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 Office of Hearings and Appeals  
 Interior Board of Land Appeals  
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October 17, 2022

IBLA 2017-199	)	DOI-BLM-UT-Y020-2016-0021-EA
	)	
SAN JUAN COUNTY	)	Travel Management
	)	
	)	Affirmed

ORDER\*

San Juan County, Utah, appealed an April 10, 2017, decision record (DR) issued by the Bureau of Land Management’s Monticello Field Office in Utah (BLM). The DR documents BLM’s decision to construct and maintain 13.6 miles of trails designated for mixed used, including non-motorized recreation and off-highway vehicle (OHV) travel, on Federal lands in Recapture Canyon. In the DR, BLM also denied San Juan County’s application for a right-of-way (ROW) grant for an all-terrain vehicle (ATV) trail system in the Canyon, including motorized access to the Canyon bottom.

SUMMARY

BLM has discretion under the Federal Land Policy and Management Act (FLPMA) and its implementing regulations to grant or deny ROWs and to designate trails for recreational uses. The County asserts that by denying its ROW application, BLM violated FLPMA and BLM regulations because it failed to adequately coordinate with the County and ensure consistency with the County’s Master Plan before issuing the DR. The County further alleges that BLM’s decision violates the Americans with Disabilities Act by denying motorized access to the Canyon bottom. As explained below, we conclude that because BLM’s DR is an implementation decision and not a planning decision, there is nothing in FLPMA or BLM’s regulations requiring the coordination and consistency asserted by the County. We also conclude that the County cannot properly challenge BLM’s decision under the Americans with Disabilities Act. We therefore affirm BLM’s decision.

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\* This Order is binding on the parties but does not constitute Board precedent.

## BACKGROUND

Recapture Canyon, in San Juan County, Utah, is used extensively for recreational activities, including hiking, horseback riding, and motorized recreation.<sup>1</sup> The Canyon contains cultural resource sites, which also make the Canyon a popular recreational destination.<sup>2</sup>

In 2006, the County submitted an application to BLM for a ROW grant under Title V of FLPMA<sup>3</sup> to construct and maintain 18.3 miles for an ATV trail system.<sup>4</sup> One of the objectives of the County's proposed trail system was to provide opportunities for riding ATVs in the Canyon's bottom to view cultural resource sites.<sup>5</sup>

In response to illegal trail work that occurred in 2005 at the bottom of the Canyon and that caused damage to six cultural resource sites, in 2007 BLM's Monticello Field Office closed 1,871 acres of public lands in the Canyon to motorized use to protect cultural resources.<sup>6</sup> BLM explained in the closure order that cultural resources "have been adversely impacted, or are at risk for being adversely impacted, by unauthorized trail construction and OHV use."<sup>7</sup>

In 2008 the County revised its ROW application to avoid potential impacts to known cultural resources.<sup>8</sup> The County amended its application again in 2012 to remove four miles of ATV trails due to conflicts with cultural resources identified through BLM's consultations under the National Historic Preservation Act as part of its decision-making process for the County's ROW application.<sup>9</sup> In 2014, in response to input received during the scoping period BLM provided for the County's proposal,<sup>10</sup> the configuration and

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<sup>1</sup> Environmental Assessment, DOI-BLM-UT-Y020-2016-0031-EA, The Recapture Canyon ATV Trails System, San Juan County, Utah at 4 (March 2017) (EA). The EA and related documents can be found at <https://eplanning.blm.gov/eplanning-ui/project/60644/570> (last visited Oct. 17, 2022).

<sup>2</sup> EA at 4.

<sup>3</sup> See 43 U.S.C. § 1761(a) (2018) (providing that the Secretary of the Interior may grant ROWs "over, upon, under, or through" public lands).

<sup>4</sup> EA at 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> Decision Record, Environmental Assessment, DOI-BLM-UT-Y020-2016-0031-EA, The Recapture Canyon ATV Trails System, San Juan County, Utah at 10 (April 2017) (stating that BLM held a 40-day public scoping period in December-January 2013) (DR).

alignment of the proposed trail system was further refined to avoid and minimize impacts on water and cultural resources.<sup>11</sup> Shortly after that, in May 2014, an unauthorized OHV ride occurred in the Canyon, led by a San Juan County Commissioner and others, which damaged eight cultural resource sites.<sup>12</sup>

BLM then prepared an environmental assessment (EA) to assess the potential impacts of the County's proposed ATV trail system. BLM explained that its objectives included developing a sustainable and manageable trail system and reducing unauthorized trails; providing a variety of recreational opportunities; and minimizing impacts to cultural and natural resources while enhancing opportunities for motorized recreation.<sup>13</sup> In the EA, BLM considered six action alternatives, including the County's proposal, and a no-action alternative.<sup>14</sup> Under each action alternative, BLM would lift its 2007 closure order after completing restoration of the damaged cultural resources sites and modify the Monticello Field Office Travel Management Plan to designate the authorized trail system.<sup>15</sup> In the EA, BLM assessed the potential impacts of each alternative on various resources, including cultural resources, paleontology, private residences, recreation, soils, water resources, and wildlife.

BLM published the draft EA for public comment<sup>16</sup> and in 2017 issued the DR now on appeal. In the DR, BLM denied the County's ROW application<sup>17</sup> and, instead, decided BLM would construct and maintain a system of recreational trails. Specifically, BLM approved a mixed-use trail system that "provides a wide range of recreational opportunities for ATVs and full[-]size vehicles, mountain biking, horseback riding, hiking, and viewing and visiting cultural sites."<sup>18</sup> BLM stated that under its decision, it would designate 6.8 miles of motorized trails (5.6 miles for ATV use and 1.2 miles that would accommodate full-size vehicles) and amend the Monticello Field Office Travel Management Plan to incorporate these designations.<sup>19</sup> BLM would also construct three trailheads and lift the 2007 closure following completion of restoration work on the cultural sites that had previously been damaged.<sup>20</sup>

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<sup>11</sup> EA at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *See id.* at 14-53.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *See* DR at 11.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 1; *see also id.* at 2 ("The BLM will be responsible for funding constructing, signing, and monitoring use of the trail system.").

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.*

In the DR, BLM stated that its decision to deny the County's ROW application "stemmed in part from the public comments received that objected to issuing the County a ROW."<sup>21</sup> BLM explained that the mixed-use trail system authorized by its decision would provide for "motorized ATV use in the north end of and on the rim west of Recapture Canyon," but would not include the County's proposed "ATV trail through Recapture Canyon south of the Canyon Bottom Trailhead" or authorize "the construction and maintenance of a non-motorized trail in the canyon bottom."<sup>22</sup> BLM noted, however, that its decision would open the canyon bottom to hiking and horseback use.<sup>23</sup> BLM explained its decision not to authorize trail construction at the bottom of the Canyon to allow for motorized access to the cultural resources there, stating: "The risk in the canyon bottom for impacts to paleontological resources by trail construction or theft will be reduced because construction will not occur and the canyon bottom will not be open to motorized or mechanized use."<sup>24</sup>

BLM stated that its decision "provides for part of the recreational experience as proposed by the County, but it allows for more diverse recreational opportunities and less environmental impact than the County's ROW proposal."<sup>25</sup> BLM further stated that it could construct and administer the trail system and take appropriate action to protect lands and resources if monitoring shows that use of the trail system causes adverse impacts.<sup>26</sup> For these reasons, BLM concluded that "a ROW is unnecessary."<sup>27</sup>

The County timely appealed BLM's denial of its ROW application.<sup>28</sup> The State of Utah and Balance Resources each appealed BLM's decision, but the Board dismissed both appeals for lack of standing.<sup>29</sup> We granted a joint motion to intervene filed by Southern Utah Wilderness Alliance, Grand Canyon Trust, Great Old Broads for Wilderness, and Utah Chapter of the Sierra Club.<sup>30</sup>

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<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 9.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Notice of Appeal (filed May 22, 2017).

<sup>29</sup> *See State of Utah*, 191 IBLA 345 (2017) (dismissing the State's appeal, docketed as 2017-200); Order, IBLA 2017-201, Motion to Dismiss Appeal Granted; Appeal Dismissed (Aug. 17, 2017) (dismissing Balance Resources' appeal).

<sup>30</sup> Order, Motion to Intervene Granted; Extension of Time Requests Granted, as Modified (Oct. 4, 2017).

## ANALYSIS

*Standard of Review and Burden of Proof*

Under FLPMA, BLM has broad discretion to grant or deny ROW applications.<sup>31</sup> When BLM exercises its discretion and acts on an ROW application, the Board will overturn that decision only if BLM “acted in an arbitrary and capricious manner or contrary to law.”<sup>32</sup> We have explained that this means we will affirm a BLM decision approving or rejecting an ROW application “where the record shows that the decision represents a reasoned analysis of the factors involved, made with due regard for the public interest, and where no reason is shown to disturb BLM’s decision.”<sup>33</sup> An appellant bears the burden to show that “BLM committed a material error in its factual analysis or that that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.”<sup>34</sup>

*The County Does Not Show Error in BLM’s Decision*

In its appeal, the County contends that BLM’s decision was improper because it denies motorized access to Recapture Canyon’s bottom, which contains numerous cultural resources sites. The County makes two specific arguments in support of its position: (1) that BLM violated section 202(c)(9) of FLPMA and BLM’s planning regulations because the decision is inconsistent with the County’s Master Plan, and (2) that BLM violated the Americans with Disabilities Act because the decision prevents disabled persons from accessing the Canyon bottom.

In its statement of reasons, the County also adopts the arguments raised by the State of Utah in its now-dismissed appeal, stating that it “refers to” and “incorporates the entirety” of the statement of reasons filed by the State.<sup>35</sup> In that document, the State

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<sup>31</sup> See 43 U.S.C. § 1761(a) (2018); 43 C.F.R. § 2804.26(a) (2021) (describing the circumstances in which BLM may deny an ROW application); see also *Western Watersheds Project*, 188 IBLA 277, 281 (2016) (“It is well established that a decision to grant an ROW under FLPMA is committed to BLM’s discretion . . .”).

<sup>32</sup> *Western Watersheds Project*, 188 IBLA at 281; see also *Las Cruces Transit-Mix, Inc.*, 183 IBLA 52, 56 (2012).

<sup>33</sup> *Bristlecone Alliance*, 179 IBLA 51, 54-55 (2010).

<sup>34</sup> *Id.* at 55 (internal citations omitted); see also *Michael & Edith Lederhause*, 174 IBLA 188, 192 (2008).

<sup>35</sup> Appellant’s Statement of Reasons at 2 (filed June 9, 2017) (SOR).

argued, as does the County, that BLM's decision violates FLPMA because it is inconsistent with the County's Master Plan.<sup>36</sup> We address each of the County's arguments below.

1. BLM did not violate section 202(c)(9) of FLPMA or BLM's planning regulations when it denied the County's ROW application.

The County first argues that BLM violated FLPMA and BLM's regulations because the decision is inconsistent with the County's Master Plan, which "sets forth a comprehensive analysis of existing resources, demographics, enhancements and opportunities existing in San Juan County" and includes "'Goals and Objectives' that provide guidelines for land planning and management."<sup>37</sup> According to the County, BLM's denial of motorized access to the Canyon bottom is inconsistent with the Master Plan because BLM's decision: "thwarts" the County's goal of providing all residents with access to the County's "rich archeological, cultural and architectural treasures residing within its limits";<sup>38</sup> "impairs the County's educational goals by effectively denying access to school children . . . to experience, first hand, the rich cultural heritage of their home county and State";<sup>39</sup> and adversely impacts economic activity in the County "by subverting access to Recapture Canyon and reducing the market for recreational equipment and guiding opportunities."<sup>40</sup>

In support of its argument, the County cites to section 202(c)(9) of FLPMA, which provides that when developing land use plans, BLM must, "to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of . . . the States and local governments within which the lands are located."<sup>41</sup> The County further refers to BLM's planning regulation at 43 C.F.R. § 1610.3-2, which echoes section 202(c)(9) by providing that BLM will, in developing land use plans, coordinate with state and local governments.<sup>42</sup>

As a threshold matter, BLM asserts that because the County did not raise any concerns about consistency with its Master Plan during BLM's decision-making process (scoping and EA development), the County cannot now raise these arguments on appeal.<sup>43</sup> Under our regulations and precedent, where a bureau has provided an

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<sup>36</sup> See IBLA 2017-200, Appellant's Statement of Reasons at 7-10 (dated June 7, 2017).

<sup>37</sup> SOR at 2.

<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.* at 6.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> 43 U.S.C. § 1712(c)(9) (2018); SOR at 4.

<sup>42</sup> SOR at 4-5 (citing 43 C.F.R. § 1610.3-2 (2017)).

<sup>43</sup> Answer to Statement of Reasons at 3, 10 (filed Nov. 29, 2017) (Answer).

opportunity for participation in its decision-making process, the Board's regulations limit a party to raising only issues it raised during that process.<sup>44</sup> We have explained that "[t]he rationale for this rule is that it maintains a logical framework for decision-making within the Department by allowing the initial decision-maker to confront objections to proposed actions before the Board reviews those objections on appeal."<sup>45</sup> Here, BLM states that there is nothing in the record indicating that the County expressed concerns about consistency with its Master Plan either during scoping or the public comment period on the EA,<sup>46</sup> but in any event, BLM determined in the EA that the proposed action and each action alternative was consistent with the County's Master Plan, which includes statements that the County "desire[d] . . . to have routes of travel accessible by motor access to the public lands" and "to provide access throughout the county to meet the needs of both residents and visitors for a wide variety of purposes."<sup>47</sup>

We found nothing in the record submitted by BLM indicating that the County raised consistency with its Master Plan during BLM's decision-making process. However, we assume, without deciding, that the County can properly raise consistency with its Master Plan on appeal because even if we consider the County's argument, we conclude that it lacks merit.

Section 202(c) of FLPMA sets forth specific criteria that the Secretary, through BLM, must consider when developing land use plans. The title of section 202 is "Land use plans," and section (c) specifies nine criteria that the Secretary "shall" follow when developing such plans. Section 202(c)(9), cited by the County, directs the Secretary to "coordinate" with state and local government plans "to the extent consistent" with Federal law. BLM's regulation at 43 C.F.R. § 1610.3-2—in effect at the time of BLM's decision—reiterates this statutory requirement, providing that in developing land use plans, "to the extent consistent with Federal laws and regulations applicable to public lands, coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes."<sup>48</sup>

BLM's decision to deny the County's ROW application, however, is not a land use planning decision and therefore is not governed by these provisions. Instead, the decision is an implementation decision, made in conformance with the applicable land

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<sup>44</sup> See 43 C.F.R. § 4.410(c)(1) (2021); see also, e.g., *Confederated Tribes of the Goshute Reservation*, 190 IBLA 396, 407-08 (2017).

<sup>45</sup> *Confederated Tribes of the Goshute Reservation*, 190 IBLA at 407 (quoting *Western Watersheds Project*, 188 IBLA 234, 248 (2016)).

<sup>46</sup> Answer at 3.

<sup>47</sup> *Id.* at 8 n.3 (quoting EA at 9).

<sup>48</sup> 43 C.F.R. § 1610.3-2(a) (2017).

use plan<sup>49</sup> and under the authority of BLM's regulations governing rights-of-way and travel management (i.e., designation of areas and trails).<sup>50</sup> The Board has specifically explained that section 202(c)(9) does not apply to implementation decisions:

While it is true that under [section 202(c)(9) of] FLPMA BLM must coordinate with and confer with States, Indian tribes, and local governments in order to ensure consistency with State and local plans at the land use planning phase, to the maximum extent consistent with Federal law, . . . this provision does not require such policy coordination with respect to individual decisions implementing actions authorized under an existing management plan.<sup>[51]</sup>

BLM therefore was not required by FLPMA or its planning regulations to coordinate with the County or ensure consistency between its decision and the County's Master Plan, and the County's argument to the contrary is without merit.

2. The County cannot challenge BLM's compliance with the Americans with Disabilities Act.

The County's second argument is that the lack of motorized access to the Canyon bottom runs afoul of the Americans with Disabilities Act.<sup>52</sup> The County appears to acknowledge that the statute does not require that BLM grant the County's ROW

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<sup>49</sup> See DR at 3 (stating that BLM's decision is "in conformance with and consistent with" the Monticello Field Office Record of Decision/Resource Management Plan).

<sup>50</sup> See EA at 8 (citing 43 C.F.R. part 2800 and 43 C.F.R. subpart 8342); see also Respondents-Intervenors' Answer at 6 (filed Dec. 11, 2017) ("BLM was not developing or revising a land-use plan under Title II of FLPMA, 43 U.S.C. § 1712, and BLM's land-use-planning regulations, 43 C.F.R. Part 1600, Subpart 1610, when it denied the County's request for a right-of-way.").

<sup>51</sup> *Owyhee County, Idaho*, 179 IBLA 18, 29 (2010) (quoting *Biodiversity Conservation Alliance*, 174 IBLA 174, 183-84 (2008) (holding that in making a travel management decision designating roads and trails for OHA use BLM was not required to ensure consistency with a County's trail plan); see also *Wyoming Coalition of Local Governments*, 188 IBLA 356, 363 (2016) ("To the extent section 202(c) of FLPMA directs BLM to seek consistency with local land use plans, it applies only to Federal land use planning, not to land use management decisions.").

<sup>52</sup> SOR at 6 (citing 42 U.S.C. §§ 12101-12213); see also *id.* ("The elderly and disabled simply cannot hike to the floor of Recapture Canyon and cannot access it by horseback or by any means other than an ATV or other motor vehicles.").



application, but the County nevertheless asserts that BLM's DR violates "the spirit" of the statute.<sup>53</sup>

As it did with respect to the County's FLPMA argument, BLM contends that because the County did not raise access under the Americans with Disabilities Act during BLM's decision-making process, it cannot raise this issue for the first time in its appeal to the Board.<sup>54</sup> But regardless of whether the County raised access to the Canyon bottom by disabled persons during BLM's decision-making process, we conclude the County cannot properly assert this claim.

This Board has long held, consistent with Federal courts, that "State or local governments do not have standing as *parens patriae* (*i.e.*, a representative of its citizens) to bring an action against the Federal Government."<sup>55</sup> Here, the County claims that BLM's decision prevents County residents from accessing the Canyon bottom.<sup>56</sup> This is an allegation made on behalf of the County's citizens and therefore is precisely the type of claim the County cannot make against the Federal government. The County argues that it is raising its Americans with Disabilities Act claim on its own behalf, stating that BLM's decision impairs the County's efforts to comply with the statute by facilitating access to recreational opportunities by people with disabilities and people with limited mobility.<sup>57</sup> But the County is seeking access to *Federal* lands; yet, the County's compliance with the Americans with Disabilities Act relates to access the County provides to *its own* "services, programs, or activities."<sup>58</sup> The County's attempt to challenge BLM's decision through this statute is therefore unavailing.

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<sup>53</sup> Consolidated Reply at 18 (filed Jan. 8, 2018); *see also* SOR at 6 (stating "it is unclear" that the statute requires BLM to "provide affirmative opportunities for people with disabilities to access Recapture Canyon," but asserting that the statute "prohibits [BLM] from effectively *denying* them access through the denial of San Juan County's application for an ATV trail system").

<sup>54</sup> Answer at 12.

<sup>55</sup> *Board of County Commissioners of Pitkin County*, 186 IBLA 288, 306 n.18 (2015) (citing *Alfred L. Snapp & Son v. P.R.*, 458 U.S. 592, 610 n.16 (1982)).

<sup>56</sup> SOR at 6.

<sup>57</sup> Consolidated Reply at 5.

<sup>58</sup> *See* 42 U.S.C. § 12132 (2018) (prohibiting discrimination against disabled persons "from participation in" or "the benefits of the services, programs, or activities of a public entity"); *id.* § 12131(1) (defining "public entity" as any state or local government, any instrumentality of a state or states or local government, and "the National Railroad Passenger Corporation, and any commuter authority").

CONCLUSION

We conclude that the County has not shown that BLM was required to ensure that its DR is consistent with County's Master Plan and that the County may not assert its claim under the Americans with Disabilities Act. The County, therefore, has not shown any error in BLM's decision, and accordingly, we affirm BLM's April 10, 2017, DR denying the County's ROW application.

\_\_\_\_\_ I concur: \_\_\_\_\_  
Amy B. Sosin Steven J. Lechner  
Administrative Judge Acting Chief Administrative Judge