



DESERT TORTOISE COUNCIL

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Via email only

Date: 9 November 2023

Attn: Tammy Owens, OHV Special Recreation Permit Project
BLM Nevada State Office
1340 Financial Blvd
Reno, NV 89502
blm_nv_srp_ea@blm.gov, taowens@blm.gov

RE: Nevada Multi-District Off-Highway Vehicle Special Recreation Permit Programmatic Environmental Assessment (DOI-BLM-NV-0000-2023-0004-EA)

Dear Ms. Owens,

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 proposed action. Given the location of the proposed action in habitats known to be occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz'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 action.

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.

The project description of the proposed action in the BLM's National Environmental Policy Act (NEPA) Register indicates that the "Nevada State Office is developing a programmatic Environmental Assessment (EA) that will cover a range of Special Recreation Permits (SRPs) for Off-Highway Vehicle (OHV) events in Nevada. The development of this EA will aid BLM staff in responding to private party applications for events on BLM-administered land throughout Nevada. The BLM has engaged the Ely, Southern Nevada, Battle Mountain, and Carson City District Offices. The planning area for the program is 28,712,700 acres. The programmatic EA will streamline the current SRP process for OHV events and lower the cost burden for applicants who bring valuable economic income to the region, in addition to alleviating processing time for BLM staff. Analysis in the programmatic EA will be limited to existing routes currently or previously used for OHV events in the region. The programmatic EA will establish a set of standard stipulations and mitigation measures that will be applied to all events on the given routes. The programmatic EA will comply with the Federal Lands (*sic*) Policy and Management Act (FLMPA) which establishes outdoor recreation as one of the principal uses of public lands and directs the Secretary of the Interior to regulate, through permits or other instruments, the use of public lands (43 CFR 2391.3)."

The EA (page 1-1) further describes the types of events being covered as "...high-speed events (referred to as 'races'), low-speed non-competitive orienteering or touring (referred to as 'low-speed non-competitive SRPs'), and motorcycle-only uses (which can be either races or low-speed non-competitive SRPs)."

Prior to reviewing the programmatic EA, we would like to respond with strong concern to several statements in the above paragraph taken from the NEPA Register.

First, we are concerned with the BLM's statement that quite typically and predictably emphasizes OHV use in the desert without any reference to environmental protection: "The programmatic EA will *streamline the current SRP process* for OHV events and *lower the cost burden for applicants who bring valuable economic income to the region*, in addition to *alleviating processing time* for BLM staff [*emphasis added*]." BLM seems to be committed to this verbiage, as it is used again, verbatim, in the solicitation for BLM's "scoping overview direction" given in the NEPA Register. It is with equal concern that no BLM biologists are included in the List of Preparers on page 4-1 of the EA; rather, it was completed by recreational planners. It is not BLM's function to promote recreational projects in EA's, which should be designed to analyze in a neutral manner what the impacts will be and modify the proposed action accordingly based on the findings.

The statements given in the NEPA Register, in the four italicized incidences listed above, emphasizes how this planning effort will benefit recreation users throughout Nevada without regard to mandated environmental protection, although FLMPA is briefly referenced at the end of the paragraph. Southern Nevada is a region that has witnessed seemingly unrestrained solar development that has eradicated tens of thousands of acres of tortoise habitats and displaced thousands of tortoises from pristine public lands since publication of the 2012 Record of Decision to promote solar energy development on our public lands (BLM and DOE 2012; Solar PEIS).

Our concern is that this programmatic EA will do for OHV enthusiasts what the Solar PEIS did for promoting solar development, with one important exception: Whereas direct impacts of solar development are restricted to a fixed parcel with identifiable boundaries (not to underestimate the importance of indirect, cumulative, and synergistic impacts), direct impacts by OHV users are unrestrained, unmanageable, and one of the most ubiquitous causes of habitat degradation and tortoise mortality within the declining, listed population of the Mojave desert tortoise.

Given this serious concern, the multitude of significant impacts associated with OHV impacts, and the scope of the proposed action that *will adversely affect* tortoises in a substantial portion of the almost 29 million acres in the project area, we assert that this EA is far too simple and inadequate to address the foreseeable and unforeseeable impacts associated with this proposed action. It is therefore imperative that this proposed action be reanalyzed and documented in a complete environmental impact statement (EIS), not in a programmatic EA. We also ask that the final document quantifies the acreage of tortoise habitat within the project area, and quantify the amount of habitat that may be directly, indirectly, and cumulatively impacted, which is not divulged in the draft EA.

We assert that BLM should prepare an EIS. We remind BLM that if they were interested in saving time, they would have included ALL Affected Interests in the public scoping process to determine the context and intensity of the impacts of the proposed action, and realized from the myriad of research articles and reports in the scientific literature that OHV use has significant impacts on desert landscapes including tortoise habitats. This leads us to question why we were not given an opportunity to provide scoping comments on the proposed action, where we definitely would have registered our concern with the level of environmental review and asked that an EIS be produced. We note that the Council was not included in the solicitation for scoping comments on April 19, 2023, nor were we provided with the draft EA. In every comment letter we've written over the last 13 years, we have asked the BLM managers in Nevada to include the Council as an Affected Interest, including a 2019 certified letter to the Southern Nevada and Ely districts of the BLM¹, yet we were not made aware of this proposed action until October 16, 2023 when a third party, not the BLM, informed us of it.

¹ <https://www.dropbox.com/s/xx5wmxcac1c1cju/BLM%20Southern%20Nevada%20District%20Managers%20Council%20as%20an%20Affected%20Interest.11-7-2019.pdf?dl=0>

Our second concern with the Project Description is revealed in the following statement, with emphasis added: “Analysis in the programmatic EA will be *limited to existing routes currently or previously used for OHV events* in the region.” We note that “existing routes” may easily be misconstrued for “designated routes,” which are not synonymous terms. We anticipate that the BLM will respond to the statement by saying it does not authorize such events on closed and undesignated routes, which is technically true. However, BLM does not effectively enforce the use of only designated routes and does not effectively mitigate the long-term damage caused to natural resources from unauthorized uses. In addition, what BLM fails to understand is that the spectators associated with these organized events are not restricted to designated routes; they use washes and closed routes, and evidence of cross-country vehicle travel following such events is always more common than before the event (Goodlett and Goodlett 1993). The SRPs also introduce new vehicle users to new areas of the desert, which they may continue to revisit for many years without any BLM oversight or restrictions. These complexities, again, argue for the need for an EIS rather than an EA.

We are concerned that, with this and other recent projects in southern Nevada, the BLM is planning to amend the Las Vegas RMP (BLM 1998) that is outdated and no longer reflects the current status and population trends of desert tortoises occurring within the Northeastern and Eastern Mojave Recovery Units (USFWS 2011) where portions of the project would occur. When asked about BLM’s intent to update the Las Vegas RMP at the virtual meeting for the GridLiance West Core Upgrades Project in September 2023, Mr. Pay of the Southern Nevada Field Office indicated that BLM was considering revising the Las Vegas RMP, but was not actively doing so at that time, and has not identified an initiation date to revise this outdated, obsolete RMP.

For example, the Las Vegas RMP did not anticipate the unprecedented conversion of prime tortoise habitats into sterile solar fields, particularly in the Pahrump Valley and around Stateline. The RMP was also completed two decades before the ubiquitous declines of tortoises were documented by USFWS (2015) and published in the scientific literature by Allison and McLuckie (2018). There has been no improvement in tortoise densities or abundance, with densities declining in the Northeastern Mojave Recovery unit since 2015 (USFWS 2016, 2018, 2019, 2020, 2022a, and 2022b) and elsewhere where minimal population viabilities are not being achieved (USFWS 1994).

Even so, we note on page 1-3 of the EA under the discussion of the Las Vegas RMP the following statement: That there be “No new courses in critical desert tortoise habitat.” It is not apparent in the draft EA that this management prescription has been implemented. Please be sure that the final EA documents if there have or have not been any SRP events in desert tortoise critical habitat within the Las Vegas RMP area. In addition, no new courses would still allow the use of past routes and routes currently used by OHVs, including unauthorized routes.

The EA in Section 1.4 (page 1-2) lists the various management plans affecting the proposed action, stating that “The Proposed Action and alternatives conform to, and are subject to...” these management plans and “[t]he Proposed Action is in conformance with the Goals, Objectives, and Management Actions of the RMPs listed above.” Please explain in the final EA why the original (USFWS 1994) and revised (USFWS 2011) recovery plans for the desert tortoise are not listed among pertinent plans that BLM would manage for and conform to.

We believe that the following statement is both naive and misleading: “There is no new surface disturbance included in the Proposed Action because all SRPs would take place on open existing roads and trails and utilize previously used staging areas and pit stops.” It presupposes, despite compelling evidence, that participants will remain on established trails, which is highly unlikely especially during race events. Goodlett and Goodlett (1993) and LaRue (1994), among many others², document the impacts of OHV activity in areas adjacent to roads during President’s Day weekend and a race sponsored by the American Motorcyclist Association through the Ord-Rodman Critical Habitat Unit in 1994, respectively. As given above, the statement also fails to acknowledge impacts by spectators who are not directly participating in the SRP events and by visitors introduced to the region that return to the area in subsequent years.

With regards to the following statement at the beginning of the third paragraph in the EA on page 2-9, “Post-SRP monitoring and post-use reports would be required for all OHV SRPs,” do these reports represent current management or new management? If such reports have been required in the past, why aren’t the direct and indirect impacts of previous SRP events summarized in the draft EA? Is BLM responsible for monitoring these events, and if not, how will BLM ensure that neutral third parties are monitoring and writing the reports? Please be sure these questions are answered in the final EA.

In the same paragraph, we ask that the word, “may” in the following sentence be replaced with the word, “will:” “The permittee ~~may~~ **will** be required to grade, drag, disc, or reseed (with native seed mixes) any areas damaged by off-route travel.” Please see the links in the Literature Cited section of this report for best management practices to enhance success of arid lands restoration (Abella and Berry 2016, Abella et al. 2023). BLM should use the best available science in analyzing the impacts of the proposed action and developing mitigation for associated impacts (BLM 2021a, 2021b, 2021c).

We read the following statements in Section 2.3.1 of the EA concerning the alternative that was rejected, entitled “Do Not Issue OHV SRPs:” “Under this alternative, the BLM would cease to issue OHV SRPs. This alternative was dismissed from further analysis, as the BLM is unlikely to stop issuing OHV SRPs in southern Nevada. The Federal Land Policy and Management Act of 1976 mandates multiple use of public lands, including recreation use.” If it were determined that issuance of a particular SRP was resulting in unacceptable habitat impacts and tortoise mortality, we assume the BLM would discontinue that SRP or modify it to avoid the impact. The circuitous argument that BLM will not cease issuing SRPs because it is unlikely to stop issuing SRPs is a tautological statement that is not a reason to reject this alternative. Nor would recreation opportunities be eliminated, as BLM open routes would continue to facilitate recreation even if SRPs were abolished. The only change is that a promoter would not be able to financially benefit from organizing these events on public land that will predictably result in the degradation and loss of public trust resources.

We read on page 3-11 that “[T]he BLM will be initiating Section 7 consultation with USFWS through preparation of a Biological Assessment to analyze effects of the Proposed Action on threatened, endangered, proposed, and candidate species and critical habitats.” As an affected interest, we ask that the Council be provided with the draft Biological Assessment so that we may review it for completeness and recommend remedial actions, if any, as needed. We would also like to see the resulting biological opinion in time to be able to comment on it.

² <https://www.dropbox.com/s/vcfxz7qs5bo0w2m/%23Road%20Impacts%20Bibliography.pdf?dl=0>

With regards to the second bullet on page 3-15 listing mitigation measures, “LOW-TE-02 (A.2) will prohibit dogs **and firearms** from being allowed on tours,” we recommend that the words, “and firearms,” be added to this prescription as shown in bold font. This reflects current management by the USFWS in its terms and conditions in biological opinions. This recommendation would also apply to measure LOW-TE-02 given on page A-16 of Appendix A to the draft EA.

With regards to the following prescription on page A-17, we recommend that the following bold wording be added to the paragraph: “LOW-TE-06: Tour guides and participants shall inspect for tortoises under a vehicle prior to moving the vehicle. If a tortoise is present, the guide shall carefully move the vehicle only when necessary and when the tortoise would not be injured by moving the vehicle **or exposing it to lethal ground temperatures (e.g., in excess of 90°F)**, or shall wait for the tortoise to move out from under the vehicle.”

The Council does not believe that the single paragraph on page 3-53 of the draft EA concerning special status species constitutes an adequate cumulative effects analysis. Please see *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345-46 (D.C. Cir. 2002) in which the court ruled that agencies must analyze the cumulative impacts of actions in environmental assessments. We request that BLM amend the final EA to include a section that *analyzes* the cumulative impacts of the proposed action especially for the tortoise and other special status species (BLM 2008a).

The Final EA should include an analysis of all impacts to the tortoise/critical habitat within the region, including an up-to-date list of future state, federal, and private actions affecting the tortoise species on state, federal, and private lands.

In the cumulative effects analysis, please ensure that the Council on Environmental Quality’s (CEQ) “Considering Cumulative Effects under the National Environmental Policy Act” (1997) is followed. BLM refers to this document in its NEPA Handbook (BLM 2008b). BLM’s analysis should include CEQ’s eight principles, when analyzing cumulative effects of the proposed action to the tortoise and its critical habitat/habitats. CEQ states, “Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects.” The analysis “must describe the response of the resource to this environmental change.” Cumulative impact analysis should “address the *sustainability* [emphasis added] of resources, ecosystems, and human communities.” For example, the EA should include data on the likelihood that the tortoise population in the Northeastern and Eastern Mojave Recovery Units will be sustained into the future given its status and trend.

CEQ’s eight principles are listed below:

1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis need to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

We request that the final EA include these eight principles in its analysis of cumulative impacts to the Mojave desert tortoise, and address the sustainability of the tortoise in tortoise conservation areas (TCAs). The EA should include an analysis of all proposed mitigation and how its implementation during all phases of the proposed action (including monitoring for effectiveness and adaptive management) would result in “no net loss in quantity and quality of Mojave desert tortoise habitat....and using offsite mitigation (compensation) for unavoidable residual habitat loss.”

Finally, we request that BLM add impacts of SRPs authorized and facilitated by this proposed action to a database and geospatial tracking system for special status species, including Mojave desert tortoises, that track cumulative impacts (e.g., surface disturbance, invasive species occurrence, wildfires, etc.), management decisions, and effectiveness of mitigation for each project. Without such a tracking system, BLM is unable to analyze cumulative impacts to special status species (e.g., desert tortoises) with any degree of confidence.

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 Desert Tortoise Council wants 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 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.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

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