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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**Fish and Wildlife Service**

**[20X LLUTC03000 L14400000 ER0000 LXSSJ0740000; UTU-93620; 13-08807]**

**Notice of Intent to Prepare an Environmental Impact Statement to Consider a Highway Right-of-Way with Associated Issuance of an Incidental Take Permit, and Resource Management Plan Amendments, Washington County, UT**

**AGENCY:** Bureau of Land Management, Interior; Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended, and the Endangered Species Act of 1973 (ESA), as amended, the Bureau of Land Management (BLM), and the Fish and Wildlife Service (FWS), as co-lead agencies, intend to prepare an Environmental Impact Statement (EIS) to consider a right-of-way application submitted by the Utah Department of Transportation (referred to henceforth as the Northern Corridor project), potential amendments to the St. George Field Office and Red Cliffs National Conservation Area (NCA) Resource Management Plans (RMPs), and the issuance of an Incidental Take Permit (ITP) to Washington County, Utah, under Section 10(a)(1)(B) of the ESA.

**DATES:** This Notice initiates the public scoping process. Scoping comments may be submitted in writing until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The date(s) and location(s) of any

scoping meetings will be announced at least 15 days in advance through a news release to local and regional media outlets and the BLM website at:

<https://www.blm.gov/news/utah>. In order to be considered during the preparation of the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM and FWS will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit written comments related to the proposed actions by any of the following methods:

- Website: <https://go.usa.gov/xpC6H>
- Email: [BLM\\_UT\\_NorthernCorridor@blm.gov](mailto:BLM_UT_NorthernCorridor@blm.gov)
- Mail: Bureau of Land Management, Attn: Northern Corridor, 345 East Riverside Drive, St. George, UT 84790

Documents pertinent to this proposal may be examined at the BLM St. George Field Office, 345 East Riverside Drive, St. George, Utah 84790 and FWS Utah Ecological Services Field Office, 2369 W. Orton Circle, West Valley City, Utah 84119.

**FOR FURTHER INFORMATION CONTACT:** Gloria Tibbetts, Color Country District Planning and Environmental Coordinator, telephone (435) 865-3063; address 176 DL Sargent Dr., Cedar City, UT 84721; email [BLM\\_UT\\_NorthernCorridor@blm.gov](mailto:BLM_UT_NorthernCorridor@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Ms. Tibbetts during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On September 4, 2018, the Utah Department of Transportation submitted an application for a right-of-way (ROW) grant for the Northern Corridor project north of the city of St. George, Utah, on BLM-managed public lands in the Red Cliffs NCA and the Red Cliffs Desert Reserve—an area set aside for Mojave desert tortoise mitigation under the 1995 Washington County Habitat Conservation Plan (HCP). The FWS is working with Washington County (County) on an HCP pursuant to Section 10(a)(1)(B) of the ESA in response to the proposed Northern Corridor project and other development in the county. The BLM is also considering amendments to the St. George Field Office and Red Cliffs NCA RMPs that would allow consideration of and mitigation for the proposed Northern Corridor project.

The EIS will analyze four proposed actions: (1) Whether the BLM will approve a 1.75-mile ROW section of the approximately 4-mile long Northern Corridor project that crosses the 62,000-acre Red Cliffs Desert Reserve and the 45,000-acre congressionally established Red Cliffs NCA; (2) Whether the BLM will amend the Red Cliffs NCA RMP to allow for a transportation ROW and/or corridor within the NCA; (3) Whether the BLM will amend the St. George Field Office RMP to modify management on approximately 6,800 acres outside the Reserve and NCA to offset the ROW impacts; and (4) Whether the FWS will issue an associated ITP for the Mojave desert tortoise for specific land use and land development activities in Washington County.

The BLM and FWS decisions that will stem from the Northern Corridor project analysis in the EIS are related, allowing the Department of the Interior to consolidate the effort. The BLM will work jointly with the FWS to ensure both agencies' requirements

are addressed through all aspects of the NEPA process and development of the EIS. For these reasons, the agencies are analyzing these connected actions within one EIS.

### **ITP - Background**

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered or threatened. *See* 16 U.S.C. 1538(a). Under Section 3 of the ESA, “the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. 1532(19). The term “harm” is further defined by regulation as “an act which actually kills or injures wildlife.” 50 CFR 17.3. “Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” *Id.* The term “harass” is also further defined in the regulations as “an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.” *Id.*

Under Section 10(a)(1)(B) of the ESA, the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed. Section 10(a)(2)(A) requires that the conservation plan describe: (1) The impact that will likely result from such taking; (2) The steps an applicant will take to minimize and mitigate that take to the maximum extent practicable and the funding that will be available to implement such steps; (3) The alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being utilized; and (4) Other measures that the

FWS may require as being necessary or appropriate for the purposes of the plan.

Issuance criteria under Section 10(a)(2)(B) for an ITP require the FWS to find that: (1) The taking will be incidental to otherwise lawful activities; (2) An applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) An applicant has ensured that adequate funding for the plan will be provided; (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) The measures, if any, that FWS requires as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and § 17.32, respectively.

Washington County's ITP expired in 2016 and the FWS granted an extension to allow time for a renewal. If approved, the Northern Corridor would require an amendment to the HCP because it would impact the Red Cliff Desert Reserve's function as mitigation under the HCP. Before renewal of the ITP can be approved, the Utah Department of Transportation and the County must demonstrate that impacts to the previous value of the Reserve from the highway would be fully offset.

### **RMPs - Background**

The BLM approved the Red Cliffs RMP on December 21, 2016. The Approved RMP satisfies the legislative direction in Section 1974 (d) (1) of the Omnibus Public Land Management Act of 2009 (16 U.S.C 460www, Public Law 111-11) that the Secretary of the Interior, through the BLM, develop a comprehensive RMP for the Red Cliffs NCA to achieve the following Congressionally-defined purposes: "(1) To conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural,

educational, and scientific resources of the National Conservation Area; and (2) To protect each species that is located in the National Conservation Area; and listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under [the Endangered Species Act of 1973].” 16 U.S.C. 460www(a).

The St. George Field Office RMP was approved on March 15, 1999, to fulfill the planning requirements of the Federal Land Policy and Management Act of 1976 and to provide a vision and direction for future public land management in Washington County. The BLM approved an amendment to the St. George Field Office RMP on December 21, 2016, to protect endangered native plant species listed as threatened and endangered and to update OHV area designations. The BLM is considering amending the St. George RMP again to allow for possible measures that the County proposed to mitigate the potential loss of tortoise habitat by any development of a ROW corridor. Specifically, the County has proposed creating a new habitat Zone 6 in the Reserve to provide additional desert tortoise habitat and to offset habitat loss potentially occurring from a ROW.

### **NEPA Process**

The BLM and FWS will use an interdisciplinary approach to develop the EIS in order to consider the variety of resource issues and concerns identified during the scoping period. Potential direct, indirect, residual, and cumulative impacts from the proposed actions will be analyzed in the EIS.

The purpose of the public scoping process is to identify relevant subject areas that will influence the scope of the environmental analysis, including potential alternatives,

and guide the process for developing the EIS. At present, the BLM and FWS have identified the following preliminary subject areas: Impacts to threatened and endangered species, including the federally listed Mojave desert tortoise; impacts to the mitigation for the 1995 HCP; impacts to the Red Cliffs NCA's purposes for designation, impacts to recreation and livestock grazing, and socioeconomic and transportation impacts in the surrounding communities.

The BLM and FWS will follow the NEPA public participation requirements to satisfy the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). Any information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM and FWS in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM and FWS will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Northern Corridor project, associated RMP amendments, and possible ESA 10(a)(1)(b) permit issuance are invited to participate in the scoping process and, if eligible, may

request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

**Edwin L. Roberson**

*State Director*

**Noreen Walsh**

*Regional Director*

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