

HOWARD B. KECK, JR.

IBLA 92-289

Decided August 26, 1992

Appeal from a decision of the State Director, California, Bureau of Land Management, dismissing protest of proposed land exchange and ordering exchange. CA-27767.

Affirmed.

~~Federal Land Policy and Management Act of 1976: Exchanges--National Environmental Policy Act of 1969: Environmental Statements~~

An environmental assessment of a proposal to exchange public for private land is sufficiently detailed where it considers, generally, the environmental impact of likely development where no plans for development have yet been proposed and such plans, if and when formulated, will be subject to State environmental review.

2. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Exchanges--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

Where review of the reasonably foreseeable impacts of a proposed exchange of public for private land, including likely development of the land, failed to disclose a potentially significant impact and there was no evidence to the contrary an environmental impact statement was not required to be prepared.

3. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Exchanges--National Environmental Policy Act of 1969: Environmental Statements

In conducting an environmental review of a proposal to exchange public for private land, BLM need not consider the alternative of conveying other land if it is not desired by the private party involved in the exchange and conveyance of such land would not satisfy the purpose of the exchange.

4. Federal Land Policy and Management Act of 1976: Exchanges--
1969: ~~Nationally~~ Environmental Policy Act of

BLM does not violate sec. 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1988), and its implementing regulations by issuing a notice of realty action for an exchange prior to preparation of an EA if the decision to proceed with the exchange is not made until after consideration of the EA.

5. Federal Land Policy and Management Act of 1976: Exchanges

One challenging a proposed exchange fails to establish error by alleging that a feasibility report was not prepared, if the record establishes that BLM prepared such a report for the exchange, as required by the BLM Manual.

APPEARANCES: Joseph J. Brecher, Esq., Oakland, California, for appellant; Tamar C. Stein, Esq., Los Angeles, California, for intervenor Travertine Corporation; Lynn M. Cox, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Howard B. Keck, Jr., has appealed from a decision of the State Director, California, Bureau of Land Management (BLM), dated February 11, 1992, dismissing his protest of the proposed Santa Rosa Mountains Land Exchange (CA-27767) and ordering the exchange.

A Notice of Realty Action (NORA) was published by BLM in the Federal Register on January 25, 1991 (56 FR 2942). Therein, BLM proposed to convey approximately 638.56 acres of public land in sec. 4, T. 7 S., R. 7 E., San Bernardino Meridian, Riverside County, California, to The Nature Conservancy (TNC). The NORA stated that, of the 638.56 acres of land which would be conveyed by BLM, approximately 160 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of sec. 4 would be reconveyed to BLM. Consequently, a total of about 478.56 acres of public land would end up in private ownership. In exchange, approximately 3,207.24 acres of private land in secs. 5, 21, 27, and 29, T. 5 S., R. 4 E., and sec. 33, T. 5 S., R. 5 E., San Bernardino Meridian, Riverside County, California, would be conveyed to BLM. The exchange was proposed pursuant to section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1716 (1988).

The selected public land is an isolated parcel situated on the west side of the Coachella Valley at the base of the Santa Rosa Mountains. The offered private land consists of inholdings within the Santa Rosa Mountains National Scenic Area (NSA). BLM concluded that acquisition of this land

would consolidate public landholdings in the NSA, promote better management, and protect important recreational, cultural, aesthetic, and wildlife resources found therein.

On February 25, 1991, Keck protested the land exchange proposal, contending that the decision to go forward with the exchange violated requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1988), and its implementing regulations. He argued that the Environmental Assessment (EA) then being prepared to address the environmental impact of the exchange was inadequate and that an Environmental Impact Statement (EIS) should be prepared.

Thereafter, BLM concluded analysis of the environmental impact of the proposed exchange and a no-action alternative in accordance with section 102(2)(C) of NEPA and completed a Final EA in January 1992. On January 27, 1992, the Area Manager, Palm Springs-South Coast Resource Area, California, BLM, signed a "Decision Record and Rationale" (Decision Record) in which he decided to proceed with the exchange after reviewing the EA. He also concluded that an EIS was not required since the exchange would have no significant environmental impact. In the subsequent February 1992 decision, the State Director dismissed Keck's protest, addressing each of his arguments. This appeal followed.

Appellant does not object to BLM's decision to acquire about 3,207.24 acres of private land for inclusion in the Santa Rosa Mountains NSA. Rather, he objects to the decision to convey the public land to TNC. He is concerned that, once conveyed, the land will in turn pass to intervenor Travertine Corporation (Travertine) through its agent George P. Berkey, which will facilitate development of the land into a resort community. Appellant fears that such development will result in uncontrolled flooding which will breach the dike separating his adjacent 300 acres of land currently devoted to the raising of commercial table grapes, endangering his operations.

It is admitted by both BLM and Travertine that the public land to be conveyed to TNC would ultimately pass to Travertine, in exchange for its private land conveyed through TNC to BLM. See BLM Answer at 3 n.2; Travertine Answer at 3. Berkey, Travertine's agent, states that the company, which owns approximately 400 acres adjacent to the public land, has an option to purchase that land from TNC. See Declaration, dated May 13, 1992, at 1. Berkey also states that all of that land (both public and private) is designated by local plans for development as a resort community and that Travertine intends to seek approval of a plan of development, but that it "has not yet formulated [any such] plan[]." Id. at 2.

According to BLM, the public land to be conveyed is within the area governed by the Eastern Coachella Valley Community Plan (ECVCP). As such, the flat portions of the land are designated "Planned Residential Reserve," which permits the development of large-scale, self-contained resort communities, containing a mixture of residential, support commercial, open space and recreational land uses. See EA at 12; Attachment to Letter to Berkey from Patricia A. Larson, County Supervisor, dated Apr. 29, 1991,

at 1. However, prior to any development, the ECVCP requires preparation of a "Specific Plan" and an "Environmental Impact Report [EIR]" under State law. See EA at 12; Attachment to Letter to Berkey from Larson, dated Apr. 29, 1991, at 2. The steeper portions of the land are designated "Mountainous Areas," thus limiting land use. See id.

The instant case poses the question whether BLM was required by section 102(2)(C) of NEPA to consider the environmental impact of potential development of the public land to be conveyed by BLM in the proposed exchange when the environmental consequences of the exchange were analyzed and, if so, whether that impact might be significant, so as to require preparation of an EIS.

[1] Where private development of public land is not the intended or likely consequence of a conveyance of that land out of Federal ownership, it is safe to say that BLM generally need not consider such development in conjunction with analyzing the environmental impact of a proposed exchange. However, the situation is different where private development is intended or likely to be facilitated by an exchange. See Sabine River Authority v. U.S. Department of Interior, 951 F.2d 669, 680 (5th Cir. 1992). As appellant correctly points out, BLM must, when considering the impact of a proposed exchange, assess the impact of private development enabled by the exchange if the exchange will lead to such development or at least make development likely. This is the lesson of National Forest Preservation Group [NFPG] v. Butz, 485 F.2d 408, 411-12 (9th Cir. 1973), and subsequent cases.

In NFPG, the public land to be conveyed was to be used "in a proposed recreational development." Id. at 410. In these circumstances, the court held that the Forest Service was required to prepare an EIS where, although the exchange itself would not significantly affect the environment, the private parties involved in the exchange "plan * * * action [which would do so]." Id. at 411. Therefore, the intended development by the recipients of the public land triggered the requirement to prepare an EIS, which must then necessarily address the impact of such development.

Likewise, in the present case, BLM was required to consider the impact of development of the selected public land since such development would be enabled by the exchange. It is not enough to say that the need for BLM analysis of such an impact is eliminated by the fact that any development of the public land (following conveyance to TNC and ultimately to Travertine) requires the prior preparation of an EIR under state environmental law. Where, at the time it was deciding whether to go ahead with the exchange, BLM was aware that development was likely to occur following the exchange, it was required to assess not only the environmental impact of the exchange, but also the impact of any development that might result from the exchange. See Lockhart v. Kenops, 927 F.2d 1028, 1033 (8th Cir.), cert. denied, 112 S.Ct. 186 (1991); Conservation Law Foundation of New England, Inc. (CLF) v. General Services Administration (GSA), 707 F.2d 626, 633 (1st Cir. 1983); NFPG v. Butz, supra at 412. BLM cannot simply defer to the State since it must first decide whether to proceed with the exchange and thus set the stage for later development.

Nevertheless, having concluded that BLM is required to consider the environmental impact of development facilitated by a proposed exchange, that finding still leaves the question of the proper scope of such review. Absent formulation of a precise plan for the development of public land, it is virtually impossible for BLM, at the time it is deciding whether to proceed with a proposed exchange, to assess the specific environmental impact of development. It cannot realistically engage in a reasoned analysis of the likely impact of such development. That is the case here. Nor is there any evidence that Travertine had made any decisions, either tentative or final, regarding development so that it could have informed BLM of the specific nature and scope of development. Berkey states in his May 1992 declaration, at page 2, that "Travertine has not yet formulated plans for development." Appellant has provided no evidence to the contrary.

At best, BLM knew that development of a resort on the public land would likely take place following conveyance of the land. It took that fact into account in the EA, stating, at page 15, that, "[i]n evaluating the potential consequences of the exchange of the selected public land, it is assumed that the land would subsequently be developed in accordance with the * * * [ECVCP] designations." Thereafter, BLM generally considered the direct impact of development on biological, cultural, geological, recreational, air, and water resources. See EA at 15-18. So far as concerns the potential consequences of indirect effects spawned by actual development that would result from an increased human presence in various forms on the public land, BLM stated:

These and other environmental issues would be subject to review by Riverside County under the authority of the California Environmental Quality Act (CEQA) [Cal. Pub. Res. Code §§ 21000-21151 (1992)] at such time as a development proposal is put forward. Development of the selected public land would require the processing of a Specific Plan * * *. An EIR would also be required.

(EA at 18). BLM was simply not in any position to go any further than that. Nor, we conclude, was it required to do so.

The court held in NFPG that a Federal agency was required to consider the impact of proposed development. See also Lockhart v. Kenops, supra at 1031, 1033 (planned residential development). It further stated that an agency was not excused from compliance with NEPA "by [its] ignorance * * * of the plans the private party may have for the land he will receive," but must "receive assurances of the plans * * * prior to the exchange." 485 F.2d at 412. In the present case, there is no "proposed * * * development" by Travertine or any other private party. Id. at 410. Nor are there any plans for such development. Appellant has provided no evidence to the contrary. Thus, the present situation is not analogous to that in NFPG.

Further, in these circumstances, BLM is not required by NFPG or any other case we are aware of to require Travertine to prepare development plans so that BLM may consider them in the course of its environmental

review of the exchange proposal. Indeed, requiring Travertine to do so now would very likely be a useless exercise where Travertine is apparently not yet in a position to formulate a plan for development and any plan prepared would at best constitute a guess regarding development. We will not require such a speculative exercise. This accords with the conclusion of the court in CLF v. GSA, *supra* at 636, which held that GSA, in deciding whether to sell surplus Federal land, need not wait to analyze the impact of the specific development plans of the high bidder at the sale since it "has no power to assure that * * * [such] plans are ever implemented." See also Lockhart v. Kenops, *supra* at 1035 (Forest Service need not consider "possible impact of use by hypothetical subsequent purchasers" of Federal land).

It cannot be said in this case, however, that development is remote and highly speculative and therefore not properly the subject of environmental review. See Trout Unlimited v. Morton, 509 F.2d 1276, 1283-84 (9th Cir. 1974). Instead, it may be said to be a reasonably foreseeable consequence of the proposed exchange and therefore must, to that extent, be considered by BLM. In such circumstances, in Sierra Club v. Marsh, 769 F.2d 868, 877-80 (1st Cir. 1985), the court concluded that certain Federal agencies were required to consider the impact of industrial development that would be facilitated by construction of a cargo port and causeway. The court was persuaded that such consideration was required where, although the precise nature of the development was "uncertain," the evidence established that "plans and a proposal for the industrial park exist" and thus the impact of development was likely and sufficiently definite to permit analysis. *Id.* at 872, 880; see *id.* at 878-79.

Similarly, in City of Davis v. Coleman, 521 F.2d 661, 677 (9th Cir. 1975), the court concluded that the Federal Highway Administration (FHWA) was required to consider the impact of industrial development that would be facilitated by a proposed highway interchange. The court so held even though such development "comprehends a range of possibilities," the ultimate outcome of which "will depend on the plans of private parties and local government." *Id.* at 676. However, these possibilities were narrowed by the fact that such development was already undergoing planning. See *id.* at 667-68. Thus, the court stated that an EIS should "evaluate the possibilities in light of current and contemplated plans and * * * produce an informed estimate of the environmental consequences." *Id.* at 676 (emphasis added). In these circumstances, it concluded that FHWA was required to make a reasonable effort to forecast the nature and extent of development and to analyze the impact thereof. See *id.*

And in Rhode Island Committee on Energy v. GSA, 397 F. Supp. 41, 60-61 (D. R.I. 1975), the court held that GSA was required to consider the impact of construction of a proposed nuclear power plant in the course of deciding whether to commit the United States to a conditional sale of surplus Federal land for that purpose. The court so held partly because GSA had a responsibility to assess such impact where it could reasonably forecast the impact "on the basis of projected dimensions [of the plant], asserted suitability [of the site], and the knowledge derived from experience with other nuclear power plants and their effects on the environment." *Id.* at 61. The

dimensions of the plant were evident as a result of preliminary planning. See id. at 46 n.8.

Here, however, BLM cannot reasonably forecast the impact of any particular development of the public land since such development is dependent on a multitude of factors (many of which cannot be predicted), particularly the financial fortunes and business judgments of Travertine. No plans have been drawn up. Nor is there any evidence that any are being formulated. It is not sufficient to say, as appellant does, that BLM need only look to other developments in the area, since the development choices are infinite. See SOR at 13-14.

In these circumstances, it is clear that the intended development of the selected public land is not sufficiently definite to permit a full review of its likely environmental impact. See Park County Resource Council, Inc. v. U.S. Department of Agriculture, 817 F.2d 609, 624 (10th Cir. 1987). Therefore, BLM need not concern itself with the particular nature and scope of development. As the court indicated in Sierra Club v. Marsh, supra at 879, an agency will not be required to analyze the "precise details" of potential development where it would be "pointless" to do so, since the development plans are not detailed enough. Rather, it may content itself with analyzing the "type of development likely to occur." Id. (emphasis in original); see also CLF v. GSA, supra at 634 ("[b]ecause the [environmental analysis] will necessarily be in terms of estimates of probabilities, no exhaustive detail is required"). That is what BLM did here.

Accordingly, we conclude that to require BLM to assess the environmental impacts of development, beyond those already addressed in the EA, would constitute an exercise in "crystal ball inquiry," which is not required by NEPA. Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973). We will not require BLM to undertake such an endeavor, especially where there is no evidence that the environmental impacts of actual development cannot adequately be analyzed by the appropriate county authorities at the time a proposal for such development is advanced by Travertine. As the court observed in CLF v. GSA, supra at 636: "Any [] use of the * * * lands * * * will be fully subject to the substantive constraints of local zoning laws and local and federal environmental standards."

[2] Appellant also contends that BLM should have prepared an EIS before approving the proposed exchange. An EIS is required in every case where a Federal agency proposes to engage in a major Federal action that would "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1988). Where BLM, after reviewing the environmental impacts of a proposed action, concludes that any impact would not be significant and therefore decides not to prepare an EIS, we will affirm that decision provided it has taken a hard look at the situation, identified relevant areas of environmental concern, and made a convincing case either that an impact would be insignificant or, if significant, would be reduced to a minimum. See Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991), and cases cited therein.

Appellant argues that because an EIR would be required by State law to assess the impact of development of the public land (as acknowledged in the State Director's February 1992 decision) means that an EIS should have been prepared by BLM. See SOR at 7-8. The record indicates that an EIR is required by the ECVCP in all cases of proposed development in an area (such as the public land) designated "Planned Residential Reserve." See EA at 12. This indicates that development is, as a rule, considered by the county to potentially impact the environment in a significant manner, thus requiring preparation of an EIR under State law. See Friends of Mammoth v. Board of Supervisors of Mono County, 502 P.2d 1049, 1054 (Cal. 1972). Appellant reasons this in turn suggests that BLM should also prepare a comparable document (an EIS), given the similarity between the Federal and State environmental laws. See id. at 1057-58.

This conclusion, however, begs the question; BLM is not required to prepare an EIS simply because the county would prepare an EIR with respect to possible future development. Rather, BLM must independently determine whether the proposed exchange would be likely to significantly impact the environment. As explained above, BLM properly limited environmental review to the reasonably foreseeable impacts of the exchange (including those caused by the type of development likely to occur). It was concluded that none of these impacts is potentially significant and that appellant has not demonstrated otherwise. In any case, BLM is not required to prepare an EIS simply because State law might (or even would) require an EIR as to these other, as yet unknown, impacts. Nothing in NFPG v. Butz, cited by appellant, persuades us to conclude that an EIS is required here, because in NFPG the private parties involved in the exchange were already "plan[ning]," at the time of the exchange, action that would have a significant impact. 485 F.2d at 411. That is not the case here.

Appellant also contends that, even if an EIS is deemed not to be required, the EA was inadequate in a number of respects. Principally, he argues that BLM failed to consider the "secondary" effects of the exchange (SOR at 11). By this, he refers to those impacts to the larger human environment that will purportedly be caused by the proposed action. He cites to a number of cases, especially those concerned with changes in highway systems which would likely lead to altered growth and land-use development in affected communities and other larger social and economic changes. In these cases, the Federal agency involved was required to consider potentially larger indirect impacts. See Coalition for Canyon Preservation v. Bowers, 632 F.2d 774, 783 (9th Cir. 1980); City of Davis v. Coleman, *supra* at 674-76. In those cases, however, the agency was only required to assess the secondary effects commensurate with the degree to which they could reasonably be foreseen. See 40 CFR 1508.8(b); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985). The exact development of the public land in the present case is not reasonably foreseeable. This fact makes any analysis now of the secondary effects stemming therefrom difficult, if not impossible. Therefore, we hold that it was not improper for BLM, as it did, to decline to analyze these effects. See EA at 18.

Appellant is principally concerned that development will cause uncontrolled flooding that will endanger his adjacent land. See SOR at 5.

He asserts that water that flows from the canyons in the nearby mountains already runs across the public land and is prevented from reaching his and other land by dikes built by the Bureau of Reclamation. He fears that development will intensify the speed and quantity of the runoff reaching the dikes by the introduction of paved and other impervious surfaces on the public land. The result, he states, "could well be failure of the dikes and inundation of the adjacent lands," including his own (SOR at 5). Understandably, appellant presents no evidence to support his concern regarding the effect of development since no development plans have been released, let alone (according to Travertine) prepared. Thus, appellant, as well as BLM, is unable to address in any realistic way the possibility that development will result in the flooding of his or other land. The concerns expressed may properly be considered when and if development is proposed.

As BLM observes, a specific plan must first be drawn up and subjected to environmental review. See Letter to Berkey from Larson, dated Apr. 29, 1991. Further, that plan "must include an evaluation of the impact, if any, on agricultural lands located * * * in proximity to the area [to be developed]." Attachment to Letter to Berkey from Larson, dated Apr. 29, 1991, at 2. There is no reason to now believe that the proper authorities will not, at that time, take into account the risk that flood waters will breach the dike separating the public land from appellant's land. Therefore, we cannot say that the EA was inadequate because it did not take into account the impact of increased water runoff as a result of unknown development. 1/ See Lockhart v. Kenops, supra at 1033 (impact of sewage runoff).

Appellant has also expressed fear that development will destroy already-identified archaeological sites, including two that are considered eligible for inclusion in the National Register of Historic Places, and contends that BLM should act to protect these cultural resources. See SOR at 3. The record indicates that BLM, in consultation with the State Office of Historic Preservation and the Advisory Council on Historic Preservation, has developed an "Archaeological Treatment Plan" which will permit the extraction of information contained in the two sites. See EA at 9. BLM concluded that implementation of this plan will "mitigate" the impact of the exchange on these sites. Id. The Area Manager adopted implementation of this plan as a condition of the exchange in his January 1992 Decision Record. Appellant has not established that the cultural resources evident in the two sites will not be fully preserved thereby.

1/ Appellant also argues that BLM failed to abide by 43 CFR 1725.2(b) by failing to consider inclusion in the patent of the public land of a suitable condition or restriction on the use of the land because it "has been evaluated as having a flood hazard potential which may cause economic loss to improvements or may endanger human life." See SOR at 5. There is, however, no evidence in the record that the subject lands pose a threat to improvements or human life due to the potential for flooding.

The EA has not been shown to be deficient in this respect. See EA at 9, 16, 20. It is clear that appellant objects to BLM's decision to proceed even in the face of the possible destruction of such resources. See Response to Answers at 3 n.2. However, the fact that BLM would go forward with the exchange in these circumstances, while appellant would choose to protect these resources, does not establish any error in BLM's decision. See Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990).

Appellant contends that the EA was deficient because BLM failed to consider the potential cumulative impacts that might result from construction of "more resort/residential communities" in the area (SOR at 14). BLM is surely required to consider the cumulative impact of a proposed action in conjunction with past, present, and reasonably foreseeable future actions. See 40 CFR 1508.7 and 1508.27(b); Fritiofson v. Alexander, 772 F.2d 1225, 1243, 1245 (5th Cir. 1985); G. Jon & Katherine M. Roush, 112 IBLA 293, 305 (1990). However, there is no evidence that any other communities of any kind are likely to be developed in the foreseeable future in any proximity to the public land involved here so that there is any likelihood of a cumulative impact on the environment. Thus, we find no error in BLM's failure to consider the potential cumulative impacts of the development of this and other land. See Headwaters, Inc. v. BLM, Medford District, 914 F.2d 1174, 1181-82 (9th Cir. 1990); G. Jon & Katherine M. Roush, *supra* at 306.

[3] Appellant also contends that the EA was deficient because it did not consider the full range of alternatives including conveyance of public land other than that identified in the NORA. 2/

NEPA requires that, in addition to a preferred course of action, a Federal agency consider alternatives thereto. See 40 CFR 1501.2(c); Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988), *cert. denied*, 489 U.S. 1066 (1989); Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992). As a result, the agency is required to consider alternatives that are feasible and reasonably related to the purpose of the proposed action; in other words, alternatives that can be accomplished and also fulfill the purpose sought to be achieved by the action. See 40 CFR 1502.14(a); Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 551 (1978); Trout Unlimited v. Morton, *supra* at 1286. The purpose of such consideration is to provide the agency with a choice of other relevant courses of action having a lesser or no impact.

The record in the instant case indicates that BLM did consider the conveyance of other public land in exchange for the private land offered for conveyance to BLM. However, BLM found that, with one exception, such

2/ Appellant also argues that BLM failed to consider the alternative of purchasing the offered private land and not conveying the public land in exchange for that land. See SOR at 10. That alternative was effectively considered in the context of the no-action alternative, under which the public land would remain in Federal ownership. See EA at 5, 19.

land "did not meet the objectives of the private parties involved in the proposed exchange" (EA at 5). Therefore, BLM properly declined to consider such land for conveyance because that alternative would not have fulfilled the primary purpose of the exchange, which was to consolidate public landholdings within the Santa Rosa Mountains NSA.

The lone exception considered by BLM was conveyance of public land situated in sec. 10, T. 7 S., R. 7 E., San Bernardino Meridian, Riverside County, California. BLM stated in the EA that it considered this land for conveyance when it was still evaluating the proposed exchange. See EA at 5. This is borne out by the record. See Letter to Torres-Martinez Band of Cahuilla Indians from Acting Area Manager, dated Sept. 26, 1990. However, BLM stated that it was concluded that this land was not suitable for exchange since it contains certain "significant cultural resources," which were especially significant because of their proximity to the Torres-Martinez Indian Reservation (EA at 5). Therefore, it found that the alternative of conveying sec. 10 would not be further considered in the EA.

We cannot fault BLM's decision not to further consider the alternative of conveying sec. 10, instead of sec. 4, in the EA. Since conveying sec. 10 would harm cultural resources to a greater (or at least similar) extent as conveying sec. 4, BLM was not required to analyze this alternative. See Sierra Club v. Morton, 510 F.2d 813, 825 (5th Cir. 1975).

Appellant does not contend that BLM failed to consider this alternative at all, but objects that BLM failed to properly justify the decision to convey sec. 4, rather than sec. 10. He contends that sec. 4 contains cultural resources equally as worthy of protection as those in sec. 10. See SOR at 9. This objection however goes to BLM's ultimate decision about what land to convey, rather than to some deficiency in the EA. That appellant would have preferred selection of a particular alternative does not establish error in BLM's consideration of the environmental impact of the exchange and alternatives thereto. See Hoosier Environmental Council, 109 IBLA 160, 173-74 (1989).

[4] It is argued by appellant that a perceived failure to prepare an EA before issuance of the NORA violated the requirements of NEPA and its implementing regulations since it committed BLM to proceeding with the exchange before giving consideration to the environmental consequences of the exchange and before the public had an opportunity to comment on the exchange. See SOR at 15-16. We must reject this argument. It is true that the NORA was issued on January 13, 1991, before preparation of the draft EA in June 1991 or the final EA in January 1992. The NORA issued in this case, however, did not commit BLM to proceed with any exchange. Rather, it gave notice that the public lands described therein were "being considered for disposal by exchange." 56 FR 2942 (Jan. 25, 1991). This statement indicated that no decision had yet been made regarding disposal.

Further, the NORA, which was issued by the District Manager, California Desert District, California, BLM, provided for a 45-day public

comment period, following which adverse comments "[would] be evaluated by the State Director who may vacate or modify this realty action and issue a final determination." Id. (emphasis added). By taking this approach the State Director retained authority to make a final exchange decision following the public comment period, during which numerous public comments were received from interested parties, including landowners adjacent to the public land to be conveyed. The State Director then issued a number of final decisions, including the one appealed herein, in which he decided to proceed with the exchange.

BLM states that the final decision regarding exchange was not intended to be made, in the absence of any adverse public comments, until after preparation of the EA and issuance of the subsequent Decision Record. See BLM Answer at 23. We accept that this was BLM's intent since the NORA elsewhere stated that the exchange was still "being considered" (56 FR 2942 (Jan. 25, 1991)) and subsequent events confirm that the final decision was not actually made until preparation of the EA and issuance of the Decision Record. See also Letter to Joseph J. Brecher from Area Manager, dated Apr. 17, 1991.

Accordingly, it is concluded that BLM was not committed to the exchange until after the environmental consequences of the proposal were considered and the public was allowed an opportunity to comment. Accordingly, we find that no violation of section 102(2)(C) of NEPA and the regulations implementing the statute occurred. See NFPG v. Butz, supra at 412; Natural Resources Defense Council, Inc. v. Hodel, 624 F. Supp. 1045, 1049-50 (D. Nev. 1985), aff'd, 819 F.2d 927 (9th Cir. 1987).

[5] Finally, appellant contends that the BLM Manual was violated by failure to prepare a "feasibility report" regarding the proposed exchange, which report was to address the feasibility of proceeding with the exchange considering relevant land-use plans, potential conflicts, public benefits, and other issues. See SOR at 4. BLM's response is that such a report was prepared. See Answer at 22. The record establishes as a fact that the report was prepared in conformity to the Manual.

Manual provisions (like other internal policy directives), while not binding on the Board since they do not have the force and effect of law, are binding on BLM. See Atlantic Richfield Co., 112 IBLA 115, 127 (1989); Okanogan County Public Utility District No. 1, Washington, 22 IBLA 342, 353 n.9 (1975). To that extent, we conclude that BLM fully complied with the requirements of the Manual by issuing the "Santa Rosa Mountains Acquisition Plan and Feasibility Study," and an April 1991 amendment thereto (copies of which are part of the record provided by BLM). The plan was amended to specifically deal with the exchange set forth in the NORA. See Memorandum from the District Manager to the State Director, dated Apr. 29, 1991.

Our review of the record of this exchange proposal therefore leads us to conclude that appellant has not established any error in the State Director's February 1992 decision to dismiss appellant's protest to the proposed Santa Rosa Mountains Land Exchange and to proceed with the exchange.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge

