



**DESERT TORTOISE COUNCIL**

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**Via email only**

12 February 2022

Attn: Ms. Laura Goff  
Bureau of Land Management  
345 East Riverside Drive,  
St. George, UT 84790  
[lgoff@blm.gov](mailto:lgoff@blm.gov)

RE: Waddy's Parking Corral at Sand Mountain (DOI-BLM-UT-C030-2021-0027-EA)

Dear Ms. Goff,

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, and that you personally contacted the Council with this opportunity. Given the location of the proposed project near suitable habitats used 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 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.

Unless otherwise noted, the page numbers referenced herein are from the document entitled "Waddy's Parking Corral at Sand Mountain Recreation Area Environmental Assessment (DOI-BLM-UT-C030-2021-0027-EA), dated January 2022 (herein, "EA").

Page 4 of the EA indicates that "The Sand Mountain Recreation Area and adjacent areas have been extensively surveyed for desert tortoise activity over the past 25 years. There have been no recorded occurrences of the Mojave Desert tortoise within 2-miles of the project area (UDWR 2021). In addition, the project area was surveyed for the presence of desert tortoise following the Mojave Desert Tortoise Survey Protocol (USFWS 2018) on April 15, 2021 by BLM biologist, Stephanie Taylor. The pedestrian surveyed area included the 20-acre project area. No tortoises or signs were discovered during the survey. The substrate within the project area is not suitable for tortoise burrows (Taylor 2021)" [see EA for three cited references].

We note that there is a more recent tortoise survey protocol (USFWS 2019) but it does not differ significantly from the 2018 version that was used for the surveys. In addition, the project area is typically smaller than the "action area," which the U.S. Fish and Wildlife Service (USFWS) survey protocol recommends be surveyed for tortoises for a proposed project/action. The USFWS defines "action area" in 50 Code of Federal Regulations 402.2 and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)." To facilitate compliance with the Federal Endangered Species Act (FESA), it is imperative that BLM coordinate early with the USFWS to identify the action area for this project and determine the full extent of surveys that should be performed. We note that tortoises in Washington County, Utah occur in some areas where the substrate is not suitable for the construction of tortoise burrows.

Given the BLM's conclusions in the EA, we understand that there would likely be no direct impacts to tortoises as the result of constructing the corral, so our comments pertain to indirect impacts, cumulative impacts, and recreational user education. Because there may be indirect impacts, we question the following conclusion given on page 4: "...it is determined that the Proposed Action would not affect the Mojave Desert tortoise or its designated critical habitat. No further analysis is warranted." Regarding indirect impacts, for example, we would presume that there would be an increased use of roadways to access and use the parking corral and an increase in trash in the corral area that would attract common ravens and other tortoise predators to the area.

Certainly, a cumulative effects analysis is required. We question the assertion that no further analysis is warranted. Please see *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345-46 (D.C. Cir. 2002) in which the court decided that agencies must analyze the cumulative impacts of actions in environmental assessments as well as in environmental impact statements. We request that BLM include an analysis of the indirect and cumulative impacts of the proposed action to the tortoise and its habitat in its final EA. In addition, we request that information on whether the USFWS desert tortoise survey protocol was conducted by qualified personnel at the appropriate time in the action area be clarified in the final EA, and that BLM demonstrate in the final EA that it is complying with the National Environmental Policy Act and FESA regulations.

Page 5 reports, “The Proposed Action (Figure 2) is to designate a 20-acre parking area along the east side of the existing Sand Mountain access road. If approved, initial construction would consist of a 5-acre parking corral within the designated 20-[sic]acres. The surrounding 15-[sic]acres would be reserved for future expansion. If in the future, more parking/staging is needed, and if funding becomes available, the parking corral could be expanded up to the designated 20-acres. If the parking corral were expanded in the future, the Applicant Committed Conservation Measures outlined in Section 2.2.3 would be applicable. Project components of the Proposed Action are outlined below.” We expect that any future expansions will require presence-absence surveys to confirm that tortoises continue to be absent from those areas, and that the latest USFWS survey protocol will be used.

Although tortoises were determined to be absent from the project footprint, riders entering onto public lands managed by the BLM are likely to encounter occupied habitats and tortoises. We appreciate that the example of the kiosk shown in Photo 4 on page 8 includes a panel concerning tortoise protection. We ask that this information or similar, updated versions be posted on the kiosk that will accompany corral development. Among other things, users should be instructed to watch for tortoises, remain on established trails, refrain from either collecting or releasing tortoises, and avoid depositing trash in backcountry areas.

We understand from the description for the retention basins given on page 6 that their function would be absorb rainwater runoff with rapid, immediate percolation. Even so, please be sure that the retention basins are constructed in such a way that there are no new opportunities for standing water. This recommendation is given to avoid a new water source that would attract common ravens and coyotes, which are known predators of tortoises. This recommendation should also be applied to the application of water for dust control; please be sure that no standing water results from this control measure. In addition, please ensure that the design and maintenance of the retention basins do not unintentionally entrap tortoises.

The project description does not indicate that any trash receptacles would be provided, which poses concerns. We believe that permanent trash containers that cannot be accessed by ravens or other tortoise predators or have their contents removed by wind should be placed at strategic places throughout the parking area, and that they be routinely maintained to avoid attraction of/use by desert tortoise predators. Absent such containers, visitors may discard trash on the ground.

With regards to Applicant Committed Conservation Measures outlined in Section 2.2.3 on page 10, we note that there is no commitment to survey the impact area for tortoises immediately prior to ground disturbance. Pending input from USFWS, it is advisable that the site be surveyed by an experienced biologist within 48 hours of grubbing the site to be sure tortoises have not entered the impact area in the interim since Ms. Taylor's survey of April 2021.

We appreciate that a list of non-native plant species occurring in the area is listed on page 15, but we do not see any commitment to revisit the impact area in the future to see if facility construction has resulted in the proliferation of these or other weed species. We would like to see a commitment by the BLM or proponent [Utah Public Lands Alliance (UPLA) and the Desert Roads and Trails Society] to monitor the facilities and remove non-native weed species on an annual basis before seed set or more frequently as needed to remove other threats (e.g., fuel for fire, etc.).

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 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**

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. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.

[USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.