



U.S. Department of the Interior  
Bureau of Land Management

California Desert District  
Palm Springs South Coast Field Office

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# Abbreviated Final Environmental Impact Statement

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Proposed Land Exchange between  
Bureau of Land Management and  
Agua Caliente Band of Cahuilla Indians

January 2018



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**United States Department of the Interior  
BUREAU OF LAND MANAGEMENT**

Palm Springs South Coast Field Office

1201 Bird Center Drive

Palm Springs, CA 92262

[www.blm.gov/california](http://www.blm.gov/california)

January 19, 2018

Dear Reader:

Enclosed for your review is the abbreviated Final Environmental Impact Statement (Final EIS) addressing environmental effects of a proposed land exchange between the Bureau of Land Management (BLM) and the Agua Caliente Band of Cahuilla Indians (Tribe). The proposed land exchange would occur within the Santa Rosa and San Jacinto Mountains National Monument. This exchange would improve opportunities for the use and protection of public lands, and promote their effective and efficient management. It would reduce the extent of “checkerboard” landownership by consolidating BLM and Tribal land bases, thereby providing for more logical and consistent land management responsibility in the Monument.

The Draft EIS was released for a 90-day public review and comment period extending from December 29, 2014, through March 29, 2015. Comment letters were received from 468 individuals, ten nongovernmental organizations, and three government entities. After considering all substantive comments, the BLM concluded that changes to the Draft EIS are minor, and as a result, an abbreviated Final EIS is published instead of rewriting the Draft EIS. The abbreviated Final EIS consists of a new cover sheet, Appendix N (Errata), and Appendix O (Public Comments and Agency Responses). This approach reduces excessive paperwork as required by and in the spirit of the Council on Environmental Quality’s *Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act* (Title 40 of the Code of Federal Regulations [CFR], Parts 1500-1508). To fully understand modifications to the Draft EIS based on public comments, as well as changes that reflect the outcome of the land value equalization process, you will need to compare the abbreviated Final EIS to the Draft EIS.

Comments received on Environmental Assessment CA-060-0010-0005, which was released for public comment and review on July 27, 2010; comments received during the public scoping process in advance of preparing the EIS, which occurred in March 2012; and comments received on the Draft EIS are available in their entirety for your review. Substantive comments received on the Draft EIS are summarized in Appendix O of the abbreviated Final EIS; agency responses to these summarized comments are also provided in Appendix O.

Coincident with release of the abbreviated Final EIS is release of the Record of Decision (ROD) for the proposed land exchange. The extent of public lands that will be exchanged for the offered Tribal lands as an outcome of the land value equalization process is not the same as identified for scenarios one, two, or three of the proposed action or the preferred alternative as described in the Draft EIS, instead falling between the no action alternative and scenario one of the proposed action. Specifically, the outcome of the land value equalization process, which is based on approved land value appraisals, results in an exchange of 2,560.00 acres of BLM lands for 1,471.24 acres of Tribal

lands with a cash payment of \$50,000.00 made by the BLM to the Tribe for equalization purposes. These lands are depicted in Figure 2f of the abbreviated Final EIS.

As described in the ROD, the following public benefits would be realized as an outcome of the land value equalization process:

*Consolidation:*

- Thirty-six percent increase in consolidation of public lands managed by the BLM in the project area, i.e., a change from 14 separate blocks of public lands under the no action alternative to nine blocks as an outcome of the land value equalization process, thereby reducing the extent of “checkerboard” landownership.
- Seventeen percent increase in the ratio of public-nonpublic land interfaces to acres managed by the BLM in the project area, i.e., a change from 1:225.14 under the no action alternative to 1:263.93 as an outcome of the land value equalization process, thereby reducing the number of miles of boundary separating Federal and non-Federal lands per acre of Federal lands managed by the BLM.

*Conservation:*

- Two percent increase in total conservation of the selected public lands and the offered Tribal lands identified for the proposed land exchange (combined), i.e., a change from 6,990 acres under the no action alternative to 7,140 acres as an outcome of the land value equalization process.
- Two percent increase in conservation of modeled/essential Peninsular bighorn sheep habitat on the selected public lands and the offered Tribal lands identified for the proposed land exchange (combined), i.e., a change from 5,385 acres under the no action alternative to 5,482 acres as an outcome of the land value equalization process.
- Five percent increase in conservation of modeled desert tortoise habitat on the selected public lands and the offered Tribal lands identified for the proposed land exchange (combined), i.e., a change from 3,787 acres under the no action alternative to 3,970 acres as an outcome of the land value equalization process.

*Potential development:*

- Forty-eight percent reduction of potential development within the selected public lands and the offered Tribal lands identified for the proposed land exchange (combined), i.e., a change from 279 acres to 144 acres as an outcome of the land value equalization process.
- Sixty-two percent reduction of potential development within modeled/essential Peninsular bighorn sheep habitat on the selected public lands and the offered Tribal lands identified for the proposed land exchange (combined), i.e., a change from 263 acres under the no action alternative to 100 acres as an outcome of the land value equalization process.
- Seventy-four percent reduction of potential development within modeled desert tortoise habitat on the selected public lands and the offered Tribal lands identified for the proposed

land exchange (combined), i.e., a change from 247 acres under the no action alternative to 65 acres as an outcome of the land value equalization process.

*Recreational access:*

- Eleven percent increase of hiking and horseback riding opportunities on official trails located on Federal lands, i.e., a change from 9.7 miles of trails on the selected public lands under the no action alternative to 10.8 miles on the retained public lands and acquired Tribal lands as an outcome of the land value equalization process. Overall, such recreational opportunities would remain unchanged, i.e., hiking and horseback riding opportunities would be available on 12.1 miles of official trails on the selected public lands and offered Tribal lands.
- Thirty-nine percent increase of mountain biking opportunities on official trails located on Federal lands, i.e., a change from 6.2 miles of trails on the selected public lands under the no action alternative to 8.6 miles on the retained public lands and acquired Tribal lands as an outcome of the land value equalization process. Overall, such recreational opportunities would remain unchanged, i.e., mountain biking opportunities would be available on 8.6 miles of official trails, whether under BLM or Tribal jurisdiction.
- Nineteen percent reduction in cross-country opportunities for hiking, mountain biking, and horseback riding on the selected public lands and offered Tribal lands, i.e., a change from 5,799 acres to 4,727 acres based on current conditions. These opportunities may change pending BLM's decision in this regard relative to the multi-jurisdictional trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan.

*Eligibility for Wild and Scenic River designation:*

- No change in eligibility for Wild and Scenic River designation in section 36, T.5S. R.4E., i.e., under both the no action alternative and as an outcome of the land value equalization process, a 1.2-mile segment of Palm Canyon on BLM-managed lands remains eligible for designation.

*Lands with wilderness characteristics:*

- Seventy-eight percent increase in acreage of contiguous tracts of public lands possessing wilderness characteristics in the project area, i.e., a change from 5,033 acres in Wilderness Inventory Unit (WIU) 340A under the no action alternative to 8,949 acres as an outcome of the land value equalization process. No change occurs for WIU 340B.

The ROD, Final EIS, and Draft EIS are available online at <https://goo.gl/qyiNJj>. Additionally, copies of the ROD, Final EIS and Draft EIS for the proposed land exchange are available for public review in the Palm Springs-South Coast Field Office located at 1201 Bird Center Drive, Palm Springs, CA 92262, during regular business hours (8 a.m. to 4 p.m.) Monday through Friday (except holidays). Comments received on Environmental Assessment CA-060-0010-0005, during the public scoping process for the EIS, and on the Draft EIS are available for public review at the BLM Palm Springs-South Coast Field Office during regular business hours. A compact disk containing these comment submissions is available upon request to the National Monument Manager at the above address, or email to [amadams@blm.gov](mailto:amadams@blm.gov).

### Protest of the Decision

Pursuit to 43 CFR 2201.7-1(b), for a period of 45 days after the date of publication of the Notice of Decision, such decision shall be subject to protest. Protests of the Record of Decision must be received on or before March 12, 2018, which ends the protest period. Protests may be sent via regular mail or alternative carrier, or delivered by hand to: Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262; or email to: [AguaCalienteExchange@blm.gov](mailto:AguaCalienteExchange@blm.gov). Verbal protests will not be accepted.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that the BLM may make your entire comment—including your personal identifying information—publicly available at any time. While you may include in your comment a request for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Pursuant to 43 CFR 2201.7-1(c), a right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4. The BLM will include information on the appeals process, if applicable, in any protest decisions.

For more information regarding the proposed land exchange or the process for protesting the Record of Decision, please contact Ashley Adams, National Monument Manager, at (760) 833-7100 or [amadams@blm.gov](mailto:amadams@blm.gov). Thank you for your interest in the shared stewardship of your public lands and resources.

Sincerely,



Douglas J. Herrema  
Field Manager

**ABBREVIATED**  
**FINAL ENVIRONMENTAL IMPACT STATEMENT**

Proposed Land Exchange between Bureau of Land Management and  
Agua Caliente Band of Cahuilla Indians

- Lead Agency: United States Department of the Interior  
Bureau of Land Management  
California State Office  
California Desert District  
Palm Springs-South Coast Field Office
- Project Location: Riverside County, California
- For further information contact: National Monument Manager  
Bureau of Land Management  
Palm Springs-South Coast Field Office  
1201 Bird Center Drive  
Palm Springs, CA 92262  
(760) 833-7100
- Abstract: The Bureau of Land Management (BLM) proposes to exchange certain public lands for properties owned by the Agua Caliente Band of Cahuilla Indians (Tribe); all public lands and Tribal properties are located within the Santa Rosa and San Jacinto Mountains National Monument. The draft environmental impact statement (EIS) described and analyzed alternatives based on varying amounts of public lands to be exchanged for Tribal lands, as well as the no action alternative. As an outcome of the land value equalization process described in the draft EIS, 2,560 acres of the selected public lands addressed in the draft EIS (5,799 acres) would be exchanged for all the offered Tribal lands (1,471 acres), plus a cash payment of \$50,000 made by the BLM to the Tribe to equalize land values. The purpose of the exchange is to promote effective and efficient management of the public and Tribal lands by reducing the extent of “checkerboard” landownership, thereby providing the BLM and the Tribe with more logical and consistent land management responsibility in the Monument.
- Protests: Protests related to NEPA documentation or other content of the Record of Decision must be received by the Palm Springs-South Coast Field Manager no later than 45 days following the date of publication of the notice of availability of the decision. Written protests may be submitted via U.S. Postal Service or other delivery service to the address above, delivered by hand, or sent via electronic mail to [AguaCalienteExchange@blm.gov](mailto:AguaCalienteExchange@blm.gov). Verbal protests will not be accepted.
- Appeals: The State Director’s decision in response to a protest is appealable to the Interior Board of Land Appeals (IBLA) in accordance with 43 CFR 4.410. If an appeal is taken, the appellant’s notice of appeal must be filed with the California State Director within 30 days from receipt of the decision on the protest. A petition may be filed pursuant to 43 CFR 4.21 for a stay of the effectiveness of the protest decision during the time the appeal is being reviewed by the IBLA; this petition must accompany the notice of appeal.

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## APPENDIX N ERRATA

### Introduction

This appendix identifies specific corrections and modifications to the draft environmental impact statement (EIS) prepared for the proposed land exchange between the Bureau of Land Management (BLM) and the Agua Caliente Band of Cahuilla Indians (Tribe). It is arranged in five sections:

- 1.0 Modifications Based on Public Comments (page N-2)
- 2.0 Modifications Reflecting the Outcome of the Land Value Equalization Process (page N-5)
- 3.0 Modifications Reflecting New Non-BLM Decisions since Preparation of the Draft EIS (page N-19)
- 4.0 Correction of Typographical Errors (page N-24)
- 5.0 Identification of New Source Materials (page N-26)

Chapters and sections of the draft EIS in which corrections and modifications occur are identified, along with page, line, and/or footnote numbers, as applicable. Clarifications and supporting information are provided as footnotes.

### Abbreviated final EIS

Upon concluding that changes to the draft EIS are minor, an abbreviated final EIS addressing the proposed land exchange between the BLM and the Tribe is published instead of rewriting the draft EIS. The abbreviated final EIS consists of a new cover sheet, Appendix N (Errata), and Appendix O (Public Comments and Agency Responses).<sup>1</sup> This approach reduces excessive paperwork as required by and in the spirit of the regulations at 40 CFR § 1500.4.

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<sup>1</sup> If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of 40 CFR § 1503.4, agencies may write them on errata sheets and attach them to the draft EIS instead of rewriting it (40 CFR § 1503.4(c)). Paragraphs (a)(1), (2), and (3) of § 1503.4 identify possible responses to public comments that may trigger rewriting the draft EIS: (1) modify alternatives including the proposed action, (2) develop and evaluate alternatives not previously given serious consideration by the agency, and/or (3) supplement, improve, or modify its analyses. Paragraphs (a)(4) and (5) identify possible responses to public comments that would not require rewriting the draft EIS: (4) make factual changes and/or (5) explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

## 1.0 Modifications Based on Public Comments

### Chapter One: Introduction

#### *1.4—Issues Addressed; (a) Purpose and Need for the Proposed Land Exchange:*

- page 1-7, footnote #8—the text is revised in its entirety to enhance understanding, though the information conveyed remains the same:

Public lands in section 36, T.4S. R.4E., which comprise the 11th block of public lands selected for the proposed land exchange, are not discussed at this point. Unlike the other 10 blocks of selected public lands that are completely surrounded by nonpublic lands, public lands in section 36 are adjoined by public lands in section 1, T.5S. R.4E., and section 6, T.5S. R.5E., (which are not selected for exchange with the Tribe). These adjoining public lands enhance consolidation of public lands in the project area, thereby establishing a preferred alternative that excludes public lands in section 36 (see section 2.3).

The original footnote is deleted:

~~Public lands in section 36, T.4S. R.4E., which comprise the 11th block of public lands selected for the proposed land exchange, are not discussed at this point because unlike the other 10 blocks of selected public lands that are completely surrounded by nonpublic lands, these adjoin public lands not selected for exchange with the Tribe. Including them in the discussion here would dramatically complicate the comparison being made with a consolidated township. These lands, however, are addressed at a later point.~~

- page 1-9, footnote #9—the text is revised in its entirety to reflect updated information regarding potential development of section 7, T.5S. R.5E.:

In the decades following Mr. Dunn’s proposal to develop private lands in section 7 for residential and commercial purposes, the City of Palm Springs revised its General Plan to substantially constrain development opportunities on lands zoned Open Space—Mountain. As a result of such revision, along with *Guiding Principles* developed by the Citizens’ Task Force for Mountain and Foothill Preservation and Planning, residential build-out population estimates for *all* Open Space—Mountain areas within the City’s boundaries is 1,466, a substantial reduction from the 1972 zoning level of 40,000 people for a 32-square-mile area annexed by the City along the Dunn Road.

The original footnote is deleted:

~~The City of Palm Springs annexed 32 square miles of the Santa Rosa Mountains along the Dunn Road in 1972, and zoned it for a population of 40,000 people. This area was referred to as “Palm Springs Atajo,” which included section 7 as a focus of development.~~

- page 1-11, line 19—clarification is provided to indicate land acquisition is an ongoing process that may further enhance consolidation of public and Tribal lands in the future. The following new paragraph is inserted below the second paragraph:

It is important to acknowledge that the block/interface analysis herein presented represents a snapshot in time of landownership. Future land acquisitions by the BLM and the Tribe may further consolidate their respective land bases in the project area. Such acquisitions would likely reduce the miles of public-nonpublic land interfaces per acre managed by the BLM.

#### Chapter Four: Environmental Consequences

Pages 4-4, 4-7, 4-21, 4-27, and 4-38 are modified to reiterate and emphasize that while opportunities for non-motorized recreation on the exchange properties are not anticipated to change in the short-term, changes to such opportunities could occur in the future. The following modifications are made in sections 4.1.4 and 4.2.1:

##### *4.1.4—General Analytical Assumptions:*

- page 4-4, line 36—insert the following new sentence at the end of the fourth bulleted statement:

Opportunities for all forms of non-motorized recreation in the future, however, could change in response to changing resource conditions or other factors that are not now reasonably foreseen.

##### *4.2.1—Impacts to Recreation Resources:*

- page 4-7, line 26—insert the following new sentence at the end of the fourth paragraph:

However, as previously indicated, opportunities for non-motorized recreation in the future could change in response to changing resource conditions or other factors that are not now reasonably foreseen.

- page 4-21, line 6—insert the following new sentence at the end of the first paragraph:

However, opportunities for non-motorized recreation on Tribal lands in the future could change in response to changing resource conditions or other factors that are not now reasonably foreseen.

- page 4-27, line 18—insert the following new sentence at the end of the first paragraph:

However, opportunities for all forms of non-motorized recreation on public lands in the future could change in response to changing resource conditions or other factors that are not now reasonably foreseen.

- page 4-38, line 20—change the third sentence of the third paragraph (“No.”) to read:

The answer is “no” with respect to the short-term.

- page 4-38, line 30—insert the following new sentence at the end of the third paragraph:

However, opportunities for all forms of non-motorized recreation on public lands in the future, whether utilizing official trails with or without dogs or traveling cross-country, could change in response to changing resource conditions or other factors that are not now reasonably foreseen.

A final modification to the draft EIS based on public comments is made in section 4.2.1—Impacts to Recreation Resources:

- page 4-17, line 15—a new subheading and paragraph are inserted below the second paragraph to acknowledge the “Palm Canyon Epic” as a mountain biking route of distinction:

*Palm Canyon Epic:*

The “Palm Canyon Epic,” recognized by the International Mountain Bicycling Association and various local organizations, provides an outstanding opportunity for mountain biking in southern California. Descending from California State Highway 74 in the Pinyon area to Highway 111 in Palm Springs, it utilizes the Palm Canyon, Indian Potrero, and Dry Wash Trails, Dunn Road, and the Hahn Buena Vista, Wild Horse, and Goat Trails (see <http://strava.com/activities/236345517>). Effects of the no action alternative, preferred alternative, and scenarios one, two, and three of the proposed action on this route are the same as herein described for each trail on the subject exchange properties, i.e., the Palm Canyon, Indian Potrero, and Wild Horse Trails. Other trails comprising the Palm Canyon Epic are located on public, private, and Tribal lands not involved in the proposed land exchange.

These minor changes are explained in BLM’s responses to comments in Appendix O. Such changes do not modify alternatives, result in the development and evaluation of new alternatives, or supplement, improve, or modify environmental analyses.

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## 2.0 Modifications Reflecting the Outcome of the Land Value Equalization Process

As described in section 3.0 of Appendix O, the extent of public lands that would be exchanged for the offered Tribal lands as an outcome of the land value equalization process is not the same as identified for scenarios one, two, or three of the proposed action or the preferred alternative, instead falling between the no action alternative and scenario one of the proposed action. Specifically, the outcome of the land value equalization process, which is based on the approved appraisals, would result in an exchange of 2,560.00 acres of BLM Category 1 lands for 1,471.24 acres of Tribal lands with a cash payment of \$50,000.00 made by the BLM to the Tribe for equalization purposes. This outcome constitutes the BLM's likely decision for the proposed land exchange.<sup>2</sup>

While predicted impacts to the use of official trails as an outcome of the land value equalization process are the same as described for scenario one of the proposed action, acreages of land available for cross-country travel would be different. However, as described for scenario one of the proposed action, whether any loss of opportunities for cross-country travel would result in adverse impacts to such travel is unknown, due in large part to a yet-to-be-made decision by the BLM regarding a proposed prohibition of cross-country travel on public lands in the project area (as identified in the multi-jurisdictional trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan), as well as a lack of empirical data regarding such travel (draft EIS pp. 4-11 and 4-12). With respect to special status species, this change in the extent of public lands to be acquired by the Tribe does not change the BLM's determination that the proposed land exchange is not likely to adversely affect bighorn sheep (and other listed species) or designated critical habitat as it only slightly changes levels of conservation and potential development. Impacts regarding eligibility of public lands in section 36, T.5S. R.4E., for Wild and Scenic River designation, as well as impacts to public lands having wilderness characteristics, are the same for the land value equalization outcome as described for scenario one of the proposed action.

### Executive Summary

- page ES-5, line 11—insert the following new paragraph after the second paragraph:

Based on approved land value appraisals and application of the process described in section 2.2 regarding the order in which the selected public lands would be considered in the land value equalization process, 2,560.00 acres of public lands would be exchanged for 1,471.24 acres of Tribal lands. This outcome falls between scenario one of the proposed action and the no action alternative.

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<sup>2</sup> The extent of public and Tribal lands that would be exchanged as an outcome of the land value equalization process is based on acreages identified in the approved land appraisals versus acreages identified in section 2.2 and Appendix J of the draft EIS, which are based on Geographic Information System (GIS) projections. With respect to public lands, total acreage of the four parcels identified for exchange (sections 16, 21, 27, and 29, T.5S. R.4E.) is 3.6 acres more than described in the draft EIS for the same sections, an increase of 0.06 percent. Total acreage of the three Tribal parcels identified for exchange (sections 7, 19, and W1/2W1/2 20, T.5S. R.5E.) is 1.24 acres more than described in the draft EIS for the same sections, an increase of 0.08 percent. Except where public and Tribal acreages are cited in the final EIS as 2,560.00 and 1,471.24 acres (respectively) for purposes of precision, analyses are unchanged given the small percentile differences.

## Chapter Two: Alternatives

- page 2-1, line 20—insert the following new sentence at the end of paragraph two:  
  
Figure 2f depicts an exchange of public and Tribal lands as an outcome of the land value equalization process (see section 2.2).
- page 2-3, line 32—insert the following new paragraph, parcel identifications, and bracketed notation after the third paragraph:

Based on approved land value appraisals and application of the process herein described regarding the order in which the selected public lands would be considered in the land value equalization process, the following public and Tribal lands would be exchanged:

*BLM Category 1 parcels:*

T.5S. R.4E. sections 16, 21, 27, and 29, all (2,560.00 acres)

*Tribal parcels identified for exchange* (totaling 1,471.24 acres):

T.5S. R. 5E. section 7, all  
section 19, all  
section 20, W1/2W1/2

[Note: Acreages of public and Tribal lands to be exchanged, which reflect those provided in the approved appraisals, slightly differ from acreages identified on page 2-2 and in Appendix J, which are based on Geographic Information System (GIS) projections. With respect to public lands, the total for the four parcels is 3.6 acres more than described for the same parcels in BLM Category 1. The total for the three Tribal parcels is 1.24 acres greater.]

## Chapter Three: Affected Environment

### *3.2.21—Wilderness:*

- pages 3-47, footnote #26—insert the phrase “and as an outcome of the land value equalization process,” and change “3e” to “3f” in the first sentence to read:

As described in Appendix J—Acres, Perimeters, and Consolidation: Public and Tribal Lands—the largest “block” of consolidated public lands ranges from 10,292.76 acres under the no action alternative to 14,613.71 acres under scenarios one and two of the proposed action and the preferred alternative, **and as an outcome of the land value equalization process** (see Figures 3a through 3f).

The remainder of the footnote is not changed.

## Chapter Four: Environmental Consequences

### *4.2.1—Impacts to Recreation Resources:*

- page 4-2, line 7—insert the following new bulleted paragraph after the first bulleted paragraph on this page:

- Outcome of the Land Value Equalization Process. Based on approved land value appraisals and application of the process described in section 2.2 regarding the order in which the selected public lands would be considered in the land value equalization process, 2,560.00 acres of public lands would be exchanged for 1,471.24 acres of Tribal lands. This outcome falls between scenario one of the proposed action and the no action alternative.

- page 4-7, line 17—insert the following new paragraph and subsequent summarization of the land value equalization outcome after the third paragraph:

Based on approved land value appraisals and application of the process described in section 2.2 regarding the order in which the selected public lands would be considered in the land value equalization process, 2,560.00 acres of public lands would be exchanged for 1,471.24 acres of Tribal lands. This outcome falls between scenario one of the proposed action and the no action alternative.

Outcome of the Land Value Equalization Process: Only a portion of BLM Category 1 lands are exchanged for the offered Tribal lands; the remaining Category 1 lands, as well as BLM Category 2 and 3 lands are not exchanged—see section 2.2 (proposed action).

- page 4-10, line 10—insert the following new sentence at the end of the first paragraph:

Jurisdiction of these trails as an outcome of the land value equalization process would be the same as herein described for scenario one of the proposed action.

- page 4-11, line 7—insert the phrase “and as an outcome of the land value equalization process” in the first sentence of the first paragraph to read:

Under scenario one of the proposed action **and as an outcome of the land value equalization process**, the only official trail on public lands affected by the proposed land exchange is the Jo Pond, which connects Cedar Spring on National Forest System lands with Tribal lands in Palm Canyon via the West Fork Trail.

- page 4-11, line 47—insert the parenthetical phrase “(or 2,560 acres transferred as an outcome of the land value equalization process)” in the second sentence of the last paragraph to read:

Whereas cross-country travel is currently allowed on the 4,015 acres of public lands that would be transferred to the Tribe **(or 2,560 acres transferred as an outcome of the land value equalization process)**, such travel would be prohibited upon acquisition by the Tribe, consistent with provisions of the THCP.

- page 4-12, line 3—insert the parenthetical phrase “(or a portion thereof as an outcome of the land value equalization process)” in the last sentence of the first paragraph to read:

Whether the loss of opportunities for cross-country travel would result in adverse impacts to cross-country travel on BLM Category 1 lands **(or a portion thereof as an outcome of the land value equalization process)**, therefore, is unknown, but such impacts are anticipated to be minor, if at all.

- page 4-14, line 7—insert the parenthetical phrase “(as well as an outcome of the land value equalization process)” in the first sentence of the first paragraph to read:

Under scenario one **(as well as an outcome of the land value equalization process)**, the only official trail on public lands affected by the proposed land exchange is the Jo Pond.

- page 4-17, line 37—insert the phrase “and the land value equalization outcome” in the first sentence of the last paragraph to read:

Under scenario two of the proposed action, opportunities for cross-country travel may be further diminished (compared to scenario one **and the land value equalization outcome**) upon the Tribe’s acquisition of BLM Category 1 and 2 lands.

- page 4-19, line 10—insert the parenthetical phrase “(as well as an outcome of the land value equalization process)” in the first sentence of the first paragraph to read:

Under scenario one **(as well as an outcome of the land value equalization process)**, the only official trail on public lands affected by the proposed land exchange is the Jo Pond.

- page 4-26, line 27—insert the parenthetical phrase “(as well as an outcome of the land value equalization process)” in the first sentence of the third paragraph to read:

Under scenario one **(as well as an outcome of the land value equalization process)**, the only official trail on public lands affected by the proposed land exchange is the Jo Pond.



- page 4-31, Table 4.2.1.6—insert two columns to the left of “Proposed Action *scenario 1*” as follows (note: the first column below is reiterated from the draft EIS to enhance understanding of this revision):

Table 4.2.1.6: Summary of access opportunities to official trails on the selected public lands and offered tribal lands by jurisdiction, in miles

	Land Value Equalization Outcome	Land Value Equalization Outcome
	BLM	Tribe
H	10.8	1.3
MB	8.6	0.0
HR	10.8	1.3

H = hiking; MB = mountain biking; HR = horseback riding

Values in these two new columns for the land value equalization outcome are the same as for scenario one of the proposed action.

- page 4-32, Table 4.2.1.7—insert two columns to the left of “Proposed Action *scenario 1*” as follows (note: the first column below is reiterated from the draft EIS to enhance understanding of this revision):

Table 4.2.1.7: Summary of cross-country opportunities by jurisdiction, in acres

	Land Value Equalization Outcome	Land Value Equalization Outcome
	BLM	Tribe
CC	4,724	0.0

CC = cross-country

- page 4-41, footnote #39—Insert the following new sentence at the end of the footnote:

As an outcome of the land value equalization process, cross-country opportunities would be available on 4,724 acres of the selected public lands, thereby diminishing opportunities for cross-country travel on 1,089 acres.

#### 4.2.2—Impacts to Special Status Species:

- page 4-46, line 41—insert the phrase “65 percent as an outcome of the land value equalization process” in the third sentence of the fourth paragraph to read:

Of the 7,269 acres of selected public lands and offered Tribal lands combined, about 20 percent would be available for cross-country travel under scenario three of the proposed action; 27 percent under the preferred alternative; 36 percent under scenario two of the proposed action; 45 percent under scenario one of the proposed action; **65 percent as an outcome of the land value equalization process**; and 80 percent under the no action alternative—all opportunities for cross-country travel would occur on BLM lands only.

- page 4-47, line 48—insert the phrase “and as an outcome of the land value equalization process,” and change “scenario 3” to “scenario three” (for consistency with terminology used in the draft EIS) in the third sentence of the last paragraph (which carries onto page 4-48) to read:

Assuming that access with dogs generally occurs on official trails for the safety of both trail user and dog (versus cross-country travel or on social trails), opportunities for such access would be greatest under scenarios one and two of the proposed action and the no action alternative, **and as an outcome of the land value equalization process**—in which 1.9 miles or about 16 percent of trails on the selected public and offered Tribal lands would be available for hiking with dogs—and least under **scenario three** of the proposed action and the preferred alternative in which no trails would be available for this activity.

*The remainder of this page is intentionally blank.*

- pages 4-53, 4-54, and 4-55; Tables 4.2.2.1, 4.2.2.2, and 4.2.2.3, respectively—insert one column to the left of “Proposed Action *scenario 1*” as follows (note: the first column in each table below is reiterated from the draft EIS to enhance understanding of these revisions):

Table 4.2.2.1: Conservation and potential development of selected public lands, offered Tribal lands, and other Tribal lands within the MCCA, in acres

	Land Value Equalization Outcome
	<b>BLM</b>
public lands retained	3,253
acquired lands	1,471
<i>total</i>	4,724
x 0.99	4,677
x 0.01	47
	<b>Tribe</b>
Tribal lands subject to 85 percent conservation	19,004
x 0.85	16,153
x 0.15	2,851
acquired lands subject to 96.2 percent conservation	2,560
x 0.962	2,463
x 0.038	97
	<b>Summary</b>
total conservation in MCCA, public and Tribal lands	23,293 (88.61%)
total potential development in MCCA, public and Tribal lands	2,995 (11.39%)

Table 4.2.2.2: Conservation and potential development of selected public lands and offered Tribal lands only, in acres

	Land Value Equalization Outcome
	<b>BLM</b>
public lands retained	3,253
acquired lands	1,471
<i>total</i>	4,724
x 0.99	4,677
x 0.01	47
	<b>Tribe</b>
Tribal lands subject to 85 percent conservation	0
x 0.85	0
x 0.15	0
acquired lands subject to 96.2 percent conservation	2,560
x 0.962	2,463
x 0.038	97
	<b>Summary</b>
total conservation	7,140 (98.02%)
total potential development	144 (1.98%)

Table 4.2.2.3: Conservation and potential development of modeled/essential Peninsular bighorn sheep habitat; selected public lands and offered Tribal lands only, in acres

	Land Value Equalization Outcome
	<b>BLM</b>
PBS habitat on public lands retained	2,536
acquired PBS habitat	1,471
<i>total</i>	4,007
x 0.99	3,967
x 0.01	40
	<b>Tribe</b>
PBS habitat on Tribal lands subject to 85 percent conservation	0
x 0.85	0
x 0.15	0
acquired PBS habitat subject to 96.2 percent conservation	1,575
x 0.962	1,515
x 0.038	60
	<b>Summary</b>
total conservation	5,482 (98.21%)
total potential development	100 (1.79%)

PBS = Peninsular bighorn sheep

- page 4-54, line 12—change the phrase “almost 98 percent under scenario one of the proposed action” in the fifth sentence of the last paragraph to “more than 98 percent as an outcome of the land value equalization process”; also change “97 percent” to “98 percent” to read:

As displayed in Table 4.2.2.3, conservation of this habitat under all alternatives is high, ranging from about 95 percent under the no action alternative to **more than 98 percent as an outcome of the land value equalization process**. This level is consistent with overall conservation which ranges from about 96 to **98** percent (see Table 4.2.2.2).

- page 4-57, line 9—change “97 percent” in the fourth sentence of the first paragraph to “98 percent” to read:

Conservation of the selected public lands and offered Tribal lands only would also remain about the same (ranging from 96 to **98** percent), regardless of the alternative selected.

- page 4-58, line 15—insert the parenthetical phrase “(as well as the land value equalization outcome)” in the third sentence of the second paragraph to read:

The reduction of conserved modeled habitat under the “intermediate alternatives”—i.e., scenarios one and two of the proposed action and the preferred alternative (**as well as the land value equalization outcome**), the implementation of which would exchange fewer than 5,799 acres of the selected public lands for the offered Tribal lands—would be marginally different.

- page 4-58, line 26—change “97.44 percent” in the first sentence of the third paragraph to “98.02 percent” to read:

Conservation of modeled habitat for least Bell’s vireo and southwestern willow flycatcher—from 96.0 percent under scenario three of the proposed action to 98.8 percent under the no action alternative—is consistent with overall conservation of the selected public lands and offered Tribal lands under all alternatives, i.e., from 96.16 percent to **98.02** percent (see Table 4.2.2.2).

- page 4-59, line 31—change “97.44 percent” in the fourth sentence of the last paragraph to “98.02 percent” to read:

This level of conservation of desert tortoise modeled habitat is generally consistent with overall conservation of the selected public lands and offered Tribal lands under all alternatives, i.e., from 96.16 percent to **98.02** percent (see Table 4.2.2.2).

- page 4-60, Table 4.2.2.4—insert one column to the left of “Proposed Action *scenario 1*” as follows (note: the first column in the table below is reiterated from the draft EIS to enhance understanding of the revision):

Table 4.2.2.4: Conservation and potential development of modeled desert tortoise habitat; selected public lands and offered Tribal lands only, in acres

	Land Value Equalization Outcome
	<b>BLM</b>
DT habitat on public lands retained	1,693
acquired DT habitat	1,471
<i>total</i>	3,164
x0.99	3,132
x0.01	32
	<b>Tribe</b>
DT habitat on Tribal lands subject to 85 percent conservation	0
x 0.85	0
x0.15	0
acquired DT habitat subject to 96.2 percent conservation	871
x 0.962	838
x 0.038	33
	<b>Summary</b>
total conservation	3,970 (98.39%)
total potential development	65 (1.61%)

DT – desert tortoise

- page 4-66, line 35—change “96-97 percent” in the third sentence of the fourth paragraph to “96 to 98 percent” to read:

Under all alternatives, conservation of habitats for Peninsular bighorn sheep, least Bell’s vireo, southwestern willow flycatcher, and desert tortoise would be high: about 88 percent on the selected public lands, offered Tribal lands, and other Tribal lands within the external boundary of the Agua Caliente Indian Reservation (see Table 4.2.2.1), and 96 **to 98** percent on the selected public lands and offered Tribal lands when considered by themselves (see Table 4.2.2.2).

- page 4-67, line 42—insert the phrase “the land value equalization outcome” in the third sentence of the last paragraph to read:

With respect to conservation of modeled habitat for the burrowing owl, **the land value equalization outcome**, scenarios one and two of the proposed action, and the preferred alternative are the same as the no action alternative since section 36 would be retained by the BLM under each of them.

- page 4-68, line 3—change “97.44 percent” in the first sentence of the first paragraph to “98.02 percent” to read:

Conservation of modeled habitat for the burrowing owl—from 96.2 percent under scenario three of the proposed action to 99.0 percent under the no action alternative—is generally consistent with overall conservation of the selected public lands and offered Tribal lands under all alternatives, i.e., from 96.16 percent to **98.02** percent (see Table 4.2.2.2).

4.2.3—Impacts to Wild and Scenic Rivers:

- page 4-70, line 11—insert the phrase “and as an outcome of the land value equalization process” in the first sentence of the second paragraph to read:

Eligibility of the Palm Canyon segment for designation as a Wild and Scenic River would continue under scenario one of the proposed action and the no action alternative, **and as an outcome of the land value equalization process** whereupon section 36, T.5S. R.4E., would be retained by the BLM.

- page 4-70, Table 4.2.3.1—insert one column to the left of “Proposed Action *scenario 1*” as follows (note: the first column in the table below is reiterated from the draft EIS to enhance understanding of the revision):

Table 4.2.3.1: Eligibility for Wild and Scenic River designation, in miles

	Land Value Equalization Outcome
public lands	1.2
Tribal lands	0.0
<i>total</i>	1.2

Values in this new column for the land value equalization outcome are the same as for scenario one of the proposed action and the no action alternative.

- page 4-71, line 7—change “97 percent” in the first sentence of the second paragraph to “98 percent” to read:

Habitat for state species of special concern—summer tanager, yellow warbler, yellow-breasted chat, gray vireo, and southern yellow bat—would be protected by virtue of overall conservation of the selected public lands (including section 36) and the offered Tribal lands under all alternatives, that is, at the 96 to **98** percent level (see Table 4.2.2.2).

- page 4-71, line 27—insert the phrase “and as an outcome of the land value equalization process” in the first sentence of the fourth paragraph to read:

While the free-flowing characteristics, outstandingly remarkable values, archaeological sites, and prehistoric trail in section 36, T.5S. R.4E., would be protected upon implementation of the proposed action or an alternative action, its eligibility for designation as a Wild and Scenic River would only be maintained under scenario one of the proposed action and the no action alternative, **and as an outcome of the land value equalization process**.

- page 4-71, line 45—insert the phrase “and as an outcome of the land value equalization process” in the third sentence of the last paragraph to read:

Under scenario one of the proposed action and the no action alternative, **and as an outcome of the land value equalization process**, eligibility of section 36 as a Wild and Scenic River would be retained, though the Omnibus Public Land Management Act of 2009 does not provide for coordinated management of Palm Canyon that involves the BLM, instead directing the Secretary of Agriculture only to enter into an agreement with the Tribe.

- page 4-72, line 35—reposition “or” and insert the phrase “the land value equalization outcome” in the fifth sentence of the sixth paragraph to read:

On the other hand, implementation of scenario one of the proposed action, the no action alternative, **or the land value equalization outcome** would retain the possibility for further enlargement of the System through designation of the Palm Canyon segment in section 36 as a Wild and Scenic River, thereby expanding the existing Palm Canyon Creek National Wild and Scenic River from 8.1 miles in length to 9.3 miles, an increase of almost 15 percent.

- page 4-72, line 45—reposition “or” and insert the phrase “the land value equalization outcome” in the second sentence of the last paragraph to read:

On the other hand, implementation of scenario one of the proposed action, the no action alternative, **or the land value equalization outcome** would preserve eligibility of this segment of Palm Canyon for designation as a Wild and Scenic River, though the realization of such status is wholly dependent upon Congressional action.

4.2.4—Impacts to Lands with Wilderness Characteristics:

- page 4-73, line 8—delete “as well as” and insert the phrase “or the land value equalization outcome” in the second sentence of the first paragraph to read:

As depicted in Figure 7a and described in Appendix L, implementation of scenarios one and two of the proposed action, ~~as well as~~ the preferred alternative, **or the land value equalization outcome** would increase the size of WIU 340A by about 78 percent, or from 5,033 acres under the no action alternative to 8,949 acres.

- page 4-73, line 24—insert the phrase “and as an outcome of the land value equalization process” in the second sentence of the second paragraph. In addition, scenarios two and three of the proposed action are erroneously identified as those under which section 36, T.4S. R.4E. would be retained by the BLM. Instead, scenarios one and two should have been identified. This typographical error is corrected to read:

The difference is due to the Tribe’s potential acquisition of section 36, T.4S. R.4E.—under **scenarios one and two** of the proposed action and the preferred alternative, **and as an outcome of the land value equalization process**, the BLM would retain this section.

- Appendix L: Wilderness Inventory Units, Table L.1—insert one column to the left of “Proposed Action *scenario 1*” as follows (note: the first column in the table below is reiterated from the draft EIS to enhance understanding of the revision):

Table L.1: Contiguous tracts of public lands possessing wilderness characteristics, in acres (Wilderness Inventory Unit CDCA 340, partial)

WIU subunit	Land Value Equalization Outcome
340A: west of Dunn Road	8,948.57
340B: east of Dunn Road	4,654.75

Values in this new column for the land value equalization outcome are the same as for scenarios one and two of the proposed action and the preferred alternative.

- Appendix L: Wilderness Inventory Units, Table L.2 (Composition of Wilderness Inventory Unit 340A, by sections)—insert a new footnote to the header “Alternative” in the first column to read:

Composition of WIU 340A as an outcome of the land value equalization process is the same as identified for scenario one of the proposed action.



4.6—Irreversible or Irretrievable Commitments of Resources:

- page 4-76, line 22—change “96 to 97 percent” to “96 to 98 percent,” and “3 to 4 percent” to “2 to 4 percent” in the first sentence of the third paragraph to read:

As described in this draft EIS: (a) conservation of the exchange lands occurs at a high level, i.e., 96 to **98** percent under all alternatives, thereby allowing no more than **2** to 4 percent of these public and Tribal lands overall to be developed (see Table 4.2.2.2); (b) ...; and (c) ....

*Figures 2a through 2e:*

- add Figure 2f to reflect the outcome of the land value equalization process, entitled:

Figure 2f  
Land Value Equalization Outcome

Figure 2f is attached at the end of this appendix.

*Figures 3a through 3e:*

- add Figure 3f to reflect the outcome of the land value equalization process, entitled:

Figure 3f  
Public Land Consolidation  
Land Value Equalization Outcome

Figure 3f is attached at the end of this appendix.

*Figure 7a:*

- reposition “and” and insert “Land Value Equalization Outcome” in the figure title to read:

Wilderness Inventory Units (WIU) – Preferred Alternative, Proposed Land Exchange (Scenarios 1 & 2), and Land Value Equalization Outcome

*The remainder of this page is intentionally blank.*

Appendix J: Acres, Perimeters, and Consolidation:

- page J-7—insert a new table to reflect the outcome of the land value equalization process, located below Table J.8—Blocks of Consolidated Public Lands, Category 1 Lands Exchanged:

Table J.8(a): Blocks of Consolidated Public Lands, Category 1 Lands Exchanged as an Outcome of the Land Value Equalization Process

Block	Constituent Sections	Acres	Perimeter (miles)
1	<u>T4S R4E</u> Sec. 16	634.89	3.98
2	<u>T4S R4E</u> Sec. 17 (parcel)	28.95	0.86
3	<u>T4S R4E</u> Sec. 18 (NE parcel)	81.27	1.51
4	<u>T4S R4E</u> Sec. 18 (NW parcel)	40.72	1.01
5	<u>T4S R4E</u> Sec. 18 (SW parcel)	20.15	0.75
6	<u>T5S R4E</u> Sec. 5	643.06	4.01
7	<u>T5S R4E</u> Sec. 32	641.54	4.00
8	<u>T5S R4E</u> Sec. 36	641.25	4.00
9	<u>T4S R4E</u> Sec. 36 (portion)  <u>T5S R4E</u> Sec. 1 (portion)  <u>T5S R5E</u> Sec. 6, 7, 8 (portion), 18, 19, 20, 28, 29 (portion), 30, 32, 33, 34  <u>T6S R5E</u> Sec. 4, 5 (portion), 6, 8, 9 (portion), 10, 14, 15 (portion), 16, 17 (portion)	14,613.71	45.60
Total		17,345.54	65.72
		Ratio of public- nonpublic land interfaces to acres managed: 1:263.93	Ratio of public- nonpublic land interfaces to acres managed: 1:263.93

- page J-10, Table J.11—insert one row above “Proposed Action, Cat.1” as follows (note: the first row in the table below is reiterated from the draft EIS to enhance understanding of the revision):

Table J.11: Summary, Consolidation of Public Lands by Alternative

Alternative	Blocks (# managed by BLM)	Acres of public lands exchanged	Acres of public lands retained	Ratio of public-nonpublic land interfaces to acres managed
Land Value Equalization Outcome	9	2,560.00	3,253.05	1.263.93

A footnote to this new row is added to read:

Acres of public lands that would be exchanged as an outcome of the land value equalization process (which is based on approved appraisals for public and Tribal parcels) slightly differ from those identified in section 2.2 and this appendix of the draft EIS for three scenarios of the proposed action, the preferred alternative, and the no action alternative (which are based on Geographic Information System (GIS) projections).

### 3.0 Modifications Reflecting New Non-BLM Decisions since Preparation of the Draft EIS

When the draft EIS was being prepared, the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan was in the process of being revised. In June 2014, the revision was approved by the Coachella Valley Conservation Commission. To reflect this change, the draft EIS is modified as follows:

#### Chapter Three: Affected Environment

##### 3.2.14—Recreation Resources:

- page 3-18, footnote #6—revise the second sentence to read:

Although such revision was completed in 2014 and approved by the Coachella Valley Conservation Commission, concomitant changes to City of Palm Springs municipal codes have not yet occurred.

The original second sentence is deleted:

~~It is anticipated that until the revision process has been completed and the revised plan is approved by the Coachella Valley Conservation Commission, changes to the City of Palm Springs’ municipal codes will be deferred.~~

The first sentence of the footnote is not changed.

Also, the San Bernardino National Forest was in the process of amending its land management plan when the draft EIS was being prepared. Since then, the process has been completed; the final

Record of Decision for the amendment was signed by the Forest Supervisor on October 28, 2014. While mountain biking on the Palm Canyon Trail remains a non-conforming use where it traverses the *Recommended Wilderness* land use zone, circumstances in this regard are clarified in the final Record of Decision, which slightly modifies the 2013 proposed decision: “The selected Alternative 2a will change the land use zone classification from [Back Country] and Back Country Motorized Use Restricted to [Back Country Non-Motorized] on 2,326 acres of the Pyramid Peak A [Inventoried Roadless Area]. The existing 7,387 acres of [Recommended Wilderness] land use zone will remain unchanged. ... The remaining 2,326 acres of the Pyramid Peak A [Inventoried Roadless Area] is mostly separated from [Recommended Wilderness] by the Palm Canyon trail, which is used for hiking, horseback riding, and mountain biking, the latter of which is a non-conforming wilderness use” (page 17 of the final ROD). As a consequence of approving Alternative 2a, references in the draft EIS to the “wilderness emphasis alternative” (alternative three) are no longer applicable. Regarding Wilderness Inventory Unit (WIU) 340A, designation of the adjacent National Forest System lands as *Back Country Non-Motorized* instead of *Recommended Wilderness* renders moot any considerations at this time of a potential joint BLM-Forest Service wilderness. As a consequence, the following changes to the draft EIS are made:

#### Chapter Four: Environmental Consequences

##### *4.2.1—Impacts to Recreation Resources:*

- page 4-16, line 23: delete the phrase “and potential” from the first sentence of the fourth paragraph to read:

It is important to acknowledge, however, existing ~~and potential~~ restrictions on mountain bike access to the Palm Canyon Trail where it occurs on National Forest System lands under jurisdiction of the San Bernardino National Forest.

- page 4-16, line 37—revise the fifth paragraph in its entirety (which carries onto page 4-17) to read:

Although the San Bernardino National Forest (SBNF) recently amended its land management plan as a component of the Southern California National Forests Land Management Plan Amendment (Forest Service 2013 and 2014), the plan amendment includes the same lands recommended for wilderness designation as identified in the 2005 revised plan for the San Jacinto Ranger District of the SBNF (Forest Service 2005); hence, mountain biking remains a nonconforming use on certain segments of the Palm Canyon Trail. Nevertheless, access to the trail is still available via the Potrero Canyon Trail which intersects the Palm Canyon Trail north of its location within the *Recommended Wilderness* land use zone (Pyramid Peak A).

The original fifth paragraph is deleted:

~~The San Bernardino National Forest is in the process of amending its land management plan. Both the proposed action and preferred alternative of the Southern California National Forests Land Management Plan Amendment (Forest Service 2013) include the same lands recommended for wilderness designation as identified in the 2005 revised plan for the San Jacinto Ranger District of the San Bernardino National Forest; mountain biking would remain a noneonforming use on certain segments of the Palm Canyon Trail if either~~

~~alternative is adopted. Nevertheless, access to the trail would still be available via the Potrero Canyon Trail which intersects the Palm Canyon Trail north of its location within the *Recommended Wilderness* land use zone (Pyramid Peak A).~~

Footnote #17 is deleted:

~~The Angeles, Cleveland, Los Padres, and San Bernardino National Forests are amending their respective land management plans as they relate to roadless area management and to monitoring. The proposed amendment is a result of a settlement agreement approved January 3, 2011, as the remedy for two lawsuits challenging the revised land management plans (California Resources Agency, et al. v. U.S. Department of Agriculture; and Center for Biological Diversity, et al. v. U.S. Department of Agriculture).~~

Footnote #18 is retained.

- page 4-17, line 5—delete the second paragraph in its entirety:

~~Most of the Palm Canyon Trail on National Forest System lands, however, occurs within the *Recommended Wilderness* land use zone under the recommended wilderness emphasis alternative (alternative three). While this alternative is neither proposed nor preferred, nor is it approved in accordance with the draft Record of Decision for the Southern California National Forests Land Management Plan Amendment (Forest Service n.d.), mountain bicycle access would be largely a nonconforming use on the Palm Canyon Trail in the project area for the proposed land exchange if it were to be adopted, except for the 1.2-mile segment on the selected public lands.~~

- page 4-37, line 6—delete the word “proposed” from the phrase “proposed Southern California National Forests Land Management Plan Amendment” and amend the parenthetical citation “(Forest Service 2013)” by adding the phrase “and 2014” in the second sentence of the first bulleted paragraph to read:

Should the U.S. Congress establish a new wilderness area on National Forest System lands adjacent to Palm Canyon (“Pyramid Peak A”) as recommended in the **proposed** Southern California National Forests Land Management Plan Amendment, bicycle access to the Palm Canyon, Oak Canyon, and Live Oak Canyon Trails may be similarly affected (Forest Service 2013 **and 2014**).

## Appendix K: Wilderness Characteristics Inventory

- Appendix K, page K-6, line 25—delete the fifth paragraph (and footnote #4) in its entirety:

~~The San Bernardino National Forest is in the process of amending its land management plan. Both the proposed action and preferred alternative of the Southern California National Forests Land Management Plan Amendment (Forest Service 2013) include the same lands recommended for wilderness designation as identified in the 2005 revised plan for the San Jacinto Ranger District of the San Bernardino National Forest (SBNF) (Forest Service 2005). At its closest point—the southwest corner of section 6, T.6S. R.5E. WIU 340A is less than one quarter mile east of the existing *Recommended Wilderness* land use zone for the “Pyramid Peak A” Inventoried Roadless Area (IRA); the entire western boundary of section 6 is contiguous with the SBNF’s existing *Back Country Non-Motorized* land use zone. With respect to the proposed action and preferred alternative of the 2013 plan amendment, public lands in section 17, T.6S. R.5E. (within WIU 340A), are contiguous with National Forest System lands that are proposed for designation as *Back Country Non-Motorized*; these lands are currently designated as *Back Country Motorized Use Restricted*.~~

- Appendix K, page K-6, line 39—delete the sixth paragraph in its entirety:

~~Under the recommended wilderness emphasis alternative of the 2013 plan amendment (alternative three) which would not be adopted per the draft Record of Decision for the Southern California National Forests Land Management Plan Amendment (Forest Service n.d.)—public lands in sections 6 and 17, T.6S. R.5E. (within WIU 340A), are contiguous with the *Recommended Wilderness* land use zone. Rationale for retaining the existing *Recommended Wilderness* land use zone under the proposed action and preferred alternative, and rejecting an increase in the size of this zone under the recommended wilderness emphasis alternative is as follows:~~

- Appendix K, page K-7, lines 2 and 12—delete the first and second paragraphs in their entirety:

~~The 7,387 acres of the Pyramid Peak A IRA [Inventoried Roadless Area] adjacent to the existing designated San Jacinto Wilderness and National Forest Boundary is classified as RW [Recommended Wilderness] because it has an impressive and expansive scenic vistas [*sic*], is within the Santa Rosa and San Jacinto Mountains National Monument, has segments of the Palm Canyon wild river (with its distinctive California fan palms), is relatively natural and free from disturbance, and has high feelings of solitude and primitive recreation opportunities. It is a key habitat for the peninsular bighorn sheep. This area’s size, shape and uses can be effectively managed as wilderness.~~

~~Another 2,326 acres of the Pyramid Peak A IRA offer limited opportunities for solitude and challenge, has [*sic*] low wilderness values and characteristics, has [*sic*] uses that cannot be effectively managed as wilderness, and is [*sic*] not needed as part of the wilderness preservation system. It is my decision that this~~

~~additional BCNM [Back Country Non-Motorized] zoning here will provide the best mix of suitable uses for this portion of the IRA.~~

- Appendix K, page K-9, line 9—delete the second paragraph in its entirety and replace it the following new paragraph:

During preparation of the draft EIS for the proposed land exchange, San Bernardino National Forest (SBNF) was in the process of amending its land management plan, a component of the Southern California National Forests Land Management Plan Amendment (Forest Service 2013); the plan amendment process concluded in October 2014 upon issuance of the final Record of Decision (Forest Service 2014). While the supplemental EIS for the proposed plan amendment includes a wilderness emphasis alternative whereby National Forest System lands contiguous to BLM’s WIU 340A would be designated *Recommended Wilderness*, this alternative was not selected in favor of an alternative designating such contiguous lands as *Back Country Non-Motorized*. Therefore, it appears the BLM’s preliminary findings and conclusion that WIU 340A has wilderness characteristics—naturalness, outstanding opportunities for solitude, and outstanding opportunities for a primitive and unconfined type of recreation—is contrary to SBNF’s final land use designation for the contiguous National Forest System lands. Why do the evaluations differ?

The original second paragraph is deleted:

~~The BLM’s preliminary findings and conclusion that Wilderness Inventory Unit CA 060 340A has wilderness characteristics appears to contradict the draft Record of Decision (ROD) for the Southern California National Forests Land Management Plan Amendment (Forest Service n.d.). In accordance with the draft ROD, National Forest System lands contiguous with public lands comprising WIU 340A offer limited opportunities for solitude and challenge, have low wilderness values and characteristics, have uses that cannot be effectively managed as wilderness, and are not needed as part of the wilderness preservation system. Yet the contiguous public lands, which the BLM preliminarily determines (through this EIS) have wilderness characteristics—naturalness, outstanding opportunities for solitude, and outstanding opportunities for a primitive and unconfined type of recreation—are substantially similar in nature. Why, then, do the evaluations differ?~~

- Appendix K, page K-9, line 21—delete the first sentence of the third paragraph and replace it with the following new sentence:

During SBNF’s plan amendment process, it was determined that National Forest System lands located between *Recommended Wilderness* west of Palm Canyon and BLM’s WIU 340A “have uses that cannot be effectively managed as wilderness” (draft Record of Decision, Forest Service n.d.).

The original first sentence is deleted:

~~The phrase, “have uses that cannot be effectively managed as wilderness,” is the key to understanding the Forest Service’s rationale for not designating~~

~~National Forest System lands east of Palm Canyon as Recommended Wilderness.~~

The remainder of the paragraph is not changed.

- Appendix K, page K-9, line 35—replace the phrase “draft ROD” with “final ROD” in the first sentence of the last paragraph to read:

Also, there is an important distinction between the BLM’s findings and conclusions herein provided and the **final** ROD for the Forest Service’s land use plan.

#### 4.0 Correction of Typographical Errors

##### Chapter One: Introduction

- page 1-1, line 38—change spelling of the word “Aga” in the last sentence of the third paragraph to read:

The remaining lands are managed by the U.S. Forest Service, State of California, **Agua** Caliente Band of Cahuilla Indians, local municipal jurisdictions, and private landowners.

- page 1-5, line 12—delete the word “the” in the first sentence of the second paragraph to read:

The BLM is a federal agency within the U.S. Department of the Interior responsible for managing the public lands in accordance with federal law, regulation, and policy in order to sustain the health, diversity, and productivity of ~~the~~ these lands for their use and enjoyment by present and future generations.

- page 1-21, line 6—insert the word “of” into the first sentence of the second paragraph to read:

*Would a fee be charged for the use **of** trails in these parcels?*

##### Chapter Three: Affected Environment

###### *3.2.14—Recreation Resources:*

- page 3-25, Table 3.2.14.2—add the letter “n” to form the word “on” in the table’s title to read:

Total miles, trails **on** Tribal lands

###### *3.2.18—Water Resources (surface and ground):*

- page 3-44, lines 16, 17, and 21—the federal Clean Air Act is erroneously cited as the applicable statute in the second and third sentences of the second paragraph, and the first



sentence of the third paragraph. Instead, the federal Clean Water Act of 1972 (33 U.S.C. 1251 et seq.) should have been cited. This error is corrected to read:

The federal **Clean Water Act of 1972 (CWA)** establishes a strategy to restore and maintain water quality by reducing point source pollution. Section 404 of the **CWA** grants authority to the U.S. Army Corps of Engineers to evaluate and approve/deny development projects that could potentially impact waters of the United States.

In 1987, amendments to the **CWA** shifted the focus of polluted runoff and required states to reduce discharges to the waters of the United States.

#### Chapter Four: Environmental Consequences

##### *4.2.1—Impacts to Recreation Resources:*

- page 4-9, footnote #10—CVMSHCP is erroneously identified as the CVMAHCP in the first sentence. This error is corrected to read:

The trails management plan element of the **CVMSHCP** addresses a proposed trail that would connect the Garstin and Thielman Trails—it would be known as the Frank Bogert Trail.

- page 4-10, footnote #12—section 3.2.13 is erroneously referenced in the first sentence instead of section 3.2.14. This error is corrected to read:

As described in section **3.2.14** of this draft EIS, *official* trails in the context of the proposed land exchange are those identified by the BLM and the Tribe where some type of use is appropriate and allowed either seasonally or year-round, and which have been inventoried and depicted on maps that are created or sponsored by the BLM or the Tribe.

The remainder of the footnote is not changed.

##### *4.2.2—Impacts to Special Status Species:*

- page 4-50, line 18—delete superscript “1” that follows the superscript for footnote #48 in the last sentence of the first paragraph. It serves no function since there is no footnote linked to it.
- page 4-55, Table 4.2.2.3—certain acreages in column two under “Proposed Action, *scenario 1*” should have been consistent with Tables 4.2.2.1 and 4.2.2.2. The following changes are made to correct this error:

row 3—change 1,791 acres to 1,784 acres

row 5—change 3,261 acres to 3,254 acres

row 6—change 3,228 acres to 3,221 acres

As a consequence of these corrections, the following change is required in the same column:

row 16—change 5,524 acres to 5,517 acres (97.80% remains the same)

### Acronyms

- page 1, line 19—add CWA, Clean Water Act of 1972

## **5.0 Identification of New Source Materials**

In responding to comments, the BLM introduced new source materials to support its position. Such new source materials do not provide information that would modify analyses in the draft EIS; instead, they either help clarify BLM's position in its responses to comments, or constitute documents that were not available when the draft EIS was being prepared. The reference section of the draft EIS is accordingly modified to add the following new sources:

Capital Realty Analysts. 2015. Appraisal Report: Agua Caliente Exchange (3 Non-Federal Parcels), prepared for U.S. Department of the Interior, Office of Valuation Services (Portland, OR). La Quinta, California.

Capital Realty Analysts. 2015. Appraisal Report: Agua Caliente Exchange (19 Federal Parcels), prepared for U.S. Department of the Interior, Office of Valuation Services (Portland, OR). La Quinta, California.

Coachella Valley Mountains Conservancy. July 13, 2015. Agenda, Attachment 4. <[http://www.cvmc.ca.gov/Documents/Agenda\\_July\\_2015.pdf](http://www.cvmc.ca.gov/Documents/Agenda_July_2015.pdf)>

Lincoln University, The. On-line posting, accessed June 6, 2015. Right to Due Process. <<http://www.lincoln.edu/criminaljustice/hridueprocess.htm>>

Palm Springs, City of. 2007. On-line posting, accessed June 23, 2015. General Plan. <<http://www.ci.palm-prings.ca.us/government/departments/planning/general-plan>>

*Statute: Land and Water Conservation Fund Act, as amended* (16 U.S.C. 4601-4 et seqw.), September 3, 1964. <<http://www.gpo.gov/fdsys/pkg/STATUTE-78/pdf/STATUTE-78-Pg897.pdf>>

*Statute: Clean Water Act, as amended* (33 U.S.C. 1251 et seq.), October 18, 1972. <<http://www.epw.senate.gov/water.pdf>>

Strava. On-line posting, accessed July 8, 2015. Palm Canyon Epic. <<http://www.strava.com/activities/236345517>>

United States. Department of Agriculture. Forest Service. October 28, 2014. Final Record of Decision, Southern California National Forests Land Management Plan Amendment, San Bernardino National Forest. <<http://www.fs.usda.gov/sbnf/>>

United States. Department of the Interior. Bureau of Land Management. California Desert District. 1978. Palm Springs Desert Access Guide.

United States. Department of the Interior. Bureau of Land Management. On-line posting, accessed June 22, 2015. Laws, Regulations, Policies, Court Decisions. <<http://www.blm.gov/wo/st/en/info/regulations.html>>

United States. Department of the Interior. Bureau of Land Management. On-line posting, accessed July 10, 2015. Managing the NEPA Process—Bureau of Land Management. Departmental Manual Part 516, Chapter 11. <[http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/departmental\\_manual/516\\_dm\\_chapter\\_11.html](http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/departmental_manual/516_dm_chapter_11.html)>

United States. Department of the Interior. Fish and Wildlife Service. March 23, 2015. Memorandum: Informal Section 7 Consultation for the Proposed Land Exchange between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians in Riverside County, California (BLM-ACBCI Land Exchange (P) LLCAD060.41).

United States. Environmental Protection Agency. 1981. Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 46 FR 18026, March 23, 1981. <<http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>>

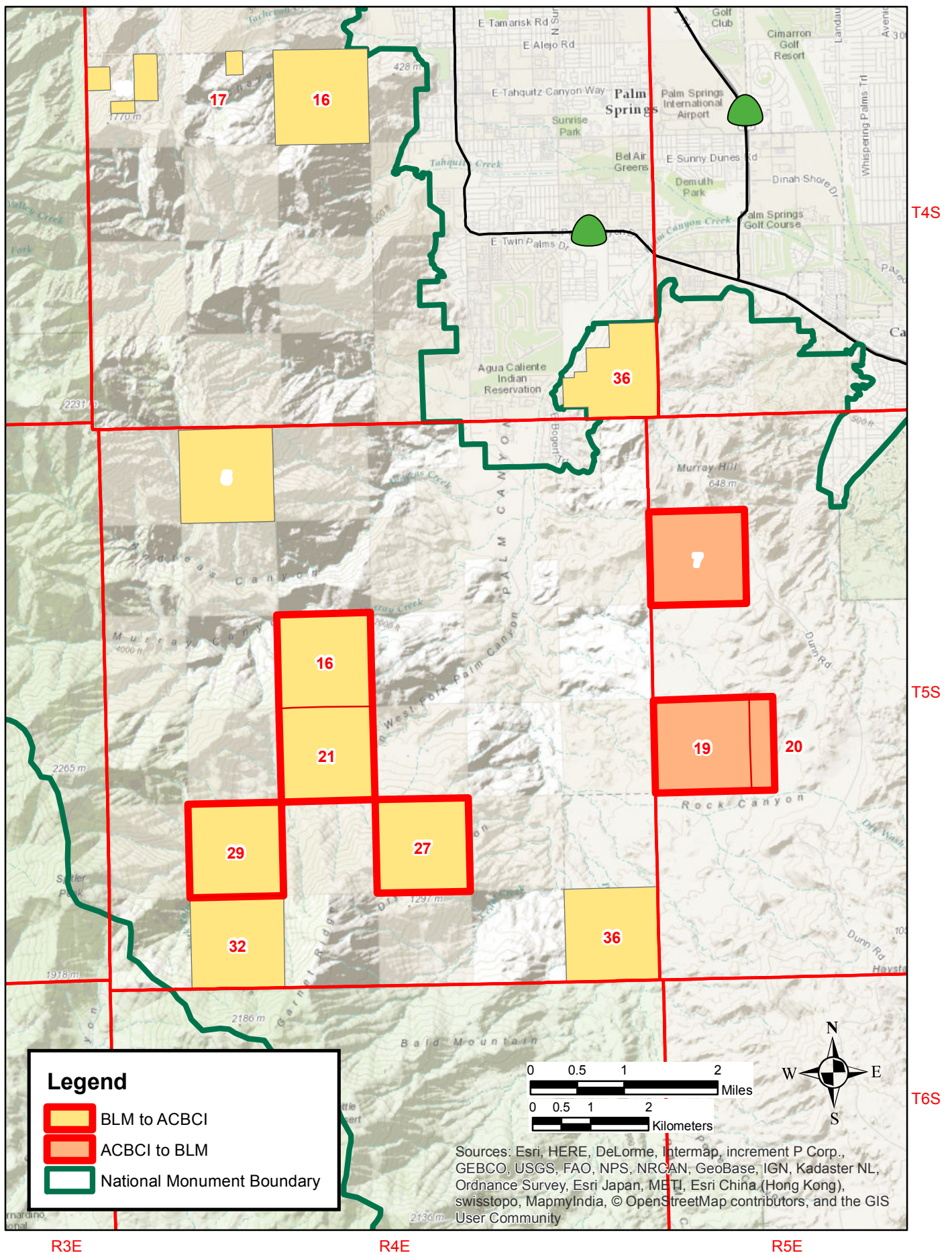
United States. Environmental Protection Agency, Region IX. March 30, 2015. Letter: Draft Environmental Impact Statement for the Proposed Land Exchange between Bureau of Land Management and Agua Caliente Band of Cahuilla Indians, Riverside County, California \*CEQ# 20140377).

United States. Department of the Interior. Office of Valuation Services. 2015. Appraisal Review Report: Agua Caliente Land Exchange, 3 Non-Federal Properties Appraisal. BLM CA 42965 FD; IVIS L14155.

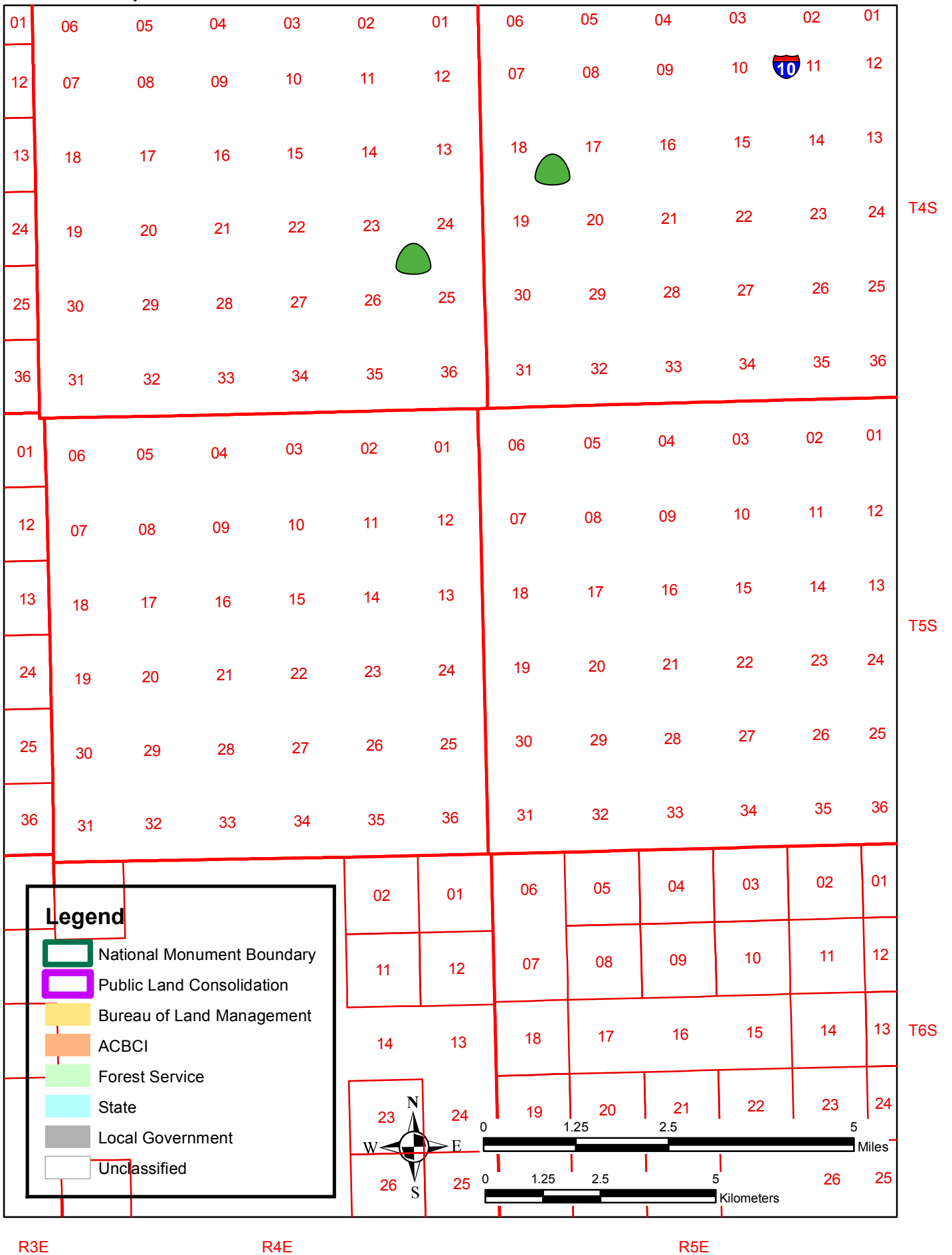
United States. Department of the Interior. Office of Valuation Services. 2015. Appraisal Review Report: Agua Caliente Land Exchange, 19 Federal Properties Appraisal. BLM CA 42965 FD; IVIS L14157.

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**Figure 2f**  
**Land Value Equalization Outcome**



**Figure 3f**  
**Public Land Consolidation**  
**Land Value Equalization Outcome**



## APPENDIX O

### PUBLIC COMMENTS AND AGENCY RESPONSES

#### Introduction

The Bureau of Land Management (BLM) extends its appreciation to members of the public and agency officials who took the time to review and submit comments on the draft environmental impact statement (EIS) addressing a proposed land exchange between the BLM and the Agua Caliente Band of Cahuilla Indians (Tribe). Public participation through the environmental review process is important to making better resource management decisions.

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#### 1.0 Solicitation of Comments

Coincident with publication of the draft EIS to inform the public about potential impacts of the proposed land exchange on the human environment, the BLM affirmatively solicited comments from individuals and organizations who may be interested in or affected by the action (40 CFR § 1503.1(a)(4)). The draft EIS was released for public review and comment on December 29, 2014; the comment period closed on March 29, 2015. Solicitation of comments regarding the proposed land exchange is traced back to 2008 and continued through 2015, as follows:

(1) On November 15, 22, and 29, and December 8, 2008, the BLM published a Notice of Exchange Proposal in *The Desert Sun* (notice number 4039) regarding its consideration of a proposal to exchange lands with the Tribe pursuant to section 206 of the Federal Land and Policy Management Act of 1976 (43 U.S.C 1701 et seq.). Interested parties were invited to submit comments concerning the proposed land exchange and provide notice of any liens, encumbrances, or claims on the lands involved. No comments were received.

(2) On July 27, 2010, the BLM released environmental assessment (EA) no. CA-060-0010-0005 for public review and comment; this EA addressed potential environmental impacts of a proposed land exchange between the BLM and the Tribe. The comment period was ultimately extended to November 19, 2010, thereby providing 116 days for submission of comments. Comments were received from 144 individuals, ten organizations, and three governmental entities. Based on these public comments and upon further internal review, it was determined that preparation of an EIS was necessary to address potentially significant effects of the proposed land exchange.

(3) On February 10, 2012, the BLM published a Notice of Intent in the *Federal Register* regarding preparation of an environmental impact statement for the proposed land exchange (77 FR 7179). The notice announced the beginning of the scoping process and invited public participation. The notice identified how written comments could be submitted by regular mail or electronic mail, indicating that all comments must be received no later than 30 days after the last public scoping meeting. The intent of the public scoping process was to solicit input on the issues, impacts, and potential alternatives that would be addressed in the EIS, as well as the extent to which those issues and impacts would be analyzed in the environmental document. In addition to issuance of a BLM news release on February 23, 2012, and publication of notices in *The Desert Sun* (March 8 and 9, 2012), *The Desert Sun* published articles on March 14, 18, and 23, 2012, about public opportunities to participate in the scoping process. In addition, approximately 120 notifications via regular mail and 140 notifications via electronic mail were sent to likely interested parties; some notices were sent to the same individuals via both regular and electronic mail.

(4) Public scoping meetings were held on March 22 and 27, 2012, with total attendance being about 125 individuals; some attended both meetings. Oral comments were provided by 24 individuals, six of whom represented non-governmental organizations. The deadline for submitting written comments was announced as April 27, 2012. The BLM received comment letters and email messages from 62 individuals, five of whom represented non-governmental organizations and two who represented governmental entities. These comments supplemented the issues previously extracted from public comments submitted in response to EA no. CA-060-0010-0005. (See draft EIS Appendix I—Scoping Report.)

(5) On December 29, 2014, the BLM published a Notice of Availability in the *Federal Register* announcing that the BLM had prepared a draft EIS for the proposed land exchange between the BLM and the Tribe and the opening of the comment period (79 FR 78105). To ensure comments would be considered, the notice indicated the BLM must receive written comments within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the *Federal Register*. The BLM's notice also identified methods for submitting comments to include electronic mail, facsimile message (fax), and regular mail.

(6) On December 29, 2014, the Environmental Protection Agency published its Notice of Availability in the *Federal Register* for the draft EIS (79 FR 78088), and indicated the end of the public comment period as March 29, 2015.



## 2.0 Specificity and Substantive Nature of Comments

Comments on an environmental impact statement or a proposed action shall be as specific as possible and may address either the adequacy of the EIS or the merits of the alternatives discussed, or both (40 CFR § 1503.3(a)). Clarifying the intent of the regulatory requirement regarding such specificity, the BLM's National Environmental Policy Act Handbook H-1790-1 (BLM 2008a, section 6.9.2.1) indicates that *substantive* comments do one or more of the following:

- question, with reasonable basis, the accuracy of information in the EIS
- question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis
- present new information relevant to the analysis
- present reasonable alternatives other than those analyzed in the EIS
- cause changes or revisions in one or more of the alternatives

Comments that are *not* considered substantive include the following:

- comments in favor of or against the proposed action or alternatives without reasoning that meet the criteria listed above
- comments that only agree or disagree with BLM policy or resource decisions without justification or supporting data that meet the criteria listed above
- comments that do not pertain to the project area or the project
- comments that take the form of vague, open-ended questions

## 3.0 Outcome of the Land Value Equalization Process

As indicated in the draft EIS, land exchanges completed by the BLM are not on an acre-for-acre basis, rather they are completed on an equal-value basis with differences in value between the federal and nonfederal lands equalized by either the addition or subtraction of lands or by a cash payment not exceeding 25 percent of the value of the federal lands involved in the land exchange (section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.); draft EIS, footnote #1 p. 2-1). Based on appraisals of the selected public lands and offered Tribal lands (date of value: March 7, 2015), the land value equalization outcome (which will likely constitute the BLM's decision) would result in an exchange of the following public and Tribal lands (as depicted in Figure 2f—Land Value Equalization Outcome—of the final EIS):

*The remainder of this page is intentionally blank.*

Selected public lands to be transferred to the Tribe

<u>Assessor's Parcel No.</u>	<u>location</u>	<u>acres</u>	<u>appraised value (\$)</u>
686-020-016	sec. 16, T.5S. R.4E.	640.00	190,000.00
686-110-002	sec. 21, T.5S. R.4E.	640.00	225,000.00
686-110-006	sec. 27, T.5S. R.4E.	640.00	190,000.00
686-110-005	sec. 29, T.5S. R.4E.	640.00	190,000.00
		<b>2,560.00</b>	<b>795,000.00</b>

Offered Tribal lands to be transferred to the BLM

686-120-002	sec. 7, T.5S. R.5E.	654.92	395,000.00
686-320-001	sec. 19, T.5S. R.5E.	656.32	360,000.00
686-320-002	sec. 20, T.5S. R.5E.	160.00	90,000.00
		<b>1,471.24</b>	<b>845,000.00</b>

Since the appraised value of the offered Tribal lands exceeds the appraised value of the selected public lands identified above, the BLM would make a cash payment of \$50,000.00 to the Agua Caliente Band of Cahuilla Indians in order to equalize values and conclude the land exchange.<sup>3</sup>

Selected public lands not included in the land exchange

<u>Assessor's Parcel No.</u>	<u>location</u>	<u>acres</u>	<u>appraised value (\$)</u>
513-060-016	sec. 16, T.4S. R.4E.	480.00	240,000.00
513-060-018	sec. 16, T.4S. R.4E.	120.00	60,000.00
513-060-023	sec. 16, T.4S. R.4E.	40.00	25,000.00
513-040-032	sec. 17, T.4S. R.4E.	10.00	5,000.00
513-040-033	sec. 17, T.4S. R.4E.	10.00	5,000.00
513-040-034	sec. 17, T.4S. R.4E.	10.00	5,000.00
513-020-002	sec. 18, T.4S. R.4E.	44.71	15,000.00
513-020-011	sec. 18, T.4S. R.4E.	80.00	25,000.00
513-030-004	sec. 18, T.4S. R.4E.	10.00	5,000.00
513-030-005	sec. 18, T.4S. R.4E.	10.00	5,000.00
510-300-003	sec. 36, T.4S. R.4E.	207.65	125,000.00
510-310-007	sec. 36, T.4S. R.4E.	303.45	175,000.00
686-020-001	sec. 5, T.5S. R.4E.	647.24	195,000.00
686-110-012	sec. 32, T.5S. R.4E.	640.00	190,000.00
686-110-020	sec. 36, T.5S. R.4E.	640.00	225,000.00
		<b>3,253.05</b>	<b>1,300,000.00</b>

Offered Tribal lands not included in the land exchange

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<sup>3</sup> Acreages of public and Tribal lands to be exchanged, which reflect those provided in the approved appraisals, slightly differ from acreages identified in section 2.2 and Appendix J of the draft EIS, which are based on Geographic Information System (GIS) projections. With respect to public lands, the total for the four parcels is 3.6 acres more than described in the draft EIS. The total for the three Tribal parcels is 1.24 acres more than described in the draft EIS.

None; all offered Tribal lands would be acquired by the BLM.

This outcome of the land value equalization process is consistent with the action alternatives described in chapter two of the draft EIS, including the order in which public land parcels would be considered to equalize land values. However, since the public lands to be exchanged are not exactly the same as identified for scenarios one, two, or three of the proposed action, or the preferred alternative, instead falling between the no action alternative and scenario one of the proposed action, sections 2.2 (proposed action) and analyses in sections 4.2.1 (recreation resources) and 4.2.2 (special status species) are modified to reflect the outcome of the land value equalization process (see Appendix N—Errata).

#### **4.0 Public Comments and Agency Responses**

The BLM received comment letters, email messages, and/or facsimile transmissions from 468 individuals, ten nongovernmental organizations, and three government entities. Substantive comments contained in these submissions are herein summarized due to the exceptionally voluminous response (as provided for by 40 CFR § 1503.4(b)). These summaries generally include text taken directly from the comments with editing for clarity only. In some cases, particularly when the same comment was provided by several individuals but worded differently, comments are paraphrased in such manner as to retain commenters' intent. Summarized public comments are abbreviated "PC" in this section of the final EIS.

Many comments submitted in 2010 regarding environmental assessment no. CA-060-0010-0005, as well as submitted in 2012 during the public scoping period for the environmental impact statement, were reiterated in 2015 as comments on the draft EIS.<sup>4</sup> A number of individuals expressed opinions such as "I support scenario one of the proposed action" or "I oppose the proposed land exchange" without reasoning that meet the criteria identified above in section 2.0; hence, they are not substantive.

##### Agency responses

The manner in which the BLM responds to comments is governed by 40 CFR § 1503.4, which states:

- (a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:
  - (1) Modify alternatives including the proposed action.
  - (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
  - (3) Supplement, improve, or modify its analyses.

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<sup>4</sup> It is important to acknowledge that the multiple-transaction proposal identified in the environmental assessment was modified to a single transaction proposal in the draft EIS whereby not all of the selected public lands would likely be transferred to the Tribe given the likely outcome of the land value equalization process (see draft EIS section 1.2, p. 1-4; section 1.4(a), p. 1-10.). Therefore, certain comments submitted on the environmental assessment are not relevant to the draft EIS.

- (4) Make factual corrections.
  - (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.<sup>5</sup>
- (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous) should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.
- (c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated. The entire document with a new cover sheet shall be filed as the final statement.

Public comment summaries and agency responses in this appendix of the final EIS are categorized in the same manner as the issues identified in the scoping report and section 1.4 of the draft EIS (Appendix I, and pp. 1-5 through 1-31, respectively):

- a. Purpose and Need for the Proposed Land Exchange
- b. Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies
- c. Development of Alternatives and Mitigation Measures
- d. Public Access to Trails
- e. Protection of Threatened and Endangered Species
- f. Potential Development of Exchanged Lands

“Adequacy of Analysis” (g) and “Miscellaneous” (h) are added for the purpose of responding to comments. While some comments bridge two or more categories, each comment is addressed in the category that best represents its focus.

#### Moot concerns

Numerous commenters expressed concern regarding an exchange that would include public lands in sections 16 and 36, T.4S R.4E., and section 36, T.5S. R.4E., citing such reasons as potential long-term loss or change of public access to trails contained therein, thereby not serving the public

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<sup>5</sup> Source materials cited in responses to comments assume two forms: (1) If the source material is identified in the reference section of the draft EIS, it is cited in the same manner as occurs in the draft EIS, e.g., BLM 2008a, ACBCI 2012, etc. (2) If the source material was not utilized during preparation of the draft EIS but incorporated in these responses to comments, the full reference is identified. Such new source materials do not provide information that would modify analyses in the draft EIS; instead, they either help clarify BLM’s position in its responses to comments, or constitute documents that were not available when the draft EIS was being prepared, e.g., land value appraisal reports for the subject public and Tribal lands, and the San Bernardino National Forest’s Final Record of Decision for the Southern California National Forests Land Management Plan Amendment.

interest, and/or inconsistency with the stated purpose and need for the action. Since an exchange based on the outcome of the land value equalization process would not result in transferring jurisdiction of public lands in these three sections to the Tribe, public concerns in this regard are moot.

#### Availability of public comments

All comment letters, email messages, and facsimile transmissions received by the BLM regarding the draft EIS, as well as comments received during the public scoping period in 2012 and for environmental assessment no. CA-060-0010-0005, are available for public review at the BLM Palm Springs-South Coast Field Office located at 1201 Bird Center Drive, Palm Springs, CA 92262, during regular business hours (8 a.m. to 4 p.m.) Monday through Friday (except holidays). A compact disk containing these comment submissions is available upon request to the National Monument Manager at the above address, or email to [amadams@blm.gov](mailto:amadams@blm.gov).<sup>6</sup>

#### **a. Purpose and Need for the Proposed Land Exchange**

##### **PC-01(a):**

An exchange of BLM Category 2 and 3 lands, which adds section 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E., respectively, to BLM Category 1 lands under scenarios two and three of the proposed action, does not meet the stated purpose and need of the proposed exchange, which is to consolidate public and Tribal land bases. Therefore, Category 2 and 3 lands must be removed from the preferred alternative for the reasons described below.

The framework of analysis presented in the draft EIS, as described in section 1.4(a)(i) and Appendix J, fails to test whether the checkerboard pattern of landownership is reduced by the land exchange, i.e., it fails to differentiate between sections of land that accomplish land consolidation and those which do not. Instead, a *micro approach* to evaluating whether the selected public lands and offered Tribal lands accomplish the purpose and need is recommended. Such an approach analyzes the number of the four sides of a section proposed for exchange that are currently contiguous to BLM and Tribal lands and compares this to the number of sides that would be contiguous to BLM and Tribal lands after the land exchange has been completed. Upon applying this approach, it is clear that other than BLM Category 1 lands, an exchange of the remaining BLM lands (sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E.) would not consolidate Tribal lands because no sides of these public lands sections are contiguous with Tribal lands, whether before or after the exchange. Relative to the BLM Category 1 parcels, sections 5, 16, 21, 27, 29, and 32, T.5S. R.4E., rank the highest in terms of meeting the purpose and need for consolidating Tribal lands because each section upon exchange would have one, two, or four sides contiguous with existing Tribal lands based on land ownership as depicted in Figures 3a through 3e of the draft EIS.

Further, ratios of public-nonpublic land interfaces to acres managed, as presented in the draft EIS, cannot be translated into a reduction of BLM staff hours or staff positions for management

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<sup>6</sup> The BLM received comment letters, email messages, and/or facsimile transmissions from 55 individuals, five nongovernmental organizations, and two governmental entities during the public scoping period for the environmental impact statement, and from 144 individuals, ten nongovernmental organizations, and three governmental entities regarding the environmental assessment.

purposes. Even if such reductions were to be cited, it would reveal the insignificance of purported efficiency when compared to the total hours and total staff at the BLM Palm Springs-South Coast Field Office. An exchange of BLM Category 1 lands, for example, would reduce the Field Office work area by an insignificant and unnoticeable 0.15 percent.<sup>7</sup>

In conclusion, whereas an exchange of BLM Category 2 and 3 lands as represented by scenarios two and three of the proposed action do not conform to the stated purpose and need, an exchange of BLM Category 1 lands as represented by scenario one of the proposed action is in the public interest as it excludes section 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E.

***Response:***

The underlying purpose and need to which an agency is responding in proposing alternatives, including the proposed action, must be specified in the environmental impact statement (40 CFR § 1502.13; draft EIS p. 1-4). Generally, these alternatives respond to a problem or opportunity described in the purpose and need statement, thereby providing a basis for eventual selection of an alternative in a decision (BLM 2008a, section 6.6.1; draft EIS p. 1-4). Whether an alternative is deemed “reasonable”—which relates to those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply *desirable* from the standpoint of an applicant—is defined in reference to the purpose and need for the action (BLM 2008a, section 6.6.1). The no action alternative, which must be included in an EIS (40 CFR § 1502.14(d)), is the only alternative to be analyzed that does not respond to the purpose and need for the action (BLM 2008a, section 6.6.2; draft EIS p. 2-1).

As described in the draft EIS, the purpose of the proposed land exchange between the BLM and the Tribe is to reduce the extent of “checkerboard” landownership, and facilitate effective and efficient management of public and Tribal lands by consolidating the respective land bases, provided that the public interest is served. It would provide the BLM and the Tribe with more logical and consistent land management responsibility in the Santa Rosa and San Jacinto Mountains Monument (draft EIS pp. 1-4 and 1-5). The manner in which land consolidation facilitates improved management is described in section 1.4(a)(i), quantified in Appendix J, and depicted in Figures 3a through 3e of the draft EIS.<sup>8</sup>

However, commenters consider BLM’s framework of analysis in this regard as inappropriate since it fails to differentiate between sections of land that do or do not accomplish land

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<sup>7</sup> The percentage described here differs from the one provided by the commenter to reflect that in disposing of 4,015 acres of BLM Category 1 lands, the BLM would acquire 1,470 acres from the Tribe, a difference of 2,545 acres, with the extent of public lands managed by the Palm Springs -South Coast Field Office being 1,700,000 acres. The commenter focused only on acres to be disposed of by BLM, not those to be acquired in the exchange, and indicated that Field Office’s jurisdiction is 1,500,000 acres instead of 1,700,000 acres.

<sup>8</sup> As described in section 3.0, the extent of public lands likely to be exchanged for the offered Tribal lands as an outcome of the land value equalization process falls between the no action alternative and scenario one of the proposed action. Consolidation of public lands under this outcome is depicted in Figure 3f of the final EIS.

consolidation. One commenter describes a “micro approach” that, as asserted, is a superior framework for analysis purposes. The BLM disagrees. Section 1.4(a)(i) of the draft EIS narratively describes consolidation outcomes under the various alternatives, summarizing that “[c]onsolidation ranges from 14 blocks of public lands under the no action alternative to one block under the preferred alternative” (p. 1-11). The narrative also describes how ratios of public-nonpublic land interfaces, or boundaries, to acres managed by the BLM may assist the reader to better understand how consolidating land ownership improves opportunities for the use or protection of public lands and promotes their effective and efficient management. Appendix J of the draft EIS quantitatively compares and contrasts the extent of consolidation under the various alternatives, as well as the ratios of public-nonpublic land interfaces to acres managed by the BLM; a summary of consolidation under the alternatives is provided in Table J.11 (p. J-10). Figures 3a through 3e depict consolidation outcomes under the no action alternative, preferred alternative, and three scenarios of the proposed action—an additional figure (3f) is provided in the final EIS to reflect consolidation as an outcome of the land value equalization process; Appendix J is concomitantly modified. Hence, it appears that commenters simply disagree with this approach to ascertain whether the purpose and need for the proposed land exchange is met.

Both the suggested “micro approach” and the BLM’s block/interface analysis, however, focus on a *snapshot in time* of landownership without acknowledging that potential future land acquisitions by the BLM and the Tribe may further consolidate their respective land bases. The ongoing nature of land acquisitions to increasingly consolidate public lands in the Santa Rosa and San Jacinto Mountains National Monument is well documented.<sup>9</sup> As an example of how additional private lands in the vicinity of the project area may come under the BLM’s jurisdiction in the future, one need only consider an action taken by the Coachella Valley Mountains Conservancy on July 13, 2015. The Conservancy’s board consented to the sale of a 156.38-acre parcel of land owned by Friends of the Desert Mountains to the BLM (APN 635-030-012; NE1/4 section 3, T.6S. R.5E.). If the BLM acquires this property (which is contingent upon completing many steps in the federal land acquisition process), it would further consolidate public lands as depicted in Figures 3a through 3e of the draft EIS, i.e., almost 800 acres—which includes this 1/4 section plus section 2, T.6S. R.5E.—would be added to a consolidated block comprised of 14,613.71 acres of public lands under the preferred alternative and scenarios one and two of the proposed action. As described in attachment 4 of agenda item 5.3 for the July 13 meeting, “[t]ransferring [this parcel, along with an 8.8-acre parcel in section 16, T.3S. R.3E.] to BLM would fulfill important conservation objectives [to include the following]: BLM ownership will allow for consolidated management of these parcels along with BLM’s adjacent holdings, thus promoting management efficiency and enhancing the habitat value of the wildlife corridor.”<sup>10</sup>

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<sup>9</sup> BLM’s acquisition and consolidation of lands in the Santa Rosa and San Jacinto Mountains gained momentum upon establishment of the Santa Rosa Mountains National Scenic Area in 1990. Establishment of the Santa Rosa and San Jacinto Mountains National Monument in 2000, which superseded the National Scenic Area, prompted BLM to continue its efforts in this regard.

<sup>10</sup> Coachella Valley Mountains Conservancy. July 13, 2015. [Agenda, Attachment 4.](http://www.cvmc.ca.gov/Documents/Agenda_July_2015.pdf) <[http://www.cvmc.ca.gov/Documents/Agenda\\_July\\_2015.pdf](http://www.cvmc.ca.gov/Documents/Agenda_July_2015.pdf)>

Hence, there should not be an *overreliance* on the outcome of the proposed land exchange with respect to land consolidation efforts and the extent to which it meets the stated purpose and need. Rather, the outcome of the proposed land exchange should be viewed in light of how it contributes to land consolidation now *and* how it may do so in the future. Clearly, the BLM's acquisition of the offered Tribal lands enhances consolidation of the public land base in this area, while future acquisitions of nonfederal lands outside the external boundaries of the Agua Caliente Indian Reservation would further enhance consolidation, a circumstance that is evident in Figures 3a through 3e of the draft EIS.<sup>11</sup>

The commenter correctly asserts that ratios of public-nonpublic land interfaces to acres managed, as presented in the draft EIS, cannot be translated into a reduction of BLM staff hours or staff positions for management purposes. The BLM does not approach costs of management in such a compartmentalized fashion, particularly when threats to public lands emanating from contiguous nonfederal lands do not require undertaking immediate or long-term management actions, such as installation of barriers, increased law enforcement patrols, or actions to reduce impacts to threatened and endangered species. Further, costs associated with managing lands within the Field Office's jurisdiction are not solely borne by the local unit. Rather, the management of public lands involves staffs from the BLM California Desert District, BLM California State Office, and the BLM Washington DC Office. These upper-level offices support the management of increasingly broader landscapes of public lands. Therefore, an attempt to tease out specific federal labor costs for managing 2,545 fewer acres (as would occur under an exchange of BLM Category 1 lands for the offered Tribal lands) from the BLM's overall labor costs for managing 1.7 million acres of public lands under jurisdiction of the Palm Springs-South Coast Field Office would not be practical or meaningful. Instead, more effective and efficient management resulting from consolidation of public lands and reduction of checkerboard landownership is best addressed in a more general way as described in section 1.4(a)(i) of the draft EIS (pp. 1-6 through 1-11).

Finally, since an exchange based on the outcome of the land value process would involve fewer public lands than identified as BLM Category 1 lands, concerns regarding whether an exchange of section 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E., meets the purpose and need are moot since the BLM would retain jurisdiction of these three sections.

In light of this response to PC-01(a), a clarification is provided on page 1-11 of the draft EIS to indicate land acquisition is an ongoing process that may further enhance consolidation of public and Tribal lands in the future. Such clarification does not modify alternatives, result in the development and evaluation of new alternatives, or supplement, improve, or modify environmental analyses.

Other than the clarification identified above, PC-01(a) does not warrant further agency response.

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<sup>11</sup> The BLM's 1978 Palm Springs Desert Access Guide, when compared to Figure 3e in the draft EIS, reveals substantial acquisitions into federal ownership over a 36-year span of time. Considering the area within the National Monument and outside the external boundary of the Agua Caliente Indian Reservation, and within the map extent of Figure 3e, the BLM has acquired approximately six sections of land, or about 3,800 acres (gross estimate), thereby reducing the extent of checkerboard landownership.



**PC-02(a):**

When the BLM first selected blocks of public lands more than a decade ago to be included in the proposed land exchange, they were chosen one at a time, not as a group. The criteria used to pick each section is not explicitly described in the draft EIS. If each parcel chosen was intended to meet the purpose and need of consolidation, this is not explained in the draft EIS. Therefore, the environmental document should be corrected in this regard.

***Response:***

The commenter erroneously asserts that public lands selected for the proposed land exchange were chosen one at a time. Instead, *all* public lands within the external boundary of the Agua Caliente Indian Reservation (ACIR) were identified for potential exchange in order to enhance consolidation of Tribal lands, i.e., they were not selected one at a time but as a *group*. Specifically, the memorandum of understanding between the BLM and the Tribe addressing acquisition and exchange of lands states that the BLM shall “jointly identify opportunities with the Agua Caliente Band of Cahuilla Indians to exchange BLM administered public land parcels within the reservation” (BLM and ACBCI 1999(b); Appendix B of the draft EIS p. B-3). This strongly suggests that “BLM administered public land parcels” are treated as a group. Further, the feasibility report addressing the proposed land exchange declares that the Agua Caliente “wish to acquire public lands which are intermixed with lands in the reservation in T.4S. R.4E. and T.5S. R.4E., San Bernardino Meridian” (BLM 2001a; Appendix C of the draft EIS p. C-2). Exhibit A of the feasibility report identifies all public lands within the ACIR, thereby constituting a “group” of such lands. Additionally, the agreement to initiate an assembled land exchange between the BLM and the Tribe states that the BLM “agrees to convey to the Tribe the federal lands [that are] shown in Exhibit A,” which again identifies all public lands within the Agua Caliente Indian Reservation (BLM and ACBCI 2002; Appendix E of the draft EIS p. E-2). Finally, the Proposed Santa Rosa and San Jacinto Mountains National Monument Management Plan and Final Environmental Impact Statement identifies the same federal lands proposed for transfer to the Tribe as described in the documents listed above (BLM and USDA Forest Service 2003 p. 2-35). Clearly, the evidence supports BLM’s assertion that public lands selected for the proposed land exchange were not chosen one at a time, but as a *group*.

For reasons described above, PC-02(a) does not warrant further agency response.

**PC-03(a):**

The draft EIS fails to account for the public’s historical use of trails located on the selected public lands in making a determination about the degree to which the public interest would be served or not served by the proposed land exchange. It is clear that of the eight sections of BLM Category 1 lands, only section 21 (T.5S. R.4E.) reveals historical evidence of recreational trail use, it being on the Jo Pond Trail. Since access to this trail is across Tribal lands, it meets the purpose and need of the exchange for the Tribe to acquire section 21 and have continuous access and control of the segment now located on public lands. In contrast, however, historical evidence exists for recreational use of the ten trails located in section 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E., that comprise BLM Category 2 and 3 public lands. Since Category 2 and 3 lands fail to meet the purpose and need of the proposed land exchange, there is a clear qualitative difference in public

interest concerns between exchanging Category 1 lands on one hand and exchanging Category 2 and 3 lands on the other.<sup>12</sup>

***Response:***

The degree to which the public interest may or may not be served is reflected in the analysis of impacts to recreational resources provided in section 4.2.1 of the draft EIS (pp. 4-6 through 4-41) wherein the no action alternative, the preferred alternative, and three scenarios of the proposed action are considered. Contrary to commenters' assertion that BLM Category 2 and 3 lands fail to meet the purpose and need of the proposed land exchange, only section 36, T.4S. R.4E., of the Category 3 lands is so deemed by the BLM; hence, it is excluded from the preferred alternative (see response to PC-01(a)). Nevertheless, concerns in this regard are moot since an exchange based on the outcome of the land value equalization process would involve only a portion of the Category 1 lands. As a result, the only trail segment identified for acquisition by the Tribe is that for the Jo Pond Trail in section 21, T.5S. R.4E.

However, some commenters assert that because acquisition of section 21 by the Tribe would provide for continuous control of the Jo Pond Trail by the Tribe, it meets the purpose and need of the land exchange. To the contrary, the extent to which the purpose and need for the land exchange is met is governed by the degree to which land consolidation occurs. As a result of such consolidation, more effective and efficient management of resources therein, including trails, should be realized. But whether trails occur within the selected public lands is not the principal metric for determining the extent to which the purpose and need for the action is met. Such a singular focus fails to consider other resource values that may benefit from land consolidation, such as management of habitat for threatened and endangered species.

Further, in ascribing historical trail use to sections of public land in which trails are located and suggesting that an exchange which includes sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., would not serve the public interest, commenters fail to acknowledge how BLM's acquisition of sections 7 and 19, T.5S. R.5E., would place certain trail segments into public ownership (see Table 4.2.2.1, page 4-10; Table 4.2.1.2, page 4-14; Table 4.2.1.3, page 4-19; and Table 4.2.1.4, page 4-26 of the draft EIS). In other words, the proposed land exchange would entail both disposal *and* acquisition of trail segments by the BLM and the Tribe. The analysis of impacts to recreation resources in the draft EIS (section 4.2.1, pages 4-6 through 4-41) addresses this circumstance.<sup>13</sup>

For reasons described above, PC-03(a) does not warrant further agency response.

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<sup>12</sup> It is important to note that references to BLM Categories 2 and 3 are commonly made as if they contain only sections 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E., respectively. Although BLM Category 2 and 3 lands both incorporate the entirety of Category 1 lands, it is acceptable for purposes of discussion and simplification to reference Categories 2 and 3 as if they contain only the sections as indicated.

<sup>13</sup> Comments addressing the public interest with respect to the disposal of public lands containing non-motorized trails largely focus on the manner in which the Tribe may manage such trails on the acquired properties, whether in the near-term or far-term. This issue is addressed by PC-01(b) and PC-01(d) and the responses thereto.

**PC-04(a):**

In footnote #8 on page 1-7 of the draft EIS, the BLM states that public lands in section 36, T.4S. R.4E., “are not discussed at this point because unlike the other 10 blocks of selected public lands that are completely surrounded by nonpublic lands, these adjoin public lands not selected for exchange with the Tribe.” As a result, the draft EIS gives the impression that only blocks of land “completely surrounded by nonpublic lands” should be included in the proposed land exchange, and further indicates that when a section is surrounded by public lands that are “not selected for exchange with the Tribe,” it too should not be included in the exchange.

Consistent with footnote #8, sections 16, T.4S. R.4E., and section 36, T.5S. R.4E., should also be excluded from the proposed land exchange since the former is surrounded on two sides by City of Palm Springs (public) lands, and the latter is surrounded on two sides by U.S. Forest Service (public) lands and on one side by Coachella Valley Mountains Conservancy (a California state agency) lands. By explicitly including public lands in these two sections, but not section 36, T.4S. R.4E., the BLM implies a policy whereby it does not consider public lands other than those owned directly by the BLM as pertinent to the exchange. Therefore, to validate this policy position, the BLM should add to the final EIS any reference to law and policy documents establishing such policy. If that is not the policy of the BLM when making an exchange under the Federal Land Policy and Management Act of 1976, the logic for removing section 36, T.4S., R.4E., from the proposed exchange should likewise be applied to the other two sections because they also do not meet the purpose and need for the exchange.

***Response:***

Upon further review, the BLM has determined that footnote #8 on page 1-7 of the draft EIS is confusing and may lead the public to misunderstand how the narrative therein relates to the discussion in section 1.4(a)(i) about land consolidation and reduction of checkerboard land ownership. Therefore, the footnote is revised as follows: “Public lands in section 36, T.4S. R.4E., which comprise the 11th block of public lands selected for the proposed land exchange, are not discussed at this point. Unlike the other 10 blocks of selected public lands that are completely surrounded by nonpublic lands, public lands in section 36 are adjoined by public lands in section 1, T.5S. R.4E., and section 6, T.5S. R.5E., (which are not selected for exchange with the Tribe). These adjoining public lands enhance consolidation of public lands in the project area, thereby establishing a preferred alternative that excludes public lands in section 36 (see section 2.3).”

It is important to this discussion to understand the definition of “public lands” as used in the draft EIS. In this regard, the reader is referred to PC-02(h) and the response thereto. To summarize, “public lands” refers only to lands under the jurisdiction of the BLM as defined in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). Lands managed by other jurisdictions, even though they are considered “public” agencies, are specifically identified in the draft EIS by agency affiliation, not as *public lands*.

Therefore, consolidation of public lands as discussed in the draft EIS relates only to the consolidation of *BLM-managed lands*. Forming blocks of public lands with those managed by the U.S. Forest Service, Coachella Valley Mountains Conservancy, or City of Palm Springs may not overcome the challenges of intermingled landownership. As indicated in section 1.4(a)(i) of the draft EIS, “different ‘rules’ for intermingled lands can be contradictory and, therefore, may adversely affect the achievement of identified goals and objectives, whether

now or in the future” (p. 1-7). Regarding public access for recreational purposes, “lack of consistency in how non-motorized recreational access is governed for trails spanning multiple jurisdictions not only lends confusion to the recreationist, it creates difficulty for the jurisdictional entities to effectively manage such access, including enforcement where restrictions apply and dissemination of information about recreational opportunities” (p. 1-7).

In response to the commenter’s question regarding whether a policy exists establishing that “public lands other than those owned directly by the BLM” are not pertinent to land exchanges, there is no such policy.<sup>14</sup> Commenters’ assertion that sections 16, T.4S. R.4E., and section 36, T.5S. R.4E., should be excluded from the proposed land exchange is also addressed by PC-01(a) and PC-03(a) and the responses thereto.

Since an exchange based on the outcome of the land value equalization process would involve fewer public lands than identified as BLM Category 1 lands, concerns regarding whether section 36, T.5S. R.4E., and sections 16 and 36, T.4S. R.4E., meet the purpose and need are moot since the BLM would retain jurisdiction of these three sections.

Other than revision of footnote #8 on page 1-7 of the draft EIS as described above, PC-04(a) does not warrant further agency response.

**PC-05(a):**

The draft EIS fails to identify a plausible public benefit to be derived from land consolidation, instead relying on assumed potential threats to public lands that may or may not be realized, and presenting alternatives that merely identify varying amounts of public lands to be exchanged for the offered Tribal lands. Therefore, the public benefit to be accrued from the proposed land exchange by reducing checkerboard landownership is elusive at best and contrived at worst.

***Response:***

The BLM disagrees with the commenter’s assertion. The response in section 1.4(a)(i) of the draft EIS extensively addresses the purpose and need for the proposed land exchange, including why checkerboard or intermingled landownership is problematic and how consolidation of

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<sup>14</sup> For clarification, BLM “policy” is established through manuals and instruction memoranda. *Manuals* contain BLM policy and program direction, including procedures and instructions to manage programs. They establish the basic authority for performing tasks and identify who bears the ultimate responsibility for seeing that these tasks are accomplished. *Handbooks*, such NEPA Handbook H-1790-1 (BLM 2008a), are the source of detailed instructions for performing specialized procedures to carry out policy and direction described in manuals (such as Departmental Manual Part 516, Chapter 11: Managing the NEPA Process—Bureau of Land Management), but do not contain broad objectives, policies, assignment of responsibilities, or delegations needed primarily by line officials and principal staff officials to administer programs. Handbooks are considered part of their respective manuals, and have the same force of authority as a manual. *Instruction memoranda* are temporary directives that supplement manuals and contain new policy or procedures that must reach BLM employees quickly, interpret existing policies, or provide one-time instructions. *Information bulletins* are also temporary directives that supplement manuals, but do not contain new policy or procedures. Instead, they call attention to existing policies or procedures, transmit material such as publications and announcements, or require an action or response from BLM officials. (BLM webpage: <https://www.blm.gov/policy>, accessed January 18, 2018). Policy is *not* established by local BLM offices or through environmental documents addressing proposed actions.

public lands may improve manageability (pp. 1-6 through 1-11). However, it appears the commenter is not satisfied with that discussion. Perhaps looking at it from a slightly different perspective may help illuminate how the proposed land exchange is in the public interest. Consider that the purpose for land consolidation is typically stated in general terms—“to facilitate effective and efficient management”—instead of specific terms that identify how consolidation resolves a particular management issue. In other words, land consolidation provides the basis for consistency of management across a broad landscape, particularly for the far-term, whereas solving specific resource management problems in the near-term usually takes another approach, such as the development of cooperative agreements or multi-jurisdictional plans.

For example, management actions to minimize the creation of social trails and the attendant resource degradation that may result from disturbing pristine soils or crushing small plants by traveling off official trails can more easily be implemented where the BLM or the Tribe have jurisdiction over large areas of land than where intermingled private landownership occurs and the landowner cannot be mandated to implement the same or similar actions on all or part of his/her lands. A similar circumstance pertains to the application of provisions across a broad landscape to support recovery of threatened and endangered species. Although common management of intermingled *agency* lands may be achieved through cooperative agreements or multi-jurisdictional planning efforts than in circumstances where agency and private lands are intermingled, there nevertheless remains potential for inconsistent management based on policy differences or other constraints that could thwart management consistency for one or more resource values, thereby potentially reducing management effectiveness and efficiency. In the end, therefore, managing lands on a landscape basis by a single entity would best achieve management effectiveness and efficiency by avoiding existing or potential conflicts established through inherent legislative or policy differences. As an outcome of the land value equalization process, for example, the entire length of the Wild Horse Trail would be under the BLM’s jurisdiction, while the entire non-Forest Service part of the Jo Pond Trail would be under jurisdiction of the Tribe, thereby enhancing management consistency for both trails.

Also, as described in the response to PC-01(a) it is important to note that land consolidation through acquisition of nonfederal and non-Tribal properties is an ongoing endeavor. Hence, benefits accrued from a single transaction, such as the subject land exchange, may not fully represent benefits to be realized over the far-term as more lands are increasingly consolidated under a single jurisdiction. While the location and extent of such additional land acquisitions by the BLM and the Tribe within the National Monument are unknown (except for those already initiated) and not reasonably foreseen in the project area, they may occur in the future.

In conclusion, public benefits to be accrued from consolidated land management may be substantial when considered over the far-term, but may be less apparent over the near-term. For reasons described above, PC-05(a) does not warrant further agency response.

**b. Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies**

**PC-01(b):**

The draft EIS focuses on near-term costs and benefits, thereby avoiding an analysis of long-term impacts emanating from potential future changes in Tribal policy regarding the management of trails on the acquired public lands, and how such policy changes represent a loss of democratic rights of due process, such as participating in the decision-making process to include expressions of opposition, filing lawsuits, and commenting on documents such as the draft EIS for the proposed

land exchange between the BLM and the Tribe. Loss of such rights of due process represents a substantial cost that is not addressed in the analysis of environmental impacts in the draft EIS. However, the public may be willing to surrender these rights with respect to an exchange of BLM Category 1 lands only because the recreation values derived from the use and enjoyment of trails is marginally affected by an exchange of Category 1 lands only.

***Response:***

During the public scoping period in advance of preparing the draft EIS, the public expressed concern regarding Tribal sovereignty over the lands it manages and the absence of a regulatory mechanism for public involvement in future decision-making processes (draft EIS, Appendix I p. I-7). The BLM addressed this concern in section 1.4(d)(i) of the draft EIS (pp. 1-18 through 1-22), describing the manner in which the Tribal Habitat Conservation Plan (ACBCI 2010) and Indian Canyons Master Plan (ACBCI 2008) govern Tribal management of lands under its jurisdiction, thereby establishing the Tribe's "management strategy." Tribal sovereignty is also addressed in section 1.4(f)(iii) (p. 1-31), discussing whether the difference in public participation opportunities for proposed BLM actions versus proposed Tribal actions necessitates analysis in the EIS, concluding that such analysis would not provide an understanding of environmental consequences that would help the BLM to make a decision that protects, restores, and enhances the environment as it would be entirely speculative to ascertain how and to what extent the Tribe might change its THCP or ICMP in the future. Nevertheless, the BLM acknowledges that Tribal sovereignty over the acquired public lands means the extent to which the public's voice may or may not be part of future decision-making processes is a determination made by the Tribal Council, that is, there are no statutory, regulatory, or otherwise-established requirements for public involvement.

At the heart of the public's concern on one level is the matter of *trust* (or lack thereof) regarding how the Tribe will manage recreational access to the trails and lands it acquires from the BLM. Despite the Tribe's commitment to "manage the trails in the same manner [as the BLM]" based on its conclusion that "changing or curtailing public access to the trails is not feasible or practical," and the Tribe's assertion that "there's no way to determine today whether the Tribe, or the BLM, would in the future charge fees for access to the trails" (ACBCI 2012), it is clear that many of the public do not trust the Tribe to adhere to its commitment regarding access, and anticipate that fees will, in fact, be charged, though "the feasibility of doing so with so many access points would make it difficult" (ACBCI 2012). While it is accurate to assert that the Tribe may change management prescriptions regarding public access to its lands and the trails thereupon, it is also accurate to make the same claim regarding BLM's management of public lands. As described in section 1.4(d)(i) of the draft EIS: "Appropriately, the Tribe did not commit to forever managing trails on the acquired public lands in a manner consistent with current BLM management; the BLM itself makes no such commitment for managing public lands. Changing circumstances could result in a change of management prescriptions, consistent with the adaptive management approach adopted by the Tribe in its THCP. Likewise, the BLM, if it were to retain the selected public lands identified for the proposed land exchange, could restrict hours of seasons of access if warranted to protect the values for which the Monument was designated, and could prohibit bicycles if warranted to protect resources and/or public safety" (p. 1-20).

While the issue of public access is at the heart of commenters' concerns and whether such access will be affected upon the Tribe's acquisition of certain public lands, on another level commenters lament the "loss of democratic rights of due process" in the Tribe's decision-

making process, such as *commenting* on a proposed change in public access to Tribal lands. If the Tribe's decisions are contrary to the public's desire, concern is expressed about the loss of opportunities to legally challenge such decisions as they would otherwise have available if the selected public lands were retained by the BLM. As asserted in the comment herein addressed, such loss of rights represents a substantial cost that is not addressed in the analysis of environmental impacts in the draft EIS.

Is the asserted "loss of democratic rights of due process" subject to environmental analysis in this EIS which addresses the proposed land exchange between the BLM and the Tribe? The answer is "no." The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR § 1500.1(c)). Further, the primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the National Environmental Policy Act are infused into the ongoing programs and actions of the federal government, and that the EIS shall provide full and fair discussion of significant environmental impacts and inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment (40 CFR § 1502.1). "Human environment" is interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment, which means that economic or social effects are not intended by themselves to require preparation of an EIS, but when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, then the EIS will discuss all of these effects on the human environment (40 CFR § 1508.14).

Hence, it is beyond the scope of an EIS to address matters of due process and rights of American citizens in this regard. The right to due process is born in the U.S. Constitution and adjudicated through case law that interprets the Constitution, not a matter for discussion in a NEPA document. The phrase *due process* "embodies society's basic notions of legal fairness. ... [Q]uestion[s] of legal fairness may be related not only to procedures, but also to legislation that unfairly affects people. As a result, courts in the U.S. have interpreted the language of [the Fifth and Fourteenth] Amendments as a limitation on substantive powers of legislatures to pass laws affecting various aspects of life. When applying what is called substantive due process, courts look at whether a law or government action unreasonably infringes on a fundamental liberty" (The Lincoln University, <http://www.lincoln.edu/criminaljustice/hridueprocess.htm>, accessed June 6, 2015). "Many of the modern due process cases deal with what is called procedural due process (fair process, procedures). Due process procedures do not guarantee that the result of government action will be to a citizen's liking. Due process requirements vary depending on the situation. At a minimum, due process means that a citizen who will be affected by a government decision must be given notice of what government plans to do and have a chance to comment on the action" (Ibid.). With respect to the land exchange between the BLM and the Tribe, the public has been given notice of the proposal and has been afforded the opportunity to comment on it (see section 1.0 in this appendix of the final EIS). A decision based on the outcome of the land value equalization process gives notice of what the BLM plans to do, to which the public has opportunities to protest and appeal.<sup>15</sup>

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<sup>15</sup> Such *public involvement* is consistent with the definition provided in section 103(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.): "The term 'public involvement' means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with

“Substantive due process refers to the Supreme Court’s examination of the reasons why the government passed a law or otherwise acted in a manner denying a citizen or a group of citizen life, liberty, or property (regardless of the procedure the law provides). In some cases, such as when a law infringes upon a citizen’s First Amendment rights, right to privacy, right to vote, or makes a racial or sexual classification, the Supreme Court requires the government to have an extremely important or ‘compelling’ reason for the law. The Court will ‘strictly scrutinize’ the government’s reasons and, in all likelihood, will strike the law down. In other cases, such as when the government enacts taxation or zoning laws, the personal rights involved are not as fundamental, and the Court will uphold the law as long as the government’s motives are not arbitrary or irrational” (Ibid.).<sup>16</sup>

This leads to a discussion regarding the manner in which Congress, through the Santa Rosa and San Jacinto National Monument Act of 2000 (16 U.S.C. 431 et seq.), provides for the proposed land exchange between the BLM and the Tribe. Section 5(i)(1)(A) of the Act states: “Subject to valid existing rights as provided in section 3(d), the Federal lands and interests in lands included within the National Monument are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws.” Per section 5(i)(2)(B): “Paragraph (1)(A) does not apply in the case of the exchange provided in section 6(e).” Section 6(e) of the Act states: “In order to support the cooperative management agreement in effect with the Agua Caliente Band of Cahuilla Indians as of the date of the enactment of this Act [BLM and ACBCI 1999a; Appendix A of the draft EIS], the Secretary of the Interior may, without further authorization by law, exchange lands which the Bureau of Land Management has acquired using amounts provided under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), with the Agua Caliente Band of Cahuilla Indians. Any such land exchange may include the exchange of federally owned property within or outside of the boundaries of the National Monument for property owned by the Agua Caliente Band of Cahuilla Indians within or outside the boundaries of the National Monument.”<sup>17</sup> Whether the Act itself affects the public’s right to due process is not a matter to be addressed in this NEPA document. As previously indicated, such matter is outside the scope of this EIS.

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respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.”

<sup>16</sup> This narrative regarding due process does not constitute BLM’s legal opinion on the matter. Rather, it is intended only to provide sufficient information to substantiate why discussions about due process are not warranted in this EIS.

<sup>17</sup> Through section 102(a)(10) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Congress declared it is the policy of the United States that uniform procedures for any disposal of public lands, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage. Section 102(b) establishes that policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.



For reasons described above, PC-01(b) does not warrant further agency response.

**PC-02(b):**

The draft EIS is unclear about how the proposed land exchange serves the public interest, a standard that must be met for it to be undertaken. When considering the public interest, full consideration must be given to the needs of state and local people as required by section 206(a) of the Federal Land Policy and Management Act of 1976, yet inclusion of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., is inconsistent with meeting the needs of such public. Further, it is assumed that the public interest is served over the long-term, not just in the immediate future. This assumption is supported by the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, which states that the National Monument was established, in part, “to preserve ... recreational values ... and to secure now and for future generations the opportunity to ... recreate therein” (section 2(b)). Ignoring impacts on recreational opportunities in the long run violates the law by inappropriately eliminating opportunities. Further, the draft EIS is not clear about time periods relative to potential impacts, nor does it attempt to quantify or qualify the degree to which the public interest is or is not being served by the proposed land exchange.

***Response:***

Regarding commenters’ assertion that elimination of recreational opportunities resulting from an exchange that includes sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., is inconsistent with the National Monument’s establishing legislation, commenters assume the exchange would, in fact, eliminate such opportunities. Such an assumption is without merit. As described in section 4.2.1.7 of the draft EIS (pp. 4-34 through 4-41), the only reasonably foreseeable action on the selected public lands and offered Tribal lands with respect to *development* is construction of a trail connecting the Garstin and Thielman Trails, which would serve to enhance recreational opportunities, not diminish them. Reasonably foreseeable changes to *management* of non-motorized recreation are limited to: (a) diminished opportunities for cross-country travel and access with dogs on nonpublic and non-Tribal lands, (b) possible diminishment of cross-country travel on public lands, and (c) an expanded prohibition of access with dogs to include public lands west of Palm Canyon (to the extent the BLM retains such public lands consequent to the land exchange). These management actions do not affect opportunities to use official trails for hiking (other than when accompanied by a dog), mountain biking, and horseback riding. (See pp. 4-39 and 4-40 of the draft EIS.)

The BLM’s conclusion—i.e., commenters’ assertions regarding elimination of recreational opportunities lack merit—is based on what constitutes reasonably foreseeable future actions. *Reasonably foreseeable future actions* are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends; however, speculation about future actions is not required (BLM 2008a, section 6.8.3.4). An evaluation of the definition’s constituent parts in this instance is warranted. (1) Is there an existing decision by the Tribe to restrict public access to trails on the public lands it acquires? Not to the BLM’s knowledge. The Tribe has committed to managing trails on the lands it acquires in the same manner as the BLM because changing or curtailing access to the trails is not feasible or practical (ACBCI 2012). Further, the management of trails on Tribal lands is conditioned by the Tribal Habitat Conservation Plan (ACBCI 2010) and the Indian Canyons Master Plan (ACBCI 2008), neither of which indicates that changes to the management of trails on public lands acquired by the Tribe are inevitable. (2) Has specific funding been identified by the Tribe to undertake actions that would restrict public access to trails on the acquired

lands? Not to the BLM's knowledge. (3) Has the Tribe prepared a formal proposal to restrict public access to trails on the acquired lands above and beyond the manner in which the BLM currently manages such access? Not to the BLM's knowledge. (4) Are restrictions to public access to trails on public lands acquired by the Tribe highly probable based on known opportunities or trends? No. In its efforts to protect resource values and enhance visitor experiences in the Indian Canyons and Tahquitz Canyon, the Tribe restricted access to trails therein with respect to allowable uses (prohibitions of bicycles and entry with dogs). It also limited access to the daytime and imposed fees for entry. While some may view this as a trend towards increasingly restrictive access to trails, the BLM's view is not the same.

First, restrictions regarding access in the Indian Canyons and Tahquitz Canyon are singular actions with protection of resource values being the principal reason for not allowing unfettered public access. Such unfettered access in the past adversely affected natural and cultural resource values, particularly in Tahquitz Canyon where camps were established for extended periods, thereby necessitating measures to restrict access. Second, there is ample evidence to indicate the Tribe is not extending the restrictive measures imposed in the Indian Canyons and Tahquitz Canyon to other trails under its jurisdiction. For example: (a) The Skyline Trail crosses more Tribal land than BLM land (ACBCI 2012; CVAG 2014), yet the Tribe has not imposed any restrictive measures on public access to it. (b) Public access to trails on the offered Tribal lands (Wild Horse Trail, East Fork Loop Trail, and Dunn Road Trail) has not been restricted during the decade-plus the Tribe has owned them. (c) The Tribe has not restricted access to segments of Palm Canyon Trail south of its intersection with Dry Wash Trail, Dry Wash Trail, and East Fork Loop Trail on Tribal lands in section 24, T.5S. R.4E. (see Figure 5c of the draft EIS)—portions of these trails are included in the "Palm Canyon Epic" mountain biking route as identified by many of the commenters. Accordingly, there is no evident "trend" that would make future changes to public access by the Tribe "highly probable." Therefore, commenters' assertions that opportunities for recreation would be eliminated upon Tribal acquisition of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., are based solely on unfounded speculation. Although it is suggested that speculation may occur when analyzing impacts in the EIS, there is no reasonable foundation on which to base such analysis, and commenters fail to provide evidence in support of such speculation.

With respect to the legislative mandate addressed in section 2(b) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, it does not specify that a full slate of recreational opportunities must be preserved on all federal lands within the National Monument. Instead the edict to preserve recreational opportunities on federal lands is reasonably interpreted as being applicable to the Monument *as a whole*. Regardless of how trails on the public lands acquired by the Tribe may be managed in the future, opportunities for present and future generations to recreate within the Monument would still be extensive (see section 4.2.1.7 of the draft EIS; in particular, Overview of cumulative effects to recreation resources pp. 4-38 through 4-41). It is important to acknowledge, however, that securing opportunities for current and future generations to recreate in the National Monument is conditioned by section 3 of the Act, which requires that the Secretary of the Interior and the Secretary of Agriculture "shall allow only those uses of the National Monument that further the purposes for the establishment of the National Monument, in accordance with (1) this Act; (2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); (3) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.) and section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a); and (4) *other applicable provisions of law* [emphasis added]." Further, in addressing recreational activities generally, the Act states: "The management plan required by section 4(a) shall include

provisions to continue to authorize the recreational use of the National Monument, including such recreational uses as hiking, camping, mountain biking, sightseeing, and horseback riding, *as long as such recreational use is consistent with this Act and other applicable law* [emphasis added].” For example, compliance with provisions of the Endangered Species Act (16 U.S.C. 1531 et seq.) could, in certain circumstances, result in restricted public access to trails on federal lands in the National Monument, including those within the project area of the proposed land exchange, in order to support recovery of an threatened or endangered species or population. This has already been evidenced by the prohibition of access with dogs to certain public lands (65 FR 3473, January 21, 2000). Such action is consistent with section 2(b) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 in that it helps preserve nationally significant biological resources found in these mountains.

Commenters also assert that impacts to recreational opportunities in the *long run* are ignored in the draft EIS, and that time periods relative to potential impacts are not clear. The BLM disagrees with this assertion. The analysis of impacts to recreation resources in section 4.2.1 of the draft EIS (pp. 4-6 through 4-41) is based on current circumstances and reasonably foreseeable future actions, the latter of which is addressed above in this response to PC-02(b). Regarding time periods and their relevance to potential impacts, these are discussed in section 4.2.1.7 of the draft EIS (see “Cumulative effects to recreation resources” pp. 4-34 through 4-41).<sup>18</sup> Section 4.2.1.7 states “the time frame for this cumulative effects analysis must be conditioned by actions that are reasonably foreseeable; attempting to ascertain impacts to recreation resources in the distant future as a consequence of the proposed land exchange (such as changes in opportunities for non-motorized access to lands acquired by the BLM or the Tribe) is unreasonable and speculative” (p. 4-39). In essence, anticipating what may or may not occur in the far-term with respect to opportunities for hiking, mountain biking, and horseback riding on trails under BLM and/or Tribal jurisdiction cannot be reasonably foreseen, other than development of a trail connecting the Garstin and Thielman Trails, which is addressed in the multi-jurisdictional trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan (CVAG 2007). If developed, it would enhance opportunities for non-motorized recreation in the project area for the proposed land exchange.

Commenters further assert the draft EIS does not attempt to quantify or qualify the degree to which the public interest is or is not being served by the proposed land exchange. In this regard, such quantification is an illusion that cannot be manifested. First, commenters equate an acquisition of public lands by the Tribe as an inevitable loss of recreational opportunities, yet changes to land management prescriptions by the Tribe are anything but assured, just as changes to land management prescriptions by the BLM cannot be predicted, especially for the far-term. Second, quantifying the degree to which any public interest is served or not served as the result of undertaking a particular action would likely be arbitrary and inaccurate. For example, would it be reasonable to conclude that closing 10 miles of a 100-mile trail system

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<sup>18</sup> BLM policy as provided in section 6.8.3.3 of National Environmental Policy Act Handbook H-1790-1 (BLM 2008a) recommends that the timeframe for each cumulative effects issue be established and described, i.e., define long-term and short-term, and incorporate the duration of the effects anticipated. Timeframes should be based on the duration of the direct and indirect effects of the proposed action and alternatives, rather than the duration of the action itself. Rationale for the timeframes established should be described in the environmental document.

represents a 10 percent reduction in serving the public interest? Or that adding 10 miles of new trails available for public use to a 100-mile system of trails enhances the public interest by 10 percent? Not likely. Whether the public interest is positively or adversely affected is dependent on a number of factors, not just one or two. With respect to the proposed land exchange, it is asserted in the draft EIS that the public interest is served by consolidating public lands, thereby reducing potential management challenges inherent in managing checkerboard landownership (see section 1.4(a)(i) pp. 1-6 through 1-11). One commenter suggested that benefits accrued from land consolidation, such as a reduction of staff hours or other costs, be quantified and discussed in the EIS and a failure to do so represents a deficiency in the analysis (see PC-01(a) and the response thereto); BLM's response is that such quantification is without merit.

Finally, based on the nature of the vast majority of comments received by the BLM, it is apparent that most commenters equate "the public interest" with their personal interest to ensure access to trails for recreational endeavors is sustained. The BLM's view of "the public interest" is much broader as established by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), which directed the BLM to manage public lands for multiple uses.<sup>19</sup> Section 103(c) of the Act states: "The term 'multiple use' means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

Hence, "the public interest" is multi-faceted. Principal to such public interest in the project area of the proposed land exchange are protection of recreation, watershed, wildlife, and natural scenic, scientific, and historical values. As described in the draft EIS, the public interest in the broad sense is maintained upon implementation of the preferred alternative or scenarios one or two of the proposed action—scenario three of the proposed action would not fully be in the interest of the public in that it includes section 36, T.4S. R.4E.

For reasons described above, PC-02(b) does not warrant further agency response.

**PC-03(b):**

Management of recreational resources on the selected public lands containing trails requires expenditures of federal tax dollars. Such expenditures include maintenance, signage, and occasional enforcement of applicable management prescriptions (e.g., the prohibition of dogs on BLM-managed lands). Transferring these lands to the Tribe would effectively transfer management

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<sup>19</sup> Through section 102(a)(7) of the Act, Congress declares it is the policy of the United States that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law.

dollars out of the community, negatively impacting local employment as the need for federal funds to maintain and protect trails is reduced. Such circumstance does not conform to the Federal Land Policy and Management Act of 1976, specifically section 206 requiring that a tract of public land or interests therein may be disposed of by exchange provided “[t]hat when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, [and] recreation areas ....”

Further, the Tribe manages its trail system in the Indian Canyons in part through user fees. If the Tribe manages trails on the acquired public lands in a manner similar to the BLM, the expectation is that it would not collect fees for use of trails on these acquired lands. While this may work for the near-term, it seems unlikely the Tribe can follow this approach over time without imposing fees to support trail management and maintenance. Therefore, the assumption presented in the draft EIS that no change would occur in the management of trails of the acquired public lands (including maintenance, signage, and law enforcement), and therefore no impacts to use of these trails are anticipated, appears invalid, particularly with respect to the Tribe’s acquisition of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., which contain 8.4 miles of the total 9.7 trail miles on the selected public lands. These management burdens to be assumed by the Tribe are not acknowledged in the draft EIS.

On the other hand, all eight blocks of BLM lands in Category 1 do not have the same financial burden, the exception being a segment of the Jo Pond Trail in section 21, T.5S. R.4E., but management of this segment could be covered in part by admission fees to the Indian Canyons since access to it is from the Trading Post.

***Response:***

An examination of expenses incurred by the BLM for trail maintenance, signage, and law enforcement, and how disposal of the subject public lands would negatively impact local employment due to a reduction of federal funds needed to maintain and protect trails on these lands as asserted by the commenter, is warranted in this response to PC-03(b).<sup>20</sup>

First, maintenance of trails on the selected public lands has typically been undertaken by volunteers assisting federal staff. Federal funds used in this endeavor are generally limited to the purchase of tools required to perform maintenance activities, and federal staff time devoted to the effort. However, purchases of tools are not specific to maintenance of the subject trails, rather these tools would be used for trail maintenance of the National Monument’s broader trail system. Whether tools are purchased from a local or non-local vendor, these minimal and sporadic purchases could not meaningfully be factored into gains or losses in local revenue or employment. Further, the amount of federal staff time devoted to trail maintenance on the exchange lands is not sufficient to warrant an increase or decrease of staff to address the matter, whether more or fewer miles of trails would be under the BLM’s jurisdiction as a consequence of the land exchange.

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<sup>20</sup> For purposes of this discussion, it is assumed that federal management costs for the selected public lands relate primarily to the management of trails, not to management actions affecting non-trail resources such as wildlife habitat and cultural resources. This assumption is reasonable since few federal funds have been expended in recent years to manage non-trail resources on the selected public lands.

Second, trail signage on the selected public lands is minimal, meaning that BLM sign purchases represent an expenditure of very few tax revenues. When considering that BLM's policy is for signs to be manufactured by the BLM sign shop in Wyoming, except under certain circumstances for which a waiver is required to purchase them locally, the expenditure of federal tax dollars for signs, including local purchase of sign posts (which is allowed without a waiver), would have unnoticeable effects on local employment.

Third, while it is reasonable to assume that indirect effects of BLM law enforcement ranger employment and expenditures by individual rangers contribute to the local economy, the land exchange itself, irrespective of the alternative approved, would not affect staffing levels at the BLM Palm Springs-South Coast Field Office. Whether the land exchange results in a net loss or gain of acreage to be federally managed, which concomitantly may result in a net loss or gain of trail mileage to be federally managed, Field Office staff would not be respectively decreased or increased. Therefore, both direct and indirect effects on the local economy with respect to BLM employment would not change.

Finally, the commenter implies that Tribal management of trails on the acquired lands—to include maintenance, sign installation, and enforcement of regulations by Tribal rangers (hence, employment of such personnel)—would contribute nothing to the local economy contrary to what would occur if the land exchange was not approved and federal tax dollars continued to be spent for management of the selected public lands as before. As described above in this paragraph, this argument cannot be supported by the facts. Hence, exchanging public lands as proposed, even if the exchange were to include sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., would not transfer federal tax revenues out of the local community and, therefore, would have no effect on local revenues or non-government employment.

Consistent with the commenter's assertion regarding costs of trail management, the BLM may expend federal tax dollars for management of the three trail segments on Tribal lands acquired by the BLM, thereby offsetting to some extent the use of federal tax dollars that would no longer be applied to public lands acquired by the Tribe. In fact, if the average management cost per mile for trails on the selected public lands is construed to be the same as average management cost per mile for trails on the offered Tribal lands, then an exchange based on the outcome of the land value equalization process whereby the BLM would acquire segments of three trails—Dunn Road Trail, Wild Horse Trail, and East Fork Loop Trail, totaling 2.4 miles—and dispose of a segment of one trail—Jo Pond Trail, totaling 1.3 miles—would result in an *increase* of federal tax dollars for trail management purposes, not a reduction. Regardless, such circumstance would not affect local revenues or non-government employment for reasons described above.

Concerns regarding potential financial burdens incurred by the Tribe upon acquisition of 8.4 miles of trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., and how such acquisition could translate in the future to the imposition of fees to support management and maintenance of these trails, are moot given the outcome of the land value equalization process. Nonetheless, circumstances regarding the imposition of fees by the Tribe are addressed in the draft EIS, contrary to the commenter's assertion, at least in general terms (see section 1.4(d)(i) of the draft EIS p. 1-21). In concluding that fees imposed by the Tribe for the use of trails in the acquired sections are not likely, the most compelling reason presented is that logistical constraints work against it. Typically, fees are most easily collected where the managing entity controls the trailhead or trailheads. Collecting fees where another entity controls trailheads, and

where trails connect with other trails outside the managing entity's control, is problematic. The Tribe acknowledged this circumstance in its on-line posting of Frequently Asked Questions about the BLM-Tribal Land Exchange (ACBCI 2012): "There's no way to determine today whether the Tribe, or the BLM, would in the future charge fees for access to the trails. The BLM doesn't presently charge fees for trail access, though it could.<sup>21</sup> The Tribe would also have the right to charge access fees, *although the feasibility of doing so with so many access points would make it difficult* [emphasis added]." Details with respect to actual fees, if any might be imposed in the future, and how they might be collected are outside the realm of *reasonably foreseeable future actions*; hence, not specifically addressed in the draft EIS.

For reasons described above, PC-03(b) does not warrant further agency response.

**PC-04(b):**

The proposed land exchange does not conform to the land tenure exchange and sale criteria described in BLM's California Desert Conservation Area Plan Amendment for the Coachella Valley because transferring management of trails located in sections 16 and 36, T.4S. R.4E., and section 36, T.5S R.4E., to the Tribe would eliminate a significant public benefit should restrictions be imposed on modes (e.g., mountain bikes) or hours (e.g., daylight only) of access, or if fees are charged.

***Response:***

Section 2.4.9 of the California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a) provides that public lands in the Coachella Valley would generally be retained in public ownership. The plan amendment, however, establishes criteria that would be applied in evaluating the suitability of land exchanges and sales as follows:

1. facilitate effective and efficient management of conservation areas;<sup>22</sup>
2. be conducted in coordination with local jurisdictions;
3. would result in a net benefit to the conservation areas or divert intensive uses away from sensitive areas;
4. not remove rare species nor their habitat, nor remove rare habitat types from conservation management;
5. not removed eligible historic properties from conservation management; and
6. not divest of public domain lands in a manner which eliminates a significant public benefit.

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<sup>21</sup> Whether the BLM could charge a fee is governed by the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801 et seq.), which permits the BLM to charge a standard amenity fee at a National Conservation Area, but charging such a fee for use of public lands in the National Monument is unlikely given other constraints established by the statute (draft EIS section 1.4(d)(i) p. 1-20).

<sup>22</sup> *Conservation areas* in the context of the plan amendment refers to areas with special designation in order to protect biological resources, such as areas of critical environmental concern (ACECs), wildlife habitat management areas, wilderness areas, the Santa Rosa and San Jacinto Mountains National Monument, and conservation areas established through the Coachella Valley Multiple Species Habitat Conservation Plan (CVAG 2007).

Commenters' concerns in this regard are addressed in section 1.6 of the draft EIS (pp. 1-36 through 1-38). Relative to how the proposed land exchange would affect opportunities for non-motorized recreation on existing trails (a "public benefit"), section 1.6 directs the reader to chapter four of the draft EIS, which includes an analysis of impacts to recreation resources (section 4.2.1 pp. 4-6 through 4-41). This response to PC-04(b) focuses on potential access restrictions to trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., and whether such restrictions, if implemented by the Tribe, would eliminate a significant public benefit as asserted by commenters.

As described in the response to PC-02(b), potential restrictions imposed by the Tribe regarding public use of trails in the acquired parcels do not constitute *reasonably foreseeable future actions*, i.e., there are no existing decisions, funding, or formal proposals in this regard, nor are such restrictive measures highly probably based on known opportunities or trends. In support of this conclusion, the BLM, in part, points to the Tribe's commitment to manage trails "in the same manner" as the BLM (as expressed by the Tribe in Frequently Asked Questions about the BLM-Tribal Land Exchange; (ACBCI 2012)). But many of the public do not trust the Tribe to adhere to such commitment, suggesting that at any time and without notice the Tribe could relinquish it. This matter of trust is addressed in the response to PC-01(b) and PC-01(d).

But more to the point, it is important to evaluate the plan amendment's land exchange and sale criteria in light of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 et seq.). Consistency requirements for resource management plans and amendments, such as the California Desert Conservation Area Plan Amendment for the Coachella Valley, are established by 43 CFR Subpart 1600—Resource Management Planning. Specifically, 43 CFR § 1610.3-2(a) requires that "guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, *so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands* [emphasis added]."

As described in the response to PC-01(b), section 5(i)(2)(B) of the National Monument's designating legislation provides for the proposed land exchange between the BLM and the Tribe by specifically identifying it as an exception to the withdrawal of federal lands and interests in land within the Monument from all forms of disposal under the public land laws (as established in section 5(i)(1)(A) of the Act). This legislation preceded the plan amendment by about two years. In accordance with the regulations at 43 CFR § 1610.3-2(a), the plan amendment must conform to the purposes, policies, and programs of the Act (as a federal law), including the plan amendment's land exchange and sale criteria and the application thereof to the proposed land exchange. If application of the land exchange and sale criteria would result in a determination that the proposed land exchange between the BLM and the Tribe cannot be considered because it may divest of public domain lands in a manner which eliminates a significant public benefit—which some assert is a potential loss of public access to trails or the imposition of restrictions regarding such access—such determination may reasonably be construed as inconsistent with the purposes of the Monument's designating legislation as expressed in sections 5(i) and 6(e), and in nonconformance with the regulations at 43 CFR § 1610.3-2(a). In other words, the U.S. Congress paved the way for the proposed land exchange between the BLM and the Tribe to occur. Although Congress did not *mandate* the land exchange be pursued, it clearly did nothing to suggest that such an exchange would be contrary



to the public interest, particularly in light of the purposes for which the National Monument was established.<sup>23</sup>

Commenters' concerns regarding the Tribe's potential future management of trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., however, are moot given the likelihood of an exchange based on the outcome of the land value equalization process as described in section 3.0 of this appendix, under which the BLM would retain jurisdiction of these three sections.

For reasons described above, PC-04(b) does not warrant further agency response.

**PC-05(b):**

In its draft EIS, the BLM acknowledges that changes to the management of recreation resources, including public access to trails, may occur in the future, yet it concludes that as a consequence of the proposed land exchange or preferred alternative, opportunities for hiking, mountain biking, or horseback riding on official trails would not be affected (p. 4-38). Such conclusion in the face of potential future change constitutes faulty logic. The BLM reached its conclusion by limiting analysis to the near-term. Yet evaluating the exchange for only the near-term does not meet the mandate established by the Federal Land Policy and Management Act of 1976 (FLPMA). The FLPMA specifically states, "when considering public interest the Secretary concerned shall give full consideration to ... the needs of State and local people, including needs for ... recreation areas" (section 206(a)), and requires that "the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to **conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses** [emphasis added]" (section 601(4)). To accept the Tribe's commitment to "manage the trails in the same manner [as the BLM]," as declared on its website (ACBCI 2012), as the primary basis to justify dismissing a legal requirement to conserve trails for the use of "future generations" is not acceptable.

It is therefore suggested that the final EIS change its conclusion on page 4-38 to indicate that opportunities for hiking, mountain biking, and horseback riding have a high probability of changing for "future generations." All sections in the final EIS will need to be modified accordingly to reflect this change in finding of law as it applies to the current state of the land exchange. The BLM should also quantify the significant impact to the public should the Tribe in the future change trail access policies reducing public use opportunities, and demonstrate through quantitative analysis how benefits from exchanging the properties that include trails exceed the costs to the public of doing so.

[The commenter provides a quantified analysis reflecting monetary value of individual trail uses/visits based on estimated land values of the selected public lands and offered Tribal lands, assuming that a cash payment of up to 25 percent of the value of the federal lands (as provided by section 206(b) of the FLPMA) could be made by the Tribe to acquire the entirety of the selected public lands. According to the commenter, application of this analytical approach demonstrates that the draft EIS grossly undervalues the BLM's retention of sections 16 and 36, T.4S. R.4E., and

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<sup>23</sup> The U.S. Congress designated the Santa Rosa and San Jacinto Mountains National Monument, in part, to preserve recreational values found in these mountains and to secure opportunities for current and future generations to recreate therein (section 2(b) of the Act). The manner in which this purpose for establishing the Monument relates to the proposed land exchange is discussed in the response to PC-02(b).

section 36, T.5S. R.4E., because the value received via the cash payment is only worth one year's use of those trails, though the FLPMA requires the BLM to consider significant impacts to future generations. The commenter indicates, however, that to determine whether the conclusion regarding gross undervaluation is reasonable, a trail use study will need to be completed and evaluated relative to the probability that the Tribe will, at some point over in the future, restrict access or charge a fee for trail use on any lands acquired from the BLM.]

***Response:***

Responses to PC-02(b) and PC-02(c) address conformance with section 206(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as well as section 2(b) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 et seq.) with respect to providing opportunities for current and future generations to recreate on public lands, including those lands that may be acquired from the Tribe upon approval of the land exchange. Responses to PC-01(d), PC-04(d), and PC-06(d) address the Tribe's commitment as stated on its website relative to both the near and far terms. Responses to PC-01(g) and PC-02(g) address the quantification of recreation values in both the near and far terms; the response to PC-02(g) speaks to the assignment of probabilities to future Tribal and BLM land management decisions. Regarding the commenter's quantified analysis as related above, an assumption that the Tribe could make a cash payment of up to 25 percent of the value of the federal lands to acquire *all* the selected public lands is erroneous—see the response to PC-03(c). Further discussion with respect to these issues, therefore, is not provided in this response to PC-05(b).

However, the commenter's challenges to the draft EIS are identified separately as PC-05(b), instead of incorporating them in other summaries of public comments, because they set the stage for his extensive quantitative analysis as described in the public comment statement. The commenter, in his assertion that a trail use study needs to be completed and evaluated to determine whether the conclusion about gross undervaluation of trail use on BLM Category 2 and 3 lands is reasonable (as supported by the quantitative analysis) suggests the BLM should delay moving forward with the land exchange until results of the trail use study are available since they could determine whether the BLM has properly evaluated the impacts of trail management on future generations as required by the FLPMA.

Is there a requirement for the BLM to obtain such "missing" data in this context? No. In accordance with the regulations at 40 CFR § 1502.22(a), "if the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement." Notwithstanding costs of obtaining trail use data, the BLM contends such data are not essential to making a reasoned choice among alternatives. Since there are no reasonably foreseeable future actions that can be identified that would affect public access to trails (other than as relates to the proposed trail connecting the Garstin and Thielman Trails), concomitantly there can be no reasonably foreseeable significant adverse impacts to be evaluated.<sup>24</sup> [The draft EIS notes that empirical

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<sup>24</sup> Issues surrounding reasonably foreseeable future actions regarding management of public access to trails are addressed in the draft EIS (see p. 4-5, pp. 4-39 and 4-40, and footnote #14 p. 4-12), and extensively addressed in the responses to comments (see public comments 02(b), 03(b), 04(b), 01(d), 03(d),

data regarding participation levels for hiking, mountain biking, and horseback riding in the project area are not available (p. 4-4). Likewise no empirical data are available regarding occurrences of cross-country travel in the project area (pp. 4-8, 4-11 and 4-12, and 4-33).]

As indicated in the response to PC-06(d), the draft EIS is modified on pages 4-4, 4-7, 4-21, 4-27, and 4-38 to reiterate and emphasize that while opportunities for non-motorized recreation on the exchange properties are not anticipated to change in the short-term, changes to such opportunities could occur in the future due to changes in resource conditions or other factors that are not now reasonably foreseen.

Finally, since an exchange based on the outcome of the land value equalization process as described in section 3.0 of this appendix would involve fewer public lands than identified as BLM Category 1 lands, concerns regarding disposal of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., are moot since the BLM would retain jurisdiction of these three sections.

For reasons described above, PC-05(b) does not warrant further agency response.

**c. Development of Alternatives and Mitigation Measures**

**PC-01(c):**

The draft EIS inappropriately argues that because changes to trail management under Tribal jurisdiction are not anticipated in the near-term, deed restrictions are not necessary on public lands acquired by the Tribe in order to prevent development and/or retain public access to trails with no use fees, restricted hours of operation, or limitations on modes of non-motorized trail use (see section 2.5(b) pp. 2-7 and 2-8). Based on Tribal actions that have occurred since a change in the chairmanship of the Tribal Council, the intent of the Tribe with respect to managing Tribal properties is unknown, which substantiates a stronger case for deed restrictions.

Such deed restrictions or removal of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., from the land exchange altogether would protect the public interest established on non-motorized trails therein. Transferring ownership of these sections to the Tribe reduces the public value of these recreational resources and therefore is not in the public interest. If, in fact, the Tribe asserts it will manage trails on the exchanged public lands in the same manner as the BLM, it would have no objection to deed restrictions that preclude future changes in the management of trails. Deed restrictions to ensure the Tribe would manage trails as BLM has done in the past or will do in the future would serve the public interest.

***Response:***

Commenters suggest that the need for deed restrictions be examined relative to the long-term, not just the short-term as addressed in the draft EIS, and that deed restrictions regarding public access to trails on the acquired public lands are the only way to ensure the public interest is protected in the long-term given uncertainties of future trail management actions by the Tribe.

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04(d), 06(d), 01(f), 01(g), and 02(g). “Significantly” as used in NEPA documents is defined at 40 CFR § 1508.27, and cited in footnote #4 on page 1-3 of the draft EIS and in the response to PC-03(d).

As indicated in section 1.4(c)(i) of the draft EIS, the regulations at 43 CFR § 2200.06(i) provide that the public interest may be protected through the use of reserved rights or interests in the federal lands to be exchanged, as appropriate. As described in the BLM's Land Exchange Handbook H-2200-1 (BLM 2005b, section 6(E)), it is the BLM's policy that deed restrictions, covenants, and reservations be kept to an absolute minimum and used only where needed to protect the public interest. Further, mitigation in the form of deed restrictions on public land conveyed into nonpublic ownership, in general, should only be used where required by law or executive order, and clearly supported by environmental documentation. Hence, the pertinent question is whether deed restrictions addressing public access to trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., are necessary to protect the public interest in the long-term and would be consistent with BLM policy.

First, are deed restrictions necessary to protect the public interest in the long term? Imposing deed restrictions on public lands acquired by the Tribe to maintain the current situation with respect to management of trails would be inappropriate. Precluding any changes in management in response to changing conditions, in fact, may be inconsistent with provisions of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 et seq.). As required by section 5(a) of the Act, "[t]he management plan required by section 4(a) shall include provisions to continue to authorize the recreational use of the National Monument, including such recreational uses as hiking, camping, mountain biking, sightseeing, and horseback riding, *as long as such recreational use is consistent with this Act and other applicable law*" [emphasis added]. Relative to the use of trails on the exchange properties, circumstances could arise that might preclude continued use as now occurs.

For example, the listing of Peninsular bighorn sheep by the U.S. Fish and Wildlife Service in 1998 as federally endangered (63 FR 13134) led to the development of a multi-jurisdictional trails management plan through the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). Approval of the CVMSHCP in 2008 resulted in certain changes to the manner in which trail users could enjoy hiking, mountain biking, and horseback riding on lands within the Santa Rosa and San Jacinto Mountains Conservation Area established under the CVMSHCP. Principal among these changes were a broad-based, year-round prohibition of dogs within essential habitat for bighorn sheep, except where specifically allowed, and seasonal restrictions on the use of certain trails. Recreationists were also prohibited from cross-country (off-trail) travel from January 1 through September 30 to protect bighorn sheep during the lambing and heat stress seasons. In 2014, a revision to the trails management plan element of the CVMSHCP resulted in minor modifications that affected trail use by the general public, such as allowing leashed dogs access to the Cross in Palm Desert, which had been prohibited under the 2008 approved plan.

Hence, deed restrictions aimed at maintaining the status quo with respect to trail use would constrain the BLM and/or the Tribe from responding to changing circumstances, and could result in violation of applicable law, such as the Endangered Species Act (16 U.S.C. 1531 et seq.), by allowing actions that may result in unauthorized incidental take of threatened or endangered species or populations.<sup>25</sup> However, concerns regarding Tribal management of trails

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<sup>25</sup> Section 9 of the Endangered Species Act, and federal regulation pursuant to section 4(d) of the Act, prohibit the take of endangered and threatened species, respectively, without a special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage

within sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., are moot since the equalization of land values through the process described in chapter two of the draft EIS would result in these sections being retained by the BLM.

Second, would establishment of deed restrictions regarding public access to trails on lands acquired by the Tribe be consistent with BLM policy, particularly with respect to guidance that mitigation in the form of deed restrictions on public land conveyed into nonpublic ownership, in general, should only be used where required by law or executive order, and clearly supported by environmental documentation? The response to this question is in two parts. (a) Are there laws or executive orders that require the imposing of such deed restrictions for the proposed land exchange? No. (b) Is the need for deed restrictions to protect the public interest clearly supported by environmental documentation addressing the proposed land exchange, which includes these responses to comments and any changes to the EIS resulting from them? No. The draft EIS and these responses to comments point to a lack of rationale for speculating that changes to the management of trails is a reasonably foreseeable future action (see section 4.2.1.7 of the draft EIS p. 4-39; PC-02(b) and the response thereto; and PC-01(d) and the response thereto).

For reasons described above, PC-01(c) does not warrant further agency response.

**PC-02(c):**

The lack of a public vetting process regarding the manner in which the Tribe would manage trails on lands acquired from the BLM is not in the public interest as the Tribe would not be bound by any particular management scenario and could modify its trails management prescriptions at any time without public input. To mitigate potential adverse impacts regarding trail access and use, it is imperative that deed restrictions be imposed on public lands acquired by the Tribe.

***Response:***

The BLM acknowledges that management of Tribal lands is subject to internal processes of the Tribe, which do not include opportunities for public involvement such as public review and comment on proposed actions, or filing appeals regarding decisions that have been made. Whether long-term outcomes of this circumstance stemming from an exchange of public lands will be construed as not being in the public interest cannot be foreseen. However, it is inappropriate to suggest the Tribe is likely to change public access to trails on its lands for reasons that are inconsistent with ensuring its stewardship goals and objectives as described in the Indian Canyons Master Plan (ACBCI 2008) and the Tribal Habitat Conservation Plan

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in any such conduct. Harm is further defined by the U.S. Fish and Wildlife Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be a prohibited taking under the Act, provided that such taking is in compliance with the terms and conditions of the Incident Take Statement contained in the applicable biological opinion. (USFWS 2010a)

(ACBCI 2010). For further discussion in this regard, see section 1.4(d)(i) of the draft EIS (pp. 1-18 through 1-22), PC-01(b) and the response thereto, and PC-01(c) and the response thereto.

For reasons described above and as referenced, PC-02(c) does not warrant further agency response.

**PC-03(c):**

In 2010, the Tribe declared it would not purchase additional lands if such purchase is necessary to acquire all selected public lands as described in scenario three of the proposed action. Since the 2003 preliminary estimate of land values as described in *Supplement to Agreement to Initiate Assembled Land Exchange* suggests that acquisition of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., would not be likely unless the Tribe acquired additional properties for exchange, the preferred alternative should not have included these sections. Also, the Tribe has full discretion over whether to acquire up to 25 percent of the total value of the selected BLM lands using cash and has not indicated they will not do so, thereby providing additional justification that the sections identified above should not have been included in the preferred alternative.

**Response:**

As indicated on pages F-2 and F-3 of *Supplement to Agreement to Initiate Assembled Land Exchange* (Appendix F of the draft EIS), “estimated values are based on most recent appraisal information, but may not reflect current market value for exchange purposes.” This raises two important considerations: (1) While the estimated values were based on the most recent appraisal information, they were not based on actual appraisals of the subject properties; and (2) market values of the subject properties may change over time. As indicated in section 2.3 of the draft EIS (pp. 2-4 and 2-5), section 36, T.4S. R.4E., was excluded from the proposed action based on a determination that its inclusion would not meet the purpose and need of the proposed land exchange. Such determination to exclude this section was not based on estimated land values, for doing so would be inappropriate since appraisals of land values had yet to occur. Excluding section 16, T.4S. R.4E., and section 36, T.5S. R.4E., from the preferred alternative would likewise be inappropriate. To emphasize, development of the preferred alternative was based on conformance with the stated purpose and need for the proposed land exchange, not on estimated values of the selected public lands.

Based on approved appraisals, fewer parcels of BLM Category 1 lands (proposed action, scenario 1) are identified to be exchanged for the offered Tribal lands; the effective date of value for these appraisals is March 7, 2015. Concerns relative to an exchange of parcels in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., therefore, are moot.

Nevertheless, commenters’ assertion that the sections identified above should not have been included in the preferred alternative because (1) the Tribe has full discretion over whether to acquire up to 25 percent of the total value of the selected BLM lands using cash, and (2) the Tribe has not indicated it will not pursue the cash payment option, fails to acknowledge that the proposed land exchange *in its entirety* is a discretionary action by both the BLM and the Tribe. First, the BLM can only acquire the offered Tribal lands if the Tribe is willing to dispose

of them.<sup>26</sup> Prior to approval of a binding exchange agreement, the Tribe could withdraw from the exchange at any time. Second, the BLM is likewise not mandated to proceed with the exchange prior to approval of a binding exchange agreement, nor is it required to accept a Tribe's proposal to utilize a cash payment not exceeding 25 percent of the value of the federal lands involved in the land exchange in order to equalize land values. Hence, commenters incorrectly indicate the Tribe has *full discretion* in this regard as though it could utilize the "25 percent option" with no recourse by the BLM.

Further, it is inaccurate to suggest the "25 percent option" is an instrument for acquiring public lands above and beyond what is necessary to equalize land values, concomitant with a sale of public land to the Tribe. As indicated in section 3.0 of this appendix—Outcome of the Land Value Equalization Process—the appraised value of the offered Tribal lands is \$845,000. The appraised value of public lands in sections 16, 21, 27, and 29, T.5S. R.4E., is \$795,000, thereby necessitating a payment of \$50,000 by BLM to the Tribe to equalize land values. However, had the land value equalization process additionally included public lands in section 32, T.5S. R.4E., for example, which are valued at \$190,000, the Tribe would have to pay \$140,000 to the BLM to equalize land values. But it could not have paid additional money to acquire more of the selected public lands as such payment would be in excess of what is needed to equalize land values.

For reasons described above, PC-03(c) does not warrant further agency response.

**PC-04(c):**

The draft EIS inadequately addresses potential changes to management of the acquired public lands, instead offering only that nothing is fixed and the BLM can also change management in a way that would restrict public access to trails. This serves only to support analyses based on there being no differences between BLM and Tribal management of trails, which is not supported by the discussion provided in section 1.4(d)(i) of the draft EIS (pp.1-18 through 1-22) that details historical and current land management policy differences between the BLM and the Tribe. The draft EIS fails to acknowledge that the only way to totally alleviate public concern regarding access to trails in sections 16 and 36, T.4S. R.4E., and section 16, T.5S. R.4E., upon acquisition by the Tribe would be an agreement that guarantees the lands would be managed the same or better than the BLM today and in the future, including a process to vet changes with the public and override Tribal decisions about trail access by the public for the public good. Such agreement must not provide an option for termination by the Tribe in the future at its discretion. Anything short of this approach would not be in the public interest. The public desires certainty of what it has experienced with public land management as opposed to uncertainty that will occur with nonpublic management.

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<sup>26</sup> Section 6(a)(2) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 et seq.) requires that "State, local government, tribal, and privately held land or interests in land within the boundaries of the National Monument may be acquired for management as part of the National Monument only by exchange with a *willing party*" [emphasis added]. Sections 6(a)(1) and 6(a)(3) address acquisitions through donation and purchase, respectively.

**Response:**

Commenters' desire regarding management of trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., is for a guarantee that no change, or improved access only, would occur upon acquisition of these sections by the Tribe, and that the public must be afforded an opportunity to dismiss any proposal that might adversely affect public access. Such desire brings to mind the words of the Greek philosopher Heraclitus (c. 535 – c. 475 B.C.): “The only thing that is constant is change.” Guaranteeing that no change or improvements only would occur regarding public access to trails in the identified sections is inconsistent with adaptive management principles<sup>27</sup> applicable to public and Tribal lands.<sup>28</sup> An example of such an adaptive response to changing conditions is discussed in PC-01(c), focusing on how the listing of Peninsular bighorn sheep by the U.S. Fish and Wildlife Service in 1998 as federally endangered (63 FR 13134) led to the development of a multi-jurisdictional trails management plan through the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), thereby changing the manner in which trail users could enjoy hiking, mountain biking, and horseback riding on lands within the Santa Rosa and San Jacinto Mountains Conservation Area. While some changes restrict public access (e.g., a broad-based, year-round prohibition of dogs within essential habitat for bighorn sheep and a seasonal restriction on cross-country travel), a 2014 revision to the plan expanded the extent of trails available for access with dogs, albeit slight. The guarantee sought by commenters would not provide for changing management in response to changing resource conditions.

In general as regards public and private land management practices, change is well-documented. With respect to local public land management, one need only consider the numerous amendments to the California Desert Conservation Area Plan since its adoption in 1980. Prior to the passage of the Federal Land Policy and Management Act of 1976, the public lands were managed in accordance of numerous federal statutes that were sometimes contradictory and conflicting. It is anticipated that in the future, additional changes to public land management will occur. Whether such changes will result in public lands being managed “the same or better” in the eyes of the public depends on an individual’s specific resource needs. Whatever the case, the bottom line is that change is inevitable. Therefore, any agreement that would include a guarantee that the management of lands must conform to certain conditions as measured against current and future BLM land management practices, especially

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<sup>27</sup> *Adaptive management* is defined as the incorporation of the scientific method into the management process to reduce management uncertainty. Specifically, it is the formal integration of hypothesis testing and management action, with the purpose of achieving stated management objectives. The process proceeds iteratively, with the results of management decisions used to guide the support or rejection of previous hypotheses, and the updated hypotheses in turn direct future management actions. (ACBCI 2010, citing Lancia, R.A., C.E. Braun, M.W. Collopy, R.D. Dueser, J.G. Kie, C.J. Martinka, J.D. Nichols, T.D. Nudds, W.R. Porath, and N.G. Tilghman. 1996. ARM! For the future: adaptive resource management in the wildlife profession. *Wildlife Society Bulletin* 24(3):436-442.

<sup>28</sup> The California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a) incorporates the goal of developing an overall strategy for managing public lands that is *adaptable* over time based on the results of resource monitoring (section 2.2). The Tribal Habitat Conservation Plan (ACBCI 2010) serves as an *adaptive tool* to allow the Tribe to update and/or revise baseline biological resource information, manage conservation goals and priorities, and complement other existing and planned conservation efforts in the region (Executive Summary).



as they relate to a single resource value such as recreation, fails to acknowledge that the BLM decision-making process must consider impacts to *all* resources that may be differentially affected by any particular management action. Hence, the management of public lands in the public interest is not limited to considerations of a subset of resource values only, such as access to non-motorized trails. It is more encompassing, i.e., under certain conditions the public interest may be best served by enhanced protection of threatened and endangered species which could entail restrictions or prohibitions on public access to important habitat areas. As narrowly defined by the commenter, however, such occurrence would not be in the public interest.

To elaborate, commenters indicate that any agreement between the BLM and the Tribe regarding the management of the acquired public lands must not provide an option for termination by the Tribe at its discretion, for to do otherwise would not be in the public interest. Such elimination of termination opportunity is inconsistent with most, if not all, agreements entered into by the BLM, even if such termination can only occur by mutual agreement of the parties. For example, see Appendix A of the draft EIS (p. A-4), Appendix B (p. B-3), and Appendix E (p. E-4), all of which provide for modification and/or termination of the respective agreements between the BLM and the Agua Caliente Band of Cahuilla Indians.<sup>29</sup>

Since development, modification, or termination of agreements does not include a public review and comment opportunity, it would be inappropriate to include a provision allowing the public to override any decision made by either the BLM or the Tribe through such agreements. Approvals by the Tribe with respect to agreements rest with the Tribal Council; approvals by the BLM rest with the applicable authorized officer. There are no administrative processes available to challenge these approvals so long as they are consistent with provisions of applicable law.<sup>30</sup> Regardless, even if such an override was possible, who constitutes the “public” in this regard? Since not all members of the public hold identical opinions about land management practices, how would the majority opinion be derived? Through a ballot measure on which people vote, or some other kind of poll? Such approach is inappropriate at best and illegal at worst. In our system of representative government whereby the U.S. Congress passes laws and through such statutes as the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) establishes the manner in which the public lands shall be managed, authority to promulgate implementing regulations and undertake actions consistent with these regulations is delegated to the administrative branch of government, which includes the U.S. Department of the Interior.<sup>31</sup> Requiring the Tribe and the BLM to allow for a public override

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<sup>29</sup> According to *Agreement to Initiate Assembled Land Exchange between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians* (BLM and ACBCI 2002), “[t]his Agreement may be amended at any time upon written agreement of the Parties” (draft EIS p. E-4). Further, “[i]n the event that any exchange considered under this Agreement cannot be completed, no liability or obligation shall accrue to the Tribe or the United States” (p. E-5). Such nonbinding aspects of agreements are typical, not unusual.

<sup>30</sup> Section 307(b) of the FLPMA provides that subject to the provisions of applicable law, the Secretary of the Interior may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands. Typically, such authority provided to the Secretary is delegated to a lower level authorized officer.

<sup>31</sup> Section 310 of the FLPMA provides that the Secretary of the interior, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable

of its decisions made through agreements not only fails to recognize Tribal sovereignty, it would entail a process that is unworkable in the realm of public land management.

Regarding the discussion provided in section 1.4(d)(i) of the draft EIS that details historical and current land management policy differences between the BLM and the Tribe (as discussed on pages 1-18 through 1-21), the commenter fails to acknowledge the manner in which the draft EIS discusses in specific terms whether fees would be charged by the Tribe for use of trails in the acquired parcels; whether hours or seasons of public access to trails in sections 16 and 36, T.4S. R.4E., would be restricted in the same manner as occurs in the Indian Canyons Heritage Park; and whether bicycles would be prohibited on trails in sections 16 and 36 as described on pages 1-21 and 1-22, the conclusion being that upon approval of the proposed land exchange, the Tribe would not require a fee, would not restrict hours of public access, and would not prohibit bicycles on the required lands (except with respect to the latter where such a prohibition would be necessary for consistency with restrictions imposed by the City of Palm Springs). In other words, the BLM properly distinguished between how the Tribe currently manages public access in the Indian Canyons and how it would manage public access on the acquired public lands, but the commenter instead suggests that BLM failed to do so.

Finally, it is important to address the matter of Tribal sovereignty in response to commenters' suggestion regarding management of trails on lands acquired by the Tribe and the need for an agreement that guarantees how such lands will be managed. "The Tribe's authority to enforce its obligations under the Tribal Habitat Conservation Plan on all lands of the Agua Caliente Indian Reservation, including non-Indian controlled fee land, flows from its inherent sovereign authority supplemented by delegated federal authority. The Agua Caliente Band of Cahuilla Indians' Constitution and by-laws, approved by the Commissioner of Indian Affairs on April 18, 1957, delegated to the Tribe specific federal powers and authority over all lands of the Reservation. Specifically, Article V.a vests with the Tribal Council the power to 'protect and preserve Tribal property, including wildlife and natural resources.' The extent of the Tribe's territory over which the Tribe may exercise the above-described jurisdiction is designated in Article II of the Constitution, which 'shall extend to the territory within the boundaries of the Agua Caliente Indian Reservation as heretofore designated and to any other lands which may hereafter be added.' Accordingly, the approval of the Tribe's Constitution by the United States Department of the Interior's representative delegated to the Tribe a degree of federal authority to manage natural resources on all of the Agua Caliente Indian Reservation, which includes non-Indian controlled fee land." (ACBCI 2010 p. ES-2) To provide more clarity with respect to lands acquired through the proposed land exchange: "The Tribe's federally approved Constitution confirms that the Tribe's land use jurisdiction extends to all [Tribal, allotted trust, and fee] land within the exterior boundaries of the Agua Caliente Indian Reservation" (ACBCI 2010 p. 1-9). Hence, requiring the Tribe to manage its lands in a specific manner through an agreement with the BLM would inappropriately compromise its Tribal sovereignty.

For reasons described above, PC-04(c) does not warrant further agency response.

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to the public lands.

**PC-05(c):**

To best serve the public interest by preserving recreational access and protecting threatened and endangered species, the BLM should identify and analyze an alternative whereby all Tribal lands within the Santa Rosa and San Jacinto Mountains National Monument would be transferred into public ownership or control while ensuring that cultural and historical values of importance to the Tribe are conserved. To ensure maximum protection, these lands could be designated as federal wilderness or a national park, or as an international park through an agreement between the Tribe and the U.S. government.

***Response:***

The response to PC-09(d), which addresses acquisition of Tribal, State of California, City of Palm Springs, and private lands to consolidate management of the Skyline Trail, is relevant to PC-05(c), i.e., an alternative that considers consolidation of all nonfederal lands into public ownership is outside the scope of the proposed land exchange and the environmental impact statement addressing it. Designation of lands as federal wilderness, or national or international park, is a legislative matter, not one for consideration in the EIS addressing the proposed land exchange. Hence, alternatives considering such designations are also outside the scope of the proposed land exchange and EIS.

For reasons described above, PC-05(c) does not warrant further agency response.

**PC-06(c):**

Given the virtual scientific certainty that climate change is occurring and advancing, alternatives that minimize the effects of the exchange on climate change and that maintain or enhance the government's ability to regulate and mitigate the effects of climate change should be identified and be given preference. Such alternatives must provide the government the ability to minimize the adverse effects of climate change on resources, wildlife, the public, and the land itself. Such effects include, but are not limited to, increased soil erosion, wildfires, and spread of exotic weeds. It is therefore reasonable that the BLM identify alternatives that involve the exchange of less land, if any, for the sake of climate change considerations.

***Response:***

Greenhouse gas emissions from human activities have steadily been increasing at an unprecedented rate, especially since 1950; these emissions are associated with the current warming of the earth, typically referred to as "global warming" (Arctic Council and International Arctic Science Committee 2014; see section 3.2.3—Climate Change—of the draft EIS). Typically, climate change associated with human activities is linked to carbon dioxide and/or methane emissions emanating from such activities. In light of this circumstance, the commenter suggests that alternatives be identified to address differences between BLM and Tribal management of the exchange properties with respect to climate change outcomes.

The BLM concludes that the proposed land exchange would have no direct impact on climate change as no construction, other ground-disturbing activities, loss of ground cover, or utilization of pollutant-creating devices would occur as a direct result of the exchange (draft EIS p. 3-6). Indirect effects of the land exchange resulting from potential development activities—i.e., effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable (40 CFR § 1508.8(b)—are unknown since future development of the exchange properties is not reasonably foreseen (draft EIS, section 1.4(f)(i),

(ii), and (iii) pp. 1-27 through 1-31); potential development of the exchange properties is also addressed in the response to PC-01(f). Given these circumstances, it is unlikely that such alternatives could be presented in comparative form that sharply define the issue and provide a clear basis for choice among options by the decision-maker and the public (40 CFR § 1502.14). Further, the commenter does not suggest how the differences between BLM and Tribal management of the exchange properties may, in fact, affect climate change.

For reasons described above, PC-06(c) does not warrant further agency response.

**d. Public Access to Trails**

**PC-01(d):**

In analyzing effects to non-motorized recreation on lands acquired by the Tribe, the draft EIS unreasonably relies on statements provided on the Tribe's webpage regarding how non-motorized recreation will be managed by the Tribe on such lands (see pp. 4-4, 4-7, 4-20, and 4-27). According to the webpage, the Tribe commits to managing trails in the same manner as the BLM. As a consequence, conclusions of "no effect" or "no substantial effect" to non-motorized recreation based on this webpage statement lack merit in that they fail to acknowledge that Tribal policy with respect to the management of trails may change in the future, thereby potentially affecting non-motorized recreational opportunities. The analyses fail to address such change in Tribal policy. In other words, there is no guarantee the Tribe will maintain current management practices for non-motorized recreation on lands acquired from the BLM; the draft EIS fails to address this circumstance as a potential long-term cost. Further, the draft EIS fails to describe the manner in which the Tribe will manage trails in the same manner as the BLM.

***Response:***

As described in section 1.4(d)(i) of the draft EIS, the Tribe (through its webpage) commits it "will manage the trails in the same manner [as the BLM]" because "changing or curtailing public access to the trails is not feasible or practical." With respect to fees, the Tribe, while acknowledging that it would have the right to charge access fees, recognizes "the feasibility of doing so with so many access points would make it difficult" (ACBCI 2012). The BLM concludes "it is reasonable to assume, therefore, that upon approval of the proposed land exchange, the Tribe would not require a fee for the use of trails on lands acquired from the BLM, would not restrict hours of access to these trails, and would not prohibit bicycles where such access is currently allowed on these lands, except where needed for consistency with restrictions imposed by the City of Palm Springs for trails in section 36, T.4S. R.4E." (p. 1-22).

Commenters are correct in asserting that Tribal policy with respect to the management of trails may change in the future, and there is no guarantee the Tribe will maintain current management practices for non-motorized recreation on lands acquired from the BLM. Matters of reasonably foreseeable future actions, adaptive management, and Tribal sovereignty, which are particularly germane to this public comment statement, are extensively addressed in responses to PC-02(b) and PC-04(c). To briefly summarize, there are no existing decisions, funding, formal proposals, or actions which are highly probable, based on known opportunities or trends, to support assertions that changes in trail management by the Tribe are reasonably foreseeable (PC-02(b)); guarantees that management of trails would not change in the future are inconsistent with principles of adaptive management and would not be responsive to changing resource conditions (PC-04(c)); and authority to protect and preserve Tribal property is vested in the Tribal Council, not with the general public (PC-04(c)).

However, the commenter's assertion that analyses in the draft EIS lack merit because they fail to acknowledge that Tribal policy with respect to the management of trails may change in the future, thereby potentially affecting non-motorized recreational opportunities, is itself without merit. As expressed in section 1.4(d)(i) of the draft EIS: "Appropriately, the Tribe did not commit to forever managing trails on the acquired public lands in a manner consistent with current BLM management; the BLM itself makes no such commitment for managing public lands. Changing circumstances could result in a change of management prescriptions, consistent with the adaptive management approach adopted by the Tribe in its [Tribal Habitat Conservation Plan]. Likewise, the BLM, if it were to retain the selected public lands identified for the proposed land exchange, could restrict hours or seasons of access if warranted to protect the values for which the [Santa Rosa and San Jacinto Mountains National Monument] was designated, and could prohibit bicycles if warranted to protect resources and/or public safety. (p. 1-20)"

The BLM acknowledges its reliance on the Tribe's webpage commitment to manage trails on the acquired lands in the same manner as the BLM when it formulated the analysis of impacts to recreation resources for the draft EIS. As described in the response to PC-02(b) with respect to reasonably foreseeable future actions, as well as section 1.4(d)(i) of the draft EIS (particularly regarding how public access to trails in sections 16 and 36, T.4S. R.4E., would not be immediately affected), there is no basis to conclude the Tribe would undertake actions contrary to its expressed commitment in the short-term. In general, hiking, mountain biking, and horseback riding would continue with no change on trails acquired by the Tribe (except perhaps on the Indian Potrero Trail; discussion in this regard is provided in the draft EIS pp. 4-14 and 4-15). As discussed in the response to PC-04(c), however, modifications to management of public and Tribal land resources are inevitable in the long-term as resource conditions change. But what such modifications might entail is unknown; hence, analyses of unknown circumstances would have been inappropriate in the draft EIS, as would unsupportable speculation about them.

Commenters also assert the draft EIS fails to describe how the Tribe will manage trails in the *same manner* as the BLM upon an acquisition of public lands.<sup>32</sup> Is it likely that two different entities could manage a single resource spanning their respective jurisdictions in *exactly* the same manner given different authorities, regulations, policies, and plans under which each operates, or in this case, apply *exactly* the same management prescriptions affecting a particular resource upon acquisition over the long-term, whether by the BLM or the Tribe? Despite a desire to do so, the likelihood of doing so in the long-term is questionable given existing constraints. But is exactitude of management the key issue? The BLM contends it is of greater utility to consider outcomes and the extent to which such outcomes are the same or different, whether in the near-term or long-term, than to focus on the degree to which specific management prescriptions correspond to one another. While management on a trail-specific basis may vary depending on whether the BLM or the Tribe retains or transfers jurisdiction, opportunities for non-motorized recreation in the project area would not be substantially affected (draft EIS p. 4-41)—this conclusion reflects an outcome of overall recreational

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<sup>32</sup> *Same* means "alike in kind, quality, amount, or degree; unchanged; not different." Webster's New World Dictionary, Third College Edition. 1988. Simon & Schuster, Inc., New York.

opportunities rather than what occurs on trail “x” under BLM or Tribal jurisdiction.<sup>33</sup> This conclusion is supported by analyses provided in section 4.2.1 of the draft EIS, which, on the other hand, addresses potential impacts of the proposed land exchange on a trail-specific basis (pp. 4-6 through 4-41).

Nevertheless, public concerns regarding the manner in which the Tribe would manage trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., upon acquisition of these public lands are moot given the outcome of the land value equalization process as described in section 3.0 of this appendix, i.e., public lands in these sections would be retained by the BLM. The only trail segment that would come under Tribal jurisdiction upon acquisition of public lands in section 21, T.5S. R.4E., is on the Jo Pond Trail. However, since access to it is currently governed by the Tribe by virtue of its jurisdiction over the adjoining trail segments, whether the Tribe continues the BLM’s management prescription for allowing mountain biking on the segment or prohibits bicycling for management consistency with the adjoining segments would make no difference in practicality (draft EIS p. 4-11).

For reasons described above, PC-01(d) does not warrant further agency response.

**PC-02(d):**

Through the 2009 management agreement between the Tribe and the BLM, the Tribe agrees only that the exchange lands remain accessible and subject to reasonable use and enjoyment by the public. How “accessible” and “reasonable” are operationally defined by the Tribe will determine how similar or dissimilar Tribal management of trails may be compared to BLM’s management of the same trails prior to the land exchange. Yet such definitions are not provided in the draft EIS, thereby depriving the public of an opportunity to ascertain whether access would, in fact, be reasonable after the exchange has occurred.

***Response:***

The referenced management agreement was attached to environmental assessment no. CA-060-0010-0005 addressing the proposed land exchange (Appendix H of the draft EIS), which was released by the BLM for public review and comment on July 27, 2010. As the EA was being prepared, the BLM and the Tribe became aware of a brewing controversy regarding the manner in which the Tribe might manage trails on the acquired public lands, particularly within sections 16 and 36, T.4S. R.4E. In response to this controversy, the BLM and the Tribe entered into an agreement that was made “for the purpose and objective of establishing and clarifying the roles and responsibilities of the Tribe and the BLM in the management and operation of the lands to be exchanged” (p. H-39). Specifically, the Tribe agreed “to manage the Exchange Lands in accordance with the resource preservation goals of the Indian Canyons Master Plan and the habitat preservation requirements of the Tribal Habitat Conservation Plan,” and “that the Exchange Lands remain accessible and subject to the reasonable use and enjoyment by the general public” (p. H-39).

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<sup>33</sup> This approach to preserving recreational opportunities is consistent with the purposes for which the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431 et seq.) was established (see section 2(b) of the Act). This approach is also discussed in the response to PC-02(b).

As reflected in comments submitted to the BLM for the environmental assessment, this agreement did not satisfy those who apparently were convinced the Tribe intended to restrict access to, or charge fees for, the use of trails on the acquired lands as soon as the land exchange was approved. In response to this circumstance, the Tribe published a document entitled “Frequently Asked Questions about the BLM-Tribal Land Exchange” on its website in which the Tribe commits to “manage the trails in the same manner [as the BLM]” because “changing or curtailing public access to the trails is not feasible or practical” (ACBCI 2012). Clearly, as indicated by PC-02(d), there continues to be a lack of trust regarding the Tribe’s intentions. Such matter of trust is extensively addressed in the response to PC-01(b). Regarding long-term management of trails on public lands acquired by the Tribe, as well as long-term management of trails on Tribal lands acquired by the BLM, the response to PC-04(c) is pertinent.

Nevertheless, public concerns regarding the manner in which the Tribe would manage trails in sections 16 and 36, T.4S. R.4E., as well as section 36, T.5S. R.4E., upon acquisition of these public lands are moot given the likelihood of an exchange based on the outcome of the land value equalization process as described in section 3.0 of this appendix, under which the BLM would retain jurisdiction of these three sections.

For reasons described above, PC-02(d) does not warrant further agency response.

**PC-03(d):**

In the draft EIS, the BLM improperly implies that since both the BLM and the Tribe can change their land management policies in the future, there is no difference as to who owns the land. This is reflected in the environmental analyses as presented, leading to a conclusion that impacts to recreational resources would not be substantially affected by the proposed land exchange. Yet suggesting that unknown future policy changes preclude an analysis that differentiates between how the BLM and the Tribe would manage the exchange properties obfuscates some real differences that may affect public access. What isn’t pointed out is that the BLM was party to a multi-jurisdictional trails management plan a decade ago that, in fact, represented a significant policy change by substantially restricting public access to trails, but due to public opposition, a new trails management plan was developed that kept trails open to the public.

***Response:***

The National Environmental Policy Act (42 U.S.C. 4321 et seq.) “is our basic national charter for protection of the environment” (40 CFR § 1500.1(a)). According to the regulations for implementing the procedural provisions of the Act, the NEPA process “is intended to help public officials make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (40 CFR § 1500.1(c)). “Analysis and disclosure of the effects of a proposed action and its alternatives are the underlying NEPA principles that move agencies toward achieving this goal” (BLM 2008a, section 1.4). Further, “[t]he primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals identified in the Act are infused into the ongoing programs and actions of the federal government. It shall provide full and fair discussion of significant environmental impacts <sup>34</sup> and shall inform decisionmakers and the

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<sup>34</sup> “Significantly” as used in NEPA requires considerations of both context and intensity. *Context*

public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.<sup>[35]</sup> Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by federal officials in conjunction with other relevant material to plan actions and make decisions.” (40 CFR § 1502.1) The environmental impact statement “shall include discussions of possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned” (40 CFR § 1502.16(c)). The EIS “must identify the known and predicted effects that are related to the issues. An issue differs from an effect; an issue describes an environmental problem or relation between a resource and an action, while effects analysis predicts the degree to which the resource would be affected upon implementation of an action” (BLM 2008a, section 6.8.1.1).

Consistent with regulatory requirements for implementing procedural provisions of the NEPA, the draft EIS analyzes and discloses potential effects of the proposed land exchange and its alternatives *based on known and reasonably foreseeable future actions that relate to the stated purpose and need*, and in doing so, addresses the degree to which the public interest is served by the exchange. Responses to public comments contained in this section of the final EIS clarify circumstances regarding potential future management of trails on the exchange lands by the BLM and the Tribe, as well as address concerns about serving the public interest. Further, as indicated in the response to PC-01(d), BLM contends that considering outcomes and the extent to which such outcomes are the same or different, whether in the near-term or long-term, is of greater utility than focusing on the degree to which specific management prescriptions imposed

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means that the significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality (40 CFR § 1508.27(a)). With respect to recreation resources, the draft EIS for the proposed land exchange focuses primarily on the affected region (the Santa Rosa and San Jacinto Mountains National Monument), the affected interests (public access to non-motorized trails on the exchange parcels), and the locality (the project area). *Intensity* refers to the severity of the impact. In evaluating intensity, the degree to which the effects on the quality of the human environment are likely to be highly controversial and the degree to which the possible effects on the human environment are highly uncertain should be considered (40 CFR § 1508.27(b)(5) and (6), respectively). The draft EIS considers intensity of potential impacts in both ways. As indicated in section 1.2 (pp. 1-3 and 1-4), environmental assessment no. CA-060-0010-0005 stimulated a high level of controversy—based on public comments and further internal review, it was determined that preparation of an EIS is necessary to address potentially significant effects of the proposed land exchange. The draft EIS also addresses uncertainty of effects with respect to future management of public access to trails in section 1.4(d)(i), and further clarifies circumstances in the regard in responses to PC-01(b), PC-02(b), PC-04(c), and PC-01(d).

<sup>35</sup> “Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS must discuss all of these effects on the human environment (40 CFR § 1508.14). Section 4.2.1 of the draft EIS (pp. 4-6 through 4-41) addresses the manner in which public access to recreation resources, including trails on the exchange lands, would be affected by the proposed land exchange and alternatives.



by the BLM or the Tribe correspond to one another. While management on a trail-specific basis may vary depending on whether the BLM or the Tribe retains or transfers jurisdiction, opportunities for non-motorized recreation in the project area would not be substantially affected (section 4.2.1.8 of the draft EIS p. 4-41). Such conclusion is based on an analysis of cumulative effects, and is consistent with the purposes for which the Santa Rosa and San Jacinto Mountains National Monument was established (see response to PC-02(b)).

The commenter cites BLM's participation in development of a multi-jurisdictional trails management plan that significantly restricted access to public trails, and because of the outcome of that effort resulting from public participation in the planning process, suggests the draft EIS obscures real differences in management between the BLM and the Tribe by implying it does not matter which one manages trails on the exchange properties.

First, to be clear regarding the referenced trails management plan, it is an element of the Coachella Valley Multiple Species Habitat Conservation Plan to which the BLM is not a signatory, i.e., the BLM is not bound by decisions regarding implementation of the CVMSHCP even though it participated in its development. The BLM prepared the California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a), in part, to determine how best to participate with the CVMSHCP in the context of BLM's land management mission as a federal agency. Regarding the multi-jurisdictional trails management plan as it affects public lands, it is anticipated the BLM will issue a separate decision, though such decision has yet to be rendered.

Second, the commenter inaccurately suggests that a multi-jurisdictional trails management plan which included significant restrictions on public access to trails had actually been approved, and a new plan that lifted these restrictions was subsequently developed. Rather, the "restrictive plan" was presented to the public as a *draft* plan for which public comments were solicited. Based on comments submitted to the Coachella Valley Association of Governments (the lead agency for preparation of the CVMSHCP), the draft trails management plan was revised. The final plan did not include restrictive measures substantially limiting public access to trails. Further, in indicating that such revision was in response to "public opposition," the commenter failed to clarify that revision of the trails management plan was due to a challenge regarding the scientific basis for imposing such restrictive measures, not solely as a result of expressed opposition to the plan.<sup>36</sup> This nuance is important with respect to comments submitted addressing the proposed land exchange. While many commenters have expressed opposition to the exchange, many failed to substantiate the reasons for their opposition. As indicated in section 2.0 of this appendix, comments in favor or against the proposed action or alternatives without reasoning that meet the criteria for *substantive* comments as identified in the BLM's NEPA Handbook H-1790-1 (BLM 2008a, section 6.9.2.1) are not considered substantive and therefore require no agency response. Relative to trails management plan element of the CVMSHCP, comments that elicited a change to the draft plan were substantive.

In conclusion, the commenter's inference—it being since both the BLM and the Tribe might change their policies in the future regarding how they respectively manage trails, the draft EIS

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<sup>36</sup> Circumstances regarding draft and final versions of the trails management plan element of the CVMSHCP are related in section 4.2.1.7 of the draft EIS p. 4-36.

inappropriately implies that it does not matter which has jurisdiction over the exchange properties, thereby obscuring differences that may affect public access—is without foundation. As often discussed in the draft EIS and in these responses to comments, particularly the response to PC-04(d), the heart of the issue is whether future actions are reasonably foreseeable. With respect to future land management policy changes, whether by the BLM or the Tribe, the BLM asserts that such changes cannot be reasonably foreseen. Developing analyses based on mere possibilities, instead of reasonably foreseen probabilities of sufficient specificity that lend themselves to analysis, is inconsistent with regulatory requirements and guidelines.

For reasons described above, PC-03(d) does not warrant further agency response.

**PC-04(d):**

The draft EIS asserts that the Tribe is not likely to change current management of trails on the acquired public lands in the near-term; therefore, developing and analyzing an alternative in response to speculation that the Tribe would restrict access to trails on these public lands or charge a fee is not warranted (page 2-7 of the draft EIS). Such reasoning is by assumption rather than analysis, and therefore inappropriate. Further, the draft EIS focuses only on the near-term and fails to consider long-term changes to Tribal management. Any potential restrictive change in the management of the acquired public lands that differs from current or future BLM management would, by definition, not be in the public interest. Since there is a positive probability that Tribal management of the acquired public lands could differ from BLM management of these same lands in the future, the draft EIS is deficient in not analyzing such probability.

***Response:***

Commenters assert that BLM’s dismissal of an alternative addressing the Tribe’s potential restriction of access to trails on the acquired public lands or charging a user fee is by assumption rather than analysis, and therefore inappropriate. The commenters’ assertion in this regard lacks merit. As described in the response to PC-02(b), analysis in the draft EIS with respect to Tribal management of trails on the acquired public lands is based on an evaluation of *reasonably foreseeable future actions* as defined in BLM’s National Environmental Policy Act Handbook H-1790-1 (BLM 2008a, section 6.8.3.4): such actions are those for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends; however, speculation about future actions is not required. The response to PC-02(b) examines each component of this definition, refuting commenters’ assumption that recreational opportunities would be lost should the Tribe acquire certain public lands. The response to PC-01(d) also addresses potential changes to the Tribe’s management of trails on the acquired public lands, contending there is no basis to conclude the Tribe would undertake actions contrary to its expressed commitment in the short-term as published on its webpage (ACBCI 2012). Speculation cannot be the basis for analysis or alternative development when considered in light of BLM’s definition of *reasonably foreseeable future actions*.<sup>37</sup> Hence, the BLM’s reasoning in this regard is by analysis, not by assumption as asserted.

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<sup>37</sup> Considering a common definition of speculative (i.e., “theoretical; not practical”: Webster’s New World Dictionary, Third College Edition. 1988. Simon & Schuster, Inc., New York.), analyses based on speculative or hypothetical situations regarding future trails management could be limitless to include both enhancements and reductions of public access; undertaking such analyses would not be practical or meaningful.

Commenters additionally assert there is a positive probability that the Tribe's management of the acquired public lands could differ from BLM's management of the same lands if held in public ownership, therefore warranting an analysis of such probability. As stated in section 2.5(a)(i) of the draft EIS, "both the BLM and the Tribe—whether the land exchange does or does not occur, or occurs in part—cannot commit to current management protocols. As resource conditions and visitor use change, there may be a need to modify the management of public access" (p. 2-7). In other words, the BLM acknowledges the potential or "probability" that management prescriptions may change. Responses to PC-01(d) and PC-04(c) speak to future changes in the way public access may be managed, particularly in conformance with adaptive management principles.

However, just because there is potential or probability that change may occur, it is inappropriate to develop and analyze alternatives based solely on such potential or probability without having identified reasonably foreseeable future actions (the only one of which identified in the draft EIS is development of a trail connecting the Garstin and Thielman Trails; see section 4.1.4 p. 4-5). The same holds true for analysis of "probable" circumstances that lack specificity or may not altogether be likely. Attempting to analyze effects on the human environment stemming from a myriad of possibilities or a "positive probability"<sup>38</sup> would not only be unreasonable, it would be inconsistent with regulatory guidance regarding presentation of environmental impacts of the proposal and the alternatives, which should be "in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public" (40 CFR § 1502.14).

For example, under scenario three of the proposed action, the Tribe would acquire 11 trail segments. Since future management of these trail segments by the Tribe is speculative and not based on existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends (i.e., reasonably foreseeable future actions), there could be many trail management strategies for the acquired system of trail segments. Trail segment "A" could be open or closed to mountain bikers, open 24 hours per day or closed during certain hours, open year-round or seasonally closed, and/or free for access or require payment of a fee. This represents 16 possible management scenarios for this single trail segment. Expand it to all 11 trail segments and the possibilities mushroom. Yet analyses of these numerous deviations would not provide a clear choice among the options should they be formulated as alternatives. While the number of alternatives and analyses could be reduced by grouping certain trails according to location or type of possible restriction, the likelihood that issues would be sharply defined and a clear basis for choice among options would be provided is very small.

Clearly, the basis for analyzing potential changes in management of the acquired public lands cannot cover the realm of what *could* occur. Such an approach to analysis would be limitless.

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<sup>38</sup> Commenters tend to generalize about future Tribal management of trails on the acquired public lands, postulating the Tribe will restrict public access by prohibiting mountain bikes, restricting hours or seasons of access, and/or charging a fee for using trails. Aside from there being no basis for arguing the Tribe will, in fact, implement these restrictive measures, there is concomitantly no evidence that such measures would be applied broadly and consistently to all trails (see response to PC-02(b)).

Therefore, the reasoning for not developing and analyzing an alternative, or analyzing an occurrence that could occur, is because the manner in which future management of trails on the acquired public lands cannot be predicted. The argument often presented by commenters is since the Tribe currently restricts access to trails in the Indian Canyons and Tahquitz Canyon and charges a fee to access these trails, it would likely restrict access to trails on the acquired public lands and charge a fee for their use. Such argument is specious. The Tribe has not restricted access to or charged a fee for the use of the Skyline Trail where it traverses Tribal lands in sections 18 and 20, T.4S. R.4E.. The same holds true for other trails that cross Tribal lands in the project area: Wild Horse and Dunn Road Trails (section 7, T.5S. R.5E.); East Fork Loop Trail (section 24, T.5S. R.4E., and section 19, T.5S. R.5E.); and Palm Canyon, Indian Potrero, and Dry Wash Trails (section 24, T.5S. R.4E.). Therefore to assume the Tribe will impose restrictions for the use of trails on the acquired public lands is not based on any particular management scenario applicable to all trails currently under Tribal jurisdiction. Instead, it is an assumption of what *could* occur on segments of trails managed by the Tribe, not what is likely or probable. Since potential restrictions on the use of trails on public lands could also occur, analyzing how differences in future Tribal and BLM management of trails on the exchange lands might affect recreation resources would be a futile undertaking; the number of different scenarios to be analyzed would be exceptionally large, particularly when potential management of trails on a trail-by-trail basis would result in many combinations that may have very minor differences in environmental impacts.

Finally, commenters assume that any potential restrictive change in the management of the acquired lands that differs from current or future BLM management would not be in the public interest. As indicated in the response to PC-02(b), “the public interest” is multi-faceted, not solely linked to public access to non-motorized trails. Instead, the public interest in the project area relates to the protection of recreation, watershed, wildlife, scenic, scientific, and historical values. As explained in the response to PC-01(c), locking in current management of trails through deed restrictions that would preclude potential restrictive changes could result in violation of applicable law, such as the Endangered Species Act (16 U.S.C. 1531 et seq.) which would not be in the public interest.

For reasons described above, PC-04(d) does not warrant further agency response.

**PC-05(d):**

In analyzing impacts to recreational resources, the draft EIS fails to consider connectivity of trails on the selected public lands to a trail system heralded by the City of Palm Springs as a benefit to residents and visitors. Eight of the eleven trails in and around the City are affected by the proposed land exchange; seven of these trails are located in section 36, T.4S. R.4E., and one in section 16, T.4S. R.4E. While there would be no significant impact to the public upon acquisition of the public land section containing a segment of the Jo Pond Trail (section 21, T.5S. R.4E.), there would be a negative impact to the public upon transfer of all other trail segments on public lands to the Tribe.

***Response:***

The commenter fails to provide justification for there being a negative impact to the public upon transferring public land parcels containing trails to the Tribe. Instead, negative impacts are assumed based on unsupported speculation regarding future Tribal management. As described in the response to PC-04(d), assumed restrictions imposed by the Tribe are typically generalized by commenters and do not reflect current Tribal management of the system of trails and trail segments as a whole on its lands.

As previously indicated, public concerns regarding the manner in which the Tribe would manage trails in sections 16 and 36, T.4S. R.4E., as well as section 36, T.5S. R.4E., upon acquisition of these public lands are moot given the likelihood of an exchange based on the outcome of the land value equalization process as described in section 3.0 of this appendix, under which the BLM would retain jurisdiction of these three sections.

For reasons described above, PC-05(d) does not warrant further agency response.

**PC-06(d):**

The draft EIS provides no evidence supporting the assertion that acquisition of the selected public lands by the Tribe would have no direct effect because the Tribe committed to managing trails in the same manner as the BLM after the exchange. Instead, it is more precise to indicate that “immediate” or “short-term” impacts to recreational resources are not anticipated to highlight that intermediate and long-term effects are not addressed. Therefore, Section 4.2.1 should be modified to make clear that while immediate or short-term impacts are not anticipated, the Tribe has the right and option to manage the acquired public lands and trails thereupon in a manner different than the BLM.

***Response:***

The BLM disagrees with commenters’ assertion that because the analysis of environmental impacts relies on the Tribe’s commitment (as expressed on its webpage) to manage trails on the acquired lands in the same manner as the BLM (ACBCI 2012), and there is no evidence that such commitment will be upheld, the conclusion that acquisition of public lands would have no direct effect on public access to trails is unsupported. To reiterate a point made in the draft EIS and in these responses to comments regarding management of trails in the future, there are no *reasonably foreseeable future actions* meeting the definition of such on which to base an analysis of impacts to recreation resources (other than a proposed trails connecting the Garstin and Thielman Trails); see sections 4.1.4 (p. 4-5) and 4.2.1.7 (pp. 4-34 through 4-41) of the draft EIS, and the response to PC-02(b).

However, the draft EIS indicates that upon acquisition of the selected public lands, management of these lands and the trails thereupon is subject to change in the long-term: “[B]oth the BLM and the Tribe—whether the land exchange does or does not occur, or occurs in part—cannot commit to current management protocols. As resource conditions and visitor use change, there may be a need to modify the management of public access” (p. 2-7). Further, “[w]hile it is anticipated that opportunities for non-motorized recreation will not be substantially affected in the short-term upon implementation of the proposed action or preferred alternative, changes to such opportunities in the long-term are less clear. ... Although the change in landownership would likely be in perpetuity, the time frame for this cumulative effects analysis [pertaining to recreation resources] must be conditioned by actions that are reasonably foreseeable; attempting to ascertain impacts to recreation resources in the distant future as a consequence of the proposed land exchange (such as changes in opportunities for non-motorized access to lands acquired by the BLM or the Tribe) is unreasonable and speculative. ... [For example,] should delisting of Peninsular bighorn sheep as an endangered population occur, opportunities for non-motorized recreation in the Santa Rosa and San Jacinto Mountains could change, though the manner and extent of such changes cannot be predicted at this time” (p. 4-39).

While the draft EIS clearly establishes that changes to the management of trails on public and Tribal lands may occur in the future, reiteration of this point is nevertheless made on pages 4-4, 4-7, 4-21, 4-27, and 4-38 for emphasis and clarification, i.e., the draft EIS is modified to reflect that while opportunities for non-motorized recreation on the exchange properties are not anticipated to change in the short-term, changes to such opportunities could occur in the future due to changes in resource conditions or other factors that are not now reasonably foreseen. This modification to the draft EIS does not supplement, improve, or modify the analysis.

Other than the modification identified above, PC-06(d) does not warrant further agency response.

**PC-07(d):**

The draft EIS should be updated on page 4-38 to reference the revised trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan and clarify current BLM policy regarding opportunities for cross-country travel. The BLM should also remove all references to uncertainty regarding this issue, and change conclusions to reflect these corrections. For further clarification, conclusions should clearly state that all cross-country travel is prohibited by the Tribe under the Tribal Habitat Conservation Plan and the Indian Canyons Management Plan, which in itself is a significant impact to the public.

***Response:***

The BLM disagrees that corrections to the draft EIS as asserted are necessary. On more than one occasion, reference is made in the draft EIS to the 2014 revision of the trails management plan, thereby indicating it was considered when preparing the analysis of environmental impacts (see pp. 1-25, 4-8, and 4-40). The revised trails plan is accordingly cited in the reference section of the document as “Coachella Valley Association of Governments. 2014.”

Circumstances regarding the decision-making process for federal lands as affected by the trails management plan, including those regarding cross-country travel, have not changed since approval of the CVMSHCP in 2008 or approval of the trails plan revision in 2014, i.e., adoption of management prescriptions applicable to public lands requires a separate decision by the BLM, which includes public involvement in the decision-making process. This circumstance is addressed in the draft EIS: “The BLM and the Tribe are not signatories to the CVMSHCP, which applies only to nonfederal and non-Tribal lands. Instead, the management of trails by the BLM and the Tribe is subject to their respective approved management plans. While the BLM may issue a decision for public lands that is generally consistent with management prescriptions established through the trails management plan element of the CVMSHCP, the final outcome of the decision-making process is unknown. *The decision will be based on environmental analysis provided in, and public response to, the applicable NEPA document [emphasis added]*” (footnote #16 p. 1-19).

Further, “[O]pportunities to hike off-trail on lands acquired from the Tribe, whether it includes the use of social trails or occurs where no trails exist, would be affected by the proposed land exchange to the extent the BLM allows or restricts such travel on public lands in the project area *through a separate decision process [emphasis added]*” (draft EIS p. 4-8). In other words, if the BLM implements a prohibition on cross-country travel on the selected public lands, acquisition of these same lands by the Tribe (assuming it would extend such prohibition to them) would result in no change to this recreational opportunity. If, on the other hand, the BLM decides not to implement a cross-country travel prohibition, opportunities for such travel may

be diminished on up to 4,329 acres under scenario three of the proposed action, though approval of other alternatives would result in lesser effects (draft EIS p. 4-38).

The commenter's assertion that all references about the BLM's yet-to-be-made decision (which denote "uncertainty") should be removed suggests the BLM should conceal this circumstance. "While the BLM collaborated on development (and subsequent revision) of this trails management plan with the goal of ultimately realizing consistency in trails management on a landscape basis to the extent practicable, it has yet to issue a separate decision addressing applicability of the plan, in whole or in part, to public lands" (draft EIS pp. 3-18 and 3-19). It is important that the public, particularly those individuals that participated in the decision-making process for the CVMSHCP, is aware that opportunities for cross-country travel on lands acquired from the Tribe may change. While the draft EIS does not address actions that are not reasonably foreseeable, parameters of BLM's future decision about public access on the acquired Tribal lands are established in the trails management plan element of the CVMSHCP, thereby constituting a formal proposal to which the BLM must eventually respond.

Finally, the commenter asserts that, for clarification, conclusions should clearly state that all cross-country travel is prohibited by the Tribe under the Tribal Habitat Conservation Plan (ACBCI 2010) and the Indian Canyons Management Plan (ACBCI 2008). Tribal management of cross-country travel is addressed in section 1.4(d)(v) (pp. 1-25 and 1-26) and section 4.2.1 (p. 4-8) of the draft EIS. As indicated in these sections, hiking on Tribal lands is allowed on designated trails only in accordance with the THCP; no cross-country travel is allowed. Since the Tribal prohibition of cross-country travel would extend to lands acquired by the Tribe, the effects of such prohibition are addressed in the draft EIS (pp. 4-11 and 4-12 for scenario one of the proposed action; pp. 4-17 and 4-18 for scenario two of the proposed action; p. 4-23 for scenario three of the proposed action; pp. 4-27 and 4-28 for the preferred alternative; and p. 4-30 for the no action alternative—these effects are summarized on p. 4-32). Further clarification in this regard is not necessary.

With respect to the commenter's assertion that the Tribe's prohibition of cross-country travel constitutes a significant impact to the public, no evidence is provided to support this conclusion. As indicated in the draft EIS, empirical data regarding levels or frequency of cross-country travel in the project area are not available. If few individuals infrequently engage in cross-country travel, impacts to this opportunity resulting from a cross-country travel prohibition would certainly be considered less than significant. If the converse were true, the conclusion might differ. Nevertheless, based on constraints imposed by the preponderance of steep rugged terrain in much of the project area and the lack of empirical data regarding current levels of cross-country travel, it is reasonably concluded that impacts to this recreational opportunity would be minor.

However, since an exchange based on the outcome of the land value equalization process as described in section 3.0 of this appendix would transfer fewer acres of public land than under scenario one of the proposed action, sections 2.2 (proposed action) and 4.2.1 (impacts to recreation resources) of the draft EIS are accordingly revised to reflect this outcome. While impacts to the use of official trails is the same as described for scenario one of the proposed action, acreages of lands available for cross-country travel are modified. Nevertheless, such revision does not change the BLM's conclusion that opportunities for non-motorized recreation in the project area would not be substantially affected (draft EIS p. 4-41).

For reasons described above, PC-07(d) does not warrant further agency response.

**PC-08(d):**

The draft EIS creates confusion by failing to describe trails on adjoining nonpublic and non-Tribal lands. To alleviate this confusion, the final EIS should list the names of agencies that own these adjoining lands, descriptions of the trails on each adjoining property, and how these trails interact with trails on the selected public lands and offered Tribal lands.

***Response:***

The draft EIS identifies the names and lengths of trail segments potentially affected by the proposed land exchange, compares these lengths to the total length of the same trails, and identifies current allowable uses of trail segments located on the exchange properties (Table 3.2.14.1 p. 3-24, and Table 3.2.14.2 p. 3-25). Figures 5a, 5b, and 5c depict the affected trails, as well as others in the general project area, and depict ownership of adjoining lands to include BLM, ACBCI, U.S. Forest Service, State of California, local government, and “unclassified,” which generally refers to lands in private ownership. Where applicable, the draft EIS addresses multi-jurisdictional management of the affected trails (other than by the BLM or the Tribe alone or in combination), e.g., Indian Potrero Trail (pp. 4-14 and 4-15), Palm Canyon Trail (pp. 4-15 through 4-17), Skyline and North Lykken Trails (pp. 4-19 through 4-22), and Araby, Berns, Garstin, Shannon, Thielman, and Wild Horse Trails (pp. 4-21 and 4-22). Further clarification with respect to names of trails not affected by the proposed land exchange and ownership of land in which they occur would not present new information relevant to analyses presented in the draft EIS.

For reasons described above, PC-08(d) does not warrant further agency response.

**PC-09(d):**

In order to serve the public interest and guarantee public access to the Skyline/Cactus-to-Clouds Trail, its entire length should be managed by public entities only (e.g., State of California or a federal government agency), thereby enhancing its potential to be recognized as a nationally protected treasure within a future National Park or the existing National Monument. To this end, the BLM should retain ownership of public lands in sections 16, 17, and 18 (T.4S. R.4E.), and acquire Tribal lands that are traversed by the Skyline Trail in sections 18 and 20 (T.4S. R.4E.). Likewise, the entire Palm Springs Epic mountain biking route should be managed by public entities only.

***Response:***

The commenter suggests development of a new alternative that includes acquisition of Tribal lands not heretofore considered, i.e., Tribal lands in sections 18 and 20, T.4S. R.4E., along with retention of public lands in sections 16, 17, 18, T.4S. R.4E. The draft EIS addresses elimination from detailed analysis an alternative that excludes sections 16 and 36, T.4S. R.4E. (section 2.5(a) pp. 2-6 and 2-7); the development of such alternative was suggested by the public during the scoping process to ensure public access to official trails therein located is retained (see Appendix I). But the draft EIS does identify and analyze in detail a preferred alternative that excludes public lands in section 36 from the proposed land exchange (section 2.3 pp. 2-4 and 2-5) in order to enhance consolidation of public lands in response to the stated purpose and need for the exchange (section 1.3 pp. 1-4 and 1-5). This issue is also addressed in section 1.4(c)(i) of the draft EIS (pp. 1-15 through 1-17). The commenter’s assertion that sections 16



and 36 should be removed from the proposed land exchange is addressed in the responses to PC-01(a), PC-03(a), PC-02(b), and PC-04(b).

Consolidation of lands so that only the BLM would manage the Skyline Trail requires an acquisition of not only Tribal lands in sections 18 and 20, but State of California, City of Palm Springs, and private lands as well. This would necessitate that the Tribe, State, City, and private landowners be willing to dispose of their lands traversed by the Skyline Trail to the BLM.<sup>39</sup> Such willingness has not been ascertained. Regardless, such proposal is outside the scope of the proposed land exchange. For public entities only to manage the trail (i.e., BLM, State of California, and City of Palm Springs), acquisition of both Tribal and private lands would need to occur. Again, this is outside the scope of the proposed land exchange.

As indicated in the memorandum of understanding between the BLM and the Tribe addressing the acquisition and exchange of lands within the National Monument, the BLM shall ‘jointly identify opportunities with the Agua Caliente Band of Cahuilla Indians to exchange BLM administered public land parcels within the [Agua Caliente Indian Reservation]’ (BLM and ACBCI 1999(b); draft EIS Appendix B). An exchange that includes Tribal parcels in sections 18 and 20, T.4S. R.4E., which are located within the external boundaries of the Reservation, is not addressed in (1) the BLM’s feasibility report and supplement thereto (BLM 2001(a) and 2001(b), respectively; draft EIS Appendices C and D), (2) the agreement to initiate an assembled land exchange and supplement thereto (BLM and ACBCI 2002 and 2003, respectively; draft EIS Appendices E and F), or (3) the Proposed Santa Rosa and San Jacinto Mountains Management Plan and Final Environmental Impact Statement (2003), which was approved in 2004.

Further, simply because public entities only might manage the Skyline Trail does not ensure consistency of management prescriptions regarding public access. For example, whereas the Skyline Trail is recognized on BLM and City lands as an “official” trail in accordance with the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan (CVAG 2007 and 2014), it is not so recognized by the State of California within Mt. San Jacinto State Park and Wilderness. This in itself creates uncertainty with respect to public access in the future. Also, management by public agencies does not ensure public access will continue in the same manner as currently exists. As indicated in the response to PC-01(c), circumstances could arise that might preclude continued use of trails as it now occurs. An example is provided that addresses how the listing of Peninsular bighorn sheep as federally endangered resulted in certain constraints being placed on public access. A change in status of the bighorn sheep’s recovery could additionally affect public use of the Skyline Trail, although at this point, more restrictions are not anticipated.

Similar challenges would be faced should public entities only manage the Palm Canyon Epic mountain biking route, which would require that the BLM retain jurisdiction of sections 36, T.4S. R.4E., and 36, T.5S. R.4E., consistent with scenario one of the proposed action, and acquire section 7, T.5S. R.5E., from the Tribe, as proposed under all alternatives except the no

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<sup>39</sup> State, local government, tribal, and privately-held land or interests in land within the National Monument may be acquired only by donation, exchange with a willing party, or purchase from a willing seller (section 6(a) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000; 16 U.S.C. 431 et seq.).

action alternative. But it would also necessitate a public entity acquire Tribal lands in section 32, T.4S. R.5E., and private properties in section 29, T.4S. R.5E., section 31, T.4S. R.5E., section 17, T.5S. R.5E., section 21, T.5S. R.5E., and section 25, T.5S. R.4E. As such acquisitions, whether by the BLM or other public entity, are outside the scope of the proposed land exchange, they are not addressed in the draft EIS.

For reasons described above, PC-09(d) does not warrant further agency response.

**PC-10(d):**

The draft EIS, in characterizing future management of public access to trails on lands acquired by the Tribe as “speculation,” thereby not warranting analysis, is disingenuous and contrary to on-the-ground practices. In 2014, a segment of the Indian Potrero Trail on public lands in section 36, T.5S. R.4E., which is widely considered to be the most iconic section of the Palm Canyon Epic route, was closed to mountain bike use by the Tribe as communicated through installation of a sign to that effect. In a 2014 email message from the BLM to an interested mountain biker, the BLM explained the purpose for the closure was that the Indian Potrero Trail “will ultimately lead them onto a small segment of the trail on Tribal lands in section 24, thereby violating the Tribe’s general prohibition of bikes on Tribal trails.” By the BLM’s own admission the Tribe does not generally permit bicycle use on Tribal lands. The statement on the Tribe’s webpage—i.e., [t]he Tribe will manage the trails in the same manner [as the BLM]—does give us hope that bicycle access would continue if the lands were exchanged. However, it would hardly be considered “speculative” if the Tribe followed their general prohibition on bicycle use and closed off the entirety of the Indian Potrero Trail.

***Response:***

The BLM was first informed of the mountain bike closure sign on March 11, 2014, through both voicemail and email messages from a concerned mountain biker; the sign stated: “No Mountain Bikes Beyond This Point.” Since it was placed south of the intersection of the Palm Canyon and Indian Potrero Trails, mountain bikers traveling north reasonably interpreted it to mean that both trails were closed. Yet as the concerned mountain biker expressed in an email message to the BLM two days later, he had always assumed that bikes were permitted on Palm Canyon Trail as long as they stayed south of the Dry Wash Trail. The BLM immediately contacted the Tribe to ascertain whether it had installed the sign on public lands (which it had), and subsequently met with Tribal staff to discuss the matter.

As indicated in the email message referenced by the commenter, which was sent to the concerned mountain biker on March 14, 2014, the Tribe agreed to remove the closure sign—it was inappropriately installed on public lands where access by mountain bikers is not prohibited—and replace it with a sign indicated that mountain bikers should proceed north on the Palm Canyon Trail. While mountain bikers’ use of the Indian Potrero Trail on public lands in section 36, T.5S. R.4E., is allowed, such use would lead them to a small segment of the trail on Tribal lands in the adjoining section 24, which is closed to mountain bikes. The BLM’s position is to avoid facilitation of trespass or violation of adjacent landowners’ restrictions through its actions. The new sign encouraging mountain bikers to continue north on the Palm Canyon Trail helped achieve this objective.

The preceding narrative provides important background to the commenter’s point that despite BLM’s recognition of the Tribe’s intention to prohibit mountain bike use in section 36, T.5S. R.4E. (which it would acquire under scenario two of the proposed action), it dismissed this circumstance as a reasonably foreseeable future action to be analyzed in the draft EIS. First,

what wasn't communicated in the email message to the concerned mountain biker is that the closure sign had not been intended for that location. Instructions given to a Tribal crew to install the sign were not precisely followed, resulting in it being inappropriately placed at the Palm Canyon Trail/Indian Potrero Trail intersection instead of the Palm Canyon Trail/Dry Wash Trail intersection. This circumstance was remedied through coordination with the Tribe.

Did the BLM consider a potential closure of the Indian Potrero Trail by the Tribe upon its acquisition of section 36 given its general prohibition of bicycle use on Tribal lands? Yes. This circumstance is addressed under the heading *Indian Potrero Trail* in section 4.2.1.1 of the draft EIS (pp. 4-14 and 4-15). "If bicyclists cannot legally access this segment of the trail through the northern terminus because of the Tribe's prohibition affecting the segment in section 24, and access from the south can only occur as far as the trail's intersection with Tribal lands in section 26, then in practicality, mountain biking is substantially limited on it. In essence, Indian Potrero Trail is a one-mile dead-end trail for mountain bikers. ... Upon acquisition of section 36 by the Tribe and continuation of the BLM's allowance for mountain biking on this trail segment, should the Tribe choose to make such an allowance consistent with its commitment to manage non-motorized activities on the acquired lands in the same manner as the BLM, opportunities for this recreational activity would not change. However, if the Tribe were to prohibit mountain bikes on the acquired segment of the Indian Potrero Trail for consistency with its prohibition on the Tribal segments in sections 24 and 26, impacts to mountain biking would be minor given availability of the parallel Palm Canyon Trail on which bicycles are allowed.<sup>[40]</sup> Hence, whether the Tribe continues the BLM's management prescription for allowing mountain bicycling on this segment of the Indian Potrero Trail upon acquiring section 36, T.5S. R.4E., or prohibits bicycling for management consistency with other segments of the trail on Tribal lands, it would make little difference in practicality."

Should the Palm Canyon Epic need to be rerouted from the Indian Potrero Trail to the Palm Canyon Trail, mountain bikers would not be precluded from accessing the Coachella Valley via Palm Canyon.<sup>41</sup> Regardless, public concerns regarding the manner in which the Tribe would manage trails in section 36, T.5S. R.4E., are moot given the likelihood that BLM will retain jurisdiction of this section as an outcome of the land value equalization process as described in section 3.0 of this appendix.

For reasons described above, PC-10(d) does not warrant further agency response.

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<sup>40</sup> It is a reasonable assumption that upon acquisition of section 36, T.5S. R.4E., the Tribe would allow mountain bikes on the Palm Canyon Trail through this section, consistent with its current decision to allow bikes on the Palm Canyon Trail south of the Dry Wash Trail in section 24, T.5S. R.4E.

<sup>41</sup> This conclusion is predicated on there being no restrictions imposed for mountain bike use on nonpublic and non-Tribal trails, such as where it crosses National Forest System lands south of section 36, T.5S. R.4E., and on private lands in section 25, T.5S. R.4E.

e. **Protection of Threatened and Endangered Species**

**PC-01(e):**

The draft EIS fails to make a persuasive case that the proposed land exchange does “not divest of public domain lands in a manner which eliminates a significant public benefit,” and “would result in a net benefit to the conservation areas,” two of six criteria identified in the California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002) that must be satisfied if land exchanges are to be considered. If these criteria cannot be satisfied, particularly with respect to sections 16 and 36, T.4S. R.4E., which contain significant “critical” habitat for species protection, a case could be made that the proposed land exchange is not in the public interest, particularly since the Tribe decided not to be a signatory to the Coachella Valley Multiple Species Habitat Conservation Plan and suspended consultation with the U.S. Fish and Wildlife Service to acquire a section 10(a) permit under the Endangered Species Act for the Tribal Habitat Conservation Plan.

***Response:***

As asserted in section 1.6 of the draft EIS with respect to the six criteria used to evaluate the suitability of land exchanges and sales, the proposed land exchange would reduce the extent of checkerboard landownership, thereby facilitating more effective and efficient management of public lands through consolidation of the land base, and change the configuration of development potential in the National Monument (p. 1-37). Regarding potential impacts to threatened and endangered species occurring in the project area—Peninsular bighorn sheep, least Bell’s vireo, southwestern willow flycatcher, and desert tortoise—and designated critical habitat for Peninsular bighorn sheep (there being no designated critical habitat for the other three threatened or endangered species within the project area), it is concluded in the draft EIS that implementation of the proposed action, preferred alternative, or no action alternative would not be likely to adversely affect these species or critical habitat, nor would implementation of the proposed action or an alternative action be likely to adversely affect their essential or modeled habitat (section 4.2.2.1.7 p. 4-67).

In its memorandum of March 23, 2015, to the BLM, the Assistant Field Supervisor of the Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Service (USFWS), concurred with the BLM’s determination, based on information provided in the draft EIS, that the proposed project is not likely to adversely affect the species and habitat identified above. (The USFWS, along with the National Marine Fisheries Service, bears responsibility for administration of the Endangered Species Act. 50 CFR § 402.01(b)) For purposes of the Endangered Species Act consultation, the Service analyzed the scenario three of the proposed action since it is the one scenario that addresses the potential for all the selected public lands to be transferred to the Tribe. In reaching its concurrence decision, the Service took into consideration the manner in which the Tribe would manage the acquired public lands consistent with the Indian Canyons Master Plan and the Tribal Habitat Conservation Plan.<sup>42</sup>

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<sup>42</sup> Section 7(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.) grants authority to and imposes requirements upon federal agencies regarding endangered or threatened species of fish, wildlife, or plants (“listed species”) and habitat of such species that has been designated as critical (“critical habitat”). Section 7(a)(2) of the Act requires every federal agency to insure that any action it authorizes, funds, or carries out (such as the proposed land exchange) is not likely to jeopardize the continued existence of any

Hence, with respect to threatened and endangered species and designated critical habitat, it can reasonably be concluded that the public interest will be maintained upon implementation of the proposed land exchange or alternative thereof. The Tribe's decision to not be a signatory to the Coachella Valley Multiple Species Habitat Conservation Plan and suspend section 10(a) consultation with the U.S. Fish and Wildlife Service has no bearing on how species and habitat protections would occur upon implementation of the proposed land exchange. Also see the response to PC-02(e).

For reasons described above, PC-01(e) does not warrant further agency response.

**PC-02(e):**

In analyzing potential effects to Peninsular bighorn sheep, southwestern willow flycatcher, least Bell's vireo, and desert tortoise and concluding that these threatened and endangered species and their habitats will be adequately protected upon implementation of the proposed land exchange or alternatives, the draft EIS relies heavily on the draft Tribal Habitat Conservation Plan. In particular, there is concern that the draft THCP may not provide sufficient protections and detail to ensure both survival and recovery for the endangered Peninsular bighorn sheep, especially in this northern part of the sheep's range. The draft EIS also fails to provide assurances that the lands exchanged into BLM management will be adequately managed for conservation, including restrictions on recreational uses where necessary to protect Peninsular bighorn sheep survival and recovery. While it is appreciated that alternatives presented in chapter two of the draft EIS consider ways to accommodate recreational access, such as exclusion of section 36, T.4S. R.4E., in the preferred alternative, additional alternatives may also need to be considered. However, any recreational access must be properly regulated to ensure that it does not adversely impact Peninsular bighorn sheep, such as seasonal limitations on access to protect bighorn sheep breeding and lambing areas.

***Response:***

As indicated in section 1.4(b)(iii) of the draft EIS, the Tribal Council approved the Tribal Habitat Conservation Plan on November 2, 2010, thereby asserting its commitment to manage Tribal lands consistent with the identified goals and objectives expressed in the THCP and in accordance with the management prescriptions therein established (p. 1-14). Contrary to the commenter's claim that the draft EIS relies heavily on the *draft* THCP, the analysis considered Tribal commitments described in the *final* plan (which, however, are the same as expressed in the draft plan).<sup>43</sup> Regardless, the U.S. Fish and Wildlife Service gives deference to and supports

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listed species or results in the destruction or adverse modification of critical habitat. Section 7(b) of the Act requires the Secretary of the Interior (or delegated authorized officer at a lower level), after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat (such as the memorandum of March 23, 2015). Section 7(d) of the Act prohibits federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. (50 CFR § 402.01(a))

<sup>43</sup> When environmental assessment no. CA-060-0010-0005 addressing the proposed land exchange was released for public review and comment on July 27, 2010, it preceded (1) the Tribe's decision not to

tribal resource management policies and implementation activities, such as those set forth in the THCP, based on the Tribe's inherent sovereign authority to manage and regulate land use and resources within the reservation, and pursuant to the U.S. Fish and Wildlife Service's Native American Policy (USFWS 1994) and Joint Secretarial Order No. 3206 regarding American Indian tribal rights, federal-tribal trust responsibilities, and the Endangered Species Act of 1973 (Offices of the Secretaries of Commerce and the Interior 1997). This policy and joint secretarial order are described in section 1.4(b)(iii) of the draft EIS (p. 1-14).

Regarding whether the THCP provides sufficient protections and detail to ensure survival and recovery for Peninsular bighorn sheep in the project area, the U.S. Fish and Wildlife Service concurred with BLM's determination that the proposed land exchange is not likely to adversely affect bighorn sheep or its designated critical habitat (see section 5.0 and the response to PC-01(e)).<sup>44</sup> This determination is supported by the analysis presented in section 4.2.2 of the draft EIS (pp. 4-42 through 4-67), which describes how both the THCP and the California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a) provide for conservation of essential and designated critical habitat for Peninsular bighorn sheep under the proposed action and alternatives. As asserted in the draft EIS, "[t]he proposed land exchange and alternatives are generally consistent with or exceed conservation goals of the BLM's governing land use plan and the Tribe's governing habitat conservation plan. Conservation of lands acquired by the BLM would likely occur at the 99 percent level or greater (as prescribed by the agency's land use plan), while conservation of lands acquired by the Tribe would occur at no less than the 96.2 percent level, which is greater than prescribed for lands currently subject to the THCP. Overall conservation of the combined BLM and Tribal lands in the project area would remain about the same (88 percent) under all alternatives. Conservation of the selected

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purchase additional lands if necessary to acquire all the selected public lands, which changed the nature of the proposed action, (2) the Tribe's suspension of consultation with the U.S. Fish and Wildlife Service regarding issuance of a section 10(a) permit under the Endangered Species Act, and (3) approval of the THCP on November 2, 2010 by the Tribal Council.

<sup>44</sup> Informal consultation with the USFWS was undertaken consistent with the regulations at 50 CFR § 402.13. Since USFWS concurred with BLM's determination that the proposed land exchange is not likely to adversely affect listed species or critical habitat, the consultation process was terminated and no further action is necessary. However, obligations under section 7 of the Endangered Species Act will be considered if new information reveals impacts of the proposed land exchange that may affect listed species or critical habitat in a manner or to an extent not previously considered, or the proposed land exchange is modified in a manner that was not considered in the EIS. To clarify, an exchange based on the outcome of the land value equalization process would transfer fewer acres of public lands to the Tribe than under scenario one of the proposed action, but more acres than under the no action alternative, both of which were analyzed in the draft EIS. Hence, a decision based on such outcome falls within the range of alternatives discussed in the draft EIS, as required by the regulations at 40 CFR § 1505.1(e). "For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives [such as considering small incremental increases in public land acreage to be transferred to the Tribe, or numerous variations in how these public lands are combined]. ... When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. ... What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case." (United States. Council on Environmental Quality. March 16, 1981. Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 46 FR 18026, March 23, 1981)

public lands and offered Tribal lands only would also remain about the same (ranging from 96 to 97 percent), regardless of the alternative selected. With respect to conservation of modeled/essential bighorn sheep habitat, it would occur at the 95 to 98 percent level depending on the alternative considered. As a result, the ecological values of Peninsular bighorn sheep habitat, whether designated as critical or identified as modeled or essential, are largely protected. While conservation of Tribal lands may occur at a marginally lower level than conservation of BLM lands in the project area, “[t]he Agua Caliente Band of Cahuilla Indians has demonstrated its commitment to manage Peninsular bighorn sheep habitat in a manner consistent with the conservation of the [Distinct Population Segment]. The 2001 Tribal Conservation Strategy, other ongoing tribal resource management, and 2007 draft Tribal HCP, when final, have provided and will provide protection and management, in perpetuity, of lands that meet the definition of critical habitat for Peninsular bighorn sheep in [Peninsular bighorn sheep Recovery] Units 1 and 2A’ (USFWS: 74 FR 17288, April 14, 2009).” (draft EIS p. 4-57)

Since an exchange based on the outcome of the land value equalization process would transfer fewer acres of public land than described in scenario one of the proposed action, sections 2.2 (proposed action) and 4.2.2 (impacts to special status species) of the draft EIS are accordingly revised to reflect this outcome. However, such revision does not change the BLM’s determination that the proposed land exchange is not likely to adversely affect bighorn sheep (and other listed species) or its designated critical habitat.

The commenter also raises concerns that the draft EIS does not provide assurances the BLM will adequately manage lands acquired from the Tribe for conservation, and that management of recreational activities in the project area may not be adequate to ensure Peninsular bighorn sheep survival and recovery. In response, it is important to acknowledge that the purpose and need for the proposed action does *not* address the manner in which non-motorized recreation will be managed on public lands, including those lands acquired from the Tribe. Rather, the proposed action and alternatives explore alternative means of meeting the purpose and need for the action (BLM 2008a, section 6.6.1), which is to reduce the extent of checkerboard landownership, and facilitate effective and efficient management of public and Tribal lands by consolidating the respective land bases (draft EIS p. 1-4). Developing alternatives to manage non-motorized recreation in the project area, or incorporating proposed trail management prescriptions into the alternatives as described in chapter two of the draft EIS, would not respond to the purpose and need. Hence, impacts of the proposed land exchange to recreation resources and special status species, among others, are analyzed in the draft EIS, based on current and reasonably foreseeable future actions, which include management prescriptions applicable to public access. Changes to current management of recreational activities on public lands would be addressed through a separate decision-making process. The NEPA document addressing such proposed changes would, in turn, analyze potential effects of them on listed species and designated critical habitat; consultation with the U.S. Fish and Wildlife Service would occur in conformance with the regulations at 50 CFR Part 402.

For reasons described above, PC-02(e) does not warrant further agency response.

**f. Potential Development of Exchanged Lands**

**PC-01(f):**

With respect to development potential of section 7 (T.5S. R.5E.), which the BLM would acquire upon implementation of the proposed action (all three scenarios) or preferred alternative, the analysis relies on a 50-year-old proposal by Michael Dunn to develop residential and commercial

facilities on this property, yet there has been no proposal of a similar nature since then. Since this section of land has no water, utilities, roads, or infrastructure, the analysis constitutes speculation which, as cited in the draft EIS, is undesirable, unnecessary, and inappropriate. The draft EIS also fails to disclose any reasons why future development might occur in section 7. Further, the draft EIS fails to make the same claim regarding development potential of section 36, T.4S. R.4E., when, in fact, such development potential in this location is greater than in section 7, looking only to a more-recent proposal by Palm Hills Development Corporation on contiguous lands in section 31, T.4S. R.5E. (which was soundly rejected by voters in Palm Springs). Further evidence of development potential in section 36 is the Tribe's own declaration that it reserves the right to develop a portion of the lands it acquires from the BLM. According to an article published in the *Los Angeles Times* on April 11, 2005 (<http://articles.latimes.com/2005/apr/11/local/me-bighorn11>), "[t]he tribe, which owns half of downtown Palm Springs, says it has no immediate plans to develop the lands [designated as critical habitat for Peninsular bighorn sheep], but wants to preserve its right to do so." The draft EIS acknowledges such development potential of up to 221 acres of lands acquired from the BLM. This represents an inconsistency of approach to analyses in the draft EIS, addressing development potential in section 7 differently than in section 36. Also, development potential was not cited in explaining why section 36, T.4S. R.4E., was eliminated when crafting the preferred alternative.

***Response:***

The draft EIS addresses development potential in *both* section 7, T.5S, R.5E., and the east half of section 36, T.4S. R.4E.<sup>45</sup> However, since there are no existing decisions, funding, or formal proposals pertaining to development in these sections (other than a proposed trail connecting the Garstin Trail in section 36, T.4S. R.4E., to the Thielman Trail in section 1, T.5S. R.4E.), and since development is not highly probable based on known opportunities or trends, which would otherwise constitute reasonably foreseeable future actions, discussion in the draft EIS in this regard is conceptual only.<sup>46</sup> Development *potential* in sections 7 and 36, therefore, is *not* addressed in the analysis of impacts to recreation resources, special status species, wild and scenic rivers, or lands with wilderness characteristics presented in chapter four of the draft EIS.<sup>47</sup>

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<sup>45</sup> Regarding development potential in section 7, see pages 1-9, 1-11, 1-28, 1-37, 1-38, 1-40, and 1-41. Regarding development potential in section 36, see pages 1-8, 1-28, 1-30, 1-40, and 1-41. Section 4.2.2.1.1 of the draft EIS addresses overall development potential under the proposed action and alternatives, as well as development potential in essential/modeled habitat for Peninsular bighorn sheep; section 4.2.2.1.2 addresses development potential in modeled habitat for least Bell's vireo and southwestern willow flycatcher; and section 4.2.2.1.3 addresses development potential in modeled habitat for desert tortoise.

<sup>46</sup> As the commenter points out, the project proposed by Palm Hills Development Corporation in section 31, T.4S. R.5E., was "soundly rejected" by voters in Palm Springs. It is highly questionable, therefore, whether future development proposals in this section would ever be approved by the City. Hence, development on this property is not highly probable based on known opportunities or trends: opportunities seem to have been diminished and trends appear to be working against hillside development.

<sup>47</sup> Analyses of environmental effects predict the degree to which the resource would be affected upon implementation of an action. The effects analysis must demonstrate that the BLM took a hard look at the impacts of the action. [A "hard look" is a reasoned analysis containing quantitative or detailed qualitative information.] The level of detail must be sufficient to support reasoned conclusions by comparing the amount



While commenters assert the draft EIS is inconsistent in its approach to analyzing development potential in section 7 compared to section 36—citing the document’s reliance on a 50-year-old proposal by Michael Dunn to develop section 7, yet failing to similarly consider development potential in section 36 where such development potential is greater than in section 7, citing a more-recent proposal by Palm Hills Development Corporation in the adjacent section 31, T.4S. R.5E.—the BLM disagrees. As expressed in the paragraph above, development potential in both section 7 and section 36 is *not* considered in the analysis of environmental consequences to resource values.

Specific to section 7, “[w]hile near-term development is unlikely, future development is not altogether precluded if the property remains in nonpublic ownership” (draft EIS p. 1-11), yet “no such threat currently exists” (draft EIS p. 1-38). Clearly, no specificity regarding the type and extent of future potential development is provided or can be reasonably foreseen; hence, it does not lend itself to a meaningful analysis of environmental consequences. Further, regarding BLM’s reference to Michael Dunn’s proposed project in the draft EIS, it was not intended to suggest that any particular development project may occur should the BLM not acquire these lands, or to speculate that development may, in fact, occur in the foreseeable future. Rather, it was only to indicate that the topography and other characteristics of section 7 are conducive for development as evidenced by Mr. Dunn’s proposal. As long as section 7 is not in public ownership, the potential for development will continue to exist even though the approved appraisal for the offered Tribal lands indicates these hillside locations are perceived by the market to be very poor and declining.<sup>48</sup> In the future, market perceptions may change regarding development potential of nonfederal lands in this general area, whether 10 years or 100 years or more from now. Unless the U.S. Congress rescinds establishment of the Santa Rosa and San Jacinto Mountains National Monument sometime in the future, or modifies provisions regarding allowable uses on public lands within the Monument, acquisition of section 7 by the BLM removes any potential development options other than those allowable in accordance with laws, regulations, policies, and applicable land use plans.

Further, in response to commenters’ assertion that the draft EIS fails to disclose any reasons why future development *might* occur in section 7, the BLM points to footnote #9 in section 1.4 of the draft EIS: “The City of Palm Springs annexed 32 square miles of the Santa Rosa Mountains along Dunn Road in 1972, and zoned it for a population of 40,000 people. This area was referred to as ‘Palm Springs Atajo,’ which included section 7 as a focus of development” (p. 1-9). This annexation and zoning clearly provided a foundation supporting future development in section 7. However, adoption of the Coachella Valley Multiple Species Habitat Conservation Plan (CVAG 2007) in 2008 established substantial obstacles to development on nonfederal lands in identified reserve units, including the Santa Rosa and San Jacinto

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and the degree of change (impact) caused by the proposed action and alternatives. (BLM 2008a, section 6.8.1.2) As indicated in this response to PC-01(f), there is a lack of specificity regarding potential development in sections 7, T.5S. R.5E., and section 36, T.4S. R.4E., Hence, there is not sufficient detail to analyze the extent to which resource values would be impacted by the proposed land exchange.

<sup>48</sup> Capital Realty Analysts (La Quinta, CA). 2015. Appraisal Report (addressing three nonfederal parcels). Prepared for U.S. Department of the Interior, Office of Valuation Services, Portland OR.

Mountains Conservation Area. Also, the City of Palm Springs General Plan designates lands in section 7 as “Open Space–Mountain” (Figure 2-2 of the General Plan), limiting residential development to one dwelling unit per 40 acres (which is a change from the 1972 zoning); *Guiding Principles* developed by the City’s Citizens’ Task Force for Mountain and Foothill Preservation and Planning serve as the basis for decision-making in the mountainous areas of Palm Springs and may further constrain development opportunities.<sup>49</sup> In fact, residential build-out population estimates for *all* Open Space–Mountain areas within the City’s boundaries is 1,466 (Table 2-1, General Plan). The likelihood of development in section 7, therefore, has been diminished since the days that Michael Dunn was planning to develop residential and commercial properties therein. But it has not been altogether precluded.

With respect to potential development of the eastern portion of section 36, commenters rely, in part, on potential development of the *adjacent* parcel (section 31) in establishing such potential in section 36, referencing a proposed project by Palm Hills Development Corporation that did not come to fruition. While topography of the eastern part of section 36 may be conducive to development given its rolling terrain (draft EIS p. 1-8), there would need to be substantially more information provided to consider how development would affect resource values, in particular, specificity regarding the type and extent of development. But as indicated above in this response to PC-01(f), development opportunities seem to have been diminished and trends appear to be working against hillside development in the City of Palm Springs. Further, as stated in the draft EIS, “[t]he Tribe has not expressed intent to develop any portion of the public lands it acquires from the BLM, including the eastern portion of section 36, T.4S. R.4E. Also ... the Tribe has committed to managing the acquired lands consistent with the Indian Canyons Master Plan and the Tribal Habitat Conservation Plan, as applicable, which constrain development options on lands within the Mountains and Canyons Conservation Area” (p. 1-30). Preserving its “right of development” on Tribal lands consistent with the ICMP and THCP is not synonymous with a proposal to develop such lands. Whereas the Tribe may develop up to 221 acres of lands acquired from the BLM under scenario three of the proposed action (and to a lesser extent under the other alternatives), not only is the location of potential development unknown, the Tribe may decide not to utilize any of the development potential allowed under the THCP. Hence, development potential in both sections 7 and 36 is not factored into analyses of environmental impacts given its nebulous nature.

As further support regarding BLM’s dismissal of potential development in its analysis of environmental impacts—again, other than effects of the proposed connector trail—the draft EIS states “the BLM would be transferring certain public lands with development potential to the Tribe (generally limited to a portion of the northeast quarter of section 16, T.4S. R.4E., and portions of the eastern half of section 36, T.4S. R.4E., and acquiring certain lands with development potential from the Tribe (principally section 7, T.5S. R.5E.). While an acre-for-acre comparison of development potential could be used to determine if it would be increased, decreased, or remain the same, such comparison would have negligible value absent consideration of other factors,” which include “the type of development being contemplated, particularly with respect to characteristics of the selected public lands and the offered Tribal lands,” and “applicable regulations, policies, and plans of the respective jurisdiction” (p. 1-28).

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<sup>49</sup> Palm Springs, City of. 2007. General Plan. <http://www.ci.palm-springs.ca.us/government/departments/planning/general-plan>; accessed June 23, 2015.

“[A]scertaining whether the proposed land exchange would result in decreased, increased, or no change in development potential has limited meaning given a lack of information about the types of development that may be proposed in the future, and whether such proposals would be consistent with applicable statutes, regulations, policies, and land use plans” (p. 1-30).

Commenters also challenge the BLM’s rationale for excluding section 36, T.4S. R.4E., in the preferred alternative because it fails to identify development potential of this section in its rationale for exclusion, instead addressing only matters of land consolidation. Commenters, however, apparently fail to acknowledge that the development of alternatives responds to the underlying purpose and need of the action (40 CFR § 1502.13, and pp. 1-4 and 1-5 of the draft EIS). Precluding development of section 36 through BLM’s retention of public lands therein, or any other of the exchange properties, is not identified as a purpose and need for the proposed action (draft EIS pp. 1-4 and 1-5). Instead, it may be a public benefit accrued as a consequence of retaining these public lands for consolidation purposes to the extent that development would actually be precluded. But whether such benefit, and the extent of that benefit, would be realized cannot be ascertained absent identification of reasonably foreseeable future actions.

A review of key aspects of the approved appraisal reports for section 7, T.5S. R.5E., and section 36, T.4S. R.4E, sheds additional light on development potential therein.<sup>50</sup>

#### Section 7, T.5S. R.5E.

“The legal restrictions that apply to the subject are the public restrictions of the City of Palm Springs UR, Urban Reserve zoning ordinance and Open Space–Mountain general plan designations. In addition, all three subject parcels [i.e., Tribal lands located in sections 7, 19, and 20, T.5S. R.5E.) are located within the Santa Rosa and San Jacinto Mountains Conservation Area of the Coachella Valley Multi-Species [*sic*] Habitat Conservation Plan (CVMSHCP). The CVMSHCP limits development to 10% of the total site area. In light of the size of these parcels, the limitations of the CVMSHCP are unlikely to further impair the develop ability [*sic*] of the land over and above the limitations, from a legal perspective, of the existing general plan. Recreational non-motorized hiking trails are a legal use, and all three subject parcels are currently in use for recreational purposes. ... In light of the location of the property, we conclude that the legal constraints of the property do impair its ability to be developed with all but recreational uses.” (pp. 31 and 32 of the appraisal report addressing three Tribal land parcels)

“The main physical features that impact the subject parcels include their lack of paved access, the lack of developed utilities, and their mountainous terrain. Interestingly, Section 7 (subject APN: 686-120-002) includes mainly gently sloping topography. Several of those interviewed for this analysis indicated that from a topographical standpoint, Section 7 is among the most developable areas in this corner of the Santa Rosas. ... Clearly, the physical limitations of lack of access and utilities impair the ability of all three subject parcels to be developed to their highest and best uses. Currently, access to these parcels is via moderate to strenuous hikes, including a steep climb up Dunn Road before reaching the plateau that includes Section 7. ...

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<sup>50</sup> Capital Realty Analysts (La Quinta, CA). 2015. Appraisal Reports (addressing three nonfederal parcels and nineteen federal parcels in two volumes). Prepared for U.S. Department of the Interior, Office of Valuation Services, Portland OR.

However, Dunn Road is not legal access, and while both mapped and social trails are available to all three subject parcels, none of these constitute the type of legal access necessary to develop improvements (other than recreational trails) on any of the three subject parcels. ... Lacking the physical elements required to facilitate residential development on these parcels, we conclude that the physical elements of the subject property do impair its ability to be developed.” (p. 32 of the appraisal report addressing three Tribal land parcels)

“Clearly, there is no demand for speculative development of the subject property as of the date of value [March 7, 2015]. We found no evidence of any lenders and/or developers risking debt and equity on new speculative development in the area of the subject properties. However, the rural mountainous location of the subject includes a very significant amount of recreational trail use. ... As stated, it is market demand for preservation and recreational use that is the underlying support of the subjects’ investment marketplace. Given the overall demand for continued mountain preservation and the broad recreational uses including, but not limited to hiking, wildlife watching and mountain biking, financially feasible opportunities for speculative investment remain with the subject properties as of the date of value.” (pp. 32 and 33 of the appraisal report addressing three Tribal land parcels)

“The legal and physical constraints of the subject severely limit the potential for these parcels to be developed with structures. Alternatively, all three parcels have been in historical use for recreational purposes, and are likely to continue to be used in this manner. Furthermore, the National Monument location of the parcels provides a built-in governmental buyer pool. In light of the available data, we conclude that the most maximally productive use of the subject parcels is for continued recreational use, while holding for long-term future price appreciation.” (p. 33 of the appraisal report addressing three Tribal land parcels)

“Notwithstanding the physical problems of access and utilities, the environmental constraints are such that the recreational highest and best use of [section 7] is likely to continue for generations to come. ... The subject property embodies all of the environmental constraints imposed on land with the locational and physical qualities outlined in this report. The fact that the property gets above average recreational use does not enhance the economic potential of the property. Alternatively, the fact that the property has comparatively gentle topography and is located relatively close to the developed area of Palm Springs suggests that if, in the distant future, a highest and best use change were to occur in Palm Hills, the subject Section 7 property would benefit. For this same reason, the property would likely carry a higher level of marketability if not value as a mitigation property. For these reasons, a slightly above average per acre value estimate seems to best reflect the market perception of value for the subject property.” (pp. 64 and 65 of the appraisal report addressing three Tribal land parcels)

Section 36, T.4S. R.4E.

“Given the [subject property’s] location, access, and topographical features, the physically possible influences have the highest impact on constraining the development and utility of the subject properties. ... The main physical features that impact the subject parcels include lack of paved access, lack of developed utilities, and their mountainous locations. ... These [hiking] trails do not constitute legal access, and while both mapped and social trails are available to some of the subject parcels [including section 36], none of these constitute the type of legal access necessary to develop improvements (other than recreational trails) on any of the subject parcels. ... Lacking the physical elements required to facilitate residential development on any of these parcels, we conclude that the physical elements of the subject do impair its ability to

be developed with all but recreational trails.” (pp. 59 and 60 of the appraisal report addressing nineteen federal land parcels)

“In each of the subject larger parcels [including section 36], the legally permissible influences that are created by their respective zoning and land use regulations limit any development that is physically possible for single-family residential use at an extremely low density. Any pursuit of legally permissible development is further challenged by the lack of direct legal access and the continuous legal challenges of environmental protectionist organizations that are steadfastly opposed to any hillside and rural development within the national monument. ... The legal constraints of the subject parcels are typical of other neighboring mountainous parcels. In light of the location of the subject parcels, we conclude that the legal constraints of the property do impair its ability to be developed with all but recreational uses.” (pp. 60 and 61 of the appraisal report addressing nineteen federal land parcels)

“From the physically possible and legally permissible aspect of the subject properties [including section 36], there is no demand for speculative development for any of the subject sites. However, as illustrated in the sales comparison model there is an ongoing active market participating in acquisitions of similar properties for speculative price appreciation as investments. The rural mountainous location of the subjects includes a significant amount of recreational utility including hiking and visual esthetics of the natural beauty found in these Mountains, thus enhancing the recreational potential of the sites. ... Given the overall demand for continued mountain preservation and the broad recreational uses including, but not limited to hiking, wildlife watching and mountain biking, financially feasible opportunities for speculative investment remain primary economic consideration for the trading of the subjects.” (p. 61 of the appraisal report addressing nineteen federal land parcels)

“The legal and physical constraints of the subjects limit the potential for these parcels [including section 36] to be developed with any structures. As of the date of value [March 7, 2015], many of the parcels have maintained historical recreational use and are likely to continue to be used in this manner. The National Monument location of the parcels provides the fundamental market underwriter for the investor buyer pool. Given our review of the data and market fundamentals, we conclude that the most maximally productive use of the subject parcels is investment and public recreation, which is supported by the underlying Public Interest Value of the existing recreational use.” (p. 61 of the appraisal report addressing nineteen federal land parcels)

“The fact that [section 36, T.4S. R.4E.] is located immediately adjacent to the developed area of Palm Springs (Southridge) suggests that if, in the distant future, a highest and best use change were to occur in Palm Hills, the subject property would benefit. For this same reason, the property would likely carry a higher level of marketability if not value as a mitigation property. For these reasons, a slightly above average per acre value estimate seems to best reflect the market perception of value for the subject property.” (p. 94 of the appraisal report addressing nineteen federal parcels)

### Conclusion

Considerable focus in the draft EIS and these responses to public comments has been on *reasonably foreseeable future actions*, particularly regarding the Tribe’s future management of public access to trails on the lands acquired from the BLM and future development in section 7, T.5S. R.5E., and section 36, T.4S. R.4E. The definition of *reasonably foreseeable future*

*actions* has often been cited to support the BLM's approach to its analysis of environmental effects. To repeat once again, such actions are those "for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends ... When considering reasonably foreseeable future actions, it may be helpful to ask such questions as: [1] Is there an existing proposal, such as the submission of permit applications? [2] Is there a commitment of resources, such as funding? [3] If it is a Federal action, has the NEPA process begun (for example, publication of a [Notice of Intent])? Analyzing future actions, such as speculative developments, is not required but may be useful in some circumstances" (BLM 2008a, section 6.8.3.4).

On November 29, 1978, the Council on Environmental Quality (CEQ) published its regulations for implementing the procedural provisions of the National Environmental Policy Act (43 FR 55978). The effective date of these regulations was established as July 30, 1979 (40 CFR § 1506.12). In June and July of 1980, the CEQ held one-day meetings with federal, state, and local officials in the ten Environmental Protection Agency (EPA) regional offices around the country to discuss the results of its 1980 review of draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, among other issues. In response to the many requests from the agencies and other participants, CEQ compiled forty of the most important or most frequently asked questions and their answers, the latter of which were prepared by the General Counsel of the CEQ in consultation with the Office of Federal Activities of the EPA.<sup>51</sup> While these answers do not impose any additional requirements beyond those of the NEPA regulations, they provide advice to aid agency staff and consultants in their day-to-day applications of the NEPA and the regulations.

Pertinent to the discussion at hand regarding potential development on federal and Tribal lands and the uncertainties surrounding it, advice is provided as follows:

**18. *Uncertainties About Indirect Effects of a Proposal.***<sup>52</sup> How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?

"The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are 'reasonably foreseeable.' *Section 1508.8(b)*. In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But in the ordinary course of business, people do make judgments based on reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision,

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<sup>51</sup> United States. Council on Environmental Quality. March 16, 1981. Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 46 FR 18026, March 23, 1981.

<sup>52</sup> *Indirect effects* are those caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable (40 CFR § 1508.8(b)).

farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.”

Again, the BLM asserts there are no reasonably foreseeable future actions on which to base an analysis of environmental consequences. As evidenced by the approved appraisal reports, as well as discussions in the draft EIS and these responses to comments, there is total uncertainty about the nature of future land uses; hence, the BLM did not engage in speculation or contemplation about future plans.

Nevertheless, concerns raised by the public about the potential for development in section 36, T.4S. R.4E., are moot; public lands in this section will likely be retained by the BLM as an outcome of the land value equalization process. The BLM’s acquisition of section 7, T.5S. R.5E., renders any discussions about development of public lands for residential or commercial purposes as inapplicable. However, footnote #9 on page 1-9 of the draft EIS will be revised to reflect that the City of Palm Springs General Plan and *Guiding Principles* developed by the Citizens’ Task Force for Mountain and Foothill Preservation and Planning substantially constrain development opportunities in section 7 should it not be acquired by the BLM. This revision of footnote #9 for clarification purposes, however, does not supplement, improve, or modify analysis contained in the draft EIS.

For reasons described above, PC-01(f) does not warrant further agency response.

**g. Adequacy of Analysis**

**PC-01(g):**

The draft EIS fails to account for all short-term and long-term costs associated with the proposed land exchange, such as adverse effects to recreational resources, adverse effects to special status species, adverse effects to wild and scenic rivers, adverse effects to lands with wilderness characteristics, increased land management costs, potential development, loss of democratic right of due process, and living with loss of a public asset. In other words, the draft EIS fails to present a quantitative cost-benefit approach to analyzing environmental impacts in both the near and far terms. When all costs and benefits are accounted for, a quantitative analysis will demonstrate that while the public interest is being served by a Category 1 (scenario one of the proposed action) exchange, it is not by a Category 2 (scenario two) or Category 3 (scenario three) exchange. While an exchange involving Category 1 lands only includes transfer of a segment of the Jo Pond Trail from the BLM to the Tribe, such transfer meets the purpose and need of the exchange for the Tribe to have continuous access and control of this trail segment.

***Response:***

For purposes of this response, the BLM assumes the commenter is not challenging the draft EIS for lack of a *monetary* cost-benefit analysis, rather one of a *quantitative* nature that addresses non-monetary values.<sup>53</sup> Therefore, the question is whether the BLM in its draft EIS

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<sup>53</sup> For purposes of complying with the National Environmental Policy Act, the weighing of the

adequately addressed environmental consequences of the proposed action and alternatives, whether in a quantitative or qualitative form? First, it is important to acknowledge that not all values can be quantified. For example, it would be unrealistic to attempt to address such matters as the “loss of democratic right of due process” or “living with loss of a public asset” in quantitative terms. How would such quantification look? The same holds true regarding quantification of land management costs with respect to the proposed land exchange (see response to PC-01(a)).

On the other hand, it is reasonable to quantify, to the extent possible, such resource values as recreational resources, special status species, Wild and Scenic Rivers, and lands with wilderness characteristics in order to compare and contrast potential environmental effects of the proposed action and alternatives. Section 4.2.1 of the draft EIS quantitatively compares and contrasts changes to management authority for official trails by alternative (see Table 4.2.1.1, p. 4-10; Table 4.2.1.2, p. 4-14; Table 4.2.1.3, p. 4-19; Table 4.2.1.4, p. 4-26; Table 4.2.1.5, p. 4-29; and Table 4.2.1.6, p. 4-31), as well as opportunities for cross-country travel by alternative and jurisdiction (see Table 4.2.1.7, p. 4-32). Section 4.2.2 of the draft EIS quantitatively compares and contrasts conservation and potential development of the selected public lands and offered Tribal lands by alternative with respect to potential effects on special status species (see Table 4.2.2.1, p. 4-53; Table 4.2.2.2, p. 4-54; Table 4.2.2.3, p. 4-55; and Table 4.2.2.4, p. 4-60).<sup>54</sup> Section 4.2.3 of the draft EIS quantitatively compares and contrasts eligibility for Wild and Scenic River designation by alternative (see Table 4.2.3.1, p. 4-70). Finally, Appendix L of the draft EIS quantitatively compares and contrasts consolidation of public lands by alternative with respect to lands possessing wilderness characteristics. Environmental effects of the proposed action and alternatives are also qualitatively described in the applicable sections of the draft EIS.

Therefore, contrary to the commenter’s assertion that the draft EIS fails to present a quantitative cost-benefit approach to analyzing environmental impacts, the evidence supports a different conclusion. However, the commenter focuses on quantitative analyses that speak to environmental impacts in both the near and far terms. Whereas the BLM contends it has quantitatively addressed impacts in the near-term as described above, it concludes that quantification of effects in the far-term would constitute unsupported speculation. As previously and repeatedly asserted, there are no *reasonably foreseeable future actions* on which to base an analysis of environmental impacts relating to future actions, particularly in a quantitative manner. Whether on public or Tribal lands that may be exchanged or retained by the BLM and the Tribe, how many miles of official trails will be open or closed or otherwise restricted in the future? The answer is “unknown.” How many acres of public lands will be

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merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations (40 CFR § 1502.23).

<sup>54</sup> *Development potential* as described in section 4.2.2 of the draft EIS does not address any particular type of development since no reasonably foreseeable future actions can be identified (see response to PC-01(f)). Rather, development potential is addressed in terms of acreages on public and Tribal lands that *may* be developed in accordance with the California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a) and the Tribal Habitat Conservation Plan (ACBCI 2010); see pp. 4-50 through 4-60 of the draft EIS.



available for cross-country travel on public lands in the future? The answer is “unknown.” How many acres of public and Tribal lands will be developed in the future as allowed by the BLM’s and Tribe’s respective plans? The answer is “unknown.” How many acres of lands will be acquired by the BLM in the future to enhance consolidation of lands possessing wilderness characteristics? The answer is “unknown.”<sup>55</sup> Yet the commenter suggests that an analysis lacking quantification of future circumstances represents BLM’s failure in its development of the draft EIS. For reasons described above, the BLM disagrees.

Finally, with respect to the commenter’s assertions regarding the public interest being served by exchanging BLM Category 1 lands, but not by exchanging Category 2 or 3 lands, this issue is addressed in the response to PC-01(a), PC-03(a), and PC-02(b).

For reasons described above, PC-01(g) does not warrant further agency response.

**PC-02(g):**

The draft EIS is deficient in not providing a more thorough analysis of potential future costs resulting from the proposed land exchange that includes the assignment of probabilities to a series of possible future Tribal and BLM land management decisions. Such future decisions include Tribal sale, lease, development of the acquired public lands; reserving acquired public lands for cultural purposes or conservation; Tribal adoption of new land management policies that are more or less restrictive than current or future BLM policies; and Tribal exploration of options to recover costs of maintenance on the acquired public lands. If one or more of these potential actions has a positive probability, an analysis of “no effect” determination relating to recreational resources is not appropriate.

***Response:***

It appears the commenter desires the BLM to not only speculate about potential future actions—which in the draft EIS and heretofore in these responses to comments has been deemed inappropriate given the lack of reasonably foreseeable future actions—but to assign a quantitative or qualitative value to the probability of a variety of future decisions that may affect the exchange lands. First, if the bases for such decisions require considerations that are highly speculative and based on pure conjecture, how could the BLM anticipate what decisions would ultimately be made? It could not. Second, if the decisions themselves are highly speculative, how could values be assigned to them that address their relative probabilities? They could not. There is simply not enough information about possible future actions to identify potential future decisions, much less the probability of their occurrence.<sup>56</sup>

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<sup>55</sup> Regarding eligibility determinations for potential Wild and Scenic River designation, the quantification by miles presented in Table 4.2.3.1 of the draft EIS (p. 4-70) will presumably not change in the future.

<sup>56</sup> Regarding incomplete or unavailable information, *reasonably foreseeable* “includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason” (40 CFR § 1502.22).

But the commenter assumes that identifying *several* different decision possibilities for any one circumstance (such as the Tribe's adoption of new land management policies that are more or less restrictive than current or future BLM policies) and evaluating the probability of their occurrence would remedy the purported deficiency. Such approach would be folly. Consider the matrix of possibilities regarding the manner in which future BLM or Tribal decisions might affect public access to trails. On both BLM and Tribal lands, there is the possibility that certain trails may be closed or access may be otherwise restricted due to changes in resource conditions, though the extent and location of such restrictions could vary greatly depending on future circumstances. If ten trails were potentially affected on BLM and Tribal lands and the only decision to be made is to open or close each of the ten trails, there would be a multitude of possible outcomes. For example, trail "A" where it crosses both BLM and Tribal lands could be open on both jurisdictions, closed on both jurisdictions, open on BLM lands and closed on Tribal lands, or closed on BLM lands and open on Tribal lands, thereby establishing four possible management scenarios. Each trail crossing both jurisdictions would have the same possibilities, but some trails occur on only one jurisdiction's lands. In the end, the number of possible combinations that may be reflected in management decisions is large. Rating the probability of each potential decision, therefore, would not only be extremely elusive, it would likely fail to provide the basis for meaningful analysis of potential environmental effects.

In conclusion, the commenter's suggested approach to analysis of potential future actions is one that deals more with possibilities (i.e., actions that *may or may not* happen) and less with probabilities (i.e., actions that are *likely* to occur). In the face of incomplete or unavailable information on which to base potential future decisions, addressing *possibilities* in analyses of environmental consequences that are not supported by credible scientific evidence and are the result of pure conjecture do not fall within the rule of reason. Hence, analyses of "no effect" as provided in the draft EIS are appropriate in light of known circumstances.

For reasons described above, PC-02(g) does not warrant further agency response.

**PC-03(g):**

Analyses in the draft EIS regarding potential impacts to recreational resources fail to demonstrate how the proposed land exchange would enhance recreational opportunities as a consequence of land consolidation as indicated in *Supplement to Feasibility Report*. Further, as asserted on page H-31 of the draft EIS, recreational activities under Tribal management will be equivalent to or more stringent than provisions of the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan. Such circumstances do not equate to enhanced recreational opportunities, thereby revealing an inconsistency in the draft EIS. In addition, it is stated in the *Feasibility Report* that the lands leaving federal jurisdiction may not be available for public use and enjoyment, and it is reasonable to assume that the resource values on the exchanged lands would not be lost to development. If public lands acquired by the Tribe may not be available for public use and enjoyment, such outcome is inconsistent with the assertion in *Supplement to Feasibility Report* that recreational opportunities would be enhanced as a result of the land exchange.

**Response:**

The response to this public comment can largely be summed up as follows: The feasibility report (BLM 2001a) and supplement to the feasibility report (BLM 2001b), while suggesting management scenarios that may or may not enhance opportunities for recreation, do not constitute analyses of proposed actions and alternatives in conformance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.); therefore, reliance on their applicability to

analyses contained in the draft EIS as the basis for challenging such analyses is inappropriate and misguided. Further, since preparation of the feasibility report and supplement thereto in 2001, significant changes in circumstances have occurred, principally, the decision by the Tribe not to purchase additional lands if necessary to acquire all the selected public lands identified for the proposed land exchange. Both the feasibility report and supplement were predicated on several exchange transactions occurring before all the federal lands could be transferred to the Tribe. This is no longer the case as the proposed land exchange will consist of a single transaction.

Likewise, the commenter points to text in the 2010 environmental assessment addressing the proposed land exchange as another means to challenge the adequacy of the draft EIS.<sup>57</sup> However, the BLM's determination that preparation of an EIS is necessary (section 1.2 of the draft EIS pp. 1-3 and 1-4) resulted in publication of a draft EIS that supersedes the 2010 NEPA document in its entirety. Hence, the commenter's reliance on statements contained in the environmental assessment as the basis for challenging adequacy of analyses in the draft EIS is inappropriate.

For reasons described above, PC-03(g) does not warrant further agency response.

**PC-04(g):**

The draft EIS fails to acknowledge that the selected public lands are of varying values and the determination of such values by certified appraisers may not account for values held by the general public for the same lands. For example, while the highest and best use of the subject parcels may be for speculative investment and/or recreation, actual valuation may be based solely on the sales comparison approach, i.e., deriving the value of the selected public lands based on sales prices of similar properties in the area. However, such approach fails to consider intrinsic values associated with recreation, such as values derived by the public from trail use to include fitness, enjoyment of the natural environment, opportunities to use trails differing in steepness and other characteristics, and similar non-economic values. From this perspective, appraised economic values of the selected public lands do not likely reflect such intrinsic public values and therefore may be inconsistent with the public interest being served by the land exchange.

***Response:***

Relative to an analysis of environmental impacts of the proposed land exchange, the appraised values of the selected public land and offered Tribal lands are important in that they affect the extent of lands to ultimately be exchanged. Since the draft EIS was prepared in advance of the appraisals being initiated, the proposed action and preferred alternative were crafted to reflect potential outcomes based on several possible appraisal scenarios. As determined by the appraisals of Tribal and public lands, which were approved by the U.S. Department of the Interior's Office of Valuation Services in April and May 2015, respectively (though the valuation date for each appraisal is March 7, 2015), 2,560 acres of the selected public lands (44 percent of the total acreage described for scenario three of the proposed action) are now proposed to be exchanged for the offered Tribal lands, consisting of 1,471.24 acres (100 percent

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<sup>57</sup> Environmental assessment no. CA-060-0010-0005 was released for public review and comment on July 27, 2010, and is included in the draft EIS as Appendix H to provide context only regarding steps leading to preparation of the draft EIS.

of the total acreage contained in the offered Tribal parcels), reflecting an average price of \$310.55 per acre for the public lands and \$574.35 per acre for the Tribal lands.<sup>58</sup>

This equates to fewer acres of public lands to be exchanged than described for scenario one of the proposed action. However, the extent of trail segments on public lands to be acquired by the Tribe—1.3 miles of the Jo Pond Trail—would be the same as described for scenario one (see Table 4.2.1.1 of the draft EIS p.4-10). In exchange, the BLM would acquire 2.4 miles of the Dunn Road Trail, Wild Horse Trail, and East Fork Loop Trail. Hence, while the per-acre value of the offered Tribal lands is 1.85 times greater than the value of the selected public lands to be exchanged, the BLM would acquire 46 percent more trail mileage than would be disposed of. With respect to intrinsic values of the acquired trail segments versus the disposed trail segment, such values are neither reflected in the land value appraisals nor considered in the analysis of environmental effects (see section 1.4(d)(iii) of the draft EIS p.1-24).

As determined by the Department of the Interior’s Office of Valuation Services, land values appraisals for the selected public lands and offered Tribal lands reasonably adhere to Uniform Standards of Professional Appraisal Practice, Uniform Appraisal Standards for Federal Land Acquisitions, 43 CFR § 2201.3, and the Statement of Work developed for the appraisal assignment. Ascribing economic value to the intrinsic recreational values held by the public, however, is not likely possible, a difficulty intensified by variations in public perception regarding the importance of one element (such as steepness of a trail) over another (such as the aesthetic qualities of the adjacent landscape). Whether a lack of considering such values in the appraisal of land values affects the degree to which the public interest may or may not be served by the proposed land exchange is a matter of personal perception that depends on the values that individuals place on intrinsic features, which are highly variable from one person to the next.

For reasons described above, PC-04(g) does not warrant further agency response.

**PC-05(g):**

The draft EIS treats the exchange properties as homogenous. While this may be a valid starting point, it is not a sufficient ending point. The exchange lands differ in their characteristics, such as distance to the City of Palm Springs, potential for development, recreational resources, road access, type of terrain, and wilderness characteristics. Further, trails located within the exchange properties are not equal and substitutable, rather they are different, i.e., “x” miles of trails in one section of land are not the same as “x” miles in another section. When the appraisals are complete, a comparison can be made between values considered in the appraisals and those not considered, thereby indicating whether the public interest is served by the land exchange. The values not considered could represent either a cost or benefit to the public.

***Response:***

The Department of the Interior’s Office of Valuation Services considers adequacy of appraisals by determining whether they meet criteria in five categories: (1) *REVIEW ANALYSIS*—

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<sup>58</sup> As described in section 3.0, the BLM would make a cash payment of \$50,000.00 to the Agua Caliente Band of Cahuilla Indians in order to equalize values and conclude the land exchange.

assignment instructions, certification, limiting conditions, extraordinary assumptions (none in this case), hypothetical conditions (none in this case), scope of work, client, intended users, intended use, date of value, date of report, definition of market value, jurisdictional exception, property rights appraised, summary of appraisal problems, legal descriptions, contact with owner, property inspection, location and neighborhood, property description, legal and physical access, use/rent/sale history and analysis, tax assessment analysis, and zoning and land use restrictions; (2) *VALUATION*—highest and best use estimate, larger parcel determination, and selection of approaches to value; (3) *SALES COMPARISON APPROACH*—analysis of subject previous sales, comparable sales selection, comparable sales description, adjustment characteristics, adjustment methodology, and unit of comparison selection; (4) *TRANSACTIONAL ADJUSTMENTS*—property rights, financing terms, conditions of sale, expenditures after purchase (not applicable in this case), and market condition; (5) *PROPERTY ADJUSTMENTS*—location, physical characteristics, economic characteristics, use and zoning, and contribution of improvements and non-realty, other, and reconciliation.<sup>59</sup>

The Office of Valuation Services determined that the appraisals submitted for the three Tribal parcels and the nineteen BLM parcels were adequate in meeting all criteria. A comparison of values considered in the appraisals to those not considered to determine whether the public interest is served by the land exchange, as suggested by the commenter, has no merit with respect to approved land values; such considerations would not change the extent of land to be exchanged. With respect to such comparison being a tool to determine whether the public interest is served by the land exchange, it is not clear how the commenter would intend the BLM to address these differences in its environmental analysis. For example, how would the distance of public and Tribal lands from the City of Palm Springs provide the basis for an assessment of impacts to recreation resources? Using the intersection of Palm Canyon Drive and Tahquitz Canyon Way as the center of the downtown area, how would a meaningful analysis be developed that compares and contrasts impacts of exchanging public lands in section 16, T.4S. R.4E., where the Skyline Trail is about one mile west of the intersection, versus exchanging public lands in section 36, T.5S. R.4E., where the Palm Canyon Trail is about eight miles south of the intersection?

Location of the exchange parcels (including how they relate to existing developments in the City of Palm Springs), development potential (which considers suitability of terrain for development), recreational uses (focusing on trail-based recreation), and road access are factored into the appraisals. The draft EIS addresses impacts to resources in such way as to provide a basis for comparing and contrasting alternatives. Impacts to recreational resources, including public access to trails, are assessed; development potential is addressed; and lands with wilderness characteristics are evaluated. Regarding the different values of trails and how these are considered in the draft EIS, see the response to PC-04(g) and section 1.4(d)(iii) of the draft EIS p.1-24. The draft EIS does not, however, consider public and Tribal exchange parcels with respect to their distances from the City of Palm Springs for reasons described in the preceding paragraph.

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<sup>59</sup> United States. Department of the Interior. Office of Evaluation Services. April 16, 2015 and May 6, 2015. Review of 3 Non-Federal Properties Appraisal, Agua Caliente Land Exchange, Riverside County, California (BLM CA 42965 PT; IVIS L14155) and Review of 19 Federal Properties Appraisal, Agua Caliente Land Exchange, Riverside County, California (BLM CA 42965 FD; IVIS L14157).

Issues related to the public interest have been addressed in other responses to comments; see PC-01(a), PC-03(a), PC-02(b), PC-03(b), PC-01(c), PC-02(c), PC-04(c), PC-04(d), PC-01(e), PC-01(g), and PC-04(g). The BLM does not see how comparing the values considered in the appraisals with those not considered would shed additional light on how the public interest is served or not served by the land exchange.

For reasons described above, PC-05(g) does not warrant further agency response.

**PC-06(g):**

The draft EIS argues that a qualitative analysis of trail characteristics would not be reasonable because it would be too difficult, complicated, and unreasonable. As a result, the draft EIS fails to consider that trails in sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., are perceived by the public to be unique, special, or valued for a variety of qualitative reasons overall, not just those as may be individually identified. Hence, such an overall qualitative value should have been accounted for in the draft EIS. In support of this approach, the draft EIS itself acknowledges special qualities surrounding the Skyline Trail, citing *Backpacker* magazine and the *National Geographic Adventure* website as supporting evidence. However, the draft EIS fails to similarly recognize the Palm Canyon Epic, a famous backcountry mountain bike ride that goes through section 36, T.5S. R.4E., utilizing the Palm Canyon Trail (see <http://strava.com/activities/236345517>). By not considering qualitative trail characteristics in its analysis of impacts to recreation resources, the draft EIS undervalues the importance of keeping these sections of land in the public domain

***Response:***

Without question, the Cactus to Clouds Trail, which incorporates the Skyline Trail, is of a unique quality since it is rare for any trail in North America to offer a day-hike opportunity that includes an ascent exceeding 10,000 vertical feet. The draft EIS acknowledges this circumstance as indicated by the commenter (pp. 2-7 and 4-19). However, whether trails in section 36, T.4S. R.4E., and section 36, T.5S. R.4E., rise to this same standard of uniqueness due to their variety of qualitative characteristics is far less clear. There are more than 200 miles of trails in the Santa Rosa and San Jacinto Mountains National Monument. Given the same approach as suggested by the commenter, each of these trails may be perceived by the public to be unique, special, or valued for a variety of qualitative reasons. But the perception of such qualities possessed by any single trail is in the eyes of the beholder, i.e., one particular trail may have certain values for one individual that differ from its value to another individual. This circumstance is addressed on page 1-24 of the draft EIS and in the response to PC-04(g). Nonetheless, the commenter suggests it is logical to view such characteristics in a general fashion, acknowledging that all trails on the selected public lands possess unique qualities, and since the draft EIS fails to consider this approach, it is deficient in its analysis of impacts to recreation resources, thereby undervaluing the importance of retaining these sections in the public domain. The BLM does not agree with such conclusion. There is no basis for singling out trails in section 36, T.4S. R.4E., and section 36, T.5S. R.4E., as possessing demonstrably unique values compared to other trails in the National Monument; hence, asserting that trails in these sections are unique lacks a reasonable foundation. Consequently, analyses in the draft EIS do not undervalue their importance relative disposal or retention of these sections.

The commenter identifies a particular mountain biking route—Palm Canyon Epic—that is “famous” and therefore should be accorded the same recognition as the Cactus to Clouds Trail, and failure to do so undervalues its importance to trail users, thereby skewing analyses regarding the disposal or retention of public lands on which the route is located. During

preparation of the draft EIS, this particular bike route, comprised of various trail segments in the National Monument, was unknown to those preparing the document. It was only brought to light by individuals submitting comments on the draft EIS.<sup>60</sup> One commenter identified the route's designation by the International Mountain Bicycling Association as an "IMBA Epic" ride; another commenter provided a website link dedicated to this particular trail.<sup>61</sup> Interestingly, commenters failed to acknowledge that the Palm Canyon Epic route not only traverses certain public lands selected for the proposed land exchange—the focus being section 36, T.5S. R.4E.—it crosses the offered Tribal lands that would come under the BLM's jurisdiction upon implementation of the proposed land exchange.

Regardless of the arguments offered by commenters and the responses thereto, the outcome of the land value equalization process provides for retention of sections 16 and 36, T.4S. R.4E., and section 36, T.5S. R.4E., in the public domain and provides for acquisition of section 7, T.5S. R.5E., through which the Palm Canyon Epic passes, thereby rendering concerns regarding disposal of section 36, T.5S. R.4E., as moot. Nevertheless, the draft EIS will be modified to acknowledge the Palm Canyon Epic as a mountain biking route of distinction.

Other than the acknowledgement to be made in the final EIS, PC-06(g) does not warrant further agency response.

**PC-07(g):**

The draft EIS fails to address potential economic benefits to the local community derived from trail users who come from outside the area specifically to hike the nationally-known Cactus to Clouds Trail or ride the nationally-known Palm Canyon Epic. These hikers and mountain bikers likely contribute money to the local economy by purchasing meals, staying in hotels, and expending funds on other amenities. Therefore, restricting public access to these nationally-known trails upon the Tribe's acquisition of public lands on which these trails are located would potentially be a detriment to the local economy. Failure to address this matter is inconsistent with applicable NEPA regulations.

***Response:***

The draft EIS and responses to comments in this section of the final EIS repeatedly address *reasonably foreseeable future actions* and the BLM's assertion that restrictions on public access to trails on public lands acquired by the Tribe are not reasonably foreseen. To minimize repetition, the basis for such assertion will not be described in this response to PC-07(g). In the absence of new reasonably foreseeable trail restrictions that would preclude public access to either the Cactus to Clouds Trail or the Palm Canyon Epic, there would be no potential adverse economic impacts of the type asserted by the commenter.

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<sup>60</sup> To date, no individual or organization has contacted the BLM regarding the Palm Canyon Epic mountain biking route to address issues of management, including identification in National Monument web-based or print media, preservation of the route, or maintenance.

<sup>61</sup> As indicated on the web-based map, the Palm Canyon Epic route heading north from California State Highway 74 in the Pinyon community utilizes the Palm Canyon, Indian Potrero, and Dry Wash Trails, Dunn Road, and the Hahn Buena Vista, Wild Horse, and Goat Trails to Highway 111 in Palm Springs.

Nevertheless, it may be of value to review applicable NEPA regulations regarding economic analyses, and discuss whether such analyses would be meaningful and if there is sufficient information available on which to base these analyses. As required by the regulations at 40 CFR § 1502.1, an environmental impact statement “shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” The *human environment* “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. ... When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment” (40 CFR § 1508.14).

With respect to the proposed land exchange and in the context of PC-07(g), an economic analysis would only be meaningful if it can be demonstrated that the proposed action and alternatives have a direct or indirect effect on the local economy to include describing how changing or maintaining public access to trails on the exchange properties would change or maintain the amount of money infused into the local economy, whether by residents or tourists.<sup>62</sup> While tourism organizations in the Coachella Valley (such as the Palm Springs Bureau of Tourism and the Greater Palm Springs Convention and Visitors Bureau) identify hiking, mountain biking, and horseback riding as attractions, and data exist regarding the extent to which tourism plays a significant role in the local economy, the BLM was unable to locate data linking the expenditure of tourism dollars to the use of trails in general, or trails in the Palm Springs area in particular. Absent such data, the extent to which trails-based tourism would be affected by the proposed land exchange cannot be ascertained, i.e., it cannot be determined whether or to what extent potential effects of the proposed land exchange on public access to trails is interrelated with potential effects to the local tourism economy.

Are such data necessary to the analysis of impacts in the EIS? No. Even if economic benefits resulting from trail-based recreational activities in general or from use of trails on the exchange properties in particular could be teased from economic statistics for the Coachella Valley or the City of Palm Springs, it is unlikely that such economic benefits would be meaningful or significant given their small scale relative to the bigger picture. Should the BLM seek to obtain these unavailable data? “If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement” (40 CFR § 1502.22(a)). Since there are no reasonably foreseeable future actions regarding public access to official trails on the exchange properties (or development of the exchange properties for that matter), and any economic effects to the local economy resulting from the proposed land exchange are therefore not anticipated, such economic analysis was not provided in the draft EIS, nor would the acquisition of data in this regard be essential to the analysis of impacts.

For reasons described above, PC-07(g) does not warrant further agency response.

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<sup>62</sup> *Direct effects* are caused by the action and occur at the same time and place (40 CFR § 1508.8(a)). *Indirect effects* are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable; indirect effects include economic impacts (40 CFR § 1508.8(b)).



**h. Miscellaneous**

**PC-01(h):**

The draft EIS makes several references to “relative values” of the lands to be exchanged, and if the relative values remain consistent with the final appraisals, one can expect the Tribe to acquire three times the amount of land than will be acquired by the BLM. However, the draft EIS fails to provide detailed information about how the estimated values described in Appendices D and F were derived, the date of these estimates, and who made the estimates.

***Response:***

Citing estimated values of the selected public lands and offered Tribal lands from the 2003 *Supplement to Agreement to Initiate Assembled Land Exchange* (Appendix F of the draft EIS) was meant only to provide a reference point for the reader to obtain a sense of how land values of the public and Tribal lands would likely differ in the final appraisal reports.<sup>63</sup> As stated in the *Supplement*, “estimated values are based on most recent appraisal information, but may not reflect current market value for exchange purposes” (draft EIS pp. F-2 and F-3). Estimates provided in the *Supplement* indicate the selected public lands, excluding those in sections 16 and 36, T.4S. R.4E., were valued at about \$351 per acre (based on \$1,638,000 for 4,661 acres) and the offered Tribal lands were valued at about \$944 per acre (based on \$1,360,000 for 1,440 acres), which equates to the public lands being about 37 percent of the value of the Tribal lands on a per-acre basis. [Estimates of public land values in sections 16 and 36, T.4S. R.4E., were not provided in the *Supplement*.]

Since estimates of land values are irrelevant to decisions regarding the extent of lands to be exchanged—only approved appraisals can be considered—information about how the estimates were derived and who made the estimates are likewise irrelevant.

For reasons described above, PC-01(h) does not warrant further agency response.

**PC-02(h):**

The term “public lands” used in the draft EIS is misleading, implying that only BLM lands are “public lands.” A clarification should be made at the first instance of referencing public lands to indicate the term is strictly referring to “BLM owned public lands.”

***Response:***

Footnote #1 on page 1-1 of the draft EIS states: “‘Public lands’ means any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos (Federal Land Policy and Management Act of 1976, section 103(e)).”

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<sup>63</sup> See pages 1-4, 1-10, and 1-11, and footnote #7 on page 4-6 of the draft EIS regarding estimated values provided in *Supplement to Agreement to Initiate Assembled Land Exchange* (BLM and ACBCI 2003). The draft EIS does not utilize land value estimates provided in *Supplement to Feasibility Report* (BLM 2001b; Appendix D of the draft EIS).

Tribal trust lands, allotted trust lands, and fee lands within the Agua Caliente Indian Reservation are not public lands.” Consistent with the commenter’s suggestion, the meaning of “public lands” is provided at its first instance of use in the draft EIS. The definition, as indicated, is based in statute and, therefore, is not a construct of the BLM. While lands under the jurisdiction of other federal, state, or local government agencies may be construed by readers as “public lands,” references to such lands in the draft EIS are referenced to the specific agency that has jurisdiction.

For reasons described above, PC-02(h) does not warrant further agency response.

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## 5.0 Regulatory Conformance

This section of the final EIS addresses mandatory reviews conducted by appropriate agencies regarding potential environmental effects that may result from implementation of the proposed action or alternatives thereof for conformance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Endangered Species Act (16 U.S.C. 1531 et seq.), and National Historic Preservation Act (16 U.S.C. 470 et seq.).

### United States Environmental Protection Agency<sup>64</sup>

The U.S. Environmental Protection Agency (EPA) reviewed the draft EIS pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and the EPA's NEPA review authority under Section 309 of the Clean Air Act. Based on this review, the EPA rated the preferred alternative as *Lack of Objections*, noting one typographical error on p. 3-44 where the Clean Air Act of 1972 is erroneously referenced instead of the federal Clean Water Act. The rating system was developed as a means to summarize the EPA's level of concern with a proposed action. A *Lack of Objections* rating indicates the EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal; this rating expresses the lowest level of concern about environmental impact of the action.<sup>65</sup>

### U.S. Fish and Wildlife Service<sup>66</sup>

The BLM pursued informal consultation with the U.S. Fish and Wildlife Service (USFWS) on July 21, 2014, in accordance with section 7 of the federal Endangered Species Act and the regulations at 50 CFR § 402.13. Based on the information provided in the draft EIS, the USFWS does not anticipate adverse effects to Peninsular bighorn sheep or its designated critical habitat,

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<sup>64</sup> United States. Environmental Protection Agency, Region IX. March 30, 2015. Review: Draft Environmental Impact Statement for the Proposed Land Exchange between Bureau of Land Management and Agua Caliente Band of Cahuilla Indians, Riverside County, California \*CEO# 20140377.

<sup>65</sup> The other three ratings regarding environmental impact of the action are (1) *Environmental Concerns* where EPA review has identified environmental impacts that should be avoided in order to fully protect the environment—corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact; (2) *Environmental Objections* where EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment—corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative); and (3) *Environmentally Unsatisfactory* where EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality—if the potentially unsatisfactory impacts are not corrected at the final EIS stage, the proposal will be recommended for referral to the Council on Environmental Quality.

<sup>66</sup> United States. Department of the Interior. Fish and Wildlife Service. March 23, 2015. Informal Section 7 Consultation for the Proposed Land Exchange between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians in Riverside County, California (BLM-ACBCI Land Exchange (P) LLCAD060.41).

southwestern willow flycatcher, least Bell's vireo, or desert tortoise upon implementation of the proposed land exchange. The USFWS concluded that adverse effects would not occur since the level of conservation anticipated on the exchanged lands would remain the same or increase, no impacts to designated critical habitat are anticipated, and changes to the extent and levels of trail-based recreational activities would not occur. Therefore, the USFWS concurred with the BLM's determination that the proposed project is not likely to adversely affect the species and habitat identified above.

#### California State Historic Preservation Office

The BLM determined that the proposed land exchange constitutes an undertaking as defined in 36 CFR § 800.16(y), and consulted with the California State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800. These regulations became effective on August 5, 2004, implementing section 106 of the National Historic Preservation Act, as amended, regarding potential adverse effects on historic properties.

The BLM, Tribe, and SHPO agreed they will resolve any potential adverse effects of the undertaking on historic properties through preparation of a Historic Preservation Management Plan (HPMP) addressing the selected public lands and offered Tribal lands. The HPMP was approved by these three entities in 2008. Implementation of the HPMP results in a determination of *no adverse effect* for purposes of the land exchange.<sup>67</sup>

## **6.0 Summary**

The primary question regarding public comments received by the BLM is whether these comments, upon assessment and consideration both individually and collectively, provide sufficient rationale for (a) modifying alternatives, including the proposed action; (b) developing and evaluating alternatives not previously given serious consideration by the BLM; or (c) supplementing, improving, or modifying the BLM's analysis.<sup>68</sup> The answer is "no." Instead, public comments regarding the proposed land exchange result only in factual corrections or clarifications to the draft EIS. Responses to public comments explain why the comments do not warrant further agency response (other than to make factual changes or provide clarifications).

#### Availability of comment letters

To reiterate from section 4.0, all comment letters, email messages, and facsimile transmissions received by the BLM regarding the draft EIS, as well as comments received during the public scoping period and for environmental assessment no. CA-060-0010-0005, are available for public review at the BLM Palm Springs-South Coast Field Office located at 1201 Bird Center Drive, Palm Springs, CA 92262, during regular business hours (8 a.m. to 4 p.m.) Monday through Friday (except holidays). A compact disk containing these comment submissions is available upon request.

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<sup>67</sup> Begay, Richard. 2008. Historic Properties Management Plan Regarding the Santa Rosa and San Jacinto Mountains Land Exchange between the Agua Caliente Band of Cahuilla Indians and the Bureau of Land Management. Agua Caliente Band of Cahuilla Indians.

<sup>68</sup> Such changes to the environmental document as possible responses to public comments are based on the regulations at 40 CFR § 1503.4(a)(1), (a)(2), and (a)(3), respectively.