

DESERT TORTOISE COUNCIL

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Via email only

3 October 2019

Ms. Dana Stephenson
Outdoor Recreation Planner, BLM Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, CA 93555, dstephenson@blm.gov

RE: Chaparrals Dual Sport Motorcycle Ride Special Recreation Permit-SR18-20 (DOI-BLM-CA-D050-2018-0011-CX)

Dear Ms. Stephenson,

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.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Agassiz's desert tortoise (*Gopherus agassizii*) (synonymous with "Mojave desert tortoise"), which is a species listed as threatened under the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA), our comments pertain to enhancing protection of this species during dual sports activities authorized by the Bureau of Land Management (BLM).

We would like to reiterate that in numerous comment letters we have repeatedly asked the BLM to consider the Council as an Affected Interest and that we be directly informed via email or U.S. Postal Service of those proposed actions on public lands managed by the BLM that may affect the desert tortoise, which includes this proposed dual sport. Fortunately, on September 26, 2019 we heard from one of our members residing in Utah that this project in California was being considered by the BLM and that we had only seven days, until October 3, 2019 to provide comments for a project that is scheduled to occur on October 6-7, 2019 (note that the notice says "October 6-7, 2018").

We question the BLM's use of a categorical exclusion as the method for compliance with the National Environmental Policy Act for this proposed action. We note that "The Departmental Manual (516 DM 2.3A(3) and appendix 2 requires that before any action described in the following list of CXs [categorical exclusions] is used, the list of 'extraordinary circumstances' must be reviewed for applicability. If a CX does not pass the 'extraordinary circumstances' test, the proposed action analysis defaults to either an EA or an EIS."

We believe that three of these 12 extraordinary circumstances apply to this proposed action: "(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects;" "(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment;" and "(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112)."

We believe Extraordinary Circumstance F applies, as the proposed recreation event is one of other like-events that occur in the California Desert Conservation Area and the location is in the west Mojave population of the Mojave desert tortoise. As such, the environmental effects of these activities should be analyzed cumulatively rather than have each recreation event analyzed separately, which results in segmentation of the impacts.

We believe Extraordinary Circumstance I applies, as per the discussion below, that the BLM has not obtained a section 2081 permit from California Department of Fish and Wildlife (CDFW) to take or handle, move, or conduct other forms of take of tortoises during the proposed action.

Finally, we believe Extraordinary Circumstance L applies. There are numerous reports in peer-reviewed scientific literature of the unintentional transport of seeds and other plant parts of non-native plants via vehicles. Brooks and Lair (2007) report "Vehicular routes are also a primary pathway for plant invasions into arid and semiarid ecosystems (Johnson et al. 1975, Amor and Stevens 1976, Greenberg et al. 1997, Brooks and Pyke 2001, Gelbard and Belnap 2003). [V]ehicles are a major vector for the dispersal of non-native plant propagules (Clifford 1959, Schmidt 1989, Lonsdale and Lane 1994)."

Assuming these three extraordinary circumstances do apply to the proposed action, we request that the Categorical Exclusion be set aside and the BLM prepare an Environmental Assessment (EA) for the proposed action. If the BLM decides to move forward with a Categorical Exclusion, we request that the BLM prepare a written record documenting why these Extraordinary Circumstances do not apply and provide a copy to the Council.

We appreciate that the BLM has attached General Biology Stipulations (Stipulations) to the end of the undated Categorical Exclusion Review and Approval (going forward, "Categorical Exclusion"), which were ostensibly derived from the USFWS (as per Exception #8 near the end of the unpaginated document), to help reduce incidental take of tortoises during dual sports events.

The first bulleted point in these Stipulations states:

- *One person who will be taking part in the entire event will be designated as the Tortoise Monitor and be in charge of ensuring compliance with these stipulations. This person will follow the steps on how to appropriately move tortoises and will need to sweep the route within 1 hour of the event. Moving a tortoise: -Any tortoises found may be moved at least 100 feet off the route in the direction it was facing. Gently pick up tortoise and hold tortoise low and level with the ground and do not jostle [sic] it. -Disposable latex (or similar) gloves must be worn (new ones for every tortoise) when handling tortoises.*

It is our understanding that the CDFW has not issued a State 2081 incidental take permit for this particular event nor has USFWS issued incidental take authorization through Section 7 of the FESA. Take includes capturing and handling. As such, it would be in violation of the CESA and FESA for anyone to handle a tortoise without such authorizations. Since the BLM is obligated to ensure that its activities are in compliance with CESA and FESA, BLM must ensure that tortoises are not handled, harmed, or harassed by this event until which time pertinent incidental take authorization has been acquired. The Tortoise Monitor described above should be informed of this restriction. Also, it is required that anyone handling tortoises, including the intended “Tortoise Monitor,” be preapproved as an Authorized Biologist by both CDFW and USFWS before handling tortoises.

The third bullet in the Stipulations states:

- *The Tortoise Monitor will educate all individuals engaged in this event about the desert tortoise, including awareness on its legal status, activity patterns (including whether the day’s weather is likely to cause desert tortoises to be active), and avoidance measures (Informational Flyers will be handed out to participants). Participants will also receive a map of the event routes.*

Please be sure that the Tortoise Monitor emphasizes that late September and early October of a given year is the time period when tortoise eggs hatch. Given the planned date for the event, it would occur at the peak time of hatching and therefore the time most likely to encounter hatchling tortoises. The Council does not believe that a 30 mile per hour speed limit is slow enough to see and avoid a 40-50 mm soil-colored, hatchling tortoise crossing the road, and that the speed limit should be reduced accordingly, to 20 miles per hour, or less.

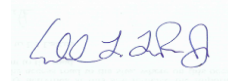
With regards to the third bullet, which states:

- *A post sweep of the routes must occur immediately after event to look for tortoises that may have been killed or injured. Any tortoises moved prior to, during, or found after the event must be reported to the BLM within 15 days of the event.*

It is essential that the Tortoise Monitor look for injured or dead *hatchling* tortoises immediately following the event. Since the project is not permitted by either a CESA 2081 Permit or Section 7 consultation, the Council understands that BLM is obligated to report any injured or dead tortoises resulting from the event to both the CDFW and USFWS to see if any penalties or impact fees would be levied against the project proponent, identified in the Categorical Exclusion as “Chaparrals Motorcycle Club.”

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during this activity. Herein, we reiterate our right that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM projects that may affect species of desert tortoises. As an Affected Interest, we request that subsequent environmental documentation for this particular project and all other projects affecting tortoise be provided to us at the contact information listed above.

Regards,



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

Literature Cited

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