

**RECIRCULATED ENVIRONMENTAL IMPACT  
REPORT (REIR) FOR PROJECT:**

**(Second/Revised Recirculation)**

**WHITNEY PORTAL PRESERVE**

**TENTATIVE TRACT MAP #239/WALTERS**

**SCH #2004071063**

INYO COUNTY PLANNING DEPARTMENT  
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**RECIRCULATED**  
**FINAL ENVIRONMENTAL IMPACT REPORT**  
**FOR THE**  
**WHITNEY PORTAL PRESERVE**  
**TENTATIVE TRACT MAP #239/WALTERS**  
**SCH #2004071063**

**1.0 INTRODUCTION**

This document provides a revised portion of the Final Environmental Impact Report (FEIR) for the Whitney Portal Subdivision (Tentative Parcel Map (TPM) #238/Walters), which was certified and adopted by the Inyo County Board of Supervisors on July 12, 2005. The FEIR identified a significant visual impact from the project and addressed land trades as an alternative to the project. The Board of Supervisors determined that the land trade alternative was infeasible and did not meet project objectives.

The FEIR was challenged in court and, on December 17, 2007, the Fourth District Court of Appeals directed that “a legally adequate EIR with respect to the analysis of the feasibility of the alternative of a land exchange with the [Bureau of Land Management (BLM)]” should be prepared, circulated, and certified before any further action is taken on the project. (*Save Round Valley Alliance v. County of Inyo* (4th Dist. 2007) 2007 WL 4376023.) The Court set aside Inyo County’s certification of the FEIR. Those portions of the FEIR that did not relate to the evaluation of a land trade with BLM were upheld (see Appendix A).

As a result of this ruling, the County is revising a portion of the FEIR to add further analysis regarding the feasibility of trading the project parcel for other parcels owned by BLM. Because this revision is limited to a small and discrete portion of the EIR, only this revised portion of the EIR (REIR) will be circulated for public review and comment, in accordance with 14 CFR 15088.5(c). The REIR, as well as the original EIR, is available for review at the office of the Inyo County Planning Department, 168 N. Edwards Street, Independence, CA 93526, and at all Inyo County libraries. In addition, text of the documents are available on the Inyo County Planning website, at [www.inyoplanning.org](http://www.inyoplanning.org), under “Current Projects” (please note that the website contains only text of the documents, with none of the non-electronic Appendix materials such as maps, photos, letters, etc.). In accordance with the CEQA Guideline provisions on recirculation of an EIR, the County of Inyo requests that reviewers limit their comments to this revised portion of the EIR. The County of Inyo will respond only to comments that relate to this revision (14 CFR 15088.5(f)(2)).

## **1.1 BACKGROUND**

The FEIR, in Chapter 3.1, examined the potential aesthetic impacts of the project. Overall, the FEIR concluded there was one environmental impact from the project that remained significant after mitigation: a scenic impact of the project on the surrounding landscape. The FEIR, in Chapter 5.2, concluded that:

“All potential environmental impacts of the proposed project, both significant or not, have been discussed in Chapter Three of this EIR, along with any appropriate mitigation measures. Most of the significant impacts associated with the proposed project can be mitigated to a level that makes them less than significant. The exception is the visual impact of the project on the surrounding landscape. This impact can be mitigated to a great degree through the requirements and restrictions proposed in the CC&Rs for the subdivision, but not to a degree that can be said to make the visual effects of the project less than significant to the surrounding landscape and view sheds. That is, even with implementation of the CC&Rs, the visual impact of the subdivision to the surrounding area, vistas, and view sheds will still be significant.

Thus, the following impact remains significant and unavoidable if the project is approved:

**Impact #3.1/Aesthetics:** The proposed project will have a significant adverse effect on the existing scenic views/vistas of the area. These scenic resources are noteworthy, as they exist within the Mt. Whitney recreation area, an area notable both nationally and internationally for its scenic beauty.”

A land trade with the BLM would seek to avoid this impact by exchanging the project site for an alternate site that would not have significant visual/aesthetic impacts.

The original discussion of the land trade alternative was contained in Chapter 4.3, “Project Alternatives,” of the Draft EIR (DEIR). The DEIR concluded that a land exchange was not feasible because “representatives of BLM judged that the project site land contained no particularly unusual or superior environmental habitat or characteristics which would make it a candidate for a land exchange with that agency.” BLM officials also stated that the project applicant and project site did not, situationally, meet BLM requirements for a land exchange (see Appendix B).

Subsequently, in the FEIR, the land trade discussion was expanded to include two additional letters: a summary statement from the applicant (see Appendix C) and a positional statement from BLM Field Manager Bill Dunkelberger (see Appendix D).

## **1.2 FEASIBILITY CRITERIA**

The purpose of the analysis in this document is to evaluate a land trade with BLM as an alternative to the proposed project and to determine if this alternative is a feasible alternative to the project as proposed.

### **Regulatory Guidance**

Key requirements for analysis of alternatives are provided below, as context to the analysis that follows:

“An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (14 California Code of Regulations § 15126(a).)

““Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Public Resources Code § 21061.1.)

“Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with regionally significant impacts should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives.” (14 California Code of Regulations § 15126.6(f)(1).)

### **Criteria**

In this expanded analysis of the feasibility of a land exchange with the BLM, the County will apply the following screening criteria to potential BLM land trade parcels, based on the regulatory guidance. The criteria vary in their importance, and while the failure to meet one may make an alternative infeasible or objectionable, others by themselves may not be determinative. Inyo County shall apply a rule of reason to the analysis of alternative sites in order to determine whether a proposed parcel would meet the project objectives while substantially lessening the impact on visual resources, and whether specific economic, legal, social, technological, or other considerations make a particular trade infeasible. This analysis focuses on the visual impact of the project because other project impacts will be satisfactorily mitigated. Relative to economic infeasibility, the key question articulated by the courts is whether any reduced economic profitability of the land exchange alternative is “sufficiently severe as to render it impractical to proceed with the project.” (see Appendix A, *Save Round Valley Alliance v. County of Inyo*, page 33).

The County shall apply the following criteria in order to identify BLM parcels that are feasible and reasonable as potential trade parcels:

I. Would the trade substantially lessen the significant effect (impact on visual resources)?

- Is the proposed trade parcel in a sensitive view shed, as that term is defined in the Inyo County General Plan (see Appendix E)?  
Moving development to another parcel within a sensitive view shed may serve only to shift the impact from one population to another and would not lessen significant effects of the project.

II. Would the new parcel obtain most of the project objectives?

The applicant's project objectives and characteristics, as stated in the Draft and Final EIR, include:

- "To develop the property in full compliance with the existing Inyo County General Plan designation for the property."
- "The project site is the Alabama Hills area to the west of the town of Lone Pine, near the base of the Sierras, and adjacent to Whitney Portal Road."
- "An equestrian trail will lead out of the subdivision at the southwest corner and connect to BLM trails on adjacent lands."
- "Homes will be a minimum of 1600 sq.ft. in size, and mobile homes will not be allowed within the subdivision."
- "A small park area for subdivision residents is proposed to be constructed on private property by the developer in a ½-acre area across Whitney Portal Road to the north, and adjacent to Lone Pine Creek." (The park area was later dropped from the project, however we assume the location adjacent to the creek continued in its importance.)

These objectives and characteristics translate into 27 residential units, based on the project site size of 74.15 acres and the General Plan density of 1 dwelling unit per 2.5 acres and a 2.5-acre minimum parcel size, at the base of the Sierra in a location with an advantageous view of the mountains and conveniently located to access the Whitney Portal trailhead and Lone Pine Creek.

In the Final EIR and the County's Resolution certifying the EIR, the County articulated its objectives as follows:

- Allowing for development in accordance with the General Plan and Zoning Ordinance.
- Providing needed housing and economic benefits to the County of Inyo.

In the Final EIR (at Appendix F of the FEIR), the applicant further articulated amenities of the project site that were integral to the project and thus were important factors in his ability to meet the project objectives: proximity to a watercourse, location adjacent to

public lands, and a notable viewshed for the large estate-type parcels. The County acknowledged these amenities and considered them in its evaluation of other alternatives.

Based on the discussion above, the County has formulated the following evaluation questions for purposes of determining whether the new parcel would obtain most of the project objectives.

- Is the proposed parcel in a reasonable proximity (i.e., in the general Lone Pine area) to Mt. Whitney and its surrounding recreation and visual amenities, so as to achieve the same advantages of location as the project site?
- Would the proposed parcel provide an adequate, if not comparable, return on investment, and thus still make the project financially feasible?
- Is the proposed parcel located in a rural residential community so that residential large-lot development, similar to the project site, could be accommodated?
- If not located in the immediate area of the project, would a proposed parcel provide similar views, recreational opportunities and large-lot rural atmosphere as the project site?

III. Is the trade feasible considering economic, legal, environmental, social and technological factors?

- Can the trade be accomplished within a reasonable period of time, taking into account economic, legal, social, and technological factors?
  - Is the BLM willing to trade for the project parcel?
  - How long would it take to consummate the trade?
- Is it within the Developer's reasonable control to bring the trade about?
- Has the BLM identified the proposed parcel as available for trade?
  - Land withdrawn from entry by Congress or Executive order is not eligible for trade.
- Is the proposed parcel of comparable size and value?
- Would the trade make the project impossible because of financial considerations?

IV. Would the proposed trade comply with the County regional planning process?

Development in California is required to comply with a county's general plan. Relevant General Plan goals and policies include:

- The County shall preserve the right of property owners to construct houses on all legally created, residentially-zoned parcels in the County, unless the County determines that such development would be detrimental to public health, safety or welfare. (Policy LU-2.11)
- The County shall require that residential development occur in a logical and orderly manner. This would include encouragement of developing the vacant land or redevelopment within a community and/or the development of vacant land contiguous to a developed community. (Policy LU-2.10)

- The County shall plan to concentrate new growth within and contiguous to existing communities (e.g., Bishop, Big Pine, Independence, Lone Pine) and expand existing infrastructure as needed to serve these areas. As a secondary priority, the County shall plan to accommodate new growth in existing rural residential communities (e.g., Olancho, Charleston View, Mustang Mesa, Starlite Estates) and expand existing infrastructure as needed to serve these areas. (Policy LU-1.2)
- Residential Rural Medium Density (RRM): The designation provides for large-lot single-family housing in rural residential neighborhoods, public and quasi-public uses, and similar and compatible uses. This designation is used around the fringes of urban communities where large parcel sizes are preferred, and for those rural communities that lack complete sewer and water systems. (Policy LU-2.7)
- Preserve and protect resources throughout the County that contribute to a unique visual experience for visitors and quality of life for County residents. (Goal VIS-1)
- The natural qualities of designated scenic routes should be protected. (Policy SH-1.1)
  - Whitney Portal Road is not designated as a scenic highway.
- Create opportunities for the reasonable expansion of communities in a logical and contiguous manner that minimizes environmental impacts, minimizes public infrastructure and service costs, and furthers countywide economic development goals. (Goal LU-1)
  - Would the trade remove developable land from the community?
  - In Inyo County, with 98% of the land owned by government agencies, opportunity for growth is extremely limited in all communities. Shifting developable properties away from one geographic region or community of the county to another has the effect of further limiting growth in the community from which developable property is removed. It is County and General Plan policy to encourage orderly growth in all of its communities.

Other Planning Considerations:

- Does the proposed parcel have water, fire protection, and other services?
- Are the zoning and general plan designations for the proposed parcel consistent with the proposed residential use?

### **1.3 PARCELS EVALUATED FOR POSSIBLE EXCHANGE**

In addition to the BLM parcel identified in the original EIR, this Recirculated EIR (REIR) examines all parcels BLM has identified as actively available for exchange within Inyo County and also, although they are not necessarily available for active exchange, any BLM parcels located adjacent to the main population centers in Inyo County (Lone Pine, Independence, Big Pine, Bishop).

All such parcels can be organized into three categories:

The category evaluated within this REIR for potential exchange with the project site consists of a parcel of approximately 100-acres owned by BLM, which was evaluated in the original EIR for the project.

The second category evaluated for exchange consists of BLM parcels that are actively offered by BLM for land exchange in Inyo County. BLM maintains a website for land exchange information at <http://gis.mono.ca.gov/LandTenure/GIS.asp>. Among the information on the website is a list of all BLM parcels eligible for exchange in Inyo County (See Appendix F).

The third category evaluated for exchange consists of any BLM parcels that, while not necessarily offered by BLM for active exchange, are adjacent to the four main towns in the Owens Valley area (Lone Pine, Independence, Big Pine, Bishop). Such parcels were examined because of their adjacency to existing communities and infrastructure (water, sewer, electrical). These factors are appropriately considered because of Inyo County General Plan policies pertaining to placing new development adjacent to existing development, as noted above on pages 5 & 6 of this document under “Relevant General Plan policies.”

The analysis of the three categories is as follows:

### **1.3.1 CATEGORY ONE: BLM PARCEL ANALYZED IN THE ORIGINAL PROJECT EIR**

This parcel group consists of 100 acres of BLM land and is included in this analysis because it was evaluated in the original EIR for the project and addressed by the court in *SVRA v. County of Inyo*. The parcel is located in the Alabama Hills area west of Lone Pine, and approximately four miles southeast of the project site. The site is located at the intersection of Horseshoe Meadows Road and Lubkin Canyon Road, just southwest of the Alabama Hills community (see map at Appendix G), in Township 16 South, Range 36 East, in Section 18. This 100-acre site is actually not a separately divided parcel, but part of a bloc of BLM land consisting of about 640 acres.

This parcel will be identified as the “Horseshoe Meadows Road” parcel for this analysis. It is located adjacent to Horseshoe Meadows Road, a road west of Lone Pine which runs approximately 16 miles from its beginning at its intersection with Whitney Portal Road, to its terminating point at Horseshoe Meadows, a popular trailhead and camping area within the Sierra. The Horseshoe Meadows Road site is not within or adjacent to the Alabama Hills subdivision, a nearby Inyo County community, but is within visual range, being located approximately one-half mile southwest of the subdivision. The parcel is adjacent to the BLM-designated Alabama Hills Recreation Area, to the north and west. A development in this location would be the only development located between the Alabama Hills community and the Sierra to the west, and the only development located adjacent to Horseshoe Meadows Road.

Of critical importance is the fact that this parcel is not among those parcels that BLM lists as actively available for trade (see website at <http://gis.mono.ca.gov/LandTenure/GIS.asp>, or Appendix F) and is thus not currently eligible for exchange. Rather, the 100-acre site is among that BLM acreage that was “withdrawn” from any potential disposal by the Congressional Act of 1931 (see Appendix H). This Act withdraws such parcels “... for the protection of the watershed

supplying water to the city of Los Angeles and other cities and towns in the State of California, and for other purposes, approved March 4, 1931 [Public Law, No. 864, 71<sup>st</sup> Congress, 3<sup>rd</sup> Session]” (see BLM title maps at Appendix I, BLM color maps at Appendix J, BLM correspondence at Appendix K, and legal descriptions within the 1931 Congressional Act at Appendix H). BLM officials confirm that the 1931 congressional withdrawal was not altered or superseded by the subsequent passage of the 1976 Federal Land Policy Management Act (FLPMA) (see Appendix L).

The landscape around the Horseshoe Meadows Road site (see photos of Horseshoe Meadows site at Appendix M, and map at Appendix G) is similar to that of the project site (see map and photos of the project site at Appendix N), with gently sloping, open sagebrush scrub. There are uninhibited views of the Sierra to the west, where the mountain range rises dramatically from base to crest in an almost vertical sweep.

### **Criteria I: Would the trade substantially lessen the impact on visual resources?**

Locating the project development at the Horseshoe Meadows Road site would eliminate the visual impact around the project site area and Whitney Portal Road, since the development would not be visible from those areas. At higher elevations, such as along Whitney Portal Road or Horseshoe Meadows Road as travelers make their way into the Sierra, there are views of the valley area below, and thus any valley development would become visible to some degree (i.e., the project site, the Horseshoe Meadows Road site, the Alabama Hills subdivision, the town of Lone Pine, etc.). The Horseshoe Meadow Road site is located along Horseshoe Meadows Road, a road – although less popular than Whitney Portal Road – also used by tourists and residents to access the Sierra, and one of only two roads that travel significant miles into the Sierra in the general area west of Lone Pine. The Horseshoe Meadows Road site is located adjacent to a BLM-designated special use area, the Alabama Hills Recreation Area, which is itself a recreation/tourist destination. This recreation area lies west of the Horseshoe Meadows Road, between the road and the Sierra. Development on the Horseshoe Meadows Road site also would be located in the mountain view shed of the existing Alabama Hills community, consisting of approximately 200 persons. While constructing the proposed subdivision on the Horseshoe Meadows Road site would eliminate the visual impact to persons traveling along Whitney Portal Road, it would create a new and significant visual impact to persons traveling along Horseshoe Meadows Road and to the Alabama Hills subdivision community, essentially shifting the visual impact from one area and population, to another.

### **Criteria II: Would the new parcel obtain most of the project objectives?**

The Horseshoe Meadows Road site is near the general area of Whitney Portal, the BLM-designated Alabama Hills Recreation Area, and the town of Lone Pine, although the site is about four miles further away from Whitney Portal than the proposed project site. Horseshoe Meadows Road intersects with Whitney Portal Road about  $\frac{3}{4}$  mile east of the proposed project site location. The site is not located within or adjacent to an existing General Plan-designated community, as is the project site. The site is at a slightly lower

elevation and a slightly greater distance from the base of the Sierra than the project site, but for the most part it has similar unobstructed views of the Sierra as those of the project site, except that Mt. Whitney is obscured from view by Lone Pine Peak. The site would be physically suitable for development similar to the proposed project site, based on its topography, relative nearness to the Whitney Portal area and its similar view of the Sierra (although absent a water feature). Significantly, however, development issues of hydrology, biology and cultural resources have not been explored in detail and are thus unknown at this time. The site is located in a rural area and nearby to the Alabama Hills community, which is designated for residential large-lot development of one-acre and 2.5-acre parcel sizes.

### **Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

#### Legal Issues.

A critical site issue is the fact that the Horseshoe Meadows Road site, and all other BLM acreage in the vicinity of Lone Pine, was withdrawn from disposal by Congress in 1931 (see BLM maps at Appendix I and J). This means that an Act of Congress would be required in order to trade the Horseshoe Meadows Road site for the project site, assuming first that the project site had characteristics which would prompt BLM to advocate for such an exchange. Although the Horseshoe Meadows Road site was the focus of informal talks initiated by the applicant with the BLM, the BLM does not have authority to offer the site for exchange under present circumstances.

Generally, BLM officials estimate that a land exchange “requires two years on average, but time frames may be longer based on the complexity, BLM unanticipated work load, and whether the exchange is controversial” (see Appendix O). In addition, BLM officials note that “the process to amend the RMP (i.e., BLM’s Resource Management Plan, which includes the list of BLM parcels that are currently actively eligible for exchange) and remove the congressional withdrawal may require several additional years to complete” (See Appendix O). In the above quote, the reference to the amendment of the RMP refers to the process whereby BLM would add new, additional acreage to the existing pool of BLM parcels it has listed as actively eligible for exchange – in effect, creating additional eligible exchange acreage. The removal of “the congressional withdrawal” noted in the quote refers to the process by which acreage protected under the Congressional Act of 1931 is then made “unprotected,” or removed from the provisions of the Act. Both of these processes are diagrammed in detail in a December 2007 letter from BLM Field Manager Bill Dunkelberger (See Appendix O). Additionally, BLM officials confirm that the 1931 congressional withdrawal was not altered, or superseded, by the passage of the 1976 Federal Land Policy & Management Act (FLPMA) (see Appendix L).

The process of reversing the withdrawn status of any BLM acreage, and thus making it eligible for exchange, is speculative, with the prospect of success never assured until the final completion of the 18-step process outlined by BLM (see Appendix O). The County

concludes that an exchange of the project site with the Horseshoe Meadows site is infeasible as an alternative to the project for two primary reasons of a legal character. First, the developer has no control over the proposed exchange parcel and thus no reasonable means of using that parcel for his project. Second, there can be no certainty, or even probability, that Congress and the BLM will be willing to trade for the Whitney Portal site. Only after a minimum of four years of processing, and Congressional action, could the availability of the site, and therefore its feasibility for this project, be conclusively determined. “An EIR need not consider an alternative ... whose implementation is remote and speculative.” (14 CCR § 15126.6(f)(3).)

### Economic Issues

There are three primary ways in which the feasibility of the land trade option is impacted by economic issues. The first is the expense of holding the initial investment in limbo for the many years necessary to effect such a trade. The second is consideration of the wasted investment in the Whitney Portal site, which must be duplicated for any other site considered. The third is the risk involved and its cost.

#### I. Developer’s Investment in Whitney Portal Project

The economic analysis begins with consideration of the developer’s investment in the project to date, as follows:

##### A. Initial and holding expenses: July 1, 2004 – July 12, 2005 (date of the Board of Supervisors’ approval of the project)

- Purchase of 74-acres, in two parcels:
  - a) \$500,000 plus 8% interest on cash = \$540,000
  - b) \$500,000 plus 6.75% simple interest on note beginning year 2
- EIR and related costs: \$186,628
- Property taxes: \$9,285
- Misc. expenses: \$43,395

**Subtotal of \$1,279,308**

(NOTE: see Appendix P)

##### B. Further investment expenses: July 13, 2005 – June 30, 2008

(NOTE: references to “interest” refer to the 8% per year opportunity cost of the expense.)

- Lawsuit expenses: \$95,860 plus \$19,478 interest = \$115,338
- Property taxes: \$27,864 plus \$2,411 interest = \$30,275
- Misc. expenses: \$26,500 plus \$2,294 interest = \$28,794
- Interest on parcel “a” = \$140,244

- Interest on parcel “b” = \$101,250
- Interest on 1<sup>st</sup> year EIR costs of \$186,628 = \$48,470
- Interest on 1<sup>st</sup> year other costs of \$52,679 = \$13,681

**Subtotal of \$478,052**

**TOTAL = \$1,757,360**

II. Holding Expenses. It would take a *minimum* of four years to effect a trade with the BLM for the Horseshoe Meadows Road site, even should the developer have the political wherewithal to gain Congressional approval to release the now-protected land for development. Once the trade occurred, the developer would then be required to gain approval from the County to develop the new parcel, which would entail a General Plan modification, an amendment to the zone code, and all of the hydrological, cultural, environmental and other studies required for CEQA and site analysis. County approval for such a land use application typically entails an approximately 18- to 24-month process (based on past Inyo County applications and discussions with staff). Thus, conservatively, the developer would be required to extend his investment, with no return, for an additional six years, as compared with developing the Whitney Portal site.

The estimated additional costs to the developer for pursuing a six-year BLM land exchange, assuming the exchange had been pursued during the initial processing of the project, would be:

- Interest for parcel “a” held an additional 6 years = \$298,138
- Interest for parcel “b” held an additional 6 years = \$202,500
- Interest on non-parcel related costs at beginning of period (\$230,023) = \$134,995
- Projected new property taxes (\$55,710) + interest (\$16,346) = \$72,056

**TOTAL = \$707,689**

This figure assumes that the trade process was initiated in 2005. In actuality, the applicant would have to begin the trade process in 2008. Including the cost of the investment from 2005 to date, the additional cost of pursuing a land trade would be \$947,607.

III. Further Development Expenses. These expenses come into play should the developer be successful in bringing about a land trade with the BLM. At that point, he would be required to submit a development application with the County and to fund a CEQA process (costing \$180,000 to \$400,000, based on County staff estimates). He would, essentially, have to repeat the process he underwent to proceed this far in the development approval for the Whitney Portal project. The process is site-specific and the studies conducted for the Whitney Portal site would not be applicable to the Horseshoe Meadows Road site. The developer would need to confirm that there was adequate water and utilities available for the proposed site and to prepare studies to support the CEQA

process for the new site. The funds invested in the Whitney Portal site, except for the purchase price, would have to be written off as a “sunk” cost, or loss. Such sunk costs total \$279,308 (\$1,279,308 of initial and holding expenses, minus the \$1,000,000 purchase price). These sunk costs, together with six additional years of “lost” interest on the total funds put into the project while a land exchange with the BLM is pursued (\$707,689), put potential future total project sunk costs at \$986,997. (This amount would be \$1,704,967 if one includes the lawsuit costs and holding costs from July 13, 2005 to June 30, 2008.) The developer could not expect to recover these costs in any land exchange. The BLM will value the parcels at their undeveloped value. Therefore, the development expense of any newly acquired project parcel will be greatly increased, since such a parcel must bear the extra \$986,997 invested in the Whitney Portal site to no purpose.

IV. Risk. The risk associated with pursuing a trade with the BLM should not be underestimated, even though it cannot be calculated. It arises first from the fact that there can be no assurance that Congress will allow a trade, even should BLM at all levels recommend one. The land was withdrawn to protect the watershed for Los Angeles’ water extraction activities in the Owens Valley. The purpose of the withdrawal still exists. The developer can have no assurance that a trade will ever occur. Ultimately, this analysis is relevant because of the continuing \$117,948 per year (on average) investment loss that would be made by the developer for at least six more years, simply to see if use of the Horseshoe Meadows Road site is ultimately feasible. A more normal risk, but substantial nevertheless, is the risk that after executing a trade and investing an additional \$180,000 to \$400,000 in preparing site plans and CEQA studies, the County would not approve the necessary zoning and general plan modifications or the overall project.

V. Conclusion. Trading the Whitney Portal site for the Horseshoe Meadows site is not economically feasible. The additional costs of holding the Whitney Portal parcel in stasis during trade processing are approximately \$707,689; this figure, added to approximately \$279,308 of the developer’s already substantial investment in developing the Whitney Portal site, would ultimately be wasted. The developer has indicated that he could not finance such a trade and that he would not be able to obtain financing for such a speculative venture. Additionally, and from a public policy perspective, it is unreasonable to expect a developer who has already invested substantial funds to use his property in accordance with the County General Plan and zoning, and who is already at some risk of disapproval, to double his investment in the same enterprise for an increased risk of failure. Given these factors, pursuing a land trade for the Horseshoe Meadows site is not economically feasible, as the reduced economic profitability of the land exchange alternative is sufficiently severe as to render it impractical to proceed with the project.

### Social Issues

General Plan Policy LU-2.11 is to: “preserve the right of property owners to construct houses on all legally created, residentially-zoned parcels in the County.” This reflects the intent of the Inyo County Board of Supervisors to protect the private property rights of its citizens, which encourages development of the limited private property in the County

(less than 2% of County land) to the benefit of all its citizens. To force a person owning private property, approved for development, to engage in the extended, expensive and risky enterprise of trading entitled land for unevaluated federal land directly conflicts with this policy and degrades the social environment of the citizens of Inyo County. This is a factor that must be considered in evaluating the overall feasibility of attempting a trade for the Horseshoe Meadows Road site, and to a somewhat lesser extent, sites that were not withdrawn from availability by the Congressional Act of 1931.

**Criteria IV: Would the proposed trade comply with the County regional planning process?**

The Horseshoe Meadows Road site is not located within, or adjacent to, an existing community, as is the project site. It is at least a half-mile from the Alabama Hills community and associated infrastructure. As a result, the Inyo County General Plan policies (Policies LU-1.2 & LU-2.10) regarding placing development within, or adjacent to, existing communities would not be met.

The Horseshoe Meadows Road site is not designated and zoned for residential development, as it is identified as federal land. As a result, no subdivision or development could occur absent a change to the Inyo County General Plan and zoning ordinance. While the need for a General Plan amendment and zone change does not preclude consideration of such an alternative, such a modification is unlikely given the overarching general plan policies that would be violated: locating new development within or adjacent to existing communities and preserving existing viewsheds. Modifying the General Plan and zone code to allow development on the Horseshoe Meadows Road site would have the effect of creating a new entitlement at the cost of degrading the view shed of an existing neighboring community (i.e., the Alabama Hills community).

Requiring a land exchange in these circumstances would also violate the General Plan Policy (Policy LU-2.11) to “preserve the right of property owners to construct houses on all legally created, residentially-zoned parcels in the County.” The only exception to this policy is when development on a site presents a threat to the public health, safety, or welfare, and this is not the case with the project site. The proposed Whitney Portal development is located on land that has been designated for decades by the County General Plan for development of just the type proposed by the developer. Persons purchasing property that has been designated by the County for development invest with an expectation that they will be able to use their property for the approved purpose. To change the rules after a citizen has invested in a developable property could not help but degrade the rights of all property owners to develop their land, in direct violation of the regional planning process of the County.

**Conclusion**

The alternative of a land trade for the Horseshoe Meadows Road site is neither reasonable nor feasible for the following reasons:

- The Horseshoe Meadows Road site is not within the reasonable control of the County or the developer, and thus neither has the ability to bring a trade with the BLM about. The developer cannot reasonably acquire, control or otherwise have access to the alternative site. Congressional action would be required to effect a trade, given the parcel's withdrawn status under the 1931 Congressional Act. The likelihood of success is speculative at best, considering the implications of the 1931 Act and the lengthy process it would entail, without any assurance that a trade would be consummated at the end of the process. This lack of control and predictability makes this alternative impractical to the point of infeasibility.
- Such a trade would shift the visual impact of a residential development (which has been planned for within the General Plan) from transient users of the Whitney Portal Road, to transient users of Horseshoe Meadows Road and residents of the Alabama Hills subdivision. If anything, the impact to the residents of the Alabama Hills subdivision, living with the impact on a day-to-day basis, is greater than the impact of developing the project site, where transient users of Whitney Portal Road and the few residents of the Lone Pine Creek community would be most affected. Therefore, this alternative would fail in its primary purpose to reduce the significant impact on visual resources. In accordance with CEQA Guidelines Section 15126.6(c), an inability to avoid significant environmental impacts is among the factors that may eliminate an alternative from detailed consideration in an EIR.
- The additional costs of pursuing a lengthy and speculative exchange with the BLM and the duplicative processing/development costs would render it impractical to proceed with the project, which makes a land exchange infeasible as an alternative.
- Developing the Horseshoe Meadows Road site would violate General Plan policies, particularly those discouraging visual impacts (Goal VIS-1, "Visual Resources") and leap-frog development that is not within or contiguous to existing communities (Policy LU-2.10, "Orderly Development," and Policy LU-1.1, "Community Expansion").
- Additionally, it is an important General Plan Policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. General Plan Policy LU-2.12, "Approved Development," specifically preserves the right of property owners to construct homes on property designated for residential uses. Creating an environment in which property owners are unable to ascertain the permitted uses of their property, and invest in the property accordingly, represents a direct threat to the economic well-being of the citizens of Inyo County because investors will be less willing to invest in any property in Inyo County.

### **1.3.2 CATEGORY TWO: BLM PARCELS ACTIVELY ELIGIBLE FOR EXCHANGE**

This group consists of those parcels listed by the BLM as actively eligible for exchange (see Appendix F, Land Tenure Property Viewer, <http://gis.mono.ca.gov/LandTenure/GIS.asp>). Among all listed parcels on the BLM website, six parcels were found to have some initial potential as exchange parcels, and their feasibility was further analyzed; all others were found to

be unsuitable for exchange and were eliminated from further consideration for the following reasons:

- Not located within Inyo County.
- Not available, having already been disposed.
- Not of comparable size. (APNs 013-070-23 [one acre], 022-07018 [10 acres], 013-050-17 [55 acres])

The six BLM parcels that showed some initial possibility for exchange are analyzed as follows:

**Central Wilkerson Parcel (118 acres):** This parcel is located in the middle of the community of Wilkerson (see map and photos at Appendix Q), approximately eight miles south of Bishop, about 1/3 mile west of U.S. Highway 395, and approximately 50 miles north of the project site. Existing Wilkerson development is adjacent to the north (“new Wilkerson”) and south (“old Wilkerson”) of the site, and the community contains approximately 250 homes. The base of the Sierra rises directly off the western portion of the site, with the rest of the site gently sloping to the east, and covered in sagebrush scrub. This location does not have a view of the Sierra escarpment and, as a result, views are very different from those of the project site; views are of mountain features resembling foothills rather than the towering, almost sheer face of the Sierra near the project site. Likewise, while there are views up and down the Owens Valley at the site, they are not sweeping, because the base of the Sierra juts out north and south of the site, obscuring more distant views up and down the valley and obscuring the crest line, or peaks, of the Sierra.

**Criteria I: Would the trade substantially lessen the impact on visual resources?**

The parcel is not in a particularly sensitive view shed, being in the middle of an existing community of homes. Motorists traveling along Highway 395 and looking west would see any future development on the parcel blend into the rest of Wilkerson development. Existing surrounding Wilkerson homes may find some of their views to the south and north altered/obscured by any future development, since the new development would be in their line of sight in those directions.

**Criteria II: Would the new parcel obtain most of the project objectives?**

Two features limit the usable area of this site for development. One is an Alquist-Priolo earthquake fault zone over roughly half the western portion of the property, making development within 50 feet of the fault lines within this zone infeasible (in accordance with California’s Alquist-Priolo Earthquake Fault Zoning Act, passed in 1972). The second is the presence of a large power line running north-south through the eastern portion of the parcel, making it undesirable for residential development and unsuitable for upscale development (see photos at Appendix Q). The remaining acreage (estimated at 40-50 acres) would be appreciably smaller in size than the project site (74 acres).

Additionally, the parcel is not in reasonable proximity to the project site, being approximately 50 miles north of it, and thus not near Whitney Portal, or other well-known trailheads, recreational amenities, or tourist draws. Rather, the site is nearest to trailheads located approximately 18 miles away west of Big Pine (to the south of the site) and approximately 25 miles from the trailheads southwest of Bishop (to the north of the site). Likewise, the site is not adjacent to a water feature. The view from the site is of a foothill-like spur of the Sierra located very near to the west, which obscures the larger, higher Sierra crest, and overall range, which is further to the west, out of view. Views to the east, across the valley, are of the White Mountains. As a result, the parcel does not have the sweeping vistas or close proximity to well known recreation areas that give the Whitney Portal site its character. Areas not in the earthquake fault zone are similar in topography and vegetation to the project site, with a gentle slope and covered in sagebrush scrub.

The overall Wilkerson community lends itself to an entirely different type of development than that envisioned by the developer in his project objectives. Much of the Wilkerson community is working class, with zoning on the central Wilkerson parcel allowing mobile homes and other reasonably priced homes (i.e., zoning is RMH (Residential Mobile Home)). The community's lot size designations mainly range from 7,200 sq.ft. to one acre in size, rather than the 2.5 acres proposed for the project site. The central Wilkerson site, specifically, is zoned and designated for parcels a minimum of one acre in size. Overall, the Wilkerson parcel is simply not in the same type of renowned location as the project site: adjacent to the road leading to Mt. Whitney and its trailhead into the Sierra backcountry, to BLM lands and trails located in the nearby Alabama Hills Recreation Area, and with Lone Pine Creek just to the north. As a result, any development on this site will be of a different character than the proposed project, both aesthetically and in terms of lot size, and unlike that envisioned by the developer when he purchased his property, or as stated in the project objectives.

**Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

Economic Issues.

I. Holding and Development Expenses. The economic analysis for the Wilkerson site is similar to that of the Horseshoe Meadows Road site, with some important differences. One difference is the fact that the site is not withdrawn from entry by Congress and is listed by the BLM as available for trade. This would reduce the time needed to gain approval of a trade by approximately two years and would reduce the risk of not obtaining the trade by a small amount. The development and holding expenses would be reduced by approximately \$235,896 as a result of the potential decrease in processing time. However, both the time investment in pursuing the trade and the risk of failure remain significant.

Unlike the Horseshoe Meadows Road site, the Wilkerson parcel is less desirable than the project site for development and therefore less valuable. The developer could not expect

to achieve near the same value for an acre of Wilkerson Land as an acre at the project site.

II. Risk. The Wilkerson site presents its own risk, beyond that inherent in any trade with the BLM, that a trade could not be successfully consummated. The earthquake fault zone on the Wilkerson site reduces its developable acreage considerably. The result is that the developer would need to obtain additional BLM acreage at a site other than the Wilkerson parcel to approach parity in the trade. Given that the BLM assesses trade parcels at their undeveloped value, it is an open question whether these factors could be included in the BLM's valuation of the trade. Ultimately, any risk is enhanced by the fact that the developer cannot know whether the trade will be successful until years after beginning the process, with the pace of the process and the ultimate outcome essentially beyond the developer's control.

III. Conclusion. Trading the Whitney Portal site for the central Wilkerson site is not economically viable. The additional cost of holding the Whitney Portal parcel in stasis during processing is greater than \$450,000 (four years of processing). Over \$279,308 of the developer's already substantial investment in developing the Whitney Portal site would be wasted. Additionally, the Wilkerson site presents serious valuation problems. Not only is the Wilkerson property less valuable on a per acre basis, but it provides less acreage for development. There is no assurance that the BLM would agree to a trade based on the development potentials for the different parcels, particularly considering BLM statements that it values trade parcels at their undevelopable value. Not only would the developer be spending significant funds processing a land trade and gaining approval of a second, different development, but he would likely end up with land worth considerably less than his current project site. The developer has indicated that he could not finance such a trade and that he would not be able to obtain financing for such a speculative venture. Given these factors, pursuing a land trade for the central Wilkerson site is not economically feasible, as the reduced economic profitability of the land exchange alternative is sufficiently severe as to render it impractical to proceed with the project.

**Criteria IV: Would the proposed trade comply with the County regional planning process?**

The parcel is located within the community of Wilkerson, and so meets Inyo County General Plan goals and policies regarding placing development within, or adjacent to, existing communities. The Wilkerson parcel, although federal land, is designated for residential development according to the Inyo County General Plan.

Exchanging the Wilkerson parcel for the project site takes developable land from one community, Lone Pine Creek (within the general Lone Pine area), and transfers it to another community, Wilkerson (located between Big Pine and Bishop). There is a lack of developable land throughout the County, and providing the additional developable land to Wilkerson comes only at the expense of depriving the Lone Pine area of an opportunity to grow. This conflicts with Goal LU-1 of the Inyo County General Plan,

whose purpose is to ensure opportunities for growth in all communities in the County. This trade would eliminate such growth in one community, where it was planned, and move it to an entirely different community.

The Wilkerson parcel will require individual water and septic systems for development, although hydrologic studies would have to be completed in order to verify there is adequate water available for development. An earthquake fault zone covers a large part of the western portion of the parcel, making that portion of the parcel either largely undevelopable or very restrictive to development. A large power line inhibits development on part of the eastern portion of the parcel. The Wilkerson parcel is within the boundaries of the Bishop Fire District and is close to existing electrical infrastructure.

### **Conclusion:**

Exchanging the project site for the central Wilkerson parcel is not feasible for the following reasons:

- The proposed exchange is economically infeasible. The alternative site is less valuable than the project site and the usable acreage is much less. The additional costs of pursuing a lengthy and speculative exchange with the BLM and the duplicative processing/development costs would render it impractical to proceed with the project, which makes the land exchange economically infeasible as an alternative.
- The developer would not achieve the project objectives at the Wilkerson site. The site is not in reasonable proximity to the project site and its scenic and recreational amenities, being 50 miles north of it. The nearest established trailheads, wilderness recreational amenities, and tourist draws are over 18 miles to the south or north. The Whitney Portal site is ideally suited for creating exclusive large-lot rural parcels, as it is located near Lone Pine, the internationally known jumping off point to Mount Whitney, and provides the views and recreational access that could command the million dollar purchase price of the property and a high sale price for the planned 2.5-acre lots. Wilkerson parcels, while suitable for smaller lot, working class neighborhood residential development, are entirely unsuitable for the type of project envisioned by the developer. For these reasons, the Wilkerson parcel could not achieve the project goals.
- In violation of the Inyo County General Plan, the trade would eliminate a substantial opportunity for growth in the Lone Pine area, where residential development has been planned for decades on the project site. Development opportunities are difficult to come by anywhere in the County, and no community in the County can afford to lose any developable land given the fact that only 2% of land within the County is privately held. In pursuing the General Plan goal for orderly growth in County communities, the General Plan has long designated the Whitney Portal site as a rural residential subdivision. Visual impacts were necessarily factored into that designation when it was first determined, as the site and surrounding area remains largely unchanged from that time.
- The developer cannot reasonably acquire, control or otherwise have access to the Wilkerson parcel, and thus doesn't have the ability to bring a trade about. The only

certainty about such a trade would be the lengthy process it would entail, without any assurance that a trade would be consummated at the end of the process. This lack of control and predictability makes this alternative impractical to the point of infeasibility.

- It is an important General Plan Policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. This policy may only be violated if such development threatens the public health, safety or welfare. These threats are not presented by development of the Whitney Portal site. Creating an environment in which property owners are unable to ascertain the permitted uses of their property and invest in the property accordingly, represents a direct threat to the economic well-being of the citizens of Inyo County.

**North Wilkerson Parcel (101 acres):** This parcel is located partially within, and adjacent to, the northwest portion of the community of Wilkerson, approximately eight miles south of Bishop, about 1/3 mile west of U.S. Highway 395, and approximately 50 miles north of the project site (see map and photos at Appendix R). A small portion of the eastern part of the site is sloping sagebrush scrub, but the landscape quickly rises into the base of the Sierra, with steep slopes and small canyon areas unsuitable for development.

**Criteria I: Would the trade substantially lessen the impact on visual resources?**

The location and its view shed is not particularly sensitive, as the full Sierra escarpment is not visible: at the site the base of the Sierra exists as a kind of spur, with the crest line, or peaks, of the mountain range farther to the west, out of view. The parcel is in the view shed of the northern Wilkerson community and to a small degree Highway 395 motorists driving north and looking west toward the Sierra. Land to the east and southeast of the parcel is already developed with homes, the residents of which might likely find that development located to their west/northwest alters their mountain view shed.

**Criteria II: Would the new parcel obtain most of the project objectives?**

A critical site characteristic is the presence of an Alquist-Priolo earthquake fault zone over roughly 1/5 of the eastern portion of the property, making development within 50 feet of the fault lines within this zone infeasible (in accordance with California's Alquist-Priolo Earthquake Fault Zoning Act, passed in 1972). Access to any future development would have to cross the fault zone and be located to its west. A second critical site characteristic is topography: 1/3 to 1/2 of the western portion of the parcel is steeply sloped (> 20-30 degree grade), making it unsuitable for development under General Plan Policy GEO-1 ("Slope Constraints"), which identifies such steep slope conditions as a geologic hazard. As a result, only approximately 35-45 acres of the parcel's 101 acres are appropriate for development.

A third critical site characteristic is the fact that the site is not in reasonable proximity to the project site, being approximately 50 miles north of it. The parcel is not near Whitney

Portal or any other similar trailhead or tourist draw. It is located approximately 18 miles from the trailheads west of Big Pine (to the south of the site) and approximately 25 miles from the trailheads southwest of the Bishop area (to the north of the site). The views to the west are of a spur of the Sierra, which obscure the higher crest and larger overall range; views to the east, across the valley, are of the White Mountains. As a result, the parcel does not have the sweeping mountain vistas or close proximity to well known recreation areas that give the Whitney Portal site its character.

The overall Wilkerson community lends itself to an entirely different type of development than that envisioned by the developer in his project objectives. Much of the Wilkerson community is working class, with community lot size designations mainly ranging from 7,200 sq.ft. to one acre in size, rather than the 2.5-acre lots proposed for the project site. The north Wilkerson site, specifically, is zoned "Open Space," with a minimum parcel size of 40 acres (i.e., OS-40 zoning), and not specifically for residential development. Overall, the north Wilkerson parcel is simply not in the same type of renowned location as the project site: adjacent to the road leading to Mt. Whitney and its trailhead into the Sierra backcountry, to BLM lands and trails located in the nearby Alabama Hills Recreation Area, and with Lone Pine Creek just to the north. As a result, any development on the Wilkerson site will be of a different character than the proposed project, both aesthetically and in terms of lot size, and unlike that envisioned by the developer when he purchased his property, or as stated in the project objectives.

**Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

The feasibility analysis of this site is the same as above for the central Wilkerson parcel.

**Criteria IV: Would the proposed trade comply with the County regional planning process?**

The parcel is partially located within the community of Wilkerson, and so meets Inyo County General Plan goals and policies regarding placing development within, or adjacent to, existing communities. The north Wilkerson parcel is zoned Open Space, 40-acre minimum parcel size; however, the eastern portion of it is designated for residential development according to the Inyo County General Plan (land use designation RRH/Residential Rural High Density, minimum parcel size of one acre).

Exchanging the north Wilkerson parcel for the project site takes developable land from one community, Lone Pine Creek (within the general Lone Pine area), and transfers it to another community, Wilkerson (located between Big Pine and Bishop). There is a lack of developable land throughout the County, and providing the additional developable land to Wilkerson comes only at the expense of depriving the Lone Pine area of an opportunity to grow. This conflicts with Goal LU-1 of the Inyo County General Plan, whose purpose is to ensure opportunities for growth in all communities in the County. This trade would eliminate such growth in one community, where it was planned, and move it to an entirely different community.

The north Wilkerson parcel will require individual water and septic systems for development, although hydrologic studies would have to be completed in order to verify if there is adequate water available for development. An earthquake fault line covers a portion of the eastern side of the parcel, making development prohibitive or highly restricted on that portion. The north Wilkerson parcel is within the boundaries of the Bishop Fire District, with existing electrical infrastructure located just to the east.

**Conclusion:**

Exchanging the project site for the north Wilkerson parcel is not feasible for the same reasons as explained above for the central Wilkerson parcel.

**Rossi Hill #1 Parcel (79 acres):** This parcel is located approximately ¼ to ½ mile to the southeast of Bir Road, a road that leads off Barlow Lane, southeast of Bishop, crosses open sagebrush scrub land and then winds up into Chipmunk Canyon at the base of the Sierra (see maps and photos at Appendix S). The site is approximately 2 miles from the outermost development of the Bishop area. Like the Wilkerson area, the escarpment, or base of the Sierra, is close to – if not part of - the site, but the crest, or top, of the Sierra is generally further to the west, out of sight. As with the Wilkerson area, this makes for a very different view than that of the project site, where the base of the Sierra might be farther away from the site, but the crest is visible, giving views of a towering, almost vertical, sweep of mountain. The site is sloped, but not to a degree that would appear to inhibit development. As a result, developable acreage is 79 acres, which is similar to the project site. The site is not located adjacent to a road; access to Bir Road would need to be developed.

**Criteria I: Would the trade substantially lessen the impact on visual resources?**

The parcel is on an alluvial fan-type area that is visible to areas around the city of Bishop. While constructing the proposed subdivision on the Rossi Hill #1 site would eliminate the visual impact to persons traveling along Whitney Portal Road, it would create a new and significant visual impact to persons living in Bishop and motorists on U.S. Highway 395, essentially shifting the visual impact from one area and population, to another.

**Criteria II: Would the new parcel obtain most of the project objectives?**

The critical site feature of this parcel is that it is not in reasonable proximity to the Whitney Portal area, but rather approximately 65 miles north, near the Chipmunk Canyon area located about five miles southwest of Bishop. It would lend itself to a somewhat different type of development than envisioned by the developer in his project objectives. While a large lot rural subdivision would be appropriate for the area (disregarding the issue of leap frog/non-contiguous development prohibitions of the General Plan), the parcel is not in the same type of renowned location as the project site: adjacent to the road leading to Mt. Whitney and its trailhead/access into the Sierra backcountry, to BLM lands/trails located in the nearby Alabama Hills Recreation Area, and with Lone Pine

Creek just to the north. The nearest trailheads, wilderness recreational amenities and tourist attractions to the site are twenty miles away. As a result, development on this site will be of a different character than the proposed project in terms of the attractiveness of the location.

**Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

The feasibility analysis of this site is the same as above for the Wilkerson parcels.

**Criteria IV: Would the proposed trade comply with the County regional planning process?**

The parcel, while approximately one mile from the small community of Chipmunk Canyon, a community described in the Inyo County General Plan, is not within or adjacent to it, or any other community. As a result, the site would not meet Inyo County General Plan goals and policies regarding placing development within, or adjacent to, existing communities.

Exchanging the Rossi Hill #1 site for the project site takes developable land from one community, Lone Pine Creek (within the general Lone Pine area), and transfers it to a remote site north of the general Bishop area. There is a lack of developable land throughout the County, and providing the additional developable land to the Bishop area comes only at the expense of depriving the Lone Pine area of an opportunity to grow. This conflicts with Goal LU-1 of the Inyo County General Plan, whose purpose is to ensure opportunities for growth in all communities in the County. This trade would eliminate such growth in one community, where it was planned, and move it to an entirely different community.

The Rossi Hill #1 site is not designated and zoned for residential development, as it is identified as federal land. As a result, no subdivision or development could occur absent a change to the Inyo County General Plan and zoning ordinance. While the need for a General Plan amendment and zone change does not preclude consideration of such an alternative, such a modification is unlikely given the overarching general plan policies that would be violated: locating new development within or adjacent to existing communities and preserving existing view sheds. Modifying the General Plan and zone code to allow development on the Rossi Hill #1 site would have the effect of creating a new entitlement at the cost of degrading the view shed of an existing nearby community (i.e., Bishop).

This parcel would require individual water and septic systems for development. Hydrologic studies would have to be completed in order to verify if there is adequate water for development. The parcel is approximately one and one-half miles from any existing electrical lines. This parcel would be served by the Bishop Fire District and,

although it is clear it is within the sphere of influence for the District, it is unclear whether it is actually within its service boundaries at this time.

**Conclusion:**

- The trade would shift a visual impact that has been planned for in the General Plan from transient users of the Whitney Portal Road to Bishop residents. If anything, the impact to the residents of Bishop, living with the impact on a day-to-day basis, is greater than the impact of developing the project site, where transient users of Whitney Portal Road and the few residents of the Lone Pine Creek community would be most affected. Therefore, this alternative would fail in its primary purpose to reduce the significant impact on visual resources. In accordance with CEQA Guidelines Section 15126.6(c), an inability to avoid significant environmental impacts is among the factors that may eliminate an alternative from detailed consideration in an EIR.
- The proposed exchange is economically infeasible. The additional costs of pursuing a lengthy and speculative exchange with the BLM and the duplicative processing/development costs would render it impractical to proceed with the project, which makes the land exchange economically infeasible as an alternative.
- The developer would not achieve the project objectives at the Rossi Hill #1 site. The site is not in reasonable proximity to the project site and its scenic and recreational amenities, being 65 miles north of it. The nearest established trailheads, wilderness recreational amenities, and tourist draws are more than 20 miles west of Bishop. The Whitney Portal site is ideally suited for creating exclusive large-lot rural parcels, as it is located near Lone Pine, the internationally known jumping off point to Mount Whitney, and provides the views and recreational access that could command the million dollar purchase price of the property and a high sale price for the planned 2.5-acre lots. For these reasons, the Rossi Hills #1 site could not achieve the project goals.
- In violation of the General Plan, the trade would eliminate a substantial opportunity for growth in the Lone Pine area, where development on the project site has been planned for decades. Development opportunities are difficult to come by anywhere in the County and no community in the County can afford to lose any. In pursuing the General Plan goal for orderly growth in County communities, the General Plan has long designated the Whitney Portal site as a rural subdivision. Visual impacts were necessarily factored into that designation when it was first determined, as the site and surrounding area remains largely unchanged from that time. Allowing the displacement of this opportunity to a site 65 miles away is a violation of the General Plan, and itself a threat to the economic viability of a segment of the County population.
- Developing the site would violate General Plan policies, particularly those discouraging visual impacts (Goal VIS-1, “Visual Resources”) and leap-frog development that is not within or contiguous to existing communities (Policy LU-2.10, “Orderly Development,” and Policy LU-1.1, “Community Expansion”).
- The developer cannot reasonably acquire, control or otherwise have access to the Rossi Hill #1 parcel. The only certainty about such a trade would be the lengthy

process it would entail, without any assurance that a trade would be consummated at the end of the process. This lack of control and predictability makes this alternative impractical to the point of infeasibility.

- It is an important General Plan policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. This policy may only be violated if such development threatens the public health, safety or welfare. These threats are not presented by development of the Whitney Portal site. Creating an environment in which property owners are unable to ascertain the permitted uses of their property, and invest in the property accordingly, represents a direct threat to the economic well-being of the citizens of Inyo County.

**Rossi Hill #2 Parcel (77 acres):** This parcel is located approximately four miles south of Bishop, generally south/southwest of the southern-most portion of Sunland Road (see map and photos at Appendix T). There is some gently sloping sagebrush scrub land, but most of the site has areas of steep slope, which are not amenable to development. The steep slopes of the site (>20-30 degree grade) are prohibited from development under Inyo County General Plan Policy GEO-1 (“Slope Constraints”), which identifies such steep slope conditions as a geologic hazard. In addition, an Alquist-Priolo earthquake fault zone covers approximately 50% of the eastern portion of the parcel, leaving total site developable acreage at only approximately 10-20 acres. Like the Rossi Hill #1 site, the escarpment, or base of the Sierra, is close to – or part of - the site, but the crest, or top, of the Sierra is not visible near the site, but only in distant views to the north and south. This makes for a very different view than that of the project site, where the base of the Sierra might be farther away from the site, but the crest is visible, giving views of a towering, almost vertical sweep of mountain. There is no road access to the site, and one would have to be developed off Sunland Road to the east.

**Criteria I: Would the trade substantially lessen the impact on visual resources?**

The parcel is on an alluvial fan-type area that is visible to areas around the city of Bishop. While constructing the proposed subdivision on the Rossi Hill #1 site would eliminate the visual impact to persons traveling along Whitney Portal Road, it would create a new and significant visual impact to persons living in Bishop and motorists on U.S. Highway 395, essentially shifting the visual impact from one area and population, to another.

**Criteria II: Would the new parcel obtain most of the project objectives?**

The analysis for this criteria is the same as for the Rossi Hill #1 site.

**Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

The feasibility analysis for this criteria is the same as for the Rossi Hill #1 site.

#### **Criteria IV: Would the proposed trade comply with the County regional planning process?**

The analysis for this criteria is the same as for the Rossi Hill #1 site.

#### **Conclusion:**

- The proposed exchange is economically infeasible. The developable acreage is so small as to be non cost-effective to develop. The additional costs of pursuing a lengthy and speculative exchange with the BLM and the duplicative processing/developing costs would render it impractical to proceed with the project, which makes the land exchange economically infeasible as an alternative.
- The developer would not achieve the project objectives at the Rossi Hill #2 site. The site is not in reasonable proximity to the project site and its scenic and recreational amenities, being 60 miles north of it. The nearest established trailheads, wilderness recreational amenities, and tourist draws are more than 10 miles to the northwest. The Whitney Portal site is ideally suited for creating exclusive large-lot rural parcels, as it is located near Lone Pine, the internationally known jumping off point to Mount Whitney, and provides the views and recreational access that could command the million dollar purchase price of the property and a high sale price for the planned 2.5-acre lots. For these reasons, the Rossi Hills #2 site could not achieve the project goals.
- This trade would eliminate a substantial opportunity for growth in the Lone Pine area, development that has been planned for decades. Development opportunities are difficult to come by anywhere in the County and no community in the County can afford to lose any. In pursuing the General Plan goal for orderly growth in County communities, the General Plan has long designated the Whitney Portal site as a rural subdivision. Visual impacts were necessarily factored into that designation when it was first determined, as the site and surrounding area remain largely unchanged from that time. Allowing the displacement of this opportunity to a site 60 miles away is a violation of the General Plan, and itself a threat to the economic viability of a segment of the County population.
- Developing the site would violate General Plan policies, particularly those discouraging visual impacts (Goal VIS-1, “Visual Resources”) and leap-frog development that is not within or contiguous to existing communities (Policy LU-2.10, “Orderly Development,” and Policy LU-1.1, “Community Expansion”).
- The developer cannot reasonably acquire, control or otherwise have access to the Rossi Hill #2 parcel. The only certainty about such a trade would be the lengthy process it would entail, without any assurance that a trade would be consummated at the end of the process. This lack of control and predictability makes this alternative impractical to the point of infeasibility.
- It is an important General Plan Policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. This policy may only be violated if such development threatens the public health, safety or welfare. These threats are not presented by development of

the Whitney Portal site. Creating an environment in which property owners are unable to ascertain the permitted uses of their property, and invest in the property accordingly, represents a direct threat to the economic well-being of the citizens of Inyo County.

**Bishop #1 Parcel (359 acres) & Bishop #2 Parcel (517) :** Both Bishop parcels are located on the alluvial fan at the base, and in the lower foothills, of the White Mountains, which form the eastern side of Owens Valley. The Bishop #1 site is approximately 13 miles north of Bishop and twenty miles across the Valley from the Sierra, which makes up the western side of Owens Valley. The Bishop #1 site is approximately 75 miles north of the project site, with the Bishop #2 site a couple miles farther north, but similarly placed in relation to the landscape (see map and photos at Appendix U). Views are expansive: north and south along the face of the White Mountain range, and west across the valley to the Sierra.

**Criteria I: Would the trade substantially lessen the impact on visual resources?**

These parcels are located on the alluvial fan and in the foothills of the White Mountains. Development on elevation above the valley floor would be highly visible to motorists traveling on U.S. Hwy 6, about ½ mile west of the sites, and which is a major artery north to Nevada from the Owens Valley area. In addition, development on the site would be visible to residents of the Sierra Sky/Rudolph Ranch community, which is located on Rudolph Road about 1-3 miles north of the Bishop #2 site, along the base of the White Mountains. The parcels are located northeast of the Bishop area, to the east of Highway 6. Building on these parcels would place development where none has existed before and unavoidably impact the view shed from U.S. Hwy 6, transforming a view of mostly natural desert mountain foothills to one of developed acreage.

**Criteria II: Would the new parcel obtain most of the project objectives?**

A critical site feature is the existence of an Alquist-Priolo Earthquake fault zone running along the base of the White Mountain range, and through half or more of the eastern portion of these parcels. Any development within such an area would have to be located 50 feet from any faults within the zone. Discounting the earthquake zone and steep slopes, there are approximately 125 developable acres out of 359 acres for Bishop #1, and approximately 225 developable acres out of 517 acres for Bishop #2.

A second critical site issue is the fact that neither of the sites are within reasonable proximity of the project site: Bishop #1 is approximately 75 miles north of it, while Bishop #2 is a couple miles further north. In addition, the sites do not possess the amenities that would compare with those of the project site. The sites are far from the popular trailheads of the Sierra and other recreational areas popular with tourists. The sites could offer a remote living experience for those seeking one, but are far removed from the objectives of the proposed project.

The nearest development is the rural residential community of Sierra Sky/Rudolph Ranch, located several miles north of the Bishop parcels, and consisting of fourteen lots. The railroad museum and industrial development of Laws is located several miles south of the Bishop parcels. There are no nearby electrical lines, and limited road access: the nearest road to Bishop #1 being the Churchill Mine Road, a rough unpaved track just at the southwest of the site; Bishop #2 has no road access and could be accessed only by extending the Churchill Mine Road north and/or (potentially) extending Rudolph Road south to the site.

**Criteria III: Is the trade feasible considering economic, legal, environmental, social and technological factors?**

The feasibility analysis for this site is the same as for the Wilkerson and Rossi Hill sites. In addition, there are further constraints: the remoteness of the parcels makes extending infrastructure such as roadways and electrical lines to the site largely economically infeasible. In addition, much of the sites are on slopes, with developable areas ranging from roughly 8% to 15% grade, and with the attendant drainage issues. Lastly, the two Bishop parcels are each very large parcels (359 acres and 517 acres). The ease and/or feasibility of breaking out a small portion of acreage for trade purposes (i.e., one that is roughly equivalent to the size of the proposed project site of 74 acres) from the larger acreage is likely time consuming and/or may be infeasible in light of BLM processing.

**Criteria IV: Would the proposed trade comply with the County regional planning process?**

The parcels are removed from any major community and are not within or adjacent to any Inyo County General Plan-designated community. Development of these parcels would entail a major extension of roads, electricity and government services to an area remote from any location where such services are currently available. As a result, the sites would not meet Inyo County General Plan goals and policies regarding placing development within, or adjacent to, existing communities. Neither parcel is designated or zoned for residential development, being identified as federal land.

Exchanging either parcel for the project site takes developable land from the more southern Lone Pine general area and transfers it north of the Bishop area of the county. The parcels will require individual water and septic systems for development. Hydrologic studies would have to be completed in order to verify if there is adequate water for development. The parcels are over 2 miles from any existing electrical lines. Neither of the parcels is within the boundaries of any fire district and road access is limited (Bishop #1 site) or non-existent (Bishop #2 site).

**Conclusion:**

- The trade would shift a visual impact that has been planned for in the General Plan from transient users of the Whitney Portal Road to transient users of U.S. Hwy 6. Even more than the Whitney Portal area, development on these sites would transform

- a remote area, distant from any General Plan-designated community or population center. Therefore, this alternative would fail in its primary purpose to reduce the significant impact on visual resources. In accordance with CEQA Guidelines Section 15126.6(c), an inability to avoid significant environmental impacts is among the factors that may eliminate an alternative from detailed consideration in an EIR.
- The proposed exchange is economically infeasible. The additional costs of pursuing a lengthy and speculative exchange with the BLM and the duplicative processing/development costs would render it impractical to proceed with the project, which makes the land exchange economically infeasible as an alternative.
  - The developer would not achieve the project objectives at the Bishop #1 & #2 sites. They are not in reasonable proximity to the project site and its scenic and recreational amenities, being 75 miles north of it. Comparatively, the sites are removed from both the Sierra Nevada and also from any popular trails or tourist areas. The Whitney Portal site is ideally suited for creating exclusive large-lot rural parcels, as it is located near Lone Pine, the internationally known jumping off point to Mount Whitney, and provides the views and recreational access that could command the million dollar purchase price of the property and a high sale price for the planned 2.5-acre lots. The Bishop sites do not have any of these or similar characteristics.
  - This trade would eliminate a substantial opportunity for growth in the Lone Pine area, development that has been planned for decades. Development opportunities are difficult to come by anywhere in the County and no community in the County can afford to lose any. In pursuing the General Plan goal for orderly growth in County communities, the General Plan has long designated the Whitney Portal site as a rural subdivision. Visual impacts were necessarily factored into that designation when it was first determined, as the site and surrounding area remains largely unchanged from that time. Allowing the displacement of this opportunity to a site 75 miles away is a violation of the General Plan, and itself a threat to the economic viability of a segment of the County population.
  - The developer cannot reasonably acquire, control or otherwise have access to the Bishop #1 & #2 parcels. The only certainty about such a trade would be the lengthy process it would entail, without any assurance that a trade would be consummated at the end of the process. This lack of control and predictability makes this alternative impractical to the point of infeasibility.
  - It is an important General Plan Policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. This policy may only be violated if such development threatens the public health, safety or welfare. These threats are not presented by development of the Whitney Portal site. Creating an environment in which property owners are unable to ascertain the permitted uses of their property, and invest in the property accordingly, represents a direct threat to the economic well-being of the citizens of Inyo County.

### **1.3.3 CATEORY THREE: BLM PARCELS ADJACENT TO EXISTING TOWN SITES, BUT NOT CURRENTLY ELIGIBLE FOR ACTIVE EXCHANGE**

County maps were reviewed to assess whether there were any BLM-owned parcels adjacent to the main Owens Valley area communities (i.e., Lone Pine, Independence, Big Pine, Bishop) that could be developed in accordance with the policies of the County General Plan, and which could be made available for trade by the BLM without congressional action.

There are no BLM parcels contiguous to any of the towns. While Lone Pine, Independence and Big Pine each have some BLM-owned parcels one to three miles outside the boundaries of the towns, such parcels are too distant from town infrastructure (water, sewer, and in some cases electric lines) to take advantage of connecting to such infrastructure. Also, developing such parcels would violate the General Plan policies discouraging leap-frog development. In addition, and significantly, many of the parcels are withdrawn from disposal under the March 4, 1931 Act of Congress, and none of the parcels are listed on the BLM land exchange website as available for active exchange.

### **1.4 CONCLUSION**

The County has conducted a thorough and independent analysis of the potential for a land trade alternative as a means to reduce the significant visual effect of the project to below a level of significance. The County began this analysis by identifying potential exchange parcels and grouping them together for analysis. The physical characteristics of each alternative site were analyzed. The analysis also evaluated whether the alternative would satisfy the goals of the project, offer substantial environmental advantages, or whether it can be accomplished. **None of the sites evaluated were able to eliminate visual impacts and meet the project goals while proving economically or legally feasible and complying with Inyo County General Plan policies.** Analysis showed that the alternative site on Horseshoe Meadows Road, the BLM-owned alternative site first considered in the DEIR and FEIR for the project, would result in basically the same visual environmental impacts as the project site, in addition to proving infeasible.

As a result, as documented in this analysis, a trade of parcels between the developer and BLM is not a feasible alternative to the proposed project.

### **2.0 Additional Recirculation of the REIR Document**

The public comment period for the original REIR document closed on August 30, 2008. After reviewing all public comments, the decision was made to gather additional information so as to more fully respond to several comments that were made. This additional information, which was used to respond to comments raised in comment letter #1, is as follows:

- Development Feasibility Study of the Central Wilkerson Parcel
- Market Analysis of the Central Wilkerson Parcel

- Global Climate Change Analysis for the Proposed Project site

As a result of the above additional information, the REIR was again recirculated for public comments. The subsequent recirculation included all information included in the original REIR, plus all public comment letters received on the original REIR, staff's responses to those comments, and the above-listed three additional pieces of information (see Appendix V).

This additional 45-day recirculation period for public comment on the revised REIR runs from December 8, 2008 to January 21, 2009.

