



DESERT TORTOISE COUNCIL

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Via email only

16 August 2023

Attn: Jeremy Vargas, Mark Stamer
Bureau of Land Management, Barstow Field Office
2601 Barstow Rd.
Barstow, California 92311
jvargas@blm.gov, mstamer@blm.gov

RE: Stoddard Valley OHV Temporary Closure and Filming Permit EA (DOI-BLM-CA-D080-2023-0007-EA)

Dear Mr. Vargas, Mr. Stamer,

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. Please note that despite years of asking the Barstow Field Office of the Bureau of Land Management (BLM) to notify the Council about projects that may affect the desert tortoise (Desert Tortoise Council 2019¹), it was a third party, not the BLM, that alerted the Council to this project and the opportunity to comment. 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 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 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), habit 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 had 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 final determination is pending.

Unless otherwise noted, referenced page numbers are taken from the BLM's draft environmental assessment, DOI-BLM-CA-D080-2023-0007-EA, entitled, "Stoddard Valley OHV Temporary Closure and Filming Permit EA," and dated July 2023 (herein, "Draft EA"). Page 3 indicates that BLM has prepared the Draft EA to "...evaluate potential impacts to the human environment from a temporary closure [of] Stoddard Valley Off-Highway Vehicle (OHV) Area and the issuing of a commercial filming permit to occur during the California 300 OHV race, from 2023 to 2027."

"The proposed action is connected to the California 300 Special Recreation Permit, if approved, to be held annually at in Stoddard Valley OHV area. The potential environmental effects were analyzed under the Stoddard Valley Management Plan (CA-068-91-23). The BLM is contemplating the issuance of a Special Recreation Permit (SRP) to Mad Media to conduct The California 300 event in the Stoddard Valley OHV Area for a five-year period, from 2023 through 2027. The multi-day event occurs over approximately five days and features a desert cleanup, multiple days of pre-running, a public poker run, an off-road festival, and two days of off-road racing on a 70-mile racecourse."

¹ <https://www.dropbox.com/s/mlwe60a9lcxhy56/BLM%20CDCA%20District%20Manager%20DTC%20as%20an%20Affected%20Interest.11-7-2019.pdf?dl=0>

We note that Section 1.4. Land Use Plan Conformance lists numerous planning documents, including the California Desert Conservation Area Plan (CDCA Plan; BLM 1980), West Mojave Desert CDCA Plan Amendment (BLM 2006), Desert Renewable Energy Conservation Plan (DRECP) CDCA Amendment (BLM 2016), and Stoddard Valley Off-Highway Vehicle Area Management Plan (BLM 1993), among others. Have the BLM and U.S. Fish and Wildlife Service (USFWS) taken the time to see if the 1993 biological opinion (Appendix 14 in BLM 1993) has function as intended? Has the mortality take limit of 1,169 dead tortoises that the opinion authorized been met? Does BLM have any monitoring data to show how this and other authorized activities in the Stoddard Valley Open Area have impacted tortoises? Is BLM required to formally consult with the USFWS to determine if this proposed action “may affect” desert tortoises in the vicinity of the California 300 OHV Race? We believe that these actions should be taken and the resulting information documented in a Final EA that can be reviewed by the public before a Record of Decision (ROD) is published for the proposed action.

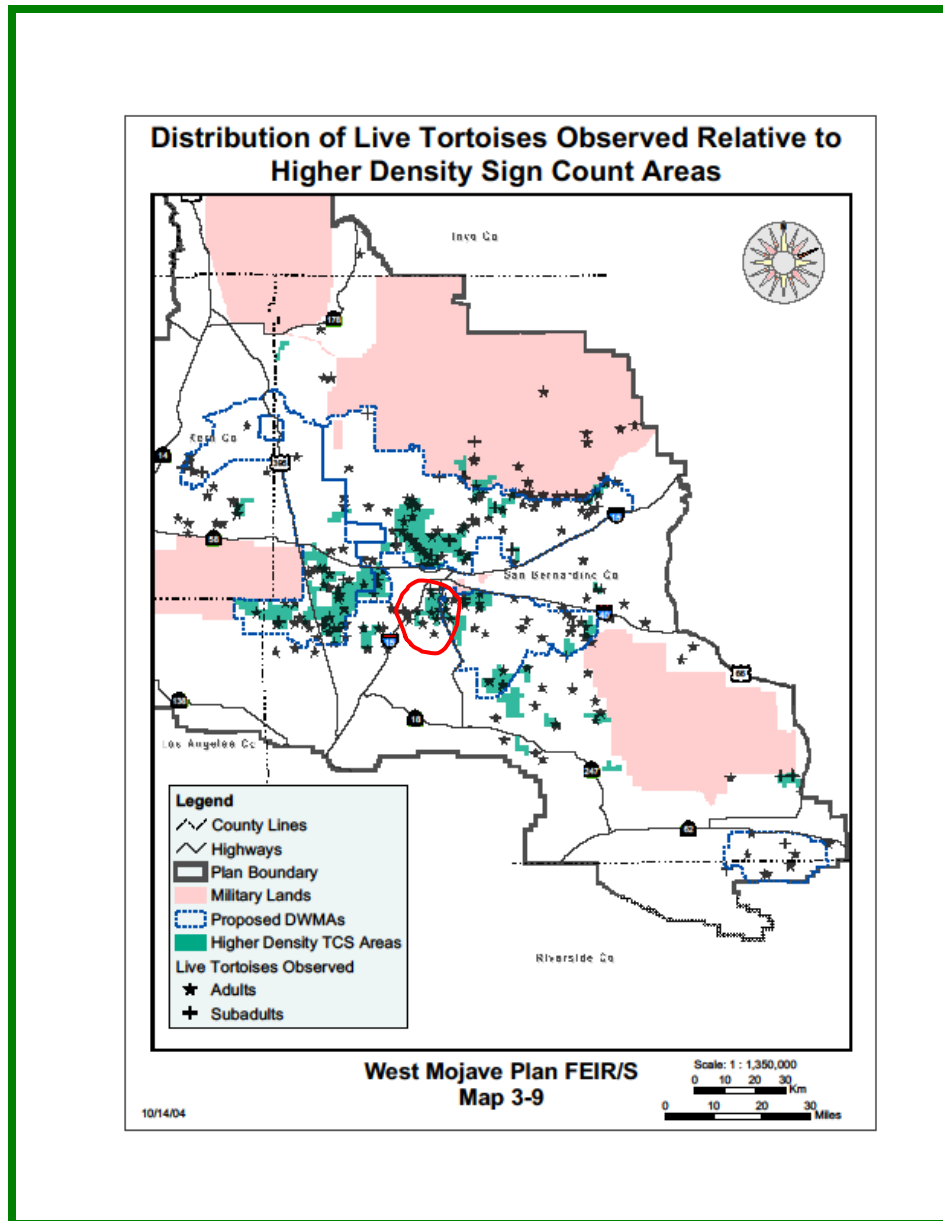
Page 7 speaks generally about the closure and its timing: “The Temporary Land Closure would temporarily close the Stoddard Valley OHV Area for the duration of the event. This closure would restrict all public use for the duration of the event. The BLM would post the dates for The California 300, the dates of the temporary closure, and a map of the closure area at the main entry points into the Stoddard Valley OHV Area; at the California Desert District Office; at the Barstow Field Office; and on the BLM website at least 30 days prior to each annual closure order, for the duration of the five permitted year.” However, the Draft EA fails to note specific dates of the event.

One function of an EA is to include alternatives that “prevent undue or unnecessary degradation of public lands” such as those that alter the timing and location. We anticipate that the event may have relatively fewer impacts to aboveground tortoises if it occurred between mid-November and late January, which is our recommendation, assuming BLM has any latitude to affect the proponent’s schedule.

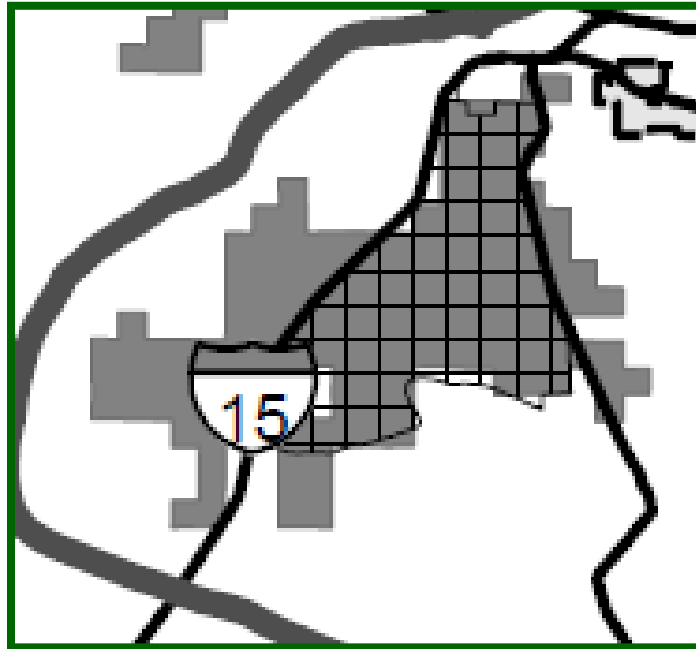
We read the following conclusion at the bottom of page 9 and top of page 10: “There are no formal mitigation measures needed for [the] Proposed Action since issuance of the Filming Permit or Temporary Closure Permit as the proposed action *will not result in any adverse impacts to recreation and health and human safety* [emphasis added]. We understand that, in addition to human elements, the BLM is also obligated to consider adverse impacts of a proposed action to nonhuman elements of the environment, particularly threatened and endangered species, which includes the tortoise. However, this and analyses of other nonhuman elements are entirely missing from the Draft EA.

It seems to us that by approving this proposed action the BLM is failing to consider its obligation in determining if the proposed action “may affect” desert tortoises. Certainly, there is no analysis of this in the Draft EA, as tortoises are not even mentioned. In the absence of any historical or programmatic monitoring data, how is the BLM able to ascertain the long-term impacts of its decisions to adversely affect tortoises and occupied habitats in this and other designated vehicle open areas?

We are alarmed to discover that the word, “tortoise,” is absent from the Draft EA. When one considers the map on the next page depicting high density tortoise areas identified between 1998 and 2000 (BLM 2005), we see that the northern part of the Stoddard Valley Open area supported relatively higher densities of tortoises, which are signified by the green polygons; individual tortoises are shown as stars.



The Draft EA fails to divulge if there are any biological opinions authorizing incidental mortality take associated with filming, which was apparently analyzed in 2014 (see top of page 7; no reference to a published document is provided). We note that tortoise mortality resulting from filming is not covered in the 1993 biological opinion (USFWS 1993). Nor are any data provided to demonstrate that tortoises are not being killed as the result of unrestricted recreational vehicle use inside and outside (BLM 2005) this and other open areas. It was documented 18 years ago, in BLM (2005), that excessive OHV impacts are not restricted to open areas, that there are ancillary impacts into adjacent areas. The gray, square-mile squares shown in the figure on the next page taken from the West Mojave Plan (BLM 2005), show extensive areas of above-average vehicle impacts west, south, and east of the Stoddard Valley Open Area, keeping in mind that those areas east of Highway 247 and the open area are in the Ord-Rodman Critical Habitat Unit (USFWS 1994).



We note that neither the USFWS nor the California Department of Fish and Wildlife (CDFW) are among the agencies consulted for this project, which are listed in Section 4.0 on page 10. Given that the tortoise is also state-listed as Threatened, isn't the BLM obligated to consult with CDFW and acquire pertinent permits and authorizations to avoid violating the California Endangered Species Act (CESA)? We ask that the Final EA address these deficiencies of the Draft EA.

We note on page 5 the following statement: "A Decision Record will be issued to document the alternative selected for implementation; *describe additional terms and conditions* or other mitigations that may be required; and discuss considerations that the BLM used in making the final decision." The phrase "*additional terms and conditions*" implies that there are a baseline set of terms and conditions, which are missing from the Draft EA, therefore not available to the public, that may be augmented in the Final EA or ROD. In the absence of a list of protective measures in the Draft EA, the Council is unable to recommend improvements to those measures.

Cumulative Impacts

The Council does not believe that the single paragraph on page 9 of the Draft EA 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.

The Final EA should include an analysis of all impacts to the tortoise/critical habitat within the region (particularly the Ord-Rodman Critical Habitat Unit that shares the eastern boundary of the Stoddard Valley Open Area), 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 2008). BLM's analysis should include CEQ's the 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 Western Mojave Recovery Unit 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.

The CEQ recognizes synergistic and interactive effects as a part of cumulative impacts analysis (Principal #6). The Council requests that BLM implement Principal #8 specifically with respect to the Ord-Rodman tortoise population (i.e., the sustainability of the tortoise in these areas), and Principals #6 and #7 for the tortoise when conducting its analysis in the Final EA of the proposed action. This would include the impacts of environmental contaminants derived from past, current, and future recreational activities on the tortoise and adjacent tortoise critical habitat.

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."

We anticipate that with increased human use for these events, there will be increased food and trash present. The BLM should implement mitigation measures that prevent the attraction of tortoise predators such as common ravens and coyotes to the project area. For regional and cumulative impacts, the BLM should require the Proponent to participate in an effort to address regional and cumulative impacts from common raven predation. For example, in California, the Proponent should contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts. Unfortunately, this Fund that was established in 2010 has not revised its per acre payment fees to reflect increased labor and supply costs during the past decade to provide for effective implementation. The National Fish and Wildlife Foundation should revise the per acre fee.

BLM should also demonstrate in the Final EA that it is fully complying with its policies on Special Status Species, Mitigation, Habitat Connectivity, and Advancing Science – a strategy that describes BLM to be “science-informed,” that “enables managers and staff to apply science in decision making and adaptive management, at every level and in every program” with respect to the tortoise (BLM 2021a, 2021b, 2021c, 2022, Kitchell et al. 2015).

We would like to take this opportunity to formally request that the BLM reevaluate and revise the 1993 Stoddard Valley Off-Highway Vehicle Area Management Plan (BLM 1993) and reinstate consultation with USFWS on its associated biological opinion (USFWS 1993), both of which were completed before critical habitat was even established (USFWS 1994). We feel that recent data (particularly Allison and McLuckie 2018) has shown sufficient declines in tortoise populations throughout the West Mojave, that it is no longer feasible to “write-off,” in this case 82 square miles, of what was once prime desert tortoise habitat for unrestricted recreational vehicle play and essentially unlimited take. We expect that a reevaluation of tortoise densities in the area is necessary to see if the USFWS' unlimited mortality take limit, given as 1,169 tortoises – the estimated number of *all* tortoises inside the open area – has been met and is still warranted given the critical declines in the West Mojave Recovery Unit.

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 Barstow Office of the BLM 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.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council

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