



DESERT TORTOISE COUNCIL

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Via email only

31 August 2023

Attn: Francisco Mendoza, Amy McGowan
U.S. Department of the Interior, Bureau of Land Management
Tucson Field Office
3201 E. Universal Way
Tucson, AZ 85756
fmendoza@blm.gov, amcgowan@blm.gov

RE: Middle Gila South Access and Transportation Plan (DOI-BLM-AZ-G020-2022-0028-EA)

Dear Mr. Mendoza, Ms. McGowan,

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 likely occupied by Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the Bureau of Land Management (BLM), which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Unless otherwise noted, the page numbers cited in this letter and excerpts are taken from the Middle Gila South Access and Transportation Management Plan (TMP) Environmental Assessment (DEA), dated August 2023. Please note that the Council has provided comments on two previous occasions, including November 17, 2022¹ (Desert Tortoise Council 2022) and April 1, 2023² (Desert Tortoise Council 2023), which are incorporated by reference and footnoted below. Since this is a draft document, we expect that there will be a final environmental assessment (FEA), and provide suggestions herein that are intended to appear in the FEA.

Page 4 describes the purpose of the TMP: “The TMP outlines the route network to be developed for recreational use through route closure or limitations of use (to only a certain type of use or a certain type of vehicle). Additionally, there are several proposed new routes identified in the TMP Area. The travel network identified in the TMP is comprised of both proposed motorized and non-motorized routes. The BLM Travel and Transportation Handbook H-8342 (BLM 2012a) [see DEA for quoted references here and elsewhere] provides definitions for route and use type that are provided in Chapter 2 and the TMP.”

Page 4 further described the intent of the DEA: “For the purposes of this Environmental Assessment (EA) and TMP, and as defined in the BLM Travel and Transportation Handbook (BLM 2012a), the term ‘route’ will be used to refer to roads, primitive roads, primitive routes, trails, temporary routes, and transportation linear disturbances. This EA provides analysis of a No Action Alternative (Alternative A) and three action alternatives (Alternative B, Alternative C, and Alternative D) including a Proposed Action (Alternative C) considered during the travel management planning process, in compliance with the National Environmental Policy Act (NEPA) and other Federal and State laws and regulations.”

The General Setting is described as “The TMP Area is in southeast-central Arizona, in the Sonoran Desert and a mountainous landscape at elevations from 1,100 to 5,000 feet above mean sea level. The TMP Area consists of portions of three Travel Management Areas (TMAs): Middle Gila South, Lower San Pedro River, and Picacho TMAs. The TMP Area includes parts of Pinal, Pima, Cochise and Gila Counties, and small towns and communities. It includes approximately 210,764 acres of BLM-administered land interspersed with other agency-managed lands and private property within a 1,854,515-acre planning area boundary (Figure 1.1-1). [see DEA for cited figures].”

For reasons given below, it is our determination that none of the Council’s scoping comments given in either 2022 or 2023 were considered or addressed in the DEA. To support this conclusion, we reviewed our two comment letters showing there were about 23 specific requests in the 2022 document and 9 additional requests in the 2023 document, which were given to avoid redundancy with the 2022 document. In its summary of public input on page 6 in Appendix J, under the subheading of “Wildlife Resources,” we read the second bullet, which states, “How would implementation of the TMP affect BLM Sensitive species’ suitable habitat, including in the Picacho Mountains Sonoran desert tortoise Habitat Management Area?” Among the 30± comments, requests, and questions the Council did make in our 2022 and 2023 letters, this specific question was not among them. This observation, along with many others listed below, is strong evidence that BLM has not begun to consider our concerns identified in the two previous sets of scoping comments.

¹ <https://www.dropbox.com/scl/fi/dpowlpae3q1xug3h0dkd/Middle-Gila-South-Transportation-Plan.11-16-2022.pdf?rlkey=77sx7ikkz0sun3a26a5eg2k1g&dl=0>

² <https://www.dropbox.com/scl/fi/51ekcq77oonlpzwyv1kkk/Middle-Gila-South-Transportation-Plan-Scoping-Comments.4-21-2023.pdf?rlkey=b05kmg2pfvpati8y62ds11v8w&dl=0>

Importantly, we note in the following comment summary on page 5 of Appendix J that the Desert Tortoise Council is not listed among the entities submitting comments:

“Comment Summary

During the NEPA public scoping period, a total of 125 comment letters or emails were received, with 11 unique letters and 114 identical letters from members of an OHV recreation organization. Most of the letters included multiple comments on a variety of interests submitted for consideration. Comments received have been categorized according to general topics of concern or question. Many submittals were questions to BLM rather than statements of fact or opinion. General topics include access-transportation, lands/realty, livestock grazing, recreation, special management areas, cultural resources, wildlife resources [*no mention of tortoises, or for that matter, sensitive species*], wilderness characteristics, wilderness, vegetation, public safety, minerals, mining, mineral exploration, air quality, soils, and socioeconomics.

Comments were received from:

Arizona Game and Fish Department
Pinal County
Bureau of Reclamation Phoenix Area Office
ASA4WDC (Arizona State Association of Four-Wheel Drive Clubs)
CTVA (Capital Trail Vehicle Association)
Arizona Sportsmen for Wildlife Conservation
ASARCO
Freeport Minerals Corporation
Center for Biological Diversity
The Wilderness Society
Town of Kearny
Individuals
[*No mention of the Desert Tortoise Council.*”

The Council submitted two letters during both your formal pre-NEPA Outreach and your formal Scoping Process, dated November 17, 2022 and April 1, 2023, respectively. Appendix J, Scoping Summary, DEA, however, does not identify receipt of either of these two letters and, in the analysis of scoping comments, does not address any of our comments in a substantive way. We know that these comments were received because we were on the list for the DEA but we have no evidence that these scoping comments were addressed. We request that BLM review both our November 2022 comments and April 2023 scoping comments again and incorporate pertinent information these into the final TMP and FEA. We also request that the BLM provide a thorough analysis of these comments in the final TMP and FEA including a description of how comments were incorporated.

We are disappointed to see that Section 1.7 Relationship to Statutes, Regulations, Other NEPA Documents on pages 6 and 7 fails to mention BLM’s responsibilities given in the Candidate Conservation Agreement (CCA) for the Sonoran Desert Tortoise (USFWS et. al 2015). Nor is the CCA ever mentioned in the TMP (BLM 2023). We are also concerned that we made the specific point in our April 2023 scoping comments (Desert Tortoise Council 2023) that the DEA needs to document how BLM’s responsibilities identified in the CCA will be implemented in the TMP. Since BLM’s obligations to fulfill its role in the CCA are missing from the DEA, we ask that the FEA be revised to describe the following responsibilities, which are taken verbatim from our 2023 scoping comments:

“As a signatory to the CCA (USFWS et al. 2015), [how is] BLM committed to implementing:

(1) BLM Manual 6840 (BLM 2008) that establishes specific procedures for managing the Sonoran desert tortoise as a BLM sensitive species, with the goal of conserving the Sonoran desert tortoise and its habitat on BLM-managed lands in cooperation with other agencies;

(2) landscape level conservation measures (e.g., identifying areas of potential conflict between agency mission and Sonoran desert tortoise habitat and identifying and reducing or otherwise mitigating dispersal barriers between Sonoran desert tortoise populations, etc.); and

(3) local level conservation measures (e.g., considering the effects of actions on the Sonoran desert tortoise during the planning process, and avoiding or minimizing impacts, or implementing mitigation measures to offset impacts to tortoise populations and habitat where practical and feasible, avoid, where practicable, or otherwise minimize or mitigate adverse effects of actions that could result in isolation of known Sonoran desert tortoise populations and/or landscape-level fragmentation of Sonoran desert tortoise habitat, etc.)?”

Instruction Memorandum (IM)-AZ-2016-004, dated October 21, 2015 describes the function of the CCA as follows: “This CCA includes conservation and reporting commitments, which the BLM has agreed to, in order to ensure the conservation of the Sonoran desert tortoise on Federal lands in Arizona (Attachment 2). The conservation measures are included in, and/or are in conformance with, all Resource Management Plans (RMPs) in the State, as well as Manual Section 6840, Special Status Species Management.” There is no indication in either the DEA or TMP that BLM’s planning ever considered the “conservation of Sonoran desert tortoise.”

We contend that the DEA is deficient until which time the FEA is rewritten to analyze the Affected Environment, Environmental Consequences, and Cumulative Impacts in Section 3.7 with regards to Special Status Wildlife and Plant Species as they pertain to Sonoran desert tortoise throughout the TMP area.

Furthermore, there is no evidence in either the DEA or the TMP that BLM has considered its responsibilities and coordination with other agencies, including U.S. Fish and Wildlife Service (USFWS) and Arizona Game and Fish Department (AZGFD), as they are elucidated in the following documents:

- Arizona Game and Fish Department. 2010. Desert Tortoise Survey Guidelines for Environmental Consultants.
- Arizona Game and Fish Department. 2014. Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects.
- Arizona Interagency Desert Tortoise Team. 2008. Recommended Standard Mitigation Measures for Projects in Sonoran Desert Tortoise Habitat. June 2008.
- Bureau of Land Management. 2012. Desert Tortoise Mitigation Policy. Instructional Memorandum IM-AZ-2012-031.

We expect that the FEA and TMP will be revised to include BLM's responsibilities as they are given in the four documents listed above.

Appendix B to the DEA on page 52 indicates that Sonoran desert tortoise is designated as a Tier 1 Species of Greatest Conservation Need, although the implication of the "Tier 1" designation is not explained. Yet, despite this designation, a search for the word "tortoise" reveals that it is briefly mentioned on pages 43 and 44 of the DEA, where BLM habitat categories are described (BLM 1988; we were unable to find a list of references given in the DEA text among the many appendices provided). The only two qualitative statements given include (1) "Desert washes have particular importance to Sonoran desert tortoise due to exposure of soil strata in banks that provide burrowing habitat" and (2) "Desert tortoise in the TMP Area tend to have relatively small ranges and those with ranges in high traffic areas are at risk of vehicle collisions or poaching." We note that the word "tortoise" does not even appear in the TMP or Appendix G, which addresses conservation measures for threatened, endangered, and sensitive species.

We note that the fourth bullet in the TMP on page 9 indicates, "Restoration actions and treatments would be implemented on routes designated as closed." We recommend that BLM implement proven restoration measures as they are described in Abella and Berry (2016) and Abella et al. (2023).

The sixth bullet on page 9 indicates, "Monitoring would be implemented for traffic volume, type of use, impacts of use on natural resources along the routes, with priority given to the main public land access routes." We ask that this measure be revised to indicate that monitoring will be applied specifically to closed routes at regular intervals to see if route closure techniques, like vertical mulching, are having the desired effects.

We appreciate this opportunity to provide comments and that BLM contacted the Council directly via email on August 1, 2023, although there is no evidence that BLM has conscientiously considered our concerns previously documented in 2022 and 2023. Herein, we reiterate that the Desert Tortoise Council asks to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BLM that may affect desert tortoises, and that any subsequent environmental documentation for this project be provided to us at the contact information listed above. If there is no evidence in the FEA that our, now, three sets of comments have been addressed, you may expect that we will formally protest the final TMP and EA. Additionally, we ask that you respond in an email that you have received this comment letter and the two previous ones 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. Tracy Stone-Manning, Director, Bureau of Land Management, tstonemanning@blm.gov
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Literature Cited

- Abella S.R. and K.H. Berry. 2016. Enhancing and restoring habitat for the desert tortoise (*Gopherus agassizii*). *Journal of Fish and Wildlife Management* 7(1):255–279.
<https://doi.org/10.3996/052015-JFWM-046>.
- Abella S.R., K.H. Berry, and S. Ferrazzano. 2023. Techniques for restoring damaged Mojave and western Sonoran habitats, including those for threatened desert tortoises and Joshua trees. *Desert Plants*, Volume 38, Number 2, May 2023.
- [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>.