

**Steens Mountain Advisory Council
Public Lands Access Subcommittee
October 21–22, 2019 Summary Minutes - FINAL**

The Public Lands Access Subcommittee of the Steens Mountain Advisory Council (SMAC) met October 22, 2019, in Hines, Oregon. On October 21, they took a tour on Steens Mountain. In accordance with the provisions of Public Law 92-463, the meeting was open to the public. This document summarizes attendance, discussions that occurred, and decisions made. For the record, it is noted that to avoid a conflict of interest, Council members absent themselves from the meeting when the Council discusses matters in which a conflict of interest may occur.

In Attendance:

SMAC members in attendance

- Ruthie Danielson, Private Landowner Representative
- Eric Hawley, Burns Paiute Tribal Representative
- Rod Klus, Oregon Department of Fish and Wildlife and State Liaison to SMAC
- Fred Otley, Grazing Permittee Representative
- Pete Runnels, Commercial Recreation Permit Holder Representative
- Terry Turner, Fish and Recreational Fishing Representative

SMAC members absent

- None

Vacant SMAC positions

- Environmental interests for the State as a whole Representative
- Environmental interests from the local area Representative
- Grazing Permittee Representative (second position)
- Mechanized/consumptive recreation Representative
- No financial interest in the CMPA Representative
- Wild Horse and Burro Representative

Members of the public

- Rand Campbell, Silvies Valley Ranch
- John F. Helmer, formerly Dispersed Recreation Representative, volunteer caretaker at Riddle Ranch
- Normandy Helmer, volunteer caretaker at Riddle Ranch
- Jake Jakubik, volunteer caretaker at Riddle Ranch
- Leon Pielstick, formerly Wild Horse and Burro Representative
- Tom Sharp, Oregon Cattlemen's Association
- Teresa Wicks, Eastern Oregon Field Coordinator, Portland Audubon
- Kali Wilson, formerly Grazing Permittee Representative

BLM

- Tara Thissell, BLM, Public Affairs Specialist
- Tom Wilcox, BLM, Wilderness Specialist
- Jeff Rose, BLM, Burns District Manager and Designated Federal Official
- Aimee Bruce, BLM, Office Automation Assistant

Housekeeping

Materials:

- Agenda
- SMAC issues of interest from June 2017
- Maps and photos from field trip
- Proposed 2020 SMAC meeting schedule
- July minutes
- Handout from Ruthie discussing the Steens Act

Minutes approved with change noted that Leon was in Reno, not L.A.

Pete is now chairman of the SMAC since John is not an official member.

Recap of Previous Day's Field Trip

Pete asked if anyone had any comments or follow up regarding the field trip.

Leon was glad to see that the cadastral survey moved the line, so the hill at Pike Creek won't have to be cut for the parking lot.

Ruthie was glad to see the work at Threemile Canyon. Seeing it is different than talking about it.

John said it is great to see toilets installed at Fields and Frog Springs. He's disappointed that we couldn't find a way to keep all the development on the other side of Pike Creek. He continues to hear a lot of support for the Penland Horse Camp. He read a letter from Stacy Livermore: "My name is Stacy Livermore. I'm VP of Field Services with Oregon Equestrian Trails. I'm writing to lend support from OET for the proposed horse camp at Penland Road that is being reviewed with SMAC this week. We would be happy to talk with you and members of the Backcountry Horsemen of Oregon about construction of the proposed camp should it be funded...." Lastly, John wanted to encourage BLM to remember to collaborate and inform neighboring landowners whenever possible; in particular, the Stroemples would like to be included in discussions about the Penland facility.

Pete liked that there was such a small change to the footprint in the area of Threemile Canyon.

Rod would like to see the results of the cadastral survey of Home Creek.

Ruthie asked Jeff to explain the term “cadastral survey.”

Jeff replied that a cadastral survey is simply a legal survey. Jeff believes cadastral survey results are put into BLM’s base data for GIS. Tara confirmed that they are, but the survey at Home Creek is not yet in BLM’s system.

Leon asked about progress with land trades with Roaring Springs and access to Home Creek. John replied that there’s no movement on that currently. The landowners are concerned about trespassing, trash, and fire, among other issues. Access at that point is the front door to the canyon and a lot of public lands.

Designated Federal Official Update

Fire:

It was a light season for the Burns District. Sixty fires over 2700 acres. Burns District’s average is 107 fires. This is the second year running they’ve had fewer fires than average. Burns District has been working closely with Rural Fire Protection Associations the last couple years and has been catching smaller fires and getting on top of them quicker. The BLM plans to have the same staffing level next year. Jeff said that Autumn Toelle-Jackson is working on meeting with the landowners on the Steens and identifying their wishes regarding fighting fire on their lands.

Litigation:

The 9th Circuit Court handed the Travel Management Plan back to be retooled. The Burns District is talking to their solicitors. John asked if BLM would expect that SMAC would have a role in redrafting the plans. Jeff said he is not sure what BLM’s direction will be and that one of the main issues was how BLM handled the base data. Once Burns District get its marching orders of what they want us to do to meet the intent of the court order, which was not very specific, the District will be coming back to the SMAC with something.

The BLM decision to reissue the Hammonds’ grazing permit has been challenged. Oral arguments will be on December 19 in Portland. The BLM has filed their initial briefs.

Collaboration:

Regarding private lands, Pete asked if it is just the Moon Hill area or if it is more widespread. Jeff replied that it is just the Moon Hill area. Ruthie asked, if there were a small fire on private property, whether management would be to just automatically put it out. Jeff replied that if there were a fire, BLM would call the landowner and ask how they’d like to deal with it. If the person said they would like BLM not to suppress the fire, BLM would back up but continue monitoring.

Jeff went on to say there’s a group, the High Desert Partnership, that’s been meeting for about four years and looking for where the highest risks of large fires in the county are and researching how they can be mitigated. Ruthie asked Jeff to define “large fire.” Jeff said 100,000 acres or

more but commented on past fires that were 40,000 and 50,000 that he would also consider large fires. The group picked the 100,000 number after Miller Homestead, Holloway, and Long Draw, which were all over 100,000. The BLM is currently working on a project with the High Desert Partnership in the Pueblos involving grazing management and fuel breaks. The other area being looked at is Stinkingwater.

Advisory Councils:

The function and makeup of advisory councils nationwide is being looked at and there is talk about reducing the numbers by combining them. Burns District hasn't heard back from the State Office on this.

As far as Jeff knows, only the SMAC and the MAC (San Juan Islands Monument Advisory Committee) are congressionally designated (in Oregon/Washington). SEORAC is having the same kind of issues with approvals as the SMAC is. The RACs feel more at risk because they aren't congressionally designated. SEORAC has been dealing with Lakeview and Vale Resource Management Plans. Jeff emphasized that although SMAC's input is not official without a quorum, BLM still appreciates it.

Staffing Updates:

- Don Rotell has been selected as the new Andrews/Steens Resource Area Field Manager. He will be reporting on November 24.
- George Orr retires in December; Bill Hart will be replacing him and reports on Monday. George and he will ride together during November and December.

Building Construction:

A new conference room is being added to the front of the Burns BLM building. There will also be a new front entrance.

Nature's Advocate:

Specialist input is still being collected. Burns District is also working with legal counsel. The environmental assessment (EA) will not go out without coming back to SMAC. Hopefully, by next meeting BLM will have something to share.

Steens Act

Previously, John asked Ruthie to review purposes and objectives of the Act. She did some research into the Act. Why is there an Act? Back in the 80s, some people thought that because the public and private landowners had lots of conflicts, an Act was needed. She went back and read some of the original documents and notes that she had from the meetings back then, and it was because the Clinton administration was, potentially, going to be designating the mountain and the area around it as a national monument. The public landowners wondered what that would mean; it was a catalyst to bring people with many different views together to have conversations about options. (Ruthie's perspective was that the designation should be stopped.) The question

was what could be done to show the mountain could be managed in a cooperative manner, with varying interests, and protecting what was there.

In order to designate the wilderness, land exchanges needed to be done. There were two years of negotiations and discussions. At that time, there were eight permitted recreational activities; the one most people are familiar with is the running camp. With that lens, they came up with the purposes. The number one purpose was to maintain the cultural, economic, ecological, and social health in Steens Mountain in Harney County. Ruthie asked, “What does ‘social health’ mean?” Depending on what lenses you’re viewing through, some of the terms in the Act have different interpretations.

Ruthie went on to talk about a subcommittee hearing/meeting from 2002, two years after enactment of the Act. Representative Greg Walden was in Frenchglen and was very interested in how this was going. Fred Otley was in the hearing and spoke to the Act. This is what Fred said:

My testimony will emphasize the functional purposes and objectives of the Steens Mountain Cooperative Management and Protection Act relative to important issues. Four of the thirteen purposes of the Steens Act are specific to making the designation of six wild and scenic rivers and redband trout reserve, the Steens Mountain Wilderness Area, the Wildlands Juniper Area, and the Cooperative Management and Protection area. All the special designations are within the CMP boundary. Four of the thirteen purposes are process purposes creating the Steens Mountain Advisory Committee, authorizing land exchanges, land purchases, and nondevelopment easements, and authorizing uses consistent with the Act. The five remaining purposes are functional, directive purposes. The first directive purpose of the Act was to maintain the cultural, economic, ecological and social health of the Steens Mountain area in Harney County. The second functional, directive purpose is number 5 and that’s to provide for and expand cooperative management activities between public and private landowners. The third directive is “(10) To maintain and enhance cooperative and innovative management practices between the public and private managers in the Cooperative Management and Protection Area,” and the fourth, number 11, is to promote viable and sustainable grazing and recreation operations on private and public lands. The fifth and last functional directive is to conserve, protect, and manage for healthy watersheds and long-term ecological integrity of Steens Mountain.”

He goes on to say, “I suggest these primary and functional purposes are balanced and specific to include ecological, economic, and social interests together.” He points out that cooperative joining together and trying to come to a common solution with very different lenses, in such lies our challenge.

The objectives are a subset of the purposes. Ruthie read objectives 1–5 in Section 102(b) of the Act. When you go through the rest of the Act there are very specific items to the inholders, very specific items to wilderness, and very specific items to the various groups. They were trying to put that all together without being very prescriptive in hopes that there wouldn’t be a lot of

lawsuits. Ruthie tried to find out why they weren't more specific. For example, if you have inholder land, the Steens Act says access will be reasonable, but it's in wilderness, and if you read the Wilderness Act there's conflict. Ruthie found some written documents from Stacy Davies where he was asked that specific question. The reason he said they didn't put those specific items in was because if they had listed one, they would have had to list them all. He said they thought they used language that everybody would understand.

John wanted to remind everybody that Peter Walker did a history of SMAC and the Steens Act, and he promised SMAC a summary, which has not been forthcoming.

John also said the science around human memory shows humans have very faulty memories. It's difficult even two years after the Act to read what you found and see Walden saying, "Well, when I said 'reasonable,' I knew I meant this." John's not saying anybody isn't telling the truth, but it's hard to go back and ask the framers. What we really have is the language of the Act that we have to work with. Ruthie agrees that if you only read sections of the Act, you could come up with a different view. SMAC's challenge is to read and understand all that's in the Act and continue to try to balance all that is in the Act. How do you balance the private landowner's rights with the increase in public coming to the public area next to the private land? You must make facilities for them. Does that change the character?

Terry commented that if you take the Act as a whole, collaborative management is all through it and is the overriding message. None of the other designations, like the wilderness area and the national monument, allow for as much flexibility as they put in the Act. The overall message is sustainable use and collaborative management of all aspects.

Ruthie said when you get to the specific issues being dealt with now, it's more difficult; the Act says nothing in this Act shall affect any existing right.

The Steens Act was purposely written to be nonspecific, whereas a monument designation is very specific. The intent was to make it cooperative for future generations.

Inholder access was front and center 20 years ago. Now, 20 years later, SMAC is still having discussions about access and what "reasonable" means.

One of the items that was talked about in the past was changing the legislation to make it clearer. If you can't agree, you can either go to court or change the legislation. There was a lot of discussion of that in the past by all the groups. All the groups agreed not to legislatively change the Act. John noted that ~~agreed~~ litigation doesn't always answer the question.

Jeff said BLM's mission is to manage all resources - multiple-use management, for sustainable use - but that doesn't mean all uses on all acres all the time. Inherently, there's conflict in the mission.

Jeff asked what the group expects the BLM to do with SMAC input. Terry said that if BLM asks SMAC for a recommendation and BLM doesn't follow it, they should give the SMAC an explanation. Ruthie agreed and said that often her statements are based on feedback she gets from her constituents, not her own opinion. John expects BLM to follow SMAC's recommendations if SMAC has done their job right, but acknowledges they need input from the experts to inform them, and sometimes they ask BLM to push the envelope.

Jeff asked if the expectation of the advisory committee is to just advise the BLM (small scale) or to influence legislation (larger scale). Jeff's sphere of influence is limited to ~~here~~ Burns BLM.

John said going into the inholder issue, SMAC was looking at the legislative route. They also tried to connect with the landowners to try to come up with some solutions for BLM.

Jeff said we need to be able to be honest when something can't be done administratively, but that doesn't mean the discussion is over, just that BLM may not be able to do more. Jeff brought up an example involving the High Desert Partnership in which policy said not to do something but doing it would ultimately benefit the area.

Two years ago, SMAC had a lot of ambition, a lot of energy. John feels like SMAC has been hamstrung by the lack of appointments and quorums.

Kali asked for clarification of the Hatch Act. Jeff answered that the Hatch Act has a lot of pieces, and one part is that he's not allowed, as a government employee, to lobby the government to change legislation. He's expected to implement the laws that Congress passes. He is not, in any manner, advocating that SMAC become a lobbying group.

Round Table

Ruthie has been trying to solicit individuals to apply for vacant SMAC positions. She has also been researching documentation of the intentions of the various sections of the Steens Act; she plans to look for Washington D.C. records.

Terry did research on the work that has been done in the Basin on redband trout. Dave Banks at Oregon Department of Fish and Wildlife (ODFW) issued a comprehensive management plan in collaboration with the Department of Fish and Wildlife (USFW) and BLM Fish Biologists about the health of populations in the Malheur Basin. Fish populations are designated by species management units. The Malheur Basin Management Unit is unique due to its isolation. Of the populations discussed in the paper, the Riddle Sub-management Unit and the Blitzen Management Unit are the healthiest. There are opportunities to work on habitat and fish passage barriers. If the group is interested, Terry could get a more detailed update or get someone else to come in to talk about things that might be done to improve the resiliency and health of those fish populations.

Fred has been dealing with water issues on the State end. He is continually amazed that watershed management gets lost so often. Basic functions that affect aquatic, ecological, economic, and biological uses of the land and surface and groundwater issues. In the management plan, the BLM must coordinate on an ongoing basis with the tribe, the State, the county, and other Federal agencies. In the Steens Act, they must also coordinate with private landowners. He said private landowners are elevated in the Steens Act as a partner, and that gets lost.

Rod said USFW has been collaring deer in the Steens for two years, mostly on the 205, Silvies Unit, and that area. They'll probably wrap that up in the next year or two. USFW also recently put 150 radio collars on pronghorn, 37 of those in the Steens. The purpose is an overall study of connectedness and movements.

The sage-grouse population report came out, and he sent it to the group the morning of the SMAC meeting. This is the third consecutive year of population decline. There are a few possibilities of why this may be happening:

- The late winter/spring may have affected male attendance at the leks
- Unusually high overwinter mortality
- Sagebrush may have had less nutrition due to drought the last couple years, starving the birds

Pete said running camp went well this year.

Eric informed everyone that Cecil Dick is now the Chairperson for the Burns Paiute Tribe.

John said people love Steens Mountain; they love how wild it is and want it to keep its wild character. He thanked Tom for managing the graveling of the road so well. He said there's been a lot of conversation among Riddle Ranch caretakers who'd like to be more helpful in interpretation and preservation of Riddle Ranch, so he thinks there'll be some additional activity in that area.

Ruthie asked if BLM has counters on the road. Tom said the road count numbers from 2018 went down four percent. Ruthie said she's seeing a lot more bicyclists with fat tires. Concerning the counters, Tom said anything that's made of metal will register on the roads. Fred would like to discuss placement and type of counters at a future meeting.

John gave some background on the inholder teams and the work they'd done previously. SMAC was working with Paul Davis on the Pike Creek issue and came to the conclusion that they had done what they could; they were not crafting a workable compromise that would yield some kind of a land trade or purchase, and SMAC thought that BLM just needed to move forward with the rights to access that they have.

They have four remaining groups; SMAC is talking with Nature's Advocate, Roaring Springs, George Stroemple, and Dave Haugeberg. Dave Haugeberg was, to some extent, paired with the Paul Davis situation, and now that SMAC is no longer trying to resolve the Pike Creek issue, Dave has his own way of addressing the situation, and SMAC's feeling is they're still supportive and interested but it's not something they need to actively be involved in.

Stacy Davies, on behalf of Roaring Springs, responded that he would like to work with SMAC on a land trade (he has no interest in purchase). On John's plate were Home Creek and maybe some other access issues. A long time went by with Stacy not ready to talk about specifics; more recently, he and John had a discussion, and Stacy feels that the administrative processes of land trades and sales are just too slow and the restrictions around fair market value are too restrictive. John doesn't think it looks like a positive route forward. If SMAC were to go the route of legislation, which opens much wider possibilities, then Stacy would be back at the table. If, as a group, SMAC wants to talk about just Home Creek in the future, that might be something they could talk to Stacy about.

Moving on to Nature's Advocate, SMAC made quite a bit of progress working with Colby Marshall, but the group's lead and font of information was Owyhee (working with Karl). John feels that SMAC took a big hit when they lost both people, although Leon has stepped in. This one was about looking for a trade for land in the Silvies Valley. Having looked at the property that would be traded out and traded for, to John it looked like there was a deal to be made. Then, in July, John felt some of Scott Campbell's conversations were a splash of cold water on the project. Scott said the land is in the names of his sons, and they're enjoying the property. When asked if SMAC should work on this, his reply was there's a price for everything, everything's for sale. Right now, SMAC doesn't have that many people to work on this, and John doesn't know how strong the interest is on the part of Nature's Advocate.

Rand Campbell replied it's always an option. They are happy with the property, and his parents are getting older. They're not interested in spending more money to get an appraisal. They don't want to spend their money and have the whole thing peter out again.

The last inholder John briefed the committee on was the Stroemple property that he'd been leading the discussion for. There was a concerted effort back in 2012 to acquire those properties, but there turned out to be a fundamental disagreement about the valuation of the property. At this point, George's interest is strictly purchase, not trade. The Nature Conservancy expressed an interest and has started to do some work on it. John cannot report that they're all in, by any means, but they've had some real estate people working on it; George forwarded the 2012 assessment to the Nature Conservancy. The Nature Conservancy also will not pay more than fair market value. Discussion now is about a completely new appraisal so all parties can be in agreement about who will do the appraisal and what the protocols will be so they can accept the appraisal and not have a repeat of 2012. A lot depends on how the assessment comes out. It could be that George values the property more than fair market price.

Lastly, John talked about the reasonable access for reasonable use document dated August 2019. This effort grew out of SMAC's consideration of the Nature's Advocate EA. Back in 2013, Nature's Advocate asked for a level of access to an inholding, and SMAC did quite a bit of work looking at the alternatives and came up with its own alternative and, along the way, started to examine the language of the Steens Act and the language of the Wilderness Act around access to private property. They ended up doing quite a bit of work that was summarized in the introduction to alternative C of the Nature's Advocate EA. In July, SMAC decided to take their work and create a separate document so SMAC could have something to pick up and use again in the future. SMAC was influenced by Jeff saying he likes documents to show the analysis. Don't just say here is our recommendation - what did you use as your rationale? John took on the task of taking the introduction to alternative C and SMAC's notes and putting them in a document (which he sent on August 16). John made no attempt to go farther than what was already done. SMAC heard from George Stroemple's attorney recently through a letter with some input on how he sees these issues. Having a document gives other people the opportunity to weigh in and say what they think. This should be a live document that SMAC can pick up the next time they have an access issue.

Ruthie asked who was on the subcommittee. John couldn't remember all the members' names but said that the subcommittee delivered the document to SMAC, so SMAC's input was included as well. John will find the names.

One of the fundamental things that SMAC grappled with was what does one do when the Steens Act and the Wilderness Act are in conflict. Specifically, the Wilderness Act calls for adequate access, and the Steens Act calls for reasonable access. SMAC was aware of the principle that if a piece of legislation is more recent and more directly applicable to the situation then it is presumed that legislation was created knowing the older legislation existed, so if it differs, it differs intentionally, and it takes precedent. Congress presumably knew there was a Wilderness Act when they passed the Steens Act, yet they passed something with different language. Well into SMAC's discussion of the language of the Acts, Owyhee, reading through the IBLA judgement of the case involving the Sierra Club, found the paragraph that's at the bottom of page one. Basically, the judge said that the Steens Act was presumably enacted knowing the Wilderness Act existed and the Steens Act grants access that's different from, potentially broader than, the Wilderness Act, but also, it doesn't mean no holds barred, anything goes.

Leon wondered what the status/authority of IBLA was - how much weight their decisions have. John said he doesn't know, it's a judge giving us some guidance on this topic. It is a legal decision.

Jeff said the 9th Circuit is the authority when you go back to the Travel Management Plan. IBLA is an administrative court for administrative process and works for the Department of the Secretary. If people aren't happy with IBLA's decision, they can go to District Court.

Ruthie said another interesting piece that she found was that there's reference to this IBLA decision back in 2002. She's not sure it was this decision, but in the text of the subcommittee hearing they were talking about the IBLA decision specifically dealing with Wilderness versus the Act, so that was part of the discussion in drafting the Act. Ruthie said she needs to do more research there, but it was interesting that those discussions had taken place. Through time, we've lost them. John replied we've lost them, but they also were not reflected in the Act itself. He spoke about the congressional oversight committee meeting in 2002 in Frenchglen, just two years after the Act, wrestling with what people meant, and Walden saying, "When I said it was alright to say reasonable, I meant historical." Even just two years after the Act, you have people trying to recollect what their intent was around using a vague word and not defining it.

John continued with the top of page two where SMAC said that given the primacy of the Steens Act, reasonable access for reasonable use has to be met first, but SMAC also respects the Wilderness Act and decisions should try to stay true to the intent of the Wilderness Act whenever possible. Then the document gets into asking what does reasonable mean. Reasonable is not defined in the Act. SMAC said, lacking any other guidance, they were going to use the most common sort of dictionary definition of reasonable, which contains concepts like not extreme or excessive, fair, and moderate. Then the document gets into perhaps one of the trickiest topics – what is reasonable use? SMAC found language in the Steens Act at 122(a) that says development on public and private lands within the boundaries of the CMPA that is different from the current character and uses of the land is inconsistent with this Act. This is an active area of SMAC discussion. Having just reviewed the Steens Act, you can pick phrases out and go in a number of directions. Maybe the council should not try to determine reasonable use and rather accept that any use that complies with local land use laws is reasonable. That's more or less the case Rand was making.

As with use, the Steens Act doesn't define reasonable access. One of John's follow up questions to Rand was "How might we think about this?" What SMAC came up with was one needs to meet the needs of the reasonable use, but one doesn't need to go beyond that. Provide access that serves the reasonable use but that is at the minimum or lowest impact that it can be and that upholds the intent of the Steens Act.

The first step would be to determine if it's reasonable use. Then, if it's reasonable use, what is reasonable access? Reasonable access is access that sufficiently serves what has been determined as reasonable use and is not extreme or excessive and is consistent with the purposes and objectives of the Steens Act. In this context, reasonable access might be thought of as the minimum or lowest impact access sufficient to serve a reasonable use.

The last paragraph of the document acknowledges that different people will have different definitions and SMAC will continue to learn. It might make sense to share it with some constituents now and ask them what they think, then take their suggestions and have SMAC look at the document again. John thinks SMAC should put a date on the current version, say it's good

as of this date, and then share it. Then the next version can consider some of the constituents' comments.

Fred had some ideas about what reasonable use is in respect to reasonable access. In Section 102, which he wrote most of, the purpose is ecological integrity. He wrote that purpose, which was reviewed by 12 to 15 different scientists that finished refining the language. Under subsection (b), Objectives, it reads "...the secretary shall manage the Cooperative Management and Protection Area for the benefit of present and future generations...." Fred emphasized that means the broader public but also the people that live and that earn their livings on the mountain. He went on to describe each of the subsections.

- (1) to maintain and enhance cooperative and innovative management projects, programs and agreements between tribal, public, and private interests in the Cooperative Management and Protection Area;
- (2) to promote grazing, recreation, historic, and other uses that are sustainable;
- (3) to conserve, protect and to ensure traditional access to cultural, gathering, religious, and archaeological sites by the Burns Paiute Tribe on Federal lands and to promote cooperation with private landowners;
- (4) to ensure the conservation, protection, and improved management of the ecological, social, and economic environment of the Cooperative Management and Protection Area, including geological, biological, wildlife, riparian, and scenic resources; and
- (5) to promote and foster cooperation, communication, and understanding and to reduce conflict between Steens Mountain users and interests.

Fred noted that for today's discussion subsection 4 is particularly important; ensuring that the social and economic environments of the CMPA are met is a part of reasonable use. He said it's part of the use generally of public lands, but it's very specific to the use of private landowners and their access. He added that subsection 5 is an objective that brings together the private and the public and is tied in with reasonable use. In Section 111(a)(1), Section 102(b)(4) is repeated. It's vital that the economic uses of the mountain are a part; the creators of the Act were not trying to decrease or restrict or erode, they wanted to improve the economic environment along with the environment of the Steens Mountain. To Fred, that needs to be built into reasonable use and reasonable access.

Ruthie read Section 112(d)(1), Roads and Travel Access, "Prohibition, Exception.— No new road or trail for motorized or mechanized vehicles may be constructed on Federal lands in the Cooperative Management and Protection Area unless the Secretary determines that the road or trail is necessary for public safety or protection of the environment. Any determination under this subsection shall be made in consultation with the advisory council and the public." To Ruthie what this says is we need to work together to try and hammer out those exceptions that we know exist to try to protect the private property rights in the laws of the State of Oregon and to protect the wilderness areas that we currently have. It adds to the polarizing tensions of this topic. She

thinks SMAC should carry this forward with more conversation and try to bridge those inconsistencies.

Unidentified speaker: Prohibition. I read that as on public lands, but if you go into 112(e) Access to Non-federally Owned Lands, it says “The Secretary shall provide reasonable access to non-federally owned lands and interests within the boundaries of the Cooperative Management and Protection Area and Wilderness Area to provide the owner of the land or interest the reasonable use thereof.”

Ruthie agreed and added the Act includes both statements, so how do we bridge that for those that really are trying to protect the wilderness and what the Wilderness Act represents and those that are looking at it from a private property perspective?

John said if we are improving the road elsewhere and abandoning some other road, the greater good is accomplished, but it is a balancing act and runs the danger of establishing precedent.

Fred added that reasonable access also has to do with maintenance necessary for achieving that access. Maintenance has two different parts to it; maintenance necessary to achieve the use thereof and maintenance to prevent damage. The reason he separates the two is you could have an old, closed road with a ditch and a watershed problem; if you don't build a short road or allow for proper maintenance of a main route you may have unintended consequences including disintegration of the road and ecological damage. It comes back to a little bit of balance.

John thinks SMAC's treatment of the Nature's Advocate EA is a good example of what Fred said. The original access request meant a pretty extreme level of road maintenance, but SMAC discussed having some access in exchange for a lower level of maintenance and abandoning use of another access point. Their solution was both acceptable to Nature's Advocate's representative and caused less disturbance than the original request.

Tara said it sounds like right now we are going to take the document as it is, and the committee is going to share it with their constituents and get feedback. We'll plan on revisiting this in the next meeting.

John will send the document after putting a date on it. He will share it via email with a list of 82 people who have expressed interest in SMAC.

Ruthie requested that the meeting minutes be distributed sooner.

Jeff said that he thinks Ruthie identified the base issue that BLM is struggling with right now in the Steens Act. The Steens Act says no new roads. Period. That's where BLM is struggling internally. But that's not all the Steens Act says. Everybody picks different pieces, but we're committed to moving this through the process. SMAC has committed a lot of time to it, and Jeff

respects that. The BLM will keep SMAC abreast of where they go. Jeff asked John to put “draft” on his document so people will understand it’s not final.

Public Comment

Rand had two comments on reasonable access and reasonable use. Oregon has a progressive land use system to protect State resources and the environment. Rand urged the committee, when considering reasonable access, to consider how State and Federal laws intersect and how that might cause unintended consequences to the landowners, particularly those in the Steens area. For instance, if State law requires that you pour a cement foundation for a dwelling but then the Steens Act won’t allow you to build a road that will allow you to get cement to the property, then you have unintended consequences that you can’t build the building because you can’t meet the State requirement. It wasn’t the purpose of the Steens Act to stop the landowner from building that building, but the State law requires that you meet certain requirements to build a building and the Steens Act doesn’t allow you to build the road that would allow you to get the materials there, basically taking property interest from the landowner.

He also believes reasonable access should accommodate all people, regardless of their physical condition. Roads get degraded over time.

Fred commented that a lot of roads were made for different uses. A road may not get used for a while and then later may get used for something else. The historical use is forgotten, and because use has declined, the road declines; then, because there’s no maintenance, it declines more. Maintenance and the original conditions of the roads are vital.

Rand added that the further you go down on Cold Springs Road, the lower quality the road is. The road is in terrible condition now, but it wasn’t that way when the Steens Act was created.

Fred said that the grazing permittee use of the area on Cold Springs Road ended with the Steens Act, but the landowner shouldn’t be penalized when the road was originally in a condition to be utilized by even a two-wheel drive vehicle.

John asked if Rand’s position is that the State laws’ allowable uses should be considered reasonable uses?

Rand replied that you can’t build in wilderness, but if you have private land, it’s State land. You pay taxes to the State on it. You should be able to use that as State law permits. You need to have access to meet those uses. If you’re reasonably using your State land, then reasonable access means whatever kind of access you need to meet the State land use laws.

Ruthie brought up Section 4, which says “Nothing in this Act shall affect any valid, existing right.” Under purposes and objectives of the cooperative management area, Section 122(d)

Relation to Private Property Rights and State and Local Law, “Nothing in this Act is intended to affect rights or interests in real property or supersede State law.”

Teresa Wicks said if roads were built in Steens Wilderness that would set a precedent. She encourages the committee to think about what that could mean on a National level. How do you make sure you’re not creating a much larger problem? Also, if you build a road, how will you make sure access to that road is limited? How do you manage how that road is being used by the public, not just by the private landowner?

John asked if she thought that same danger of setting a precedent would be there if the legislation was coming from the Steens Act rather than the Wilderness Act.

Teresa believes if the Steens Act is allowed to override the Wilderness Act, a precedent will be set such that other laws can override the Wilderness Act. Theresa added that there are also a lot of environmental and conservation laws, and those laws should also be influencing what’s considered reasonable use and reasonable access. She doesn’t believe building a new road in wilderness is reasonable.

Leon asked how she would effect reasonable access for the inholder?

Teresa’s interpretation is a private road is being built on public wilderness. Is the proposal really to build a private road on public land?

Fred said part of the reason the SMAC proposed the alternative they did was it was a shorter route. He asked if Theresa’s comment was only about a new road or also about maintenance?

Teresa clarified that if a new road were built, it would bolster building new roads elsewhere. She said that’s an unintended consequence that needs serious consideration.

Tom Sharp is concerned that SMAC doesn’t have a quorum because he thinks a diverse perspective is important to the group as they work on difficult and controversial issues. He feels like SMAC is being asked to do things unofficially, with one hand tied. He intends to support SMAC through conversations with Oregon Cattlemen’s Association.

Normandy thanked Rand for mentioning access for people with mobility issues. She is thrilled that Kiger Overlook is getting more accessible treatment. She said the U.S. has an obligation to the disabled.

Normandy went on to say she feels like the Steens Act is a pilot project. An important thing that SMAC can do is to write a user’s guide to managing the mountain and document the conversations they’re having so people can refer to the guide and not have to rehash the same issues. She suggested that “historic” is another word that should be reviewed and discussed. She

believes social management is a key aspect, because we're all neighbors and want to see the mountain thrive.

Jake is from central Oregon and said he's seeing the deterioration of excessive overuse in central Oregon. He hopes things go forward to prevent that from happening here. He observed at Riddle Ranch that the caretakers there, from his perspective, are among the few people that have contact with the public constantly. They're talking to people every day. He would like to see a little more feedback from the caretakers into what's going on and get that information back to SMAC so SMAC can have a better sense of what's going on up there.

Review of SMAC Issues of Interest

Tara provided a copy of the SMAC issues of interest compiled at a previous meeting. There was a lot of interest in resolving WSAs, but SMAC felt they didn't have the capacity to take on more. Kali didn't realize that some had been converted. She thinks that SMAC needs to get ahead of that; what does SMAC want to see happen? Apart from wilderness study area designation, what about what takes place in them? The North Steens Environmental Impact Statement has been delayed for years; part of it's being implemented, part not.

Ruthie thinks getting the SMAC to function should be the first priority. Then SMAC can reexamine the issue list. Maybe a subcommittee meeting in between the official meetings would help.

John agrees the committee is troubled by not having a quorum.

Fred's priority would be to help BLM bring fire back to the mountain as a tool. He said we're going to lose the progress made in the last 20 years unless we help BLM to be able to use fire to protect from the threat of a catastrophic wildfire and to help protect sage-grouse and other wildlife. If it keeps going like it is, one of two things will happen: watershed erosion due to juniper dominance or a massive wildfire, allowing more of the mountain to be overtaken by medusahead or cheatgrass. The BLM's hands have been tied locally. Fred encourages SMAC to help get the change through supportive documents, letters, and brainstorming how they look at these things.

John moved that SMAC accepts that numbers 1 and 3 (land exchange and SMAC authority and functioning) are what they are working on. The motion was seconded.

Jeff suggested that at each meeting BLM could provide some information about the basic functioning of the BLM, starting with WSAs. Someone brought up NEPA training.

Next Meeting

Tara sent out a proposed 2020 meeting calendar. After feedback from SMAC, Tara decided to send out a new poll with Thursday/Friday dates. February's meeting will be on the 13th in Bend.

Agenda items for Bend meeting:

- Wilderness and WSAs
- Terry on resiliency and health of fish populations
- Progress reports on some on-the-ground developments
- Recreation statistics update
- Progress report on Nature's Advocate EA
- Public access at Home Creek
- Steens Act topic: Discussion led by Fred about historic and economic uses on the Steens
- Dark Skies designation – invite Teresa Wicks and Tom Wilcox to brief SMAC

John moved to adjourn. Ruthie seconded.