest groups love to claim that motorized recreation in Bears Ears is causing all manner of calamities, that could not be farther from the truth. In reality, the motorized route network in Bears Ears is currently well managed and is not causing any significant impacts to monument objects and values. There is simply no demonstrable need for a significant reduction in motorized routes as proposed in some action alternatives.

The current motorized route network in Bears Ears is not haphazard or the result of a historical accident, but is the product of considered and deliberate travel management planning conducted in 2008 for BLM lands, and through MVUMs that are the product of many years of management actions in the Manti La Sal National Forest. The 2008 Monticello Field Office RMP already closed 316 miles of existing motorized routes in the area, with the remaining routes providing the bare minimum access necessary for basic connectivity and transportation needs in the area. Road densities throughout the monument are already sparse, as evidenced by the fact that so much of the monument is listed as possessing wilderness characteristics. Opportunities for solitude are already abundant even in roaded areas and there is simply no need for mass road closures to create such opportunities.

The existing motorized route network in Bears Ears has already been thoroughly evaluated for resource impacts as recently as 2008, and those routes that remain open have all been determined to have an important purpose and need. Routes in the Indian Creek and Shash Jaa units were again evaluated at least at a high level for compliance with monument objects and values under





the Trump proclamation, and none were determined to pose any imminent harm that required their immediate closure.

Among the routes evaluated in the 2020 management planning effort is the OHV route at the bottom of Arch Canyon, which (thanks to SUWA's repeated attempts to secure this route's closure over the last few decades) has been thoroughly evaluated no less than five times since 2006, and each time has been found to serve a valuable purpose and need and to not cause any significant adverse impacts on the environment. The most recent evaluation occurred in 2020, when the BLM determined that continued motorized use of this route would not cause any undue harm to Bears Ears NM objects and values, and decided to maintain the existing rules governing its use from the 2008 Monticello Field Office RMP.

Given the long management history of the motorized routes in this area and their extreme importance to the local economy in enabling all forms of recreation within the monument, any significant closures of motorized routes mandated in the new monument management plan simply cannot be justified either legally or factually. We therefore urge the agencies to consider and adopt the following general provisions regarding travel management:

1. Keep all existing OHV area designations from current management plans. The 2008 Monticello and Moab Field Office RMPs, the Manti La Sal National Forest forest plan, and the 2020 monument management plans have already thoroughly evaluated what areas are suitable for OHV use and what areas are not. There is no need to designate additional areas as OHV-closed. The current OHV-limited designation across every part of the monument where OHV use is allowed is fully sufficient to limit OHVs designated routes. Any changes to individual route designations should be made as part of a later travel management process, which is far better suited for detailed analysis of individual routes than a high level resource management plan. The recent trend in federal land management has been to separate route specific travel management planning from resource management planning. Thus the agencies should avoid making decisions regarding individual routes in this planning process and should leave decisions regarding individual routes to future travel planning.
2. Maintain existing decisions regarding lands with wilderness characteristics. The existing management plans carefully evaluated what lands were suitable to manage for the protection of wilderness characteristics (BLM natural areas) and those that were not. Those that were determined to be managed as BLM natural areas were without roads and already managed for non-motorized recreation. Lands determined not to be managed for wilderness characteristics had that determination for a reason, "because those lands were

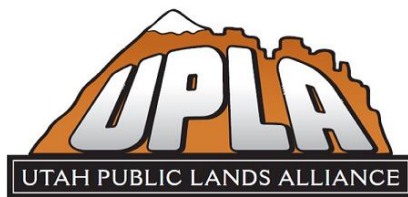


found to have other important resources or resource uses that conflict with protection, preservation, or maintenance of the wilderness characteristics.” Designating additional lands with wilderness characteristics as BLM natural areas closed to OHV use would disrupt the existing careful balance made in previous planning efforts and would have a severe negative effect on multiple forms of recreation and other valid existing rights.

3. We urge the agencies to continue to follow the general travel management guidance established in the 2020 Bears Ears management plans. Specifically, we support maintaining all individual route designations under existing travel management plans until a new travel plan is developed. We also strongly support provision TM-4 from the 2020 Indian Creek and Shash Jaa Units Management Plan, “Implementation-level travel planning in SRMAs and Extensive Recreation Management Areas (ERMAs) will recognize the San Juan County OHV route system and integrate it to the extent possible in travel management and recreational goals and objectives.”

We are disappointed to see this provision not carried forward in the draft management plan, which merely says the agencies should, “coordinate with local government and the BEC and other Tribal Nations on implementation-level travel planning.” This replacement provision is utterly insufficient, and we urge the agencies to restore the provision requiring specific recognition of the San Juan County OHV trail system. San Juan County has long maintained a thorough inventory of existing OHV routes and each route on their maps is extremely important for motorized recreation. Most routes in their route system are also claimed R.S. 2477 roads that should be kept open pending final resolution of their legal status.

4. We support the adaptive management framework for motorized use established in provision TM-6 of the 2020 monument management plans: “As part of implementation-level travel planning, monitor OHV use areas and, if unacceptable impacts to natural and cultural resources are occurring, develop implementation-level limitations including route designation, route closure, motorized vehicle size and weight limitations, or other mitigation measures as necessary to address those impacts.” Any route closures or other management measures should be developed in response to specific unacceptable impacts identified through monitoring, not done preemptively based on pure speculation. The best way to manage OHV use in the monument is with the least restrictive approach first, leaving room to escalate to increased restrictions later when necessary.
5. It is absolutely essential that the new monument management plan carry over provision TM-7 from the 2020 management plans: “Any lands acquired by the BLM over the life

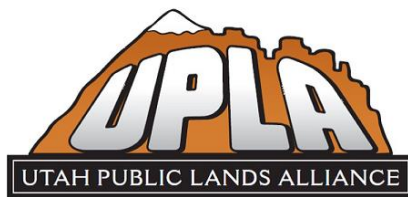


of the MMP will be managed with the same OHV area designations of adjoining BLM-administered lands or as stated or implied in the land transfer. If clarification is absent, the BLM will manage the acquired lands as OHV limited. The type of limitation will be determined by implementation-level travel planning. Until that implementation level travel planning is completed, the OHV limited use will continue in the same manner and degree consistent with the proper care and management of Monument objects and values.”

This provision is vital because numerous state land parcels within the monument may eventually be transferred to the BLM and Forest Service. Many existing designated routes either pass through those parcels or continue onto them after leaving federal lands. One such example is the route leading to an overlook of Arch Canyon on a SITLA parcel at 37.57080, -109.72118. It is vital that these route segments do not end up being inadvertently closed simply because the underlying land was transferred to the federal government and the segments on state land had not previously been included in a federal travel management plan. We urge the agencies to provide clarity that all existing routes on former state land parcels will remain open to motorized use until considered in implementation level travel planning.

6. Special recreation permits for motorized events must continue to be allowed for all routes currently permitted for events. Chicken Corners, Lockhart Basin, and Hotel Rock are currently permitted for Easter Jeep Safari, while Arch Canyon is permitted for Jeep Jamborees and has been used for Jeep Safari in the past. These two events are extremely important to the motorized community, and it is critical that they continue to be allowed to use these routes.

Most of these provisions are incorporated into alternative A, and but are deliberately left out of all of the action alternatives. We strongly oppose this divergence from existing management, and see it as a clear sign the agencies intend to de-emphasize motorized recreation in the region going forward while favoring other uses. Additionally, it is critical for RMP planning managers to note: closure or restriction of OHV access will also negatively impact many other multiple uses such as grazing access, dispersed camping, hunting, rock climbing, equestrian, hiking, among many other forms of recreational and economic use of BENM. We strongly urge the agencies to re-incorporate the provisions noted above into the final management plan to provide a minimum bar of protections for OHV recreation and broader public access going forward.



## **Outstanding Recreation Value: Rock Climbing**

Indian Creek Corridor is one of the country's most renowned rock climbing destinations, and it is located entirely within Bears Ears National Monument. Climbers come from around the world to test themselves on Indian Creek's famous "splitters" -- vertical cracks in otherwise smooth sandstone that demand specialized techniques and equipment to climb. Restrictions or closures of access to rock climbing in BENM effectively serves to eliminate an irreplaceable climbing experience; it decimates the ability for current and future climbers to engage in a highly unique climbing site that cannot be accessed elsewhere.

Restrictions or elimination of access to rock climbing is disturbingly ironic given the RMP's goals related to conservation and protection of monument objects. Rock climbing is a sport in which the span of potential impact from human use is remarkably slim. The very action of climbing requires that those engaged traverse a specific route, which in the case of BENM, comprises singular cracks in the sandstone cliff face that are no more than a few inches wide.

Furthermore, [rock climbing as a sport embodies and advances a deep value and commitment for responsible stewardship of public lands](#)<sup>17</sup>. The Leave No Trace (LNT) philosophy stands as a beacon of responsible outdoor ethics, guiding climbers toward environmentally conscious practices that protect and preserve the very landscapes they cherish. Throughout each stage of a climbing journey – from the approach to the summit, and through the descent to camping or bivouac – these seven principles serve as a compass, guiding climbers to minimize their impact and leave behind only memories, not traces. Climbers believe that they have the privilege of experiencing some of nature's most awe-inspiring vistas, and with that privilege comes a shared responsibility to protect them. By embracing the LNT principles, climbers embark on a collective mission to safeguard the beauty of climbing areas and leave them unspoiled for generations to come.

As noted previously in this comment letter, BENM RMP planning managers have failed to incorporate comprehensive public participation that effectively utilized meaningful input from all vested stakeholders of BENM. Rather, a distinctly biased, narrowly selective group of public input (native-American tribes) was deliberately sought and used to inform scoping, alternative development, and analysis of the draft RMP. The formation of the Bears Ears Commission as guided by Presidential Proclamations 9558 and 10285 does not usurp the rights of the American public to engage in meaningful participation in the RMP planning process.

The RMP planning team did not represent an interdisciplinary approach. An obvious lack of agency representation and expertise in sociology, economics, and recreation management has



resulted in a chasm of missing data and analysis to inform RMP process and outcomes related to cumulative impacts on public access, local economies, as well as diverse social groups and stakeholders.

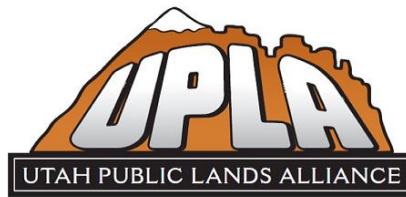
Use of active management and mitigation measures are noticeably lacking throughout the RMP planning process and documents. While NEPA is intended to prevent cumulative impacts from closures and restrictions to public access on public lands through comprehensive environmental review processes, public involvement, interdisciplinary analysis, mitigation measures, and adaptive management strategies, the RMP planning team failed to adhere to NEPA mandates and therefore failed to leverage these mechanisms to ensure that the potential cumulative effects of management actions were thoroughly considered and addressed. As a result, the BENM draft RMP does not promote sustainable and balanced use of public lands.

**We call the attention of RMP planning managers to this failure in compliance with NEPA mandates, and subsequent imposition of unjustifiable, arbitrary, and capricious negative cumulative impacts. We urge RMP planning managers to refrain from advancing the draft RMP to final status, or adopting any of the five alternatives or combination of alternatives as currently reflected within the draft RMP, without first rectifying each of the legal and procedural violations specific to cumulative impacts as noted above.**

### **LEGAL & PROCEDURAL VIOLATIONS** **WILLFULLY IGNORED FOLLOWING PUBLIC COMMENTS**

The following egregious errors in RMP planning process, documents, and maps were brought to the attention of planning managers by members of UPLA and Ride with Respect during in-person and virtual public meetings in April and May of this year. We are deeply concerned about the legal and procedural violations that have subsequently been willfully perpetuated by planning managers, as these errors have not been since corrected in RMP semantics, documents or, static or interactive maps.

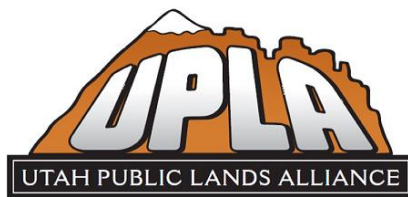
1. Planning for the expanded BENM should not be conducted until litigation is resolved.
2. From the outset, scoping should have portrayed the current status of public land management accurately, and portray the affected area in sufficient detail for the public to meaningfully participate.
3. Existing management plans for the 1.36 million-acre area within BENM boundaries do not interfere with genuine interest to improve conservation.
4. Planning for BENM should recognize that the State of Utah is increasing its support of trail work, education, and law enforcement in the planning area.



5. The AMS factually misrepresents the actual ROS zoning in Manti-La Sal National Forest.
6. The 1.36 million-acre planning area has reached a threshold of the minimum motorized access needed to effectively manage diverse recreation opportunities.
7. The “closed” OHV area designation is not warranted outside of designated wilderness areas and WSAs within the 1.36 million-acre planning area.
8. As with OHV area designations, any alternatives developed for an RMP should avoid limiting the addition of motorized routes beyond the severe limitations already made by presidential proclamation.
9. Planning for BENM should not reduce the concept of a backcountry setting to mean primitive or non-motorized.
10. Minimizing the density of motorized routes, in and of itself, is not an appropriate goal in national monument RMPs.
11. Planning for BENM should not rely on past planning processes that bypass NEPA and clearly lack a willingness or ability to manage for the primary type of travel that is used by visitors to BENM: motorized travel.
12. Planning for BENM should institute new regulations sparingly, and recognize organized and commercial activities as opportunities for partnership.
13. Planning for BENM should utilize proactive recreation management to protect monument objects and values in the long term.
14. Planning for BENM must adequately assess the socio-economic benefits of motorized recreation, and how it would be affected by any alternatives.
15. Collaborative efforts should remain faithful to the congressional directive of public lands to benefit the public as a whole.
16. Planning for BENM must recognize congressional prohibition on buffering wilderness areas.
17. Planning for BENM must not automatically convert all Lands with Wilderness Characteristics (LWC) to Lands Managed for Wilderness Characteristics (MWC).

**We raise these concerns again in this comment letter to ensure that they are fully and accurately documented as public comments, and incorporated into the administrative record for this RMP. We caution RMP planning managers on any contemplation of advancing the draft RMP to final status, or adopting any of the five alternatives or combination of alternatives as currently reflected within the draft RMP, without first rectifying each error and omission noted above.**





## **EQUITY, ENVIRONMENTAL JUSTICE, AND PEOPLE WITH DISABILITIES NOT ADDRESSED IN RMP ALTERNATIVES AS PER E.O. 13085 AND E.O. 14035**

In his first two months in office, President Joe Biden issued Executive Order(s) [13085](#)<sup>18</sup> and [14035](#)<sup>19</sup> On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. These executive orders established “an ambitious whole-of-government equity agenda” which focuses on addressing “entrenched disparities in our laws and public policies,” and mandates a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” In the fall of 2021, the Department of Interior subsequently published a notice in the Federal Register seeking comments on how to provide more equitable access to public lands, which it has identified as an important goal of this administration.

Under these executive orders, “The term ‘equity’ means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities....” Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network.

Travel management policies focused on “minimizing” the environmental impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist biases have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other “human powered” and “quiet use” forms of recreation in which many people with disabilities are unable to participate.

Every time motorized routes are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been little recourse for such people in the past because the Americans With Disabilities Act does not require public land management agencies to consider disproportionate effects on the disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the BLM has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.



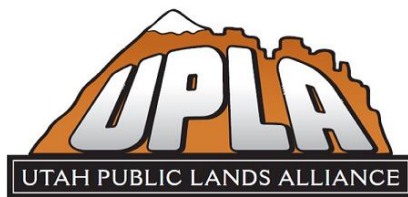
The Biden Administration’s focus on equity, however, changes the equation. While the ADA focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any policy that is facially neutral but disproportionately harms a disadvantaged or marginalized group is considered inequitable. The BLM is therefore required by this executive order and others mandating that federal agencies consider “environmental justice” in NEPA proceedings to consider whether any restriction or closure of OHV access imposed by the BENM RMP would disproportionately harm disabled users’ ability to access public lands.

It is imperative that the BLM consider the access needs of disabled users in considering the alternatives for this travel plan and ensure that people with disabilities who depend on motorized means do not lose access. Such consideration is also required by the BLM’s recently adopted Equity Action Plan that was released by the Department of Interior in April 2022. The Equity Action Plan recognizes that off-road routes create a form of access to public land for those with disabilities, and specifically identifies limited physical access as a barrier that prevents people with disabilities from recreating on public lands. Limiting the areas motorized vehicles can access limits those users who want to experience public land and contradicts the agency’s Equity Action Plan. Therefore, BLM should analyze how the proposed closures would undermine the objectives of the Equity Action Plan.

**I (Loren Campbell) personally am affected because I am 68 years of age and have been a Type 1 diabetic in excess of 30 years. I can no longer visit these scenic areas without the benefit of motorized vehicles. My husband has been as asthmatic since childhood, and he also may be deprived of the opportunity to visit these lands without motorized vehicles.**

Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized routes on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them.

Alternatives B, C, D, and E restrict or eliminate OHV access into many extremely scenic and wild areas, which would subsequently require lengthy hikes to visit. It is inevitable that such closures would disproportionately impact people with disabilities, who would now have no practical way to visit these areas. Where before they could easily visit these places in a Jeep or side-by-side, not even the most robust electric wheelchair is capable of driving a 10 mile long closed Jeep trail even if it were allowed to.



Because of the extreme number of closures contemplated in the alternatives presented in the RMP, the result is unavoidable disproportionate impacts on people with disabilities, which violates EO 13085 and contravenes the DOI Equity Action Plan.

We note that, anecdotally, a significant and growing number of racial minorities (especially Latinos) have recently been getting involved in motorized recreation driving side-by-sides and UTVs. From personal observations while off-roading in both Colorado and Utah, a significant proportion of UTV drivers are Hispanic. These vehicles seem to appeal to that demographic in ways that traditional off-road vehicles or other outdoor activities like hiking or mountain biking historically have not. Motorized recreation (specifically OHV use) is therefore playing a major role in diversifying recreation on western public lands, which is one of the primary goals of the DOI's Equity Action Plan. Eliminating a significant amount of motorized recreational opportunities in BENM therefore runs counter to this goal and disproportionately affects racial and ethnic minorities who prefer motorized recreation over other forms of outdoor recreation. For that reason as well, the action alternatives presented in the draft RMP are broadly overreaching towards conservation and should be rejected or scaled back to a more balanced approach that allows for both conservation and outdoor recreation access to be protected for perpetuity.

Many of UPLA's members and supporters are made up of individuals that are elderly, handicapped in some way, or suffer from physical mobility challenges, and cannot access public lands because of their limitations without the benefit of motorized vehicles.

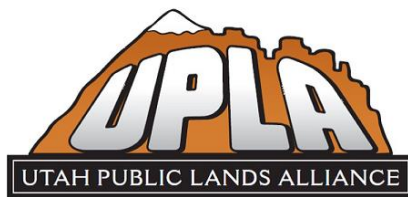
**You must include compliance with Executive Orders 13985 and 14035 on Advancing Racial Equity and Support in your list of regulations and laws that the RMP must address, and address how you achieve compliance with proposed limits or closures in the Draft EIS.**

### **CONFORMITY WITH UTAH STATE LAW**

The RMP should be in conformity with Utah State laws, especially 2024 H.B. 471 and S.B. 67. Compliance with State laws should be a stated objective of the RMP. In the event that BLM chooses not to comply with State law, an explanation should be included in the RMP.

### **SAFETY IMPACTS LEADING TO IRREPARABLE HARM**

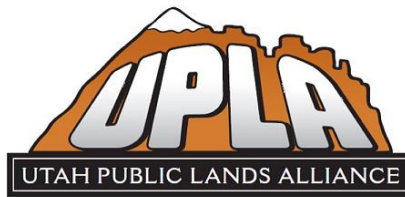
As a former EMT and Wilderness First Aid Caregiver, I (Loren Campbell) have been well acquainted with The Golden Hour for treatment of critical injuries or illnesses has been a practice since it was introduced by the French in WW I. More recently, medical professionals



have said that the hour should be shorter or longer depending on the circumstances, but “as soon as possible” has been a good guide.

As I am frequently a trail leader for groups, one essential part of my preparation is planning for an emergency exit for medical and other reasons. I have been presented with all of the following emergencies on routes that I have been on, and quick exits to seek advanced medical care or extraction points was essential.

- A simple fall by a club member shattered both knees on a trail near Silverwood Lake in California. Due to the excruciating pain and risk of internal bleeding, I splinted both legs and evacuated him in the back of a Jeep to a waiting ambulance on the highway using the quickest and smoothest of available route choices.
- Twice on the Dusey Ershim Trail in California, we had members that began having chest pains, difficulty breathing and dizziness. We evacuated one back to advanced medical care. He was diagnosed with severe altitude sickness, the only field remedy was moving him to a lower altitude as quickly as possible, which is what we did. The other member we hydrated and put to bed and he adjusted to altitude overnight.
- On another Jeep trip to Johnson Valley in California, a member of our group was bitten by a rattlesnake. After driving with OHV to reach a cell signal, we contacted 911 and arranged evacuation to a suitable landing site for helicopter transport for treatment for advanced medical care at a hospital with the needed anti venom. Without motorized OHV to quickly reach cell reception and to arrange expedited emergency evacuation and treatment, that member would have suffered irreparable harm possibly including death.
- A passenger on a UTV run in Parker, AZ and had a panic attack as a result of getting lost, running low on fuel and water, and darkness setting in. The other members were eventually able to calm him down somewhat and evacuated him. This was the first time he had a panic attack, but the attacks became prevalent and more severe over the next year. He committed suicide one year later as a result of the attacks. Not sure if quicker treatment might have made a difference, but it was a tragic loss.
- A Jeep member was on a run in Havasu, AZ and had a heart attack. We began CPR and contacted EMS who we met at the highway and drove to the patient. Unfortunately efforts were unsuccessful and the member died, but at least because of OHV we were able to expedite arrival of EMS.
- On a Jeep run in Big Bear, CA we saw a mountain biker collapsed on the side of the road. We verified his vitals were good and called 911. It was very hot, almost 100°. He was severely dehydrated, so after he regained consciousness we got him in an air conditioned Jeep and started dousing him with water to cool him down and started rehydration. We



drove him to a fire station about 6 miles away where EMS and an ambulance was waiting, who took him to a hospital for advanced medical care.

- There are many other common medical conditions I have not experienced, but happen everyday. Expedited medical care, even if it is just a scoop and run, generally increases the chances of recovery.
- Other emergencies such as threats by fire or flood also are enhanced with motorized OHV in expediting evacuation.

Often the shortest, or the route you came in on, are not the best routes for evacuation. Having a multitude of route choices is often the very best way to expedite evacuation and recovery. I have had a variety of emergency experiences in my life, but it pales in comparison to the number of actual issues that arise in daily life. Closing routes WILL increase evacuation, treatment delays, and even survivability. **Human life and safety should be considered carefully in your decisions. For every route you propose to close, you should evaluate how these factors will be affected in the surrounding area.**

### **TRANSPARENCY AND EASE OF SUBMITTING COMMENTS BY PUBLIC**

Many of our members and supporters have expressed considerable frustration and difficulties being forced to use the EPlanning website to submit comments. Both BLM and UPLA have been emphasizing the importance of more substantive comments, but the Participate Now link makes it much more difficult..

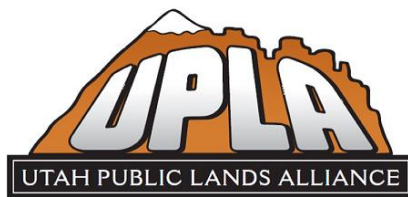
- The Participate Now link often takes 10-15 seconds to appear when accessing the page, many people abandon the site before it appears, and occasionally the link does not work
- There is no “Help” option on the Participate Now page for people having difficulty.
- Deep linking to the Participate Now Comment page is not supported
- The 5000 character limit for comments is inadequate to support substantive comments, my comments nearly 8000 words without any attachments.
- The file types do not support adding gpx or kmz files which are the most commonly used
- There is no ability to simultaneously copy other organizations or elected officials in comments so that they are aware.
- Mailing comments is impractical, especially when photos are included.

**We urge that BLM offer the option of submitting comments by a dedicated email address as they have in the past.**

### **FALSE ASSERTION OF GOVERNMENT OWNERSHIP OF FEDERALLY-MANAGED PUBLIC LANDS**

As noted previously in this comment letter, the BLM and Forest Service manage public lands and subsurface estate under jurisdiction granted by the United States Congress, in accord with





the [Federal Land Policy and Management Act of 1976](#)<sup>4</sup> (FLPMA). The agencies are contracted public land managers, with direct accountability to the citizens of the United States for the method and outcomes of their management actions. Neither the agencies, nor their respective “departments of” (for BLM, Department of the Interior; for the Forest Service, the US Department of Agriculture) possess ownership of BLM or Forest Service managed lands. Nor does either agency possess sole discretion to exercise management authority that excludes the vested interests of the full citizenship of the USA. As elected leaders, the US Congress is the only entity which may direct the agencies’ management protocol. US citizens are protected from the risk of BLM and Forest Service overreach in management authority by the functions of congressional process, FLPMA, as well as the broader framework of the US Constitution.

Thus, we are alarmed and disappointed that there are multiple statements within the RMP that assert that the public land within BENM is federally “owned” by the BLM and/or Forest Service. In order to protect the vested rights and ownership that American citizens possess through the endowment of our treasured public lands, and to ensure accurate language that aligns with FLPMA, the US Constitution, and Congressional directives, each of these false statements within the RMP must be corrected. Erroneous references to federal ownership of public lands are found in the following:

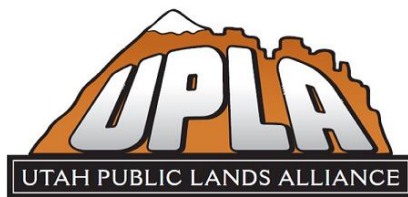
- Volume 1, Section 3.5.6, Lands and Realty, page 3-387, paragraph 3:
  - *“As dictated by FLPMA, the BLM has a responsibility to plan and manage federally owned public lands that are administered by the Secretary of the Interior.”*
  - This must be corrected to state “federally administered” or “federally managed.”
- Volume 1, Chapter 1, Purpose and Need, 1.1: Introduction, page 1-1, paragraph 6:
  - *“The Federal Land Policy and Management Act of 1976 (FLPMA) establishes the policy of the United States concerning the management of federally owned land administered by the BLM.”*
  - This must be corrected to state “public land owned by the citizens of the United States, and managed by the BLM”
- Volume 1, Section 3.4.1.2, Environmental Consequences, part 3.4.1.2.2, Impacts Common to All Alternatives, page 3-16, paragraph 2:
  - *“If BLM-administered or NFS lands are disposed of and removed from federal ownership, they no longer retain any BLM or USDA Forest Service protection for paleontological resources.”*
  - This must be corrected to state “BLM- or NFS-managed lands are removed from federal management...”



- Volume 1, Section 3.4.3.1, Affected Environment, Table 3-12, National Hydrography Dataset Features within the Planning Area by Land Ownership, page 3-52:
  - *The BLM, USDA Forest Service, and USDA Forest Service Wilderness Area are all cited as entities with “ownership” of land within the planning area*
  - This must be corrected to distinguish accurate, legal land owners (Private and State entities) from public land managers (BLM, USDA Forest Service, and USDA Forest Service Wilderness Areas). The American public must be cited as “owners” of public lands that are managed by any federal agency.
- Volume 2, Glossary, page 9, “National Monument”:
  - *“An area created from any land owned or controlled by the federal government for the protection of objects of historical, cultural, and/or scientific interest..”*
  - This glossary item must be corrected to state “...An area created from any land managed by the federal government...”
- Volume 2, Glossary, page 12, “Public land”:
  - *“Land or interest in land owned by the United States and administered by the Secretary of the Interior through the BLM or Secretary of Agriculture through the USDA Forest Service...”*
  - This must be corrected to state “Any land and interest in land owned by the citizens of the United States”

Please note, there may be additional erroneous references to federal, BLM, or Forest Service ownership of public lands in other components of the RMP, appendices, and supporting documents. The items in need of correction as noted above are not intended to be a comprehensive list of all such references. All additional erroneous references must also be corrected.

**Again, it is critical for the BLM and Forest Service to bear in mind that the agencies do not own our public lands. BLM and Forest Service managed lands are a part of the public endowment, as all public lands are owned by the citizens of the USA (the public); the BLM and Forest Service are merely contracted to manage those lands within the defined scope of limited authority that is granted by Congress. Thus, we assert the exigence that the agencies must correct each item of erroneous language that states implicitly or explicitly that the BLM, Forest Service, Department of the Interior, US Department of Agriculture, or any other federal agency owns our public lands and the mineral rights and natural resources that are contained within them.**



## CLOSING

In addition to our preceding comments, we support any additional comments from individuals, groups, associations, and the general public that encourage the BLM and Forest Service to adhere to the Congressionally-mandated NEPA directive that requires a true recreation alternative as an additional option for public comment. We support any additional comments that encourage the agencies to uphold their mission and commitment to the public to manage public lands in BENM in a manner that maximizes public access, and sustains the health, diversity, cultural resources, and values of the land for the use and enjoyment of present and future generations. We strongly advocate against any components of the RMP that would diminish or eliminate public access to BENM.

We would like to close by once again calling your attention to the rights and interest that UPLA members, all outdoor recreationists, and the general public have as vested stakeholders of the BLM-managed lands contained within the footprint of the BENM RMP. We encourage the BLM to uphold their alignment with the BLM mission and operating guidelines, their responsibility to manage our public lands for the benefit of all American citizens, and their accountability to operate within the scope of congressionally-granted boundaries as contracted managers of our nation's public lands - the citizenry's prized national heritage.

Utah Public Lands Alliance would like to be considered an interested public for the RMP. Information can be sent to the following address and email address:

Rose Winn  
Utah Public Lands Alliance  
PO Box 833, St. George, UT 84771  
[rose@utahpla.com](mailto:rose@utahpla.com)

Sincerely,

Rose Winn  
Natural Resources Consultant  
Utah Public Lands Alliance  
559.862.6382

Loren Campbell  
President  
Utah Public Lands Association  
909.499.3295

cc: Senator Mike Lee, Senator Mitt Romney, Congressman John Curtis, Congresswoman Celeste Malloy, Congressman Blake Moore, Congressman Burgess Owens, Governor Spencer Cox, Redge Johnson, Laura Ault, UPLA Trustees and Members



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