

**STATE OF CALIFORNIA
OFF-HIGHWAY MOTOR VEHICLE RECREATION COMMISSION**

MEETING MINUTES

May 3, 2013
10:01 to 1:16 p.m.

Holiday Inn
1350 North First Street
San Jose, CA 95112

OHMVR COMMISSIONERS PRESENT

Paul Slavik, Chair
Breene Kerr, Vice Chair
E. Theodore Cabral
Edward Patrovsky
M. Teresa Villegas
Kevin Murphy

OHMVR DIVISION STAFF PRESENT

Christopher C. Conlin, Deputy Director
Phil Jenkins, Division Chief
Kathryn Tobias, Legal Counsel
Maria Mowrey, Administrative Chief
Daniel Canfield, Acting Planning Manager

AGENDA ITEM I - Call to Order – 10:01 a.m.

- (A) Pledge of Allegiance led by Commissioner Villegas
- (B) Roll Call - Six OHMVR Commission members present at time of roll call.

AGENDA ITEM II - Approval of Agenda

One item agenda as this was a special meeting held to discuss Clear Creek Management Area (CCMA). No discussion was held to add or change items since the notice given to the public was to discuss CCMA only.

AGENDA ITEM III – Business Item: Clear Creek Management Area

Jane Arteaga, Bureau of Land Management (BLM) Off-Highway Vehicle (OHV) Coordinator, introduced herself and clarified her role at this meeting as support only. She offered her expertise on all questions related to the National Environmental Policy Act (NEPA) process only. The planning aspect of CCMA could not be discussed since the protest process reached Washington D.C. Dan Canfield, Acting Planning Manager from the Off-Highway Motor Vehicle Recreation (OHMVR) Division, provided an overview, brief history of events, and the current status of CCMA. Items included:

- The Proposed Resource Management Plan (RMP) was published by BLM on April 15, 2013.

- The Proposed RMP eliminated OHV recreation from the 30,000-acre serpentine Area of Critical Environmental Concern (ACEC).
- Federal regulation allows a 30-day protest period in which individuals or organizations that participated in the planning process have the opportunity to protest the planning decision.
- A letter written by the OHMVR Commission to members of the United States House of Representatives in June 2011 confirms the Commission's planning participation and therefore eligibility for the protest process.

Background information, current events and the protest process was discussed in detail by Mr. Canfield.

CCMA is located in the Diablo Mountains of Central California, and is 40 miles south of Hollister Hills State Vehicular Recreation Area (SVRA). It consists of approximately 75,000 acres and is located in San Benito and Fresno Counties. Most OHV recreation occurs in the serpentine ACEC, a 30,000-acre area with many single-track motorcycle trails.

In 2008, the Environmental Protection Agency (EPA) released a study describing asbestos-related risk associated with recreating in the ACEC. BLM responded with a temporary closure of CCMA.

In 2009, BLM published the draft Resource Management Plan (RMP) for CCMA.

In 2010, the OHMVR Division commissioned an independent study to examine OHV related risks associated with the naturally occurring asbestos in the serpentine ACEC. The purpose of the study was to determine if management options were available that could allow continued OHV recreation while mitigating health risks. This study was released in 2011 and is known as the IERF (International Environmental Research Foundation) study. Following the release of this study, the OHMVR Commission sent a letter in June 2011 discussing the findings of the IERF study and encouraging BLM to adopt management options in the RMP process that would allow OHV recreation at the serpentine ACEC.

In April 2013, BLM released the proposed RMP. The proposed action map of the RMP identifies routes and the vehicles allowed on the identified routes. According to this map, OHV recreation would not be an option; instead, motorcycle touring by highway-licensed vehicles with a permit, and limited to a certain numbers of days per year, would be available.

As of April 26, 2013, members of the United States House of Representatives introduced a Federal Bill, HB 1776. Referred to as the Clear Creek Natural Recreation Area and Conservation Act, the bill directs BLM to reopen CCMA to recreation and also develop a plan that would allow OHV recreation in the serpentine ACEC while mitigating health risks associated with naturally occurring asbestos. It also establishes a 21,000-acre BLM wilderness as the Joaquin Rocks Wilderness; and designates five river and creek segments as wild and scenic rivers.

Following the update of events, Mr. Canfield explained the protest process- a 30-day protest period for interested parties on an RMP. The following rules and/or requirements were identified for an interested party to participate in the protest process:

- Must identify how they would be adversely affected by the approval of the plan.
- Must provide a statement of the issues being protested, and the section and page must be cited. These issues must have been identified earlier in the planning process; new issues may not be introduced at this time.
- Must provide copies of the document that addressed the original issue must be provided.
- Must provide a concise statement explaining why the State Director's decision is believed to be wrong.

Mr. Canfield provided the June 2011 Commission letter as a reference for the Commission to decide whether or not they would participate in the protest process.

Will Harris, Senior Engineering Geologist with California Geological Survey, gave a detailed overview of the geological features of the impacted area.

In response to questions from various Commissioners, Mr. Canfield and Mr. Harris discussed the permit process, recommendations for OHV recreation at CCMA based on findings in the IERF study, and more detailed information regarding naturally-occurring asbestos compared to asbestos found in industrial buildings.

A motion to compose a letter was heard from Commissioner Cabral and seconded by Commissioner Murphy.

Motion carried.

Public Comment

Comments were heard from the following individuals:

- Jim Bramham, California Association of 4-Wheel Drive Clubs
- John Stewart, California Association of 4-Wheel Drive Clubs
- Tom Tammone, Individual
- Dave Duffin, Board Chairman Carnegie Forever, Incorporated
- Mark Martinez, Carnegie Forever
- Jennifer Schreck, Individual
- Dave Pickett, District 36 Motorcycle Sports Committee
- Bruce Brazil, Individual
- Ross Ross, Individual
- Diana Meat, Individual
- Amy Granat, California Off-Road Vehicle Association
- Nick Haris, Western State Representative, American Motorcycle Association
- Steve Koretoff, Resource Advisory Council Member

A lengthy discussion regarding the content of the letter ensued. Ultimately, it was decided that the letter would include conversations from a previous meeting at Hollister Hills SVRA where CCMA was discussed, and the letter would also recognize alternative

B as the preferred alternative with suggestion for changes in the recommended seasons for riding. The following was discussed as potential topics for the protest letter:

Murphy: reference 2011 letter and plead to decision maker to listen to public; reference the importance of CCMA and why it means so much to OHV community in California; request BLM uses mitigation methods suggested by the State allowing OHV recreation on a seasonal basis with wet soil conditions; express want to protect the public and children, but to also allow people to make informed decisions about what they feel is a risk or not

Cabral: include number of visitors represented by the people who spoke today, May 3, 2013; provide a situational approach to rain conditions given unpredictable rain patterns; note that BLM's preferred alternative is against the will of the people; note broad science is being used to make a specific decision; recommend seasons of riding is not appropriate given unpredictable weather changes; ask to reopen CCMA and recommend requesting a grant for proper soil studies; mention importance of this area to other stakeholders such as rock hounding community

Kerr: discuss the lack of evidence supporting the theoretical risk, lack of real world data; include an interim strategy for partial opening during rain season; recognize alternative B or C as preference; discuss investment of OHV Trust Fund Dollars; agrees that a 365-day-a-year opening is not appropriate, however the rainy season is appropriate especially given Hollister's closure periods during this time; stress the Commission's interest and charge to represent the user communities and how they will be adversely effected by this decision; mention the reduction in OHV recreation opportunities for families

Patrovsky: request more comprehensive soil testing in both wet and dry conditions

Slavik: discuss the passion that California residents have for CCMA; feels that since there is a different constituency in Washington D.C. that a new overview will have to be provided; make short references to the June 2011 letter; include photos; explain the Commissions' investment including money and time

Dan Canfield and Elizabeth Meyers-Shields, BLM Land Planning and NEPA expert, discussed the recourse process if BLM's preferred alternative is chosen. Mr. Canfield explained that this protest letter should be land-use specific, which is different from an implementation decision. Ms. Meyers-Shields explained that the proposed RMP and Environmental Impact Study (EIS) contains two types of decisions – land-use planning decisions and implementation decisions. BLM has two different administrative remedies for these two types of decisions. The protest period discussed today, May 3, 2013, is based on land-use planning which is specifically called out in the EIS. Once these protests are resolved, BLM will sign the Record of Decision (ROD) reflecting the protests they receive. An appeal process will follow for the implementation-level decisions that are also in the RMP. This appeal process takes place after the ROD is signed which is appealed to the Interior Board of Land Appeals, an administrative court within the Department of the Interior. Ms. Meyers-Shield provided travel management route designations and any decision on routes as an example of implementation-level

decisions and decisions on whether an area is open, limited, or closed to vehicular use as a land-use planning decision.

Responding to Chair Slavik's request for input, Deputy Director Conlin recommended that the letter should include the interest of all users and focus on science and the debate on whether due diligence was used in the study of the area.

Chief Jenkins referenced the "Adaptive Management" section of the RMP and reiterated that if the three criterion were met, as described in the plan, that it could result in a new adaptation or change in the decision. Changes could include new studies that showed reduced levels and allow for a change to the windows of time for recreational opportunities.

Chair Slavik appointed Commissioner Cabral and Commissioner Murphy for the CCMA subcommittee.

Commissioner Patrovsky made a motion to support alternative B. All were in favor with the exception of Commissioner Cabral, who mentioned he would reconsider his decision if the record showed that his main concern was the date schedule allowing for opportunities as it is unrealistic in regards to weather patterns. Commissioner Kerr proposed that the letter would read that the Commission hopes that this adaptive management plan will allow the OHMVR Division to engage with the BLM to study soil moisture for possible inclusions in the adaptive management process. Commissioner Cabral agreed. A vote was taken, and all were in favor for alternative B.

Public Comment Non-Agenda Items

Comments were heard from the following individuals:

- Jennifer Schreck, Individual
- Bruce Brazil, Individual
- Nick Haris, American Motorcycle Association
- Dave Pickett, District 36, Motorcycle Sports Committee
- Dave Duffin, Carnegie Forever
- John Stewart, California Association of 4-Wheel Drive Clubs
- Tom Tammone, Individual
- Steve Koretoff, Friends of Clear Creek Management Area

San Jose County Supervisor Jerry Muenzer addressed the protest letter during the public comment process given CCMA and Hollister Hill SVRA are within his district, District 4. Supervisor Muenzer informed the Commission that there would be a resolution submitted to endorse a letter of protest to the BLM on the final EIS based on their claim or title to the roads in CCMA at the next scheduled Board of Supervisors meeting, May 7, 2013. Supervisor Muenzer requested that the Commission submit their protest letter based on their studies of asbestos health issues and on the fact that the OHMVR program has awarded BLM nearly \$7 million in grants for maintenance and improvements for OHV use in the CCMA. He also requested that the Commission direct OHMVR staff to draft a letter of support for HB 1776, the Clear Creek National Recreation Conservation Act that was introduced by U.S. Representative Sam Farr, David Valadao, and Jeff Denham.

Motion to adjourn at 1:16p.m. made by Commissioner Murphy and seconded by Commissioner Cabral.

Motion carried.