

**Public Employees for Environmental Responsibility  
Coalition To Protect America's National Parks  
Western Watersheds Project  
Basin and Range Watch  
Amargosa Conservancy  
and John W. Hiscock**

September 28, 2024

**Protest Regarding #DOI-BLM-HQ-3000-2023-0001-RMP-EIS - Final Programmatic  
Environmental Impact Statement and Proposed Resource Management Plan Amendments  
for Utility-Scale Solar Energy Development (FPEIS/RMPAs)**

**Protest Summary**

This protest is hereby submitted on behalf of the signatory organizations and individuals.

The protesting parties realize the importance of the Department of the Interior (DOI) initiative laid out in the PEIS in terms of advancing understandable, wise, and sustainable renewable solar energy choices and development on public lands in the western United States. However, we protest for the reasons related to management and protection of National Historic and National Scenic Trails in the western region of the U.S., including, specifically, the Old Spanish National Historic Trail. Our primary points of protest are as follows, and also expressed in the body of this submission:

- The Department of the Interior and Bureau of Land Management (BLM) failed to fulfill statutory responsibilities under the National Trails System Act (NTSA) and agency policies related to that act.
- The Department of the Interior and Bureau of Land Management have violated the provisions of the Federal Land Policy and Management Act (FLPMA) in proceeding with a plan authorizing discretionary utility scale solar development on public lands in conflict with non-discretionary statutory mandates of the National Trails System Act and BLM policies concerning effectuation of the NTSA.
- Inappropriate sequencing of mandated versus discretionary DOI planning, and specifically the subject programmatic plan for utility scale solar energy development, and therefore, inadequacy of NEPA analysis of potential impacts of the PEIS on the statutorily protected resources, values, and opportunities of the Old Spanish National Historic Trail (OSNHT).
- Absence or inadequacy of National Scenic Trail (NST) and National Historic Trail (NHT) plans and related actions required by the NTSA, and BLM policy, and therefore, inadequacy of NEPA analysis of potential impacts of the PEIS on the statutorily protected resources, values, and opportunities of all NSTs and NHTs (NTs).

- Inconsistency in establishment of solar development exclusion zones and lack of justifications for certain limitations on the “National Conservation Lands” (NCL) exclusion category.
- Lack of clarity and detail as to how the PEIS relates to BLM unit by unit Resource Management Plans (RMPs); and specifically, how, and when those RMPs will be amended to comply with decisions reached in the PEIS, and/or further work conducted as suggested by the PEIS to bring those RMPs into compliance with the PEIS, federal statutory law, and BLM policy.
- Inconsistency with the Desert Renewal Energy Conservation Plan (DRECP).

This protest is primarily focused on the relationship of the PEIS, the programmatic plan, and BLM RMP amendments related to utility scale solar development and the effects of such on public lands crossed by National Historic and National Scenic Trails, including, specifically, the Old Spanish National Historic Trail. It should be noted that many of the issues related to the OSNHT are pertinent to the relationship between the PEIS and public lands crossed by other National Historic and National Scenic Trails.<sup>1</sup> These comments should be carefully considered where applicable to these other Trails as well.

This protest is inclusive of issues raised in the joint comments of John W. Hiscock, Public Employees for Environmental Responsibility, the Coalition to Protect America’s National Parks, the Western Watersheds Project, and the Southern Utah Wilderness Alliance (SUWA) submitted on April 18, 2024 (copy attached). Such initial comments are further clarified and supported by information submitted herein.

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**Protesting Parties**

The organizations and individuals protesting the FPEIS include the group signing on to the comments of April 18, 2024, excluding SUWA and including additional individuals and organizations that previously submitting separate, but related comments on the Draft PEIS.

The noted core group listed above has been mis-characterized by the BLM in its “Table M-1. Correspondence Submitted on the Draft Programmatic EIS Containing Unique Content” (Final PEIS, Appendix M, p. M-77 – M-141. That Table lists the core group comment submitted as being jointly submitted by one organization and five individuals – “Public Employees for Environmental Responsibility; Hiscock, John W.; Dumais, Laura; Rosenthal, Chandra; Francis, Philip A.; Welp, Laura; Larsen, Hanna.” Id. at M-120. In actuality, as listed on the letterhead of the comments, and as detailed in the signature lines of the subject comments the organizations and individuals jointly submitting the unified comment were: Public Employees for Environmental Responsibility (signed by its authorized representatives Public Lands Director Chandra Rosenthal and Staff Counsel, Laura Dumais); Coalition for Protection of America’s

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<sup>1</sup> Other national scenic trails and national historic trails crossing public lands subject to the PEIS, the programmatic plan, and related forthcoming RMP amendments include: Arizona NST, California NHT, Continental Divide NST, El Camino Real de Tierra Adentro NHT, Juan Bautista de Anza NHT, Lewis and Clark NHT, Mormon Pioneer NHT, Nez Perce Ne Mee Poo NHT, Oregon NHT, Pacific Crest NST, Pacific Northwest NST, and Pony Express NHT.

National Parks (signed by its authorized representative and Chairman, Philip A. Francis); Western Watersheds Project (signed by its authorized representative and Vegetation Projects Specialist Laura Welp); and Southern Utah Wilderness Alliance (signed by its authorized representative Staff Attorney Hanna Larsen); and individually by John W. Hiscock; and, each of the individuals aforementioned. (See comments submitted by listed organizations and individuals on April 18, 2024.) Other commenting parties joining in the current protest are Kevin Emmerich, Basin and Range Watch, Laura Cunningham, Western Watersheds Project, and Mason Voehl, the Amargosa Conservancy.

The foregoing protesting individuals are users of the National Trails System and advocates for the System. The foregoing protesting organizations are comprised of members who are users of the National Trails System and advocates for the system.

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**DOI and BLM’s Authority to Allow or Permit Utility Scale Solar Energy Development Under FLPMA is Discretionary and Secondary to the DOI’s and BLM’s Administration, Management, and Protection Responsibilities Mandated by the NTSA.**

**Allowances for Solar Development Applications Under FLPMA and the FPEIS Within Mandated NT Rights-of-Way are Contrary to Law and DOI Lacks Authority to Accept or Approve Such Applications**

The National Trails System (NTS) was created in law, by Congress, in 1968. National Trails System Act, Pub. L. No. 90-543 (codified as amended in 16 U.S.C. §§1241-1251). In 1978, Congress amended such law, and the National Trails System to include congressionally established National Historic Trails. National Parks and Recreation Act of 1978, Pub. L. No. 95-625 (codified as amended in 16 U.S.C. §§1241-1251). The Old Spanish National Historic Trail was statutorily added to the National Trails System in 2002. Old Spanish Trail Recognition Act of 2002, Pub. L. No. 107-325 (codified as amended in 16 U.S.C. §1244).

The Federal Lands Policy and Management Act (FLPMA) governing the management of public lands administered by the Secretary of the Interior through the BLM was passed as federal statutory law in 1976. Federal Land Policy and Management Act of 1976, Pub. L. 94-579 (codified as amended in 43 U.S.C. §§1701 – 1785). FLPMA generally mandates that public lands are to be managed under the principles of multiple use and sustained yield, **however, the statute also states “except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it will be managed in accordance with such law.”** 43 U.S.C. §1732 (emphasis added). NHTs and NSTs established under the NTSA are such an exception to FLPMA’s multiple use mandate.

The OSNHT, and in fact any National Historic Trails (NHTs) and National Scenic Trails (NSTs) “administered by the Bureau of Land Management” were added to a newly established federal system of conservation lands, the National Landscape Conservation System (NLCS) in 2009. Omnibus Public Lands Management Act of 2009, Pub. L. No. 111-11, Subtitle A (codified in 16 U.S.C. §7202(b)). Congress expressed the purpose of the Act as follows: “In order to conserve,

protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations, there is established in the Bureau of Land Management the National Landscape Conservation System.” *Id.* at §7202(a).

Furthermore, Congress directed that:

“The Secretary shall manage the system—

(1) in accordance with any applicable law (including regulations) relating to any component of the system included under subsection (b); and

(2) in a manner that protects the values for which the components of the system were designated.”

*Id.* at 16 U.S.C. 7202(c).

This congressional mandate clearly strengthens the exception to general multiple use management cited in FLPMA in regard to all NLCS lands, including NHTs and NSTs. The congressionally authorized routes of the OSNHT pass through and are proximate to federal public land areas of the FPEIS/RMPAs. Therefore, in accordance with FLPMA (43 U.S.C. §1732) said lands must be managed in accordance with the mandates of the NTSA and the NLCS as such precedential laws dedicate said lands with limitations and allowances of greater specificity than the broad multiple use purposes of FLPMA.

Under FLPMA the Secretary’s authority to allow solar development on federal public lands is discretionary, not mandated, and limited and dependent upon a broad array of factors. The Secretary’s authority to allow any activities on federal public lands crossed by NTs, including the OSNHT is specifically prescribed, and limited by the language of the NTSA. Activities, uses, and development along NTs, and specifically, NHTs such as the OSNHT are limited to Secretarial allowances for the following uses and subject to certain findings:

- purposes for which such NTs were established such as public recreational enjoyment, and public education and learning;
- “[w]ithin the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes” (16 U.S.C. §1246(d));
- developments and uses along NTs for “campsites, shelters, and related-public-use-facilities” and “[o]ther uses along the trail, which will not substantially interfere with the nature and purposes of the trail . . . .” (16 U.S.C §1246(c)); and,
- “the use of motorized vehicles” “which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation [i.e. – the designation or establishment date of a given NT], are allowed by administrative regulations” “shall be permitted by the Secretary charged with administration of the trail.” *Id.*

Taking these limitations on the Secretary’s authority to allow activities and uses along NTs into account, any authorization of solar energy development is subject to a finding that such use “will not substantially interfere with the nature and purposes of the trail . . . .” *Id.*

The lands that comprise the management and protection zone of a NT are not only the line of such NTs depicted in each NT's Feasibility Study presented to, and acted upon by Congress, but logically, the NTSA right-of-way required by Congress (16 U.S.C. §1246(a)(2)), and reinforced by agency policy **“that is of sufficient width to encompass National Trail resources, qualities, values, and associated settings”** (BLM, Manual 6250, *National Scenic and Historic Trail Administration (Public)* at §1.6(A)(1-3). pp. 1-8 (emphasis added)), and/or NT Management Corridor **“of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored”** (*Id.* at “Glossary”, p. G-5).

As discussed more thoroughly below, the Secretary of the Interior and BLM and NPS Co-Administrators have not established a NTSA right-of-way, or CMP or RMP NT Management Corridor for the OSNHT via a CMP or properly amended RMPs. Consequently, the Secretary has no basis for analyzing the potential impacts of solar development on the OSNHT. Because the Secretary has no present basis for concluding that the “use” of solar energy development “will not substantially interfere with the nature and purposes of the OSNHT,” the Secretary has no authority for allowing applications for solar development even within BLM’s professed NT exclusion zone.

**DOI’S AND BLM’S FAILURE TO ESTABLISH AND EXCLUDE DISTINCT NTSA RIGHTS-OF-WAY AND TRAIL MANAGEMENT CORRIDORS FROM UTILITY SCALE SOLAR DEVELOPMENT IN THE CURRENT FPEIS IS CONTRARY TO STATUTORY LAW, IS UNAUTHORIZED, AND ARBITRARY AND CAPRICIOUS.**

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**The Department of the Interior and Its Delegated NT Administrators  
Have Failed to Fulfill Statutory Responsibilities Regarding the OSNHT  
Under the National Trails System Act  
and Agency Policies Related to That Act.**

NT Policy and Purposes.

The NTSA describes the policy of the Act as follows:

In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located.

16 U.S.C. §1241(a). Furthermore, the Act describes the purpose of NHTs to be: “National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment.” *Id.* at §1242(a)(3).

Additional statutory instruction concerning uses of NTs includes:

(j) Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this Act or other Federal laws, or any State or local laws.

*Id.* at §1246(j).

NHTs must have “significant potential for public recreational use or historical interest based on historic interpretation and appreciation,” therefore, recreation and public and individual learning are also important, congressionally recognized purposes. *See* 16 U.S.C. §1244(b)(11)(C). And, in specific reference to NHTs and portions thereof acknowledged as “high potential route segments” the purpose of enjoyment through vicarious recreational experiences is described as follows: “‘high potential route segments’ means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route.” *Id.* at §1251(2).

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### NTSA Mandates and Responsibilities

The Secretary of the Interior, was statutorily assigned responsibility for administration of the OSNHT by the “Old Spanish Trail Recognition Act of 2002” (Pub. L. No. 107-325; codified at 16 U.S.C. §1244(a)(23)(C) as part of the NTSA). Upon addition of the OSNHT to the National Trails System (NTS) in 2002, the Secretary of the Interior assigned joint administrative responsibility for the Trail to the National Park Service (NPS) and the BLM. *See* Memorandum, Secretary of the Interior (Gale Norton), *Administrative Authority for the Old Spanish National Historic Trail*, June 5, 2003.

The NTSA mandates the Secretary of the Interior to fulfill certain obligations regarding the NTs and the NTSA.

Advisory Council. The NTSA calls for the Secretary to establish an Advisory Council for each NT, stating: “The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the system, . . . , establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment.” 16 U.S.C. §1244(d).

**The Secretary of the Interior has failed to ever establish an Advisory Council for the OSNHT in accordance with the NTSA mandate detailed at 16 U.S.C. §1244(d).**

Comprehensive Management Plan. One of the most important and exacting mandated secretarial responsibilities of the NTSA is the preparation and congressional submission of a

“comprehensive plan for the management” (CMP) of each congressionally designated NHT and NST. In regard to NHTs, including the OSNHT, the CMP is to address “use of the trail” and the following items:

- (1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;
- (2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
- (3) a protection plan for any high potential historic sites or high potential route segments; and
- (4) general and site-specific development plans, including anticipated costs

16 U.S.C. §1244(f).

Each such CMP is mandated to be completed “[w]ithin two complete fiscal years of the date of enactment of legislation designating a national historic trail . . .” and submitted “to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate . . .” *Id.* In accordance with these statutory provisions, the CMP for the OSNHT should have been completed and submitted to the noted congressional entities by October, 2005 – within two complete fiscal years of the Trail’s enactment in December, 2002.

**To date, no CMP has been prepared for the OSNHT, in accordance with legal mandates. Such CMP is presently 19 years overdue. The DOI and its OSNHT administrative delegates have failed to fulfill this statutory responsibility.<sup>2</sup>**

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<sup>2</sup> In 2017, the OSNHT Co-Administrators issued a Comprehensive Administrative Strategy (CAS) for the Trail. It fails to meet the NTSA requirements for a CMP for a variety of reasons including: (1) no assertion that the CAS was intended to, or sufficed to replace the statutorily required CMP; (2) no submission to Congress as required of a CMP; (3) no National Environmental Policy Act analysis or related formal public review process as intended and practiced for NT CMPs (see following paragraph); and, (4) no comprehensive inclusion of CMP elements as directed by agency administrative policies, including designation of a OSNHT NTSA right-of-way. Consequently, the OSNHT CAS does not suffice to meet NTSA or agency policy requirements. Furthermore, CAS suggested listings of certain administration and management areas, such as “high potential historic sites” and “high potential route segments” are incomplete and non-binding as these major federal actions potentially affecting federal administration and management of the Trail, related public lands, and federal negotiations regarding, or acquisition <sup>2</sup> **2 (cont.)** of, non-federal lands under NTSA, have not been subject to NEPA process and review. Those listings are nothing more than suggestions.

Furthermore, NEPA review of CMPs is called for by both BLM and NPS policy. BLM policy states: “the National Trail Administrator shall ensure adequate public involvement in administration activities through established NEPA and planning processes.” BLM Manual 6250, §1.6(A)(9), p. 1-12. BLM policy also states:

“3. *Trailwide Comprehensive Planning*

- i. The National Trail Administrator shall lead the interagency effort to develop, or update, as policy or resource conditions warrant, the statutorily required trailwide Comprehensive Plan, public participation, and accompanying environmental document, following the requirements of NEPA and Section 5 of the NTSA. . . .”

NT Rights-of-Way. Also, of comparable administrative importance to CMPs, is the NTSA secretarial obligation to establish NT rights-of-way. The NTSA mandates that: “the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register.” *Id.* at §1246(a)(2).

**To date, no NTSA rights-of-way for the OSNHT have been prepared or issued in accordance with legal mandates. The DOI and its OSNHT administrative delegates have failed to fulfill this statutory responsibility.<sup>3</sup>**

**DOI’S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE NTSA IN REGARD TO THE OSNHT IS A VIOLATION OF FEDERAL STATUTORY LAW.**

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Formal Agency NTSA Policies

Agency policies, including those of the BLM/NPS Co-Administrators of the OSNHT incorporate additional guidance on preparation of CMPs and the importance of NTSA rights-of-way.

BLM NT Administration policies contained in Manual 6250, *National Scenic and Historic Trail Administration (Public)* (2012), state:

1.6 Policy

A. Statement of Programmatic Policy

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*Id.* at §1.6(D)(3)(i). And,

“xi. The National Trail Administrator shall publish the notice of availability of the selected National Trail Right-of-Way maps and descriptions in the Federal Register concurrently with the draft and final trailwide Comprehensive Plan and NEPA document.”

*Id.* at (xi). NPS policy states that NTSA administrative tasks include: “Complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other laws and executive orders where applicable.” NPS, Reference Manual 45, *National Trails System*, §3.1.1, p. 23. NPS policy also states:

Planning and operating national trails – as Federal actions – are subject to a large body of law and regulation. For example, the National Environmental Policy Act (NEPA) requires that prior to undertaking a Federal action, Federal agencies must take into account impacts on the environment and try to minimize such impacts.

NEPA requires that an EIS be completed before any Federal action is taken which may be controversial and/or have a significant effect on the quality of the human environment. To determine whether or not an EIS is required, an EA may be conducted. In recent years, EIS requirements have been built into some comprehensive management plans for national trails.

*Id.* at §5.2, p. 56. Of the 31 NSTs and NHTs designated since 1968, all but the OSNHT have gone through NEPA analysis evaluation. Some Finding of No Significant Impact (FONSI) conclusions have been reached, however, in almost all of those FONSI instances the NTs were in the midwest and east and do not traverse significant tracts of, or any federal lands. Virtually all of the CMPs regarding NSTs and NHTs crossing significant multi-jurisdictional federal lands in the west have been subject to an EIS. The Federal Register Notice of Intent for a OSNHT CMP effort, which ultimately failed, clearly stated that effort would be subject to a NEPA EIS. *See* 71 Fed. Reg. 2956 (2006).

<sup>3</sup> Few, if any, NT rights-of-way for other NTs, including those subject to this FPEIS, have been issued.



1. **Once a trail is designated by Congress, the National Trail Administrator, shall identify and determine the nature and purposes of National Trails, select National Trail Rights-of-Way, and establish goals and objectives within trailwide Comprehensive Plans** to safeguard the nature and purposes of assigned National Trails, provide for maximum compatible outdoor recreation potential, and protection, conservation and enjoyment of the nationally significant scenic, historic, natural, and cultural qualities of the areas and associated settings through which such trails may pass, as well as the primary use or uses of the trail. .

..

2. **The National Trail Right-of-Way (see glossary) is selected by the National Trail administering agency in the trailwide Comprehensive Plan and includes the area of land that is of sufficient width to encompass National Trail resources, qualities, values, and associated settings in order to further the purposes for which the trail was designated by Congress. In selecting the right-of-way, the BLM, through the Secretary, shall include the resources, qualities, values, and associated settings, (comprised of the scenic, historic, cultural, recreation, natural, and other landscape values of the land areas through which such National Trails may pass), and the primary use or uses.**

....

3. **The National Trail Administrator shall identify, determine, and describe the nature and purposes of the National Trail and provide strategic direction for safeguarding the nature and purposes within the trailwide Comprehensive Plan, in coordination with participating public land managing agencies. The nature and purposes of a National Trail are the character, characteristics, and the congressional intent for a designated National Trail, including the resources, qualities, values, and associated settings of the areas through which such trails may pass; primary use or uses of a National Trail; and activities promoting the preservation of, public access to, travel within, and enjoyment and appreciation of a National Trail.**

BLM, Manual 6250, *National Scenic and Historic Trail Administration (Public)* at §1.6(A)(1-3). pp. 1-7 – 1-8, 1-10 (emphasis added).

Furthermore, BLM policy generally describes that: “National Trail administration includes leadership in the development of the statutorily required trailwide Comprehensive Plan, which provides strategic direction for National Trail administration and management, including identification of the nature and purposes of the National Trail and selection of the National Trail Right-of-Way.” *Id.* at §1.6(D).

**To date, no CMP has been prepared for the OSNHT, in accordance with agency national trail policy requirements and guidance. The DOI’s delegated OSNHT Co-Administrators have failed to fulfill these agency policy requirements which are designed to effectuate the mandates of the NTSA.**

BLM NT Administration policies further define the NTSA rights-of-way as follows:

*National Trail Right(s)-of-Way*. Term used in Section 7(a)(2) of the National Trails System Act to **describe the corridor selected by the National Trail administering agency in the trailwide Comprehensive Plan and which includes the area of land that is of sufficient width to encompass National Trail resources, qualities, values, and associated settings**. The National Trail Right-of-Way, in the context of the National Trails System Act, differs from a Federal Land Policy and Management Act (FLPMA) Title V Right-of-Way, which is a grant issued pursuant to FLPMA authorities. It becomes a key consideration in establishing the National Trail Management Corridor in a Resource Management Plan.

*Id.* at “Glossary,” p. G-6 (emphasis added); *see also* BLM, Manual 6280, *Management of National Scenic and Historic Trails* . . . at “Glossary,” p. G-6.

BLM NT administrative and management policies (including Manual 6280 on NT management as well as Manual 6250 on administration) recognize the importance and need of conducting general and refined inventories of NT resources, values, and opportunities in establishing NT rights-of-way and potentially more refined National Trail Management Corridors related to individual field unit resource management plans.

Manual 6250 defines National Trail Management Corridor similarities to NTSA rights-of-way as follows:

*National Trail Management Corridor*. Allocation established through the land use planning process, pursuant to Section 202 of Federal Land Policy and Management Act and Section 7(a)(2) of the National Trails System Act (“rights-of-way”) for a public land area of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.

*Id.* at “Glossary,” p. G-5; *see also* BLM, Manual 6280, *Management of National Scenic and Historic Trails* . . . at “Glossary,” p. G-6.

In designating initial, general NTSA rights-of-way to be included in CMP efforts, BLM policies state: “The National Trail Administrator, to the extent practicable, shall conduct a viewshed analysis in cooperation with land managing agencies to inform the selection of the required National Trail Right-of-Way for the trailwide Comprehensive Plan.” *Id.* at §1.6(D)(2)(ii), p. 1-18.

NPS NT policy states: “The intent of the System is to create protected corridors for recreation and historic preservation.” NPS, Director's Order #45: National Trails System, §3.10, p.7 (May 24, 2013). Such “corridors” would be initially created through NTSA rights-of-way designation and potentially refined through inventories and field unit land management plans as areas akin to BLM’s National Trail Management Corridors.

At least 24 BLM field units are crossed by the OSNHT in the FPEIS geographical area of coverage. These include: Arizona – Arizona Strip Field Office RMP; California – California

Desert Conservation Area Plan as amended by DRECP LUP amendment, South Coast RMP; Colorado – Grand Junction RMP, Dominguez Escalante NCA RMP, Gunnison Resource Area RMP, McGinnis Canyons NCA RMP, San Luis RMP, Tres Rios RMP, Uncompahgre RMP; New Mexico – Rio Puerco RMP, Taos RMP, Farmington RMP; Nevada – Las Vegas RMP, Red Rock Canyon NCA RMP; Utah – Beaver Dam Wash NCA RMP, Cedar Beaver Garfield RMP, Grand Staircase-Escalante NM RMP, Kanab RMP, Kanab-Escalante RMP, Moab RMP, Monticello RMP, Price RMP, Richfield RMP, St. George RMP. With the possible exception of two of these RMPs, none of the noted BLM RMPs include OSNHT management or protection provisions.<sup>4</sup> Notably absent from these RMPs are any NTSA rights-of-way, or BLM policy “Trail Management Corridors.”

The absence of NTSA rights-of-way, BLM policy “Trail Management Corridors,” and NT management and protection provisions in these RMPs is even more egregious, and arbitrary and capricious, given further policy guidance issued by the BLM as early as 2012. BLM NT policy states:

Chapter 4. Congressionally Designated National Trails - Land Use Planning

4.1 General Requirements

A. Addressing Designated National Trails through Land Use Planning

**1. As soon as practical after activation, the BLM must address designated National Trails through the land use planning process.**

2. Designated National Trails may be addressed through a land use plan amendment, or a Statewide Trail Management Plan or a programmatic multi-state effort which amends applicable Resource Management Plans.

3. Regardless of the type of land use planning process undertaken, **the BLM shall establish a National Trail Management Corridor(s)** and identify management goals, objectives, and actions for each designated National Trail.

4. National Trails shall be clearly identified as a specific resource or discipline, in its own unique section throughout the various chapters of the Resource Management Plan - not contained within and across multiple disciplines.

5. Resource Management Plan decisions should be compatible across BLM jurisdictions, as applicable, to provide for trailwide management consistency.

BLM, Manual 6280, *Management of National Scenic and Historic Trails* . . . at Chap. 4, p. 4-1 (emphasis added).

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<sup>4</sup> The two OSNHT relevant RMPs that mention BLM policy Trail Management Corridors are: the Beaver Dam Mountains NCA RMP, and, currently in proposed status, the Grand Staircase Escalante NM (GSENM) RMP. Even in those two cases, the establishment of Trail Management Corridors is faulted. In regard to the Beaver Dam Mountains NCA, the “corridor” was established without a comprehensive inventory of OSNHT resources, values, and opportunities. In regard to the proposed GSENM RMP a “corridor” has been suggested for a portion of the OSNHT, but not for other portions, and, therefore, the entirety, of the OSNHT; and, with only a partial inventory of OSNHT resources, values, and opportunities. In particular regard to the current FPEIS, these two areas are somewhat irrelevant as completely excluded from potential solar development by virtue of their NCA and NM status.

BLM organizational responsibility for these land use planning provisions is also assigned by BLM NT policy:

B. *State Directors* are responsible for: . . . .

5. Ensuring that National Trails are addressed within BLM Resource Management Plans; National Trail Management Corridors are established through the land use planning process; National Trail Management Corridors are compatible across Field Office jurisdictions; and activities within the National Trail Management Corridors are conducted in accordance with the NTSA, FLPMA, national and state policies and guidance, and Resource Management Plans.

. . . .

C. *District and Field Managers* are responsible for: . . . .

5. Establishing National Trail Management Corridors through the land use planning process, and incorporating management actions for National Trails in accordance with applicable laws and policy.

6. Ensuring that activities within National Trail Management Corridors are conducted in accordance with FLPMA, the NTSA, the BLM budget and related policies, and Resource Management Plans, including the consideration of guidance contained in the trail wide Comprehensive Plan.

*Id.* at §1.4, p. 1-12, 1-13.

**To date, no NTSA rights-of-way for the OSNHT have been prepared or issued in accordance with agency national trail policy requirements and guidance. Furthermore, the DOI’s delegated OSNHT Co-Administrators have failed to establish NTSA rights-of-way, or trail management corridors. BLM Field Units crossed by the OSNHT have also failed to incorporate NTSA rights-of-way, or trail management corridors required by BLM policy into associated RMPs. Failure to perform these formally adopted policy directives in support of effectuation of the NTSA is arbitrary and capricious.**

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**BLM’S CONSISTENT AND PROLONGED FAILURE TO COMPLY WITH THE NTSA AND ITS AGENCY POLICIES REGARDING MANAGEMENT AND PROTECTION OF THE OSNHT IS ARBITRARY AND CAPRICIOUS, VIOLATES THE ADMINISTRATIVE PROCEDURE ACT, AND, HAS FURTHER PRECLUDED EFFECTUATION OF THE NTSA , AND IS, THEREFORE, A VIOLATION OF THAT ACT, RESULTING IN DEMONSTRABLE DAMAGE TO OSNHT RESOURCES, VALUES, AND PUBLIC OPPORTUNITIES.**

**THE ESTABLISHED AND CONTINUING FAILURE OF BLM TO EFFECTUATE NT POLICY AND THE NTSA, INCLUDING THE CURRENTLY PROPOSED FPEIS/RMPAs WITHOUT EXECUTION OF NT POLICY AND NTSA MANDATES WILL FURTHER DEGRADE THE NTS.**

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**Federal Case Law Requires the Completion of NT CMPs in Accordance with the Provisions of the NTSA, and Prohibits the Development/Amendment of Subsidiary Land Use Plans, such as the FPEIS/RMPAs Prior to the Completion and Adoption of Such NT CMPs, Including, Specifically the OSNHT CMP**

The federal courts have held that NT CMPs must be completed pursuant to the requirements of the NTSA – that is, within the prescribed time period - and each final CMP submitted to designated congressional committees. *See Yaak Valley Forest Council v. Vilsack*, 563 F. Supp. 3d (D. MT 2021). In the referenced case, the subject NT CMP, for the Pacific Northwest NST, was delinquent and the court, therefore, ordered the completion of a CMP within approximately one year from the ruling. Likewise, the CMP for the OSNHT must be completed prior to other discretionary federal plans, such as the FPEIS being formulated.

Furthermore, the federal courts have held that failure to meet procedural planning requirements of federal land management law is actionable, and until such mandate land management plans are completed other agency plans and actions that may preclude statutory protection of lands, waters, or related resources are inappropriate and prohibited. (*See Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202 (E.D. Cal. 1999), and, *Friends of Yosemite Valley v. Kempthorne*, 464 F. Supp. 2d 993 (E.D.Cal.2006), and, *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9th Cir. 2008)).

Completion of the FPEIS, relevant RMPs and amendment of such RMPs prior to completion of the statutorily mandated CMP for the OSNHT makes the RMPs, the FPEIS, and proposed amendments of the RMPs invalid, at least in regard to the areas crossed by the OSNHT. Arguably, before any such action proceeds, the CMP must be completed subject to NEPA requirements. Following that, the inventory and corridor setting procedures of BLM Manual 6280 must be fulfilled and RMPs amended, subject to NEPA requirements, to properly address OSNHT management and protection including justifiable establishment of NT protective and management corridors. Without modification, the PEIS must be withdrawn.

**THE STATUTORILY MANDATED COMPREHENSIVE MANAGEMENT PLAN FOR THE OSNHT MUST BE COMPLETED PRIOR TO SECONDARY, DISCRETIONARY LAND MANAGEMENT PLANS, SUCH AS THE FPEIS/RMPAs, TO ASSURE THAT STATUTORY MANDATES ARE FULFILLED.**

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**The FPEIS/RMPA Resource Based Exclusion for NHTs And NSTs Is Unclear, Insufficient, and Ineffective, and Further Delays Already Delinquent DOI and BLM Obligations Under the NTSA and Agency Policies**

**Unclear and Insufficient FPEIS/RMPA Resource Based Exclusion for NHTs and NSTs**

The FPEIS identifies land areas to be excluded from solar development as “Resource Based Exclusions.” The FPEIS states that “[e]xclusion criteria identify areas that are not available for solar applications.” FPEIS at p. 2-22. One category of said “Resource Based Exclusions” is

“National Conservation Lands” including “[a]ll National Scenic and Historic Trails designated by Congress, trails recommended as suitable for designation through a congressionally authorized National Trail Feasibility Study, or such qualifying trails identified as additional routes in law, including any trail management corridors identified for protection through an applicable land use plan.” *See* FPEIS, **Table ES-2. Resource-Based Exclusion Criteria in the Proposed Plan, #14 – National Conservation Lands**, pp. 2-22.

A footnote to the Table on “Resource Based Exclusions” further defines NTs as follows:

National Scenic Trails are extended pathways located for recreational opportunities and the conservation and enjoyment of the scenic, historic, natural, and cultural qualities of the areas through which they pass (NTSA 3(a)(2)). National Historic Trails (NHTs) are federal protection components and/or high-potential historic sites and high-potential route segments, including original trails or routes of travel, developed trail or access points, artifacts, remnants, traces, and the associated settings and primary uses identified and protected for public use and enjoyment (NTSA Sec. 3(a)(3)) and may include associated auto tour routes (NTSA 5(b)(A) and 7(c)). NHTs or other types of historic trails may also contain properties listed or eligible for listing on the NRHP including NHLs. NHTs are protected and identified as required by law (NTSA 3(a)(3)) through BLM inventory and planning processes. *Id.*

**BLM has misquoted NTSA definitions in this footnote.** The relevant NTSA sections cited actually state the following:

NTSA 3(a)(2) (16 U.S.C. §1242(a)(2)) – “National scenic trails, . . . , which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.”

NTSA 3(a)(3) 916 U.S.C. §1242(a)(3) – “National historic trails, . . . , which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historic significance. . . . National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water-based components of a historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail.”

Consequently, BLM has muddied the explanation of what the FPEIS “Resource Based Exclusions” actually exclude from potential solar development. The quoted statement regarding NHT protection and identification “through BLM inventory and planning processes” is meaningless as BLM has not conducted comprehensive NT resource, values, and opportunities inventories in accordance with its policy Manual 6280 on virtually any of its lands. And, the protection of trail corridors containing such NT resources, values, and opportunities that would

be identified in such inventories has not occurred as neither NTSA rights-of-way or “Trail Management Corridors” have not been established in a CMP or land management unit RMPs.<sup>5</sup>

Again, the “Resource Based Exclusion” for “National Conservation Lands” and, specifically for NTs includes “[a]ll National Scenic and Historic Trails designated by Congress.” FPEIS, Table ES-2. Resource-Based Exclusion Criteria in the Proposed Plan, #14 – National Conservation Lands, p. 2-22. However, NTs are only “designated by Congress” as lines on a map, in a study normally prepared by the DOI and NPS. And, the width of any such NT line is not defined and infinitesimally narrow. Such a line, which has its origin in the Feasibility Study, study report, or study map for each NHT and NST, prepared for Congress and which serves as the basis for congressional establishment of each Trail, has no definable width.

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<sup>5</sup> Furthermore, BLM continues to confuse what federal lands crossed by NHTs are subject to protection, by continually asserting that the identification of “high potential historic sites” and “high potential route segments” may constitute the only federal lands subject to such protection. Contrary to this assertion, the law is absolutely clear on what federal lands constitute “federal protection components” of NHTs. The NTSA clearly states: “ONLY THOSE SELECTED LAND AND WATER BASED COMPONENTS OF A HISTORIC TRAIL WHICH ARE ON FEDERALLY OWNED LANDS AND WHICH MEET THE NATIONAL HISTORIC TRAIL CRITERIA ESTABLISHED IN THIS ACT ARE INCLUDED AS FEDERAL PROTECTION COMPONENTS OF A NATIONAL HISTORIC TRAIL.” 16 U.S.C. §1242(a)(3). The quoted statutory statement is easy to break down. “[O]n federally owned lands” means on federally owned lands, not other lands, such as state, local government, or private lands crossed by an NHT. “[W]hich meet the national historic trail criteria established in this Act” means those portions or “components” that have been evaluated in “trail studies and reports,” “feasibility studies,” or study “maps” provided to Congress for its review and NTSA designation, and which analyze and meet the following “criteria”:

- “must be a trail or route established by historic use and must be historically significant as a result of that use”
- “must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included”
- “must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation”

*See* 16 U.S.C. §1244(b)(11).

**All trails or routes of NHTs studied in “trail studies and reports,” “feasibility studies,” or study “maps,” which contain evidence of the noted criteria being met, and subsequently enacted by Congress, implicitly “meet the national historic trail criteria established in the NTSA, and all federal lands crossed by such NHTs are therefore “federal protection components of such NHTs. In contrast, not all “high potential historic sites” or “high potential route segments” of such NHTs are necessarily “federal protection components” of such NHTs as those designations may not lie on federal lands. Although the designation of “high potential historic sites” and “high potential route segments” of NHTs is part of the CMP process, or field unit RMP process with the participation of NHT Administrators, such designations are incomplete, and in the case of the OSNHT, such listings are invalid as no CMP exists. The primary importance of “high potential historic sites” and “high potential historic segment” designations is to assure the protection of such sites and segments that are not on federal lands, through cooperative agreements, acquisition, or condemnation acquisition. *See* 16 U.S.C. §1244(f)(3), and 16 U.S.C. §1246(g). The cited sections of the NTSA are the only places in the text of the Act that the consequences of identification of “high potential historic sites” and “high potential route segments” are mentioned. **Therefore, the often times repeated assertion of the BLM that only “high potential historic sites” and “high potential route segments” are the only “federal protection components” of NHTs is unsupported and an erroneous reading of the NTSA.****

The width of NTs is to be determined through the congressionally required NTSA rights-of-way and BLM policy required “Trail Management Corridors.” If the responsible NT administering Secretary has not established a NTSA “right-of way” for a given NT, and the NT CMP contains no NTSA “right-of-way,” and the BLM, or other agency RMP or LUP, does not designate a “Trail Management Corridor,” the FPEIS exclusion provision only prevents solar development on an infinitesimally narrow line, and will not protect any resources, values, and public opportunities, or “settings” that are undoubtedly associated with each Trail although intended to be managed and protected by the NTSA. So, beyond the infinitesimally narrow line protected by the FPEIS exclusion, other excluded NST and NHT lands only includes “trail management corridors identified for protection through an applicable land use plan.”

At least in regard to the OSNHT, as discussed above, none of the 24 BLM field units crossed by the Trail have RMPs that even recognize or discuss the Trail, much less have been amended to identify and designate “trail management corridors.” The land areas covered by five of the RMPs, crossed by the OSNHT, are excluded from solar development by the FPEIS exclusion for national conservation areas, and national monuments. Consequently, in lands covered by the other 19 RMPs, as the FPEIS exclusion areas currently seem to be defined, only the line of the OSNHT is excluded by the NT exclusion.<sup>6</sup> In the case of the OSNHT, without a NTSA “right-of-way,” without a NTSA CMP, and with no BLM RMP “Trail Management Corridors” in RMPs, the resources, values, and public opportunities, and “settings” associated with the Trail are not protected from potential solar development by virtue of the NT exclusion. And, why are NT resources, values, “settings” and opportunities on BLM lands not excluded from solar development, and protected? Because, the responsible Secretary, responsible administrative delegates, and Field unit land managers have not established statutorily required NTSA rights-of-way, or policy required “trail management corridors” geographically encompassing said resources, values, “settings” and opportunities.

**DOI’S AND BLM’S OWN INACTION ON A OSNHT CMP, ALL NT NTSA RIGHTS-OF-WAY, AND RMP AMENDMENTS ESTABLISHING “TRAIL MANAGEMENT CORRIDORS” HAS MADE THE FPEIS EXCLUSION CONFUSING AT BEST, AND MEANINGLESS AT WORST. THE NT SOLAR ENERGY “EXCLUSION” IS ARBITRARY AND CAPRICIOUS AND IN VIOLATION OF THE APA.**

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**It is Unclear How the FPEIS/RMPAs Will Programmatically Assess Solar Energy Applications Adjacent to NTs and Assure Protection and Management of NT Resources, Values, and Opportunities Pursuant to the NTSA and Agency Policies**

As discussed above, given the existing language of the NT exclusion in the FPEIS it seems that any NT lacking a NTSA right-of-way or policy based trail management corridor remains subject

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<sup>6</sup> This non-resource/value/opportunities outcome created by the FPEIS “Resource Based Exclusion” may unfortunately be true of other NTs as well.



to solar energy development applications. Appendix H of the FPEIS seems to provide some additional information about processing of such applications, however, is significantly unclear.

Appendix H is titled “Implementation Support Information and Maps for Design Features” and includes a section titled “H.4 National Scenic and Historic Trail – Draft Inventory Analysis Units.” FPEIS, pp. H-1, H-6. The text of section H.4 states:

The map shown in Figure H.4-1 illustrates the locations of the National Scenic and Historic Trail -Draft Inventory Analysis Units (IAUs). A higher resolution and interactive map illustrating the National Scenic and Historic Trail Inventory Analysis Units is available using the following link:

<https://experience.arcgis.com/experience/51e1b71274f248aaa8f831b229dcfc38>

Based on design feature SDLW-3, if a proposed solar project includes areas within these Draft IAUs, the project developer shall evaluate, in coordination with the BLM, whether the proposed development area has been adequately inventoried (per BLM Technical References 6280-1 Volumes 1 & 2) to inform about any adverse impacts on the resources, qualities, values, associated settings, and the nature and primary use or uses of the potentially affected trail. If adverse impacts are determined to be likely, avoidance or other mitigation measures must be identified in coordination with the BLM authorizing officer. Updates or refinements to the IAUs through the inventory process would supersede the Draft versions. (see Appendix B, Section B.2.16 for the entire design feature text).

This section calls for a potential developer to ascertain whether there has been an adequate inventory of NT resources, values, and opportunities. **It does not explain what happens if an adequate inventory has not been conducted. Clarification is needed. Furthermore, the section states that, regardless of the existence of an adequate inventory, “[i]f adverse impacts are determined to be likely” the development proponent and BLM will identify “avoidance or other mitigation measures.”**

**The suggested process once again sidesteps BLM’s NT protection and management responsibilities detailed in its own policies and driven by NTSA mandates. This is unacceptable as contrary to fulfillment of the statutory intent and purposes of the NTSA. The process described also seemingly contradicts “purpose area” process described below calling for “additional inventory and analysis.” These inconsistencies must be addressed. Current language with lack of explanations will result in further degradation of the NTS.**

The web-based IAU map at the link provided states:

Purpose Areas of special concern for National Scenic and Historic Trails are those areas beyond the congressionally designated route that would not be excluded from application by operation of the NLCS exclusions that apply across all of the Solar Programmatic EIS Action Alternatives, but that require additional inventory and analysis at the local level at the time of a solar project application.

See <https://experience.arcgis.com/experience/51e1b71274f248aaa8f831b229dcfc38>.

It is implied that “Purpose Areas of special concern” are areas adjacent to NT lines that may contain NT resources, values, and opportunities that are subject to protection but have yet to have been inventoried or included in an RMP “Trail Management Corridor.” It also seems to be apparent that additional inventory and analysis in accordance with BLM policies would be initiated at the time of a solar energy application covering such areas. **Clarification is needed.**

Why is a solar energy development application the triggering factor? BLM policy (Manual 6280) already requires such inventories of NT resources, values, and opportunities, and establishment of Trail Management Corridors as soon as possible after NT establishment by Congress. **The suggested process once again sidesteps BLM’s NT protection and management responsibilities detailed in its own policies and driven by NTSA mandates. This is unacceptable as contrary to fulfillment of the statutory intent and purposes of the NTSA.**

Furthermore, there is no indication of what action will be taken following such inventory and analysis. **If the inventory and analysis reveals the presence of relevant NT resources, values, and opportunities the lands examined should be protected by establishment of a Trail Management Corridor and development precluded if such would “substantially interfere” with the nature and purposes of the trail.”**

The referenced and seemingly relevant Appendix B, Section B.2.16 states:

**SDLW-3** The project developer shall coordinate with the BLM field office, National Scenic and Historic Trail (NSHT) administrators, Tribes, and partner organizations to review the adequacy of information in available RMPs and NSHT inventory reports for any proposed solar project that may impact NSHT management corridors. They must ensure that the project design avoids substantial interference and adverse impacts on NSHT management corridors and determine any areas unsuitable for development, following the BLM national trail inventory process as outlined in the NSHT manuals (6250/6280) and Inventory, Assessment, and Monitoring (IAM) technical references. Developers should avoid, minimize, or compensate for impacts on NSHTs to the maximum extent practicable (see glossary) according to program policy standards. If NSHT management corridors are not adequately inventoried in an RMP, developers shall refer to the DRAFT Inventory Analysis Units (IAU) established for NSHTs in the 11-state planning area. These areas, though not excluded from lands available for application under the NCL exclusion criterion, will require further consideration, inventory, and analysis by the BLM or project developer, including the refinement of IAUs at the local level during the solar project application process. This inventory may reveal unanticipated or undocumented remnants, artifacts, trail tread or trace, high potential historic sites and route segments, trail features, and associated settings for NSHTs adjacent to or within the proposed project site. For more information, see Appendix H, Section H.4.

This section seems to call for additional inventory of NT resources, values, and opportunities if such inventories do not exist. **However, the suggested process once again sidesteps BLM’s NT**

**protection and management responsibilities detailed in its own policies and driven by NTSA mandates. This is unacceptable as contrary to fulfillment of the statutory intent and purposes of the NTSA. BLM policy (Manual 6280) already requires such inventories of NT resources, values, and opportunities, and establishment of Trail Management Corridors as soon as possible after NT establishment by Congress.**

**ALL OF THE FOREGOING FPEIS DISCUSSION OF HOW SOLAR ENERGY APPLICATIONS WILL PROCEED FOR NTs WITHOUT DESIGNATED “TRAIL MANAGEMENT CORRIDORS” AND THEREFORE EXCLUDED FROM SUCH APPLICATIONS, CONSTITUTES DISREGARD OF EXISTING BLM TRAIL MANAGEMENT AND PROTECTION POLICY CONTAINED IN MANUAL 6280, INTENDED TO EFFECTUATE STATUTORY, NTSA RESPONSIBILITIES OF DOI AND BLM, THAT HAS BEEN IGNORED AND GONE UNFULFILLED FOR MORE THAN A DECADE.**

**RATHER THAN ONCE AGAIN SIDESTEPPING ITS REPONSIBILITIES UNDER THE NTSA AND ITS OWN POLICIES, BLM MUST AGRESSIVELY PURSUE NT INVENTORIES AND ESTABLISHMENT OF LEGITIMATE TRAIL MANAGEMENT CORRIDORS WITH FULL PUBLIC KNOWLEDGE AND COMMENT OPPORTUNITIES PROVIDED VIA THE NEPA PROCESS.**

**FURTHERMORE, INDICATIONS OF ASSIGNING NT INVENTORIES AND EVALUATION OF ADVERSE IMPACTS ON NTs TO NON-GOVERNMENTAL SOLAR ENERGY DEVELOPMENT APPLICANTS IS AN IMPROPER ASSIGNMENT OF INHERENT FEDERAL GOVERNMENT FUNCTIONS AND RESPONSIBILITIES.**

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**IT IS UNCLEAR WHAT RMPAs WILL LOOK LIKE AND HOW SUCH WILL ASSURE PROTECTION OF NTs, AND ASSOCIATED NT RESOURCES, VALUES AND OPPORTUNITIES IN ACCORDANCE WITH BLM NT MANAGEMENT POLICIES. CLARIFICATION IS NEEDED.**

**WHAT WILL THE TIMING AND SCHEDULING OF RMPAs BE? BLM’S DISREGARD OF AMENDMENTS TO RMPs IN ACCORDANCE WITH ITS NT POLICIES DOES NOT BODE WELL FOR THE SUBJECT RMPAs IMPLEMENTATION, AND PROPER MANAGEMENT AND PROTECTION OF NTs.**

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**Illegitimate Inconsistency of BLM’s Solar Development Policy in Different Programmatic Plans**

The FPEIS/RMPAs establish solar development exclusion areas, based on the existence of protected resources, values, and qualities of such areas. These exclusions are based on federal laws that mandate protection of such resources, values, and qualities.

The FPEIS/RMPAs also states that it does not affect the existing solar development management regime for the California desert BLM lands under the Desert Renewal Energy Conservation Plan (DRECP). This special exception for the DRECP makes no sense as the lands covered by the exclusion categories of the FPEIS are governed by the same legal mandates whether within the California desert, or on BLM lands in the other western states covered by the FPEIS.

**THE DRECP SHOULD BE SUBJECT TO THE SAME SOLAR ENERGY EXCLUSIONS FOR SPECIALLY DESIGNATED FEDERAL LANDS AS IN THE FPEIS, AND FOR SUCH LANDS OTHERWISE STATUTORILY PROTECTED, AS NO RATIONALE EXISTS FOR DIFFERING TREATMENT. WITHOUT SUCH EXCLUSIONS APPLICABLE TO THE DRECP THESE LANDS AND THEIR RESOURCES AND PURPOSES WILL BE DEGRADED.**

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**Possible Suggested Resolution for Proper Protection of National Trail Corridors and NT Resources, Values, and Opportunities**

Based on the foregoing information and arguments, we request a retraction or significant modification of the FPEIS to protect the purposes, resource, values and opportunities of the NTS. This is legally required in regard to all BLM lands crossed by the OSNHT, at a width calculated to protect any possible OSNHT resource, values, and opportunities.

The following approaches may offer potential avenues of resolution:

**Alternative #1:** Modify FPEIS and RMPAs to designate NT rights-of-way for all NTs in the geographic area of coverage (including the DRECP) with a width of 30 miles (15 miles on each side of NT centerlines) based on 30 mile viewshed analyzed and depicted on “National Scenic and Historic Trails - Draft IAUs” map presented by the BLM at <https://experience.arcgis.com/experience/51e1b71274f248aaa8f831b229dcfc38>.

Establishment of such NTSA rights-of-way is within the Secretary of the Interior’s authority under the NTSA, and would fulfill a neglected responsibility. To reiterate, BLM policy states that the use of such viewshed data should be used to inform the establishment of NTSA rights-of-way. That policy states: “The National Trail Administrator, to the extent practicable, shall conduct a viewshed analysis in cooperation with land managing agencies to inform the selection of the required National Trail Right-of-Way for the trail wide Comprehensive Plan.” BLM, Manual 6280, *Management of National Scenic and Historic Trails* at §1.6(D)(2)(ii), p. 1-18. And, as discussed, the establishment of a NTSA right-of-way may take place separate of, or as a part of a NT CMP.

Follow such rights-of-way action with amendment of all relevant BLM RMPs to establish 30-mile-wide policy based “Trail Management Corridors” for each NT in the geographic area of coverage, with the caveat that with progress and completion of NT trail inventories pursuant to BLM policy the width of such “Trail Management Corridors” will be adjusted to justifiable widths to protect NT resources, values, and opportunities. Amend FPEIS “Resource Based

Exclusions” exclusions from solar energy development to exclude 30 mile wide NTSA NT rights-of-way.

**Alternative #2:** Utilize Secretary of the Interior’s withdrawal authority to withdraw federal public lands from any new solar energy development, other new renewable and non-renewable energy development and new mineral leasing and mining claims for all federal public lands within a 30-mile NT corridor (15 miles on each side of NT centerlines). This could be justified on basis of DOI’s delinquency in establishing NTSA rights-of-way and effectuating BLM NT management policy. Again, such withdrawal(s) could include the caveat that with progress and completion of NT trail inventories and establishment of “Trail Management Corridors” to protect NT resources, values, and opportunities, said withdrawals will be adjusted.

We are interested in discussing the issue and will be following up with a meeting request.

This protest is respectfully submitted by:

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