Subject: PROTEST OF DRECP NEPA/CEQA

This PROTEST is filed on behalf of the California Four Wheel Drive Association (CFWDA), a California trail-based recreation group, in regards to the Proposed Land Use Amendment (LUPA) and Final Environmental Impact Statement (FEIS) for the Desert Renewable Energy Conservation Plan (DRECP). (Note: Comments were originally submitted under the name California Association of Four Wheel Drive Clubs.)

CFWDA filed timely comments on the draft Desert Renewable Energy Conservation Plan (DRECP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS). In addition, CFWDA filed timely comments on the West Mojave Route Network Project (WMRNP) and Draft Supplemental Environmental Impact Statement (SEIS). At the time, these were two separate planning processes.

On September 25, 2015, the BLM reopened the comment period on the West Mojave Route Network Project (WMRNP) and Draft Supplemental Environmental Impact Statement (SEIS), which originally closed in June. In that announcement, an illegal nexus was created between the proposed Desert Renewable Energy Conservation Project (DRECP) and the WMRNP.

After reviewing the documents, CFWDA has determined that it is unclear how the LUPA will impact OHV activity in the WMRNP project area.

Cal4Wheel believes the agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions – both inside and outside the WMRNP project area - to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

PROTEST POINTS

a) FAILURE TO DISCLOSE SITE-SPECIFIC EFFECTS OR IMPACTS
b) INCLUDING ARBITRARY GROUND DISTURBANCE CAPS WITH NO VISIBLE ANALYSIS TO DETERMINE VALUES

c) CREATING RESTRICTIVE AND CONTRADICTORY CONSERVATION ZONES WITHOUT SITE-SPECIFIC/PROJECT LEVEL ANALYSIS

**Cal4Wheel commented:** “DRECP is advertised to be a long-term framework utility-scale renewable energy and conservation plan. It should not provide or allow for site-specific or project-specific approval. However, there is language in the programmatic framework that is site/project specific and does make mandated decisions.

Identifying National Conservation Landscape (NCLS) lands or Areas of Critical Environmental Concern (ACEC) or other land/habitat designation, within a programmatic (framework) structure is problematic. Those actions are site/project specific and should be subject to appropriate scoping and public review under the National Environmental Policy Act (NEPA) to determine disclose and analyze the proposed project impact on the natural environment.

CA4WDC is concerned that the final changes in the programmatic (framework) documents will dictate and force a change in the land use management plan that the public has not had the opportunity to adequately review and comment on. For example, final language concerning the ACECs, Conservation Focus Zones and Development Focus Zones may introduce sideboards affecting current designated routes for travel and hamper future OHV route designation/management efforts. This is an decision action under the auspices of the LUPA concerning land use management concepts and must be properly disclosed and analyzed with public involvement as required by NEPA.” (Comments E30-7 through E30-9)

**The Agency response was:** “The DRECP does not make decisions to approve or deny specific projects. It does make decision on land us allocations, allowable uses, and management actions, which are appropriate at a programmatic level.”

The Agencies rely on programmatic or broad-scale analyses to focus the scope of alternatives, environmental effects analysis, and mitigation in subsequent tiered levels of documentation. (“Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 38.)

The Agency acknowledges that the DRECP is a “programmatic” document. Such documents are regional in scope; often crossing political boundaries and covering numerous ecosystems, typically defining a set of policies and maps of possible future uses, the specifics of which are not yet known; range of alternatives includes future land use scenarios, often with differing objectives.
Impact focus is cumulative effect of multiple future activities with mitigation generic.

Guidance defines three analysis Options: 1) Keep it very general; 2) Make analytical assumptions about a maximum level of activity; and 3) Make analytical assumptions about typical activities.

The result is to develop broad environmental policies, programs, or plans that would apply to many future projects, the details and location of which are not yet known.

Cal4Wheel believes the Agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions to approve or deny specific projects based on the management prescriptions assigned to the the various “zones”. That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

As the Agency noted in comment responses, “However, you are correct that the land use allocation decisions in the DRECP would affect future transportation planning, which is appropriate for this programmatic, landscape scale planning document.”

Cal4Wheel believes the land use allocation decisions are appropriate at the site/project level and exceed the guidance for a “programmatic” document as outlined in “Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) p. 38.

Cal4Wheel believes it would be appropriate for the document to define potential Energy Development Zones where broad guidelines are established that would identify lands based on general requirements for development of proposed energy projects. Such future project would then be evaluated used on the defined area the meets site/project specific requirements.

In addition, the numerous zones defined as (collective) “Conservation” Zones (non-development zones) should be defined with broad guidelines and subjected to future evaluation for their appropriate classification as an ACEC, NLCS, or other class based on salient characteristics through site/project level analysis.

The Agency states: “BLM does not agree that designations of ACEC and NCL lands will negatively impact the availability of Special Recreation Permits for competitive and non-competitive events.”
After reviewing the “clarifying language in Appendix L”, Cal4Wheel does not concur with the Agency determination. The DRECP defines SRMA/ERMA lands and the DRECP does define several conservation zones, NCLS lands and some new ACECs.

For analysis, start with a GIS layer of the boundaries and designated (and un-designated) route system. Now, overlay the SRMA layer. That layer does a good job of including the route system. See Attachment 1.

Next, overlay the conservation zones. The route system begins to disappear. Next, overlay the NLCS. The SRMAs and route system are now gone.

This is an example of “zone” conflicts that is apparent within the DRECP. Problematic, and focal to Cal4Wheel nonconcurrance, is the DRECP stipulated that in cases where conflicting zone boundaries occur, the more restrictive (conservative) classification will preside.

This actions is a definitive “project specific” decision that is not appropriate within a “programmatic” document.

To compound the issue, the numerous (collective) conservation zones have ground disturbance levels defined. This is another example where the “programmatic” document creates stipulations that are a pre-determined management prescription that is properly handled at the site/project level analysis.

Cal4Wheel also believes that the highly restrictive “ground disturbance caps” are regressive in nature as they exceed the “Impact focus is cumulative effect of multiple future activities with mitigation generic” guidance of a programatic document.

As an example, the ACECs and NLCS lands are vaguely described with no indication of existing “ground disturbance”. However, caps are arbitrarily applied without an analysis of the existing on-the-ground conditions. This is a site/project specific decision that exceeds the “Impact focus is cumulative effect of multiple future activities with mitigation generic” guidance of a programatic document.

As such, during future site/project level analysis, if it were determined that “ground disturbances” exceeded the arbitrary caps, routes would be closed without appropriate analysis to determine their potential to provide for multiple use tenets of the BLM managed public lands.

Cal4Wheel believes the DRECP, as modified from previous versions, is regressive and limits public participation in future site-specific/project level analysis opportunities. Cal4Wheel objects to the “ground disturbance” caps which are applied in an arbitrary manner. Such specific criteria is not appropriate for a “programmatic” document as they apply limitations that confine future
projects in scope. The agency has exceeded the guidance for a programmatic document in developing the DRECP. The DRECP does make decisions – both inside and outside the WMRNP project area - to approve or deny specific projects based on the management prescriptions or caps assigned to the various “zones” (e.g. SRMA/ERMA/NLCS/ACEC/Conservation/Ground Disturbance Caps, etc.). That action does imply decisions on land use allocations, allowable uses, and management actions, which are beyond the “programmatic” scope of the document at a programmatic level.

REQUESTED REMEDY

CFWDA request the following sequence of alternative remedies:

a) Suspension of further action on the Proposed LUPA and issuance of a supplemental NEPA document to correct the identified NEPA deficiencies created by the eleventh hour nexus between the DRECP and WMRMP.

b) Clarification of our protest points.

c) Removal of the “ground disturbance caps” from the document until they can be appropriately analyzed in a site-specific/project level document.

d) Removal of the ACEC, NLCS and other land classifications that overlap the SRMA designated lands.

e) Consultation with CFWDA and/or other stakeholders, in response to this protest or similar protests filed by the OHV community.

Sincerely,

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Over 50 years advocating for recreation