

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

**Environmental Assessment
DOI-BLM-NV-L000-2016-0002-EA
Conservation Easement for City**

November 1, 2016

Location: Basin and Range National Monument

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Prepared by
U.S. Department of the Interior
Bureau of Land Management
Location
Basin and Range National Monument

November 1, 2016
Type of Project: Conservation Easement

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Chapter 1. Introduction

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On May 6, 2015, Triple Aught Foundation granted the Los Angeles County Museum of Art (LACMA) an Easement for Conservation (Appendix A). The Easement for Conservation (easement) covers certain private lands within the boundaries of Basin and Range National Monument in T. 2 N., R. 58 E., Sections 13, 14, and 15, Mount Diablo Meridian, Lincoln County, Nevada, which encompass and are in the vicinity of Michael Heizer's land artwork *City*. The purpose of the easement is to "forever preserv[e] the cultural, architectural, historical, natural, scenic, open space character of the subject property, while allowing certain portions of the subject property to be maintained in agricultural uses." This easement was recorded with the Lincoln County Recorder on May 7, 2015.

Also on May 6, 2015, Michael Govan, LACMA Chief Executive Officer, and Wallis Annenberg, Director, sent a letter to the Secretary of the Interior (Appendix B) stating: "I write to express my strong support of the designation of the Garden and Coal Valley area as a component of the National Landscape Conservation System pursuant to either Presidential authorities or federal legislative actions, and to notify you of the Los Angeles County Museum of Art's intent to transfer to the federal government for the purpose of such a designation a conservation easement in private lands encompassing and nearby the artwork *City*, by the artist Michael Heizer."

The letter from LACMA elaborates, "LACMA is prepared at this time to donate the conservation easement encompassing the realty containing *City* and the adjacent open space to the federal government as approved by the Board of Trustees of LACMA pursuant to their authority under LACMA's Articles of Incorporation and Bylaws. Our intent is that the donated conservation easement would be administered by the Secretary of the Interior through the Bureau of Land Management as part of the National Landscape Conservation System."

This Environmental Assessment (EA) has been prepared to analyze the potential impacts of LACMA's donation of the conservation easement to the United States.

The easement would grant BLM explicit and limited rights -- but not an obligation -- to protect the artwork and the surrounding open area from inconsistent development or uses of the property. The proposed easement donation would grant BLM (instead of LACMA) the ability to prohibit certain uses on private lands in the easement area.

The Presidential Proclamation that designated the surrounding area as Basin and Range National Monument provides that "[i]f the Federal Government acquires any lands or interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government." Thus, upon acquisition of the conservation easement, that "interest in land" (i.e., the conservation easement) -- which interest is limited to a right to prevent certain development and uses of the private land covered by the easement -- would become part of the monument. The land and artwork, however, will remain in private ownership and thus not become part of the monument as a result of the proposed donation.

This EA is a site-specific analysis of potential impacts that could result with the implementation of a proposed action or alternatives to the proposed action. The EA assists the Bureau of Land Management (BLM) in project planning and ensuring compliance with the National Environmental Policy Act (NEPA), and in making a determination as to whether any "significant" impacts could result from the analyzed actions. "Significance" is determined by the consideration of context and intensity of the impacts. If there is a Finding of No Significant Impact (FONSI), the

context and intensity criteria are listed with rationale for the determination in a FONSI document. If a FONSI is not reached, an Environmental Impact Statement would be prepared to identify significant impacts resulting from the proposed action or alternatives.

This document is tiered to, and incorporates by reference, the Ely Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/EIS) released in November 2007. Should a determination be made that implementation of the proposed or alternative actions would not result in “significant environmental impacts” or “significant environmental impacts beyond those already disclosed in the existing NEPA documents”, a FONSI will be prepared to document that determination, and a Decision Record issued providing the rationale for approving the chosen alternative.

1.1. Background:

An easement is a right to use someone else’s property without actually possessing it. An affirmative easement gives the easement holder the right to do something, such as pass over someone else’s land. A negative easement, on the other hand, prohibits the land owner from doing something, such as building a structure that would block the easement holder’s view.

A conservation easement is typically a type of negative easement created by statute -- in this case, Nev. Rev. Stat. Ann. 111.390-111.440 -- that provides a mechanism by which land remains in private ownership, but is protected from certain forms of future development. It is an agreement between a land owner and a government agency, land trust, or other organization in which the land owner voluntarily agrees to limit the future use of the property in order to protect certain conservation values or resources, such as wildlife habitat. Conservation easements are predicated on the premise that it is not necessary for the easement holder to acquire fee title to land to achieve certain resource protection objectives.

LACMA has offered to transfer, as a donation to BLM, the existing 2015 Conservation Easement (Appendix A) between Triple Aught Foundation, the land owner or Grantor, and LACMA, the easement holder or Grantee. This transfer would allow BLM to take a more active role to preserve the cultural, scenic, and open space character of the easement area, including the land artwork *City*, which is located on private land within the boundaries of the Basin and Range National Monument. Following the transfer of the easement to BLM, the land would remain in private ownership, and the landowner would continue to have all the rights of ownership except to the extent certain activities are prohibited by the conservation easement.

The easement describes a Cultural Area and an Open Area. According to the easement, “City is located within the Cultural Area of the Property. City is composed of abstract sculptural, architecturally sized forms made of compacted earth, gravel, concrete, and volcanic cinder that are reminiscent in shape, scale, and ambition of ancient ceremonial cities, while also reflecting modern building technologies.”

Under the easement, “The areas of the Property outside of the Cultural Area are referred to as the Open Area. The Open Area is unspoiled, undeveloped and unlit. Preservation of the Open Area in this natural, scenic and open condition preserves the viewscape and solitude within which *City* was conceived and created, and within which context it is intended to exist and to be experienced.”

1.2. Purpose of and Need for the Proposed Action:

The purpose is to determine whether BLM will accept the easement as a donation to the United States from LACMA to be managed as part of the National Landscape Conservation System. The need for the proposed action is to enhance BLM's management of the Basin and Range National Monument (Monument), established by Presidential Proclamation on July 10, 2015, and to facilitate future public access to *City*, the land artwork described in the Monument Proclamation.

In accordance with Section 205 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Secretary of the Interior is authorized to accept donations of lands or interests in land. Under the Antiquities Act of 1906 and the Presidential Proclamation establishing the Monument, the Secretary is authorized to accept relinquishments of lands or interests in lands within the boundaries of national monuments.

1.3. Decision to be Made:

Upon completion of this Environmental Assessment, the Authorized Officer for the BLM will determine whether to accept donation of the easement for management by the BLM in accordance with the provisions in the Proclamation creating the Basin and Range National Monument. Such acquisition would be subject to approval of title by the Department of Justice.

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Chapter 2. Description of Alternatives, Including Proposed Action

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2.1. Introduction:

In order to meet the purpose and need of the proposed project, the BLM has developed two alternatives—the Proposed Action and the No Action Alternative. The potential environmental impacts or consequences resulting from the implementation of each alternative are then analyzed in Chapter 3 for each of the identified issues.

2.2. Alternative A – Proposed Action:

Under the proposed action, BLM would accept the donation of the Easement for Conservation contained in Appendix A. Under this alternative, the BLM would replace LACMA as the Grantee. None of the mutual covenants, terms, conditions and restrictions contained within the easement would be changed, and Triple Aught Foundation would remain as Grantor.

The easement would give BLM certain rights. These rights would be primarily the right to protect the conservation values of the property, and as necessary for such protection: to access the private land, to require certain upkeep of the property, to prevent inconsistent activities, and to install signs. See page 8, section 6 of the easement (Appendix A).

2.3. Alternative B – No Action:

Under the No Action Alternative, the BLM would not accept the donation of the easement contained in Appendix A. It is assumed that LACMA would continue to hold the easement as Grantee and Triple Aught Foundation would remain as Grantor.

2.4. Alternatives Considered, but Eliminated from Detailed Analysis

An alternative for BLM to accept the easement with modifications was considered but eliminated from detailed analysis. The proposed donation is for an existing easement as currently written. An easement under different terms has not been offered to the BLM.

2.5. Relationship to Planning

2.5.1. Conformance with BLM Land Use Plan(s):

The proposed action is in conformance with the Goals and Objectives of the Ely District Record of Decision and Approved Resource Management Plan (Ely RMP, BLM 2008), which include:

Management Actions – Lands and Realty

Parameter – Acquisitions

LR-26: Limit acquisition of lands to situations where no other reasonable alternative exists. Coordinate on acquisitions with federal, state, and county agencies, and other interested parties prior to the acquisition. Consider private lands or rights for acquisition from willing sellers.

*Chapter 2 Description of Alternatives,
Including Proposed Action
Introduction:*

- Consider acquisition of lands or interest in lands with at-risk or high resource values or those characteristics that contribute to restoration, healthy watersheds, or other resource goals (e.g., ACECs, wilderness study areas, habitat for threatened and endangered species, cultural resources, and designated wilderness) in the planning area, or those lands that also provide for environmentally responsible commercial activities.
- Consider split-estate where appropriate to improve resource management while protecting resource values.

LR-27: Acquire legal public or administrative access from willing landowners, where a public demand or administrative need exists.

LR-28: Manage newly acquired lands in the same manner as comparable surrounding public lands or in conformance with established guidelines for the special management area.

2.5.2. Relationship to Statutes, Regulations, or other Plans:

The proposed action is in conformance with the Proclamation that designated the surrounding BLM lands as the Basin and Range National Monument. This easement would contribute directly to the conservation of scenic and historic values within the Monument. The Proclamation specifically mentions the need to prevent harm to the artwork in conjunction with consistent care and management of all the objects in the Monument. The Proclamation states: “Nothing in this proclamation shall be deemed to limit the authority of the Secretary, under applicable law other than this proclamation, to undertake or authorize activities on public land in the vicinity of the sculpture *City* for the purpose of preventing harm to the artwork, including activities to improve drainage and to prevent erosion, consistent with the care and management of the objects identified above.”

The easement is also consistent with BLM’s mission, which is to “To sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations.” This easement would prevent harm to the land artwork *City* and conserve the surrounding area for the use and enjoyment of present and future generations. Acceptance of the easement is also consistent with the Omnibus Public Lands Management Act of 2009 and Secretarial Order 3308, which instruct the BLM to ensure that the components of the National Conservation Lands are managed to protect the values for which they were designated, as BLM will be better able to prevent activities on the conservation lands that might be in conflict with National Conservation Land values.

The easement would be donated to BLM under the authority of Federal Land Policy and Management Act, Section 205, which gives the Secretary of the Interior authority to acquire “lands or interests therein.”

Chapter 3. Affected Environment/Environmental Impacts

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3.1. Introduction:

This chapter presents the existing environment (i.e., the physical, biological, social, and economic values and resources) of the impact area, identification of issues or resources that may be impacted by the action, and resulting impacts to those resources.

While many potential issues may arise during scoping, not all of them warrant analysis. Issues raised through scoping are analyzed if:

- Analysis of the issue is necessary to make a reasoned choice between alternatives.
- The issue is significant (an issue associated with a significant impact, such as a potential violation of a law imposed to protect the environment).
- Analysis of the issue is necessary to determine if the direct or indirect impacts are themselves significant, or if it would add a measurable incremental impact to past, present and reasonably foreseeable actions that could have a cumulatively significant impact.

Potential impacts to the resources/concerns listed in Table 3.1 were evaluated in accordance with criteria listed above to determine if detailed analysis was required. Consideration of some of these items is to ensure compliance with laws, statutes, or Executive Orders that impose certain requirements upon all federal actions. Other items are relevant to the management of public lands in the Ely District.

The following reports were prepared and used to determine the scope of this document:

1. Land Surveyor Report, Final Determination by the Certified DOI Land Surveyor (March 2, 2016)
2. Land Surveyor Report, Final Determination by the Certified DOI Land Surveyor (May 27, 2016)
3. Property Baseline Report for Triple Aught/Heizer Property, Prepared by Resource Concepts, Inc. (April 28, 2015)
4. Environmental Site Assessment Phase I for Triple Aught Foundation, Prepared by Resource Concepts, Inc. (May 5, 2015)

Many times a project will have some degree of effect upon a resource or concern, but that effect does not approach any threshold of significance, nor does it increase cumulative impacts by a measurable increment. Such effects are described as “negligible” in the rationale for dismissal from analysis.

3.2. Identification of Issues:

An interdisciplinary team (ID team) conducted internal scoping on January 26, 2016, which involved analyzing the potential consequences of the proposed action. Table 3.1 includes a summary of the results of this ID team review and documents the identification of issues for analysis or rationale for dismissal from analysis:

Table 3.1. Identification of Issues for Detailed Analysis

Resource/ Concern	Not Present	Present/ Not Affected	Present/ May Be Affected	Rationale
Air Quality*		X		The proposed easement would not affect air quality.
Water Quality, Drinking/Ground*		X		The proposed easement would not affect water quality.
Water Resources (Water Rights)			X	Water resources are analyzed in detail below.
Farmlands, Prime and Unique*		X		The proposed easement contains lands classified as a mix of not prime farmlands and prime farmland if irrigated and reclaimed of excess salts and sodium. The proposed action would not affect farmlands because the easement allows the Grantor to continue agricultural uses in the Open Area.
Soils/Watershed		X		The proposed easement would not affect soils or watersheds.
Forest Health*	X			There are no BLM forest resources located within the easement boundaries; therefore, no analysis required.
Vegetation, Forest/Woodland and other vegetative products (Native seeds, yucca and cactus plants)		X		The proposed action would not affect vegetative products as the easement would allow such products to be used only if trees are dead and pose a hazard or safety issues, and it does not allow for commercial use of such products. Trees in the easement area may be removed or altered if dead or to control insects, disease or invasive or non-native species.
Wetlands/Riparian Zones*	X			There are no wetlands or riparian areas located within the easement.
Fish and Wildlife		X		The proposed action would have no effect on fish and wildlife.
Migratory Birds*		X		The proposed action would have no effect on migratory birds.
FWS Listed (or proposed for listing) Threatened or Endangered Species or critical habitat.	X			There is no habitat for listed or proposed species within the action area. The proposed action would have no effect on threatened, endangered, or proposed species.
Special Status Animal Species, other than those listed or proposed by the FWS as Threatened or Endangered.	X			The proposed action is not located within habitat for Greater Sage-Grouse nor are any other special status animal species known to exist in the area.
Special Status Plant Species, other than those listed or proposed by the FWS as Threatened or Endangered.	X			The proposed action would have no effect on special status plant species as there is no ground disturbance proposed nor any known species in the area.

Resource/ Concern	Not Present	Present/ Not Affected	Present/ May Be Affected	Rationale
Wild Horses	X			The private property is not within a wild horse Herd Area or Herd Management Area and the majority of the property is fenced. Therefore, no wild horse analysis is required.
Cultural Resources *		X		This proposed action has no potential to effect historic properties. Therefore in accordance with the State Protocol Agreement Part 1 Section I.A.3, the BLM has no further obligations under Section 106 of the NHPA.
Special Designations (ACECs, National Monuments, etc.)			X	There are no ACECs located within the project area. The surrounding area is within the special designation of the Basin and Range National Monument, which is analyzed in detail below.
Paleontological Resources	X			There are no known paleontological resources located within the project area.
Visual Resources		X		Although visual resources are a key component of the purpose of the easement, the proposed action would not affect existing visual resources. The existing easement, with LACMA as Grantee, protects visual resources.
Land Uses			X	Land Uses are analyzed in detail below.
Transportation/ Access		X		The proposed action would have no effect on existing transportation and access.
Recreation Uses including Back country Byways, Caves, Rockhounding Areas		X		The proposed action would have no effect on existing recreation uses.
Grazing Uses/Forage		X		The proposed action would have no effect on existing grazing uses and forage. The BLM does not issue permits for grazing on private lands.
Mineral Resources		X		The proposed action would have no effect on mineral resources.
Floodplains*		X		Although the area is unmapped for floodplains (zone D), the proposed action would have no effect on floodplains.
Fuels		X		Language in the easement maintains current fuel loads; therefore, no further analysis is needed.
Emergency Stabilization and Rehabilitation	X			There are no Emergency Stabilization and Rehabilitation projects located within the project area.
Non-Native Invasive and Noxious Species *		X		The proposed action would have no effect on non-native invasive and noxious species as no ground disturbances are proposed by transfer of the easement to BLM.
Wilderness/ WSA*	X			There are no wilderness or wilderness study areas located within the project area.
Wild and Scenic Rivers	X			There are no wild and scenic rivers located in the project area.

Resource/ Concern	Not Present	Present/ Not Affected	Present/ May Be Affected	Rationale
Lands with Wilderness Characteristics	X			There are no lands with wilderness characteristics located within the project area.
Human Health and Safety*		X		The proposed action would have no effect on human health or safety.
Native American Religious and other Concerns*		X		Consultation with Native American Tribes is on-going for this project. Letters regarding the proposed action were mailed to Tribes on April 21, 2016. No concerns have been identified.
Wastes, Hazardous or Solid*		X		The proposed action would have no effect on solid or hazardous wastes. An Environmental Site Assessment Phase I was prepared on May 5, 2015 for the easement area. The assessment revealed evidence of "No Recognized Environmental Condition at the Site" and no further assessment appeared to be warranted.
Environmental Justice*		X		No disproportionately high or adverse human health or environmental effects are anticipated on minority populations or low-income populations from the proposed action.
Socioeconomics		X		The proposed action would have no effect on socioeconomics.

*Supplemental Authority. The NEPA is only one of many authorities that contain procedural requirements that pertain to treatment of elements of the environment when the BLM is considering a Federal action. There is a list of "supplemental authorities" that may apply to BLM actions. See Appendix 1: Supplemental Authorities to be Considered in BLM Handbook H-1790-1: National Environmental Policy Act Handbook.

3.3. General Setting:

The proposed easement is located on private land in Garden Valley in northwestern Lincoln County, Nevada near the Lincoln and Nye County line (see Appendix C for a map). The private land is surrounded by BLM-administered lands within the Basin and Range National Monument. The area is remote, with livestock ranching, recreational use, and the land artwork *City* among the activities in this area.

The easement is located in an area ranging from 5,100 to 5,200 feet above sea level in elevation. The area receives from 4 to 12 inches of annual average precipitation. The project area contains inter-mountain basins mixed salt desert scrub and inter-mountain basins greasewood flat vegetation, according to SWReGAP vegetation data (USGS 2004).

The majority of the easement area is fenced along the outer perimeter. Portions of easement parcels 00616101 and 00616106 are unfenced (see Appendix A, Exhibit B- Map of the Property for easement parcels). Access to the easement area could be either via Seaman Wash Road (also known as Coal Valley Road) or Timber Pass Road and Cherry Creek Road. These roads are generally maintained by the Lincoln County Roads Department. The private land and roads on the private land are currently not open to the public due to the fencing and a locked gate in the northern portion of parcel 00616101.

3.4. Resources/Concerns Analyzed

3.4.1. Water Resources

3.4.1.1. Affected Environment

The proposed action would occur on private land surrounded by public land with a large structure that is at a lower elevation than the surrounding landscape. The Basin and Range system with alluvial fans east of the private land tend to direct overland flow into the basin.

As is stated in the Proclamation, "Nothing in this proclamation shall be deemed to limit the authority of the Secretary, under applicable law other than this proclamation, to undertake or authorize activities on public land in the vicinity of the sculpture City for the purpose of preventing harm to the artwork, including activities to improve drainage and to prevent erosion, consistent with the care and management of the objects identified above."

3.4.1.2. Environmental Effects Proposed Action

Due to the lower elevation of the structure on private land within the easement, there is the possibility that overland flow will enter the structure area and cause flooding and erosion. The easement would give BLM rights, but not responsibilities, to address any potential issues of flooding and erosion within the easement area consistent with the terms of the easement.

3.4.1.3. Environmental Effects No Action

If the BLM does not accept the donation of the easement contained in Appendix A, management of overland flow events for flooding and erosion control may still occur on public lands outside the easement boundary for the purpose of preventing harm to the artwork as provided in the Proclamation for the National Monument.

3.4.2. Special Designations

3.4.2.1. Affected Environment

The proposed action would occur on private land surrounded by public lands within the Basin and Range National Monument. President Barack Obama designated and established the Basin and Range National Monument (BARNM) by Proclamation dated July 10, 2015. BARNM encompasses approximately 704,000 acres of BLM-administered public lands in Nye and Lincoln Counties in southeastern Nevada. The land artwork *City* is situated on private land and is not currently open to the public.

As the Proclamation indicates, the President established BARNM to “preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the prehistoric, historic and scientific values of this area remain for the benefit of all Americans.” The Antiquities Act of 1906 gives the President the authority to create National Monuments and identify the objects to be protected.

The Proclamation includes a discussion of the unique landscape and geology of the area, as well as a discussion of how the easement area provides a novel opportunity to experience these values of the Monument:

The location of a recent work of land art in the Basin and Range area reflects the rugged landscape and confirms its importance as a unique geologic area. The artist Michael Heizer chose the area for his work *City*, begun in 1972 and now nearing completion. Sitting on privately-held land in Garden Valley, *City* is one of the most ambitious examples of the distinctively American land art movement. Built into and out of the vast undeveloped expanse of Garden Valley, the work combines modern abstract architecture and engineering with ancient American aesthetic influences on a monumental scale, roughly the size of the National Mall, and evokes the architectural forms of ancient Mesoamerican ceremonial cities like Teotihuacán and Chichén Itzá. The presence of *City* in this stark and silent landscape provides the visitor a distinctive lens through which to experience and interact with Garden Valley.

Furthermore, the Proclamation includes language about preventing harm to the artwork through actions on surrounding public lands: "Nothing in this proclamation shall be deemed to limit the authority of the Secretary, under applicable law other than this proclamation, to undertake or authorize activities on public land in the vicinity of the sculpture *City* for the purpose of preventing harm to the artwork..."

3.4.2.2. Environmental Effects Proposed Action

If the BLM accepts this easement, the BLM might be better able to ensure that use of the private lands covered by the easement is consistent with the management of the surrounding landscape in Garden Valley as part of the Basin and Range National Monument. As stated in the Proclamation, "The presence of *City* in this stark and silent landscape provides the visitor a distinctive lens through which to experience and interact with Garden Valley." The easement would help ensure the preservation of the scenic values with a holistic approach within this area of the Monument.

3.4.2.3. Environmental Effects No Action

Under the No Action Alternative, the existing easement would continue to be held by LACMA. BLM would not acquire any rights on the easement lands.

3.4.3. Land Use

3.4.3.1. Affected Environment

All interest in private lands identified for donation and known as the "Easement for Conservation" are further described in Appendix A, Exhibit A, Description of Property, including Cultural Area and Open Area, and depicted on Exhibit B, Map of Property, including Cultural Area and Open Area, attached to the "Easement for Conservation", recorded May 7, 2015 in Book 295, Pages 231-255, in Document # 0147481, of the Official Records of Lincoln County, Nevada. The private lands described above are located in sections 13, 14, and 15, Township 2 North, Range 58

East, Mount Diablo Meridian, Nevada. The lands surrounding said private lands and administered by the BLM are described as follows; Sections 9 thru 13, 16, 21 thru 24, Township 2 North, Range 58 East, Mount Diablo Meridian, Nevada, and section 18, Township 2 North, Range 59 East, Mount Diablo Meridian, Nevada. According to General Land Office (GLO) Records, the private property was conveyed out of federal ownership to the State of Nevada on July 22, 1895, under the authority of the June 16, 1880, Nevada-Lieu Selection (21 Stat. 287). The grant was issued without the reservation of minerals or other rights to the United States.

A Land Surveyor Report was prepared for the easement on March 3, 2016. The findings recommended a field investigation be performed by a Cadastral Surveyor to evaluate the original corner evidence that is not addressed on existing local, private surveys. The final determination made in the Land Surveyor Report (LSR-2016–29–2) on May 27, 2016 states that, “Based on our review of the Basin and Range National Monument Proclamation and the conservation easement granted by the Triple Aught Foundation to the Los Angeles County Museum, nothing discovered by this investigation indicates a boundary risk that would hinder the stated purpose of transferring the Los Angeles County Museum conservation easement to the Bureau of Land Management.”

A review of potential Land Disposal Areas (Appendix B of the RMP) was conducted, and no lands are identified for disposal within the boundaries of the Monument.

There are an unknown number of access roads to the private property. There are no right-of-way authorizations in the records for these roads. No authorizations for utilities or other purposes were identified serving the private property.

The Baseline Document Report identifies three distinct areas within the 1,517.33 acre private property. The conservation easement encompasses 1,316.5 acres, as follows:

- The “Cultural Area,” 879.87 acres. The area wherein the land art *City* is located. The artwork itself is a massive sculpture covering approximately 143 acres or 16% of this area. The grantor’s documents describe the sculpture as comparable in size to the National Mall in Washington D.C. The remainder of this area has roads and disturbances supporting the on-going construction of *City*, as well as open desert. The area has altered topography to support the artist’s vision of the work. Construction completion of *City* is anticipated by 2020.
- The “Open Area,” 436.63 acres. The area has some agricultural and some undisturbed land. It has access roads, main gate, major drainages, a dam, and open desert.

The property owner also owns a third area of 200.83 acres which is omitted from the easement. The third area of private land consists of a ranch complex (buildings, corrals, solar panels), agricultural fields, drainages and open desert.

3.4.3.2. Environmental Effects Proposed Action

The effects of the easement on lands and realty are analyzed within the context of the authorities, regulations, existing land authorizations, and issues presented in the Affected Environment section of the EA. The easement information is taken from the Easement for Conservation between Triple Aught Foundation (Grantor) and the Los Angeles County Museum of Art (LACMA, Grantee),

recorded in Lincoln County, Nevada on 5/7/2015, Document #0147481. The Lands and Realty analysis pertains to the anticipated effects of implementing the easement once transferred.

The purpose of the easement is “forever preserving the cultural, architectural, historical, natural, scenic, open space character of the subject property.” As presented in the easement, these conservation values are complemented through completion of the construction of *City*, on-going agricultural activity, and eventually a visitor program. The Grantor retains primary responsibility for these purposes.

The proposed action would not result in impacts to lands and realty on public lands because they would continue to be managed in accordance with the existing land use plan.

Other holders of rights or interests in the private land:

Mineral rights:

The easement that is proposed to be conveyed by donation to the United States prohibits “[t]he mining or extraction of soil, sand, gravel, rock stone, decorative stone, oil natural gas, fuel, or any other mineral substance, of any kind or description . . . except in conjunction with the City Uses in the Cultural Area.” (Paragraph 4.8). As the mineral rights for the easement lands are held by the Grantor, Triple Aught, no mining is allowed on these lands under the terms of the easement.

Water rights:

There are water rights associated with the private land. Some of the values identified in the proposed easement can only be successfully maintained with the use of water. These include ongoing agriculture, maintenance of *City*, and future amenities for visitors. The BLM as Grantee does not receive a right to the use of water.

Responsibilities:

The Grantor retains primary responsibility for and use of the property, including the completion, protection, maintenance, repair and preservation of the sculpture *City*; on-going agriculture and grazing; and the development of a Visitor Management Plan and potentially visitor facilities, amenities, signage, and hosting of visitors by 2020.

The easement makes the Grantor primarily responsible for costs and performance of continued construction, maintenance, repair, and restoration of *City* and other easement conservation values presently and into the future.

Acquisition of the easement would grant BLM certain rights but no obligations for management of the area consistent with the conservation easement. The Grantee has the right, but not the obligation, to perform any maintenance, repair, or restoration that it deems necessary to protect the conservation values of the easement. As identified above, the easement does not provide for water use, therefore these obligations are further minimized for the Grantee. While the Grantor is performing its duties, the Grantee may be notified, consulted, and asked for agreement, and may ensure that the Grantor is performing its responsibilities.

Through donation of the conservation easement, the prominent artwork *City* is brought from totally private administration or protection by the Triple Aught Foundation and the LACMA into joint coordination of protection with the BLM. BLM’s acquisition of the easement would further the objectives of the Basin and Range National Monument.

3.4.3.3. Environmental Effects No Action

Under the No Action Alternative, the easement would continue to be held by LACMA. Similar impacts would occur on public and private lands as described under the Proposed Action except BLM would not have a role in the easement area.

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Chapter 4. Cumulative Impacts

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4.1. Introduction:

As required under NEPA and the regulations implementing NEPA, this section analyzes potential cumulative impacts from past, present, and reasonably foreseeable future actions combined with the Proposed Action within the area analyzed for impacts in Chapter 3 specific to the resources for which cumulative impacts may be anticipated. A cumulative impact is defined as “the impact which results from the incremental impact of the action, decision, or project when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time” (40 Code of Federal Regulations 1508.7).

4.2. Past, Present, and Reasonably Foreseeable Future Actions

Past, present, and reasonably foreseeable future actions are analyzed to determine cumulative impacts in the project area. Past actions on the private land and surrounding public lands in the area include grazing and range improvements; hunting, trapping, and wildlife viewing; off road and all-terrain vehicle use; rights-of-way grants, leases, and land use permits; other forms of recreation; uses on the private land (land artwork, grazing, and agriculture); and municipal water well development. Present actions include all of the past actions, although the surrounding area has been withdrawn from mineral entry since the Proclamation created a National Monument. Many of the past and present actions are also reasonably foreseeable future actions, unless prohibited by the Proclamation. The disturbances related to these individual activities are minor, mostly temporary, and tend to occur randomly in time. A reasonably foreseeable future action that is not presently occurring is the artwork being opened to the public by 2020.

4.3. Cumulative Impact Analysis

4.3.1. Proposed Action

Although the existing easement anticipates visitors in the future, the transfer of that easement from LACMA to the BLM has no reasonably foreseeable impacts on visitor use. The amount of visitation will vary regardless of who holds the easement. Moreover, because a Visitor Management Plan has not yet been developed, the details of how many visitors and what times of years and, thus, potential effects of visitors at the artwork are unknown, thus impacts are too speculative to analyze at this time. The artwork is predicted to be available for public viewing by 2020. Increased visitors to the area could result in more traffic, increased dust, effects on wildlife, and similar types of impacts from visitors coming to view the artwork. Any such impacts resulting from future federal actions will appropriately be analyzed when more information is available.

There are no known additional cumulative effects anticipated in combination with the past, present, and reasonably foreseeable future actions. Future use and management of the easement area would continue to be subject to the existing easement but the easement would be held by BLM. Additional land uses would be allowed on the private easement lands in accordance with the stipulations and restrictions of the easement. Actions with adverse effects to resource values for which the easement was acquired would not be allowed on the easement lands. Overall, acquisition of the easement could have a positive cumulative effect on Monument management because BLM could potentially integrate the easement area into a more holistic and contiguous

management approach for the entire Monument. BLM's acquisition of the easement would further the objectives of the Basin and Range National Monument as described in the Proclamation.

4.3.2. No Action Alternative

Future use and management of the area would continue to be subject to the existing easement, with LACMA continuing to hold the easement. Development and other future uses of the private property may occur that are not as effectively coordinated with the management of the surrounding public lands as a National Monument.

Chapter 5. Consultation and Coordination:

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5.1. Introduction

The issues considered and the analysis completed in the EA were informed by the public and agency involvement process described in sections 5.2 and 5.3 below.

5.2. Persons, Groups, and Agencies Consulted

Table 5.1. Persons, Groups, and Agencies Consulted

Name	Purpose & Authority for Consultation or Coordination	Findings and Conclusions
John Callan, Environmental Professional, BLM Nevada State Office	Phase I Environmental Site Assessment review by BLM Nevada State Office	Based upon a review of the Phase I Environmental Site Assessment (ESA) and the nature of the Conservation Easement, concurs with author's conclusions presented in the Phase I ESA which state "This assessment has revealed no evidence of RECs [Recognized Environmental Conditions] on the lands associated with the conservation easement."
Confederated Tribes of the Goshute Reservation, NV-UT, Duckwater Shoshone Tribe of the Duckwater Reservation, NV, Ely Shoshone Tribe of Nevada, Te-Moak Tribe of the Western Shoshone Indians of Nevada; Elko Band Council; South Fork Band Council; Battle Mountain Band Council, Paiute Indian Tribe of Utah; Indian Peaks Band of Paiutes; Shivwits Band of Paiutes, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Las Vegas Paiutes Tribe of the Las Vegas Indian Colony, and the Yomba Shoshone Tribe of the Yomba Indian Reservation, NV	Tribal Consultation	To date, no Tribes have expressed concern regarding this action.

5.3. Summary of Public Participation

The preliminary EA was made available for a 30-day public comment period from July 8, 2016 to August 8, 2016. The comment period was advertised through multiple venues: (1) on the BLM ePlanning and Ely District Office websites, (2) by mailing of interested party letters, and (3) in a press release published in the Lincoln County Record.

Twelve written comments were received from: Conservation Lands Foundation, Renewable Envoy, Toiyabe Chapter of the Sierra Club in Nevada and Eastern California, Nevada Department of Wildlife, a livestock grazing permittee, and private citizens in Nevada and Utah.

The comment letters can be categorized into four general positions:

- 4: supporting the No Action Alternative

- 4: supporting the Proposed Action
- 1: supporting analysis of more alternatives
- 3: neutral or no stated opinion on which action should be selected

Letters supporting the No Action Alternative either recommend that the action be deferred until the Basin and Range National Monument Resource Management Plan and associated Environmental Impact Statement are complete and/or express concern that BLM funding should not be used to manage the easement area.

Letters supporting the Proposed Action describe how the easement would ensure landscape scale management of the area, the importance of the artwork, and potential ideas regarding visitation of the area in the future.

One letter supports analysis of a larger range of alternatives and requests adding an alternative which includes public participation in decisions made on future federal responsibilities for the protection of the artwork.

Some letters offer no direct opinion on which alternative should be chosen.

A summary of BLM's responses to these comments as incorporated in the EA is included in Appendix D.

On April 22, 2016, the Basin and Range National Monument mailed certified letters to a number of Tribes requesting information or input on any known traditional religious sites or cultural sites of importance that could potentially be adversely affected by the proposed action. The following Tribes were contacted: Confederated Tribes of the Goshute Reservation, NV-UT, Duckwater Shoshone Tribe of the Duckwater Reservation, NV, Ely Shoshone Tribe of Nevada, Te-Moak Tribe of the Western Shoshone Indians of Nevada; Elko Band Council; South Fork Band Council; Battle Mountain Band Council, Paiute Indian Tribe of Utah; Indian Peaks Band of Paiutes; Shivwits Band of Paiutes, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Las Vegas Paiutes Tribe of the Las Vegas Indian Colony, and the Yomba Shoshone Tribe of the Yomba Indian Reservation, NV. To date, no Tribes have expressed any concerns regarding the Proposed Action.

5.4. List of Preparers

5.4.1. BLM

Table 5.2. List of BLM Preparers

Name	Title	Responsible for the Following Section(s) of this Document
Alicia Styles	Monument Manager	Project Management
Andrew Gault	Hydrologist	Air Quality, Water Quality, Water Resources, Prime and Unique Farmlands, Soils/Watershed, Wetlands/Riparian Zones, Floodplains
Katie Walsh	Natural Resource Specialist	Forest Health
Daniel Condie	Rangeland Management Specialist	Rangeland Standards and Guidelines, Sensitive Plant Species, Grazing/Forage, Vegetation Resources

Todd Trapp	Wildlife Biologist	Fish and Non-Avian Wildlife, Migratory Birds and Sensitive Avian Species, Endangered Species, Sage Grouse, Special Status Animal Species
Ruth Thompson	Wild Horse and Burro Specialist	Wild Horses
Nicholas Pay	Archaeologist	Cultural Resources, ACECs for Cultural Resources, Heritage Special Designations, Paleontological Resources
Lisa Domina	Outdoor Recreation Planner	Visual Resources, Transportation/Access, Recreation Uses
Elena Montenegro-Long	Realty Specialist	Land Uses
Paul Nordstrom	Geologist	Mineral Resources
Cody Coombs	Fuels Program Manager	Hazardous Fuels, Fire Management
Chris McVicars	Natural Resource Specialist	Invasive Non-native species
Shirley Johnson	Caliente Field Office AFM Non-renewable	Wilderness, wilderness study areas, lands with wilderness characteristics, wild and scenic rivers
David Loan	Civil Engineer	Public Safety, Human Health/Safety
Randy Johnson	Aviation Manager	Hazardous or Solid Wastes
Elvis Wall	Native American Coordinator	Native American Concerns
Emily Simpson	District Planning and Environmental Coordinator (Acting)	Environmental Justice, Socioeconomics

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- Resource Concepts, Inc. May 5 2015. Environmental Site Assessment Phase I for Triple Aught Foundation.
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Acronyms

BARNM:

Basin and Range National Monument

BLM:

Bureau of Land Management

CFR:

Code of Federal Regulations

DR:

Decision Record

EA:

Environmental Assessment

EIS:

Environmental Impact Statement

FLPMA:

Federal Land Policy and Management Act

FONSI:

Finding of No Significant Impact

IM:

Instructional Memorandum

LACMA:

Los Angeles County Museum of Art

NEPA:

National Environmental Policy Act

RFFS:

Reasonably Foreseeable Future Action

RMP:

Resource Management Plan

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Appendix A. Conservation Easement

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Appendix B. Letter from LACMA

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Appendix C. Map of Conservation Easement

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Appendix D. Comments and Responses