

Desert Trails Coalition

a 501(c)(3) non-profit public benefit corporation

John R. Kalish
Field Manager, Bureau of Land Management
1201 Bird Center Drive
Palm Springs, CA 92262

November 19, 2010

Re: CACA 42965
2200
(CA-066.62)

Dear Mr. Kalish:

After we wrote our letter of comment dated September 10, 2010, we continued to analyze the Environmental Assessment (EA) and obtained additional input from our members and their organizations.

The Desert Trails Coalition believes the proposed land exchange does not benefit the public, that the lands to be exchanged are grossly unequal in value to the public, and that the EA does not support a finding of no significant impact.

In addition, the Coalition believes that the land exchange process conducted by the BLM is flawed and does not conform to federal regulations set forth in the BLM Handbook for Land Exchanges. The federal regulations for land exchanges were written to ensure transparency and fairness in processing land exchanges. The BLM Handbook for Land Exchanges was written to ensure BLM compliance with those regulations. In this proposed exchange, the BLM has not conformed to the regulations in significant ways. For example, transparency and fairness should include involving the Appraisal Services Directorate (ASD) of the Department of the Interior (DOI) in the process from the beginning. In this proposed exchange, the BLM has not involved the ASD of the DOI and has stated to members of the Desert Trails Coalition in a meeting that the BLM does not plan to involve the ASD until after the EA is approved. In another example, transparency and fairness should involve ensuring effective public participation. The efforts the BLM has made to alert the public to the proposed exchange and inform the public about the issues at stake have not been sufficient to ensure effective public participation and have misled the public about the BLM's authorization to exchange lands and the effects of the exchange.

This letter provides additional examples of the BLM's nonconformity to the federal regulations as described in its land exchange handbook, such as not identifying reasonable alternatives and not consulting the US Fish and Wildlife Service. The flaws in the way the BLM has processed this land exchange process have caused a lack of fairness and transparency and have impaired the integrity of the EA.

The concerns that our members and members of their constituent organizations have raised that have led us to hold the beliefs described in the preceding paragraphs are presented as appendices to this letter. They are preceded by a table of appendices that shows the page number for each comment.

Yours truly,

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Vice-President, Desert Trails Coalition

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MEMBER ORGANIZATIONS

CV Hiking Club
CV Community Trails Alliance
Desert Bicycle Club
Desert Cities Track Club
Desert Trails Hiking Club
Desert Riders
Great Outdoors Palm Springs
Sun City Hikers

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Lack of Public Benefit

After the exchange the public will own nearly 7 square miles less than it now owns in the National Monument. The land the public receives is a little more than 2 square miles. The land it gives up is much larger - more than 9 square miles.

On page 4 the EA states that the proposed exchange is needed to implement a cooperative agreement between the Tribe and the BLM and that it will “facilitate effective and efficient management of the national monument through consolidation of the land base, i.e., reducing the extent of “checkerboard” land ownership.” The claims sound implausible. Neither the EA nor the Feasibility Report for the exchange explain how the exchange facilitates management or why it is necessary for cooperative management of the land. Surely it is possible to facilitate management and cooperation without exchanging lands. The EA should discuss specifically how the exchange facilitates management and cooperation and identify reasonable alternatives.

One can see how it would be easier for the BLM to manage two square miles of land rather than nine square miles, but that does not justify giving up so much land that the public values for its wilderness attributes and uses.

Nearly half of the land the BLM has proposed giving up does not represent checkerboard ownership. Neither section 16 or 36, T4S, R4E nor section 32 or 36, T5S, R4E, for example, represents checkerboard ownership. Section 32, T5S, R4E, is currently bordered by other BLM land to the north and US Forest Service (USFS) land to the west, southwest, south, southeast and east. In addition, section 16, T4S, R4E, is not bordered to the north, south, east or west by land the Tribe owns (see BLM 2007 Palm Springs Map.) Section 36, T5S, R4E is bordered by USFS land and private land according to the BLM 2007 Palm Springs Map.) Section 36, T4S, R4E, barely intersects land the Tribe owns, shares a greater border with other BLM land, and is mostly contiguous with the City of Palm Springs where access is easy.

The Feasibility Report signed in July 2001 justified the exchange by saying in paragraph 9 that “consolidation of ownership would facilitate greater accessibility to the public lands.” The EA shows that public access to the land would be decreased not increased. Neither the EA nor the Feasibility Report establishes a public benefit for the exchange. The EA amounts to a finding that the benefit identified in the Feasibility Report was false.

Land the public now owns (Sections 16 and 36, T4S, R4E) contains popular trails. They begin in the City of Palm Springs where access is easy, and many people can use them because they are not too strenuous. Land the public would receive is remote and hiking to it is too strenuous for most people.

Land the public would receive could only be practically accessed from land the Tribe now owns or would own after the exchange (i.e., Section 36, T4S, R4E.) The easiest access would be through Indian Canyons where the daily use fee is \$8, the hours are restricted, and if one does not get back before closing time one's car may be towed. Without the exchange, the public can use and enjoy public land where access is easy, flexible and free.

The public values its land in the National Monument for its wilderness values. Land preservation requires ongoing public support - political and legal. Public support for preservation of land it does not own, and may not be able to freely use, is unlikely to be maintained. The public feels more responsible for land it owns than for the land it does not own and it will lose its legal authority to preserve the land along with its pride of ownership. The public will be less likely to oppose development of land it does not own and would be less powerful to stop it even if it opposed it.

The benefits to the public of keeping the land it currently owns exceed the benefits of completing the exchange.

Land Use Plan Conformance (EA, Page 3)

The CDCA Plan, page 70, states:

“Regardless of the methods available to participate in the desert recreation, provision to ensure that these opportunities will continue must be a constant concern of both management and desert users.

Where significant demand exists for recreation use immediately adjacent to desert communities, BLM will manage public lands to assist in meeting that demand.”

The proposed exchange does not conform to this provision of the plan because, related to public recreation, the exchange does not “ensure that these opportunities will continue.” In addition, it eliminates the BLM’s and the public’s ability to exercise “constant concern.” The BLM has said in meetings with the Coalition that it will not be able to control the way the land is managed after an exchange even through the proposed management agreement.

While the public would have a constant concern into the future for the land involved in this proposed exchange, the transfer of these lands out of public ownership takes away the public’s ability to control the land. Such control is necessary for the public’s constant concern to have effect.

The CDCA Plan is an old plan issued in 1980. The cover letter for the 1999 reprint of the CDCA Plan states that the plan had been amended 147 times since it was issued in 1980. It also states that some of its text and many of its maps are out of date and need substantial revision. The cover letter expresses the intention to update the plan and refers to four ongoing bio-regional plans. The EA for this land exchange should include an evaluation of how out of date text and maps may affect the assessment. It should consider issues that have been raised in the ongoing bio-regional plans. If drafts of revisions to the CDCA or bio-regional plans have been developed, they should be considered just as drafts of other conservation plans have been addressed in the EA.

Considering the age of the CDCA Plan and that the BLM’s cover letter for the 1999 reprint acknowledges that it is out of date, the EA should identify and address the issues created by trying to base an environmental assessment on a plan that is out of date. Conformance with an out of date plan is not what Title 43 Code of Federal Regulations 1610.5-3 requires. Conformance to an out of date plan provides no basis for concluding that an action such as this exchange has no significant impact.

Section 36, Township 4, in this exchange is immediately adjacent to the City of Palm Springs. The transfer of this land out of public ownership does not allow the BLM to continue managing this land to meet the significant demand for recreation use on the land.

Lack of Involvement of the Appraisal Services Directorate of the DOI

The feasibility report and its supplement both signed in 2001, contain no evidence of the involvement of the independent Appraisal Services Directorate (ASD) of the Department of the Interior. The EA also does not contain evidence of involvement of the ASD. When the Desert Trails Coalition met with John Kalish and Jim Foote in September 2010, we inquired about the extent of the involvement of the ASD in this land exchange process from the beginning until that date. John Kalish said the ASD has not yet been involved.

The BLM Handbook, Chapter 2, page 2-7 & 8, states:

6. Valuation Analysis. The purpose of the Valuation analysis section of the feasibility report is to document the communication and coordination that has occurred with the ASD to consider both the exchange proposal and the appraisal/appraisal review process. This section of the feasibility report is generally written by BLM with input from the appraisal staff of the ASD. During valuation analysis, Field Office Managers should focus on the value implications of considering various exchange alternatives, including:

- various land configuration and timing scenarios, t
- he number of appraisals or reviews to be procured,
- additional technical studies needed to improve the quality and reliability of the appraisal report,
- the interest in land (including mineral interest) proposed for exchange and
- an estimate of cost and time frames for the process.

Summarize the outcome of the valuation analysis process as it relates to the potential for the transaction to be of equal value following completion of the appraisals. Also, summarize any unique, complex or controversial aspects of the valuation process and how those issues will be handled.

Identify the strategy for equalizing the exchange by adjusting the properties included in the proposal and how the strategy will be incorporated in the appraisal and environmental documentation processes. Identify if equalization funding is potentially available, and how and when such funding may be used in equalizing the land exchange. Also, identify the process the land exchange parties will use to resolve value disputes. Where you anticipate completing a land exchange in several linked transactions or phases, the valuation analysis section of the feasibility report must address the appraisal process that will be applied to these transactions. (See Illustration 1-2 Secretarial Order No: 3258 Policy Guidance Concerning Land Valuation and Legislative Exchanges, December 30, 2004.)

The substance and conclusions of the EA are undermined by the lack of involvement of the ASD. The preliminary estimates of value that would have been provided by the ASD at the time of the feasibility report or at any time since then would have enabled the BLM to assess whether or not the exchange of over 9 square miles of public land for a little more than 2 square miles of Tribal involves lands of equal value. Without knowing whether it does or not, one cannot evaluate whether or not the evaluation of effects of the exchange presented in the EA are meaningful or not. This means the conclusion of no significant impact is unsupported. This means that parties like ourselves, as well as the preparers of the EA, are not able to assess what lands the exchange may ultimately

involve and deprives us of the opportunity to analyze a known feasible exchange. Instead, we can only weigh the indefinite effects of ill-defined possibilities.

BLM Handbook, Chapter 6, Section B, page 6-1, states:

For some properties, especially those potentially influenced by timber, minerals, or water rights, additional expertise will be necessary for the appraisals, and BLM will play a major role in ensuring this expertise is available and appropriate. This may include BLM staff involvement in preparation of the technical reports, or oversight, review and approval of reports and material provided by third parties. Close coordination with the DOI ASD appraiser is critical.

The properties the BLM would give up in this exchange include lands that are used to a significant extent by the public, and the lands also contain sufficient developable acreage to eliminate or greatly change public use and access. In addition, the Tribe may be able to use these lands to mitigate the environmental effects of other development in nearby areas. That could significantly increase the value of land that has even limited recreational or other values, such as land located on mountain sides like this proposed exchange includes. It can also have environmental effects outside of the land directly involved in the exchange. Studies by experts in such matters would be required to credibly assess these possibilities and unknowns because the variables to consider in such an assessment are complex environmentally, biologically and economically. Without such an assessment, whether by experts in or out of the BLM, this EA is incomplete and does not support a finding of no significant impact. The necessary expert studies have not been performed and there has been no coordination with the DOI ASD. This EA is deficient and its conclusion unsupported.

BLM Handbook, Chapter 6, Section B, page 6-1, in a paragraph related to environmental assessments states:

The preliminary scoping should provide a framework for both the identification and scheduling of the data collection and analysis efforts. The information will lead to a determination of whether the exchange proposal is in the public interest, of equal value, and can be conducted in compliance with NEPA and all other laws and regulations.

Section B lists reports and studies that are typically required. They include appraisal reports.

The EA did not include a review of appraisal reports. Apparently, no appraisal reports have been prepared because, contrary to regulations, the BLM has not involved the Appraisal Services of Directorate of the Department of Interior.

By not obtaining the appraisals required by regulations, the BLM has no way of determining whether or not the lands in the proposed land exchange have equal value or is in the public interest. In addition, without knowing whether the lands in the proposed

exchange meet those tests (i.e., equal value and public interest) there is no way to evaluate whether or not the EA actually assesses the impact of a likely or legal exchange.

The BLM has stated to the Coalition that it intends to obtain an appraisal after the EA is approved. Unless the BLM allows another public comment period for the EA after the appraisal has been performed, the public has no chance to comment on the exchange with full information until the BLM issues a decision on the exchange. The public is left only the option of protesting, appealing and challenging the decision in court. The BLM handbook and the regulations on which it is based describe a more open process in which obtaining preliminary appraisals precedes the preparation and issuance of the EA. That more open process allows the public the opportunity to comment on the EA with an understanding of land values, public benefits and environmental impacts. By not following the regulations in this respect the BLM has deprived the public of its rights, undermined the public's ability to understand and comment on the exchange before the decision is made, and compromised the integrity of the EA and the fairness and transparency of the land exchange process.

Access Report

Among the studies that the BLM Handbook, Chapter 6, Section B, page 6-2, lists as “potentially necessary” is an access report. Later in Chapter 6, on page 6-6, the BLM Handbook states:

Access

Evaluate the need to reserve public access, easements, or other access rights on the Federal land. This is critical information that the ASD appraisal staff needs to arrive at a market value opinion. Access, or lack thereof, may also be an important factor to address as part of considering the merits of the resource values and public benefits.

The EA does not refer to an access study, and does not evaluate the need to reserve public access, easements, or other access rights. Without it the EA is incomplete and its finding of no significant impact is unsupported. Without it, the ASD will lack critical information that it needs for its appraisal. Without it, it is not possible to evaluate the merits of the resource values and public benefits.

No Access Report appears to have been prepared. When, during a meeting in September 2010, the Coalition asked John Kalish what reports had been prepared, he replied that there had been none other than a minerals report and that is the only report referenced in notes to the EA.

An “Access” report is important for this EA because of public concerns raised about the potential loss of access. The Feasibility Report for the exchange states in Section 4 that after the exchange the lands the BLM gives up in the exchange “may not be available for public use and enjoyment.” In addition, in a discussion of trails on the land involved in the proposed exchange, the “Recreation Resources” section of the EA (page 34) states, “The proposed land exchange has the potential to impact access to these trails, and the creation of new trails.” The EA adds,

“As part of the exchange, the BLM and Tribe have approved a management agreement addressing sections 16 and 36, Township 4 South, Range 4 East, upon which public trail access has been identified as an issue (Appendix B). The management agreement stipulates that such exchange lands shall remain accessible and subject to the reasonable use and enjoyment by the general public, and the Tribe may adopt rules and regulations for the use and enjoyment of the exchange lands that conform to and are consistent with the policies and guidelines set forth in the Indian Canyons Master Plan and the THCP, and with similar measures now in effect regarding existing Tribal Reserves. The management agreement also requires that the Tribe maintain existing facilities, including trails, through the life of the management agreement.”

The problems with this analysis in the EA are:

- a. the management agreement can be terminated after one year
- b. the management agreement provides the BLM and the public no legal remedies for noncompliance.
- c. the Tribe has discretion to set rules and regulations
- d. the public has political and legal means to influence the rules and regulations of the BLM but not of the Tribe
- e. current Tribal rules and regulations in Indian Canyons and Tahquitz Canyons are more restrictive than current BLM rules and regulations
- f. BLM allows free unrestricted access while the Tribe does not allow that to all of its lands that it allows the public to use
- g. the cost of BLM's management of the land is funded by taxpayers while the Tribe must fund its own management of the land and that may necessitate restrictions or use fees that BLM's management would not require

Although the EA discusses access in connection with recreational use, it does not contain the evaluation of the regulations required as described in Chapter 6 of the BLM Handbook. It should, especially considering that the EA identifies known, likely and possible losses to public access and that the Feasibility Report in Section 4 states that the lands the BLM gives up "may not be available for public use and enjoyment" after the exchange.

The EA should examine more closely how the land exchange may affect access, discuss the alternative ways access can be preserved, and evaluate the impacts of these alternatives.

Public Ownership of the Skyline Trail

The Skyline Trail trail is iconic and has national as well as local importance. It represents one of the most difficult and dramatic mountain trails in the nation. Hikers come here from all over the nation to climb it. It begins on the desert floor in Palm Springs and leads past the upper tram station to Mount San Jacinto.

Currently the Skyline Trail crosses land owned by the BLM, the Tribe and the State. After the exchange, the Tribe would own most of the trail outside of the State Park boundary. Hikers of this major trail are concerned that the reduction in public ownership of the trail may lead to loss of access or less access. Indeed, the BLM has stated in the Feasibility Report that after the exchange the lands “may not be available for public use and enjoyment.”

Bicycles

Public interest in riding bicycles is increasing because it improves health, is safe for the environment, and is a lot of fun. The average age of bicycle riders is roughly the same as the average age of residents of Palm Springs (late forties.) The land the BLM wants to give up contains beautiful areas in which to ride. According to the BLM's environmental assessment, the land exchange would reduce the number of trails and miles on which the public could ride. It would cut off the most practical access for many (the Thielman Trail) to places where people can most easily ride.

In addition to the trails listed in Table 5, the exchange may result in reduced or total loss of access to other trails such as the Goat Trails.

Appendix B Management Agreement between the Tribe and BLM, mutual covenant #3 USE states: "The Tribe agrees that the Exchange Lands remain accessible and subject to the reasonable use and enjoyment by the general public."

Yet, on page 36 of the EA, "...opportunities for mountain biking would be reduced by a total of 3.1 miles..." and again on page 37, "The reduction of mountain biking opportunities by 3.1 miles is an adverse cumulative impact..." and stated again, "...the proposed action (closing trails to bicycles) increases adverse cumulative impacts for this type of recreation."

The most alarming example of "adverse cumulative impact" is the announced closing of the Thielman Trail. The Thielman is the only trail coming up from Palm Springs to the west that is allowed for use by bicycle riders to gain access to other trails in the area. That loss of use violates the California Desert Conservation Area Plan Amendment for the Coachella Valley that says exchanges would "...not divest of public domain lands in a manner which eliminates a significant public benefit."

Considering the above, the impact on Recreation Resources is not a "Minor Adverse Effect" as stated in the chart on page 27 of the EA and the finding of "No Significant Impact" as stated on page 48 of the EA is unsupported.

Issues and Conflicts

BLM Handbook, Chapter 2, page 2-9 states:

10. Issues and Conflicts. Identify possible conflicts, problems and areas of potential sensitivity. Include anticipated public support or opposition and local government positions on the exchange. Highlight completed public outreach efforts. Briefly describe planned outreach efforts designed to involve constituents such as open houses, public meetings or coordination with Resource Advisory Councils. For large, controversial or sensitive exchanges or where significant media attention has already been focused, it may be appropriate to develop a detailed communication plan which would establish proposed dates of news releases in conjunction with key exchange processing dates. In these instances, advance planning to clarify communication objectives and provide a framework for getting our message out would be helpful. Identify other governmental entities, interest groups, and individuals that should be notified during the public comment period.

Recognizing that the feasibility report is a communication tool that will be reviewed by the State Office and the Washington Office; include any other information that may be necessary to further explain the proposal or processing schedule. States Offices may also require additional information depending on the issues germane to the State.

The feasibility reports, which were signed in 2001, do not identify any issues or conflicts and no “issue paper” as required by paragraph 11a on page 2-10 is attached to them. The Desert Trails Coalition requested copies of any issue paper that may have been prepared and the BLM found no issue paper in its files nor a record of one being prepared. By not conducting sufficient outreach efforts such as open houses and public meetings the BLM has not identified issues and conflicts. By not identifying issues and conflicts, the BLM has not performed a complete environmental analysis.

Issues and conflicts have been presented to the BLM in Desert Trails Coalition meetings since the NOEP was issued in 2008. In addition, issues and conflicts have been reported in comments made by the Desert Trails Coalition and others during the comment period for this EA, and issues and conflicts have been reported by newspaper and other media during the comment period. The problem is that the BLM had a regulatory obligation to identify such issues and conflicts much earlier in the process, to elaborate on them in an issue paper, and to address them in the EA. By not doing this, the BLM has prepared an incomplete EA. The incompleteness of the EA means that the finding of no significant impact is unsupported. It also means that the EA does not provide an adequate basis for public comment. If the EA were complete, public comments would be more complete and effective. This represents a serious weakness in the environmental assessment process and undermines the validity of the finding of no significant impact.

Consultation with USFWS

BLM Handbook, Chapter 6, Section C, page 6-2 states:

“Where there is a potential for listed or sensitive species, biological and botanical studies may also need to be conducted early in the process, particularly when there is a limited window for conducting field surveys to appropriately detect the presence of a species or habitat. Limited field seasons for conducting surveys may have to be considered in the timing of exchange processing. Additionally, where there is a need for consultation with the U.S. Fish and Wildlife Service, the schedule for the collection of resource information needs to allow time for conducting the consultation, and to consider the input as a part of the environmental documentation process.”

BLM Handbook, Chapter 6, Section E, page 6-5 elaborates:

Wildlife and Botanical Surveys and Reports for Listed and Sensitive Species

Section 7 of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service (Service) if an exchange proposal may affect a listed species or habitat. Formal consultation may take up to 180 days, after which the Service will issue a biological opinion. If there is any question, informal consultation should begin immediately. The informal consultation process will help identify the extent to which Federal and non-Federal land may need to be inventoried to allow the analysis of all beneficial and adverse impacts of an exchange proposal.

On page 4, the EA states:

“The BLM will complete consultation with the U.S. Fish and Wildlife Service (USFWS) pending completion of the public review and comment period.”

The BLM’s analysis in the EA has these problems:

- a. Instead of basing its analysis of listed or sensitive species on a consultation with USFWS, the BLM based it on a draft of an Environmental Impact Statement prepared for the draft of the Tribal Habitat Conservation Plan.
- b. The Tribal Habitat Conservation Plan is a draft that may change.
- c. The Environmental Impact Statement is a draft prepared in November 2007 that may change, and the long delay (more than three years) in obtaining approval may imply that it is flawed, may become out of date even before it is approved, and may require revision before it is approved.

- d. Without completing its consultation with USFWS before preparing the EA, the outcome of the consultation is unknown and the analysis of endangered species in the EA is deficient.
- e. Completing the consultation with USFWS will require a revised EA and an additional public comment period.
- f. The EA states that “the mapping of these areas in the Draft THCP results in slightly different acreages than those identified in the October 1999 memorandum of understanding...” Even a slight difference in acreages can represent a significant impact on listed and sensitive species and have a significant effect on the environmental assessment.
- g. Considering the age of the draft EIS for the THCP, consultation with USFWS as required in the regulations might identify the need to conduct a more current inventory of the land to allow the analysis of all beneficial and adverse impacts of an exchange proposal.
- h. The delay in the approval of the draft EIS for the THCP may signify issues that should be discussed in the EA and should be subject to public scrutiny and comment.

Likely Foreseeable Future Use of the Land

BLM Handbook, Chapter 6, Section D, page 6-3 states:

“The description of the proposed action must include the likely foreseeable future use of both the Federal and non-Federal land.”

The EA does not contain a description of the likely foreseeable future use of the land the Tribe would own after the exchange. It should. It discusses development potential, but does not describe the likely development or how such development might affect trails, public use and enjoyment, access, wildlife, and other aspects of the land that may concern the public. It should include such description and allow the public to comment on it.

The EA should evaluate foreseeable development scenarios and include a study of how they would affect loss of habitat, loss of access, loss of use, and loss of trails.

The EA should discuss the legal means the public would have to ensure the terms of the draft Tribal Habitat and Conservation Plan are implemented and enforced and compare those means for assuring conservation of land, habitat, threatened and endangered species, and trails with the means available to the public if the lands are not exchanged.

The Tribe may be able to use the land acquired through this exchange to mitigate the environmental effects of developing other land that is outside of the National Monument. If that possibility exists, then the value of the land the BLM would give up could be worth many millions of dollars more than the land it would receive, more than even the gross imbalance in acreage may imply. In addition, the possible use of the land to mitigate adverse environmental effects of other development represents an effect on the environment that the EA has not addressed. The exchange could result in the use of far more land for development than would be possible without the exchange. The EA should include a discussion of the scope of this possibility, what laws would apply to the regulation of this possibility and how they could be enforced. A thorough analysis of this possibility is critical to assuring that the BLM will not complete an exchange that harms the public and the environment.

No Alternatives Identified

BLM Handbook, Chapter 6, Section D, states:

“The analysis should consider reasonable alternatives to the proposed action.”

The EA only identifies one alternative: the no action alternative. The EA should identify and discuss other alternatives such as excluding land from the exchange that includes trails or other important resources and the option of reducing the lands involved in the proposed exchange and finding other ways to enhance the cooperative management of lands within the National Monument. It is not plausible that the full exchange as discussed in the EA and the “no action alternative” are the only possible arrangements that enable the BLM and the Tribe to cooperatively manage the lands.

BLM Handbook, Chapter 6, Section E, page 6-4 states:

The regulations under 43 CFR 2200.0-6(i) provide that the public interest may be protected through the use of reserved rights or interests in the Federal land. In general, mitigation in the form of deed restrictions on Federal land conveyed into non-Federal ownership should only be used where required by law or executive order, clearly supported by the environmental documentation and closely coordinated with the Field or Regional Solicitor. It is the BLM’s policy to limit reservations to those supported by the environmental documentation, public benefit determination process and fully considered in the appraisal process. Environmental mitigation in the form of reserved Federal rights or interests should be evaluated for appropriateness as part of analysis of alternatives in the environmental documentation.

Environmental mitigation in the form of reserved Federal rights or interests has not been evaluated for appropriateness as part of analysis of alternatives in the environmental documentation. It should be.

For all resource issues, the effects of the “no action” alternative and of reasonable alternatives should be stated and compared with the full exchange alternative identified in the EA.

Water Rights

BLM Handbook, Chapter 6, Section E, pages 6-9 & 10 describe the expected content of the EA related to water rights. The EA appears to contain no discussion of water rights. It should.

Wild and Scenic Rivers

The discussion of Palm Canyon Creek does not address whether or not this creek could be a concern related to potential development. The exchange might affect the status and designation of the creek as a Wild and Scenic River under the law. The exchange would prevent future Wild and Scenic River designation on Tribal lands because no mechanism exists for tribal Wild and Scenic River designation. These concerns could represent a significant impact. The EA should address these concerns.

Recreation Resources - Trails

Table 5 on page 25 does not list all of the trails that exist on the land and that are used. The EA should include a complete inventory of trails include those that are not mapped, such as, but not limited to, those in Section 36, T4S,R4E known as “the goat trails.” In addition, the Table should include a segment of the N. Lykken Trail that crosses a corner of SEction 16, T4S, R4E.

The analysis should address access as well as mileage. It should include a study of how much these trails are used.

Trail users believe the potential loss of access related to stricter Tribal policies and possible development represent a significant impact. The EA does not show that the effect is “minor” even though that is the claim the BLM makes in Table 6.

EA Table 6, Page 27

The notations of “no impact” are only supported in the narrative by claims of no change. No change does not necessarily mean no impact. The effects should be analyzed in greater detail.

Threatened and Endangered Animal Species

Part 1

The BLM should postpone approval of the EA and delay the land exchange process until consultation with USFWS is complete. In addition, a preliminary appraisal should be performed. That would enable the BLM to determine which lands will actually be included in the exchange and to assess the effects on threatened and endangered species before the EA is approved.

Considering the political and economic resources of the United States government to protect threatened and endangered species, it appears likely that such species would be better protected by federal ownership of the land.

The EA should include maps of critical and modeled habitat for all sections before and after the exchange and an accompanying narrative analysis.

Threatened and Endangered Animal Species

Part 2

These comments address (1) incorrect assumptions used in the Environmental Assessment (EA) to determine what effects the “Proposed Action” (Land Exchange) will have on “Threatened and Endangered Animal Species” (T&E Animal Species); (2) inconsistencies between (a) findings of fact in the EA and (b) stated objectives in documents referenced by the EA; and consequently (3) false logic in the EA that was used to arrive at the “Beneficial Effects” conclusion. Correcting all three sets of errors will result in, overall, a finding that this Land Exchange will have “Adverse Effects” on T&E Animal Species.

Recommendations:

(1) The of Bureau of Land Management (BLM), as a result of its review of these and other public comments on the EA, should conclude that the Land Exchange will overall have “Adverse Effects” on T&E Animal Species.

(2) Once the BLM comes to that conclusion, the BLM should take actions to mitigate those “Adverse Effects” on T&E Animal Species, by (a) negotiating an enforceable conditional agreement with the Agua Caliente Band of Cahuilla Indians (Tribe) to ensure “Beneficial Effects” on T&E Animal Species and (b) demonstrating a net positive value to the public from this Land Exchange.

(3) If the BLM is unable to both (a) mitigate those “Adverse Effects” on T&E Animal Species, and (b) demonstrate a net overall positive benefit to the public that would result from this Land Exchange, the BLM should not move forward with the Land Exchange.

Discussion – Environmental Impacts on T&E Animal Species:

There are several incorrect assumptions in the EA. Correcting some of those assumptions will cause the BLM to logically conclude the Land Exchange will have *no* “Beneficial Effects” on T&E Animal Species. Correcting others will actually lead the BLM to logically conclude the Land Exchange would have “Adverse Effects” on T&E Animal Species. Following is a list of those incorrect assumptions, by category, what the correct assumptions should be, how to categorize the subsequent consequences to T&E Animal Species, and why these assumption and logic corrections are needed.

(1) Total Development Potential

Incorrect Assumption:

The EA concludes on page 28 that there will be “Beneficial Effects” on T&E Animal Species because “the net result of the exchange is that the total development potential would be reduced by 43 acres....”

Corrected Assumption:

The Land Exchange will result in *no change* in development potential.

Corrected Impact on T&E Animal Species:

This correction in the EA will result in the conclusion that the Land Exchange will have “No Impacts.”

Reason for the Correction:

All of the claimed development reduction in the EA comes from reducing BLM development; none comes for any consideration provide by the Tribe. But the BLM has the ability to not develop any or all of its land absent the Land Exchange, so the BLM could achieve all claimed reductions anyway. Assigning this type of credit to the Land Exchange for anything the BLM can do absent the Land Exchange is illogical, and incorrectly allocates public value to the Land Exchange that does not exist. See “(2) ‘Critical Habitat,’” below, for additional discussion.

(2) “Critical Habitat”

Incorrect Assumption:

The EA concludes on page 30 that there will be “Beneficial Effects” on T&E Animal Species because “conservation of designated ‘critical habitat’ for Peninsular bighorn sheep would be expected to increase 7 acres.”

Corrected Assumption:

The Land Exchange will result in *no change* in conservation of designated “critical habitat” for Peninsular bighorn sheep.

Corrected Impact on T&E Animal Species:

This correction in the EA will result in the conclusion that the Land Exchange will have “No Impacts.”

Reason for the Correction:

The BLM could achieve all claimed “critical habitat” benefits in the EA without this Land Exchange because the BLM now has the ability to decide whether or not to develop any of its 731 acres of “critical habitat” lands slated for this Land Exchange. If the purported reduction by 7 acres of development/disturbance is truly a benefit to the public through the Land Exchange, it would have the same value to the public even without the Land Exchange. However, without the Land Exchange, the public maintains its ability to ensure maximum public value by influencing the BLM’s decisions, whether it be for future development/disturbance or conservation. By maintaining public oversight absent the Land Exchange, the public would actually see greater value.

Also, no Tribal lands are currently designated “critical habitat,” so the Tribe can take no action on its own lands to increase “critical habitat” conservation after the Land Exchange. It would only be making a decision to do something the BLM could implement without the Land Exchange.

(3) Modeled Habitat

Incorrect Assumption:

The EA concludes on page 30 that there will be “Beneficial Effects” on T&E Animal Species because “conservation of modeled (Peninsular bighorn sheep) habitat would be expected to increase by 89 acres.”

Corrected Assumption:

The Land Exchange will result in *no change* in conservation of modeled (Peninsular bighorn sheep) habitat once the Tribe’s Section-by-Section development targets are considered.

Corrected Impact on T&E Animal Species:

This correction in the EA will result in the conclusion that the Land Exchange will have “No Impacts.”

Reason for the Correction:

The BLM, using the same logic as “(2) ‘Critical Habitat,’” above, will be contributing 43 of the 89 acres the EA claims as a “Beneficial Effect.” Under this logic and absent the Land Exchange, the BLM, with valuable public input, could decide on its own, without coercion from a Land Exchange proposal, to not develop those 43 acres. So it is incorrect to include those 43 acres in evaluating the impacts from this Land exchange.

The balance of the 89 acres, representing 46 acres ($89 - 43 = 46$ acres), is calculated using an incorrect assumption. On page 29, the EA acknowledges that “in accordance with the (Draft) TCHP, the Tribe would limit development potential to 221 acres.” Also on page 29, the EA indicates that neither the Draft THCP, nor the Tribe through other communications, have “specified” the “location of such potential development.” The EA therefore concludes it is best to allocate the 221 development acres across all Sections evenly, including “critical habitat” for Peninsular bighorn sheep. Doing so generates a multiplier of 3.8% ($221 \text{ acres} / 5,799 \text{ acres} = .038$, or 3.8%). That multiplier was then used to calculate how many acres of modeled habitat would be impacted by development ($3.8\% \times 4,183 \text{ acres} = 159 \text{ acres}$).

Using this technique ignores the Draft THCP statement on page 2-11 of the Draft THCP that “As a condition of the exchange, the Tribe would reserve 221 acres of development potential on a maximum of 5,725 acres of land.” The Tribe will not be reducing that by 221 acres by 28 acres, or 3.8% of the “critical habitat” it has proposed to conserve at 100% ($3.8\% \times 731 \text{ acres} = 28 \text{ acres}$), as suggested by the EA. Nor has the Tribe proposed to reduce the 221 acres of development in Sections that are not developable. Rather, the Tribe has proposed development using Section-by-Section development targets as identified in Figure 35, after page 4-74 in the Draft THCP. Under those Draft THCP targets, the Tribe has identified the potential to develop much more than 221 acres in the five Sections of BLM transferred land that is included in modeled bighorn sheep habitat (Sections 8, 16, 21, 27 and 36 of Township 5 South, Range 4 East). A casual review of Figure 35 in the Draft THCP also shows that the areas outside the modeled bighorn sheep habitat (primarily Sections 29 and 32 of Township 5 South, Range 4 East) are so remote and steep that they would never be feasible to develop, and should not therefore have been considered development potential, and should therefore not have been listed as having development potential in the EA. The proper conclusion is that, after the Land Exchange, all 221 acres of development by the Tribe will occur in modeled bighorn sheep habitat. The same result after the Land Exchange that exists prior to it.

(4) Least Bells' vireo/southwestern willow flycatcher and Desert tortoise

Incorrect Assumption:

The EA makes the same types of errors as (1) through (3), above, in determining that the Land Exchange would have “Beneficial Effects” on T&E Animal Species for both the Least Bells' vireo/southwestern willow flycatcher and desert tortoise habitats.

Corrected Assumption:

The Land Exchange will result in *no change* in conservation of habitat for the Least Bells' vireo/southwestern willow flycatcher and desert tortoise habitats once the appropriate assumptions and logic, as per (1) through (3), above, are used by the BLM to adjust the EA's analysis.

Corrected Impact on T&E Animal Species:

This correction in the EA will result in the conclusion that the Land Exchange will have “No Impacts.”

Reason for the Correction:

The EA makes the same mistakes in determining and assigning value for conservation for the Least Bells' vireo/southwestern willow flycatcher and desert tortoise habitats as it does for Peninsular bighorn sheep habitat. The proper conclusion is that this Land Exchange will have no impact on those habitats.

(5) Draft THCP

Incorrect Assumption:

The EA developed its conclusions on all threatened and endangered species by assuming that information “primarily gathered from the Draft THCP EIS” would not change once the Draft THCP is finalized.

Corrected Assumption:

The Final THCP, and its successors, could be dramatically different from the Draft THCP, which would potentially allow more than 221 acres of development, thereby causing T&E Animal Species to be adversely impacted by the Land Exchange.

Corrected Impact on T&E Animal Species:

This correction in the EA will result in the conclusion that the Land Exchange will have “Adverse Effects.”

Reason for the Correction:

Transferring ownership of the BLM’s 5,799 acres to the Tribe enables the Tribe to increase development at its own discretion and without public oversight. The EA falsely assumes the Draft THCP will be adopted without any changes that could negatively impact the value of this Land Exchange to the public. It also assumes away contradictions between the Draft THCP development targets in Figure 35, after page 4-74, and the proposed maximum development of 221 acres. The Draft THCP development targets in Figure 35 represent far more than 221 acres. This is also supported by the total number of acres the Tribe assumes in the “Maximum Buildout” scenario in Appendix I of the Draft THCP. That scenario, one that the Tribe considers to be a possibility, identifies as much as 3,048 acres of development for all of the Mountains and Canyons Conservation Area (MCCA), of which the BLM exchanged lands are a significant portion.

Finally, the EA falsely assumes that, once adopted, the adoption of an unchanged Draft THCP will become a binding agreement enabling entities representing the public to enforce the terms of the THCP, and thereby limit development to a maximum of 221 acres on the land received from the BLM. Only Congress has the ability to influence development related actions the Tribe may decide to take, and Congress has not passed, and is not likely to pass legislation to create binding terms attached to the Final THCP to limit development to 221 acres. Absent that oversight, the Tribe is free to make future changes to the THCP. Future changes made by the Tribe to the Final THCP that would increase developable acres to greater than 221 acres on the BLM’s 5,799 acres transferred to the Tribe would have “Adverse Effects” on T&E Animal Species. Through the Land Exchange, the Tribe will gain this flexibility. It doesn’t exist absent the Land Exchange.

Conclusions:

Taken together, correcting the above referenced assumption and logic errors will cause the EA to conclude that the Land Exchange will have “Adverse Effects” on T&E Animal Species. If in response to these and other public comments, a well written, enforceable conditional contract is entered into by both the BLM and the Tribe to mitigate the potential “Adverse Effects” on T&E Animal Species

described in “(5) Draft THCP,” above, the BLM will still need to make changes to the Land Exchange. The BLM will have to incorporate changes to the Land Exchange that will provide sufficient public benefit to offset the “Adverse Effects” this Land Exchange will have on “Recreation Resources.”

BLM's Responsibility to Ensure Effective Public Participation

BLM Handbook, Chapter 1, page 1-9, Section G.1.g. states:

The BLM will ensure effective public participation in the processes for considering land exchange proposals from Tribes, State and local governments, third party interests and individual private landowners.

BLM Handbook, Chapter 5, Section H on page 5-5 states:

H. Public Participation and Analysis of Public Comments

Comments received in response to the publication of the NOEP should be analyzed and considered during land exchange processing. Comments that are not received within the 45-day comment period should also be considered whenever possible. The NOEP is not a decision, and is not subject to protest or appeal.

Field Offices are encouraged to consider a variety of additional public involvement forums such as open houses, public meetings, field tours, posting notices to websites and/or including information on the exchange proposal in NEPA and planning updates to improve public involvement opportunities.

Additionally, it may be beneficial to develop a news release or otherwise encourage local newspapers to do a story on the exchange proposal and encourage public participation in the evaluation process.

It appears that the Field Office did not provide additional public involvement forums such as open houses or public meetings and did not seek to improve public involvement opportunities.

The Desert Trails Coalition in meetings it initiated with the Monument Manager expressed concerns about the fairness of the exchange and lack of public benefits and requested additional information such as the reasons for the exchange, approximate value of the lands involved in the exchange, and means the BLM might have to secure public access to trails. The Monument Manager said that our questions would be answered in the EA and that we would have a chance to express our concerns then. He said it did not matter whether we agreed with the exchange or not. He said Congress had directed the BLM to make the exchange. He said that all we could do was to comment on the EA. He should not have claimed that Congress had directed the BLM to make the exchange because has not done so. The Monument Manager's claim had the effect of discouraging the Coalition from exercising its rights to raise issues for the BLM to consider before it issued an EA.

The lack of effective public involvement in the exchange process has resulted in an EA that does not give due consideration to public concerns. The BLM's responsibility is to determine whether or not a land exchange is beneficial to the public. Without effective public involvement in the exchange process and due consideration to public concerns, the BLM cannot determine whether or not the exchange is beneficial to the public and cannot assess the environmental effect of the action of the public's use and enjoyment of the land. The public has shown in letters to Congress and the BLM and in discussions with the Monument Manager that it is concerned about the loss of access to trails that it uses and enjoys. The lack of effective public involvement and the BLM's lack of response to public concerns have contributed to an incorrect finding of no insignificant impact in the EA. A finding of no significant impact is unsupported and wrong.

The Monument Manager has repeated at several meetings of the Desert Trails Coalition that it does not matter whether the public supports or opposes the land exchange, only whether the public is able to find weaknesses in the EA. We believe the Monument Manager is incorrect and if the BLM office processing this exchange has adopted that incorrect stance, then it is not fulfilling its obligation under federal regulations. If the BLM receives letters opposing the exchange that do not point to a technical weakness in the EA, the BLM still has a responsibility to analyze the reasons for the opposition and even to consider that the opposition likely amounts to evidence that the land exchange does not benefit the public and that a finding of no significant impact in the EA is not supported and not correct.

Lacking a public forum provided by the BLM, a large group of hikers took a plea for help to the Palm Springs City Council meeting on November 3, 2010. According to the Desert Sun article on November 4, 2010, the land exchange was "discussed for more than an hour as at least a dozen residents expressed their concerns regarding access of several trails currently free for public use." Those who spoke at the meeting were backed by more than a hundred others who came to the City Council hoping to find support for their concerns that they could not find at the BLM.

In another quote in its articles about the November 3 Council Meeting, the Desert Sun reported, "Jim Foote, manager of the national monument, declined to comment on the issue but added that "each and every comment will be addressed in our record of decision.""

It is not sufficient for the BLM to address public concerns in the "record of decision." The BLM is required to ensure effective public participation. The EA is a difficult legal and technical document for most citizens to critique. Simply allowing written comments on the EA falls short of what regulations mean by "effective public participation." By not involving the public in the decision making process at an earlier phase, the BLM has limited the public recourse to what is available through official appeals and litigation after the BLM makes its decision. That puts an onerous burden on the public. This is not the kind of fairness and transparency the federal regulations were written to provide.

The BLM's inadequate involvement of the public subverts the intention of federal regulations for the land exchange process to be transparent and to attend to the public's concerns. It is undemocratic. It is illegal. Limiting the public's effective involvement to commenting on the EA, a legal and technical document crafted by a professional consultant, a difficult document for citizens to critique, has the effect of intimidating the public and discouraging participation rather than stimulating public participation. Allowing the public to comment for only a short period of time adds to that intimidation and discourages full participation. The BLM worked on the EA for about two years. It could have involved the public during that time and could have reflected the public's concerns in the EA. Instead, the BLM revealed nothing about the planned content of the EA during those two years and did not discuss it with the public.

The BLM's Monument Manager told the Desert Trails Coalition that the EA would probably be released during the summer of 2009 and that the public would have 30 or 45 days to comment on it. The Coalition told the BLM in meetings and in a letter that a summer release with a 30 day comment period would not allow the public enough time to comment on the EA especially considering that so many people leave the desert during the hot summer months. The Coalition asked for a longer comment period and one that extended into the winter months when most people who might comment would be in the desert. The Monument Manager acknowledged that the BLM had received the letter but said that the comment period would not be extended and that the BLM would not reply to the letter.

When the BLM did not issue the EA in the summer of 2009, the Monument Manager told the Coalition that the BLM was still working on the EA. Then, the EA was issued in the summer of 2010 around the first of August and the BLM notified the Desert Trails Coalition that it would have 45 days to comment. When a member of the Coalition asked to see when public notice of the EA issuance and comment period had been posted in the Desert Sun, the BLM said that it had sent a news release to the Desert Sun but that it had not been published. Subsequently, the BLM extended the comment period for 30 days, until October 15, 2010. The Coalition appealed to Congresswoman Mary Bono Mack for assistance in extending the comment period for a longer period of time. She appealed to Interior Secretary Ken Salazar who then directed the BLM to extend the comment period until November 19, 2010.

Instead of ensuring effective public participation, the BLM has limited it. Instead of encouraging public involvement, the BLM has restricted it. The BLM's actions and inactions have led to an inadequate EA and to a false finding of no significant impact. It has created frustration and anxiety among the public. In response to a question asked by the Desert Sun about the public frustration and anxiety, the BLM has offered no comment and said only, "each and every comment will be addressed in our record of decision." The law requires more of the BLM than this.

The BLM should take a fresh look at the exchange, involve the public, produce the issue paper that is an essential required part of a feasibility report, conduct a fresh environmental impact study, and then allow a comment period that is long enough for the public to give it due consideration and arrange for the comment period to occur during the winter months when the desert population is at its peak.