

**DESERT TORTOISE COUNCIL**

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**Via email only**

7 May 2022

Attn: Joshua Travers  
BLM Red Rock/Sloan Field Office  
Legacy Trail Draft EA  
4701 N. Torrey Pines  
Las Vegas, NV 89130  
[jtravers@blm.gov](mailto:jtravers@blm.gov), [BLM\\_NV\\_RR\\_LegacyTrail@blm.gov](mailto:BLM_NV_RR_LegacyTrail@blm.gov)

Federal Highway Administration  
Central Federal Lands Highway Division  
12300 West Dakota Avenue  
Lakewood, CO 80228

RE: Red Rock Canyon National Conservation Area: Legacy Trail Phase 1 - NV FLAP 500(1) - Red Rock Trail and Intersections Improvements Project (DOI-BLM-NV-S020-2021-0008-EA)

Dear Mr. Travers,

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.

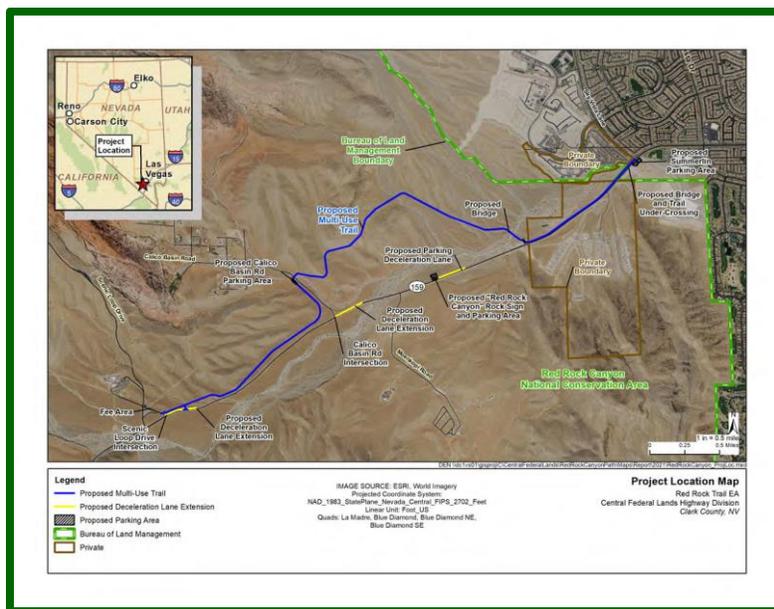
We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats known to be occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of 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.

Mojave desert tortoise is now on the list of the world’s most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature’s (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021). As such, it is a “species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors.” It is one of three turtle and tortoise species in the United States to be critically endangered.

The following project description is given in the BLM’s National Environmental Policy Act (NEPA) Register Notice: “The Bureau of Land Management (BLM) Southern Nevada District and the Federal Highway Administration (FHWA) propose to construct a multi-use trail in sections of Red Rock Canyon National Conservation Area (RRCNCA). The proposed trail would start from the intersection of Charleston Boulevard and Sky Vista Drive in Summerlin and end at the RRCNCA fee station approximately 5.5 miles to the southwest in Clark County, Nevada. The FHWA is proposing to build a paved recreational trail through undeveloped land across the RRCNCA. The trail will provide pedestrians new and safe opportunities to enjoy the countryside away from the noise and safety hazards of a heavily traveled section of Nevada State Route 159 (SR 159). The trail will be designed for multiple uses including walking/jogging, bicycling and rollerblading. It will conform to Americans with Disabilities Act design standards for accessibility. Currently there are no approved trails between Summerlin and the RRCNCA Scenic Drive, which encourages pedestrians to travel along the shoulders of SR 159. Heavy vehicular traffic creates health and safety concerns for these people.”

The Council would like to thank BLM for contacting us directly in an email on April 7, 2022 with the background information and Draft Environmental Assessment (DEA). Unless otherwise noted, all referenced page numbers are from the DEA.

The following map of the proposed project is given on page 5:



Why was only “internal scoping” pursued without public participation (page 6)? Had such pre-project scoping occurred, the Council would have had the opportunity to recommend that the proposed trail coincide with the southern side of State Route-159, which we believe may still be a valid alternative, rather than loop so far north through the RRCNCA. We see on page 7 that the design was derived with stakeholder input, but fails to identify the stakeholders, and certainly did not include the Council, which has reiterated for years that we wish to be included on projects like this one where tortoises would be affected.

We assume that the trail cannot be constructed along the northern side of the route due to the extensive wash areas. However, since the predominant need is to protect bicyclists and pedestrians who currently are using the heavily-travelled SR-159, there is no apparent rationale to extend this paved trail so deep into the RRCNCA; keeping it close to the southern side of SR-159 would satisfy the intended need for public safety while minimizing impacts to the RRCNCA. Rather, it appears that the trail is being located deep into the RRCNCA to facilitate recreation, which will likely have many more impacts than would occur if it were located alongside the existing highway. This is a significant concern, as 32.7 of the 35.16 acres (93%) of permanent and temporary impacts (see Table 2-2 on page 13) would be along the Multi-Use Trail.

We see on page 10 that there is mention of “Fuels/Fire Management” (Section 2.2.3) and a commitment to produce a “Weed Plan” (Section 2.2.5). We believe that a science-based Fire Management Plan should be developed for the project. Elevated cycle and pedestrian use through the RRCNCA may result in increased incidence of fire, which in turn would likely contribute to the spread of weed species. We see in Figure 3-1, page 28, that Saharan mustard is prevalent along SR-159 and nearly absent from the proposed Multi-Use Trail right-of-way (ROW). Construction of this trail will predictably increase the incidence of this invasive, non-native plant as a result, and threatens parts of the RRCNCA that would not otherwise be threatened. So, we ask that the BLM/FHWA develop a detailed Fire Management Plan in addition to the Weed Plan. We are concerned that “but for” this project there would be no need to introduce herbicides into the RRCNCA (Section 2.2.5), and strongly advocate for the removal of weeds without the use of herbicides or heavy equipment.

We see in Section 2.2.11 the following statement: “The Proposed Action would comply with the minimization measures stipulated in the RRCNCA Programmatic Biological Opinion (File No. 1-5-04-F-526) [PBO] and minimization measures outlined in the Biological Opinion to be issued for this project.” We note that such a paved trail constructed through the RRCNCA would not likely be specifically identified in the PBO for take to be authorized for this project. Although we did not have access to the PBO, we assume that the trail was unforeseen at the time of its writing in 2004. As such, if tortoises are subject to take as the result of this proposed project, formal consultation must occur among the affected federal Lead Agencies and a project-specific Biological Opinion needs to be issued for the project. We believe that observations of six live tortoises within the proposed ROW (Figure 3 in Appendix G) is a clear indication that take is likely to occur and formal consultation is warranted.

Section 2.7, page 14, indicates the following: “The RRCNCA RMP [Resource Management Plan] (BLM 2005) is the overarching management plan and guidance document for activities within RRCNCA.” The Council is concerned with the use of such a dated plan, which in our estimation

needs to be revisited given the precipitous declines in tortoise populations throughout most of the listed range between 2004 and 2014 (Allison and McLuckie 2018), and which continue unabated (USFWS 2022a, 2022b). Similarly, we also question whether the PBO referenced in the DEA and mentioned above also needs to be updated and revised to account for declines that were not documented in 2004, when distance sampling was in its infancy and when the PBO was drafted.

The following conclusion given on page 32 is misleading, when one considers Figure 3 in Appendix G, which shows six live tortoises (not found by tortoise surveyors during protocol surveys) *within* the actual ROW: “Several Mojave desert tortoises were observed in the vicinity of the Proposed Action during biological surveys in May 2020 (Jacobs 2020a).” If not for Appendix G, which is not referenced in Section 3.9, we would not know that tortoises are definitely present within the ROW and that most of the tortoise sign was found within the ROW for the Multi-Use Trail as opposed to survey areas along SR-159. Again, this amount of tortoise sign warrants a project-specific Biological Opinion from U.S. Fish and Wildlife Service (USFWS).

In Section 4.9.1, page 43, we read: “Implementation of the Proposed Action could adversely affect the federally threatened Mojave desert tortoise, but these effects would be less than significant. The Proposed Action would occur within known occupied habitat for Mojave desert tortoise, and several individuals were observed in the vicinity during biological surveys in May 2020 (Jacobs 2020a).” First, there were six tortoises within the ROW, not “several individuals.” The distribution of the sign indicates that tortoises occur throughout the project area. And it is our understanding that take of a federally threatened species automatically comprises a significant impact under pertinent federal laws. In this respect, the DEA appears to minimize the significance of the impact and fails to accurately interpret the results of the professional biological consultants’ findings. Someone reading the text of the DEA (without consulting Appendix G) would be led to believe that this project would constitute an insignificant impact to both tortoises and occupied habitat, when in fact, the potential impact will require permitting and take authorization.

There are numerous direct and indirect impacts to tortoises that render the DEA and the abbreviated impacts analysis on pages 43 and 44 deficient. For example, as mentioned above, there may be increased incidences of fire associated with the Multi-Use Trail, which facilitates human use and intrusion into the RRCNCA that would not occur “but for” this project. There are also likely to be more ravens attracted into the area due to elevated human use; collection of wild tortoises and release of pet tortoises may be more likely; litter and discarding unwanted materials may also attract coyotes, in addition to ravens. Although we do not expect the BLM to complete a final environmental assessment that fully divulges these and other adverse impacts, we do expect BLM and FHWA to identify measures that would curtail them (e.g., informational kiosks along the trail that prohibit collection of wild tortoises and release of pet tortoises).

We note that ravens are not even mentioned in the protection measures listed in Section 4.15.7 that are taken from the PBO. This either means that the PBO is outdated and needs to be revised or the partial list given in the DEA fails to prohibit litter or the establishment of refuse containers along the trail that will be regularly maintained. Will there be a prohibition of pets on the trail, or at least a requirement for leash-controlled dogs? These are just a few of the predictable impacts that are not addressed in the DEA and need to be considered and addressed by the BLM and FHWA should the project proceed as proposed.

We appreciate this opportunity to provide comments on this project 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 and FHWA that may affect species of 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

### **Literature Cited**

- Allison, L.J. and A.M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology* 13(2):433–452.
- 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>
- [USFWS] U.S. Fish and Wildlife Service. 2022a. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2020 Annual Reporting DRAFT. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada.
- [USFWS] U.S. Fish and Wildlife Service. 2022b. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2021 Annual Reporting DRAFT. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada.