

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

| | | |
|--|---|--|
| |) | IBLA No. 2015 – 265 |
| |) | |
| Colorado Off-Highway Vehicle Coalition |) | Appeal of August 10, 2015, Decision of the |
| |) | BLM Colorado State Director |
| |) | Grand Junction Travel Management Plan |

**BUREAU OF LAND MANAGEMENT’S ANSWER AND
MOTION TO DISMISS IN PART**

The Bureau of Land Management (BLM), through undersigned counsel, hereby answers the statement of reasons filed by appellants Colorado Off-Highway Vehicle Coalition, Colorado Snowmobile Association, and Colorado Trails Preservation Alliance. Appellants challenge BLM’s August 10, 2015, decision to adopt the Resource Management Plan (RMP) and the Travel Management Plan (TMP) for the Grand Junction Field Office (GJFO). BLM construes the appeal as a challenge to the TMP decision.¹

Appellants challenge BLM’s compliance with the National Environmental Policy Act, 43 U.S.C. §§ 4321-4370h (NEPA), and the support in the administrative record for BLM’s decision in light of the multiple-use directive of the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. §§ 1701-1787. As appellants have not carried their burden to show error in BLM’s TMP decision, the decision should be affirmed.

¹ Appellants cannot challenge the RMP decision in this forum. See motion to dismiss in part, *infra* section III.A. Appellants have, however, followed the procedure to appeal the implementation decisions described in the TMP decision. See Fact Sheet, *available at*:
http://www.blm.gov/style/medialib/blm/co/field_offices/grand_junction_field/ARMP_and_ROD.Par.72974.File.dat/FACT%20SHEET%20for%20GJFO%20ARMP-ROD%20Appeals%20062415%20b.pdf.

I. BACKGROUND

The TMP is detailed in Appendix M to BLM's Approved GJFO Resource Management Plan (Approved RMP). Record No. (RN) 12469 at App. M.² That document also provides background information and describes the process that BLM used to develop its TMP, but a summary is provided here, together with other pertinent information. BLM initiated the travel management planning process in 2004, beginning with a route inventory that was completed in 2010. *Id.* at M-6. The travel management inventory identified roughly 4,000 miles of roads, trails, and other features within the planning area, covering 1.06 million acres. *Id.* at M-7. In order to effectively communicate with the public, cooperating agencies, partners, user groups, and resource specialists, and to track decisions, the planning area was broken into 19 zones. *Id.* at M-5, M-7. Each route was broken into logical segments and given a unique number that correlated with its zone. *Id.* at M-7.

BLM began public scoping for the RMP revision and TMP route designation processes in October 2008. The RMP process resulted in planning-level travel-management decisions to open or close areas to cross-country travel, or to otherwise limit such use, whereas the TMP process resulted in implementation-level route designations. *Id.* at M-8-9; see also M-13 (listing designations). All of the routes that were identified in the inventory were offered for public review and comment during February and July 2009, to ensure the inventory was accurate and that BLM fully understood the importance of individual roads and trails and how the public was using them. *See* RN 12774 (RMP Newsletter). *See also* RMP Public Involvement Timeline.³

² The Approved RMP (including Appendix M) also is available at: <http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/docs.html>.

³ Available at: <http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/news.html>.

Next, to evaluate each route, BLM first defined the route's purpose by identifying the current uses and reviewing BLM's files for records of associated legal or administrative agreements. *Id.* at M-11. Each route then was evaluated by the designation criteria established in 43 C.F.R. Subpart 8342 and GJFO-specific planning criteria described in the RMP. *Id.* at M-11. The Approved RMP Comprehensive Trails and Travel Management section provides a detailed list of resources and uses considered in the route designation process. *Id.* at 159-165; see also *id.* at M-17 (Table 3). All public comments on the route inventory were considered in route-designation decisions. *Id.* at M-11.

BLM next developed the route designations for the Draft RMP/TMP. For this process, the GJFO interdisciplinary team and cooperating agency representatives convened daily for six weeks to consider each route (or route segment) and evaluate the recreational and other access needs associated with each, as well as applicable public comments and resource concerns. *Id.* at M-9; RN 12608 at Appendix M, Attachment 4; RN 32129 (Comprehensive Travel Management Process). As BLM explained in the TMP, the team included BLM specialists representing the major programs that the BLM administers (*e.g.*, recreation, range management, archaeology, and wildlife), who were familiar with conditions on the ground, had access to data collected over the years of managing resources in the area, and were familiar with the laws and regulations governing each program. RN 12469 at M-9. The team used a structured, consistent approach to consider the significant amount of data that went into the analysis process. *Id.* M-9-10. All of the route designations and identified resource concern information developed or considered during this process were captured in a geographic information system (GIS) database. RN 12883. The team discussed on-the-ground conditions, reviewed route locations along with

geospatially available sensitive resource data, viewed routes in Google Earth to facilitate discussion, and reviewed information provided by the public for each route segment.

BLM prepared a Draft RMP and Environmental Impact Statement (EIS) to analyze the impacts of the RMP alternatives—which included differing sets of travel management decisions—on the resources and resource uses managed by BLM’s various programs. RN 12606 at Table 2-2 at 2-142 (summary of area designations); 12608 at M-13-16. RN 12469 at M-9-10. The preliminary designations of individual route segments were included in the Draft TMP, Appendix M to the Draft RMP/EIS (issued in January 2013).⁴ RN 12608; *see also* Administrative Record folder 2.8B.a (draft travel maps), *e.g.*, RN 29444, 29448, and 29452. BLM considered the impacts to various resources from travel management under the action alternatives, and compared them with ongoing impacts under the no-action alternative (current management). *See generally* RN 12607 at chapter 4. The analysis included consideration of impacts to cultural resources from different combinations of travel-management decisions. RN 12607 at 4-205, 4-209, 4-211, 4-212, 4-217, *see also* RN 12606 at 2-221. It also addressed impacts to recreation and socioeconomic conditions. RN 12607 at 4-394-440 (socioeconomic analysis for all programs, including recreation).

BLM conducted a robust public comment process for the TMP. RN 12469 at M-7-8. It also consulted extensively with interested Indian Tribes. RN 12420 (Record of Decision) at 22-23; *see also* RN 12607 (Draft RMP/EIS) at 5.2 and RN 12977 (Proposed RMP) at 5.2.⁵ As noted

⁴ The Draft RMP/EIS (including the Draft TMP) is RN 12606, 12607, 12608, and 11238, and also is available at: <http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/docs.html> (scroll to bottom).

⁵ The Record of Decision also is available at: <http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/docs.html>. The Proposed RMP/Final EIS (PRMP/FEIS), issued in April 2015, is available on the same webpage. GIS files and maps are not included in the posted EIS documents, and are listed separately in the administrative record. *See generally*, Administrative Record folder 1.4 (containing over 19,000 files; these rows are “hidden” in the electronic index for ease of use). Note that some of the files in folder 1.4 may contain confidential information, even if not so

above, cooperating agencies were closely involved in the route designation process, and some of them submitted additional comments during the comment period. *See* RN 32237-32256 (comment reports);⁶ *see also* RN12469 at M-8; RN 12608 (Draft TMP) at Appendix M, Attachment 4; RN 32129; Administrative Record folder 3.1E (public comments). Appellants submitted comments during the public comment period for the draft TMP. *See* RN 10829; RN 32237-32256. *See also* Administrative Record folder 3.1E; RN 12980 (RMP comment report, for planning decisions including travel management area designations).

Each route was reevaluated during development of the Proposed RMP/TMP and Final EIS (PRMP/FEIS), which was issued in April 2015. RN 12982 at M-10. During preparation of the PRMP/FEIS, the team of cooperating agency representatives and BLM specialists convened daily for seven additional weeks to consider each route designation in the Preferred Alternative again in light of public comment and other information. This process resulted in a Proposed Alternative that reflected changes from the Draft RMP/EIS Preferred Alternative. RN 12469 at M-10. Resource data and public comments for each route segment were saved in a non-GIS database that was used to develop the final designation for each route. RN 23970*,⁷ 24024.⁸ The changes that BLM made between the draft and final documents include changes in certain RMP area designations, and modifications to the route designations in Appendix M. RN 12974 at 1-20-37, 1-26-29 & 1-31-32 (area designations), 1-37 (route designations). Based primarily on public comment and cooperator input, BLM increased motorized access between the draft and

marked in the electronic record index; however, those files are not specifically cited as evidence here. RN 12883, cited *supra*, is in this folder, but is not confidential.

⁶ The comment reports also are available at:

http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/travel_management0.html (by zone under “Route Designation Public Comment Reports”).

⁷ Documents cited in this brief that BLM considers confidential are identified with an asterisk (*). These records are subject to BLM’s forthcoming request for non-disclosure pursuant to 43 C.F.R. § 4.31.

⁸ RN 24024 is a form that is required to query and view information in the database.

proposed plans. *Compare* RN 12608 (draft) at M-13 (in areas limited to designated routes, see total of motorized use categorizes) *with* RN 12982 (proposed) at M-29 (total open to motorized use, less mileage in open areas and county maintained, for comparison); *see also* 12469 (Approved RMP) at M-15 (Approved TMP), RN 12420 (Record of Decision) at 14.

In conjunction with the PRMP/FEIS, BLM prepared route reports for each zone. *See* RN 32263, 32265, 32267, 32269, 32271, 32273, 32275, 32277, 32279, 32281, 32283, 32285, 32286, 32288, 32290, 32292, 32294, 32296, 32298, 32300.⁹ BLM's final proposed designation of each route segment appears in the route report for the corresponding zone. The route reports identify, for each segment, the proposed final designation, alternatives from the draft, any seasonal closure, minimization criteria in accordance with 43 C.F.R. § 8342.1, any change in designation after implementation of mitigation, and any prescribed mitigation.¹⁰ The reports also describe the resource issues that were considered for each segment, and the rationale for the designation, based on those issues. As noted above, BLM considered all of the public comments that it received for each segment; those comments are included in the reports.

⁹ BLM prepared both internal and public versions of the route reports. The internal versions contained greater detail about sensitive resources, including confidential information about proximity to cultural resources, and are not cited as evidence here. For ease of access, the public versions of the reports also appear in a separate folder on the drive with the electronic administrative record ("Approved Travel Plan – 4.2D"). All of the public route reports also are available at: <http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp/maps.html>, and can be opened by clicking on "2015 Route Designation Reports" and then selecting the zone of interest under "Route Reports." Maps of the routes are available at the same website, under "2015 Final Travel Management Maps." Maps are available as .pdf files and as .kmz (Google Earth) files. The .kmz files must be opened using Google Earth software, and allow the user to click on a route in a map and view the corresponding route report.

¹⁰ In the final TMP, BLM identified routes that would require some form of mitigation to allow for long-term public or administrative access and to minimize possible adverse effects on resources. For example, where legal public access is not known to exist and BLM has identified an interest in public access, mitigation would include obtaining the agreement of willing landowners to allow public access across private land. In other situations, where there is an acute concern for damage to sensitive resources, mitigation could include a project such as a water bar or construction to reroute the trail or road. RN 12469 at M-11-12, M-23-27. Some routes may change designation following the completion of prescribed mitigation. *Id.* at M-15 (Table 2); RN 12420 at 13-14 (Table 1.4).

Appellants submitted a protest to the Proposed RMP on May 8, 2015. The BLM Director considered all protests and issued a protest resolution report on August 10, 2015.¹¹ The same day, the BLM Colorado State Director signed the Record of Decision for the RMP and TMP. Appellants' appeal followed.

II. STANDARD OF REVIEW

BLM has the authority, pursuant to FLPMA, 43 U.S.C. §§ 1701-1785, and other acts and executive orders, to regulate the use and operation of off-highway vehicles on the public lands. *See* 43 C.F.R. Part 8340; *Rainer Huck*, 168 IBLA 365, 395 (2006); *Rocky Mountain Trials Assn.*, 156 IBLA 64, 70 (2001); *Robert P. Muckle*, 143 IBLA 328, 332-33 and n.1 (1998).

Consistent with the standard governing challenges to BLM decisions implementing land use management plans, “a BLM activity plan implementing the [off-road vehicle] decisions in an RMP or other [off-road vehicle] management plan will be affirmed if the decision adequately considers all relevant factors including environmental impacts, reflects a reasoned analysis, and is supported by the record, absent a showing of compelling reasons for modification or reversal.” *Rainer Huck*, 168 IBLA at 395; *see also Rocky Mountain Trials Assn.*, 156 IBLA at 70; *Daniel T. Cooper*, 154 IBLA 81, 84-85 (2000); *Stan Rachesky*, 124 IBLA 67, 70 (1992)).

NEPA requires that an agency take “a ‘hard look’ at all potentially significant environmental consequences of the proposed action and reasonable alternatives thereto and considered all relevant matters of environmental concern.” *Mammoth Community Water Dist.*, 186 IBLA 108 (2015) (citing *Backcountry Against Dumps*, 179 IBLA 148, 161 (2010)). “[A]n EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed

¹¹ The protest resolution report is available at: http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html.

action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decisionmaker to consider fully the environmental factors involved and to make a reasoned decision.” *Id.* (quoting *County of Suffolk v. Secretary of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977)).

Appellants have the burden of demonstrating by a preponderance of the evidence that the BLM committed a material error in its factual analysis or failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made. *Rainer Huck*, 168 IBLA at 395 (citing *Utah Trail Machine Assn.*, 147 IBLA 142, 144 (1999)). Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision. *Id.*; *Southern Utah Wilderness Alliance*, 128 IBLA 382, 389-90 (1994).

III. ARGUMENT

Appellants challenge BLM’s compliance with NEPA through assertions that BLM has improperly withheld information from public review, relied on inadequate “summary worksheets,” failed to define “surface disturbing activity,” and considered an inadequate range of alternatives. Appellants also argue that in making the decision, BLM failed to comply with FLPMA’s multiple-use mandate and did not strike a proper balance between cultural resource protection and recreation, particularly in light of its economic analysis. The administrative record shows that BLM complied with NEPA, and that its decision has a rational basis.

A. Motion to Dismiss in Part

Throughout their statement of reasons, appellants challenge elements of the RMP decision; in other arguments, appellants are unclear as to whether they challenge the RMP decision or the TMP decision. Appellants protested the Proposed RMP to the BLM Director,

and their protest was dismissed. *See* Protest Resolution Report at 5.¹² That decision is final for the Department of the Interior, and therefore is not appealable to the Interior Board of Land Appeals. 43 C.F.R. § 1610.5-2. To the extent that appellants seek this Board's review of the RMP decision, their appeal must be dismissed.

B. Compliance with NEPA

1. Confidentiality of Information

Under NEPA section 102(2)(C), 42 U.S.C. § 4332(C), and its implementing regulations, agencies are encouraged to facilitate public involvement in the NEPA process. *See, e.g.*, 40 C.F.R. § 1506.6. In preparing an EIS, agencies are directed to "request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected." 40 C.F.R. § 1503.1(a)(4). The Department's NEPA rules direct that BLM "must seek comment from the public as part of the . . . notice of availability for a draft environmental impact statement." 43 C.F.R. § 46.435(a).

The Archaeological Resources Protection Act (ARPA) requires BLM and other agencies to prevent the public disclosure of information about the nature and location of archaeological resources. 16 U.S.C. § 470hh. Further, Executive Order 13007, "Indian Sacred Sites," 61 Fed. Reg. 26771 (May 24, 1996), directs agencies to maintain the confidentiality of Indian sacred sites.¹³ In addition, under Departmental policy, BLM has an affirmative responsibility to "protect from disclosure to the public sensitive and confidential information about traditional tribal practices and beliefs, and the locations with which they are associated, to the greatest

¹² Available at: http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html.

¹³ This policy directs agencies to "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites."

degree possible under law and regulation. Where appropriate, Field Offices shall maintain the confidentiality of sacred sites.” RN 32004 at 8120.06.G.

Appellants argue that BLM has improperly withheld, as confidential, information about “cultural resource sites found *ineligible* for listing on the National Register [of Historic Places].” SOR at 2-4 (emphasis added). They assert that cultural sites have a “strong relationship” to “recreational routes” and that BLM’s withholding of the information “impaired the ability of the public to undertake site specific comments on route closures based on cultural resource concerns.”¹⁴ SOR at 4.

The core premise of appellants’ argument is flawed, as BLM did not close routes based on the presence of “ineligible” historic sites.¹⁵ See route reports; see also RN 12982 at M-18-19 (describing criteria used for route designations, including consideration of cultural resources eligible or potentially eligible for listing). Further, route closures generally were based on consideration of multiple factors. See route reports. Appellants have not identified routes that were closed, either to public use or certain forms of travel, based on the presence of “ineligible” historic sites.

Furthermore, even if BLM had closed routes based on the presence of sites that were ineligible for listing in the National Register of Historic Places, the precise location of archaeological resources or sacred sites (whether or not eligible for listing) is not needed in order for a member of the public to comment on proposed route designations. Appellants have not explained what additional information they could have presented in comments if they knew the

¹⁴ Appellants specifically reference route closures in this argument, which are TMP implementation decisions and therefore are properly before the Board. Appellants’ arguments regarding other forms of closure (*e.g.*, area closures to cross-country travel, or closures to surface-disturbing activity within 100 m of a site) are RMP decisions and therefore are not subject to review by the Board in this appeal.

¹⁵ In fact, few routes were closed based on the presence of potentially *eligible* historic sites alone. See route reports.

specific locations of the “ineligible” cultural resources at issue. They have not, for example, suggested that they would have provided additional scientific information about the sites for consideration by BLM’s cultural resource specialists, such as information prompting BLM to revisit its “ineligible” determination for these sites. The absence of site-specific cultural resource information in no way prevented appellants, or other members of the public, from commenting and expressing their interest in the *routes* they felt were important for recreation or other uses. Indeed, appellants did comment, RN 10829 and 12980, and BLM considered that information when making the TMP decision. RN 12980 at 6-63, 6-64, 6-77, 6-141, and 6-231 (responses to appellants’ RMP comments); *see generally* TMP comment reports (including appellants’ TMP comments); route reports (containing rationale for route designations, including TMP comments).

Appellants’ argument is not aided by the regulations implementing “Section 106” of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f), with respect to the disclosure of information about ineligible historic sites. SOR at 2-3.

Appellants misapprehend 36 C.F.R § 800.4(d)(1), which provides,

If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

This provision describes a scenario that would lead to the conclusion of the Section 106 process for a particular *undertaking*—not a particular site. In developing the TMP, BLM did not make either of the predicate findings described in this provision. On the contrary, BLM identified numerous historic properties and other cultural resources present in the planning area, RN 12469

at Appendix I, and it concluded that the undertaking (adoption and implementation of the TMP) *could* affect at least some of those historic properties. BLM was, therefore, obligated to continue the Section 106 process, 36 C.F.R. § 800.4(d)(2). The provision cited by appellants therefore has no relevance here.¹⁶

Appellants complain that they “repeatedly requested” information relating to historic sites, including visits to “trails in historic areas,” but were refused by BLM because cultural resource information is confidential, and at least some documents were “pre-decisional.” SOR at 3. They assert that information gathered through the cultural inventory process cannot be “pre-decisional” for a NEPA process. Appellants ignore that while technical resource inventories yield factual information that may be releasable in some circumstances,¹⁷ the information at issue here is subject to ARPA’s confidentiality provision, 16 U.S.C. § 470hh, and therefore would be exempt from disclosure under the Freedom of Information Act (FOIA). 5 U.S.C. § 552(b)(5). Furthermore, BLM’s consideration of the information in its decision process for the RMP/TMP was indeed deliberative. Thus, until BLM issued the decision, portions of the administrative record that reflected BLM’s decision-making process about management of cultural resources

¹⁶ Even if the provision applied, it only requires that documentation of the “finding” be made available to the public—not all details about the sites themselves. Moreover, the regulatory directive would not overcome the statutory requirement to prevent the public disclosure of information about the nature and location of archaeological resources. 16 U.S.C. § 470hh.

¹⁷ The technical compilation of resource inventories is required by Section 201 of FLPMA, 43 U.S.C. § 1711, and is not, in itself, a decision-making process subject to NEPA’s public involvement procedures. *See* BLM Manual Section 8110, Identifying and Evaluating Cultural Resources, at .44 (consultation responsibilities extend to State Historic Preservation Officers and Indian tribes, but not the general public). In compiling a resource inventory, BLM nevertheless considers information supplied by the public. *See, e.g.*, BLM Manual 6310, Conducting Wilderness Characteristics Inventory on BLM Lands, at ¶ 06.A.3.

were indeed pre-decisional and likely subject to the deliberative process privilege within exemption 5 of FOIA, 5 U.S.C. § 552(b)(5).¹⁸

2. Adequacy of Information

Appellants argue that BLM's Appendix I did not satisfy the information disclosure requirements of NEPA because it was "a simplistic summary worksheet which did not provide any inventory information and completely failed to address many factors to be analyzed." SOR at 4; *see also* SOR at 15-18. The Approved RMP prescribes the management actions and allowable uses associated with six cultural resource use categories that provide the framework for cultural resource management under the RMP.¹⁹ RN 12469 at 63-69. In Appendix I of the Approved RMP, "Cultural Resource Allocation to Use Categories," BLM explained the six use categories, and the criteria used to allocate a site to a particular category. RN 12469 at I-1-6. *See also* RN 12608 (Draft RMP/EIS Appendix I), RN 12982 (PRMP/FEIS Appendix I).

Appendix I also contains tables that list known cultural resources within the planning area, by primary use category. The tables in Appendix I include, for each site, a brief description of its historic or prehistoric type, BLM's current assessment of its eligibility for listing in the National Register of Historic Places,²⁰ its general location within the planning area, and its secondary use category, if any. BLM explained that a cultural resource's use categorization may change during the life of the RMP "when circumstances change or new data become available." *Id.* at I-1; *see also* RN 12469 at 63 (CUL-MA-03).

¹⁸ Appellants have not asserted that they ever submitted a request for this information in accordance with FOIA, or that such a request was denied.

¹⁹ As noted in Section III.A, *supra*, these decisions are not under review in this appeal.

²⁰ The code "O" indicates that the State Historic Preservation Officer (SHPO) has concurred in the determination, and BLM's files reflect that concurrence. The code "F" indicates that the SHPO has not yet concurred or BLM's file has not yet been updated to reflect SHPO's concurrence.

The tables in Appendix I are summary tables; they provide a “snapshot” of the current information about known sites, *id.* at I-1; they are not, themselves, RMP decisions. *See* BLM Manual 8110, Identifying and Evaluating Cultural Resources, Section .41 and Manual 8130, Planning for Uses of Cultural Resources, Section .21. The use allocations described in Appendix I inform planning decisions, and provide information to aid BLM in resolving potential conflicts that may arise in connection with proposed land uses. When BLM considers a proposal that requires an implementation decision, it may undertake further analysis of a potentially-affected cultural resource site, reevaluate its use allocation, and consider the management actions and allowable uses that pertain to that category. Thus, BLM was not required to have complete information about every site at the time it made its RMP decisions for the management actions and allowable uses that pertain to each cultural resource use category.²¹ To the extent that appellants’ challenge relates to implementation-level route closures in the TMP decision, BLM likewise need not collect all possible data about every cultural resource site in order to determine that the presence of a site should be considered in the TMP decision.

Appellants rely on the decision in *California v. Block*, 690 F.2d 753 (9th Cir. 1982), in support of their argument that a summary worksheet is “unsatisfactory for general NEPA review.” SOR at 4. In *Block*, the court addressed a programmatic decision of the United States Forest Service (FS) regarding the allocation of inventoried roadless areas to one of three planning categories that would prescribe their future management. The decision included allocation of 36 million acres to the “nonwilderness” category, in which lands would “be

²¹ For the same reason, BLM was not required to consider, in detail, the impacts of previous management of cultural resource sites, and consequent deterioration, when evaluating the known sites listed in Appendix I, as proposed by appellants. SOR at 12.

managed for uses other than wilderness.” *Id.* at 758, 762. The court found that the decision “to commit these areas to nonwilderness uses” was “irreversible and irretrievable,” and as a result, “[t]he site-specific impact of this decisive allocative decision must . . . be carefully scrutinized now and not when specific development proposals are made.” *Id.* at 763.

As part of the decision-making process at issue in *Block*, FS prepared a programmatic EIS. The record for the EIS included documents that described, in very cursory form, each of the areas under consideration. The court concluded that such summaries did not adequately describe the existing environment of each area in terms of its unique features because they did not “identify the distinguishing wilderness characteristic of each area.” *Id.* at 763. Further, the analysis in the EIS failed to “assess the intrinsic worth of the wilderness features of any particular area.” *Id.* at 764. The court explained that “[t]he foreclosing of the wilderness management option requires a careful assessment of how this new management strategy will affect each area’s benchmark characteristics as identified in the Wilderness Act.” *Id.* FS argued that detailed worksheets that it had prepared for each area, which formed the underpinning of the summaries, should be considered part of the EIS. The court rejected this argument, because the detailed worksheets were located in offices distributed across the country, and therefore were not available and accessible to the public. *Id.* at 765.

The present case is distinguishable from *Block*, in which the decision at issue related solely to the management of roadless areas. Here, BLM’s RMP and TMP decisions relate to the management of numerous resource values and uses. More important, in *Block*, the allocation of an area to the “nonwilderness” category was “irreversible and irretrievable” because the lands were “decisively” committed to nonwilderness uses. *Id.* at 763. By contrast, appellants here challenge a decision intended to *protect* cultural resource values. Also, the GJFO RMP decision

could have no “irreversible and irretrievable” impact on those values, because it is not specific to particular cultural resource sites, but rather to categories of cultural resource uses. The impacts to an individual site must still be assessed before a particular proposal can be approved. As the court explained, “[t]he detail that NEPA requires in an EIS depends upon the nature and scope of the proposed action.” *Id.* at 761 (citing *Aberdeen & Rockfish R.R. Co. v. Students Challenging Regulatory Agency Procedures*, 422 U.S. 289, 322 (1975)).

BLM’s analysis of route closures for the TMP decision, which are properly under review in this appeal, likewise did not require more detail about cultural resource sites than that provided in Appendix I, because closures do not have irreversible and irretrievable effects on those resources. BLM’s route designations were informed by the information summarized in Appendix I; BLM used that information to make reasonable judgments about whether to consider (together with other resource values) the presence of sites and their proximity to routes. Those considerations are reflected in the route reports.

In further contrast to *Block*, the information summarized in Appendix I is grounded in detailed site survey reports that are included in GJFO’s inventory files, and are part of the administrative record. *See, e.g.*, Administrative Record folder 3.5C.c.²² Those records are not available for public review because they contain statutorily-protected archaeological resource information, as well as sacred site information protected under Executive Order 13007.

However, as explained above, greater detail about specific cultural resource sites would not aid members of the public in commenting on their own use of certain routes.

²² This folder contains a subset of the thousands of site evaluation forms that informed Appendix I for the RMP. In light of the large size of the administrative record, and because the RMP itself is not at issue in this appeal, not all such forms have been included in the administrative record that was transmitted to the Board for review. BLM is not citing individual site forms in its argument, and therefore is not including them within its forthcoming request for nondisclosure. Nevertheless, BLM considers all of those forms confidential under ARPA, 16 U.S.C. § 470hh.

Appellants also complain that their review of the RMP and TMP was hindered because they could not ascertain the definition of “surface-disturbing activity,” and that the absence of this definition will make implementation of the record of decision “arbitrary and capricious.”²³ SOR at 18-19. This term is relevant to RMP decisions about allowable uses, which are not at issue in this appeal. Nevertheless, the term is defined in Appendix B to the Approved RMP, which lists the stipulations for fluid mineral leasing and land use authorizations, permits, and leases issued on BLM lands. RN 12469 at B-1. BLM explained, “[s]urface-disturbing activities are those that normally result in more than negligible (i.e., immeasurable, not readily noticeable) disturbance to vegetation and soils on public lands and accelerate the natural erosive process.” *Id.* at B-2. BLM further provided a number of examples of surface-disturbing activities, as well as activities that “are not normally considered surface disturbing.” *Id.* Thus, the term “surface-disturbing activity” is sufficiently explained in the Approved RMP.

3. Range of Alternatives

Appellants challenge the range of alternatives that BLM considered in the EIS. SOR at 19-20, 20-22. Specifically, they complain that some management actions and allowable uses described in the PRMP/FEIS (and adopted in the Approved RMP) were the same across alternatives, and argue that BLM therefore did not comply with the NEPA directive to consider a reasonable range of alternatives. SOR at 20. Although the management actions and allowable uses are not subject to review in this appeal, BLM notes that the management actions are broad directives intended to achieve the goals and objectives identified in the RMP, and in some cases, alternative directives would not comport with those goals and objectives. *See* RN 12420 (Record of Decision) at 9-10 (explaining the function of management actions). The one allowable use

²³ It is unclear whether appellants are referring here to implementation of the RMP or TMP.

(i.e., limitation) identified on the pages cited by appellants (C-AU6, a no-surface-occupancy stipulation) applies to specific areas, and varied across alternatives in the PRMP/FEIS according to specific maps. *See* SOR at 20 n.23 (citing RN 12982 (PRMP/FEIS) at 2-134-136); *see also* 12982 at Appendix A, Figure 2-43.

For the route designations in the TMP, BLM considered alternatives that included varying combinations of designations for individual routes and segments. *See* route reports; *see also* 12469 at M-9 (“The range of alternatives developed in the route designation process for this TMP mirror the goals and objectives of each of the alternatives developed in the RMP revision.”). Appellants have not shown that BLM failed to consider sufficient alternative designations for particular routes.²⁴

C. Compliance with FLPMA

Appellants challenge the manner in which BLM chose to balance protection of cultural resources with protection of other resources and resource uses in the RMP and TMP decisions. This is a challenge to BLM’s compliance with FLPMA’s directive to “manage the public lands under principles of multiple use and sustained yield.” 43 U.S.C. § 1732(a). As discussed in Section III.A, the RMP decision is not subject to review in this appeal. For the TMP decision, appellants have not shown that BLM failed to adequately consider relevant factors or engage in a reasoned analysis, or that the decision is not supported by the record. *See Rainer Huck*, 168 IBLA at 395. Nor have they provided “compelling reasons for modification or reversal.” *Id.* The TMP decision therefore should be affirmed.

1. Balancing of Cultural Resource Protection

²⁴ Appellants’ assertion that BLM could “move to a designated route system,” SOR at 22, is perplexing, as that is what BLM adopted for portions of the planning area in the RMP area designations.

Appellants claim that BLM has “placed the management of cultural resources ahead of all other multiple uses and has failed to balance impacts from cultural resource protections with other activities.” SOR at 6, 9. In support of this position, Appellants contend that BLM treated all cultural sites equally regardless of the importance of the site or its eligibility for listing in the National Register of Historic Places. SOR at 7-11. This argument reflects a misunderstanding of the RMP decision process, which focuses not on the management of individual sites, but on the management of categories of resources.²⁵ BLM’s RMP decisions vary, depending on the cultural resource use category.²⁶ RN 12469 at 64-65. In addition, each allowable use restriction (stipulation) is subject to case-by-case exceptions. *Id.*; see also *id.* at B-44-45. Moreover, the RMP management actions and allowable use restrictions are distinct from the TMP route designations at issue in this appeal.

BLM closed few routes based on cultural resource concerns alone, and sought to provide access where possible, even in some cases where public access directly conflicts with inventoried cultural resources. *See, e.g.*, F138, F140, F152, F213, P1, and P12 in RN 29293 and RN 29398 (route reports for zones F and P). Some route closures, however, were based in part on the need to avoid impacts to archaeological resources where modeling results predicted high potential for

²⁵ Appellants emphasize that BLM has described many cultural resource sites as “needing data” and asserts that this shows arbitrariness in BLM’s decision to manage for the protection of such sites. SOR at 11, 14-15. But as noted above, BLM need not fully analyze every site before making a broad RMP decision about resource management, or even a TMP decision about route designations. For management purposes, the “needs data” description simply means that a site should be considered potentially eligible for listing in the National Register of Historic Places until further analysis can be performed. *See* RN 9076 (State Protocol Agreement between BLM and SHPO) at Attachment A at 2 (electronic page 28) (providing definition of “needs data”) and Attachment F, Addendum 1 at 2 (electronic page 49) (discussing protection of resources classified as “need[ing] data” in travel management planning).

²⁶ Appellants’ argument that the only sites “excluded” from management are those that have been destroyed or sold mistakenly assumes that BLM must choose in an RMP (or even a TMP) whether to “manage” individual sites. *See* SOR at 6. On the contrary, as discussed above, in an RMP, BLM identifies appropriate management actions and allowable uses for certain cultural resource use categories, but individual sites are not irrevocably assigned to specific categories. BLM need not decide, as part of the decision process, whether to exclude certain sites from future management consideration.

archaeological site occurrence, or where archaeological sites were documented through inventories. *See* RN 32028* and 32029* (GIS archaeological resource databases). Where inventory data were unavailable, BLM used GIS modeling for cultural resource sensitivity. RN 32030*, 32019*, 32020*. BLM discussed the qualitative impact to cultural resources from various route designation alternatives in the DEIS and the PRMP/FEIS. *See, e.g.*, RN 12607 (DEIS) at 4-205, 4-209, 4-211, 4-212, 4-214, 4-217; 12977 (PRMP/FEIS) at 4-233-250 (corresponding discussion).

Tribal interest in sacred and religious sites also was an important consideration in the TMP decision, RN 32354 and 32355, and impacts to resources important to Native Americans were considered in the EIS. *See, e.g.*, RN 12977 at 4-237. Through GJFO's tribal consultation process, Indian tribes with ancestral and ongoing ties to Western Colorado expressed strong interest in protecting cultural resources in several portions of the planning area. The authorities for tribal consultation, and the Departmental policy for carrying out such consultation, are described in Departmental Manual 8120. RN 32004 (beginning at electronic page 179) at *e.g.*, MS 8120.03, 8120.04, 8120.06.E.

Tribes participated in consultation meetings on many occasions in 2012, 2013, 2014, and 2015, during the development of the RMP and TMP. *See, e.g.*, RN 330, 211*, 7784, 7935*, and 24202* (field visits attended by tribal representatives); RN 12453*, 32002, 786*, 7781, 24202*, 24332*, 32001* (in-office meetings with tribal representatives); and RN 7782, 21979, 24160, 24120, 24122, 24124, 24167, and 31440 (correspondence about survey results and a programmatic agreement). BLM staff also kept notes regarding their discussions with tribal members, and the field office maintains other records of tribal interests in the area. RN 7935*,

211*, 32001*. *See also* RN 7795*, 7935*, 24202* (see especially from 01:03:57 to end),²⁷ 19850*, 19899*, 27139*, 31220*, 31229*, and 32500* (reflecting sensitive concerns expressed by tribal members about locations within the planning area).

In addition, BLM's administrative record contains extensive documentation of all forms of recreational use of the planning area, RN 12977 at 3-187-197 (describing existing conditions for recreation and visitor use), 3-197-206 (describing additional aspects of existing travel and transportation management) and shows that BLM gave due consideration to those uses when making its travel management decisions in the RMP and TMP. RN 12977 at Section 4.4.3 (beginning at 4-322). BLM also considered the influence of recreation under the various alternatives on socioeconomic conditions within the planning area and across Mesa and Garfield Counties. 4-449, 4-451, 4-473-483.

Across the planning area, BLM identified 871 miles of routes as open to all uses without limitation,²⁸ another 291 miles as open in areas open to cross-country travel, and 235 miles as open with some seasonal limitation.²⁹ RN 12420 (Record of Decision) at 14. BLM designated 136 miles of routes as open to more limited forms of motorized recreation (*i.e.*, motorcycles and vehicles less than 50"), and another 174 miles of routes as open to non-motorized uses. *Id.* BLM deferred decisions on approximately 734 miles of routes (including routes in zone L for which inventories were not complete), closed 723 miles (94 miles closed due to a lack of public access), and limited 524 miles (including 332 miles with no public access) to administrative and permitted uses only. *Id.* In some cases, BLM chose route designations that allow more intensive

²⁷ This record is a video recording.

²⁸ In addition, 309 miles were designated as "county maintained," which in practice, typically means open to all uses.

²⁹ These figures reflect initial designations, without implementation of mitigation.

recreational use, despite potential adverse impacts to other resources. *See, e.g.*, RN 32251 at O2035 (zone O route report, indicating wildlife concerns in Indian Creek area).

BLM's approved RMP also includes an action to evaluate the broader De Beque area for a suitable Recreation Management Area (RMA), as well as potential development of a trail system that would meet both resource protection and recreation needs. RN 12469 at 98 (REC-OBJ-05).

2. Change from Existing Management

Appellants contend that BLM's balancing of resource considerations must be deficient because few cultural resource sites were identified for management under the 1985 proposed RMP and final EIS.³⁰ SOR at 13-14. Appellants also suggest that some of the sites listed in Appendix I "were previously inventoried and found unsuitable for additional management." SOR at 12. In fact, the 1987 approved RMP did not identify any known cultural resources as "unsuitable" for management. Moreover, additional cultural resource inventories have been performed in the intervening years since BLM adopted its 1987 plan, and many more cultural resource sites are now known. In addition, through BLM's continued efforts to engage in tribal consultation with tribal representatives throughout the RMP process, as required by law and Departmental policy, new information has emerged about tribal interest in cultural resources in the planning area. BLM's decisions now have the benefit of that information.

3. Management of Wickiup Sites

Appellants contend that BLM's RMP and TMP decisions over-prioritize the protection of wickiups. BLM has discretion to protect cultural resources such as wickiups, and as explained above, it has a responsibility to do so in accordance with the sacred sites policy.

³⁰ The proposed RMP/FEIS was issued in 1985, but the record of decision was signed in 1987.

As an initial matter, appellants' contention that "95% of cultural sites are associated with wickiups" is not supported by the record. *See* SOR at 24. BLM's records indicate that approximately 0.01% of the sites recorded in the GJFO are associated with a wickiup. RN32028*. Appellants further contend that "most of the wickiup sites on the GJFO are wholly insufficient to support designation on a Historic Register." SOR at 24. As explained above, the eligibility of individual sites for listing on the National Register of Historic Places is not a definitive element in RMP or TMP decisions; rather, it is a factor considered in making use category allocations. However, BLM does consider Native American values when evaluating the eligibility and significance of cultural resource sites, as 36 C.F.R. § 800.4.c.1 directs that the evaluation of historic significance of a site should occur in consultation with "any Indian tribe . . . that attaches religious and cultural significance to identified properties."

Appellants argue that BLM has over-emphasized protection of wickiups, given that many of them have limited historic value. SOR at 25-26. Wickiups that remain on the landscape, whether in pristine condition or collapsed, are a tangible connection between modern Ute people and their ancestors. In consultation with BLM, the Ute tribes have emphasized the importance of the preservation of these structures as a sacred connection to Ute history and as evidence of traditional cultural properties. RN7935*; RN7795* at 65. Ute representatives have expressed their preference that heritage resources, including wickiups, be maintained so that they remain accessible and usable. RN7795* at 14, 64.

Wickiups also are important from a scientific and archaeological perspective. Prior to the Ute Wickiup Project by the Dominguez Archaeological Research Group, which began in 2004, very little archaeological work had been directed toward Ute archaeology. RN7795* at 29-30. Because relatively few Ute wooden structures remain, and those that do are susceptible to

disappearing due to natural and human causes, documentation and protection of wickiups and other wooden Ute features is a scientific priority.³¹ RN7795* at 30. Thus, BLM's consideration of the presence of wickiups in its route designations is reasonable.

4. Economic analysis

Appellants argue that BLM's economic analysis should have resulted in a different decision, and they emphasize that an economic analysis must rely on sound assumptions. SOR at 26, 27. BLM agrees that, as with any resource analysis, the assumptions that inform an economic analysis should be well-supported and reasonable. Appellants do not claim, however, that BLM has used "misleading economic assumptions" such as the "inflated estimate of recreation benefits" described in *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 447 (4th Cir. 1996). *See* SOR at 26-27, 30. In fact, appellants even acknowledge that BLM appropriately refined its economic analysis in the PRMP/FEIS.³² SOR at 28.

Appellants appear to argue that because BLM identified a greater economic contribution from recreation in the PRMP/FEIS than it had described in the Draft RMP/EIS, the Approved RMP should have allowed a corresponding increase in recreational access, even at the expense of other resources. *See* SOR at 29. FLPMA does not require BLM to allow recreational access in direct proportion to its economic contribution, and in fact explicitly directs that BLM should give consideration to "the relative values of the resources and not necessarily to the combination of

³¹ In the article cited by appellants, SOR at 25, the author stated, "[w]ickiup sites represent unique opportunities . . . and that is why they merit unusually thorough recording and data recovery." *See* Exhibit 1, Rand A. Greubel, *Strategies and Methodologies for Investigating Wickiup Sites*, Presented at the Colorado Council of Professional Archaeologists Annual Meeting (March 5, 2005) at 2. The author did not suggest that wickiups are unworthy of data collection, as appellants suggest. *See* SOR at 25. Nevertheless, tribes have often requested that BLM refrain from performing invasive data recovery methods on wickiups. *See, e.g.,* RN7935*.

³² Contrary to appellants' suggestion, SOR at 26, 28, BLM's economic analysis is not subject to heightened review by this Board. The standard articulated in *Rainer Huck*, 168 IBLA at 395, applies to all factors considered in BLM's TMP decision. The *Hughes River* court applied the *de novo* standard only in its review of a matter of statutory interpretation. 81 F.3d at 448.

uses that will give the greatest economic return or the greatest unit output.” 43 U.S.C. § 1702(c). As discussed above, the record shows that BLM gave due consideration to both cultural resource protection and recreational use—as well as other resources and resource uses in the planning area. The fact that the change in permissible recreation use did not have a linear relationship to the change in BLM’s analysis of the economic contribution of recreation does not warrant reversal of the decision.

5. Disagreement with decision

Appellants’ objections primarily reflect their disagreement with BLM’s travel management decision. As noted above, “mere differences of opinion” cannot overcome a well-supported BLM management decision. *Rainer Huck*, 168 IBLA at 395; *Southern Utah Wilderness Alliance*, 128 IBLA at 389-90.

In carrying out its multiple-use mission under FLPMA, BLM is required to strike a balance among various resource values and resource uses. 43 U.S.C. § 1732. “Multiple use” does not, however, mean that every use must be allowed in every portion of a planning area. As the Board explained, when considering another travel management decision, in *Rainer Huck*, 168 IBLA at 400:

Sections 102(a)(7) and 302(a) of FLPMA, 43 U.S.C. §§ 1701(a)(7) and 1732(a) (2000), direct BLM to manage public lands under the principle of multiple use, which is defined in part as “the management of 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; * * * [and] the use of some land for less than all of the resources.” 43 U.S.C. § 1702(c) (2000). The principle of multiple use does not preclude BLM from excluding a particular use from part of the public lands; rather “the essence of the multiple use mandate is simply to require a choice regarding the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place on any given area of the public lands at any one time.” *Utah Trail Machine Association*, 147 IBLA at 144; see *Oregon Shores Conservation Coalition*, 83 IBLA at 8. BLM weighed the competing resource values in the limited to designated roads and

trails [off-highway vehicle (OHV)] category and designated routes which best accommodated those competing values, including the OHV recreational experience and the special management directives.

The factors that BLM considered for each route designation are described in the route reports. RN 32263, 32265, 32267, 32269, 32271, 32273, 32275, 32277, 32279, 32281, 32283, 32285, 32286, 32288, 32290, 32292, 32294, 32296, 32298, 32300. Appellants have not “shown that BLM’s weighing of the resource values was unreasonable, and [their] simple disagreement with the balance BLM chose does not establish that the closure of various . . . routes [to motorized recreation] violated FLPMA’s multiple use mandate.” *See Rainer Huck*, 168 IBLA at 400.

IV. CONCLUSION

BLM’s GJFO RMP decision is not subject to review by this Board, as the Director’s decision that dismissed appellants’ protest to the RMP was final for the Department. Appellants’ appeal must be dismissed, to the extent that it purports to challenge the RMP decision.

The administrative record shows that in making its decision to adopt the GJFO TMP, BLM considered “all relevant factors including environmental impacts.” *Rainer Huck*, 168 IBLA at 395. Further, the decision “reflects a reasoned analysis” of the impacts that the various alternatives would have on competing uses and resource values associated with the planning area. *Id.* As appellants have not met their burden to show that BLM committed a material error in its factual analysis, that BLM failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made, the decision should be affirmed.

Furthermore, appellants have provided no compelling reason to modify or reverse the decision. Appellants’ differences of opinion with BLM regarding the proper outcome of the

TMP decision process are not sufficient to overcome BLM's amply supported decision. For these reasons, BLM's decision to approve the TMP should be affirmed.

Respectfully submitted this 21st day of March, 2016.



Danielle DiMauro
Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
(303) 445-0608
danielle.dimauro@sol.doi.gov

CERTIFICATE OF SERVICE

This is to certify that on this 21st day of March, 2016, in accordance with 43 C.F.R. § 4.401(c), a true and correct copy of the foregoing Answer and Motion to Dismiss in Part was transmitted for delivery by U.S. Mail, with a courtesy copy by electronic mail, to the following persons at the addresses below:

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203
ibla@oha.doi.gov

Scott Jones, Esq.
508 Ashford Drive,
Longmont, CO 80504
scott.jones46@yahoo.com

A handwritten signature in cursive script, reading "Jeanne M. Jeffas", written over a horizontal line.

cc: Bureau of Land Management (by electronic mail)
Colorado State Office
Attn.: Brian St. George, Deputy State Director - Resources and Fire
2850 Youngfield St.
Lakewood, Colorado 80215
bstgeorg@blm.gov

STRATEGIES AND METHODOLOGIES FOR INVESTIGATING WICKIUP SITES

By Rand A. Greubel
Alpine Archaeological Consultants, Inc.

Presented at the Colorado Council of Professional Archaeologists Annual Meeting,
March 5, 2005, Grand Junction, Colorado

Wickiups constructed by Numic peoples of the Intermountain West during the protohistoric and historic periods are an important but increasingly threatened cultural resource. The threats to these fragile structures include intentional and unintentional human destruction as well as natural decay and wildfires. The certainty of eventual destruction or deterioration imparts great urgency to the documentation and investigation of wickiup sites in the region. The loss of important data, however, can be mitigated by investigative techniques that include thorough and rigorous recordation of structural remains, mapping, metal detection, photography, and – in some cases – subsurface data recovery. This paper describes various methods and strategies applicable to both survey and excavation, including structure-focused investigations and, especially, more inclusive landscape approaches.

The purpose of this paper is to explore different options for documenting sites with wooden habitation structures commonly called wickiups. In Colorado, wickiup sites are most commonly, but not exclusively, found on the Western Slope. The vast majority of extant wickiups are in pinyon and juniper woodlands, but some still exist at higher elevations in aspen or spruce-fir forest. I make no claim to possessing special knowledge about wickiup sites nor of the methods used to investigate them, which are essentially the same methods employed on other types of archaeological sites. In fact, much of what I have to say on the matter has already been said, 16 years ago by Doug Scott right here in Grand Junction (Scott 1988). Many points, however, are worth reiterating.

First, I will discuss the various types of features, artifacts, and other cultural manifestations potentially present on wickiup sites. Although a bit tedious, this laundry list portion of the paper is necessary to lay the groundwork for the discussion that follows. The ensuing discussion will focus on what I believe to be some useful methods and strategies for recording wickiup sites, as well as for conducting more extensive types of data recovery. Some of what I will cover is extracted from the regional literature and reflects how archaeologists have tended to treat wickiup sites in the region. Some reflects my own thinking on the subject, based on wickiup sites that I have seen, recorded, or excavated.

What is so unusual about wickiup sites that justifies such a discussion of recording and excavation strategies? To put it simply, late sites with good preservation possess a much richer archaeological record than older site types in the region (see Simms 1989:3). The great advantage and value of Protohistoric and Historic wickiup sites is that, in addition to extant structures, the site



environment and integrity of setting remain largely intact. In other words, the link between the structures and cultural remains and many of the aspects of the landscape with which these materials were originally associated has not been severed by time and geomorphological processes to the degree that it has with older sites. Wickiup sites represent unique opportunities in this regard and that is why they merit unusually thorough recording and data recovery methods.

Wickiup sites will most often be encountered during surface inventories and will only rarely be subjected to data recovery, a fact that underscores the importance of careful and complete non-invasive recording methods. The recent *Aboriginal Wooden Structure Component* form, created by the Dominguez Archaeological Research Group, is a welcome step in the right direction. One of these forms is intended to be completed for each structure on a site, and allows for the detailed documentation of nearly every potentially significant dimension and architectural element of a wickiup or other type of structure. Such data are very important because the structures themselves may not be around much longer (Sanfilippo 1998:82). The information that can be extracted from extant structures now, therefore, can serve as a basis for inferences about structures that have disappeared and whose former presence is evidenced by archaeological traces only (Reed and Metcalf 1999:147).

Even the best form, however, can never fully replace thoughtful, thorough, and meticulous recording methods that seek to identify, describe, and place in their proper context not just the structures or their faint remaining traces, but a host of often very subtle cultural associations. Thus, detailed descriptions should always be made of the relationships between structures and their associations in addition to completing the forms.

Identifying wickiups can be a challenge. Partially intact structures with standing elements or collapsed structures with well-preserved poles in an obvious radial pattern are relatively easy to recognize. All that may be left of highly deteriorated structures, however, are one or two decayed poles on the ground, a pole or two leaning into a tree, or a concentration of weathered juniper splinters. Stone slabs that formerly reinforced the bases of the poles may be present, although in my experience are not common. These materials may be associated with mature foundation (i.e., support) trees and, possibly, features and artifacts. *Context, coupled with pattern recognition, is of key importance.* For example, it may not be justifiable to record one or two juniper poles lying on the ground in a pinyon and juniper woodland with no associated artifacts or features as a wickiup. In contrast, a pattern, repeated several times within a circumscribed area, of a few poles lying conspicuously beneath mature juniper trees, together with a light scatter of artifacts and possibly other features such as long-dead, bark-stripped trees, may very well represent the remains of a

Protohistoric campsite. We must keep in mind that we are much more likely to find collapsed and deteriorated structures than ones with intact elements.

Aside from the physical remains of the domiciles, what are some of the materials, features, and other cultural associations potentially present on wickiup sites? First, wickiup interiors should be examined for hearths as evidenced by fire-cracked rock, charcoal, or ash stains. Concentrations of juniper bark may be present, likely in highly deteriorated condition, representing floor covering, bedding, or clumps of fallen structure closing material (Huscher and Huscher 1939; Buckles 1971; Conner 1988; Greubel 2001; O'Neil 2004; Scott 1988). Artifacts may be visible on the modern ground surface inside wickiups, including flaked and ground lithics, ceramics, metal and glass items, and beads. Finally, there may be hearth furniture such as large flat-topped stones that functioned as pallet stones, expedient tables, or bone-reducing anvils (Baker 1996, 2003; Greubel 2001), an example of which was present inside Structure 1 at the Simpson wickiup site.

The area surrounding the structure should be looked over carefully for hearths or ash dumps, fire-cracked rock, lithic tools and debitage, pottery, concentrations of fragmented burned or unburned bone, and anvils or other hearth furniture. Other types of structural features may be present; the remains of meat drying racks, for example, or small associated structures (e.g., Baker 2003:20; Buckles 1971 645-647). One type of ephemeral structure, sometimes called a "pull-down," consists of a large branch or two pulled down and broken but not detached from the trunk of the tree, to create a simple shade or windbreak. In addition to careful examination of the ground surface inside and surrounding wickiups, the trees, living and dead, in the vicinity of structures should be examined. Tree platforms, used for storage and possibly observation, may be present (Huscher and Huscher 1939).

Trees – especially junipers – may bear the marks of modifications such as branches trimmed off to accommodate a wickiup or to create more headroom within a habitation structure. Another important modification to juniper trees is bark stripping. Juniper bark was used for many things, including structure closing material, floor covering, bedding, and lining for storage pits. It has been hypothesized that the procurement of bark in large quantities sometimes resulted in on-site trees being stripped bare and killed (Cater 2003; Greubel and Cater 2001; Greubel 2001). Clusters of stripped junipers have been identified in association with wickiup remains on the Schmidt and Simpson Wickiup sites near Norwood, Colorado (Greubel 2001; Greubel and Cater 2001).

Clearly there are potentially many more cultural materials and features on a wickiup site than just the structures themselves. By what methods can such a complex of relatively short-lived

cultural associations be documented in order to create a lasting and, above all, useful record should the site never be excavated? It is important to keep in mind that much of the material evidence associated with Protohistoric and Historic occupations is at, near, or above the modern ground surface at these sites, and therefore readily accessible to archaeologists whether they are conducting a survey or extensive data recovery project. Much data can be acquired from a wickiup site through non-destructive techniques.

Detailed mapping is probably the single most important recording method, especially for sites covering large areas. Ethnoarchaeological studies suggest that hunter-gatherer campsites may occupy very large areas (e.g., O'Connell 1987). It is likely that a variety of activities connected with the day-to-day domestic life of a camp were carried out at some distance from the habitation structures. So far away, in fact, that archaeologists might be tempted to record the remains of these activities as separate sites. Anyone who has recorded large lithic scatters in areas of high site density is familiar with the "lumping vs. splitting" dilemma. In the case of large, dispersed wickiup sites, I would argue that more is gained by combining numerous small occupation loci into single large sites, provided they form a relatively discrete macro-cluster on the landscape. By doing so, we are compelled to consider the relationships between clusters of structures and other materials in a way that we might not if the clusters were considered separate sites. Fortunately, GPS technology has vastly simplified the daunting task of mapping large sites in woodland areas where visibility may be limited. Moreover, in keeping with the principle that the modern landscape may retain much of the character of the landscape of two or three centuries past, as many natural features as possible should be mapped, possibly including the larger, older trees but especially trees exhibiting any type of modification.

The large size of some wickiup "villages" may be due to the apparent tendency of some Numic groups to revisit the same locales repeatedly, and to construct new wickiups each time rather than reoccupy the ones from previous years (Simms 1989:28-29). The accretionary nature of some sites can result in misinterpretations regarding group size and length of occupation, as it is possible or even likely that on sites with numerous structures no more than a small number were ever inhabited at one time. Deciphering a palimpsest resulting from a redundant settlement pattern is challenging, requiring the dating of individual structures. As such, it cannot typically be accomplished with survey-level data. Nevertheless, much information can be obtained through careful observation and documentation. For example, the *relative* dating of structures might be accomplished through a systematic effort to rank them according to level of deterioration.

Lithic density mapping might be undertaken on a survey project, if an abundant debitage assemblage makes such an approach worthwhile and time and budget allow. In most cases, the time-consuming nature of this technique is more appropriate for data recovery. It requires the gridding out of a large area encompassing an occupation locus and counting all the lithic flakes and tools in each unit of the grid. Unit size will depend on available time and the size of the area to be gridded, but 2 by 2 m or even larger units will yield useful data. Lithic density mapping can contribute much toward an understanding of site structure on a broad scale, identifying refuse deposits, lithic reduction and other activity areas, and locating low density zones where structures may have stood.

An exploratory technique that is probably more appropriate for data recovery than survey application is metal detection. Metal artifact prospecting should only be conducted within the context of a structured research design, but if all finds are mapped and their depths recorded, a metal detector can be a useful research tool for Historic-era wickiup sites. The recovery of metal artifacts, however, should never be undertaken simply because it is easy to do. Restraint, therefore, should be exercised when recovering artifacts with a metal detector.

Photography is an inexpensive and important method of archaeological documentation in any context, but is especially valuable on wickiup sites (Sanfilippo 1998:82-82). Multiple photographs should be taken of both intact and remnant structures, as well as other features. It would be impossible, I think, to take too many photographs of structures and features that may soon disappear entirely. In addition to standard black and white photography for producing archival photos, the use of a digital camera for easy sharing of the images with other researchers should be considered.

Fine-grained dating of wickiup sites is critical (Reed and Metcalf 1999:151-152). The interpretation of sites may hinge upon, or will certainly benefit enormously from, careful dating that can distinguish between occupations only a few decades or even a few years apart. Moreover, there are important research questions concerning Protohistoric and Historic chronology and the rate of culture change among the Ute during these periods that can only be resolved with fine-grained dating. Dating methods that are especially appropriate include dendrochronology (tree-ring dating), thermoluminescence dating of ceramics, and temporally diagnostic historic artifacts such as gunflints, percussion caps, beads, cone tinklers, and even bottles or cans. Radiocarbon dating should not be abandoned entirely, however. Instead, meticulous attention to context and material is required in order to avoid the "old wood" problem. C-14 dating should be restricted to annual and short-lived plant material and perhaps animal bone collagen, if enough faunal material is recovered.

Wood charcoal, especially pinyon and juniper, should be avoided if possible. If wood charcoal is all that is available, then the smallest diameter twigs or the outermost rings should be selected for dating.

Tree-ring dating should be applied particularly to wickiup poles. Cutting dates will only rarely be obtained, but it may be possible to narrow down the time of the occupation by identifying the earliest possible year that a pole could have been used in a structure. If sapwood is found in the tree-ring sample a cutting date may be estimated to within several decades, which is still better than many radiocarbon dates. If dead, bark-stripped juniper trees are found on wickiup sites they should be tree-ring dated as well, as they may have been killed as a result of procuring bark for structure closing material, floor covering, or bedding. Associating a tree-ring date from a bark-stripped tree with a particular structure on the basis of proximity is problematic (see O'Neil et al. 2004:66), but the dating of numerous bark-stripping events on a site may provide a chronological framework within which discrete construction episodes can be defined. In addition to the archaeological samples, control samples consisting of cores, wedges, or cross-sections should be collected from large living or dead standing pinyon and juniper trees in the area, especially if a tree-ring chronology has not yet been established for the region.

If a wickiup site is to be excavated, blocks should encompass the largest areas feasible. The exposure of large areas surrounding habitation structures offers the best chance for identifying and investigating diverse activity areas and refuse deposits associated with the structures but potentially located some distance away from them (e.g., O'Connell 1987:105-106; Simms 1988:210). Four-hundred square meters – a 20 by 20 m block – were excavated at the Simpson Wickiup site. As a result, numerous extramural features, artifact concentrations, and deposits of faunal refuse were found. The deposits on such sites will typically be shallow; it may be possible to recover all of the materials associated with the occupation in the upper 10 cm of deposits. Moreover, the subsurface potential of exposed or shallowly buried wickiup sites should not be underestimated, although potential may vary across a site area. For example, sediments may be denuded in open areas but cultural materials may be well preserved in the sediment and duff “islands” that have accumulated beneath trees.

In closing, it is well to remember that with this class of sites even a survey project can, in part, serve as data recovery. We should record not just the wickiups and obvious cultural features but any modifications to, or unique characteristics of, the natural environment that may be associated with the occupation. Given the fragility of this type of resource, it is entirely possible that the recordation you perform will be the only work that is ever done on the site prior to its destruction

or total decay. Finally, I am aware that most wickiup sites will be found and recorded during the course of contract surveys rather than as academic or grant projects, and in such cases it may not be possible to remain on sites long enough to collect all the data that is available. Nevertheless, I believe that a few extra hours spent on a wickiup site making that map a little more detailed, or taking a few more pictures, will be time well spent.

References Cited

Baker, Steven G.

1996 *Numic Archaeology on the Douglas Creek Arch, Rio Blanco County, Colorado: Ute Rancherías and the Broken Blade Wickiup Village (5RB3182)*. Centuries Research, Inc. Prepared for the Bureau of Land Management, Meeker, Colorado.

2003 *Historic Ute Archaeology: Interpreting the Last Hour Wickiup (5RB3236)*. *Southwestern Lore* 69(4):1-34.

O'Neil, Brian, Carl E. Conner, Barbara J. Davenport, and Richard Ott.

2004 *Archaeological Assessment of the Rifle Wickiup Village – 5GF 308, in Garfield County, Colorado*. Report submitted to the Colorado Historical Society. Archaeological Assessment Grant Project No. 2004-AS-004. Dominguez Archaeological Research Group, Grand Junction, Colorado.

Buckles, William G.

1971 *The Uncompahgre Complex: Historic Ute Archaeology and Prehistoric Archaeology of the Uncompahgre Plateau, West Central Colorado*. Ph.D Dissertation, Department of Anthropology, University of Colorado. University Microfilms, Ann Arbor.

Cater, John

2003 *A New Perspective on the Seasonal Use of Ute Architecture in Western Colorado*. *Southwestern Lore* 69 (1):1-11.

Conner, Carl E.

1988 *Archaeological Investigations at 5EA433*. In *Archaeology of the Eastern Ute: A Symposium*, edited by P.R. Nickens, pp. 190-205. Occasional Papers No. 1, Colorado Council of Professional Archaeologists, Denver.

Greubel, Rand A.

2001a *Simpson Wickiup Site (5SM2425)*. Chapter 24 in *The TransColorado Natural Gas Pipeline Archaeological Data Recovery Project, Western Colorado and Northwestern New Mexico*. Alpine Archaeological Consultants, Inc. Submitted to TransColorado Gas Transmission Company, Lakewood, Colorado and the Bureau of Land Management Uncompahgre Field Office, Montrose, Colorado.

Greubel, Rand A. and John D. Cater

2001 *Schmidt Site (5MN4253)*. Chapter 21 in *The TransColorado Natural Gas Pipeline Archaeological Data Recovery Project, Western Colorado and Northwestern New Mexico*. Alpine Archaeological Consultants, Inc. Submitted to TransColorado Gas Transmission Company, Lakewood, Colorado and the Bureau of Land Management Uncompahgre Field Office, Montrose, Colorado.

Huscher, Betty H., and Harold A. Huscher

1939 *Field Notes for 1939*. Notes on file at the Bureau of Land Management's Uncompahgre Field Office, Montrose, Colorado.

O'Connell, James F.

1987 *Alyawara Site Structure and Its Archaeological Implications*. *American Antiquity* 52(1):74-108.

Reed, Alan D., and Michael D. Metcalf

- 1999 *Colorado Prehistory: A Context for the Northern Colorado River Basin*. Prepared for the Colorado Council of Professional Archaeologists, Denver.

Sanfilippo, Joanne M.

- 1998 *Ute Wickiups or Navajo Forked-Stick Hogans: Determining Ethnicity through Architecture in the Archaeological Record*. Thesis, submitted to the Department of Anthropology, Northern Arizona University, Flagstaff.

Scott, Douglas D.

- 1988 Conical Timbered Lodges in Colorado or Wickiups in the Woods. In *Archaeology of the Eastern Ute: A Symposium*, edited by Paul R. Nickens, pp. 45-53. Colorado Council of Professional Archaeologists Occasional Papers No. 1. Denver, Colorado.

Simms, Steven R.

- 1988 The Archaeological Structure of a Bedouin Camp. *Journal of Archaeological Science* 15:197-211.
- 1989 The Structure of the Bustos Wickiup Site, Eastern Nevada. *Journal of California and Great Basin Anthropology* 11:2-34.