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**UNITED STATES DEPARTMENT OF THE INTERIOR
 OFFICE OF HEARINGS AND APPEALS
 INTERIOR BOARD OF LAND APPEALS**

WILDERNESS WATCH,)	IBLA 2008-52
)	
Appellant,)	Environmental Assessment No.:
)	NV058-07-386
vs.)	
)	APPELLANT’S STATEMENT
BUREAU OF LAND MANAGEMENT,)	OF REASONS
)	
Respondent.)	

Wilderness Watch (“Appellant”), hereby presents this Statement of Reasons, pursuant to 43 C.F.R. § 4.412, in support of the Notice of Appeal filed by Appellant on December 24th, 2007.¹ (See Notice of Appeal, attached hereto as Exhibit A.) Wilderness Watch appeals the decision by the Bureau of Land Management (“BLM” or “Agency”) to authorize the Las Vegas Metropolitan Police Department Search and Rescue (“LVMPD”) to conduct literally hundreds of

¹ Under 43 C.F.R. § 4.412, the Board permits the appellant to file a statement of reasons within the 30-day period after filing the notice of appeal. As such, Appellant’s filing of this Statement of Reasons is timely.

helicopter landings in designated wilderness areas within Red Rock Canyon National Conservation Area. The BLM's decision must be reversed because it is the result of flawed process under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331, *et seq.* More fundamentally, the decision violates the Wilderness Act, 16 U.S.C. § 1131, *et seq.*, by authorizing the landing of aircraft in wilderness, and because the decision authorizes action that would destroy the wilderness character of La Madre Mountain Wilderness and Rainbow Mountain Wilderness.

BACKGROUND

A. The BLM's Decision

Wilderness Watch challenges the BLM's decision to authorize LVMPD's request to conduct search and rescue training, including the landing of helicopters, in the La Madre Mountain Wilderness and Rainbow Mountain Wilderness. (*See* Decision Record Rationale/Finding of No Significant Impact ("FONSI") for Environmental Assessment NV058-07-386, attached hereto as Exhibit B.) The BLM's decision authorizes training operations at 24 sites within wilderness. (*See* Search and Rescue Training in the La Madre Mountain and Rainbow Mountain Wilderness Areas, Environmental Assessment # NV058-07-386 ("EA"), attached hereto as Exhibit C, at 2.) The selection of sites was based on the "proximity to the City of Las Vegas and ease of access for members of the [rescue] team" and on the availability of "unique challenges." (EA at 2-3.)

The BLM's decision places no limitation upon the number of days during which training could occur. (EA at 5.) The decision places no limitation upon the time of year during which training could occur. (EA at 5.) The decision places no limitations whatsoever on flights in the

designated wilderness areas that do not involve the actual landing of helicopters in the wilderness. (EA at 7.) For search and rescue training that involves helicopter landings, the BLM authorizes 48 total hours of such training each year, in perpetuity. (EA at 5.)

The search and rescue training includes both pilot training and crew training in the wilderness areas. Pilot training “involves flying in narrow canyons in a variety of weather conditions and may occur at night using night-vision goggles.” (EA at 6.) The EA explains that pilot training will generally occur in sessions of at least two hours and involve six landings per session. (EA at 6.) But these numbers are only estimates, and the BLM places no actual limitation on the duration of pilot training sessions or the number of landings. Similarly, the EA explains that pilot training will usually occur at night and on weekdays, but the BLM places no actual restrictions on the timing of the training. (EA at 6.)

Rescue crew training involves repeated helicopter landings in remote areas and deployment of large crews and equipment. (EA at 6, 8.) Crews would practice long-line extraction, and rescue teams and equipment would be retrieved. (EA at 6.) Up to 60 landings per session in the designated wilderness could occur. (EA at 6.) Sessions would occur on Saturdays from January to September for a maximum of seven hours during the daytime. (EA at 6.) But the BLM places no limitation on dates, locations, and extent of the training. The EA expressly provides that these decisions would be left to the LVMPD. (EA at 6.)

B. La Madre Mountain Wilderness and Rainbow Mountain Wilderness

The La Madre Mountain Wilderness and Rainbow Mountain Wilderness were designated as wilderness and included within the National Wilderness Preservation System in 2002. (EA at 2.) The wilderness areas are a part of the Red Rock Canyon National Conservation Area.

The Red Rock Canyon is an oasis of deep sandstone canyons within the Mojave Desert. It lies immediately west of the City of Las Vegas and it is “recognized regionally, nationally, and internationally” for its scenic resources and recreation opportunities. (EA at 5.) It is particularly known for its unique geologic features and plants and animals. (*See Red Rock’s Unique Resources*, Dept. of the Interior, Bureau of Land Management, *available at* <http://www.blm.gov> (last visited January 13, 2008)). In addition, the Red Rock Canyon is recognized as one of the top five climbing areas in the United States. (EA at 5.) The eastern portion of the Rainbow Mountain Wilderness and La Madre Mountain Wilderness contain highly scenic sandstone cliffs that are suitable for rock climbing. (EA at 1.)

Each year more than a million visitors come to the Red Rock Canyon National Conservation Area. (EA at 2.) In addition to numerous local visitors, visitors arrive from around the United States, as well as other countries. (EA at 1.) Visitors come “to scramble on the sandstone boulders and mountains and hike the cool, verdant canyons” within the Red Rock Canyon. (EA at 5.)

The LVMPD is responsible for search and rescue in the Red Rock Canyon National Conservation Area, and elsewhere in Clark County, Nevada. (EA at 1.) The rescues are supported by helicopter and ground crews, and the rescue unit is comprised of seven teams. The LVMPD conducts approximately 15-20 rescues in the two wildernesses each year. (EA at 1.)

C. The Interests Of Wilderness Watch

Wilderness Watch is a non-profit national conservation organization focused on assuring proper stewardship of areas within the National Wilderness Preservation System. Wilderness Watch monitors the management of every wilderness in the system with the purpose of ensuring that the wilderness character of these special places is protected and preserved.

Wilderness Watch members use, enjoy, and value the Rainbow Mountain Wilderness and La Madre Mountain Wilderness, including the area in the vicinity of the proposed search and rescue training. Members of Wilderness Watch hike the area, view and photograph plant and animal life, and generally enjoy using the area for recreational and aesthetic purposes.

The BLM's decision to authorize search and rescue training involving helicopter landings in designated wilderness areas adversely affects members of Wilderness Watch. (*See* Declaration of Vicky Hoover, attached hereto as Exhibit D). The area is one of narrow canyons, where the deafening sound of low-flying and landing helicopters would reverberate off canyon walls and be amplified by confinement of the steep and rugged terrain. The training sessions would eliminate opportunities for solitude or primitive and unconfined recreation. They would disrupt wildlife and thereby decrease visitors' enjoyment of wildlife and aesthetic qualities in a large part of these two wildernesses. In short, the opportunity for Wilderness Watch members to experience solitude or primitive and unconfined recreation would be lost.

Wilderness Watch has been active in the administrative process that led to the BLM decision. It submitted detailed comments to the BLM in response to BLM's "scoping notice" in February 2007. Because members of Wilderness Watch who desire a wilderness experience within the La Madre Mountain Wilderness and Rainbow Mountain Wilderness will be unable to attain one under the BLM's decision, Wilderness Watch has standing to appeal the BLM's decision.

D. The Scope of this Appeal

Although Wilderness Watch challenges the BLM's decision to authorize the use of helicopters in the two designated wilderness areas, Wilderness Watch emphasizes that its appeal is not about preventing the use of aircraft or other motorized equipment during actual

emergencies involving the health or safety of persons within the areas. Nor is the appeal about preventing the use of helicopters or other motorized equipment for training exercises in areas outside designated wilderness. Rather, Wilderness Watch seeks to ensure that the BLM rigorously and faithfully applies the governing laws and regulations in all decision making affecting the La Madre Mountain Wilderness and Rainbow Mountain Wilderness. In addition to the grounds articulated in its Petition for Stay Pending Appeal filed previously (and attached hereto as Exhibit E), Appellants present the following grounds in support of its appeal.

ARGUMENT

In issuing its decision, the BLM violated several laws and regulations, including the Wilderness Act and the National Environmental Policy Act.

I. The BLM's Decision Violates The Wilderness Act

The Wilderness Act, 16 U.S.C. § 1131, *et seq.*, is the key statute governing the administration of the La Madre Mountain Wilderness and Rainbow Mountain Wilderness. Mindful of “increasing population, accompanied by expanding settlement and growing mechanization,” Congress passed the 1964 Wilderness Act in order to preserve and protect certain lands “in their natural condition” and thus “secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a). Congress therefore directed that designated wilderness areas “shall be administered . . . in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character” *Id.* at 1131(a).

The Act defines “wilderness” as “an area where earth and its community of life are untrammelled by man,” “in contrast with those areas where man and his own works dominate the landscape” to include lands

without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which

(1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; [and]

(2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation;

....

Id. at 1131(c). In short, the Wilderness Act has as its overarching purpose the protection of the wilderness character of designated wilderness areas.² See *High Sierra Hikers v. Blackwell*, 390 F.3d 630 (9th Cir. 2004).

A. Search And Rescue Training Involving Unlimited Landing of Aircraft Fails To Preserve Wilderness Character

Section 4(b) of the Wilderness Act imposes on the BLM a fundamental duty to protect the wilderness character of designated wilderness, above all other purposes for which an area may be established:

Except as otherwise provided in this Act, each agency administering any area designated as wilderness **shall** be responsible for **preserving the wilderness character** of the area and **shall** so administer such area for such other purposes for which it may have been established as also to **preserve its wilderness character**. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, educational, conservation, and historical use.

² The Ninth Circuit explained:

The Wilderness Act twice states its overarching purpose. In Section 1131(a) the Act states, “and [wilderness areas] shall be administered . . . in such a manner as will leave them unimpaired . . . so as to provide for the protection of these areas, the preservation of their wilderness character.” . . . This responsibility is reiterated in Section 1133(b), in which the administering agency is charged with preserving the wilderness character of the wilderness area.

High Sierra Hikers Ass’n v. Blackwell, 390 F.3d 630, 648 (9th Cir. 2004).

16 U.S.C. §1133(b) (emphasis added). “Although the Act stresses the importance of wilderness areas as places for the public to enjoy, it simultaneously restricts their use in any way that would impair their future use *as wilderness*.” *High Sierra Hikers*, 390 F.3d at 648 (emphasis original). The agency’s duty under Section 4(b) of the Wilderness Act to preserve wilderness character is non-discretionary, and nothing in the Wilderness Act allows an agency to avoid that duty and authorize the degradation of the wilderness character of a designated area.

The BLM, in its Minimum Requirements Decision Guide (“MRDG”), attached hereto as Exhibit F, uses four qualities of wilderness in its analysis of the impacts of the training operations on wilderness character. The four qualities are “untrammeled,” “undeveloped,” “natural,” and “outstanding opportunities for solitude or a primitive and unconfined type of recreation.” (MRDG at 4.) The BLM concedes that the training operations will “impair” three of these wilderness qualities, namely “untrammeled,” “natural,” and “outstanding opportunities for solitude or a primitive and unconfined type of recreation.” (MRDG at 4.) The BLM describes the impacts on “solitude” and “primitive and unconfined type of recreation” as follows:

During training days, the proposed helicopter supported search and rescue training would have a **strong negative impact** on solitude. The sounds of **the helicopter would dominate the setting**, and cause most people to leave the area. Most of the impact would be limited to a particular canyon, but adjacent canyons and ridges could also experience some disruption. Opportunities for primitive and unconfined recreation would also receive a **strong negative impact**. Most **visitors would feel driven out of the area** by the training as it would place limits on the experience available to visitors.

(MRDG at 4, emphasis added.)

Similarly, the BLM acknowledges that the unlimited landing of helicopters and the training activities of large numbers of personnel would impair wilderness character. For example, the EA provides as follows:

Noise from aircraft flying in the canyon reverberates off canyon walls and is amplified by the confinement of narrow canyons and would **significantly**, albeit temporarily, **reduce the opportunity to enjoy the solitude and tranquility** normally found in the isolated reaches of the canyons in Red Rock Canyon. The presence of large numbers of personnel, associated with training, would **significantly reduce potential to enjoy the tranquility and solitude** normally found in various canyons.

(EA at 8, emphasis added.)

The plain language of the Wilderness Act requires federal agencies to preserve the wilderness character of those areas designated wilderness. BLM's own recognition that its decision will harm the wilderness character, even **significantly**, flies in the face of its statutory responsibility. BLM's decision is in clear violation of the Wilderness Act section 1133(b) and must be set aside.

B. The Wilderness Act Expressly Prohibits Landing Of Aircraft In Designated Wilderness Areas, Subject To Very Narrow Exceptions Not Available Here

Section 4(c) of the Wilderness Act declares that "there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, **no landing of aircraft**, no other form of mechanical transport, and no structure or installation within any such area." 16 U.S.C. § 1133(c) (emphasis added). But rather than impose a complete prohibition on the landing of aircraft, Congress made this "severe" restriction subject to two "very narrow exceptions." *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1089 (11th Cir. 2004). First, under section 4(c) the landing of aircraft is not prohibited if it is "necessary to meet minimum requirements" for the administration of the wilderness for the purpose of the Wilderness Act. 16 U.S.C. § 1133(c). Second, under section 4(d)(1) the use of aircraft may be permitted to continue "where these uses have already become established." 16 U.S.C. § 1133(d)(1). As discussed below, because the authorized helicopter landings would be utilized in furtherance of the administrative function of

search and rescue, the exception in section 4(c) controls here, and the BLM cannot authorize the action unless it is “necessary to meet minimum requirements.”

1. Unlimited Aircraft Landings In The Wilderness Areas Are Not Necessary To Meet Minimum Requirements For Administration As Wilderness

The landing of aircraft in designated wilderness areas is not prohibited if it is “**necessary** to meet **minimum requirements** for the administration of the area for the purpose of this Act (including measures required in emergencies involving health and safety of persons within the area).” 16 U.S.C. § 1133(c) (emphasis added). As noted above, the “purpose of this Act” is protection of the wilderness character of designated wildernesses. *See High Sierra Hikers*, 390 F.3d at 648. The plain language of the Wilderness Act therefore prohibits the landing of aircraft unless “necessary to meet minimum requirements” to administer the area as wilderness. *See* 16 U.S.C. §§ 1131(a), 1133(c). Here, the purpose of the training has nothing to do with preserving wilderness character. Rather, the BLM justifies the decision as “meet[ing] the needs of team members and LVMPD to provide similar and adequate training for volunteers and protects the health and safety of visitors” (EA at 17.) For this reason alone, the BLM’s authorization of helicopter landings in the wilderness cannot fall within the section 4(c) exception.

The Wilderness Act explicitly states that the prohibitions on landing of aircraft do not apply for “emergencies involving the health and safety of persons within the area.” 16 U.S.C. § 1133(c). Importantly, Congress did not provide an exception for **training** for such emergencies, but instead provided for motorized use in “matters of urgent necessity.” *Olympic Park Assocs. v. Mainella*, No. C04-5732FDB, 2005 U.S. Dist. LEXIS 44230, *14 (W.D. Wash. Jan. 8, 2005). But even if the exception were to be more broadly interpreted to allow for training for emergencies in the wilderness, which it clearly does not, the BLM still would need to

demonstrate that the training operations are “necessary to meet minimum requirements.” *See* 16 U.S.C. § 1133(c).

To begin, with the exception of Yosemite National Park, the BLM could identify no other motorized search and rescue training in designated wildernesses administered by the BLM, United States Forest Service, or the National Park Service. (EA at 7.) The lack of training in other wildernesses speaks volumes to the necessity -- or more accurately, lack of necessity -- of such training in La Madre Mountain Wilderness and Rainbow Mountain Wilderness. The BLM fails to explain why search and rescue training involving hundreds of helicopter landings is necessary for the administration of the La Madre Mountain Wilderness and Rainbow Mountain Wilderness when it is not necessary in larger and more remote wildernesses. The use of helicopters here probably has more to do past practices and ready access to helicopters than actual necessity.

Moreover, there is nothing in the EA, FONSI, or the Minimum Requirements Decision Guide that even attempts to justify the proposed action as the “minimum” required to administer the wilderness. Instead, the BLM readily admits that the training operations exceed minimum requirements in terms of hours of training. The BLM authorizes 48 hours of training in the wilderness areas, but “[t]he minimum standard set by the Department of Interior (DOI) for short haul rescue training is 25 hours annually.” (EA at 2.) In blatant disregard for the protections provided by the Wilderness Act, the BLM authorized nearly **double** the minimum number of hours set by the Department of Interior. Even the BLM’s own minimum tools assessment defined two days -- sharply different from the 48 cumulative hours ultimately authorized -- as the minimum requirement for training based upon search and rescue training conducted for wilderness areas in Yosemite National Park. (EA at 7.)

The wildernesses in the Red Rock Canyon do not necessitate more extensive training than Yosemite National Park, which is one of the most popular and challenging climbing locations in the United States. But the EA states, “To assure the highest level of safety and preparedness, the LVMPD conducts search and rescue crew training that exceeds local, state, or federal agency guidelines.” (EA at 2.) This unqualified statement amounts to an admission by the BLM that the helicopter landings cannot fall within the section 4(c) exception. Certainly, the LVMPD may conduct as many hours of training as it deems appropriate in areas outside the designated wilderness areas. But the BLM violates the law if it authorizes training operations in wilderness exceeding that which is “necessary to meet minimum requirements.” *See* 16 U.S.C. § 1133(c).

In addition, the BLM’s asserted justifications for authorizing training in the wildernesses, rather than limiting training to areas outside the wildernesses, fail to demonstrate that training in the wildernesses is necessary to meet minimum requirements. The BLM asserts that training in the wildernesses is required because “[t]raining in conditions and environments similar to actual search and rescue emergencies is critical to the safety of team members and the public.” (EA at 10.) But nearby non-wilderness areas with similar topography to the La Madre Mountain Wilderness and Rainbow Mountain Wilderness could be used instead. The massive limestone cliffs locally known as Lake Mead Buttress and the canyons and cliffs on the east side of Mount Potosi are just two examples. Moreover, the BLM explains that Calico Hills have been used previously for search and rescue training. (EA at 3.)

Even assuming that the wildernesses have unique topography that is not found elsewhere, to meet “minimum requirements,” the BLM decision would need to restrict its authorization to

only those wilderness landing sites that are highly technical and require pilot familiarity.³ The decision documents provide no indication that the training sites were selected on these narrow grounds. Rather, the EA explains that in addition to providing “unique challenges,” sites were chosen based on “proximity to the City of Las Vegas and ease of access for members of the [rescue] team.” (EA at 2-3.) Furthermore, as noted above, with the exception of Yosemite National Park, the BLM could identify no other wilderness area where helicopter training has been authorized by the BLM, the Forest Service, or the National Park Service. Training for rescues in these other wilderness areas properly occurs outside of the wildernesses. Even BLM’s own analysis in the Minimum Requirements Decision Guide demonstrates that the BLM authorized more than the minimum required. In the Minimum Requirements Decision Guide, the BLM concludes that Alternative 2, which includes **no** crew training with helicopters in the wildernesses, “is the minimum necessary to train search and rescue personnel capable of conducting rescues in the wilderness under most weather conditions.” (MRDG at 11.)

It appears that the BLM improperly attempted to “balance” competing interests in reaching its decision to authorize landing of helicopters in the designated wilderness areas. But the unambiguous statutory language allows only actions “necessary to meet minimum requirements” for preserving wilderness character, and thereby prohibits such balancing.⁴ The

³ Moreover, the search and rescue teams do not need to practice in the wilderness areas to become familiar with the technical landing sites. The EA states that 15-20 rescues in the wildernesses occur each year, and these rescues can serve as “on-the-job” training. (See EA at 1.)

⁴ A focus on “balancing” competing interests may appear compelling on the surface, but federal courts have properly rejected it. See *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1096 (11th Cir. 2004) (“The compromise on public transportation reached in this case cannot be squared with the language of the Wilderness Act.”) In *Wilderness Watch v. Mainella*, the Park Service decided to allow motor vehicles to transport visitors across designated wilderness. 375 F.3d at 1090. “Faced with competing demands from different constituencies in both Congress and the general public, the agency attempted to find a compromise that would satisfy all interested

language in this subsection is quite categorical, providing for “no landing of aircraft” except “as necessary” and labels this a “prohibition.” 16 U.S.C. § 1133(c) (emphasis added).

In sum, the BLM’s decision to administer the designated wilderness areas by authorizing unlimited landings of helicopters simply cannot be construed as “necessary” to meet the “minimum requirements” for administering the area “for the purpose of [the Wilderness Act].” 16 U.S.C. § 1133(c). The plain language of the statute contradicts the BLM’s decision, which must therefore be reversed.

2. The Established Use Exception In Section 4(d)(1) Does Not Apply Here

The minimum requirements analysis of section 4(c) forms the basis for BLM’s justification for its decision. The fact that the BLM completed the Minimum Requirements Decision Guide shows that the agency recognizes that the exception in section 4(c) controls here. Furthermore, the BLM acknowledges that the landing of helicopters is “generally prohibited under the Wilderness Act of 1964 unless it is the minimum necessary for the administration of the area as wilderness.” (EA at 5-6.) The lawfulness of the BLM’s decision must rest on the justification the agency has given. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419-20 (1971); *Gifford Pinchot Task Force v. United States Fish & Wildlife Serv.*, 378 F.3d 1059, 1071 n.7 (9th Cir. 2004). As such, the proper inquiry is whether the authorized helicopter landings fall within the section 4(c) exception.

To be sure, the exception in section 4(d)(1) cannot apply here because an agency charged with administration of the wilderness is seeking the exception, rather than a member of the

parties” 375 F.3d at 1096. The court, while finding this goal “laudable”, concluded that it could not withstand judicial scrutiny, given that the language at hand -- “necessary to meet minimum requirements for the administration of the area” -- did not allow for such a compromised position. *Id.*

public. For three separate reasons, it is evident that section 4(d)(1) relates to established public use, while section 4(c) covers administrative uses of motorized equipment. First, the BLM authorized use of aircraft in the wildernesses for search and rescue training, and search and rescue is an administrative function specifically addressed in section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c). Second, the BLM's regulations provide (in Subpart 6303, which is titled, "Administrative and Emergency Functions") that the BLM may "[p]rescribe conditions under which other Federal, State, or local agencies or their agents may use . . . [aircraft] to meet the minimum requirements for protection and administration of the wilderness area, its resources and users" 43 C.F.R. § 6303.1. It is evident from the EA that the BLM has delegated to LVMPD its administrative responsibility for search and rescue. (See EA at 1, 2.) Third, the exception in section 4(d)(1) refers to established uses by the public, rather than agencies. The Forest Service Manual makes this explicit by stating that helicopter landings will only be allowed "at approved landing areas" where the "use by the public" was established. FSM 2326.1. Indeed, the exception in 4(d)(1) is commonly understood to refer to public use of previously existing backcountry landing strips used as fly-in trailheads. See *The Wilderness Society, Wilderness Act Handbook* 54 (2004).

In sum, because LVMPD is seeking an exception from the prohibition on landing of aircraft in the wilderness in order to carry out the administrative function of search and rescue in the wilderness, section 4(c) provides the relevant standard for determining whether the training operations can be excepted from the prohibition on landing of aircraft in the wilderness.

3. Even If Section 4(d)(1) Could Apply Here, BLM Offers No Evidence That The Use Of Aircraft Authorized By Its Decision Would Occur Only Where Established And Active Prior To Designation As Wilderness

Even if the exception in section 4(d)(1) could apply in lieu of section 4(c) to search and rescue training operations carried out by the agency charged with this administrative task, the LVMPD cannot satisfy that the use of aircraft was “established” in these areas. The Wilderness Act allows the continued use of aircraft “where these uses have already become established.” 16 U.S.C. § 1133(d)(1). The BLM regulations further explain that the agency may authorize the landing of aircraft in wilderness “if these uses were established and active at the time Congress designated the area as wilderness.” 43 C.F.R. § 6304.21. The Act’s exceptions on use of aircraft in wilderness are “very narrow.” *Wilderness Watch*, 375 F.3d at 1089. The plain language of the statute and the BLM’s own regulation make clear that the BLM may authorize the use only “where” it was “established” and “active” at the time of designation.⁵ 16 U.S.C. § 1133(d)(1); 43 C.F.R. § 6304.21.

The BLM has failed to demonstrate that the helicopter landings at issue here constitute an “established” use of aircraft in the La Madre Mountain Wilderness and Rainbow Mountain Wilderness prior to the designation of the areas as wilderness. The BLM explains that training “has occurred in the Red Rock Canyon” for up to 14 days a year, without limitation on duration or locations, and that LVMPD has conducted search and rescue training “in the area” since

⁵ Moreover, the BLM cannot authorize use of aircraft in the wilderness without “notice and comment” rule-making. *See United States v. Gregg*, 290 F. Supp. 706, 708 (W.D. Wash. 1968) (“[S]ubsections (c) and (d)(1) of Section 1133 say quite specifically that all landing of aircraft is prohibited, but that the Secretary may, **by positive regulation**, create an exception to this blanket prohibition at places where the use of aircraft was established before the passage of the Act.”) (emphasis added).

1970.⁶ (EA at 2, 10.) But the BLM does not detail whether this use was established in the specific areas of La Madre Mountain and Rainbow Mountain that are now designated as wilderness. Furthermore, the BLM does not identify the time of year, duration, or frequency of the training sessions in the wilderness areas, which makes it impossible for Wilderness Watch to determine whether the presently authorized use is similar to the established use, as the law requires. The BLM's vague assertions fall far short of demonstrating an established use, and its authorization is therefore contrary to law.⁷

In sum, because the BLM's decision would allow landing of aircraft in designated wilderness areas that does not fall within the very narrow exceptions provided by the Wilderness Act, the decision is contrary to law and should be reversed.

II. The BLM Failed To Comply With The National Environmental Policy Act And Its Implementing Regulations

The BLM's decision to authorize training operations in the La Madre Mountain Wilderness and Rainbow Mountain Wilderness should be set aside for the additional reason that BLM failed to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331, *et seq.* First, the FONSI determination cannot stand in light of the significant impacts identified in the EA and the Minimum Requirements Decision Guide. Second, the EA contains inadequate

⁶ The BLM also states that training operations have historically occurred in the Calico Hills -- an area outside of the designated wilderness areas. (EA at 3.) But historical use of aircraft in areas without a current wilderness designation certainly cannot be used to justify use in entirely different areas that are now designated wilderness. Indeed, the fact that training historically occurred outside the designated wilderness areas shows that it is unnecessary to authorize training operations in the designated wilderness areas.

⁷ BLM fails to provide **any** evidence of the purported historical use and cannot rely on blanket generalizations to justify its decision. Wilderness Watch disputes that aircraft have been used since 1970 in the areas now designated as wilderness.

analysis to support a FONSI determination. Third, the BLM failed to consider an adequate range of alternatives in the EA.

NEPA is a procedural statute that does not mandate particular results, but provides the necessary process to ensure that federal agencies take a “hard look” at the environmental consequences of its actions. *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1070 (9th Cir. 2002). The completion of environmental review under NEPA

[E]nsures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). The “larger audience” also includes the public, and NEPA documentation gives the public the assurance that the agency has “indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983).

A. The Environmental Assessment Identifies Significant Impacts From The Training Operations That Necessitate Further Analysis In An Environmental Impact Statement

The Act mandates that an EIS be prepared for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The Council on Environmental Quality (“CEQ”) regulations provide that an agency may prepare an EA to determine whether an EIS is necessary. 40 C.F.R. §§ 1501.4, 1508.9(a). If an EA establishes that the agency’s actions “**may** have a significant effect upon the . . . environment” then an EIS must be prepared. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (emphasis original). If not, the agency must issue a Finding of No Significant Impact (“FONSI”), 40 C.F.R. §§ 1501.4(e), 1508.9, accompanied by a “convincing statement of reasons

to explain why a project's impacts are insignificant." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

A project's significance is evaluated in terms of its context and intensity, and the CEQ regulations provide a list a criteria for evaluation of intensity. 40 C.F.R. § 1508.27. If the agency's action is environmentally "significant" according to any of these criteria, then the agency erred in failing to prepare an EIS. *National Parks & Conservation Ass'n*, 241 F.3d at 731. Under these criteria, "[s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts." 40 C.F.R. § 1508.27(b)(7).

Cumulative impact is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. The intensity of a project also needs to be considered with respect to an "[u]nique characteristics" of the area. 40 C.F.R. § 1508.27(b)(3).

Here, an EIS is required under NEPA and the CEQ regulations. To begin, the BLM concedes in its FONSI that there is a potential for significant impacts. Rather than conclude that the impacts of the project would be insignificant, the signing officer for the BLM concludes, "I have determined that the **potential for significant impacts** to wilderness and natural resources are **adequately addressed** and that an environmental impact statement is not required." (FONSI at 1, emphasis added.) Under NEPA, a "finding of no significant impact" means exactly that, and an EIS cannot be avoided by ensuring that the "potential for significant impacts" are

“adequately addressed.” If there **may** be significant impacts, an EIS must be prepared. *Nat’l Parks Conservation Ass’n*, 241 F.3d at 730.

The EA and Minimum Requirements Decision Guide also concede that the impacts would be significant. The BLM found that the training operations would “significantly” reduce the opportunity to enjoy the solitude and tranquility of the wilderness areas. (EA at 8.) To be sure, the Minimum Requirements Decision Guide explains that “[m]ost visitors would feel driven out of the area by the training” and that the “sounds of the helicopter would dominate the setting” (MRDG at 4.) The Minimum Requirements Decision Guide further concludes that “solitude and primitive recreation would be **lost entirely** due to the intensity of noise.” (MRDG at 9, emphasis added.)

The helicopter noise would not just drive humans out of the area, it would undoubtedly disrupt wildlife. The bighorn sheep is a species of concern that inhabits the areas. (EA at 9.) Helicopter noise may have a significant impact on mating or lambing, and the fact that there is no limitation on the season during which the training could occur is especially troubling.

The BLM attempts to dismiss the significant impacts from noise as “temporary.” (FONSI at 1.) But this rationalization has no basis under the law. The CEQ regulations provide, “Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). Although one helicopter landing in the wilderness may not have a significant impact, the cumulative impacts must be considered. 40 C.F.R. § 1508.27(b)(7); 40 C.F.R. § 1508.7. Here, the BLM authorized a permanent program that allows an essentially unlimited number of helicopter landings in the wilderness each year,

every year, in perpetuity. The repeated helicopter landings would have cumulatively significant impacts.⁸

The impacts from the training operations are especially significant when considered in light of the unique characteristics of the La Madre Mountain Wilderness and Rainbow Mountain Wilderness.⁹ *See* 40 C.F.R. § 1508.27(b)(3). To begin, the areas are unique because of the recreational opportunities they provide for technical rock climbers. The area has been identified as one of the top five climbing areas in the United States. (EA at 5.) Because the noise and activity would “cause most people to leave the area” the training operations would have a significant impact on recreational opportunities. (*See* MRDG at 4.) The impacts are exasperated by the fact that the crew training would occur on Saturdays, a time when recreational use peaks. But more importantly, these areas are unique because they are wilderness. As such, they provide “an area where the earth and its community of life are untrammelled by man” and “opportunities for solitude or a primitive and unconfined type of recreation.” 16 U.S.C. §§ 1131(b); 1131(c). As discussed above, the BLM concedes that the training operations would “significantly” impair solitude. (EA at 8.) It also follows that the proposed action is significant because it threatens a violation of the Wilderness Act. *See* 40 C.F.R. § 1508.27(b)(10) (providing that an evaluation of intensity should consider “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment”).

⁸ Beyond noise impacts from helicopters and large numbers of personnel, the training operations may cause significant damage to rock art, a treasured cultural resource. The EA concedes that the training operations may damage rock art sites in the Willow Springs area. (EA at 9.)

⁹ The BLM has recognized that the Red Rock Canyon has “unique” characteristics. *See Red Rock's Unique Resources*, Dept. of the Interior, Bureau of Land Management, *available at* <http://www.blm.gov> (last visited Jan. 20, 2008).

In sum, the BLM did not -- because it could not -- provide a “convincing statement of reasons to explain why a project’s impacts are insignificant.” *Blue Mountains Biodiversity Project*, 161 F.3d at 1212; *see* 40 C.F.R. § 1508.13. The EA and the Minimum Requirements Decision Guide concede that the impacts of the training operations would have significant impacts on solitude and would eliminate opportunities for recreation. In addition, significant impacts on wildlife are possible. The BLM dismisses these impacts as temporary, but this reason is not “convincing” because the BLM has authorized a permanent program with significant cumulative effects. The agency’s own documents demonstrate that there would be significant impacts, and therefore an EIS must be prepared.

B. The EA Contains Inadequate Analysis To Support A FONSI Determination

The EA must “provide sufficient evidence and analysis” for making the FONSI determination. 40 C.F.R. § 1508.9(a)(1). This requires taking a “hard look” at the relevant environmental concerns in preparing the EA. *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 66-67 (D.C. Cir. 1987). Here, the EA is filled with unsupported conclusions, rather than evidence and analysis.

The discussion on the impacts on wildlife, for example, is completely devoid of scientific studies supporting the assertion that the training operations “will have limited impact on wildlife in the area.” (EA at 9.) While the EA lists the Desert Tortoise as a species of concern, the EA does not even mention that the Mojave population of the Desert Tortoise is listed as threatened under the Endangered Species Act. *See Determination of Threatened Status for the Mojave Population of the Desert Tortoise*, 55 Fed. Reg. 12178, 12191 (April 2, 1990). Furthermore, the BLM provides no indication that it has complied with the consultation requirements under section 7(a)(2) of the

Endangered Species Act. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402. If the agency has failed to consult with the United States Fish and Wildlife Service, this failure would form another independent basis for reversing the authorization of the training operations.

The BLM's treatment of impacts on naturalness provides another example of insufficient analysis in the EA. The BLM treats this important wilderness value in just one conclusory sentence: "There would not be any impact to the naturalness of an area due to search and rescue training." (EA at 8.) Of course, there is nothing natural about the helicopter noise and the deployment of equipment and large crews that would occur during the training operations. Reflective of how far the EA strays from reality, the BLM comments that the types of activity in the proposed action are "similar to casual use, sport and technical rock climbing already taking place within the wilderness areas" (EA at 11.)

The impacts on solitude are also not sufficiently analyzed in the EA. While the BLM admits that solitude would be significantly impaired where training operations are occurring (EA at 8), the EA does not analyze how far away from landing sites the impairment would occur. In fact, the BLM fails to provide any quantitative evidence or analysis of decibel levels from the training operations. This lack of analysis falls far short of what NEPA requires. *See Izaak Walton League of Am., Inc. v. Kimbell*, 516 F. Supp. 2d 982, 995-996 (D. Minn. 2007) ("The Court finds that the analysis of sound impact contained in the EA is inadequate to support the FONSI. The EA provides no quantitative evidence or analysis of decibel levels projected by the South Fowl Trail into the adjoining wilderness. . . . The absence of any supporting data in the EA deprives interested parties of information relevant to the agency's decision-making process and

thus undermines the procedural safeguards of NEPA.”). Noise from aircraft flying in the canyons would reverberate off canyon walls and would therefore have significant impacts throughout the wilderness. More detailed analysis of the noise impacts is required to support the FONSI.

In short, the analysis in the EA is wholly insufficient to satisfy the agency’s burden under NEPA, and it should be rejected.

C. The Environmental Assessment Failed To Consider An Adequate Range Of Alternatives

NEPA requires that federal agencies “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). In addition, the regulations include an independent requirement that agencies preparing an EA examine alternatives, as required by NEPA. *See* 40 C.F.R. § 1508.9(b) (“[EA should] include brief discussions of . . . alternatives as required by [42 U.S.C. § 4332(2)(E)] . . . [and] environmental impacts of . . . alternatives.”); 40 C.F.R. § 1500.2(e) (explaining that federal agencies should use the NEPA process “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment”); *see, e.g., C.A.R.E. Now, Inc. v. Federal Aviation Admin.*, 844 F.2d 1569, 1574 (11th Cir. 1988) (discussing whether an EA contained appropriate alternatives analysis).

The BLM failed in its duty to offer a reasonable range of alternatives because there are no action alternatives in the EA that preserve wilderness character. The environmental impacts under “Alternative B” are less severe than the other action alternatives, but even “Alternative B” authorizes pilot training in the wilderness, as long as the helicopters do not land in the

wilderness. Low-flying aircraft in a wilderness would have a significant impact on wilderness values, and the BLM should have included an action alternative that did not impair the wilderness. For example, BLM should have analyzed an alternative that lessened the need for the most dangerous search and rescue operations. This could be accomplished by regulating visitor use, closing areas to climbing where search and rescue is too dangerous, or engaging in a significant educational effort aimed at visitors that are entering the area unprepared for the rigors or risks of wilderness travel. The EA should have examined a range of public use management techniques that might reduce the number of rescues and associated risks, and that would place greater responsibility on visitors to be mindful for their own safety.

All action alternatives would impair the wilderness and destroy recreational opportunities by authorizing pilot training in the wilderness areas. The BLM therefore failed to provide a reasonable range of alternatives in the EA, in violation of NEPA and its implementing regulations.

CONCLUSION

For all of the foregoing reasons, the BLM's decision to authorize training operations involving landing of helicopters in the La Madre Mountain Wilderness and Rainbow Mountain Wilderness must be reversed.

DATED this 23rd day of January, 2008.

Respectfully submitted,



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EXHIBIT LIST

EXHIBIT A: Notice of Appeal

EXHIBIT B: Decision Record Rationale/Finding of No Significant Impact (“FONSI”)

EXHIBIT C: Search and Rescue Training in the La Madre Mountain and Rainbow Mountain Wilderness Areas, Environmental Assessment # NV058-07-386

EXHIBIT D: Declaration of Vicky Hoover

EXHIBIT E: Petition for Stay Pending Appeal

EXHIBIT F: Minimum Requirements Decision Guide

CERTIFICATE OF SERVICE

I, Collette L. Adkins Giese, hereby certify that on January 23rd, I served the foregoing Statement of Reasons and accompanying documents upon the following individuals via certified mail, return receipt requested. I further certify that on January 23rd, I served the foregoing Statement of Reasons upon the Interior Board of Land Appeals via fax.

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