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**Affiliation:** City of Henderson

**Topic:** Socioecon

**Comments**

The draft EIS states in 4.12.1 No Action Alternative, "The change in rate of population growth is expected to occur with or without the land sale action and subsequent development. Therefore, the No Action Alternative is not expected to contribute to population increases that would have a substantial adverse effect on community resources or services."

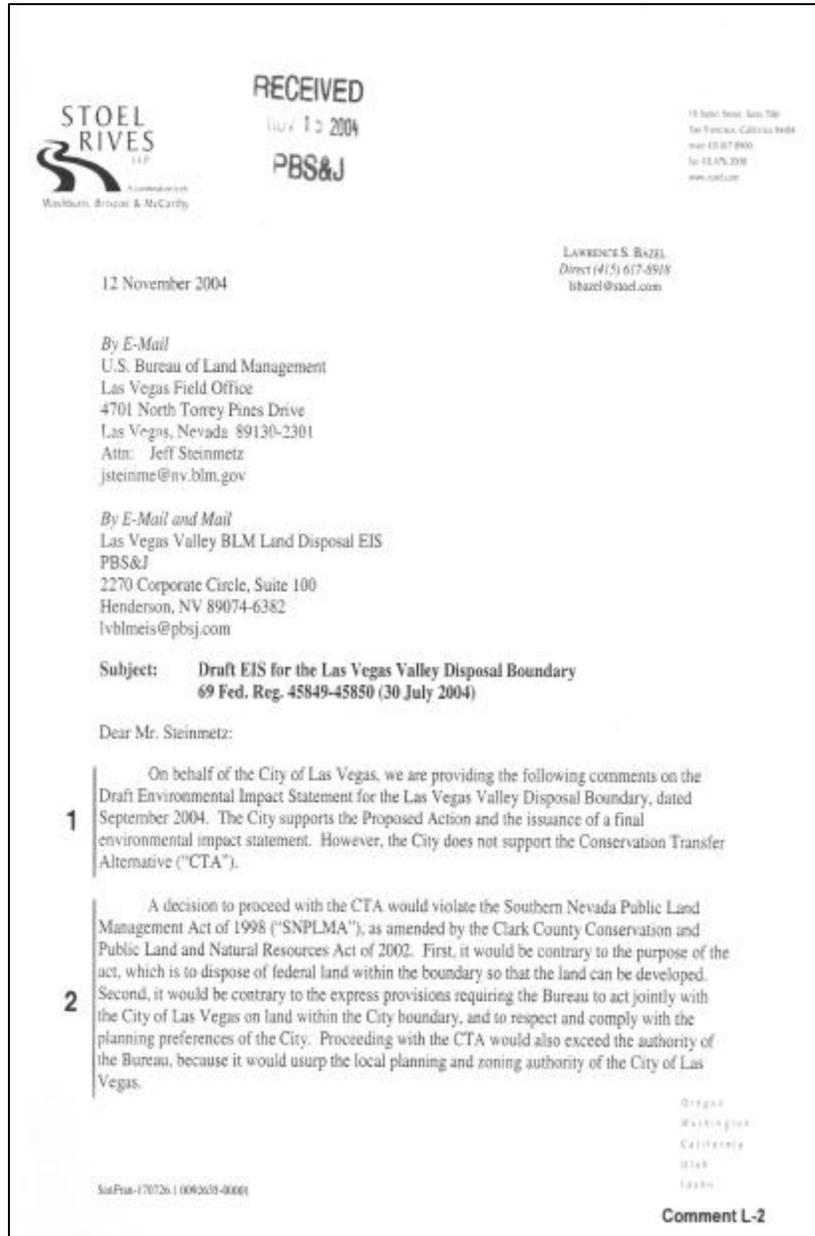
- 1 It is recommended that the EIS include acreage calculations of existing developed land in the Las Vegas Valley, vacant private undeveloped lands in the Las Vegas Valley and undeveloped BLM lands in the Las Vegas Valley. The acreage calculation will most likely show vacant BLM lands account for the vast majority of undeveloped land in the Las Vegas Valley. The calculations will show that in Henderson, for example, the majority of growth has for the past 3 years been on former BLM lands, a trend that will continue. The EIS should show that the No Action Alternative will have a substantial negative impact on, not only population growth, but also tax revenue from new construction as well as a loss of jobs from no new construction. For example, Anthem is being developed on land previously sold by BLM. Anthem accounts for nearly 50% of all new residential permits in the City of Henderson. Likewise, Alliance in North Las Vegas most likely accounts for the bulk of residential permits in that City.
- 2

Comment L-1

**Response L-1 (City of Henderson)**

**1** As was stated in Section 3.9.1, approximately 14 percent of land within the disposal boundary area is managed by the BLM. The Regional Transportation Commission of Southern Nevada (RTC) assembles data from community plans and from the Clark County Assessor to determine existing and planned land uses for transportation planning purposes. The RTC data indicate approximately 103,000 acres of private undeveloped (vacant) lands within the disposal boundary area (RTC 2002a). There are 46,700 acres of primarily vacant BLM lands remaining. Together with the approximate 6,400 acres of BLM lands that have been sold since 2002, the majority of vacant land within the disposal boundary area is in private ownership. Text has been added to Section 3.9.1 to address vacant land ownership.

**2** Development of previously disposed BLM lands would continue under the No Action Alternative. As was described in Appendix E, ongoing development would continue at the rate projected and would result in complete build out of the disposed properties by the end of 2013. The economic impacts of this ongoing development (i.e., No Action Alternative) were presented in Tables E-19 through E-27, and E-38 through E-42. These results can be compared against the economic impacts of the Proposed Action to determine the relative significance of this difference.



**Response L-2 (Stoel Rives for City of Las Vegas)**

- 1 Comment noted.
- 2 Comment noted. The specific issues raised in this paragraph are addressed in the following responses to the detailed comments.



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**I. THE CONSERVATION TRANSFER ALTERNATIVE  
VIOLATES THE SOUTHERN NEVADA PUBLIC LAND MANAGEMENT ACT**

**A. Congress Intended That The Lands Be Sold For Development**

Even as it announced the availability of the Draft EIS, the Bureau recognized that the intent of the SNPLMA is to provide land for *development*. "This EIS will ensure the intent of Congress, as portrayed in the SNPLMA and the Clark County Act, is met by providing land for organized local community development." (69 Fed. Reg. 45849, 30 July 2004, emphasis added.)

Congress recognized that "Southern Nevada is one of the Nation's fastest growing areas and, with over 87 percent of Nevada owned by the Federal Government, it makes expansion of our communities almost impossible." (143 Cong. Rec. H1749, 23 April 1997 (statement of Rep. Gibbons).) In response, Congress identified federal lands that would be "sold for fair market value." (*Id.*, H1748 (statement of Rep. Hansen).) Lands within the disposal boundary "are to be disposed of":

"The blue on this map indicates the public lands that are located within the red boundary which this legislation establishes. The blue lands are the public lands within the Las Vegas valley to be disposed of within this legislation." (*Id.*, H1749 (statement of Rep. Ensign).)

**3** Congress was especially concerned about "the patchwork pattern of private lands interspersed among public lands". (*Id.*) The patchwork pattern "puts enormous pressure on local elected officials, the school district, utility providers and, most importantly, the residents who are forced to shoulder the price tag of this development", (*Id.*) "Furthermore, it is exceedingly expensive for our local utilities to transport services across Federal lands to private tracts". (*Id.*) For these reasons, "everyone is in agreement that it makes sense to dispose of these lands." (*Id.*)

More than anything else, the purpose of SNPLMA was to provide land for development. It "will allow developers to acquire needed lands for community expansion and development." (*Id.*, H1750 (statement of Rep. Gibbons).) The statute:

"accomplishes . . . very important goals in Nevada. First, it allows land in the Las Vegas area to be developed to accommodate the ever growing number of people moving to that area." (*Id.*)

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**Comment L-2**

**3** Under the express language of SNPLMA, Section 4(a) merely "authorizes" BLM to dispose of lands within the disposal boundary area, but dispenses with the land use planning requirements of FLPMA. In addition, SNPLMA land disposals are to be conducted in accordance with "other applicable law." Therefore, BLM can withhold from sale any parcel or area of federal public land if disposal would not be in accordance with other applicable law. In the case of area covered by the Conservation Transfer Alternative, disposal without further analysis or mitigation may not comply with other applicable laws, namely the federal and state endangered species laws. The Conservation Transfer Alternative also meets the requirements of NEPA to consider reasonable and feasible alternatives. Also see General Response 2 – Range of Alternatives.



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4 In response to environmental concerns, Congress provided a tradeoff. Money obtained from the sale of lands inside the disposal area would be used to purchase environmentally sensitive lands outside the disposal boundary. In this way, the statute would "ensure this growth occurs without neglecting the environment by funneling revenue for acquisition of environmentally sensitive lands and to our existing federal facilities, such as Lake Tahoe, Red Rock and Lake Mead." (*Id.*, H1749 (statement of Rep. Ensign).)

Consistent with this intent, SNPLMA specifies that its purpose is "to provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada." (SNPLMA § 2(b).)

5 If the Bureau chooses to proceed with the CTA, it would be acting contrary to Congressional intent and the express purpose of the statute in three ways. First, it would not be selling lands for development. The Bureau "would not transfer title to any lands with the Conservation Transfer Area until a Conservation Agreement is signed by all parties to the agreement." (Draft EIS, page 2-7.) This conservation agreement does not exist, and the goals for the agreement are inherently contradictory. It would "provide for the long-term protection of sensitive resources", apparently by prohibiting development, and yet at the same time "fulfill the intent" of SNPLMA "and meet the land development expectations of local governments" by allowing for development. (*Id.*) The Bureau is unlikely to find buyers for land that cannot be developed, and the CTA will therefore prevent the disposal of federal lands within the boundary, contrary to Congressional intent and to the express purpose of SNPLMA.

6 Second, although the purpose of the statute is the "orderly disposal" of federal lands, the CTA would create disorder. The CTA would disrupt current City plans for transportation and flood control, which now include a parkway and a flood-control basin within the proposed conservation area. If the Bureau chooses to proceed with the CTA, the City will not be able to proceed with its plans. Instead, it will have to wait for the process to produce something sufficiently definite for planning purposes. In this way the CTA will bring disorder, rather than order, to the planning process, contrary to the express purpose of SNPLMA.

7 Third, the CTA will exacerbate the problems caused by the patchwork of federal lands among private lands. Congress complained, as discussed above, about the burdens imposed on residents who have to pay for the cost of installing utilities across undeveloped federal land. The CTA will be worse, because residents will have to pay the much greater cost of going around the conservation area. Because of the added cost—and because there will apparently be no way to build roads through conservation area, at least initially—the CTA may restrict the development of the portion of the City that lies north of the conservation area, and thereby withhold from sale

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4 Because land disposals under Section 4(a) of SNPLMA must be conducted in accordance with "other applicable law," it does not follow that the provision of SNPLMA that allows proceeds to be expended for the acquisition of environmentally sensitive lands works the kind of "tradeoff" asserted. The express language of SNPLMA does not allow for environmental concerns on lands within the disposal boundary area to go unaddressed. The SNPLMA land sales are not exempt from environmental laws such as NEPA and the Endangered Species Act.

5 It is the BLM's position that the Conservation Transfer Alternative is a legally permissible, feasible alternative that meets the requirements of SNPLMA and NEPA. The SNPLMA authorizes the BLM to dispose of lands in the disposal boundary area, either by sale or transfer for public purposes. This alternative does allow for the transfer of the land within the Conservation Transfer Area (CTA), with specified limitations on use to be determined through a consultative process with the BLM and units of local government. The broad goal of SNPLMA for land disposal is met by this alternative, which includes disposal of land to meet public purposes, such as open space areas, resource protection, and recreational and educational opportunities that could be supported by the CTA.

6 While the Conservation Transfer Alternative would require consultation and agreement on the specifications for the transfer, the BLM would work with units of local government to develop feasible plans that support flood control, resource protection, and multiple uses of the CTA.

7 Once lands are transferred in the CTA, the requirements for management of the area would be the responsibility of units of local government.



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7 and development most of the land within the City of Las Vegas that Congress intended be sold and developed.

8 In construing a statute, a federal agency "must give effect to the unambiguously expressed intent of Congress." (*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).) Here Congress has unambiguously declared that the purpose of the SNPLMA is "to provide for the orderly disposal" of federal lands within the disposal boundary. The Bureau should not interpret the statute in a way that provides for the disorderly nondisposal of federal lands.

**B. The CTA Would Be Inconsistent With Local Land Use Plans And Policies**

SNPLMA limits the authority of the Bureau, and requires it to comply with local requirements and "recommendations":

9 **Joint selection required.**—The Secretary [of the Interior] and the unit of local government in whose jurisdiction lands [for disposal] are located shall jointly select lands to be offered for sale or exchange under this section. The Secretary shall coordinate land disposal activities with the unit of local government in whose jurisdiction such lands are located. Land disposal activities of the Secretary shall be consistent with local land use planning and zoning requirements and recommendations." (SNPLMA § 4(d)(1).)

Congress stressed the importance of participation by local governments: "Most importantly, the [statute] provides the essential mechanisms to . . . allow this growth to occur in an orderly fashion by allowing local officials a seat at the table". (143 Cong. Rec. H1749 (statement by Rep. Ensign).)

The Draft EIS recognizes that the Bureau must comply with local plans and policies: "Thus the United States (U.S.) Congress passed the SNPLMA legislation authorizing the BLM to dispose of federal land in Clark County, Nevada *consistent with community land use plans and policies.*" (Draft EIS, page ES-1, emphasis added.)

10 Exercising its joint authority to select "lands to be offered for sale", the City hereby selects those lands included in the conservation area to be among those offered for sale, consistent with City plans and policies.<sup>1</sup> Exercising its authority to make recommendations, the

<sup>1</sup> The City also exercises all rights available to it under section 4(b) of the act, which provides that the Bureau "shall retain the elected lands [chosen by a unit of local government] for

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- 7(cont.)** As was described in Section 2.4, additional land use activities in the CTA could be implemented as long as the actions are protective of the resources and consistent with the provisions of the Conservation Agreement. Implementation and management of these requirements and decisions would be the responsibility of local governments, as required by the SNPLMA. As was described in Section 4.4.3, management of the CTA would include the potential for infrastructure developments that would transect the area as long as the proposed utility and transportation crossings are designed and constructed to mitigate impacts to the resources.
- 8** The BLM would work with units of local government to ensure orderly disposal, including following the land disposal requirements of FLPMA, for any alternative selected and implemented. As part of the Conservation Agreement, the CTA would be transferred from federal ownership to the units of local government, or to other parties with mitigation or avoidance requirements that protect sensitive resources. The SNPLMA does not define or restrict disposal to include only auction to private parties for development, but also includes disposal actions that result in use of land for public purposes.
- 9** Through a consultative process, the BLM and local governments would determine the conservation requirements for the resources identified in the CTA. Local governments have a role in the selection of lands for disposal in areas surrounding the CTA to control development patterns consistent with the requirements of the Conservation Agreement and local land use plans.



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**10** City hereby recommends that land within the conservation area be protected, and developed where appropriate, under City authority, and consistent with City plans and policies, including those identified in the accompanying letter from the City providing comments on the Draft EIS. The City generally intends to retain the conservation area as open space and park, while also providing for necessary roads, flood control, and utilities. Consistent with SNPLA, the City would like to coordinate with the Bureau to dispose of the land in the conservation area, as well as all other federal land, within the City. As Congress intended, any sensitive areas will be protected through City plans, policies, and recommendations.

**11** The CTA is not consistent with City plans, policies, and recommendations, which provide (among other things) for a parkway crossing parts of the conservation area, and for a flood-control basin within the area. To comply with the specific terms of the statute, the Bureau must act consistently with City plans.

**12** The EIS process may allow for the consideration of the environmental effects of an alternative such as the CTA, but it does not provide authority to choose the CTA alternative. Instead, the Bureau must comply with the intent of Congress, as identified in SNPLMA. Of the alternatives in the Draft EIS, only the Proposed Action complies with SNPLMA.

**II. THE BUREAU DOES NOT HAVE AUTHORITY  
TO USURP THE ZONING AND LAND-USE FUNCTIONS OF THE CITY**

**13** If the CTA were chosen, the Bureau would establish a steering committee, which would be responsible for regulating land use within the conservation area: "To develop and implement the Conservation Agreement, the BLM would establish an inter-agency steering committee to address options on how best to conserve the sensitive resource values within the Conservation Transfer Area yet fulfill the intent of SNPLMA and meet the land development expectations of local governments." (Draft EIS, page 2-5.) By regulating land use within the boundaries of the City of Las Vegas, this committee would usurp the City's planning and land-use authority.

**14** Nothing gives the Bureau the authority to usurp the City's land-use authority, much less to hand it over to a steering committee consisting of at minimum three cities, seven regional agencies, three state agencies, one federal agency, tribes, and a volunteer organization.<sup>2</sup> On the conveyance to . . . such unit of the local government", and "shall issue right-of-way grants" in accordance with specified provisions.

<sup>2</sup> Nothing authorizes the Bureau to delegate its authority to private individuals or organizations.

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**9(cont)** The SNPLMA directs the BLM to coordinate disposal actions so that the resulting land uses would be consistent with community land use plans. Because the majority of federal lands in the area of the CTA were previously managed as Wilderness Study Area, community land use plans did not specify land uses for this portion of the disposal boundary area. Under the Conservation Transfer Alternative, the BLM and local governments would implement the conservation transfer process to protect resources in areas that were not considered in local land use plans, other than general designations for open space preservation or for outdoor recreational opportunities.

**10** Proposals for nomination of specific land areas would be considered as part of the disposal process, consistent with the Record of Decision for the alternative selected to implement the disposal requirements of SNPLMA. Under the Conservation Transfer Alternative, the CTA would not necessarily remain under federal ownership, but would include management by local governments for resource protection as developed through a consultative planning process between the BLM and local governments.

**11** Land uses designated in current community plans in the CTA, including flood control and recreation land uses could be implemented in parts of the CTA, as long as the planned activities address the sensitive resources as required by the Conservation Agreement.

**12** See Response 5 above. As was described in Section 2.1, an alternative outside the scope of what Congress has approved is still evaluated as the basis for modifying Congressional approval in light of the policies of NEPA.



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14 contrary, federal control of privately owned land within the CTA would, as the Supreme Court has said in another context, "result in a significant impingement of the States' traditional and primary power over land and water use." (*Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159, 174 (2001), citing *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30, 44 1994 (regulation of land use is "a function traditionally performed by local governments").) Even under ordinary circumstances, therefore, the Bureau would not have authority over local land-use decisions. Here, however, the circumstances are extraordinary, because Congress has required the Bureau to defer to local land-use requirements and even recommendations.

15 The Draft EIS seems to recognize that the Proposed Alternative is the Bureau's only authorized choice. "The Proposed Action was developed to strictly comply with the requirements of SNPLMA as amended by the Clark County Act". (Draft EIS, page ES-2.) The Bureau should—and is legally required to—comply with unambiguous Congressional directives. The Bureau should proceed with the Proposed Action.

Thank you for your consideration of these comments. The City of Las Vegas would appreciate an opportunity to discuss these comments and the proposed action in more detail at your convenience. In the meantime, please call me directly if you have any questions.

Sincerely,

Lawrence S. Bazel

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- 13 The function of the committee is to provide input to the BLM and units of local governments to consider in the development of options for addressing resource conservation and protection. Much of the data and information that evidences the sensitivity of the CTA is too new for local governments to have undergone meaningful comprehensive planning to address these resources.
- 14 See Response 5 and Response 13 above.
- 15 See Response 3 and Response 5 above.



LAS VEGAS CITY COUNCIL

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*By E-Mail*

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4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130-2301  
Attn: Jeff Steinmetz  
jsteinme@nv.blm.gov

*By Mail*

Las Vegas Valley BLM Land Disposal EIS  
PBS&J  
2270 Corporate Circle, Suite 100  
Henderson, NV 89074-6382

Re: Comments to the Las Vegas Valley Disposal Boundary Draft  
Environmental Impact Statement (DEIS)

Dear Mr. Steinmetz:

The City of Las Vegas appreciates the opportunity to comment on the Las Vegas Valley Disposal Boundary DEIS. This document describes and analyzes the potential environmental impacts of three alternatives for the disposal and use of lands managed by the Bureau of Land Management (BLM) within the Las Vegas Valley disposal boundary area in Clark County, Nevada. The alternatives include the Proposed Action, the Conservation Transfer Alternative, and the No Action Alternative.

The Southern Nevada Public Lands Management Act of 1998, as amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002, makes eligible for disposal federal lands within Clark County that are currently managed by BLM. The Clark County Act increased the amount of land available for disposal by approximately 22,000 acres. Of the 22,000 acres, approximately 7,728 acres generally located north of Moccasin Road and west of Buffalo Drive were annexed into the City of Las Vegas. The City intends to nominate portions of these lands in the future and to plan its development in a manner consistent with strategic goals and objectives adopted by City Council in the Las Vegas Master Plan 2020 and other city policy documents. This letter contains our comments in support of the Proposed Action and expresses concerns with the Conservation Transfer Alternative. The City's legal counsel, Stoel Rives LLP, will also be submitting comments on legal issues.

Comment L-3

**Response L-3 (City of Las Vegas)**

**1** Comment noted.

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**CHAPTER 2 DESCRIPTION OF ALTERNATIVES**

**SECTION 2.2—DEVELOPMENT OF ALTERNATIVES**

The last paragraph of the discussion of the development of alternatives states that the Preferred Alternative is the alternative that would fulfill the BLM's statutory mission and responsibilities. Further, this paragraph states that the preferred alternative would be identified in the Final EIS based upon the public and agency comments. However, a public meeting was scheduled for Monday November 1, 2004 to discuss and identify mitigation measures for the Conservation Transfer Area Alternative with many of the federal agencies, the cities of North Las Vegas and Las Vegas, Clark County, and various environmental groups such as Outside Las Vegas and the Sierra Club. At this meeting, BLM staff publicly stated that the Conservation Transfer Alternative would be the Preferred Alternative this position has been consistently repeated in various meetings with agencies scheduled to discuss the EIS. This decision was made prior to BLM staff receiving all comments from the public and agencies. As a cooperating agency the City of Las Vegas objects to the approach of the BLM staff to the EIS process that has resulted in the premature selection of a preferred alternative. This action is inconsistent with the statements in this section that indicated that all comments received would be considered in the selection of a preferred alternative. The process used by BLM staff violates this stated intent and is in conflict with any common notion of "due process". The City of Las Vegas respectfully requests a clear explanation of the dismissal of the EIS process by BLM staff in identifying and selecting a preferred alternative.

2

**SECTION 2.3—PROPOSED ACTION**

The City supports the Proposed Action as the preferred alternative. As a cooperating agency, and for the reasons given below, the City has concluded that the Proposed Action would be the environmentally preferable alternative, and would most effectively implement the SNPLMA. Although the City recognizes that there are concerns about paleontological resources on federal land within the City, these concerns can best be resolved, and the resources protected, through federal regulation, the State of Nevada Office of Historic Preservation and City of Las Vegas planning and land-use processes.

3

The City has identified the upper wash as open space that would be incorporated into a cultural park. Page 4-9 of the Northwest Open Space Plan, which is attached as Exhibit A, shows that an area along the upper wash is to form a cultural park, which would include open space as well as an

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- 2 As was stated in Section 2.2, the preferred alternative will be identified in the Final EIS; however, this does not preclude the BLM from stating a likely selection of the preferred alternative based on the results of the environmental impact analysis and comments received prior to publication of the Final EIS.
  
- 3 The open space planning conducted by the City of Las Vegas is commendable and is anticipated to be compatible with the resource protection objectives of the Conservation Transfer Alternative. The Conservation Transfer Area (CTA) also encompasses area outside the planning boundaries of the City and was developed to include all contiguous sensitive biological and paleontological resources in the vicinity.

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3 archeological park. This area is conceptually similar to the area that would be included within the conservation area of the Conservation Transfer Alternative. BLM personnel participated in the development of the Northwest Open Space Plan as members of the Technical Working Group. Although some necessary utilities would pass through the proposed conservation area, the majority of the area would remain open space. Paleo resources within the area would be protected by a proposed upstream detention basin, and through the City's policies and procedures for protecting archeological and biological resources outlined on pages 3 thru 7. Surveys would be performed before construction, and resources identified and preserved. We understand that concerns have been expressed about flooding of sensitive biological resources identified in the DEIS, in particular bearpoppy and buckwheat populations. These resources would best be protected against flooding by the stormwater detention basin the City has planned for the upper wash in combination with the existing detention basin upstream of the sensitive populations located in the vicinity of Decatur and Moccasin Roads. Therefore, the Proposed Action would protect all sensitive resources identified within the City by the Draft EIS.

The proposed Action meets the preferred alternative criteria outlined in Section 2.2 and complies with the provision in the Southern Nevada Public Lands Management Act that states that "land disposal activities of the Secretary shall be consistent with local land use planning and zoning requirements and recommendations". The following outlines the City of Las Vegas land use planning and zoning guidelines that support the identification of the proposed action as the preferred alternative, including policies and procedures related to the archeological and biological resources identified in the BLM staff survey work performed for this EIS:

**Planning Efforts**

4 A priority of the Mayor and City Council, as published in the City of Las Vegas Strategic Planning Guide, reads: "Create, integrate, and manage orderly and sustainable development and growth of our community."

- The City is advancing the potential for sustainable development through its efforts in preparing for the disposal of approximately 1,700 acres known as the Kyle Canyon Gateway area. This effort includes a study prepared by the Rocky Mountain Institute with involvement from a broad cross-section of the development community, public officials, and technical experts. The effort also includes design principles prepared by Poggemeyer Design

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4 See Response 3 above.

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Group, and a resolution that outlines the key principles of smart community design and sustainable development that will be presented to the City Council at its meeting on November 17, 2004.

- The Clark County Regional Flood Control District Master Plan Update calls for the upper Las Vegas wash to be preserved in its natural state for flood control and drainage. The City of Las Vegas conducted a preliminary feasibility study on the upper Las Vegas wash, and concluded that a 1,000-foot corridor would be sufficient for flood control, provided a detention basin was constructed at the upper end of the wash.
- The Regional Transportation Commission (RTC) is beginning a study to determine transit needs in the northwest area. The RTC is also planning for light-rail transit through the City of North Las Vegas and eventually serving the Kyle Canyon Gateway area and new development north of Moccasin Road. In addition, the RTC is planning park and rides and bus rapid transit along the Highway 95 corridor in the northwest area of the City.
- The City has retained experts to assist in the preparation of an Open Space Plan. This plan, in its draft form, calls for 30% of developable land be retained for open space. It further prescribes the preservation of washes and arroyos in their natural state for site drainage, trails, open space, preservation of views, wildlife habitat, and preservation of natural desert areas. The plan also calls for the creation of a cultural park. A major component of the cultural park would be preservation of significant paleontological sites, development of interpretive centers, trails and other amenities to preserve these areas for research, education and open space.

**Master Plan Goals, Objectives and Policies**

- The City's Master Plan includes the following goals, objectives, and policies:
- Goal 3: "Newly developing areas of the city will contain adequate educational facilities, and recreational and open space and be linked to major employment centers by mass transit, including buses, and by trails."

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- Objective 3.4: "To ensure that adequate portions of the lands released for urban development by the Bureau of Land Management (BLM) are developed for recreational and educational public facilities, transit facilities and fire stations, that will benefit the city."
- Objective 3.6: "To ensure that adequate amounts of park space and trail systems are designated and developed to meet or exceed national standards and standards established in the Master Plan Parks Element."
- Goal 7: "Issues of regional significance, requiring the City of Las Vegas to coordinate with other government entities and agencies within the Valley, will be addressed in a timely fashion."
  - Objective 7.1: "To ensure that the natural resources of the City, particularly those that directly support an enhanced quality of life for its residents, are protected."
  - Objective 7.2: "To ensure that arroyos, washes and watercourses throughout the City are integrated with urban development in a manner that protects the integrity of the watershed and minimizes erosion."
  - Objective 7.4: "To identify, protect and preserve archeological resources and areas with unique or sensitive geologic features that exist within the city boundaries, and to integrate them with new urban development that extends into archeologically sensitive areas."
    - Policy 7.4.1: "That as new development occurs on the urban fringe, particularly in areas with natural rock outcroppings, the City ensure that an inventory is made of any archeological resources, such as petroglyphs, within the boundaries of the proposed development."
    - Policy 7.4.2: "That efforts be made to preserve any significant archeological resources that may be discovered. If possible, that such protection or preservation integrates the resource into the context

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of the community, such as in a park or open space.”

- Policy 7.4.3: “That the City protect and preserve desert flora and fauna to the extent practicable.”
- Policy 7.4.4: “That the City work with Clark County and environmental organizations to preserve viable desert habitat.”
- Conservation Element Implementation Action WSQ.6: “The City shall continue to work to preserve the state of the Las Vegas Wash by maintaining natural features in all areas of work or construction within the city portions of the wash. The City should work with the Regional Flood Control District to ensure that natural features are not, unless dictated by physical necessity, replaced with concrete flood channels. Natural features shall be privately maintained. In areas planned for urban development along washes, setbacks from the washes should be implemented to minimize the need for channel reconstruction and to provide a valuable open space amenity.”
- 4 • Conservation Element Implementation Action HW.1: “The City shall continue to be an active participant in the Implementation and Monitoring Committee of the Clark County Multiple Species Habitat Conservation Plan (MSHCP), for the duration of the MSHCP, which shall continue through the year 2028.”
- Conservation Element Implementation Action HW.2: “The City shall continue to collect the \$550 per acre fee for new development on behalf of the Clark County MSHCP, for the duration of the MSHCP, and for use as directed by the Implementation and Monitoring Committee.”
- Conservation Element Implementation Action HW.3: “The City should continue to participate in the implementation of the adopted Clark County Multiple Species Habitat Conservation Plan.”
- Conservation Element Implementation Action HW.12: “The City should pursue a standard that 30 percent of the lands transferred from the BLM to the city in the far northwest part of the city are

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4 retained through community master planning processes as park land available to the public, open space, natural resource areas and for other recreational amenities that benefit both area residents and the city as a whole.”

SECTION 2.4 – CONSERVATION TRANSFER ALTERNATIVE

- “Land within the Conservation Transfer Area may be nominated for transfer to local or regional government agencies using the same process as the other disposal lands. However, the BLM would not transfer title to any lands within the Conservation Transfer Area until a Conservation Agreement is signed by all parties to the agreement.”

5 The City of Las Vegas has concerns that the requirement for a Conservation agreement and the appointment of a steering committee to develop the Conservation Agreement, agreeable to “all” parties, and signed before any lands within this area could be disposed of is beyond the legislative intent and authority for the disposal of lands within the boundaries prescribed by the SNPLMA. Further, the maintenance of this area will also be a major expense with no funding source identified. Thus the criteria for selection of a preferred alternative that fulfills the BLM’s statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors ... has not been met.

The following discussion outlines several of the City’s concerns which need to be addressed in order to demonstrate that the Conservation Transfer Alternative meets the criteria outlined in the DEIS for selection as the preferred alternative:

- 6 • **Conservation Transfer Area Size** - The conservation transfer area is considered excessive in area and should be redefined. Buffer areas of 50 to 100 feet for bearpoppy and buckwheat sites have been delineated in the DEIS and 500-foot buffer areas identified for the paleontological locations. However, when the aliquot part parcel, prepared for the conservation easement, is added to the buffer areas identified around these resources, the designation becomes excessive. In addition to this comment, the buffer area of 500 feet around a paleo resource seems particularly excessive, and both the plant species and paleo buffer areas have not been justified in the EIS document. The City of Las Vegas would request a clear justification of the buffer areas, their

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5 The function of the committee is to provide input to the BLM and units of local governments to consider in the development of options for addressing resource conservation and protection. The parties to the agreement would be the BLM and units of local government that would be responsible for management. The nomination and sale process would still include co-selection by BLM and units of local governments (see General Response 1).

6 The buffer areas were selected based on the best professional judgment of resource specialists regarding the requirements that would provide for effective protection of sensitive resources. Because fossil occurrences may extend along an individual bed of strata beyond an outcrop exposure into the subsurface, recovery of these materials may extend well beyond any surface exposure location. The use of existing aliquot boundaries was considered the only practicable method for developing a legal boundary description for the CTA.

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intended functionality and reconsideration of the aliquot parcel designations.

7

- Information presented within the DEIS describes an area that is of great traditional importance to a number of tribes, noting that ethnographic records place numerous villages within the disposal area (1st paragraph Section 3.6.2). Several specific sites are noted in the 2nd paragraph of that section, however it is not clear if they are outside or inside the disposal area. In addition, Section 3.6.3 says none of the 15 tribes "contacted" by BLM provided any comments on significance of the villages, garden sites, or other culturally significant places that had been identified. They do not, however, offer an independent assessment of their significance. In Chapter 4, the DEIS indicates that the exact locations of these resources could not be determined, therefore their potential NRHP eligibility and significance could not be determined.

8

- The DEIS does not indicate what attempts BLM (or others) made to identify these Native American resources. Apparently, the Bengston 2004 report, referenced throughout this section, would need to be reviewed to ascertain appropriate status. In addition, several listed or eligible TCPs were noted on page 3-38, however there is no impact analysis for these contained in Chapter 4.

9

- Most of the sites are eligible under Criterion D (some with some additional criteria noted) and, as such, are archaeological resources. The BLM received concurrence from the Nevada SHPO on nine sites. However, there is no information in the DEIS on how or why the eligibility recommendations were made by BLM.

10

- There is no table showing the eligible sites. There is a discussion of the four criteria, however there is no link between the criteria and the historic properties. A table should be included listing the eligible sites and their eligibility criteria. The DEIS section refers to Appendix F, however, a separate, short table of the sites and their corresponding criteria would be helpful.

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- The footnotes to Table 3.6-2 provide information regarding the location of the sites noted in the 2<sup>nd</sup> paragraph of Section 3.6.2. Consideration of places of significance for Native American resources is based on the expressed interests of Native American tribes. As was stated in Section 3.6, an Ethnographic Assessment was completed and the results of this assessment were summarized in Section 3.6.3 and Section 4.6. The Ethnographic Assessment was completed in accordance with applicable regulations and executive orders. Responses to letters, results of meetings, and documentation of telephone conversations are all included in the Ethnographic Assessment.
- See Response 7 above. Due to the sensitivity of information, specific requests to further review documents should be addressed to the BLM under separate letter. As was stated in Section 4.6.2, the TCPs are outside the disposal boundary area and no direct or indirect adverse impacts from the land disposal actions would occur.
- The State Historic Preservation Officer (SHPO) reviewed the results of the Class III inventory (see Appendix F) and as was stated in Section 3.5.2.1 and Section 4.5, the SHPO concurred with the determinations made by the BLM regarding eligibility of sites for the National Register of Historic Places. Due to the sensitivity of information, specific requests to further review documents should be addressed to the BLM under separate letter.
- The data in Appendix F are incorporated by reference, as allowed under with 40 CFR §1502.21.

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- No information is provided to describe how paleontological resources were used to determine that a 5,000-(8,000?)-acre conservation transfer area was required. Without this information, it is difficult to determine whether or not a conservation transfer area of this size can be justified. Further, it appears that mitigation measures could offset any potential impact on these resources, thereby eliminating the need to establish a conservation area and reduce development opportunities.

- Section 3.7.2 of the DEIS states, "Fossils identified from these localities consisted of non-diagnostic bone fragments which are generally considered to have little potential to be paleontologically significant." And though some localities contained "large, well-preserved bone portions," these resources could be addressed through mitigation measures, not the prohibition of development.

- We believe that there are a number of significant mitigation measures that could be implemented to reduce the size requirement of the conservation transfer area. Several of these measures include:

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- Mitigation measures for impacts to the Las Vegas bearpoppy are mentioned for two situations in the DEIS. For the "No Action" Alternative, BLM would retain permitting authority for right-of-way (ROW) development and Recreation and Public Purposes Act (R&PP) leases and would stipulate various mitigation measures in conjunction with those activities. The example mitigation measures listed in this paragraph are standard measures. For the "Proposed Action" and "Conservation Transfer Alternative", mitigation would be required by NDF under the MSHCP. The measures mentioned as "appropriate" in this paragraph include "stockpiling of the soil, seed collection, etc."; however, NDF could impose other mitigation measures depending on the circumstances.

- Relevant Clark County mitigation requirements of the MSHCP include:

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11 See Response 6 above. As was stated in Section 4.7.4, mitigation measures of any subsurface resources would be dependent upon the extent of the resource and ultimate land use.

12 Mitigation measures would be considered for certain types of activity within the CTA after transfer, such as roads, utilities, or public facilities consistent with other requirements such as the MSHCP. These measures would be developed through a consultative process with the BLM, USFWS, NDF, and local governments, with input from the strategy committee, to best accomplish the objectives of land disposal and preservation.

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- ... "Imposition of \$550-per-acre development fee and implementation of an endowment fund,
- ... Purchase of grazing allotments and interest in real property and water,
- ... Maintenance and management of allotments, land, and water rights which have been acquired, and
- ... Construction, monitoring, and maintenance of barriers along linear features."

- In addition, "Clark County will cooperate and work with USAF, Las Vegas Valley Water District, BLM, NPS, USFWS, NDF, NDOT, and TNC to manage populations of the Las Vegas bearpoppy in key areas of its distribution. Also, Clark County will agree to fund for two years a position with NDF to assist in implementation of the measures set forth in the Memorandum of Agreement (refer to Appendix F in the DEIS). Finally, if required, Clark County has agreed to expend up to \$90,000 to protect a critical population at Nellis Air Force Base."

- The Conservation Transfer Alternative would appear to limit development in certain areas and might require mitigation for any development permitted in a Conservation Area. The mitigation measures suggested above are reasonable to propose for development in the conservation area.

- We request that the BLM incorporate appropriate mitigation measures into the description of the Conservation Transfer Alternative in the Final Environmental Impact Statement in an effort to reduce the size of the area.

13

- **Conservation Transfer Area Creates a Barrier** - The conservation transfer area creates a barrier for the extension of public utilities into and across the area. Access to both sides of the Las Vegas Wash and conservation transfer area must be provided,

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13 Upon development of mitigation requirements the infrastructure and rights-of-way access described in this comment could be placed in the CTA. Also, as described in Section 1.2, the purpose and need for land disposal is to address the federal parcels interspersed among private lands and thus it is not the intent of the Conservation Transfer Alternative to further barriers to development.

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as well as allowance for necessary infrastructure. Concerns include:

- **Steering Committee** - A steering committee established by the BLM (including local governments, regional agencies, and state and federal agencies including State Parks, State Historic Preservation Office, Division of Forestry, USF&W, and organizations such as Friends of Tule Springs) would have significant impact on the City's ability to effectively control infrastructure planning and installation so that it is both environmentally sound and completed in a timely fashion. Rather than providing for a Steering Committee, the Conservation Transfer Alternative should consider agreements with local governments to manage the area.
- **Future Land Development Potential** - The conservation easement would bisect the 12,000-acre parcel north of Moccasin and would impose significant obstacles to the development of the land north of the conservation area, thereby potentially withholding the majority of the land north of Moccasin from development. By dividing the land north of Moccasin in half, with a conservation easement, the development potential of the parcel north of the conservation easement is greatly diminished. Also, the City of Las Vegas is in negotiations with the State to assume the state land south of Moccasin and west of Decatur. The Conservation Transfer Alternative could render the state land undevelopable with no means of maintaining it. Preservation of this land does not appear warranted, as the majority of the land has already been partially disturbed by motorcycles and 4-wheel vehicles.
- **Provisions to Accommodate Necessary Infrastructure** - The conservation easement could greatly impede development by creating an extreme challenge for establishing necessary infrastructure across the conservation easement. It is essential that provisions be made to accommodate major streets and arterial corridors, sewer collection systems, water distribution systems, power, gas, and drainage systems. Infrastructure facilities will be affected by:

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- **Implementing the Mountain Edge Parkway (MEP)** - Surveys show that Las Vegas is in need of additional major transportation corridors. Housing densities have increased by 80 percent over the last 20 years, with high land prices expected to continue. The Conservation Transfer Alternative will limit development of both surface transportation improvements and transit opportunities, which will add to congestion and air pollution. The MEP is currently on the County's Transportation Element and the City of Las Vegas and North Las Vegas Master Plan of Streets and Highways. Significant additional expenses will be incurred for bridge structures to cross the conservation easement. Delays associated with the uncertainty involving BLM's treatment of the conservation transfer area will produce long-term secondary impacts affecting the implementation of the MEP and light rail transit system associated with it. The Regional Transportation Commission (RTC) has expressed a desire for light rail transit along the MEP corridor. This would meet the goals of environmental groups presently delaying the widening of US95. Timely planned related land use development opportunities dependent on auto travel, infrastructure and transit could be delayed and lost opportunities will be experienced. A figure showing existing City of Las Vegas plans for road development in the area is attached as Exhibit B.
- **Arterial Roadways** - Traffic circulation will be restricted within the 12,000-acre area north of Moccasin as a result of the conservation easement.
- **Sewer Collection System** - More expensive sewer collection infrastructure systems will be required since a gravity collection system might not be permissible along the existing wash within the conservation easement. Pump systems would be required with increased maintenance costs. A dual parallel system would probably be needed on both sides of the conservation easement. A gravity sewer collection system should be allowed along the wash.
- **Drainage Facilities** - The DEIS proposes a conservation area that encompasses the entire braided channel area for

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the Upper Las Vegas Wash North of Moccasin. Braided channels and alluvial fans are common place in the Las Vegas Valley and do not constitute a need for a conservation area. The City has worked with the Corp of Engineers to develop in washes and braided channels. However, it should be noted that it is not the intent of the City of Las Vegas to place a concrete channel along the wash that bisects the conservation area north of Moccasin. It should be noted that it was the City of Las Vegas that proposed a 1,000-foot wide natural channel which was incorporated into the Clark County Regional Flood Control District's Master Plan Update. The City is desirous of protecting the natural channel and contracted with VTN Engineers to ensure this is accomplished. The Draft Study is entitled Upper Las Vegas Wash Facility Study dated July 2004. This study proposes to reduce the peak flows that would otherwise wash out paleontological resources. The proposed improvements include:

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- **Proposed Detention Basin** - The Upper Las Vegas Wash Facility Study proposes a detention basin at the upper reaches of the Northern Las Vegas Wash (see attached Exhibit C). This detention basin will be located at the very north end of the conservation area and is needed to reduce the peak flow from a high rate of about 15,000 cfs to a manageable rate of 5,000 cfs. Without this detention basin the paleo-resources will continue to be subjected to erosive velocities in the wash. The Clark County Flood Control District Master Plan (2002) proposed a 1,000-foot wide natural wash be preserved to contain flows. It is understood that the majority of the paleo-resource locations were located within the existing wash, and it is clear from Exhibit C that the proposed 1,000-foot wide natural wash is within the Conservation Transfer Alternative boundary. Therefore, preservation of the 1000-foot natural wash would encompass the majority of the paleontological resources and accomplish the desired action. The VTN Study establishes that the future 5,000 cfs reduced flow out of the detention basin will be contained within an approximate 600-foot wide channel, well within the 1,000-foot proposed width.

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The 1,000-foot wide existing natural channel proposed by the CCRFCD Master Plan Update (MPU) 2002, and further defined by the VIN study, could be used to preserve the paleo-resources within that corridor. Necessary stormwater collection facilities from the adjacent roadway network into the existing wash would also need to be allowed for.

- As a final note, the ROW for the existing Las Vegas Wash ranges generally from 150-foot to 200-feet in width. Therefore, this facility would be 5 to 6 times the width of the existing Las Vegas Wash ROW downstream. Therefore, this should provide adequate width for the development and preservation of the paleo-resources, since the majority of these resources were identified within the wash. Construction of the proposed detention basin must be allowed at the north end of the wash.

**Previous Environmental Studies**

**The Nevada BLM Statewide Wilderness Report dated October 1991, Volume V** – This report was previously prepared by the BLM and recommended this land, which includes the 5,000-acre conservation easement, be released. The Wilderness Study Area (WSA) report recommended the disposal of the entire 12,145 acres of land. The report reads:

**WSA, Page V-189** – “The report recommendation for the Wilderness Study Area (WSA) was to release all 12,145 acres for uses other than wilderness. ...Although the recommendation is not the All Wilderness Alternative, the recommendation for this WSA would be implemented in a manner, which would utilize all practical means to avoid or minimize environmental impacts. ...The quality of the wilderness values and the reduction of conflicts with utility and rail line development were the key considerations in the recommendation. While the

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WSA contained wilderness values necessary for study, they are not considered to be of a quality to merit the area's inclusion in the National Wilderness Preservation system."

In response, since the study for the WSA recommended the release of all 12,145 acres, and the quality of wilderness values were low for wilderness use, the land should be sold and developed at its highest and best use in a manner to minimize environmental impacts.

WSA, Page V-189 - "A wash runs through the southern part of the study area. There are no major geologic formations in the unit and vegetation consists of low desert shrubs and grasses."

In response, since the WSA did not identify any major geologic formations in the original Quail Springs Wilderness Study, which encompassed the conservation easement area, no new major formations should be identified now to preclude the sale of the land.

Additional Comments

14

- **Maintenance Costs** - In time, the conservation transfer area will be surrounded by development. Maintenance costs of this acreage could be significant. The Conservation Transfer Alternative appears to assume that the costs of maintenance will be born by local governments or private parties. This assumption is unreasonable, and should not be included in the Final EIS without a clear identification of a funding source. The consideration for a preferred alternative to include economic factors leads to the conclusion that the Conservation Transfer Area Alternative does not meet this requirement until a viable funding source for the successful implementation, operation and maintenance of the CTA can be reasonably identified and agreed to by the local units of government targeted to receive ownership of this area. This is particularly true if the property is to be excluded from development and thus not eligible for generation of public revenues commonly afforded local units of government.

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- 14 Funding of actions undertaken to manage land and resources transferred from BLM management could not be provided by BLM, unless a specific authorization of funding is approved by Congress. The distribution of the proceeds from the land sales is specified by SNPLMA, but may be an avenue for funding. The types of expenditures and the process for nominating and funding projects are described on the SNPLMA web site at:  
<http://www.nv.blm.gov/snplma/projectsdefault.asp>

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- **Mitigation Measures** – All paleo issues identified in the Draft EIS would best be resolved with mitigation measures and the choice of the Proposed Action, rather than the Conservation Transfer Alternative. By working cooperatively with the City of Las Vegas, with its resources and land use planning authority, BLM could best accomplish the protection of the resources within the proposed conservation area. BLM itself may not have the resources necessary to maintain and protect the proposed conservation area.

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15 Comment noted.

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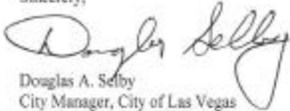
16

- In summary, the City does not support the Conservation Transfer Alternative as the preferred alternative due to the many concerns expressed above.

SECTION 2.5 – NO ACTION

The City agrees that the No Action Alternative should be rejected.

Sincerely,



Douglas A. Selby  
City Manager, City of Las Vegas

DAS:pl

Enclosures  
Exhibit A – Northwest Open Space Plan  
Exhibit B – Northwest Consensus Map  
Exhibit C – Resource Map

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16 Comment noted.

