

**DESERT TORTOISE COUNCIL**

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**Via Federal eRulemaking Portal:** <https://www.regulations.gov>

January 22, 2024

Tracy Stone-Manning, Director (HQ-630)  
Bureau of Land Management  
Room 5646, 1849 C St. NW  
Washington, DC 20240,  
Attention: Regulatory Affairs: 1004-AE89

RE: Temporary Closure and Restriction Orders – Proposed Rule (RIN 1004-AE89)

Dear Director Stone-Manning,

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 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 above-referenced project. Given the location of the proposed project in habitats potentially occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise)/Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by the Bureau of Land Management (BLM), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. The decision is still pending at the time of this writing.

### **Summary of Proposed Rule**

The BLM is proposing to modify how it notifies the public of temporary closures and restriction orders; clarify that it may issue closures or orders to implement management responsibilities, avoid conflicting uses, and provide privacy for Tribal activities for cultural use; require specific information on the initiation and termination of the closures/restrictions; implement the closure immediately; and impose penalties for violations of the orders/restrictions. Currently, the BLM is required to publish temporary closure and restriction orders in the *Federal Register* with a wait time before they are implemented.

BLM is proposing to inform the public about temporary closures and restriction orders by notifying local media outlets and posting information about the closure or restriction on at least one BLM-controlled, publicly available online communication system. The proposed rule would not require the BLM to issue any new or additional closure or restriction orders. The proposed revisions would be more consistent with those of the U.S. Forest Service (USFWS) and National Park Service (NPS).

### **Comments on the Proposed Rule**

We found no clarification on the proposed rule if it applies to all lands managed by BLM. Are national monuments, national conservation areas, outstanding natural areas, cooperative management and protection areas, and forest reserves that are managed by BLM exempt from or included in this proposed rule? This information should be clearly stated in the rule.

The Council contends that not all temporary closures and restriction orders are equal in need for expediency. For planned events, such as the examples provided in the Proposed Rule (e.g., Burning Man Project, King of the Hammers off-road race, Reno Air Races, Mint 400 off-road race in Las Vegas, Desert Classic racecourse, etc.), BLM knows about these events weeks, months, or longer in advance of their proposed occurrence. BLM has more than adequate time to publish notifications in the *Federal Register*. For these non-emergency events, BLM should continue to publish the closures/orders in the *Federal Register* and notify the public using other means described below.

BLM says the proposed rule would be “more consistent” with USFS and NPS rules on temporary closures. However, BLM describes NPS temporary closures as occurring for “emergency situations, those that will not result in a significant alteration in the public use pattern of a park area, and those that will not adversely affect a park’s natural, aesthetic, scenic, or cultural values.” The examples of events that BLM provided in the proposed rule that would be included under a temporary closure and restriction order include large scheduled events (e.g., Burning Man Project, King of the Hammers off-road race, Reno Air Races, Mint 400 off-road race in Las Vegas, Desert Classic racecourse, etc.). These events are not emergency situations. They will result in a substantial alteration in the public use pattern of the area of public land where they will occur. They will adversely affect natural, aesthetic, scenic, and/or cultural values. The Council believes that BLM’s proposed rule is not consistent with the NPS’s rule. Rather the proposed rule goes far beyond the NPS’s rule for implementing temporary closures and restriction orders. Consequently, BLM should adopt the rules of its sister agency on temporary closures and restriction orders to be consistent with the NPS.

BLM says, “[t]he proposed rule would help clarify the broad range of situations in which the BLM may issue temporary closure and restriction orders.” BLM provides examples including “[r]estricting access to areas of public lands may also be necessary to avoid conflicts between user groups, such as an off-road racecourse being closed to other uses during the race.” This closure would prohibit third-party monitors from accessing the race course and staging areas to collect data on the impacts of the race. The Council is opposed to this restriction and strongly recommends that BLM “reign in” the broad range of situations in which BLM issues temporary closures and restriction orders for **non-emergency** situations, especially those situations that would not provide for sustained yield of the natural and cultural resources that BLM is charged with managing for under the Federal Land Policy and Management Act.

In the proposed rule, BLM says, “a temporary closure or restriction order would generally remain in effect until the situation it is addressing has ended or abated, it expires by its own terms, or the BLM issues a superseding decision, which can include incorporating the terms of a closure or restriction order into a resource management plan in accordance with the regulations at 43 CFR part 1600.” “Its own terms” is not defined. Under these conditions, a temporary closure could remain in effect for years, especially if BLM does not make a decision or decides to end the temporary closure or restriction order through an amendment to a resource management plan. The Council is opposed to this change and strongly recommends that “temporary” be defined as the minimum time needed for the events, but should not exceed 6 months. With no time limit, BLM is unlikely to make rectifying the situation a management priority.

BLM says it would notify the public of temporary closures and restriction orders on “BLM-controlled, publicly available online communication system.” BLM should explain what this phrase means. As mentioned above, currently BLM has a website for each BLM office at the national, state, district, and field office levels and several web pages for each website. On which one or ones of these choices would BLM post this information? How would BLM provide effective information dissemination to the public when most of the public is not familiar with BLM’s office hierarchy and therefore BLM’s websites? In addition, the public is not familiar with the geographic area of responsibility of each field and district office. If the area affected is within the jurisdiction of one field office, would the information be posted only on that field office’s website but not on the district office or state office website? These are questions that BLM should consider when deciding which websites and pages to post this information on to reach the public.

Not all persons have equal accessibility to or are familiar with the proposed online communication system. In addition, there are generational differences in how the public obtains its information. Consequently, BLM should use all forms of communication available to contact the public including but not limited to print media, *Federal Register*, social media, email, and BLM websites at the national, state, district, and field office levels. By using this approach “BLM would be better positioned to serve the public and maximize the number of stakeholders and visitors who are aware of potential access and use limitations.”

In 2019, the Council submitted letters to all the BLM field offices overseeing management of public lands in California, Nevada, Arizona, and Utah coinciding with the ranges of Agassiz’s desert tortoise and Sonoran desert tortoise. Therein, we asked that the Council be identified as an Affected Interest for all projects affecting these tortoise species in the same manner we ask for that consideration at the end of this letter. Although BLM has improved in contacting us for such projects over the past four years, there are still projects where we are alerted by third parties, not the BLM, of opportunities to comment. We therefore ask that as part of this rulemaking procedure that the BLM also maintain a formal list of Affected Interests and alert them to these closures in addition to the other means listed.

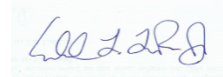
For **emergency** situations or events, the notice of a temporary closure and/or restriction orders should be widely disseminated using all methods that would provide immediate notification to the public, including contacting identified Affected Interests. In addition to local and regional media outlets, social media, and websites, we suggest contacting local and regional emergency response agencies, as appropriate, to request that they communicate to the public about the emergency (e.g., reverse 911). For some emergencies, access to a website or social media is not always possible during an emergency (e.g., wildfire, etc.).

“While most temporary closure and restriction orders are unlikely to have significant effects on the quality of the human environment, the BLM would continue to ensure that individual closure and restriction orders satisfy NEPA's requirements.” The Council notes that BLM must comply with the National Environmental Policy Act (NEPA) for any action it authorizes, funds, or carries out that may affect the human environment. We expect that BLM would issue categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs) for these decisions, if NEPA compliance had not occurred previously, and BLM would make the EAs the EISs available for public comment.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Council wants to be identified as an Affected Interest for this and all other projects or actions funded, authorized, or carried out by the BLM that may affect desert tortoises, and that any subsequent environmental documentation for this proposed project/proposed action is provided to us at the contact information listed above. Additionally, we ask that you notify the Desert Tortoise Council at [eac@deserttortoise.org](mailto:eac@deserttortoise.org) of any proposed project/proposed actions that BLM may authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*, *G. flavomarginatus*) so we may comment on it to ensure BLM fully considers actions to conserve these tortoises as part of its directive to conserve biodiversity on public lands managed by BLM.

Please 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.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

### **Literature Cited**

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. <https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en>

Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. <https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203%202020%20Final%200.pdf>.