



DESERT TORTOISE COUNCIL

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Via email only

18 August 2023

Attn: Arizona Department of Transportation, Long-Range Transportation Plan
1655 W. Jackson St., MD126F
Phoenix, AZ 85007
LRTP@azdot.gov

RE: Arizona Department of Transportation draft 2050 Long-Range Transportation Plan

To: Arizona Department of Transportation,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of the three desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the Arizona Department of Transportation's (ADOT) draft 2050 Long-Range Transportation Plan (LRTP). Given that most of the proposed projects occur in habitats likely occupied by Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise) and that some of the projects to the west (Black Hills area) and north (Beaver Dam Slope/Littlefield areas) support Mojave desert tortoises (*Gopherus agassizii*), our comments pertain to enhancing protection of these species during activities proposed in the future under this plan and subsequent specific transportation development plans. Please accept, carefully review, and include in the relevant file the Council's following comments and attachments for the proposed plan.

The Sonoran desert tortoise is not currently listed under the Federal Endangered Species Act (FESA), although it has been proposed for federal listing and was formerly designated as warranted but precluded from listing. We understand that efforts are underway to reevaluate the recent decision not to list this species. Currently, in Arizona, Morafka's desert tortoise is a state protected species, and Arizona Game and Fish Commission Order 43 has prohibited the removal of Sonoran desert tortoises from the wild since 1988. Under Arizona Revised Statute (ARS) 17-306, it is unlawful to release wildlife (including Morafka's desert tortoise) in Arizona without prior approval from the Commission/Arizona Game and Fish Department. ARS 17-309 establishes the penalty for a violation. Per Arizona Administrative Code R12-4-402, it is unlawful to import, export, or offer to sell live wildlife, including Morafka's desert tortoise. It is unlawful to propagate captive Morafka's desert tortoises or export them from Arizona.

Since 2018, the Council has commented on three different ADOT projects, which we feel are all relevant to the current planning exercise. Therefore, we are resubmitting those three documents as attachments to this letter with the expectation that ADOT will consider (or reconsider) the points made with regards to ADOT's 2019-2023 Five-Year Transportation Facilities Construction Program (Desert Tortoise Council 2018a), ADOT's Application for Assumption of Federal Highway Administration's National Environmental Policy Act Responsibilities (Desert Tortoise Council 2018b), and ADOT's Statewide Rest Area Study (Desert Tortoise Council 2023).

We note that ADOT is a signatory to the Candidate Conservation Agreement for the Sonoran Desert Tortoise (CCA) (USFWS et al. 2015). As such, ADOT is a member of the Arizona Interagency Desert Tortoise Team, which is the primary channel for interagency coordination on Sonoran desert tortoise management and research activities in Arizona. The purpose of this CCA is to complement existing conservation and management plans that are designed to conserve Sonoran desert tortoise populations and habitats in Arizona. A goal of the CCA is to implement range-wide conservation and management of the Sonoran desert tortoise by assessing and directing lasting conservation measures in Arizona. Please be sure that final environmental document(s) describe this relationship and define ADOT's responsibilities as they pertain to implementing the LRTP over the next 27 years and fulfilling the goals of the CCA.

CCA's goals include: (1) range-wide conservation and management of the Sonoran desert tortoise by assessing and directing lasting conservation measures in Arizona; (2) facilitating and directing effective tortoise conservation actions across multiple agencies to achieve an organized conservation approach with coordinated actions and uniform reporting, integrated management, monitoring, and research efforts; and (3) facilitating a cooperative conservation effort among identified state and federal agencies and non-federal landowners in Sonoran desert tortoise conservation in Arizona

Our primary concern is that the LRTP does not address an obvious need for each specific, future transportation plan to address environmental concerns about those species that are at risk, whatever their official federal status may be. As such, we propose that for future projects resulting in improvement, expansion, or creation of roads and related facilities in suitable or occupied tortoise habitats, or habitats needed for connectivity between tortoise populations, that specific and correctly performed surveys (USFWS 2019) of the area be conducted and reported as part of that specific development plan. ADOT should commit to providing appropriate mitigation that fully offsets the direct, indirect, synergistic, interactive, and cumulative impacts that will result from any project facilitated by the LRTP, and implement effective measures to protect tortoises and tortoise habitat both during and following project development such that long-term viability and conservation is assured.

It is clear to the Council that development that diminishes either tortoise populations or their habitats would undermine recent federal decisions that the Sonoran desert tortoise not be listed. Responsible action requires that ADOT considers desert tortoises at all levels of planning for future developments. ADOT should identify protective measures during project planning, implement those measures during construction to avoid loss of habitat and individual tortoises, and treat tortoises in a conscientious manner during operations and maintenance.

The Council understands that the LRTP focuses on overall financing for road improvements and that detailed and specific plans will be prepared on a project-by-project basis. The Recommended Investment Choice (RIC) breakdown of spending in the draft LRTP for greater Arizona (excluding Maricopa and Pima counties) is:

- 78% (\$25.2 billion) for system preservation.
- 15% (\$5 billion) for system modernization for new technologies and safety improvements.
- 7% (\$2.2 billion) for system expansion to widen and add new highways.
 - The percentage of system expansion is lower in greater Arizona and higher in Maricopa and Pima counties, which have dedicated transportation sales taxes and a higher percentage of funding dedicated toward expansion projects.

We are disappointed that the draft plan does not address, even in a general sense, the need for environmental reviews, onsite species studies, or specific mitigation proposals for future projects. Because this is a funding document, it would be appropriate in the final iteration to indicate how funding will be spent to provide for environmental protection and conservation enhancement especially for Mojave and Sonoran desert tortoises. We also urge that all plans for new roads take into account specific information on the location of species, identify risks, and prioritize routes that avoid adding to that risk.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. The Desert Tortoise Council asks to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out under this LRTP that may affect the Sonoran desert tortoise, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council

- cc. Heather Whitlaw, Field Supervisor, Arizona Ecological Services Field Office (Phoenix), U.S. Fish and Wildlife Service, heather_whitlaw@fws.gov
Kenneth Petty, Associate Administrator (Acting), Office of Planning, Environment, and Realty kenneth.petty@dot.gov
Gary Jensen, Office of Natural Environment, Office of Planning, Environment, and Realty, Federal Highways Administration gary.jensen@dot.gov
Ty Gray, Director, Arizona Game and Fish Department tegray@azgfd.gov

Attachments

- Desert Tortoise Council. 2018a. Arizona Department of Transportation 2019-2023 Current Five-Year Transportation Facilities Construction Program. Comment letter dated June 25, 2018 submitted to John S. Halikowski, Director, Arizona Department of Transportation. 7 pp.
- Desert Tortoise Council. 2018b. Arizona Department of Transportation's Draft Application for Assumption of Federal Highway Administration's National Environmental Policy Act Responsibilities. Comment letter dated July 27, 2018 submitted to Paul O'Brien, NEPA Assignment Manager. Arizona Department of Transportation c/o NEPA Assignment. 11 pp.
- Desert Tortoise Council. 2023. Arizona Department of Transportation's Statewide Rest Area Study. Comment letter dated March 26, 2023 submitted to the attention of Arizona Statewide Rest Area Study, Arizona Department of Transportation. 6 pp.

Literature Cited

- [USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV. https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf.
- [USFWS et al.] U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, National Park Service, Department of Defense, Customs and Border Protection, U.S. Forest Service, Natural Resources Conservation Service, Arizona Game and Fish Department, and Arizona Department of Transportation. 2015. Candidate Conservation Agreement for the Sonoran Desert Tortoise (*Gopherus morafkai*) in Arizona. May 27, 2015. <https://www.blm.gov/sites/blm.gov/files/policies/IMAZ-2016-004-a1.pdf>.