



## OHMVR COMMISSION MEETING San Jose, CA

May 3, 2013

**STAFF REPORT:** BLM Clear Creek Management Area  
**STAFF:** Dan Canfield, Planning Manager  
**SUBJECT:** BLM CCMA Proposed Resource Management Plan/ Final EIS

---

### Summary

On April 5, 2013, the Bureau of Land Management (BLM) Hollister Field Office published the Clear Creek Management Area (CCMA) Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS). The PRMP/FEIS eliminates Off-Highway Vehicle (OHV) Recreation from the 30,000 acre Serpentine Area of Critical Environmental Concern (ACEC) within the CCMA.

Pursuant to Title 43, Section 1610.5-2 of the Code of Federal Regulations (CFR) there is a 30-day protest period in which individuals or agencies that participated in the PRMP planning process may protest the planning decision. The 30-day protest period for CCMA PMRP/FEIS runs through May 6, 2013.

In June 2011, the OHMVR Commission submitted a letter to members of the United States House of Representatives, copying representatives of the BLM, regarding the CCMA Draft Resource Management Plan (Draft RMP; see Attachment 1). Having participated in the planning process, the Commission may choose to file a protest on the CCMA PRMP/FEIS.

### Discussion

The CCMA is a popular OHV recreation area administered by the Hollister Field Office of the BLM. Located in the Diablo Mountains of Central California, the CCMA spans parts of southern San Benito County and western Fresno County. The CCMA is comprised of approximately 75,600 acres. In 1984, the BLM designated approximately 30,000 acres within the CCMA as a "Serpentine Area of Critical Environmental Concern," or Serpentine ACEC. The majority of CCMA OHV routes lie within the Serpentine ACEC. Prior to its temporary closure in May 2008 (discussed below), the CCMA received approximately 35,000 visitors annually.

Since May 2008, the CCMA has been subject to a temporary closure order based on health concerns related to naturally occurring asbestos (NOA) identified in a 2008 study conducted by the Region 9 office of the U.S. Environmental Protection Agency (EPA

Region 9). The EPA Region 9 findings were presented in a May 2008 risk assessment study entitled, "Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment." The EPA Region 9 study stated that the NOA inhalation health risks to individuals participating in various recreational activities, including OHV recreation, were "of concern." In response to the EPA study, the BLM Hollister Field Office issued a temporary closure of the CCMA in May 2008. The temporary closure prohibits "all forms of entry and public use" at the CCMA.

On December 4, 2009, the BLM Hollister Field Office released the CCMA Draft RMP/EIS, which proposed pedestrian use and limited vehicle touring by highway registered vehicles within the Serpentine ACEC by permit only. Vehicle touring would be limited to less than 5 days/year and pedestrian activity limited to less than 12 days/year. In March 2010, the OHMVR Division commissioned an independent, OHV-specific risk assessment of NOA exposure within the Serpentine ACEC of the CCMA to determine if management and operational strategies could be employed at CCMA to mitigate NOA risk while still allowing OHV recreation at the CCMA. The independent study, released March 8, 2011 and entitled, "Preliminary Analysis of the Asbestos Exposures Associated with Motorcycle Riding and Hiking in the Clear Creek Management Area (CCMA), San Benito County, California" was prepared by scientists with expertise in asbestos related risk assessment from the International Environmental Research Foundation (IERF), the Department of Physics at Harvard University, and the Center for Applied Studies of the Environment at the City University of New York. Following is an excerpt from the Executive Summary portion of the IERF study:

*The IERF study assumes in its risk assessment that motorcycle OHV enthusiasts will visit CCMA five days for one year and ride for eight hours on each of those days. Using the pessimistic 1986 EPA Airborne Asbestos Health Assessment Update, the lifetime risk for asbestos-related cancer for an OHV motorcycle rider, five days in one year, under the conditions we observed, would be 0.18 asbestos-related cancer deaths per million motorcycle riders. The above referenced 1986 EPA Health Assessment Update is based on the increase in asbestos-related deaths from occupational asbestos exposure, and it is also the most protective in that it assumes a no threshold, linear dose-response.*

*For perspective, the risk is similar to the lifetime risk of death for smoking less than one cigarette over the same one year period. Other recreational activities, such as swimming, hiking, and snow skiing are over a 100-fold more dangerous.*

The OHMVR Commission submitted a letter June 21, 2011, to members of the United States House of Representatives regarding the CCMA Draft RMP, the underlying EPA Region 9 findings, and the results of the IERF study. The letter was copied to representatives of the BLM. A response letter from the BLM was sent July 20, 2011 to the chairman of the OHMVR Commission (See Attachment 2).

The April 2013 CCMA PMRP/FEIS acknowledges the IERF study but eliminates OHV recreation from the Serpentine ACEC portion of CCMA. As with the Draft RMP, only highway licensed vehicles, under special use permit, would be able to enter the Serpentine ACEC. Vehicular travel in the Serpentine ACEC would be limited to a

designated touring route during the wetter winter months, and individuals would be restricted to five such visits annually.

On April 26, 2013, U.S. Representatives Sam Farr (D-Carmel), David G. Valadao (R-Hanford), and Jeff Denham (R-Turlock) introduced H.R. 1776, the Clear Creek National Recreation Area and Conservation Act, which would direct the BLM to reopen the CCMA for recreational use, including access for OHVs. The bill instructs the BLM to develop a rigorous plan to minimize the risk from asbestos exposure and to educate visitors to the recreation area about the natural asbestos. The BLM would also be required to reduce the impact of OHVs to protect the area's habitat. Additionally, the legislation would designate approximately 21,000 acres of BLM land adjacent to Clear Creek as the Joaquin Rocks Wilderness and designate five creek and river segments located outside the designated OHV zone as Wild and Scenic Rivers.

### **Protest Letter Requirements:**

Should the Commission decide to submit a protest letter by the May 6 deadline, the letter will need to carefully address the protest requirements as prescribed by 43 CFR Section 1610.5-2. The Commission would first need to establish standing, which requires the Commission to demonstrate participation in the PRMP planning process and an interest that could be adversely affected by the PRMP. Additionally, the letter would also need to identify the issue(s) and part(s) of the PRMP being protested and provide a clear statement explaining why the BLM State Director's decision is believed to be wrong.

The June 21, 2011 Commission letter and BLM response comprise the OHMVR Commission's participation in the planning process. Loss of the unique OHV recreation opportunity afforded by the Serpentine ACEC is directly adverse to the Commission's interest in supporting the OHMVR Program and ensuring that high quality outdoor OHV recreational opportunities are available for the people of California. Combined, the correspondence and statement of interest establish the Commission's standing to file a protest on the CCMA PRMP/FEIS.

On its website describing the protest resolution process, the BLM further defines valid protest issues as being limited to allegations that finalizing the PRMP would violate an applicable statute, regulation, or BLM policy. Comments that have not been raised previously in the planning process or that are not germane to the planning process are not valid issues. Similarly, statements reflecting disagreement, opinions, or otherwise not supported by a concise statement on why the State Director's decision is in error would also not qualify as protest issues. Based on preceding consideration, the following discussion describes possible protest points for consideration.

### **Possible Protest Points:**

- CCMA PRMP fails to accommodate some level of OHV recreation under permitted and managed conditions in the Serpentine ACEC.
  - Issue raised in June 2011 Commission letter
  - PRMP Section 2.5 Description of the Proposed RMP

- CCMA PRMP has no provision for off-highway motorcycle recreation either within the Serpentine ACEC or via managed conditions on CCMA lands outside the Serpentine ACEC.
  - Issue raised in June 2011 Commission letter
  - PRMP Section 2.5 Description of the Proposed RMP

### **Commission Action**

The Commission may:

1. Take no action.
2. Submit a protest letter to the BLM on the CCMA PRMP/FEIS

### **Attachments**

Attachment 1 – OHMVR Commission Letter, dated June 21, 2011

Attachment 2 – BLM Response Letter, dated July 20, 2011



DEPARTMENT OF PARKS AND RECREATION  
Off-Highway Motor Vehicle Recreation Commission  
1725 23<sup>rd</sup> Street, Suite 200  
Sacramento, California 95816  
(916) 324-5801

Ruth Coleman, Director

June 21, 2011

The Honorable Doc Hastings  
Chair  
United States House of Representatives  
Committee on Natural Resources  
1203 Longworth House Office Building  
Washington, DC 20515

The Honorable Ed Markey  
Ranking Member  
United States House of Representatives  
Committee on Natural Resources  
2108 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rob Bishop  
Chair  
United States House of Representatives  
Subcommittee on National Parks,  
Forests and Public Lands  
123 Cannon House Office Building  
Washington, DC 20515

The Honorable Raúl Grijalva  
Ranking Member  
United States House of Representatives  
Subcommittee on National Parks,  
Forests and Public Lands  
1523 Longworth House Office Building  
Washington, DC 20515

Dear Chair Hastings, Ranking Member Markey, Chair Bishop, and Ranking Member Grijalva,

As the Chairman of the State of California Off-Highway Motor Vehicle Recreation (OHMVR) Commission (Commission), and at the direction of the Commission members, I am writing to **request your consideration and support for the reopening of the Clear Creek Management Area (CCMA)**, a 33,000 acre recreation area located in San Benito and Fresno counties. The CCMA is managed by the Bureau of Land Management (BLM), Hollister Field Office, and until recently provided sustainable recreational opportunities for motorized access to thousands of people who visit the area to enjoy a variety of outdoor activities including rock-hounding, camping, hunting, and off-highway motor vehicle (OHV) recreation.

Since May 2008, the CCMA has been subject to a temporary closure order based on health concerns identified in a May 2008 study conducted by the United States Environmental Protection Agency, Region 9 Office (EPA Region 9), related to naturally occurring asbestos present in the area. We believe the EPA study did not fully consider available management options which the BLM could employ to allow continued public access to the area in a safe and responsible manner. It appears the EPA instead overstated the risks to human health from exposure to naturally occurring asbestos based on "worst case" scenarios only.

In March 2010, the OHMVR Division of California State Parks commissioned an independent, OHV-specific risk assessment of naturally occurring asbestos exposure within the Serpentine Area of Critical Environmental Concern (ACEC) of the CCMA. This study, conducted by scientists from the International Environmental Research Foundation (IERF), the Department of Physics at Harvard University, and the Center for Applied Studies of the Environment, at the City University of New York, concluded that management and operational strategies could be effectively employed at the CCMA to allow OHV recreation without exposing the public to unacceptable risk from exposure to naturally occurring asbestos.

The Commission, composed of members appointed by the Governor and Legislature, is charged with ensuring high quality outdoor OHV recreational opportunities are available for the people of California through maintaining and improving areas for sustainable OHV recreation. Since the mid-1970s, OHV use has been the predominant recreational activity at the CCMA which has been recognized as one of the top ten OHV recreation areas in the nation. The OHMVR Program has awarded the BLM nearly \$7,000,000 in grants which have been used for maintenance and improvements of the CCMA.

The closure of the 63,000 acres of the CCMA concerns the Commission greatly. In April 2011, the Commission convened in Hollister, California, to hear presentations regarding the CCMA and CCMA risk assessment investigations given by representatives of the Hollister Field Office of the BLM, EPA Region 9, and the IERF team. After presentations, the Commission engaged the scientists and representatives in a panel discussion about the merits and shortcomings of each investigation and BLM's proposed management strategies for the CCMA. The Commission also received comments from the public concerning the temporary closure and related significant socio-economic and recreational impacts associated with the loss of OHV recreation at the CCMA. At this meeting, and many others that have been held regarding the closure of the CCMA, hundreds of members of the public turned out expressing their concerns and frustrations.

The Commission appreciates the determination and dedication of the EPA Region 9 and BLM Hollister Field Office in their efforts to address the naturally occurring asbestos issue at the CCMA. The Commission takes public health issues seriously and in no way wishes to minimize the importance of the efforts of the BLM and the EPA Region 9 to address potential health concerns regarding naturally occurring asbestos. However, the approach taken by the EPA is not consistent with President Obama's Memorandum on Scientific Integrity, dated March 9, 2009, which underscores the "public must be able to trust the science and scientific process informing public policy decisions". EPA Administrator Lisa Jackson and Interior Secretary Ken Salazar issued follow-up memos which reaffirmed the need to foster honesty and credibility in science conducted and used by the agencies.

The Commission believes the EPA report did not look objectively at scenarios in which the CCMA could be reasonably managed to allow for continued use by the public, and failed to consider management options that would mitigate risks of exposure to naturally occurring asbestos. The EPA report based risk analysis on year-round activities at the CCMA. Thus, by failing to consider the seasonal operation being employed by the BLM, the report does not provide an objective analysis of the risks of allowing continued access by the public to their public lands. The EPA's approach presents significantly skewed and biased conclusions that under no conditions can the area be opened to OHV recreation.

In November 2009, the BLM Hollister Field Office issued a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) to guide the management of public lands in the CCMA. The BLM suspended finalization of its CCMA RMP/EIS pending the release of the IERF study and an examination and discussion of the IERF study findings. The Draft RMP/EIS provides seven (7) alternatives for the management of the CCMA, ranging in scope from no action to prohibition of all public access. The BLM's preferred alternative prohibits OHV recreation within the Serpentine ACEC but would allow limited dirt-road touring by highway-registered vehicles within the eastern third of the area (an apparent departure from the recommendations of the EPA study). Public health and safety risks would be mitigated by requiring permits for restricted access into the Serpentine ACEC. Vehicle touring would be limited to less than five (5) days/year and pedestrian activity limited to less than twelve (12) days/year.

The BLM's proposed preferred management strategy could be responsibly and effectively modified to allow OHV recreation without significant risk to public health. The IERF study commissioned by the OHMVR Division expressly demonstrates that OHV recreation, specifically motorcycle trail riding, can occur safely under management scenarios similar to those proposed by the BLM for vehicle touring within the CCMA - namely, visitation limited to five (5) days per year. In fact, under the conditions of its risk analysis, the IERF study demonstrates the health risk from exposure to naturally occurring asbestos while riding motorcycles at the CCMA is less than the risk of dying by cancer from smoking one (1) cigarette per year.

Based on the presentations, panel discussion, and public comments heard at the Commission's April 2011 hearing, and our review of the associated documents, the principle position of the Commission is the continued and proposed permanent closure of the CCMA does not appear to be supportable nor in the best interest of the public. OHV recreation may occur under managed conditions that will mitigate human health risk associated with naturally occurring asbestos exposure at the CCMA. The Commission requests the BLM lift the temporary closure order and reopen the CCMA, October through May, consistent with BLM's operational strategy at the CCMA prior to issuing the temporary closure. Further, we request the BLM actively and collaboratively engage and work with the OHMVR Division staff to implement an appropriate management program for future OHV recreation at the CCMA.

On behalf of the Commission, I thank you for your consideration of this request. Please feel free to contact me at 415-717-1027, or Daphne Greene, the California State Parks Deputy Director charged with management of the OHMVR Division, at 916-324-5801, should you have any questions or require additional information.

Sincerely,  
**Original Signed by**

Eric Lueder, Chairman  
Off-Highway Motor Vehicle Recreation Commission

cc: United States House Committee on Natural Resources  
Subcommittee on National Parks, Forests and Public Lands  
Sam Farr, US House of Representatives California  
Devin Nunes, US House of Representatives, California  
Dianne Feinstein, US Senator, California  
Barbara Boxer, US Senator, California  
Ken Salazar, Secretary of the Interior  
Bob Abbey, Director, Bureau of Land Management  
Peter Ditton, Acting California State Director, BLM  
Rick Cooper, Field Manager, Hollister Field Office, BLM  
Lisa P. Jackson, Administrator, US EPA  
Jerelean Johnson, Remedial Project Manager, US EPA Region 9  
Luis Alejo, California State Assembly, 28<sup>th</sup> District  
David Valado, California State Assembly, 30<sup>th</sup> District  
Anthony Canella, California State Senate, 12<sup>th</sup> District  
Michael Rubio, California State Senate, 16<sup>th</sup> District  
John Laird, Secretary for The California Natural Resources Agency  
Ruth Coleman, Director, California State Parks  
Daphne Greene, Deputy Director, OHMVR Division  
Off-Highway Motor Vehicle Recreation Commissioners



## United States Department of the Interior



### BUREAU OF LAND MANAGEMENT

Hollister Field Office  
20 Hamilton Court  
Hollister, CA 95023  
Phone (831) 630-5000 Fax (831) 630-5055  
<http://www.blm.gov/ca/hollister>

July 20, 2011

*In Reply Refer to:*  
1610(P)  
CAC09000

Mr. Eric Lueder, Chairman  
California Off-Highway Motor Vehicle Recreation Commission  
1725 23<sup>rd</sup> Street, Suite 200  
Sacramento, CA 95816

Dear Chairman Lueder:

Thank you for providing us a copy of the Commission's June 21, 2011, letter to the Senate Committee on Energy and Natural Resources and the Subcommittee on Public Lands and Forests. Your letter addressed concerns and recommendations related to the Clear Creek Management Area (CCMA) in the Bureau of Land Management (BLM) Hollister Field Office.

The BLM recognizes that the CCMA has been a popular destination for many outdoor activities, and that the off-highway vehicle riding opportunities provided in this area are particularly important and unique. This area presents BLM a difficult management challenge due to public health and safety concerns, given the unusual circumstance of having the largest Serpentine formation in the nation and extremely high concentrations of naturally occurring asbestos in the soil underlying this popular recreation destination.

As you indicate in your letter, in 2008, based on the results of the Environmental Protection Agency's (EPA) Asbestos Exposure and Human Health Risk Assessment, BLM issued a temporary closure order for the CCMA. The State of California's Department of Toxic Substance Control and the Office of Environment Health Hazard Assessment concurred with BLM's decision to issue a temporary closure while we continued to evaluate appropriate allowable uses in the Serpentine area.

As the BLM continues to work on completing the proposed Resource Management Plan and Final Environmental Impact Statement for CCMA, we remain committed to working with the Commission and all interested parties to identify reasonable management and operational strategies that could allow for enhanced public access and use of the area.

Decisions about public use in the area will be designed to reduce risks to public health based on the best available information. The BLM will continue to consider new and credible

information related to human health risk for visitors to CCMA. Adaptive management criteria that might be applied for the Serpentine ACEC could be based upon significant new information or circumstances such as 1) a change in the regulations for asbestos (i.e. classified as non-carcinogenic), 2) lower or higher toxicity values for chrysotile in agency approved risk models, or 3) activity-based studies demonstrate reduced exposures from implementation of mitigation measures and a long-term management strategy.

We appreciate the efforts of the California Off-Highway Motor Vehicle Recreation Division to provide the Bureau with additional data on the health risks at the CCMA presented in the recent International Environmental Research Foundation study, and the Commission's support and interest in working with us to gather additional data to ascertain if possible safe public use scenarios could be developed for the CCMA.

The completion of the Resource Management Plan will not interfere with this intent and adaptive management options allowing for flexibility to consider future changes in CCMA land use allocations for recreation and other uses. BLM remains committed to working with the California Off-Highway Motor Vehicle Recreation Division and the Commission to examine new management and operational strategies for recreation use in CCMA.

I look forward to continued dialogue and progress on finding responsible management solutions that protect the public health and safety, while allowing for use and enjoyment of the CCMA. If you have any further questions please feel free to contact me at (831) 630-5010.

Sincerely,



Rick Cooper

Hollister Field Manager

cc: Daphne Greene, Deputy Director, OHMVR Division