



Record of Decision

Washington County Habitat Conservation Plan Final Environmental Impact Statement

Washington County, Utah | January 2021

U.S. Department of the Interior, Fish and Wildlife Service

Record of Decision

Proposed Issuance of an Endangered Species Action Section 10(a)(1)(B) Incidental Take Permit to Washington County regarding Implementation of the Amended Habitat Conservation Plan for the Threatened Mojave Desert Tortoise in Southwestern Utah

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This document should be cited as follows:

U.S. Fish and Wildlife Service. 2021. Record of Decision. Proposed Issuance of an **Endangered Species Action Section 10(a)(1)(B)** Incidental Take Permit to Washington County regarding the Implementation of the Amended Habitat Conservation Plan for the Threatened Mojave desert tortoise in Southwestern Utah.

The final Record of Decision and all associated supporting documents, including the Draft and Final Environmental Impact Statement, Endangered Species Act Section 7 Biological Opinion, Findings and Recommendations on Issuance of an Incidental Take Permit, and Analysis of Public Comments will be available on the U.S. Fish and Wildlife Service's Utah Field Office website (<https://www.fws.gov/utahfieldoffice/news.php>), which is linked through the project website at: <https://go.usa.gov/xw8TX>.

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Introduction

This Record of Decision (ROD) was prepared by the U.S. Fish and Wildlife Service (FWS) in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq.), as amended. The purpose of the final ROD is to document the decision of the FWS in response to an application submitted by Washington County, Utah (Applicant) for an Incidental Take Permit (Permit or ITP) addressing species listed under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. §1531 et seq.) (covered species). The information contained in this ROD is based on the ITP application and the submission of a supporting Habitat Conservation Plan (Amended HCP), the Final Environmental Impact Statement (FEIS) addressing this action, and other information in the decision file. In compliance with NEPA, the FWS and the Bureau of Land Management (BLM), as joint lead agencies, prepared an FEIS that analyzed and disclosed potential impacts that could result from issuance of an ITP to Washington County, as well as the subsequent implementation of the Amended HCP and other Federal actions as identified in the FEIS.

Washington County prepared a Habitat Conservation Plan (HCP) in 1995 that provided for the conservation of the Upper Virgin River recovery unit population of the Mojave desert tortoise (*Gopherus agassizii*) (Washington County Habitat Conservation Plan Steering Committee and SWCA Environmental Consultants 1995; hereafter 1995 HCP). The Habitat Conservation Plan for Washington County (the Amended HCP) amends the 1995 HCP and supports the County's application for renewal of Incidental Take Permit No. TE036719 which expired in 2016. Prior to its expiration, the County applied to renew the ITP. Pursuant to 50 CFR 13.22, covered activities authorized by the ITP are continuing while FWS processes the application. The requested permit, which is for a period of 25 years, would authorize incidental take of the species detailed in Section 1.1 below (Covered Species). Amendments to the 1995 HCP are needed to incorporate developments in the best available science pertaining to the Mojave desert tortoise (desert tortoise), comply with current FWS regulations pertaining to the issuance of ITPs, evaluate the change in circumstances relating to the proposed Northern Corridor highway right-of-way (ROW) to the 1995 HCP conservation program, and evaluate the conservation program under changed circumstances.

The FWS considered Washington County's request for an ITP through section 10 of the ESA, as they conduct otherwise legal activities, as detailed (see Chapter 2 of the Amended HCP and below in Covered Activities, within the permit area (see Chapter 4 of the Amended HCP for a description of the permit area), located in Washington County, Utah. A permit issued by the FWS must meet all applicable ESA issuance criteria and implementation should be technically and economically feasible. Issuance criteria under the ESA include, without limitation, the requirements that the Applicant will minimize and mitigate the impacts of the taking on covered species to the maximum extent practicable and the taking will not appreciably reduce the likelihood of survival and recovery of the listed species in the wild. See 16 U.S.C. § 1539(a)(2)(B); 43 C.F.R. § 46.420(b).

Proposed Federal Action

The FWS evaluated the issuance of an ITP to Washington County, under the authority of Section 10(a)(1)(B) of the ESA implementing regulations found at 50 Code of Federal Regulations (CFR) §13, 17, and 22, for a period of 25 years. Documents used in the preparation of this ROD include the following, all herein incorporated by reference and henceforth referred to as Project Documents:

1. Final HCP (Washington County, Utah. 2020. Habitat Conservation Plan for Washington County, Utah—Restated and Amended October 2020. Prepared by SWCA Environmental Consultants and Jacobs. Prepared for the Washington County Commission. St. George, Utah. 163 pp + appendices.)
2. Final EIS (Final Environmental Impact Statement to Consider a Highway Right-of-Way, Amended Habitat Conservation Plan and Issuance of an Incidental Take Permit for the Mojave Desert Tortoise, and Proposed Resource Management Plan Amendments, Washington County, UT. U.S. Department of the Interior, Bureau of Land Management, Canyon Country District Office, and Fish and Wildlife Service.)
3. HCP Biological Opinion (Biological Opinion for Amended Washington County Habitat Conservation Plan. U.S. Fish and Wildlife Service Arizona Ecological Services Field Office, Flagstaff, Arizona)
4. Northern Corridor Biological Opinion (Biological Opinion for the Northern Corridor Highway Project. U.S. Fish and Wildlife Service Utah Ecological Services Field Office, West Valley City, Utah); while this opinion considers BLM's decision whether to issue a right-of-way for the Northern Corridor, the commitments and analysis inform our decision to issue the ITP.
5. Findings and Recommendations (Findings and Recommendations for the Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit for the Washington County Habitat Conservation Plan)

Issuance of an ITP by the FWS is a Federal action that may affect the quality of the human environment. Thus, this action is subject to review under the National Environmental Policy Act of 1969, as amended (NEPA; 40 C.F.R. §§ 1500-1508¹). In compliance with NEPA, the FWS and BLM, as joint lead agencies, prepared an Environmental Impact Statement (EIS) that

¹ The regulations at 40 C.F.R. §§ 1500-1508 and 1515-1518 were updated through a Final Rule that took effect on September 14, 2020 (85 Federal Register [FR] 43304). Since this project was already underway at the effective date of the new regulations, it will continue to follow the previous regulations. All citations in this document will reference the previous regulations and provide a footnote citation to the new regulations, where applicable.

analyzed and disclosed potential impacts that could result from issuance of an ITP to Washington County, the subsequent implementation of the Amended HCP, and related BLM decisions. This ROD was prepared in compliance with the agency decision-making requirements of NEPA.

The purpose of the ROD is to document the FWS's decision regarding the Preferred Alternative as evaluated in the Amended HCP and the FEIS.

This ROD was prepared to:

1. document the FWS's decision with regard to the alternatives associated with the Proposed Action, including the No Action Alternative;
2. identify all the alternatives considered in reaching a decision;
3. identify key issues (covered species, covered activities, etc.);
4. identify associated impacts, mitigation, and findings, providing all practicable means to avoid and minimize environmental harm;
5. summarize public involvement; and
6. provide a conclusion.

Covered Species

The ITP will authorize take of species that are adequately addressed by the Amended HCP (the covered species). The desert tortoise is listed as a threatened species and is the only covered species of the Amended HCP.

Covered Activities

The Applicant seeks take authorization for otherwise lawful, non-Federal land use or land development activities that are under the direct control of the County and performed within the permit area. The covered activities and permit area are described in greater detail in the HCP in Chapter 2 and Chapter 4 respectively.

Permit Implementation

The ITP will be conditioned on the implementation of the HCP. Washington County's role is that of the permittee, with central responsibility for ensuring that all requirements of the Amended HCP are met, as considered and determined in the Findings and Recommendations for Issuance of a Section 10(a)(1)(B) Permit to the Washington County Habitat Conservation Plan document.

The responsibilities of Washington County are described further in the Amended HCP and the Implementation Agreement for the Washington County Habitat Conservation Plan.

The Habitat Conservation Advisory Committee (HCAC) and the Technical Committee (TC) are advisory committees appointed by the Washington County Commission to oversee and provide guidance on the implementation of the 1995 Washington County HCP in accordance with the terms and conditions in the 1996 ITP issued to Washington County. The HCAC and TC will continue to provide these roles under the Amended HCP. These committees provide adaptive management recommendations to the County and HCP Partners for addressing new information and uncertainty regarding the effectiveness of the conservation program. The HCAC and the TC also create a platform for ongoing communication and coordination among the HCP Partners, other stakeholder groups, and the public.

Conservation Program

The ITP is conditioned on implementation of the Amended HCP. The Applicant developed the Amended HCP with technical input from the FWS. Impact avoidance and minimization measures associated with operation and maintenance of the Project are described in Section 6.3.2 of the HCP.

The conservation program of the HCP includes: (1) establishment in perpetuity of the Red Cliffs Desert Reserve for desert tortoise that maintains specific reserve values (2) implementation of the HCP including commitments of the Implementation Agreement; and (3) Minimization and Avoidance measures that minimize take of desert tortoise that include, but are not be limited to fencing, law enforcement, education and outreach, translocation, land management and habitat restoration. Under the Northern Corridor changed circumstance, the Reserve is expanded to 68,822 acres including Zone 6.

The conservation program is intended to offset impacts to the desert tortoise through conservation measures, , primarily though the establishment in perpetuity of the expanded Red Cliffs Desert Reserve (Reserve). The Reserve management prioritizes habitat protection and management actions that conserve desert tortoise as supported through funding and coordination to implement committed measures as described in the Amended HCP. Conservation of desert tortoise is monitored and expected to result in positive biological outcomes for the desert tortoise over the term of the ITP (see Adaptive Management). Under the Northern Corridor changed circumstance, the County will include additional conservation measures to ensure the conservation program remains intact.

Monitoring, Reporting, and Adaptive Management

Chapters 6 and 7 of the HCP addresses the monitoring and reporting program to be implemented by the County. Section 6.3.3 of the HCP describes the adaptive management approach that will be used to evaluate and respond to potential new information within the plan area. The adaptive management program of the HCP is a key element to ensure new information is being developed and included in Reserve and HCP management. Criteria for success towards the Amended HCP goals will be used to track success of the conservation program, accomplishments and funding. Section 9.1 addresses the Applicant's responses to potential changed circumstances within the

plan area. All three of these sections in combination, (1) monitoring and reporting, (2) adaptive management, and (3) response to changed circumstances, demonstrate that the conservation measures in the Amended HCP are being implemented adequately and effectively toward meeting the goals and objectives of the HCP.

Alternatives

Proposed Action: Issue the Incidental Take Permit

Under the proposed action, the FWS would issue Washington County an ITP authorizing incidental take of the desert tortoise on suitable desert tortoise habitat as a result of otherwise lawful land use and development activities (covered activities) over a 25-year term. The ITP would be issued based on Washington County's Amended HCP and Implementation Agreement. Upon issuance of the ITP, Washington County would begin implementing the Amended HCP and would cease implementing the 1995 HCP.

No Action: Deny the Incidental Take Permit

Under this alternative, the FWS would not issue an ITP to Washington County authorizing the incidental take of desert tortoise subject to the conservation measures in the Amended HCP, and the covered activities authorized by the 1996 ITP would no longer be able to operate under the temporary letter of extension. Washington County would not implement the Amended HCP, would cease implementing the 1995 HCP, and would not be authorized for any take of the desert tortoise from covered activities. Washington County would not provide future funding for desert tortoise conservation. The Washington County staff positions created to support implementation of the HCP would be terminated, and the HCAC and TC would be dissolved. Management decisions and activities on lands within the Reserve would remain under the jurisdiction and responsibility of the respective landowner, but regular coordination and collaborative adaptive management would no longer be supported by Washington County. Lands not yet acquired for the Reserve would cease to be managed for the benefit of the desert tortoise.

Project proponents performing non-federal land use or land development activities would have the responsibility to comply with the ESA on a project-by-project basis or through a separate approach. Prior to initiating a non-federal activity, each non-federal project proponent would have the responsibility to review its own activities to determine if the activity is reasonably certain to result in the incidental take of a listed species. If incidental take is reasonably certain to occur, the project proponent could either modify the activity to avoid the take or seek authorization for such take from the FWS.

Environmentally Preferable Alternative

Regulations under 40 C.F.R. § 1505.2(b) require that, in cases where an EIS has been prepared, the ROD must identify all alternatives that were considered, "specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in the NEPA. Within the Final EIS, the FWS identified the range of impacts anticipated from each of the alternatives based on relevant factors including ecological, social,

economic, and technical considerations. Of the alternatives considered in the EIS, the proposed action of issuance of the incidental take permit meets the FWS's NEPA requirements and promotes the best alternative for the conservation of desert tortoise habitat in perpetuity. Therefore, we consider the preferred alternative to be the environmentally preferable alternative.

Decision and Rationale

We, the FWS, intend to issue a permit to Washington County to authorize the incidental take of the desert tortoise caused by covered activities. As described in Alternative to Issue the ITP, this issuance is based on a thorough review of the alternatives and their environmental consequences as described in the FEIS. The primary criteria used to select a preferred alternative for the FEIS was to minimize the amount of high-density desert tortoise habitat subject to covered activities and provide a cohesive approach to desert tortoise conservation throughout non-federal and non-Tribal lands in the permit area. Under the Alternative to Issue the ITP, the County would:

- 1) Continue to support the biological values and objectives of the Reserve, which would result in less ground disturbance and consequently less take of desert tortoise on non-federal lands within the Reserve than would occur under the No Action Alternative (i.e., not issuing the permit).
- 2) Move desert tortoises prior to or during covered activities to areas where they may support recovery of the species, which would be less coordinated and reliable under the No Action Alternative.
- 3) Continue to provide a mechanism for ESA compliance throughout the HCP take area, which provides a coordinated approach to conservation as compared to the No Action Alternative.
- 4) Establish and manage the proposed Zone 6 as part of the Reserve under the Amended HCP Northern Corridor changed circumstance, thereby protecting a high-density subpopulation and its habitat in perpetuity and promoting recovery of the UVRRU its connection with the adjacent recovery unit and the range of the species.

Under either alternative, take of the desert tortoise is anticipated as complete loss of habitat from covered activities and can occur in the form of harm. Significant modification of habitat will significantly impair breeding, foraging, and sheltering of the desert tortoise, which is likely to result in killing or injury to individuals. The Alternative to Issue the ITP would permanently remove 62,960 acres of desert tortoise habitat with up to 200 acres inside the Reserve. The No Action Alternative would result in 66,301 acres of habitat (with up to 200 acres within 9,407 acres inside the Reserve) that would not be covered by a permit. Issuance of the ITP authorizes the incidental take of the covered species identified above, subject to incidental take limits stated in the ITP and other requirements of the HCP. The term of the ITP is 25-years. The FWS's No Surprises Rule (50 C.F.R. §§ 17.22 and 17.32) would apply to the permit during the term.

The determination to issue an ITP is based on the issuance criteria, which we evaluated using documentation in the FEIS, our final Biological Opinions, our ESA section 10 Findings and Recommendations, a final ROD, and other information in the decision record. Before issuing an ITP, the FWS determined that the Proposed Action is not likely to appreciably reduce the likelihood of the survival and recovery of listed species in the wild, and that the HCP otherwise complies with the permitting standards of 16 U.S.C § 1539(a)(2)(B).

Issue the Incident Take Permit - Issue the Incidental Take Permit consistent with the County's expressed need for the HCP and complies with applicable laws and regulations. Through our NEPA analyses, ESA section 7 HCP Biological Opinion (FWS 2021a), ESA section 7 Northern Corridor Biological Opinion (FWS 2021b) and set of findings and recommendations on amending the permit (FWS 2021c), we determined, and summarize below, that all the following permit issuance criteria under Section 10(a)(2)(B) of the ESA would be met:

- 1) the taking will be incidental;
- 2) Washington County will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- 3) Washington County will ensure that adequate funding for the HCP 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) no other measures are necessary or appropriate for purposes of the HCP.

Section 10(a)(1)(B) also states that the FWS shall issue an incidental take permit if the permit application, including the HCP, meets all the permit issuance criteria. Therefore, because Washington County meets all the permit issuance criteria, we must issue an incidental take permit to Washington County.

In consideration of the nature and magnitude of impacts to the factors of the natural and human environment analyzed in the FEIS, the Alternative - Issue the Incidental Take Permit provides protection and management of habitat for the desert tortoise in perpetuity and fulfills the FWS's need to respond to Washington County's application for a permit.

Project Effects and Required Mitigation

The Alternative to Issue the ITP would result in the permanent loss of 62,960 acres of habitat. This permanent conversion of habitat would affect soil, vegetation, wetlands, wildlife habitat (including special status species habitat), and land use. Long-term, adverse impacts from loss of this habitat would occur to wildlife, special status species, recreation and tourism, cultural resources, visual resources and aesthetics, air quality, noise, and health and safety. Transportation would be affected in the short-term from construction-related closures that interfere with regular traffic flow and local emergency response activities.

Businesses and surrounding communities would enjoy beneficial economic impacts, both in the long-term and short-term. No disproportionate and adverse impacts are anticipated to occur on environmental justice populations.

There is the potential for effects from implementing the HCP to historic properties in the HCP take area. For the ITP, the FWS determined that they cannot fully anticipate the effects to historic properties prior to issuance of the ITP and have worked with the State Historic Preservation Office and other consulting parties to develop a programmatic agreement, as authorized by 36 C.F.R § 800.14(b). The programmatic agreement defines a process to evaluate and address any adverse effects to historic properties on a case-by-case basis throughout the term of the ITP. The final signed programmatic agreement for the ITP is included with the decision record.

Covered activities within the permit area are expected to permanently remove 62,960 acres of desert tortoise habitat with up to 200 acres within the Reserve. The County will implement the Amended HCP Conservation Program and avoidance and minimization measures described in the FEIS and Amended HCP. The County will continue to support the Reserve and its management to retain biological values as described in the Findings. Biological values include: Animals, Size/Area, Intactness, Connectivity, and Condition as described in the HCP in Appendix G and in the Findings. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

To ensure implementation of avoidance, minimization, and mitigation measures, the County will retain the 0.2 percent construction fee and continue to manage the interest-bearing HCP Trust Fund established under the 1996 ITP. The fee will naturally adjust with inflation and any changes in actual implementation costs. The Trust Fund ensures that funding is available to implement the HCP, including adaptive management. The Amended HCP states that the funds deposited into the HCP Trust Fund will be used to further the purposes of implementing the Amended HCP or for expenditures that are otherwise consistent with the conservation or recovery of the desert tortoise (p. 124).

To offset impacts to the Reserve under the Northern Corridor changed circumstance in the Amended HCP, the County will increase their commitments. These commitments include but are not limited to: 1) protect additional high-density habitat in Reserve Zone 6; 2) provide \$150,000 for desert tortoise passage structures across Cottonwood Springs Road, an existing fenced road, in the Reserve; 3) purchase approximately 450 acres in Zone 6; and 4) provide funding to support post-fire restoration as described in the Amended HCP. Zone 6 supports documented high densities of desert tortoise. Protection of this habitat would ensure that it remains undeveloped. When fully acquired by the BLM or the UDNR, the Reserve including Zone 6 will be protected in perpetuity. Until acquired, Zone 6 and other unacquired lands will be managed as part of the Reserve. Zone 3 is fragmented by the fenced Cottonwood Springs Road, an existing north-south running road. Passage across this road will support desert tortoise demographic and genetic connectivity by allowing more natural dispersal and movement patterns. In addition, the County will purchase a portion of non-federal land within Zone 6

(approximately 450 acres), support post-fire restoration, and retain staff and funding for clearance surveys, habitat restoration, fencing, law enforcement, and education efforts.

Public Involvement and Coordination

The scoping period began with the publication of the Notice of Intent in the Federal Register on December 5, 2019 and extended through January 6, 2020. During the scoping period, the BLM and FWS sought public comments to identify issues to be addressed in the Draft EIS. A public scoping meeting was held on December 17, 2019, at the Dixie Convention Center in St. George. In total, 17,258 submissions were received from the public during the scoping period.

Information about scoping meetings, comments received, comment analysis, and issue development can be found in the Northern Corridor – Highway Right-of-Way with Associated Issuance of an Incidental Take Permit and Resource Management Plan Amendments: Scoping Report (April 2020).

The BLM and FWS published the Notice of Availability (NOA) of the Draft EIS in the Federal Register on June 12, 2020. The publication of the NOA began a 90-day public comment period that ended on September 10, 2020. Comments on the Draft EIS were accepted by the BLM and FWS using U.S. Postal Service mail and email and at BLM offices during the comment period.

In July, midway through the public comment period, the BLM and FWS hosted two online public meetings to provide an overview of the project and respond to questions from the public. The BLM and FWS notified the public of these meetings via the project website and a news release. The online meetings were held on July 16 and 21, 2020. The materials presented at each meeting can be viewed the BLM's ePlanning website.

The BLM and FWS published the NOA of the Final EIS in the Federal Register on November 13, 2020 which initiated a 30-day public protest period for the Proposed RMP Amendment and a 30-day availability period for the FEIS. Although the availability period is not a formal comment period, the BLM received 23 submissions providing input in addition to the valid protests. The publication of the NOA began a 30-day protest period that ended on December 14, 2020. Protests on the Final EIS were accepted by the BLM using U.S. Postal Service mail and email and at BLM offices during the protest period. The comments were considered to determine if they have merit, such as if they identify significant new circumstances or information relevant to environmental concerns and bear upon the proposed action. No new issues were raised in the comments that weren't already addressed in the FEIS/Proposed RMP Amendment.

Cooperating Agencies

Federal regulations direct the BLM and FWS to invite eligible Federal agencies, State and local governments, and federally recognized American Indian Tribes to participate as cooperating agencies when drafting the EIS. The groups listed in Table 1 were invited to participate as cooperating agencies in the preparation of the EIS.

The BLM and FWS communicated regularly throughout the process with the cooperating agencies to review development of alternatives, public comments, and the analysis contained in the Draft and Final EIS. This process included cooperating agency workshops, meetings, and conference calls completed on January 28, April 10, April 29, and September 15, 2020. During these workshops, the BLM and FWS worked with the cooperating agencies to review the following:

1. Issues raised during scoping.
2. Alternatives developed for consideration in the Draft EIS.
3. Preliminary portions of the Draft EIS.
4. Public comments on the Draft EIS.
5. Preliminary portions of the Final EIS.

Table 1. Invited Cooperating Agencies

Agencies Invited to be Cooperating Agencies	Accepted (Yes/No)
U.S. Army Corps of Engineers	No
State of Utah – Public Lands Policy Coordinating Office	Yes
Washington City	Yes
Dixie Metropolitan Planning Organization	Yes
City of St. George	Yes
City of Ivins	Yes
Santa Clara City	Yes
City of Hurricane	Yes

Tribal Consultation

In December 2019, the BLM and FWS initiated government-to-government consultations with 14 American Indian Tribes and Bands that claim affiliation to southwestern Utah, requesting information about sacred sites or places of traditional cultural importance. On December 30, 2019, the Hopi Tribe responded to this initial consultation, stating concerns that the proposed Northern Corridor would adversely impact cultural and natural resources that are significant to the Tribe. The BLM presented information on the proposed Northern Corridor highway and the two RMP amendments at the February 10, 2020, Tribal Council meeting of the Paiute Indian Tribe of Utah.

The FWS sent letters in April 2020 to the same American Indian Tribes and Bands and associated Tribal historic preservation offices that claim affiliation to southwestern Utah, requesting information about sacred sites or places of traditional cultural importance specifically related to the ITP. The Hopi Tribe responded to the FWS with concerns regarding impacts on cultural and natural resources significant to the Tribe. The FWS considered these comments in this decision and will continue to work with Tribes to address their concerns.

American Indian Tribes Invited to Participate in Government-to-Government Consultation:
Cedar Band of Paiutes

1. Kanosh Band of Paiutes
2. Paiute Indian Tribe of Utah
3. Chemehuevi Indian Tribe
4. Koosharem Band of Paiutes
5. Pueblo of Zuni
6. The Hopi Tribe
7. Las Vegas Paiute Tribe
8. San Juan Southern Paiute Tribe
9. Indian Peaks Band of Paiutes
10. Moapa Band of Paiute Indians
11. Shivwits Band of Paiutes
12. Kaibab Band of Paiute Indians
13. Navajo Nation

National Historic Preservation Act Section 106 Consultation

The potential issuance of a ROW and amendments to the RMPs by the BLM and issuance of an ITP by the FWS are Federal undertakings and are therefore subject to Section 106 of the National Historic Preservation Act (NHPA). Section 106 through its implementing regulations (36 C. F. R. Part 800) defines Federal undertakings as any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency, those carried out with federal financial assistance, and those requiring a federal permit, license or approval. The regulations require federal agencies to consider the effects of their undertakings that have the potential to impact historic properties including any district, site, building, structure, or object that is listed on or eligible for listing on the National Register of Historic Places (NRHP) and provide the State Historic Preservation Office (SHPO), affected Tribes, and other consulting parties an opportunity to comment.

The BLM and FWS notified the public that they would coordinate their public consultation obligations under the NHPA (54 U.S.C. § 306108) through this NEPA process, as provided for in 36 C.F.R. § 800.2(d)(3) as a component of the Notice of Intent to prepare an EIS (84 Fed. Reg. 66692-66694). The BLM and the FWS each independently initiated the Section 106 process, as it related to their respective decisions, by establishing the undertaking (pursuant to 36 C.F.R. 800.3.a), identifying and consulting with interested parties, identifying points in the process to seek input from the public, and notifying the public of proposed actions.

The BLM and the FWS each consulted independently with the Utah SHPO and American Indian Tribes regarding efforts to identify cultural resources and evaluate them for NRHP eligibility (36 C.F.R. § 800.4), and assess effects of the project on historic properties by applying the criteria of adverse effect (36 C.F.R. § 800.5). The BLM and the FWS will continue consultation to identify processes to resolve any adverse effects to historic properties (36 C.F.R. § 800.6), including development of an archaeological treatment plan when potential adverse effects have been

determined. As part of this consultation, a programmatic agreement was signed by all consulting parties to resolve future, but presently unknown, effects associated with the FWS's issuance of an ITP to Washington County.

For the ITP, the FWS determined that they cannot fully anticipate the effects to historic properties prior to issuance of the ITP and have worked with the State Historic Preservation Office and other consulting parties to develop a programmatic agreement, as authorized by 36 C.F.R § 800.14(b). The programmatic agreement is limited to the authorized activities in the ITP and conservation measures in the HCP that result in take of desert tortoises and may have the potential to cause effects on historic properties. The County's list of covered activities identified in their HCP is not under the direct jurisdiction of the FWS and thus, are not part of the undertaking for consideration by the FWS (FWS HCP Handbook Appendix A). The programmatic agreement defines a process to evaluate and address any adverse effects to historic properties on a case-by-case basis throughout the term of the ITP. The final signed programmatic agreement for the ITP is included with the decision record.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. If an action agency determines a proposed action may affect listed species or designated critical habitat, consultation between that agency and the FWS is required under Section 7 of the ESA.

The FWS completed an intra-agency Section 7 consultation regarding the potential effects of issuing an ITP to Washington County and further completed an inter-agency Section 7 consultation regarding the potential effects of BLM's issuance of the Northern Corridor ROW to UDOT.

Summary of Changes Between Draft and Final Environmental Impact Statement

The Draft EIS and Draft RMP Amendments document were available for a 90-day comment period that ended on September 10, 2020. The BLM and FWS have prepared the Final EIS in consideration of public comments, feedback received from cooperating agencies and American Indian Tribes, and internal BLM and FWS review of the Draft EIS and Draft RMP Amendments. Changes made between the Draft EIS and Draft RMP Amendments and Final EIS and Proposed RMP Amendments are indicated by vertical lines in the margin of a page in Chapters 1 through 4 and Appendices A through N of the Final EIS and Proposed RMP Amendments. The changes are summarized as follows:

1. Preliminary construction cost estimates for each of the Northern Corridor highway alternatives were added to the description of alternatives in Chapter 2.
2. In Chapter 2, clarification was made that certain BLM decisions related to the potential implementation of proposed Zone 6 described in Section 2.5 are implementation-level decisions, with adjustments to the analysis contained in Chapter 3 to support these implementation-level decisions.

3. Additions and clarifications to the design features and mitigation measures contained in Chapter 2 and Appendix D were made to incorporate revisions to the Draft Plan of Development (POD) made by UDOT, and to include additional measures that would be required by the BLM. These measures would reduce impacts on desert tortoise and the Red Cliffs NCA objectives and values, as well as minimize or avoid impacts or encumbrances to Land and Water Conservation Fund (LWCF) properties. Revisions were made to some resource analysis sections based on the changes to the mitigation measures and design features.
4. Minor revisions to the description of Washington County's Amended HCP were made in Chapter 2 to account for revisions to the Amended HCP made by the County between the Draft EIS and Draft RMP Amendments and Final EIS and Proposed RMP Amendments.
5. Four notable fires—the Turkey Farm Road, Cottonwood Trail, Lava Ridge, and Snow Canyon fires—burned within the Red Cliffs NCA and the Reserve after the Draft EIS and Draft RMP Amendments were published. These four fires burned a combined 12,378 acres within the Red Cliffs NCA and the Reserve, 8,867 acres of which were previously burned in wildfires that occurred since 1976. Revisions to the affected environment and environmental consequences language of Section 3.2, Vegetation Communities; Section 3.3, Special Status Plants; Section 3.4, Wildlife; Section 3.5, Special Status Wildlife; Section 3.6, Endangered Species Act Section 6 Land Acquisition Grants; Section 3.13, Visual Resources; Section 3.14, Cultural Resources; Section 3.15, Recreation and Visitor Services; and Section 3.22, Fire and Fuels Management were made to address the changes posed by the wildfires. Map 3.22-1 was also updated to include the aforementioned wildfires.

The BLM and FWS considered several factors to determine if the areas that burned in 2020 resulted in “significant new circumstances or information” that were not disclosed in the Draft EIS and warrant preparation of a supplemental EIS. Although the wildfires covered more acreage than most previous years, they have become a common occurrence on this landscape over the past 30 years. The growing wildfire trend and its impacts are known issues that were previously identified and/or analyzed in multiple documents, including the Red Cliffs NCA RMP, draft Biological Report, and Draft EIS. After reviewing the scope, nature, and intensity of the impacts of the fires and the relevance of these changes to the BLM and FWS's decisions to be made using the EIS, the agencies determined that the 2020 wildfires do not represent a significant new circumstance or information for the consideration of the ROW, ITP application, Red Cliffs NCA RMP Amendments, or SGFO RMP Amendments, and no supplementation to the current analysis is necessary. For additional information, refer to Section O.3.12 of Appendix O.

6. The FWS developed an estimate for tortoise abundance using a kernel density analysis, which provides a more detailed assessment of the variability of desert tortoise abundance across the landscape within Zone 3 (FWS 2020). The analysis for desert tortoise was refined using the kernel density data rather than a static ratio of tortoise per square kilometer. A map was added to show the tortoise density findings.

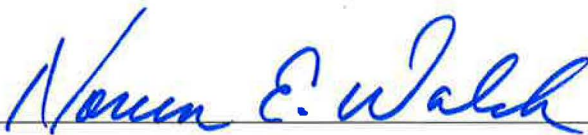
7. A discussion and analysis of the federally listed endangered Fickeisen plains cactus was added to Section 3.3.
8. A correction was made in Section 3.6 to lands encumbered by ESA Section 6 in Snow Canyon State Park, which resulted in revisions to total ESA Section 6 lands within the Reserve.
9. Warranty deeds were reviewed, and subsequent revisions were made to Section 3.16 to clarify existing encumbrances and potential impacts to properties acquired or developed through grants and Congressional appropriations from the Land and Water Conservation Fund (LWCF) Act.
10. The cumulative impacts analysis contained in Section 3.28 was revised to include additional information about resource conditions and trends resulting from climate change and also to consider additional reasonably foreseeable future actions such as the proposed Western Corridor highway.
11. Section 4.2 was updated to include additional information regarding ESA Section 7 consultation, National Historic Preservation Act (NHPA) Section 106 consultation, and American Indian Tribal consultation activities completed between the Draft and Final EIS.
12. A new appendix, Appendix O, Responses to Public Comments on the Northern Corridor – Highway Right-of-Way, Issuance of an Incidental Take Permit Final EIS and Draft RMP Amendments, was added to the Final EIS and Proposed RMP Amendments document. This appendix summarizes public comments received on the Draft EIS and Draft RMP Amendments document and the Washington County Draft Amended HCP and provides the BLM and the FWS's responses to the comments received.

Various other clarifications, corrections, additions, and minor revisions to the alternatives considered and the impacts analysis were made throughout the Final EIS document and the appendices to improve the discussion of the affected environment and analysis of potential impacts, correct typographical errors, and address comments and recommendations from the public and cooperating agencies.


RECOMMENDATION OF PERMIT ISSUANCE

I certify that the FWS considered all the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the joint lead and cooperating agencies in developing the Final EIS.

Based on the foregoing Record of Decision and the Findings for the HCP, I recommend issuance of an Incidental Take Permit to Washington County for incidental take of the desert tortoise in accordance with the Amended HCP.



Noreen Walsh
Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service
Denver, CO



Date

LITERATURE CITED

- BLM and FWS 2020. Final Environmental Impact Statement to Consider a Highway Right-of-Way, Amended Habitat Conservation Plan and Issuance of an Incidental Take Permit for the Mojave Desert Tortoise, and Proposed Resource Management Plan Amendments, Washington County, UT. U.S. Department of the Interior, Bureau of Land Management, Canyon Country District Office, and Fish and Wildlife Service.
- FWS. 2020. Estimating Mojave Desert Tortoise Abundance and Habitat Acres Affected by Three Proposed Northern Corridor Alignments: T-Bone Mesa, UDOT Application, and Southern. U.S. Fish and Wildlife Service Utah Ecological Services Field Office West Valley City, Utah. July 2020. 13 pp.
- FWS 2021a. Biological Opinion for the Amended Washington County Habitat Conservation Plan. U.S. Fish and Wildlife Service Arizona Ecological Services Field Office, Flagstaff, Arizona.
- FWS 2021b. Biological Opinion for the Northern Corridor Highway Project. U.S. Fish and Wildlife Service Utah Ecological Services Field Office, West Valley City, Utah.
- FWS 2021c. Findings and Recommendations on Issuance of an Incidental Take Permit to Washington County for their Habitat Conservation Plan. U.S. Fish and Wildlife Service, Mountain Prairie Regional Office, Lakewood, CO.