

MolenReef

**A RECOMMENDED PROPOSAL FOR AMENDING THE PUBLIC LANDS SECTION OF THE EMERY COUNTY GENERAL PLAN TO CLARIFY LONGSTANDING POLICIES FOR THAT GEOGRAPHIC REGION OF EMERY COUNTY DESCRIBED BELOW AND HEREINAFTER REFERRED TO AS THE “MOLEN REEF REGION.”**

WHEREAS, Emery County has a general plan adopted pursuant to Utah Code containing policies for the appropriate use of private and public land within the county; and

WHEREAS, Emery County desires to supplement its general plan to clarify long-standing policies specific to certain geographic regions of the county as the need arises; and

WHEREAS, the Emery County Public Lands Department has recommended certain amendments associated with lands in the Molen Reef region of the county; and

WHEREAS, the Emery County Planning Commission has reviewed and concurs with the recommendation of the Public Land Use Committee;

NOW, THEREFORE, THE EMERY COUNTY PLANNING COMMISSION PROPOSES THAT THE EMERY COUNTY GENERAL PLAN BE AMENDED BY INSERTING THE FOLLOWING AT THE END OF THE PUBLIC LANDS SECTION OF THAT PLAN:

# **CLARIFICATION OF EMERY COUNTY'S ONGOING PLAN FOR MANAGING CERTAIN LANDS IN THE MOLEN REEF REGION OF THE COUNTY**

## **SECTION 1.      Subject Lands.**

This plan clarification applies to areas of land located in any townships and ranges of Southwestern Emery County, which an organization by the name of the Utah Wilderness Coalition ("UWC") has purported to include in its so-called "Citizen's Proposal for Wilderness in Utah" for their so-called Book Cliffs Region, according to the map thereof set forth in the UWC internet web site, address [http://www.protectwildutah.org/proposal /index](http://www.protectwildutah.org/proposal/index), as it exists on April 15, 2007, including the following areas labeled as follows in the Book Cliffs Region portion of the said UWC internet web site:

- Molen Reef, located in parts of:

T21S R7E

Sections 33, 34, and 35.

T22S R6E

Sections 12, 13, 23, 24, 25, 26, and 35.

T22S R7E

Sections 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35.

T22S R8E

Sections 6, 7, 8, 9, 15, 17, 18, 19, 20, 21, 22, 28, 29, 30, and 31.

T23S R6E

Sections 1, 12, and 13.

T23S R7E

Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 17.

T23S R8E

Sections 5 and 6.

For purposes of this plan clarification, all of the above-described lands are collectively referred to herein as the "Molen Reef Region," and are illustrated more fully in the official map attached

hereto. Any reference hereafter to the term “Molen Reef Region” shall refer to any and all of the above-described land areas.

**SECTION 2.**            **Clarification of Ongoing Plan.**

It is Emery County’s intent and purpose to clarify the public land use policies within the Emery County General Plan to include this supplement pertaining to the Molen Reef Region. These policies are intended to supplement the general plan policies that apply county-wide. Emery County declares its plan for the subject region to be as follows:

**SECTION 3.**                            **Achieve and Maintain A Continuing Yield of Mineral Resources In The Molen Reef Region At The Highest Reasonably Sustainable Levels.**

- Development of the solid, fluid and gaseous mineral resources in the Molen Reef Region is an important part of the economy of Emery County.
- Emery County recognizes that it is technically feasible to access mineral and energy resources while preserving non-mineral and non-energy resources.
- All available solid, fluid and gaseous mineral resources in the Molen Reef Region should be seriously considered for development.
- Lands shown to have reasonable mineral potential in the Molen Reef Region should be open to oil and gas leasing with stipulations and conditions that will protect the lands against unreasonable and irreparable damage to other significant resource values. This should include reasonable and effective mitigation and reclamation measures and bonding for such where necessary.
- The waste of fluid and gaseous minerals should be prohibited.
- Any previous lease restrictions in the Molen Reef Region that are no longer necessary or effective should be modified, waived or removed.
- Restrictions against surface occupancy should be modified, waived or if necessary removed where it is shown that directional drilling is not ecologically necessary, where directional drilling is not feasible from an economic or engineering standpoint, or where it is shown that directional drilling will in effect sterilize the mineral and energy resources beneath the area.





outdoor recreational opportunities in the Molen Reef Region have been open and accessible to working class families, to families with small children, to the sick and persons with disabilities, to the middle aged and elderly, to persons of different cultures for whom a “primitive solitary hike” may not be the preferred form of recreating, and to the economically disadvantaged and underprivileged who lack the money and ability to take the time off work necessary to get outfitted for a multi-day “primitive hike” to reach those destinations. All of society should not be forced to participate in a “solitude experience” or a “primitive experience” as the one and only mode of outdoor recreation in the Molen Reef Region.

- Any segment of society, for that matter, who want to recreate in the Molen Reef Region are entitled to motorized access to that recreation if they desire it, and are entitled to all traditional forms of outdoor recreation if they desire it. They should not have to hike into the outdoor recreational destinations in the Molen Reef Region if they do not want to or are physically unable or cannot afford such an activity.
- Hence Emery County’s plan calls for continued public motorized access to all traditional outdoor recreational destinations in all areas of the Molen Reef Region for all such segments of the public. Emery County specifically opposes restricting outdoor recreation in the Molen Reef Region to just one form - available for those who have enough time, money and athletic ability to hike into the destinations of the Molen Reef Region for a so-called “solitude wilderness experience” or the like.
- Accordingly, all roads in the Molen Reef Region that are part of Emery County’s duly adopted transportation plan should remain open to motorized travel. None of them should be closed, and Emery County should have the continued ability to maintain and repair those roads, and where reasonably necessary make improvements thereon. All motorized trails in the Molen Reef Region that have been designated open to OHV use in the 2003 BLM San Rafael Route Designation Plan should continue to remain open. Traditional levels of wildlife hunting and fishing should continue. Traditional levels of group camping, group day use and all other traditional forms of outdoor recreation - motorized and non-motorized - should continue.

**SECTION 7.**                      **Maintain and Keep Open All Roads in the Molen Reef Region That Appear On Emery County’s Most Recent Transportation Map, and Provide For Such Additional Roads and Trails As May Be Necessary From Time to Time.**

- Emery County’s transportation plan includes an official county-wide transportation map, available to the public for viewing and copying, showing all County B and D roads.
- That portion of Emery County’s official transportation map which shows all County B and D roads in the Molen Reef Region is considered to be part of Emery County’s plan

specifically applicable to the Molen Reef Region. All such public roads are shown in the attached official map.

- Emery County plans to keep all such roads in the Molen Reef Region open and reasonably maintained and in good repair. Emery County will consult with the BLM about any required improvements to such roads, reserving the right to request court intervention and relief in the event Emery County and BLM cannot reach an agreement on such proposed improvements after reasonable efforts at consultation.
- Additional roads and trails may be needed in the Molen Reef Region from time to time to facilitate reasonable access to a broad range of resources and opportunities throughout the Molen Reef Region, including livestock operations and improvements, solid, fluid and gaseous mineral operations, recreational opportunities and operations, search and rescue needs, other public safety needs, access to public lands for people with disabilities and the elderly, and access to Utah school and institutional trust lands in the Molen Reef Region to accomplish the purposes of those lands.

**SECTION 8.**                    **Manage the Molen Reef Region So As to Protect Prehistoric Rock Art, Three Dimensional Structures and Other Artifacts and Sites Recognized as Culturally Important and Significant By the State Historic Preservation Officer.**

- Reasonable mineral development in the Molen Reef Region can occur while at the same time protecting prehistoric rock art, three- dimensional structures and other artifacts and sites recognized as culturally important and significant by the state historic preservation officer.
- Reasonable and effective stipulations and conditions to protect against damage to the above-described cultural resources should accompany decisions to issue mineral leases, permit drilling or permit seismic activities in the Molen Reef Region. Such drilling and seismic activities should not be disallowed merely because they are in the immediate vicinity of the above-described cultural resources if it is shown that such activities will not damage those resources.

**SECTION 9.**                    **Manage the Molen Reef Region So As to Not Interfere With The Property Rights of Private Landowners Located Adjacent to That Region.**

- There are parcels of private fee land located adjacent to the Molen Reef Region.
- Land management policies and standards on BLM land in the Molen Reef Region should not interfere with the property rights of private landowners adjacent to the region to enjoy and engage in traditional uses and activities on their private property, consistent with

controlling County zoning and land use laws.

- Nor should those landowners and their guests be denied the right of motorized access to their private property consistent with past uses of those private land parcels.

**SECTION 10. Manage the Molen Reef Region So As to Not Interfere With The Fiduciary Responsibility of the State School and Institutional Trust Lands Administration (“SITLA”) With Respect to Trust Lands Located in That Region.**

- Scattered throughout the Molen Reef Region are sections of school and institutional trust land owned by the State of Utah and administered by SITLA in trust for the benefit of public schools and other institutions (“school trust lands”), as mandated in Utah’s Enabling Act and State Constitution.
- As trustee, SITLA has a fiduciary responsibility to manage those school trust lands to generate maximum revenue therefrom, by making them available for sale and private development, and for other multiple use consumptive activities such as mineral development, grazing, recreation, timber, agriculture and the like, all for the financial benefit of Utah’s public schools and other institutional beneficiaries.
- Land management policies and standards on BLM land in the Molen Reef Region should not interfere with SITLA’s ability to carry out its fiduciary responsibilities.
- Nor should SITLA be denied the right of motorized access to those school trust sections to enable SITLA to put those sections to use in order to carry out SITLA’s fiduciary responsibilities.

**SECTION 11. Managing Part or All of The Molen Reef Region For So-Called Wilderness Characteristics Would Violate FLPMA, Contradict The State’s Public Land Policy and Contradict The Foregoing Plans of Emery County For Managing The Molen Reef Region.**

- As Utah Code § 63-38d-401(6)(b) indicates, managing the Molen Reef Region under a “wilderness characteristics” management standard is not the State of Utah’s policy for multiple use-sustained yield management on public lands that are not wilderness or wilderness study areas. Nor is it Emery County’s. A so-called “wilderness characteristics” management standard for the Molen Reef Region is de facto wilderness management by another name. It is incompatible with and would therefore frustrate and defeat the foregoing plans of Emery County for managing the Molen Reef Region. The Public Lands Section of Emery County General Plan, as well as written communications

by Emery County to BLM, specify that additional wilderness designation shall be opposed.

- A so-called “wilderness characteristics” management standard for the Molen Reef Region also violates FLPMA and the 2003 Settlement Agreement between Utah and Department of Interior.
- Managing Post-603 Lands<sup>1</sup> pursuant to the Interim Management Policy of 1979 (“IMP”) is inconsistent with BLM authority. Agreement p. 6 & 13.a;
- Managing Post-603 Lands to preserve their alleged wilderness character strays from the multiple use mandate in a manner inconsistent with FLPMA § Section 603 limited delegation of authority. Agreement p. 9 & 17;
- The 1999 Utah Wilderness Reinventory shall not be used to manage public lands “as if” they are or may become WSAs. Agreement p. 13 & 4;
- DOI/BLM will not establish, manage “*or otherwise treat*” Post-603 Lands as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization. Agreement p. 14 & 7;
- DOI/BLM will remove from the proposed revised resource management plans in the Vernal, Price, Richfield, Monticello and Moab Districts any and all references or plans to classify or manage Post-603 BLM lands “*as if*” they are or may become WSAs. Agreement p. 14 & 7.

**SECTION 12. Imposing The Expanded Areas of Critical Environmental Concern (“ACEC”) in Alternative E Would Contradict Emery County’s Plan For Managing The Molen Reef Region.**

- It is Emery County’s policy that no part of the Molen Reef Region should be designated an (“ACEC”) unless it is clearly demonstrated to the satisfaction of the Emery County Commission that:
  - The proposed ACEC satisfies all the definitional requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a).
  - The proposed ACEC is limited in geographic size and that the proposed management prescriptions are limited in scope to the minimum necessary to specifically protect and prevent *irreparable* damage to values that are objectively

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<sup>1</sup> As that term is defined in the *Utah v. Norton* settlement agreement of April 11, 2003.

shown to be relevant and important or to protect human life or ensure safety from natural hazards.

- The proposed ACEC is limited only to areas that are already developed or used or to areas where no development is required.
- The proposed ACEC designation and protection is necessary to protect not just a change in ground conditions or visual resources that can be reclaimed or reversed eventually (like reclaiming a natural gas well site after pumping operations are complete). Rather, the damage must be shown in all respects to be truly *irreparable* and justified on short term and longterm horizons.
- The proposed ACEC designation and protection will not be applied redundantly over existing protections available under FLPMA multiple use sustained yield management.
- The proposed ACEC designation is not a substitute for a wilderness suitability determination, nor is it offered as a means to manage a non WSA for so-called wilderness characteristics.
- • The foregoing summarizes the ACEC criteria of the State of Utah as well as Emery County. See Utah Code § 63-38d-401(8)(c). And the foregoing summarizes the criteria of FLPMA.

**SECTION 13.** NA There are no river segments within the Molen Reef Region which have be nominated for Wild and Scenic River Designation.

**SECTION 14.** **A Visual Resource Management Class I or II Rating for Any Part of the Molen Reef Region Would Contradict the State's Public Land Policy and Contradict Emery County's Plan For Managing the Molen Reef Region.**

- The objective of BLM Class I Visual Resource Management is not compatible with, and would therefore frustrate and interfere with, Emery County's foregoing plan clarification for the Molen Reef Region.
- The objective of BLM Class II Visual Resource Management is generally not compatible with, and would therefore frustrate and interfere with, Emery County's foregoing plan clarification for the Molen Reef Region.
- Emery County's foregoing plan clarification for the Molen Reef Region is generally consistent with either Class III or Class IV, depending on the precise area.

