



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

[PO #4820000251]

Notice of Availability of the Records of Decision for Reconsideration of a Highway Right-of-Way Application and Associated Amendment of an Incidental Take Permit, Washington County, UT

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

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) and the United States Fish and Wildlife Service (FWS), as co-lead agencies, announce the availability of the records of decision (RODs) for the Northern Corridor highway right-of-way (ROW) and associated amendment of an incidental take permit (ITP) located in Washington County, Utah. The RODs constitute the decisions of the BLM and FWS.

DATES: The Acting Deputy Secretary of the Interior signed a ROD for the Northern Corridor highway ROW on December 19, 2024. The FWS's Deputy Regional Director for the Mountain-Prairie Region (Region 6) signed a ROD to amend the ITP issued to Washington County (County) on December 19, 2024.

ADDRESSES: The RODs are available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2026562/510>.

FOR FURTHER INFORMATION CONTACT: Dawna Ferris-Rowley, National Conservation Area (NCA) Manager, Red Cliffs and Beaver Dam Wash NCAs, telephone (435) 688-3200; address 345 East Riverside Drive, St. George, UT 84790; email BLM_UT_NorthernCorridor@blm.gov. Individuals in the United States who are deaf,

deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Ferris-Rowley. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM and FWS are issuing this Notice of availability pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR parts 1500 through 1508 (as amended on May 20, 2022, 87 FR 23453); and the Department of the Interior's NEPA regulations, 43 CFR part 46.

On September 4, 2018, the Utah Department of Transportation (UDOT) applied for a ROW grant for the Northern Corridor project north of the City of St. George, Utah, on BLM-managed and non-Federal lands within the Red Cliffs NCA and the Red Cliffs Desert Reserve. The Red Cliffs NCA was established through the passage of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www). Prior to the NCA's designation, the Red Cliffs Desert Reserve was established for the protection of the Mojave desert tortoise as part of the 1995 Washington County Habitat Conservation Plan (HCP). In 2015, pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA), Washington County applied to renew and amend the HCP and associated ITP. The restated and amended HCP described the Northern Corridor highway as a potential changed circumstance, which would be partially offset with the addition of a sixth zone to the Red Cliffs Desert Reserve (Zone 6) as the primary conservation strategy. To consider the ROW application and the proposed Zone 6, the BLM needed to also consider amending the St. George Field Office and Red Cliffs NCA Resource Management Plans (RMPs).

In 2019 and 2020, the BLM and FWS prepared an environmental impact statement (EIS) to analyze the environmental impacts associated with the proposed actions and reasonable alternatives. The BLM also consulted with the FWS to meet the requirements in section 7(a)(2) of the ESA. The FWS issued a biological opinion to the BLM that determined the ROW and the amendments to the RMPs were not likely to jeopardize the continued existence of the Mojave desert tortoise or destroy or adversely modify designated critical habitat for the Mojave desert tortoise. In addition, the FWS issued an intra-agency biological opinion that determined that the ITP was not likely to jeopardize the continued existence of the Mojave desert tortoise, Holmgren milkvetch, Shivwits milkvetch, dwarf bear-poppy, Siler pincushion cactus, Gierisch mallow, and Fickeisen plains cactus or result in the adverse modification of critical habitat for any of the above-listed species.

On January 13, 2021, the Secretary of the Interior signed a ROD that approved the Northern Corridor ROW application and approved the amendments to the RMPs. The decision approving the ROW was effective immediately. The BLM then signed and issued the ROW grant to UDOT on the same day. Also on January 13, 2021, the FWS Regional Director for the Mountain-Prairie Region signed a ROD approving the issuance of an ITP to Washington County. The FWS issued the ITP to Washington County on January 13, 2021. Because the BLM approved the UDOT ROW application, the changed circumstance was triggered, and Zone 6 was formally added to the Reserve.

On June 3, 2021, seven conservation organizations (collectively, Plaintiffs) filed an initial complaint in the United States District Court for the District of Columbia, Case No. 1:21-cv-01506. Among other claims, plaintiffs alleged the BLM's ROW decision violated both NEPA and the National Historic Preservation Act (NHPA). The Plaintiffs stated, in part, the Final EIS did not fully address the changed circumstances of wildfire in the region and the impacts it may have on the Mojave desert tortoise, desert tortoise

habitat, and the spread of invasive annual grasses. The Plaintiffs also alleged that the BLM failed to comply with the consultation requirements under section 106 of the NHPA. On July 27, 2021, Plaintiffs amended their complaint to include the FWS and additional claims related to NEPA and the ESA.

During the litigation, the United States and plaintiffs reached a settlement agreement that was signed on August 30, 2023. Prior to executing that agreement, the United States moved for the remand and partial vacatur of the BLM's and FWS's 2021 decisions. In the motion, the United States acknowledged the BLM did not fully comply with the NHPA and the agencies had concerns that the Final EIS may lack sufficient analysis of certain resource effects, including the effects of the construction and use of the Northern Corridor project in the context of the following: (1) the trend in the increasing frequency and extent of wildfires in the Mojave Desert; (2) the rise of non-native/exotic and invasive vegetation in post-burn areas; and (3) the impacts increased fire and new non-native/exotic and invasive vegetation have on desert tortoise. On November 16, 2023, the court issued an Order that granted the remand of all decisions associated with the January 2021 RODs issued by the BLM and FWS and denied the BLM's request to vacate the ROW grant issued to UDOT in January 2021. On March 8, 2024, at the request of the BLM and consistent with the Settlement Agreement, the FWS withdrew the Biological Opinion for the Northern Corridor ROW grant.

A 30-day public scoping period for a supplemental EIS was initiated with the publication of a Notice of Intent in the *Federal Register* on November 16, 2023 (88 FR 78781). The scoping period was extended at the request of Washington County and the State of Utah until December 28, 2023. The scoping period included a public open house held in St. George, Utah on December 6, 2023, with over 200 attendees. A total of 8,993 comment submissions were received, of which 8,145 were form letters, 793 were unique submissions, and 55 did not include a comment or were comments not relevant to

scoping. The BLM and FWS considered all comments received during the scoping period in preparation of the Draft Supplemental EIS. A scoping report is available for public review on the BLM ePlanning project website (see ADDRESSES).

A Notice of Availability for the Draft Supplemental EIS was published in the *Federal Register* on May 10, 2024 (89 FR 40504), initiating a 45-day public review and comment period. In addition, the BLM issued media releases and sent notifications via email to cooperating agencies, Tribal Nations, and the updated project mailing list. The BLM and FWS held an in-person public open house on June 4, 2024, at the Dixie Convention Center in St. George, Utah, during the public comment period.

Agencies, organizations, and individual stakeholders were able to submit comments through the U.S. Postal Service and the BLM ePlanning project website (see ADDRESSES). The comment period was extended until July 9, 2024, after an updated Traffic Analysis Memorandum, prepared by the Dixie Metropolitan Planning Organization, and an Assessment, Inventory, and Monitoring Vegetation Survey Technical Report were made available for public review on the BLM ePlanning project website. The BLM and FWS announced the availability of these documents, and the date of the extended public review and comment period, through social media releases, a posting on the BLM ePlanning project website, and email messages to the project mailing list.

A total of 4,255 comment submissions were received during the 60-day public comment period, of which 3,354 were part of organized letter-writing campaigns and 901 were unique comment submissions. The BLM and FWS considered all comments received during the extended comment period in the preparation of the Final Supplemental EIS. The BLM and FWS responded to substantive comments and made appropriate revisions in the Final Supplemental EIS or explained why a comment did not warrant a change, as documented in Appendix F of the Final Supplemental EIS.

The BLM's 2024 ROD decision is to terminate the UDOT ROW grant issued on January 13, 2021, and to endorse the Red Hills Parkway Expressway alternative. The termination of the BLM ROW grant is effective immediately. The FWS's ROD amends the 2021 ITP to authorize incidental take of the desert tortoise to Washington County caused by covered activities, without the Northern Corridor changed circumstance. The amended ITP reinstates take authorization of desert tortoise in the 3,341 acres of State and private land in Zone 6, previously required as mitigation under the Northern Corridor changed circumstance.

(Authority: 40 CFR 1506.6; 40 CFR 1506.10 (2022))

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