

June 18, 2024

RE: My detailed comments on the draft Supplemental Environmental Impact Statement (SEIS)

Dear BLM and FWS officials:

Please carefully consider, respond to in the final SEIS, and include in this SEIS administrative record my following detailed comments. The format for my comments is that I first provide an actual excerpt from the draft SEIS (with page numbers), and then I respond to that excerpt with my responsive comments (in **bold**).

From the draft SEIS:

ES-4: Endangered plants and occupied habitat on non-Federal lands in Zone 6 may be subject to development with no assurance of protections under the ESA if the Red Hills Parkway Expressway, One-way Couplet, or Terminate UDOT's ROW alternative is selected.

This is misleading because there is no such assurance regardless of which alternative is selected. This is because SITLA does not have the authority to permanently protect its lands. SITLA beneficiaries can successfully sue at any time to require development on the SITLA Zone 6 lands.

ES-4: Selecting the Red Hills Parkway Expressway, One-way Couplet, or Terminate UDOT's ROW alternative would remove current protections on non-Federal lands within the Zone 6 boundaries and continued degradation of soils and habitat loss from unmanaged motorized and non-motorized recreational activities on and off trails may occur, which could increase the risk of wildfire.

This is misleading because there is no such protection regardless of which alternative is selected. This is because SITLA does not have the authority to permanently protect its lands. SITLA beneficiaries can successfully sue at any time to require development on the SITLA Zone 6 lands. Moreover, SITLA and the county supported the High Desert OHV Trail southern terminus on SITLA land in Zone 6. Bringing thousands of OHV riders each year into Zone 6 is clearly incompatible with tortoise protection. The county and SITLA have consistently demonstrated that they will always put development and recreation interests ahead of tortoise conservation.

ES-5: No additional Mojave desert tortoise habitat would be lost as a result of selecting the Red Hills Parkway Expressway, One-way Couplet, or Terminate UDOT's ROW alternatives, although selecting any of these alternatives would not trigger the Northern Corridor changed circumstance, thus eliminating Zone 6 from the Reserve and exposing non-Federal lands in Zone 6 to land development and other covered activities that could potentially increase impacts to Mojave desert tortoise.

This is misleading because SITLA does not have the authority to permanently protect its lands. SITLA beneficiaries can successfully sue at any time to require development on the SITLA Zone 6 lands. The only way to ensure protection of tortoise habitat on SITLA land is to acquire or exchange the land and transfer the title to an entity with conservation authority.

ES-5: The UDOT ROW Alignment may affect up to eight historic properties, the T-Bone Mesa Alignment up to six historic properties, the Southern Alignment up to five historic properties, and the Red Hills Parkway Expressway up to two historic properties. There are 63 historic properties located along the One-way Couplet, but it is unlikely that there would be adverse effects from converting the streets into a one-way couplet. The number of historic properties that may have adverse effects may be reduced with further developments in design changes. Regardless, BLM will complete a Memorandum of Agreement to resolve adverse effects to Historic Properties under any of the alternatives within the NCA to comply with the National Historic Preservation Act.

This is an important acknowledgement that the Red Hills Parkway Expressway would affect the least number of historic properties of any of the action alternatives. Executing the NHPA required MOA should therefore be the easiest to achieve if this alternative is adopted.

Page 7: Prior to the ITP's expiration in 2016, Washington County applied to the FWS to renew their ITP as described in their proposed HCP for Washington County, Utah, Restated and Amended October 2020 (hereafter Amended HCP; Washington County 2020). To address some of the Reserve effects if a ROW crossing the Red Cliffs NCA were granted for the Northern Corridor, the Amended HCP included a Northern Corridor changed circumstance that addressed effects of the highway to the HCP conservation program. FWS defines changed circumstances as "changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by

plan or agreement developers and the [FWS] and that can be planned for” (50 CFR 17.3). Selecting a ROW alignment that crosses the existing Reserve would be considered a changed circumstance, in accordance with Section 9.1 of the Amended HCP, that may affect the Mojave desert tortoise. If triggered, a significant part of the changed circumstance was to expand the Reserve by approximately 6,813 acres with the addition of a new sixth zone (Zone 6; see Figure 1). Creation of Zone 6 was contingent on the BLM issuing a ROW grant crossing Zone 3 of the Reserve and was the primary conservation strategy to offset granting the Northern Corridor ROW in the Reserve.

FWS should not have accepted this NCH changed circumstance because the NCH would violate several federal laws. A HCP and ITP cannot be conditioned on an otherwise illegal action. A changed circumstance can only be from a natural cause or a change that can be addressed through lawful compliance.

Page 9: The St. George Field Office RMP Amendment aligned the management of BLM-managed lands within Zone 6 of the Reserve with the management described in the Amended Washington County HCP. The creation of Zone 6 resulted in permanent protection of 6,813 acres including the BLM’s commitment in the RMP Amendment to acquire and manage the state and private lands in Zone 6. The Amendment changed management prescriptions for approximately 3,471 acres of public lands in Zone 6 to offset impacts of the Northern Corridor ROW within the NCA and Zone 3 the Reserve.

This is misleading because the SITLA Zone 6 lands cannot be permanently protected unless and until they are acquired or exchanged, and title is transferred to a conservation entity.

Page 9: 1.6 Relationship to Statutes, Regulations, and Other Plans All alternatives analyzed in detail must be consistent with Federal laws and applicable agency policies including FLPMA, OPLMA, the NHPA, and the ESA, as described below.

This is misleading and ignores the litigation claims and public scoping comments that the NCH would violate several federal laws. This text should be revised to indicate that consistency of the alternatives inside the NCA and these laws is subject to question.

Page 9: The Omnibus Public Land Management Act of 2009 (P.L. 111-11). As stated in Section 1.2, the designating statutory authority for the Red Cliffs NCA is

OPLMA of 2009 (Public Law 111-11 at Title I, Subtitle O, Section 1974(a), codified at 16 U.S.C. 460www. Section 1974 directs the Secretary of the Interior to manage the NCA in a manner that conserves, protects, and enhances its resources and to only allow uses that would further its designation purposes. OPLMA at Title 1, Subtitle O, Section 1977(b)(2) also directs the Secretary to develop a comprehensive travel management plan for the land managed by the BLM in Washington County and, in accordance with FLPMA, “in developing the travel management plan, the Secretary shall—(A) in consultation with appropriate Federal agencies, State, Tribal, and local governmental entities (including Washington County and St. George City, Utah), and the public, identify one or more alternatives for a northern transportation route in the County.”

This is somewhat accurate but creates a false and misleading equivalency between the two cited OPLMA provisions. The conservation purposes of the NCA are controlling for any proposed use in the NCA. The OPLMA TMP “identify” requirement is county-wide, not limited to the NCA, and either is pending (because BLM is years behind its TMP deadline) or fulfilled in intent by the previous FEIS analysis of several northern alternative routes.

Page 9: Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200301 et seq.). The LWCF Act established a funding source to assist the Federal agencies and States in acquiring certain lands for certain recreation and other conservation purposes. The LWCF Act has a Federal agency component (54 U.S.C. 200306) and a State and local government component (54 U.S.C. 200305), which have different uses and requirements. For Federal land management agencies such as the BLM and FWS, the LWCF may be used to purchase private in-holdings to meet certain resource management objectives. Lands acquired for Federal purposes are administered by the respective Federal land management agency and subject to other laws. Since the establishment of the Reserve, and in accordance with the 1995 HCP Implementation Agreement, the BLM has acquired private property parcels within the Reserve. Most of these acquisitions have been made with funds originating from the LWCF Act.

This text fails to acknowledge the key point that there is no authority for federal agencies to approve inconsistent or harmful actions in lands acquired with federal side LWCF monies. This is possible for state side funded acquisitions, but not federal. So legally, BLM and FWS cannot approve the

degradation of these federal side LWCF acquired lands. These lands were purchased to provide permanent tortoise habitat protection.

Page 10: Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1)). 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 ROW alternatives within the NCA occur within desert tortoise habitat. The BLM developed a Biological Assessment to document the expected impacts to the species and habitat, including designated critical habitat, and completed formal consultation with the FWS as part of the Final EIS process. The FWS also completed a formal intra-agency Section 7 consultation regarding the potential effects of issuing an ESA Section 10(a)(1)(B) ITP to Washington County. The FWS, as co-lead for the SEIS, has again been working with BLM on the information and the potential impacts of the actions on threatened and endangered species and designated critical habitats in the SEIS. As part of the SEIS process the BLM will submit a supplemental Biological Assessment and complete Section 7 consultation with FWS for the ROW. If an amendment to the ITP is warranted, the FWS will review the intra-agency Section 7 consultation for the action to determine if revision is necessary.

This text omits the key ESA requirement that reasonable and prudent alternatives be used to avoid adverse impacts on ESA listed species and FWS designated critical habitats. This is relevant in the context that this draft SEIS presents feasible alternatives that would avoid or greatly reduce those impacts.

Page 11: A detailed transportation and traffic analysis was prepared for the Final EIS to help inform the development of alternatives and to distinguish among the alternatives, especially in the NCA, related to average intersection delay and travel time at key points and routes in the City of St. George and around the Northern Corridor. The traffic and transportation effects were based on future 2050 travel demand forecasts for Washington County that were developed using the DMPO's regional travel demand model which included an analysis of the transportation system within the northern City of St. George, Washington City, City of Santa Clara, and the City of Ivins metropolitan areas. The traffic and transportation

analysis methodology, study, intersections and roadways, and results are detailed in the Northern Corridor Highway Alternatives Development Report (Jacobs 2020a and included as Appendix J in the Final EIS) and the Preliminary Northern Corridor Traffic Analysis Memorandum (Horrocks Engineers 2020 and included as Appendix L in the Final EIS). The growth in and around the greater St. George metropolitan area since the Final EIS was published warrants an update to the traffic analysis. This analysis is underway and will be provided by the DMPO for inclusion in the Final SEIS, although it is not complete at the time of publication of the Draft SEIS.

This is misleading because it does not acknowledge the blatant conflict of interest and bias involved with the NCH and DMPO. The DMPO and county have shamelessly promoted the NCH for over a decade. The county is reportedly paying for this new traffic analysis. At a recent HCAC meeting, a county commissioner indicated that alternatives other than the NCH would be too expensive. It is clear that the “fix” is already in. The new DMPO traffic analysis won’t be objective and will be designed to make the NCH look good and the alternatives outside the NCA look bad. BLM and FWS cannot use or rely on this new DMPO traffic analysis. Only an independent analysis not dependent on county funding may be credible.

Pages 17 and 18: 2.3.4 Red Hills Parkway Expressway The Red Hills Parkway Expressway Alternative proposes changes to the existing Red Hills Parkway so that it would function as an expressway (Figure 3). Under this alternative UDOT would no longer hold the ROW grant for the Northern Corridor across the NCA. The BLM may need to grant necessary ROW amendments to the City of St. George’s existing FLPMA Title V ROW for the Red Hills Parkway if the planned improvements exceed the boundaries of the existing ROW. The FWS would need to amend the ITP under this alternative because the Northern Corridor changed circumstance would not occur, thus eliminating Zone 6 as mitigation for the Northern Corridor Highway. Instead, the FWS would authorize incidental take of the Mojave desert tortoise associated with the implementation of covered activities 17 occurring on non-Federal lands in Zone 6. The additional HCP partner conservation obligations related to the establishment and management of Zone 6 described in Section 2.2 and in detail in the Amended HCP (Washington County 2020), would end. This would include authorizing take of Mojave desert tortoise on non-Federal lands in Zone 6, reducing the HCP funding obligations, and allowing development to occur on non-Federal lands in Zone 6, which could affect

the endangered dwarf bear-poppy and its habitat, as well as the Parry's sandpaper plant, managed by the BLM as a Sensitive Species. Wildlife and native plant habitats could be subject to degradation and loss from the use of unmanaged motorized and non motorized recreational activities on and off trails, in addition to a potentially greater risk of wildfires due to dispersed camping and/or the complete loss of habitat from development. Management of BLM managed lands within Zone 6 would remain unchanged.

This is misleading because the SITLA land in Zone 6 remains subject to potential future development because SITLA does not have the authority to permanently protect its land. FWS should never have accepted the county's illegal changed circumstance for an illegal NCH. A new ITP should be developed to require stronger tortoise conservation measures. FWS should drive this process and stop letting the county do it.

Page 24: Construction of the Northern Corridor Highway on the UDOT ROW Alignment has the potential to further introduce ignition sources during construction and through daily vehicle usage. This would increase fire probability and likely increase fire frequency near the highway, which would again lead to an increase in noxious weeds and invasive species.

This is accurate but perhaps understated because cheatgrass fires (mostly started along or near highways) are the dominant threat to tortoise habitat.

Page 24: Red Hills Parkway Expressway Modifications to the Red Hills Parkway to make it function as an expressway would result in substantially fewer impacts on native vegetation or the spread of noxious weeds and invasive species, when compared to the construction of a new highway within the UDOT ROW alignment. The Red Hills Parkway is a fenced multi-lane highway and the modifications required would be limited to the roadway between Skyline Drive and I-15, with the most extensive being made in fully developed private and municipal areas. Under this alternative, the Northern Corridor changed circumstance is not triggered, thus eliminating Zone 6 from the Reserve as mitigation for the Northern Corridor, and non-Federal lands in Zone 6 would be subject to covered activities through the HCP (e.g., land development) and increased activity that could potentially increase noxious weeds and invasive species. As a result of selecting this alternative, development of the non-Federal lands within the Zone 6 boundaries may occur as well as the continued degradation of soils and habitat loss from the use of unmanaged motorized and non-motorized recreational activities on and off trails.

The development of the SITLA Zone 6 land may occur regardless because SITLA cannot permanently protect these lands. And SITLA supported the High Desert OHV Trail southern terminus staging area on its Zone 6 land, which would make motorized impacts worse.

Page 27: Maintaining Zone 6 as part of the Reserve would protect occupied and suitable habitat for dwarf bear-poppy and Holmgren milkvetch, Holmgren milkvetch critical habitat, and the populations of Parry's sandpaper plant that occur in this area. Current management of the area protects habitat on non-Federal lands in Zone 6 from development and provides for additional plant and habitat protections that would otherwise not be available under the ESA. In addition, current management reduces unmanaged motorized and non-motorized recreational activities on and off trails on non-Federal lands in Zone 6, which would reduce habitat loss and degradation, reduce the risk of wildfires, and reduce the spread of noxious weeds and invasive plants into Federally-listed and BLM sensitive plant occupied or suitable habitat.

The development of the SITLA Zone 6 land may occur regardless because SITLA cannot permanently protect these lands. And SITLA supported the High Desert OHV Trail southern terminus staging area on its Zone 6 land, which would make motorized impacts worse.

Page 34: UDOT ROW Alignment (Affirm Current ROW Grant) Construction of the Northern Corridor on the UDOT ROW Alignment has the potential to further introduce ignition sources during construction and through daily vehicle usage and increased human activity. Road construction would create a permanent fuel break and potential weed treatments and road maintenance activities could reduce fuel loads in the short term. However, these actions may not offset the increase in fire probability and likely increase in fire frequency that would occur from constructing a road in the NCA. All five fires that occurred in 2020 were human caused and the increase in human activity that would result from selecting an alternative within the NCA may increase fire probability and frequency. Native vegetation and wildlife already affected by previous wildfires would have increased difficulties recovering from further population and habitat loss. The proliferation of noxious and invasive plants already observed within the Reserve contributes to high fuel loads and the potential for new fires to spread beyond previously burned areas, thereby increasing loss of native vegetation and habitat. Zone 6 has been relatively untouched by wildfires, and the additional plant and habitat protections that are in

place because of the changed circumstance would reduce unmanaged motorized and non-motorized recreational activities on and off trails on non-Federal lands in Zone 6. These protections could reduce habitat loss and degradation, reduce the spread of noxious weeds and invasive plants, and reduce the risk of wildfires in this area.

This is misleading because the development of the SITLA Zone 6 land may occur regardless because SITLA cannot permanently protect these lands. And SITLA supported the High Desert OHV Trail southern terminus staging area on its Zone 6 land, which would make motorized impacts worse. SITLA and the county have actively promoted more recreational use of Zone 6 and this increases the potential for human ignitions and the spread of cheatgrass.

Page 37: Table 5. Desert Tortoise Critical Habitat and Potential Number of Adult Tortoises Impacted in the Reserve (adapted from Final EIS Table 3.5-12)

Alternative	Lost Critical Habitat within Reserve (acres)	Percent of Total Critical Habitat Lost from Reserve (%)	Disturbed and Fragmented Critical Habitat (Total Indirect Impacts) (acres)	Potential Number of Tortoises Translocated	Number of Tortoises with Indirect Impacts	Total Number of Tortoises Affected by Alternative
UDOT ROW Alignment	275	0.59	2,333	40	328	368
T-Bone Mesa Alignment	255	0.54	3,278	30	463	493
Southern Alignment	340	0.73	1,883*	44	249	293
Red Hills Parkway Expressway	0	0	11**	0	1	1
St. George Boulevard/100 South One-way Couplet	0	0	0	0	0	0

This demonstrates the stark contrast between the harm to tortoises and tortoise habitat from the highway alternatives inside the NCA versus those outside the NCA. Under the Endangered Species Act, BLM and FWS have an affirmative legal duty to use their authority in furtherance of the conservation and recovery of listed species including Mojave desert tortoises.

Page 39: Regular monitoring of the tortoise population between 2006 and 2019 indicates the population had not recovered from the 2005 wildfires, which resulted in similar percentage losses to the adult Mojave desert tortoise population as the 2020 fires (UDWR 2007, Kellam et al. 2022). The inability to repopulate is a substantial concern for long-lived species with a low reproductive output like the Mojave desert tortoise (Doak et al. 1994, FWS 2019b). Burned areas within the Reserve now support fire return intervals as short as 5 to 10 years (TNS 2011, Moloney et al. 2019), which is less than a third of a tortoise's generation time. Tortoise population stability is predicated on high adult survival (>90%) and

sufficient recruitment into adult size classes (Doak et al. 1994), therefore a short fire return interval may contribute to extirpation of the tortoise population. Reserve Zone 6 is separated from the other zones and would serve as a refuge population that may be less prone to the threats of fire and weeds and may help provide for the long-term protection of tortoises. In addition, the habitat restoration efforts identified in Appendix B would help restore tortoise habitat impacted by fire and weeds.

This draft SEIS properly acknowledges in other text how the highway alternatives inside the NCA would increase the risk of cheatgrass expansion as well as the risk from future human caused fires. Zone 6 is indeed separated from the other zones but increased recreation (including from the southern terminus of the High Desert OHV trail) will increase the risk for cheatgrass expansion and human caused fires there as well. Cheatgrass and fires are therefore a comparable threat to tortoise habitat in all zones.

Pages 41 and 42: Desert Tortoise and Invasive Plants As discussed in Sections 3.2 and 3.4, invasive plants and wildfires are closely interrelated, and a number of projects have been undertaken to reduce invasive grasses in the Reserve (see Appendix B). Burned native shrubs may take years or even decades to centuries to regrow and recover depending on the severity of the fires and the type of community burned. Changes in vegetative cover from native shrublands to invasive and non-native plants have an effect on food availability, food nutrition, shelter and thermal landscape environments for Mojave desert tortoise. The prevalence of invasive *Bromus* grasses in the diets of juvenile Mojave desert tortoise leads to a host of body and health conditions including loss of fat, increased muscular atrophy, mucosal inflammation from embedded grass seeds, and 41 increased susceptibility to disease and other health related problems (Drake et al. 2016, FWS 2021b, Jennings and Berry 2023). This in turn leads to reduced recruitment and survivorship in the species as a whole. Desert tortoises exhibit high site-fidelity and will remain in native home ranges despite poor quality habitats and vegetation changes from burn-reburn patterns (Drake et al. 2015, Lovich et al. 2018).

This summary is accurate and describes why the highway alternatives inside the NCA would contribute to the ongoing tortoise population decline.

Page 45: Several local-level climate models projected substantial reductions in and movement upslope of suitable Mojave desert tortoise habitat under the

anticipated effects of climate change (FWS 2022a). For example, at moderate predictions of climate change (+2°C maximum July temperature, –50 millimeters annual precipitation), modeled Mojave desert tortoise habitat at Joshua Tree National Park shrank by nearly 66% in the Mojave Desert portion and nearly 88% in the Sonoran Desert portion of the park (Barrows 2011, FWS 2022a). Similarly, models of the region surrounding Lake Mead National Recreation Area using a similar range of climate projections as those above predicted habitat reductions of up to 77% (Barrows and Murphy 2011, FWS 2022a). In conclusion, climate change has been identified as a primary threat to Mojave desert tortoise (FWS 2022a). The combined effects of global climate change (i.e., increased ambient temperatures and altered precipitation patterns) and drought may increasingly influence the long-term persistence of the Mojave desert tortoise, including within the UVRRU and Reserve (FWS 2011, FWS 2021b, FWS 2022a).

This summary describes how climate change will increase the threats to tortoises including from new highways that would fragment tortoise habitat and block or impede the necessary movement of tortoises to new habitats.

Page 50: The establishment of Zone 6 provided conservation benefits to the desert tortoise and increased the existing acreage of the Reserve by approximately 11%. The addition of Zone 6 to the Reserve provides additional protection to approximately 736 adult desert tortoises and 6,813 acres of habitat (both Federal and non-Federal; Table 8). Habitat in Zone 6 has not been impacted by fires in the recent past and is separated from the other zones geographically. As such, Zone 6 may serve as a refuge population less prone to the threats of weeds, fire, and disease and may therefore preserve genetic and behavioral representation through habitat corridors connecting analytical units and recovery units. The protection of this additional habitat may increase the viability of desert tortoises by increasing the number of tortoises living within protected habitat and providing increased resiliency and redundancy against the cumulative threats they face in the UVRRU (FWS 2021c).

This text is misleading. The SITLA land in Zone 6 is not permanently protected because SITLA lacks this authority. There is no guarantee that future acquisitions or exchanges will be sufficient to eventually provide that protection. And the county and SITLA are actively promoting increased recreational uses in Zone 6 (including the southern terminus of the High Desert OHV trail) that would increase the risk for cheatgrass expansion and

human caused fires. The HCAC has also demonstrated that it won't oppose or stop potential incompatible human uses in Zone 6.

Pages 50 and 51: Desert Tortoise in the Upper Virgin River Recovery Unit 408 (95% CI: 275 – 598) A range-wide Mojave desert tortoise population estimate in 2014 documented a decline of almost 125,000 adult tortoises over a 10-year period, representing a nearly 37% overall population decline (Allison and McLuckie 2018). According to overall extrapolated density estimates within the UVRRU, densities of Mojave desert tortoise in the UVRRU are declining at a rate of approximately 3.2% per year, lower than 50 other tortoise populations across the range, including Colorado Desert (4.5%), Eastern Mojave (11.2%), and Western Mojave (7.1%) (Allison and McLuckie 2018). If tortoises in the UVRRU continue this downward trajectory at the same rate of decline (3.2%), they could become more vulnerable to future stochastic events and habitat impacts, particularly considering the small size of the UVRRU and its proximity to growing urbanized areas. Densities within the Reserve are currently higher than many other Mojave desert tortoise populations range wide. Densities across the range outside of the UVRRU are thought to range from 1.7 to 14.2 tortoises per km² (FWS 2020). While the UVRRU hosts a higher density of adult Mojave desert tortoises than any other Mojave desert tortoise conservation area⁵ (Berry and Murphy 2019), the small geographic size of the Reserve and UVRRU increases the vulnerability of the population. Therefore, the long-term survival and population viability of Mojave desert tortoises in the UVRRU and Reserve will depend upon the reduction, avoidance, and mitigation of primary threats to the species.

This is an accurate summary of why the current HCP and ITP should be much stronger to help stop and reverse the current decline toward extirpation of the UVRRU tortoise population. This tortoise population has the best potential for gradual recovery, but only if BLM and FWS require more effective tortoise conservation actions. Sacrificing Zone 3 tortoises for questionable “protection” in Zone 6 would be a step backward.

Page 52: Table 9. Potential Number of Adult Tortoises Impacted in the Reserve
Alternative Potential Number of Adult Tortoises Translocated (within ROW)
UDOT ROW Alignment 31 Number of Adult Tortoises with Indirect Impacts (from ROW) 275
Number of Tortoises Subject to Take in Zone 6 Total Number of Tortoises Affected by the Alternative T-Bone Mesa Alignment 0 27 357 306
Southern Alignment 0 31 189 0 384 Red Hills Parkway Expressway 220 0 3 St.

George Boulevard/100 South One-way Couplet 0 328 331 0 Terminate UDOT's ROW 0 0 328 328 328 Note: Under the Red Hills Parkway Expressway, St. George Boulevard/100 South One-way Couplet, or Terminate UDOT's ROW alternatives, the non-Federal lands in Zone 6 could be developed, as described in Section 2.2. As per HCP protocols, surveys would be conducted, and tortoises would be relocated prior to development.

This is misleading because the SITLA lands and tortoise habitat in Zone 6 could eventually be developed and/or undermined by excessive recreational impacts.

Pages 53 and 54: Red Hills Parkway Expressway No additional Mojave desert tortoise habitat would be lost as a result of selecting the Red Hills Parkway Expressway (see footnote to Table 5). Consequently, the acres of habitat that could be impacted by this alternative is lower than the three alternatives located wholly within the NCA. The potential number of adult tortoises translocated from within the ROW for this alternative is zero (which is a change from one in the Final EIS), and the number of adult tortoises with indirect impacts from the ROW is three (which is a change from one in the Final EIS). This difference from the Final EIS is due to the change in estimated abundance and observations from the Final EIS (using 2017 abundance information) to the 2023 information, as noted earlier. These tortoises may be indirectly impacted, for instance by road noise and vehicle vibrations, but this is not new disturbance as the roadway already exists. Under this alternative, the Northern Corridor changed circumstance is not triggered, thus eliminating Zone 6 from the Reserve as mitigation for the Northern Corridor Highway, and non-Federal lands in Zone 6 would be subject to covered activities through the HCP (e.g., land development) and increased activity that could potentially increase impacts to Mojave desert tortoise. As a result of selecting this alternative, development of the non-Federal lands within the Zone 6 boundaries (3,338 acres) may occur and Mojave desert tortoises on non-Federal land in Zone 6 (328 tortoises, see Tables 8 and 9) would be subject to take under covered activities in the ITP. Mojave desert tortoises displaced by development would be translocated (i.e., moved outside their home range) to appropriate locations facilitated by the County's Mojave desert tortoise conservation program in coordination with UDWR. Translocations would occur through the term of the ITP (25 years) or until such time that all covered activities are finished, or all clearances have been completed and there would be no more need for salvage collection. Under this alternative, the FWS would amend the ITP to allow for

incidental take of Mojave desert tortoise on 3,338 acres of tortoise habitat on non-Federal lands within Zone 6 as a result of covered activities. The 3,338 acres of non-Federal lands within Zone 6 would become available for future development, resulting in potential direct impacts to tortoise habitat, fragmentation, and potentially increasing the wildland-urban interface between the population of tortoises located on BLM-managed lands to the west. Development of the non-Federal lands within the Zone 6 boundaries would result in indirect effects up to 508 meters out from the development as well (approximately 2,270 acres). With the elimination of Zone 6, the habitat on non-Federal lands would also be subject to degradation and loss 53 from the use of unmanaged motorized and non-motorized recreational activities on and off trails. In addition, tortoise habitat could be at a greater risk of wildfires due to dispersed camping.

This is misleading because of the incorrect reliance on the SITLA land in Zone 6 for long-term tortoise protection. This is also misleading because FWS can revise or strengthen the current ITP per this remand process.

Page 60: Red Hills Parkway Expressway The Red Hills Parkway Expressway Alternative proposes changes to Red Hills Parkway. Under this alternative, UDOT would no longer hold the ROW grant for the Northern Corridor and no new road would be built in the NCA. There would be no direct or indirect impacts on any of the new Section 6 parcels under this alternative because they all are more than 1 kilometer in distance from this alternative. Under this alternative, the new parcels would retain their conservation value and continue to serve their intended purpose and there would not be any additional impacts to Section 6 lands beyond those described in the Final EIS.

This explains why the Red Hills Parkway Expressway would be consistent with the LWCF statute. This statute does not give federal agencies the authority to destroy or degrade conservation lands acquired with federal side LWCF funds. Therefore, BLM and FWS cannot legally approve any of the highway alternatives that would violate the LWCF statute.

Page 61: The BLM is unaware of any express statutory or regulatory provision prohibiting the issuance of a ROW over portions of NCA lands. The BLM's review of the warranty deeds did not reveal any reference to LWCF, limitations on additional encumbrances, or other restrictions on the LWCF parcels identified in the Final EIS. Lands that are acquired pursuant to 43 U.S.C. 1715 are subsequently managed in accordance with the governing land use plan. The wildlife habitat

acquired was for the endangered Mojave desert tortoise, consistent with the Amended HCP Implementation Agreement. The Final EIS determined that due to the small amount of acreage potentially encumbered within the ROW corridor under the T-Bone Mesa Alignment, UDOT ROW Alignment, and Southern Alignment alternatives, NCA lands would continue to fulfill wildlife habitat purposes.

This text is outrageously misleading. The first sentence begs the question of whether BLM will be improperly biased in performing the required NCA compatibility determination. The highway alternatives inside the NCA are plainly contrary to the OPLMA statutory conservation purposes of the NCA. The separate OPLMA TMP “identify” provision does not supersede these conservation purposes. The warranty deed and title references are of dubious relevance because here BLM and FWS, as federal agencies, would be making discretionary decisions subject to the limitations of existing statutes and regulations, including those of the LWCF statute. The absence of title restrictions does not magically grant federal agencies the authority to degrade conservation lands they acquired with federal side LWCF funds. While deed restrictions could apply to private owners, in this case, the federal government is now the owner of these acquired lands. The Final EIS determination relating to a subjective “small amount of acreage potentially encumbered” is questionable because it was made by corrupt Trump administration officials and this remanded SEIS is the opportunity to correct such biased and self-serving “determinations.” There is no LWCF statutory authority for a federal agency to degrade ANY amount of conservation land acquired with federal side LWCF funds.

Page 64: Environmental Consequences UDOT ROW Alignment (Affirm Current ROW Grant) Under this alternative, the UDOT ROW Alignment would directly encumber a portion of two of the new LWCF parcels. As shown in Table 16, approximately 1.93 acres of Parcel 6810-D-30 and 2.30 acres of Parcel 6810-D-32 are located within the 500-foot corridor alignment for this alternative.

Approximately 18% of Parcel 6810-D-30 and 10% of Parcel 6810-D-32 would potentially be encumbered within the ROW corridor under this alternative. Table 16. Direct Impacts to Federal LWCF Lands within the UDOT ROW Alignment. BLM Case Number Total Acres UDOT ROW Alignment (acres within 500-foot corridor) 6601-A 53.28 6810-D-30 11.01 0 6810-D-32 1.93 23.08 Total 2.30 87.37 4.23.

As previously noted, there is no LWCF statutory authority for a federal agency to degrade ANY amount of conservation land acquired with federal side LWCF funds. This text is therefore an admission that BLM and FWS could not legally approve the UDOT ROW Alignment alternative.

Pages 66 and 67: (from BLM Manual 6220) (E) Rights-of-way and Transportation and Utility Corridors (2) When processing a new ROW application, to the greatest extent possible, through the NEPA process, the BLM will: a. determine consistency of the ROW with the Monument or NCA's objects and values; b. consider routing or siting the ROW outside of the Monument or NCA; (7) To the greatest extent possible, subject to applicable law, the BLM should through land use planning and project-level processes and decisions, avoid granting new ROWs in Monuments and NCAs and similar designations. In deciding whether to approve ROWs in these components of the National Landscape Conservation System, the BLM shall consider whether ROW proposals are consistent with the authority that designated the component. Subject to applicable law, the BLM shall exercise its discretion to deny ROW applications in Monuments and NCAs and similar designations if they are inconsistent with the component's designating authority. (8) To the greatest extent possible, subject to applicable law, the BLM should through land use planning and project-level processes and decisions, avoid designating or authorizing use of transportation or utility corridors within Monuments and NCAs. To that end, and consistent with applicable law, when developing or revising land use plans for Monuments and NCAs, the BLM will consider: b. not designating any new transportation or utility corridors within the Monument or NCA if the BLM determines that the corridor would be incompatible with the designating authority or the purposes for which the Monument or NCA was designated; 66 The BLM worked with UDOT, FWS, and other partners to identify additional measures that would conserve, protect, and enhance the objects and values of the NCA and reduce the potential impacts of BLM issuing a ROW to UDOT for the construction of the Northern Corridor. As a result of those conversations, UDOT submitted a revised POD containing additional design features of the proposed action for environmental protection. In addition, BLM, in collaboration with FWS and other partners identified additional mitigation measures that were applicable to the issuance of the ROW across the Red Cliffs NCA for the Northern Corridor (refer to Section 2.2.9 of the Final EIS.

This text is misleading and confusing. At the beginning, it describes why BLM should not consider approving any new highway in the Red Cliffs NCA and

should instead favor alternatives outside the NCA. Then, the text does a miraculous back flip. It describes that, as a result of “conversations”, BLM somehow found that it could egregiously defy the previous policy guidance by “identified additional mitigation measures.” This is code for corrupt Trump era attempts to circumvent what is plainly required. It would be honest to instead simply say that the BLM policy guidance was overridden due to the political expediency of pleasing regressive Utah officials and developers. For this remand, BLM should correct this gross deviation and uphold its own logical policy guidance.

Page 67: 3.8.2 Supplemental Analysis In the August 2023 Settlement Agreement, the BLM committed to the following: Prior to any new decision on the ROW application, BLM agrees to make a compatibility determination to ensure that the decision is compatible with law, regulation, and policy for a National Conservation Area, consistent with the Omnibus Public Lands Management Act, the Federal Land Policy and Management Act, and those version of BLM Manual 6220 and BLM’s National Monument, National Conservation Areas, and Similar Designations Compatibility Analysis Framework in effect at the time of the decision. Therefore, a formal compatibility framework analysis will be completed for this project once the analysis for the SEIS is complete and a preferred alternative is identified. The formal compatibility framework analysis will assess the impacts of the project on the NCA’s objects and values, as described above, and in accordance with BLM Manual 6220, Section 1.6, which describes specific direction for Compatibility of Uses and Rights-of-way and Transportation and Utility Corridors. As described in Section 2.3, five alternative alignments for the Northern Corridor that were previously considered in the Final EIS are being carried forward in this SEIS, as is an alternative that would terminate UDOT’s ROW grant for the Northern Corridor within the NCA. Because the SEIS is an extension of the Final EIS where the alternatives being considered are already established, the BLM is conducting its compatibility analysis at the end of the process rather than the beginning to remain consistent with its prior analysis. A compatibility determination is made by the authorized official, and any early determinations may be pre decisional and jeopardize the integrity of this SEIS process. Therefore, the compatibility determination will be documented in the ROD for the SEIS.

Given the relevant legal requirements and the extensive documentation of negative impacts in this draft SEIS, BLM must not pick a highway alternative

inside the NCA because BLM could not then properly determine that it was compatible with the protection of the NCA objects and values. Picking an alternative outside the NCA is necessary, and the Red Hills Parkway Expressway is the best choice.

Page 80: Environmental Consequences 19.5 9.2 In 2023, DMPO, a cooperating agency, commissioned a new traffic analysis that will examine, among other things, traffic congestion and travel times at major intersections adjacent to the project area under each alternative. DMPO expects to receive and share the results from this analysis before the Final SEIS is published. While BLM expects the results will be similar to the 2020 analysis, the agency anticipates the projected results for the expected level of service at individual intersections, traffic volumes, and travel times under each alternative may potentially increase because of the growth in and around the greater St. George metropolitan area since 2020 (19.3% growth between 2017 and 2022), and other factors that have occurred since the Final EIS was published. BLM understands from DMPO that these changes are incorporated into the 2023 Travel Demand Model.

BLM and FWS should not and cannot properly trust the DMPO. It is obviously biased, serves county development interests (including SITLA), and has actively promoted the Northern Corridor Highway (NCH) through the RCDR and NCA for well over the past decade. BLM and FWS should not use or rely on the new traffic analysis unless it is independently verified by those qualified without any potential conflict of interest. Keep in mind that the current NCH alignment is different than past proposed alignments. The current NCH alignment is specifically designed to serve a massive new SITLA development near Green Springs and Exit 13 of Interstate 15. The professed need has always been to improve east to west traffic flow, but the alignments have changed. The current alignment is to serve a specific SITLA development scheme. The DMPO traffic analysis is likely to be improperly skewed to justify this relatively new alignment. BLM and FWS must not allow this to stand or be found credible.

Page 87: (Special status wildlife-cumulative effects) Supplemental Analysis Since publication of the Final EIS, a number of projects or actions listed in Table 3.28-2 of the Final EIS have been completed. The effects of those projects are now considered as part of the affected environment baseline for special status wildlife. Additional reasonably foreseeable actions identified in Table 26 that have the

potential for ground disturbance in suitable habitat would have the potential to contribute to cumulative effects to special status wildlife. Effects would be similar to those disclosed in Section 3.28.5 of the Final EIS. Road construction and widening projects completed since publication of the Final EIS have contributed to the incremental habitat loss for special status wildlife species. Additional foreseeable and planned projects such as road construction and associated developments for recreation as well as the widening of SR-318 would add to habitat loss and fragmentation. The implementation of the project combined with the ground-disturbing projects listed in Table 26 would result in incremental cumulative impacts to special status wildlife within the analysis area. Of particular note are the planned 3.0-mile Cottonwood Springs Drive from Red Hills Parkway to the Northern Corridor highway that would be undertaken by the City of St. George and UDOT's 4.0-mile Babylon Road project that would connect Old Highway 91 to Hurricane along the existing Babylon Road. Both of these projects would be located in occupied Mojave desert tortoise critical habitat within the NCA. In addition, the planned Western Corridor would directly abut the western boundary of Zone 6. The Western Corridor would result in direct impacts to tortoise, including loss/degradation of occupied tortoise habitat, loss of habitat connectivity (including between the UVRRU and Northeastern Mojave Recovery Unit), and increase threats of fire, the spread of exotic/invasive plants, and of raven subsidies (e.g., roadkill).

I concur with this text but would add that it demonstrates the ongoing “death by a thousand cuts” pattern where the county and SITLA always support continued development and the associated destruction, degradation, and fragmentation of the remaining tortoise habitats in the county. For their part, BLM and FWS have actively contributed to this development pattern by their endless pandering to county and SITLA officials. While the county and SITLA serve developers, BLM and FWS are supposed to follow federal conservation laws to restrict or prohibit development on federal lands when necessary. Unfortunately, BLM and FWS usually try to find ways to circumvent or ignore these laws out of cowardice and crass political expediency. The county and SITLA won't change. If BLM and FWS don't change, the county tortoise population is ultimately doomed.

Please use my detailed comments as you prepare the final SEIS, compatibility determination, and ROD.

Thank you very much for your kind consideration.

Sincerely,

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cc: Interested parties