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**INTERIOR BOARD OF LAND APPEALS
OFFICE OF HEARINGS AND APPEALS
UNITED STATES DEPARTMENT OF THE INTERIOR**

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| CONSERVE SOUTHWEST UTAH |) | |
| AND RICHARD A. SPOTTS |) | IBLA No. 2021-0121 |
| |) | |
| |) | Re: Saint George Field |
| Appellants, |) | Office’s Finding of No |
| v. |) | Significant Impact and |
| |) | Decision Record for the |
| BUREAU OF LAND MANAGEMENT, |) | Long Valley Road Extension |
| |) | Right-of-Way Project |
| Respondent. |) | |
| |) | DOI-BLM-UT-C030- |
| |) | 2020-0004 EA |
| |) | BLM File: UTU-94658 |

STATEMENT OF REASONS

1. Introduction

Conserve Southwest Utah (CSU) and Richard A. Spotts (collectively, “Appellants”), in accordance with the regulations at 43 C.F.R. Part 4, timely filed a Notice of Appeal on December 2, 2020 regarding the Bureau of Land Management’s (BLM’s) November 10, 2020 Finding of No Significant Impact (FONSI) and Decision Record (DR) for the Long Valley Road Extension Right-of-Way Project, analyzed in Environmental Assessment (EA) DOI-BLM-UT-C030-2020-0004 EA. The Interior Board of Land Appeals (IBLA) acknowledged receipt of this Notice of Appeal in an email dated December 7, 2020 and assigned this appeal IBLA number 2021-0121.

On December 21, 2020, appellants filed an Unopposed Motion for Extension of Time to File Statement of Reasons. This motion was approved December 23, 2020 with a Briefing Schedule to be submitted by January 7, 2021. On January 7, 2021, a proposed Briefing Schedule was submitted that included filing the Administrative Record (AR) by January 13, 2021. On January 13, 2021, appellants and respondent filed a Proposed Amended Briefing Schedule because of a delay in completing the AR.

This request was approved by Order on January 15, 2021, and required the AR to be filed by January 19, 2021, the appellants' Statement of Reasons to be filed by February 22, 2021, and the respondent's Answer to be filed by March 24, 2021. Appellants received the AR and noticed that their EA comment letters were omitted. The AR was supplemented on February 4, 2021 to include these letters.

2. Summary of Issues

By granting the Long Valley Road Extension Right-of-Way (ROW) through the Warner Ridge/Fort Pearce Area of Critical Environmental Concern (ACEC), BLM violated:

- a. National Environmental Policy Act (NEPA) by not identifying and evaluating possible alternatives (including outside the ACEC), not properly determining direct impacts to resources values and listed species (see St George Field Office Resource Management Plan (RMP), page 2-62; AR Index item 1), and not analyzing cumulative impacts from other local projects (e.g., the Northern Corridor Highway),
- b. Federal Land Policy and Management Act (FLPMA) by not properly protecting an ACEC as directed by the St George Field Office Resource Management Plan (see page 3 of the 2016 Amended RMP; AR Index item 2), and

c. Administrative Procedures Act (APA) by arbitrarily inadequately addressing and summarily dismissing EA comments (BLM Comment Response, AR Index item 41).

3. Background

On September 29, 2020, BLM announced a 30-day comment period on the Draft EA. There was no public scoping that would have enabled applicants an opportunity to identify potential alternatives. The 30-day comment period was an extremely short time for the public to gain knowledge and define issues related to this previously unknown proposal. BLM summarily responded to the appellants' comments within 10 days and issued its Finding of No Significant Impact (FONSI) and Decision Record (DR) on November 11, 2020, approving an extension of the Long Valley Road through an ACEC to accommodate a new housing development without identification or analysis of any alternatives. This short time period indicates the level of consideration given to the issues. The appellants' comments (see CSU Draft EA comments, page 2; note that these comments are in the AR but are not listed in the AR Index) on the EA suggested alternatives avoiding the ACEC should be analyzed. BLM dismissed those comments on the basis that there were no reasonable alternatives and that they analyzed reasonable alternatives and found their impacts were greater and that basically the applicant thought the selected location was best (Final EA, AR Index item 45, page 17). No analyses leading to those conclusions have been disclosed. The applicants' request was based on an alignment with a planned limited-access highway interchange. The appellants' claim that an alternative alignment, allowing the new road to connect to the interchange without violating the purpose of the ACEC, is entirely possible and reasonable. Such an alternative would require negotiation with the Utah Department of Transportation to adjust the location of the interchange to allow a connection with the Long Valley road without violating the ACEC. The terrain in the area is

very uniform, offering no obvious reason for one specific location for the interchange over the other. The appellants believe that a proper alternatives analysis was rejected because BLM preferred to improperly abdicate its duty to protect its own ACEC and instead decided to arbitrarily limit the EA analysis to only what the ROW applicants wanted.

4. Statement of Standing

CSU is a grassroots local non-profit conservation organization located in Saint George, Utah, founded in 2006, consisting of approximately 2500 members, a volunteer Board of Directors, one paid and several volunteer staff. CSU members and staff use and enjoy BLM managed lands in Washington County, and have a deep concern in the proper management and protection of those lands. CSU has been heavily involved in the Northern Corridor Highway controversy and other BLM-related issues for 15 years. CSU also has been a consistent voice advocating for greater protection of the declining threatened Mojave desert tortoise population and other Endangered Species Act (ESA)-listed species in the county, including those in this ACEC. CSU has organized and participated in many habitat protection and restoration projects in cooperation with BLM and Washington County. Tom Butine, CSU's Board President, like many of CSU's members, local residents and visitors, is an avid hiker and bicyclist, and frequently rides past the area impacted by the Long Valley Road Extension, enjoying the views and the desert habitat in and around the ACEC that is the foundation of this appeal. He has visited the proposed road location and taken photographs that show that feasible alternatives may exist but were not analyzed in the subject BLM EA. [See CSU/Butine Declaration.]

Richard A. Spotts has lived in Washington County for over 18 years, and he has hiked and explored on BLM lands in the county. He has a longstanding interest in BLM land management and Mojave desert tortoise conservation. Prior to his retirement, he was the

Planning and Environmental Coordinator for the BLM Arizona Strip District Office located in Saint George, Utah from 2002 to 2017. In a previous job, he was a member of the team that successfully petitioned for listing of the Mojave desert tortoise under the federal ESA. For his past efforts, Richard received awards from the Desert Tortoise Council and Desert Tortoise Preserve Committee.

5. Overview of Federal Law Violations made in the BLM Decision to grant the Long Valley Road Extension through the Warner Ridge/Fort Pearce ACEC

The appellants filed this appeal due to BLM violations of federal laws including the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq., the Federal Lands Policy and Management Act (FLPMA) 43 U.S.C. §§ 1701-1785, and the Administrative Procedures Act (APA), 5 U.S.C. § 551 et seq.

5.1. National Environmental Policy Act (NEPA) Violations

BLM's EA violated NEPA by failing to properly scope, identify, and analyze a reasonable range of alternatives, and failing to analyze cumulative effects on affected resources, especially the Mojave desert tortoise.

The fundamental purpose of NEPA is to ensure that federal actions receive appropriately detailed environmental review. 42 U.S.C. § 4332. NEPA requires federal agencies to take a "hard look" at their actions, and to assess the environmental impacts of those actions in a forthright and public way. NEPA requires agencies to analyze and disclose cumulative impacts. 40 C.F.R. § 1508.25. The BLM must disclose to the public "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." *Id.* § 1508.27(b)(7). A cumulative impact results from the incremental impact of the proposed action

when added to other past, present, and reasonably foreseeable future actions. *Id.* § 1508.7.

Impacts can result from individually minor actions taking place over a period of time. *Id.*

5.2. Administrative Procedures Act (APA) Violations

BLM arbitrarily refused to properly respond to or analyze issues raised in Appellants' EA comments. BLM's responses were vague, conclusory, or non-responsive. The proposed road project does not conform to relevant BLM RMP decisions relating to its ACEC (RMP page 2.62).

The APA standards for review of agency decisions are described in 5 USC 706, as follows:

“To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.”

BLM's approval of the Final EA and FONSI, response to public comments, and subsequent issuance of the road ROW violated APA standards of review:

- Section (2)(A), because BLM decisions were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” by dismissing the need for alternatives analysis and finding no comments rose to the level of causing a text change or addition to the final EA analysis.
- Section (2)(C), because BLM exceeded its legal authority by approving a road ROW through its ACEC under deficient NEPA analysis, in non-conformance with its

relevant RMP decisions, and against FLPMA, BLM planning regulations, and without the required Federal Register notice for a proposed RMP ACEC-related revision.

- Section (2)(D), because BLM ignored NEPA procedures to properly identify and analyze reasonable alternatives and to properly respond to substantive public comments. BLM also violated this section by not proposing to amend its existing RMP ACEC decisions in a manner that would allow this ROW application to proceed, and by failing to publish a Federal Register notice of any such proposed RMP amendment.
- Section (2)(E), because many BLM assertions in the EA are not supported in the AR, and many BLM responses to public comments were likewise lacking in such AR evidentiary support, for example, BLM claims that:
 - alternatives were analyzed;
 - there were no added cheatgrass and fire risks;
 - impacts on ESA listed threatened Mojave desert tortoises would be “minor” despite BLM’s own finding to the U.S. Fish and Wildlife Service [FWS] that this project “may affect, likely to adversely affect” this species;
 - a 10-acre enclosure would adequately mitigate project damage; and
 - removal or reduction of commercial livestock grazing as mitigation is unnecessary, even though this was suggested in both the public EA comments and by a FWS official in the AR.

5.3. Federal Land Policy and Management Act (FLPMA) Violations

BLM violated FLPMA provisions regarding protection of ACECs and the associated BLM planning regulations that require that a proposed project not in conformance with existing

Resource Management Plan (RMP) decisions must be considered in the context of proposed RMP amendments noticed in the Federal Register.

6. Description of Violations

6.1. BLM violated NEPA and APA because the BLM arbitrarily failed to consider and analyze a reasonable range of alternatives in the EA

The CEQ NEPA regulations describe the requirements for an EA to evaluate a reasonable range of alternatives, as follows: **“40 CFR §1502.14 Alternatives including the proposed action.**

The alternatives section should present the environmental impacts of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§1502.15) and the environmental consequences (§1502.16). In this section, agencies shall:

- (a) Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.
- (b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- (c) Include the no action alternative.
- (d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (e) Include appropriate mitigation measures not already included in the proposed action or alternatives.
- (f) Limit their consideration to a reasonable number of alternatives.”

The alternatives analysis is the CEQ-acknowledged “heart” of an EA, but sadly this EA does not have one. The purpose and need for action should determine which alternatives may be feasible and therefore should be carried forward for detailed EA comparison and analysis. In this case, the clear purpose and need was to provide a secondary access road to a proposed new subdivision development. This purpose could be achieved through any number of different alternatives. BLM could also have had an independent purpose of upholding its RMP decisions as well as the processing of the ROW application.

Unfortunately, throughout this entire NEPA process, BLM was arbitrary and capricious under the APA because it failed to consider the required “reasonable range of alternatives.” And

BLM did not go beyond vague and conclusory reasons for this failure, in both the EA and AR documents. BLM improperly abdicated its independent NEPA duty to objectively consider additional action alternatives. The need to do this was amplified by the presence of two Endangered Species Act (ESA) listed species and a BLM ACEC that would be harmed by the Brennan Development and Washington City action alternative. Despite these serious potential resource conflicts, BLM simply accepted what Brennan Development and Washington City wanted as the sole EA action alternative.

According to the October 31, 2019 EA “kick-off” meeting agenda in the AR (item 16 in the AR Index), one discussion item was listed as “Alternatives Considered & Rejected.” The minutes from this meeting show absolutely zero evidence that this agenda item was even discussed. This failure is telling because no ROW application had been prepared or submitted at that time. There was another agenda item of “Proposed Action & Alternative(s)”. Again, the minutes provide no evidence that any other action alternatives were discussed.

The October 31, 2019 “kick-off” meeting notes (item 16 in the AR matrix) indicates that some key factors were uncertain or in flux. These factors would normally be relevant to determine which potential action alternatives may be feasible and appropriate, and whether further research may be needed in this crucial regard. For example, the agenda states “Confirm that the road will connect to the planned 3650 South Interchange.” And a related question “Is the interchange part of this proposed right of way?” In the meeting minutes, it states “.... plans for the interchange are not finalized.” It also states “Gravel road just for now to connect to the potential 3650 South Interchange (which may be built in 15-20 years from now).” There is no evidence in the AR that these factors were resolved prior to the subsequent submission of the ROW application and BLM’s acceptance of it.

These meeting notes also contain an especially incriminating *de facto* admission that the “fix was in” with respect to EA alternatives and that improper pre-decisional bias under the APA had occurred. This information states that Mojave desert tortoise “surveys completed.” And that “Fall of 2019” Mojave desert tortoise “surveys completed.” This AR evidence proves that BLM knew or should have reasonably known that public staff time and funds had already been spent to survey for tortoises in the specific area of the Brennan Development and Washington City action alternative. This pre-kick off meeting tortoise survey information was what BLM relied upon in preparing the EA tortoise related analysis.

In EA Section 2.4, BLM summarily justifies its failure to consider any other action alternatives by saying “Due to the topographical features of the area and the location of the Southern Parkway, including the planned 3650 South Interchange, no other alternative would reasonably meet the purpose and need of the project ...” There is nothing elsewhere in the EA, nor in the entire AR, that explains what these “topographical features” are and why they would make any proposed road infeasible. From photos of the action area (shown in both the Final EA, appendix D (AR matrix item 45) and CSU Draft EA Comments, Attachment (subsequently added to the AR)), this is likely a reference to a ridge line that is set back from and generally parallel to the existing Southern Parkway. Even if you accept that ridge line as a reasonable obstacle, that still leaves many other potential locations and alignments for a proposed secondary access road to the proposed subdivision. Much of this area remains undeveloped so there should be great flexibility in considering access road alternatives. Even in areas with greater density of human developments, proposed alternative roads may consider underpasses, overpasses, or flyovers to achieve necessary access. There is no evidence in the AR that BLM or the applicants considered any such alternatives, nor that they took pause with the uncertainty about the actual future details of the proposed 3650 road extension and connection to

a potential future Southern Corridor Interchange. The AR indicates that this EA process was expedited despite the lack of these key details and the absence of any factual urgency. For example, note BLM Action Item 6 in the August 19, 2020 meeting minutes (item 26 in the AR Index): “The goal is to have the process completed by November 1.” Indeed, the AR hints that the “connecting” road extension and interchange may not be designed and constructed for another one to two decades.

After their review of the draft EA, appellants expressed specific and timely concerns in their EA comments about BLM’s apparent failure to consider alternatives and requested that BLM remedy this failure in the final EA. As noted in the subsequent BLM response to these comments in the AR, BLM simply reiterated its conclusory reasons about why no other action alternatives would serve the purpose and need, and decided that no changes were needed in the text of the final EA. BLM was arbitrary and capricious by failing to properly respond to their EA alternatives comments and by failing to provide any additional supporting information on alternatives that BLM might have considered in the AR.

In his October 21, 2020 EA comment letter, Appellant Spotts wrote: “I carefully reviewed this EA and I appreciate the work of those who prepared it. However, I have a number of serious concerns with the adequacy of this EA under both NEPA and the Endangered Species Act (ESA).

For example, I am concerned that BLM may be essentially abdicating its discretion to evaluate the NEPA required "reasonable range of alternatives" by limiting the EA to only one proposed action alternative that directly aligns where UDOT wants to put a Southern Parkway interchange per Washington County transportation plans. The EA only summarily provides this UDOT-aligned proposed action alternative and the obligatory no action alternative. This "take it or leave it" approach shows undue deference to UDOT, especially when federally listed species and an Area of Critical Environmental Concern (ACEC) would be adversely impacted. Under NEPA, alternatives are the "heart" of the process because they provide the agency and public with an objective comparison of the potential impacts of alternatives that would serve the purpose and need for action. Here, the purpose and need is to provide secondary access to a new subdivision development adjacent to the Southern Parkway. This EA is myopic because it does not explain why no other potential action alternatives were feasible. In the appendix, there is a graphic showing where 3650 South approaches the Southern Corridor, and then would turn south to cross it. This turn to the south creates a greater distance from the proposed subdivision development and thereby generates the purported need for a much longer BLM right-of-way

extending south to north parallel to the Southern Corridor to access the subdivision. The EA provides no explanation for this turn to the south, nor whether a turn to the north would instead be feasible so that a likely much shorter and less destructive secondary road (and BLM right-of-way) would be necessary.”

“A revised EA is necessary and should add one or more action alternatives that would provide for shorter and less damaging BLM right-of-way grants, or at least provide a detailed, objective explanation for why the UDOT proposed 3650 South alignment and future interchange could not be located further north.”

In its October 27, 2020 comments, Appellant CSU wrote: “1. Inadequate Alternatives Analysis

The Long Valley Road Extension is proposed as the only reasonable way to provide the necessary access to a new development: “No additional alternatives were considered. Due to the topographical features of the area and the location of the Southern Parkway, including the planned 3650 South Interchange, no other alternative would reasonably meet the purpose and need of the project; therefore, the only alternatives considered in this EA are the Proposed Action and the No Action Alternative.” [From EA section 2.4 Alternatives Considered but not Analyzed in Detail.] This is an inadequate explanation and, on the surface, seems false. An interchange could be developed near MP 13, completely negating the need for extending the Long Valley Road and for disturbing the Area of Critical Environmental Concern. See the attachment, Maps 1-3. The scale of the maps used in the EA are inadequate to provide the project’s context and to envision alternative solutions. See the attachment, Maps 1-3. The topographical features [in] the area are fairly consistent from MP 15 to MP10, allowing adequate space to develop an interchange anywhere along that section of the Southern Parkway. See the attachment, Photos 1-4. There are existing interchanges at MP 10 (Warner Valley/Washington Fields) and 15 (Washington Dam/Long Valley). Adding a new one as planned at MP 11 rather than at MP 13 is arbitrary, perhaps even unjustified considering the proximity of the MP10 interchange. Doing so while disturbing an ACEC seems unwarranted. The reasons presented for not considering any other alternatives appears to be invalid.”

“2. Shape of the ROW

The ROW is defined as routing from north of MP 13 to an interchange near MP11, a distance of about 2.5 miles, yet the ROW description indicates it is only 1 mile long. Also, the purpose of the unusual shape of the ROW is not described. These details should be explained. See Map 2 of the attachment.”

“3. Public Involvement Section 1.6 of the EA [page 4: 1.6 Scoping and Public Involvement and Issues] addresses public involvement, but mentions no such involvement. Public engagement could have helped identify alternatives. “

From Final EA page 17: “2.4 Alternatives Considered but not Analyzed in Detail

No additional alternatives were considered. Due to the topographical features of the area and the location of the Southern Parkway, including the planned 3650 South Interchange, no other alternative would reasonably meet the purpose and need of the project; therefore, the only alternatives considered in this EA are the Proposed Action and the No Action Alternative.”

BLM offered no defense to not considering alternatives, as evidenced in the draft EA and final EA alternatives “considered but not analyzed” text that was identical and there were no specific BLM responses to Appellants’ specific alternatives related comments, BLM chose not to defend its failure because it likely knew that it could not plausibly do so.

BLM’s response to these comments was: “TABLE E-2 COMMENT AND RESPONSE TABLE

Public Concerns by Resource Topic Respondent # Response

1 Alternatives - -

1.01 The EA did not comply with NEPA by not evaluating the required “reasonable range of alternatives.”

The BLM evaluated potential reasonable alternatives. It was determined that none were available that would result in fewer adverse environmental impacts and still meet the purpose and need of the Proposed Action. Currently, UDOT has no plans for the construction of any additional interchanges that would result in a shorter access road being constructed. Consideration of any such interchange would require an application from a qualified proponent who would then plan and pay for the interchange. The proponent would need to meet UDOT standards and the Southern Parkway Standards for spacing and obtain a permit from UDOT to construct the interchange (Personal conversation with Kim Manwell, Project Director, UDOT). The BLM is responding to a Washington City proposal that only considers the planned Interchange 11 (3650 South). An analysis of other potential, unplanned interchanges are outside the scope of this EA. The BLM has conducted the required hard look at potential alternatives. The analysis of the Proposed Action and No Action Alternatives is in full compliance with NEPA guidelines. No changes in the text are required. AR001037”

Note that this BLM response includes arguments that are not based on any information in the AR nor any revisions in the text of the final EA. Much of this general area is currently undeveloped, but as more development occurs there will be a need for additional interchanges to access the existing Southern Parkway. As previously noted, prior to the premature tortoise surveys and BLM “kick off” meeting, BLM officials could have worked with Brennan Development, Washington City, and UDOT to examine a range of potential alternatives to provide secondary access to the subdivision. Instead, BLM simply accepted and went with what the ROW applicants wanted.

The BLM response states “Currently, UDOT has no plans for the construction of any additional interchanges that would result in a shorter access road being constructed.” That

statement is not supported or documented in the AR. Even if true, UDOT is continually planning as rapid development occurs in this general region. There is no indication that BLM tried to work with UDOT on potential alternatives, nor to identify what other developments are planned in this general region that would likely necessitate ROW applications for access to the Southern Parkway. With a one-to-two-decade timeframe from now for designing and constructing the “connecting components” to this specific access road, other proximate ROW applications could be submitted at any time and well before the actual need for this access road. The BLM response states “An analysis of other potential, unplanned interchanges are outside the scope of this EA.” This conclusion is not explained or justified in the final EA or AR. If BLM had raised serious concerns about harming ESA listed species, their habitats, and BLM’s own ACEC, those concerns could have influenced UDOT’s flexible planning process for future interchanges. This might have generated a higher scale look at foreseeable developments and where future interchanges may be needed to serve those developments. However, in this case, since BLM did not stand up for the sensitive resources under its care, and ventured nothing, we don’t know what might have been gained. In its response, BLM basically admitted that UDOT’s current plans superseded any duty on BLM to explore or strive for potentially less damaging alternative access roads.

6.2. BLM violated NEPA and APA because the EA arbitrarily failed to consider and analyze many cumulative effects, including with respect to adverse effects on ESA listed species and a BLM ACEC

NEPA requires agencies to analyze and disclose cumulative impacts. 40 C.F.R. § 1508.25. The BLM must disclose to the public “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” *Id.* § 1508.27(b)(7). A

cumulative impact results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. *Id.* § 1508.7. Impacts can result from individually minor actions taking place over a period of time. *Id.*

In his October 21, 2020 EA comment letter, Appellant Spotts wrote: “As acknowledged in the EA, the proposed action alternative would harm Mojave desert tortoises and their occupied habitats. If approved at the currently proposed location, this new secondary road would contribute to the "death by a thousand cuts" which cumulatively explains why tortoise populations continue to decline in the FWS Upper Virgin River Recovery Unit and elsewhere within its range.”

“From a tortoise ecology standpoint, the EA does not address how this project's adverse tortoise impacts may affect the overall health of the tortoise population in this southern portion of the county (which may be connected to tortoises on BLM Arizona Strip and Arizona state lands further south). “

In its October 27, 2020 comments, Appellant CSU wrote: “5. Inadequate Analysis of Cumulative MDT Impacts. It is likely that Mojave desert tortoise occupy the ACEC. The EA fails to address the long-term cumulative effects on the species of continued habitat destruction. Their protected habitat in the Red Cliffs NCA has experienced fire and is under development pressure from proposals like the Northern Corridor Highway.

Proposed Zone 6 will be under additional developmental pressure. The cumulative effects of this habitat destruction should be taken into account in considering the impacts of the proposed road through the ACEC.”

From Final EA pages 30 to 32: “4.3 Cumulative Impact Analysis

This section looks at the potential cumulative effects of the proposed extension of Long Valley Road in relation to past, present, and future actions within the area.

4.3.1 Past and Present Actions

Past and present actions near the proposed project area include the following:

- Sand Hollow Reservoir and designation of Sand Hollow State Park
- Installation of the Sand Hollow Regional Pipeline
- Designation and recreational use of Sand Hollow OHV area

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- Construction of Sand Hollow Golf Course
- Construction of the Southern Parkway
- Development of subdivisions located west of the project area
- Development of roads, transmission lines, and other infrastructure
- Livestock grazing
- Recreation activities including OHV use

4.3.2 Reasonably Foreseeable Future Actions

Reasonably foreseeable future actions (RFFA) near the proposed project area include the following:

- Power transmission lines: As urban expansion occurs throughout Washington County, additional transmission lines will be needed. One such line, the Purgatory Flats line, is being constructed approximately 3 miles north of the project.
- Roads: The demand for new roads in this region is expected to increase over time, and usage of roads in the area is expected to increase over time. An increase in new roadways may lead to increased effects upon native plant and animal species due to noise and dust and will lead to increased habitat fragmentation in the area.
- Urban expansion: Washington County is expanding, and additional housing development is likely to occur in this region in the future similar to the Trails at Long Valley subdivision. With increased urban expansion will come increased demand for recreation in the area, such as hiking or OHV use, which potentially pose a threat to the plant and animal species in the area.
- Application has been submitted and is undergoing the NEPA process for a ROW grant for the Northern Corridor Project north of the City of St. George, Utah. The proposed project is located on non-federal and BLM-administered public lands across the Red Cliffs National Conservation Area and Reserve, which was established for the Mojave desert tortoise under the 1995 Washington County HCP.

4.3.3 Cumulative Effects

The past, present, and RFFAs identified in Sections 4.3.1 and 4.3.2 are expected to continue. Federally-listed species and the ACEC would continue to be afforded a measure of federal protection in accordance with applicable regulations as future actions are proposed and evaluated under NEPA and the Endangered Species Act (ESA). The cumulative impact of the Proposed Action on federally-listed species in conjunction with the past, present, and RFFAs would be minor. Impacts that would affect values associated with the 51.1 acres of the Warner Valley/Fort Pearce ACEC located within the project area would be cumulative to other actions that have occurred or may occur in the future inside of the ACEC and would be minor in scope. Anthropogenic impacts are expected to continue in the areas surrounding the project. Migratory birds and wildlife would be affected by the loss of habitat through the clearing of vegetation as well as noise associated with construction activities. Some nest abandonment by migratory birds would occur if these actions occurred during the nesting season. Habitat adjoining the project area would become more fragmented. Since most of the land in the analysis is administered by the BLM, actions that would alter the use of this land would be analyzed on a case-by-case basis under the provisions of NEPA. Significant adverse impacts to wildlife, BLM sensitive species, and vegetation would be reduced or mitigated accordingly. Considering the established wildlife, migratory bird, and vegetation protective measures, the cumulative impact of the Proposed Action on wildlife, BLM sensitive species, migratory birds, and vegetation when combined with past, present, and RFFAs would be minor in the long term.”

BLM’s cumulative effects analysis in the EA has two basic components. The first is a listing of some but not all of the past, current, and reasonably foreseeable specific projects, types of projects, and land uses that pose cumulative impacts on the resources carried forward for EA

analysis. This listing omits obvious additional causes of cumulative impacts on these same resources. These additional causes or stresses include prolonged drought from climate change, expansion of cheatgrass and other invasive plants that dangerously alter fire ecology, massive past and recent fires that destroyed thousands of acres of wildlife (including tortoise) habitat, illegal OHV route proliferation that degrades and fragments habitat, and a serious tortoise respiratory disease. For example, the cumulative impacts of road projects (like the Northern Corridor Highway, NEPA project DOI-BLM-UT-C000-2020-0001-RMP-EIS) on the tortoise population should be considered. BLM failed to take a “hard look” at these impacts.

The second component is largely a string of conclusory sentences that are not justified or explained by any supporting information in the AR. BLM summarily concludes that this new access road would pose “minor” impacts in terms of its cumulative effects analysis, including with respect to the ESA listed species and the ACEC. An incomplete listing of stresses and string of conclusory sentences do not constitute an adequate NEPA cumulative effects analysis. On the Mojave desert tortoise issue alone, this analysis ignores the reality that tortoise populations throughout the county are rapidly declining. Much of these declines have and continue to occur on BLM managed lands. BLM continually deflects this scientific reality in its NEPA analyses by narrowly focusing on each project and speculating that each project would have minor tortoise impacts. But all of these past, present, and reasonably foreseeable projects in tortoise habitat add up. They cumulatively destroy, degrade, fragment, and isolate tortoise habitats. That is why tortoises continue to rapidly decline despite their ESA listing in 1990. BLM and FWS will not admit their overall failure in stopping this rapid decline nor their ongoing pattern of approving projects that have cumulatively caused that rapid decline. The inadequate cumulative effects analysis for tortoises in this EA is simply another sad example of this ongoing pattern.

BLM's own contemporaneous Northern Corridor Highway Draft and Final Environmental Impact Statements confirm the seriousness of many of these EA-omitted threats as well as the dramatic decline of the tortoise populations in the supposedly protected Red Cliffs Desert Reserve (RCDR) and BLM Red Cliffs National Conservation Area (RCNCA) and throughout the county in the FWS Upper Virgin River Recovery Unit (UVRRU).

In contrast to some other areas in the county, this proposed project area and vicinity have not been generally surveyed for the presence of tortoises. The tortoise survey referenced in the EA and AR was very narrow and limited to the area of potential disturbance for the proposed access road. The survey results do not provide any information on the presence or density of tortoises in the immediately surrounding area, nor what connectivity may exist with any proximate or adjacent tortoise populations. This context information is important from a cumulative effects standpoint. It would help to explain how the loss of the project's tortoises and tortoise habitat would potentially affect connections with and the future viability of these proximate or adjacent tortoise populations.

The scientific disciplines of conservation biology and landscape ecology have strongly demonstrated the importance of protecting linkages between and among species' habitats so that species can move to adapt to changing environmental conditions (like climate change) and interbreed to maintain genetic diversity and future viability. However, BLM arbitrarily ignores these scientific disciplines in the EA because of the EA's artificially narrow spatial scope and failure to analyze broader connections that go to potential indirect and cumulative effects on tortoises and other species.

In sum, an incomplete listing combined with a string of conclusory statements (without support in the EA analysis or AR) do not constitute a legally adequate cumulative effects analysis under NEPA, the relevant CEQ regulations, and the appropriate case law.

6.3. BLM violated NEPA and APA by arbitrarily failing to consider and analyze

commercial livestock grazing and whether reducing it could mitigate project impacts

From his October 21, 2020 EA letter, Appellant Spotts wrote: “The EA does not indicate whether any livestock grazing occurs in or near this proposed action area. Livestock grazing is a known threat to the conservation and recovery of tortoises. For the NCH, BLM is proposing to phase out harmful livestock grazing in a new Zone 6. Similarly, if livestock grazing occurs in the general area covered in this EA, then the analysis should be revised to evaluate whether any phase out or reduction of this livestock grazing could be done to mitigate the adverse impacts on tortoises.”

BLM’s response to these grazing related comments was: “5 Livestock Grazing - - AR001047

*Long Valley Road Extension Right-of-Way Draft Environmental Assessment
Transcon Environmental, Inc. page E-13*

Public Concerns by Resource Topic Respondent # Response

5.01 The EA does not indicate whether any livestock grazing occurs in or near the proposed project area. Livestock grazing is a known threat to the conservation and recovery of tortoises. If livestock grazing occurs in the general area covered by the EA, then the analysis should be revised to evaluate whether any phase out or reduction of the grazing could be done to mitigate the adverse impacts on tortoises.

The ID Team Checklist and EA documents that livestock grazing occurs within and near the project area. Grazing is not analyzed further as there would not be any changes to existing authorized grazing practices, such as reduction in Animal Unit Months or loss of livestock-related developments. Additionally, the BLM has completed Section 7 consultation with the USFWS regarding the impacts from the Proposed Action to the ESA-listed species; therefore, no additional impact analysis is required. No change in the text is required.”

This BLM response is inconsistent with several basic facts. First, BLM itself has used the retirement of livestock grazing permits many times as mitigation for other projects that harm or destroy tortoise habitat. Such permit retirement has successfully occurred in much of Clark County Nevada (save for the chronic Cliven Bundy trespass grazing) and in the RCDR established under the county’s 1995 Habitat Conservation Plan (HCP). More recently, as part of the Zone 6 mitigation for BLM’s approval of the Northern Corridor Highway through the RCDR and RCNCA, BLM committed to retiring Zone 6 grazing permits on BLM lands. There is a longstanding precedent and many examples of BLM considering and using grazing permit retirement as tortoise damage mitigation. Thus, Appellant Spotts’ request to evaluate similar

mitigation in this final EA analysis was reasonable, and BLM was arbitrary and capacious under the APA by failing to do so.

Second, one of the described mitigation measures in the final EA is a proposed 10-acre site where livestock grazing would be excluded and the results monitored. Monitoring is not mitigation *per se*, but rather a method to determine whether mitigation objectives were achieved. In this case, 10 acres would only be a small fraction of a tortoise's home range, so this small enclosure would have nominal mitigation benefit. But this mitigation measure is an admission by BLM that livestock grazing in this area poses an ongoing threat to tortoise conservation, as acknowledged in the FWS tortoise recovery plan. Given this admission, BLM was obligated to evaluate broader potential mitigation benefits by removing or limiting livestock grazing in the directly affected, proximate, and adjacent tortoise habitats. BLM arbitrarily failed to do so.

Third, the January 22, 2020 email from Hilary Whitcomb of the FWS (AR Index item 20) raises the specific issue of whether removal of livestock grazing should be considered in the EA analysis for tortoise and bear-claw poppy mitigation. Ms. Whitcomb properly raised this issue, asked if it was "being discussed?" and apparently received no response. BLM arbitrarily and capriciously ignored Ms. Whitcomb's issue and question, and again did so by rejecting the same issue when raised by Appellant Spotts.

6.4. BLM violated NEPA and APA because the EA arbitrarily failed to consider and analyze whether or how culverts under highways may reduce adverse impacts on wildlife species, especially the ESA listed threatened Mojave desert tortoises

New highways and roads cause habitat fragmentation and tend to isolate tortoise populations. Road kill causes direct tortoise mortality. Even where tortoise proof fencing is installed and maintained, the fragmentation and isolation caused by highways and roads causes

significant indirect and cumulative adverse effects on tortoise populations. Smaller populations are at greater risk of extirpation through human caused or natural disturbance events (such as cheatgrass encroachment and fire habitat destruction) and through inbreeding depression (loss of genetic viability). As such, the harmful impacts from new highways and roads go well beyond their actual construction footprint. Indeed, recent scientific studies demonstrate that these impacts can occur substantial distances away from the actual construction footprint. Wherever possible, culverts can and should be used to help facilitate movement of tortoises that would otherwise be blocked. Culverts are a key mitigation measure that should be fully considered and analyzed in road or highway related NEPA documents.

From his October 21, 2020 EA letter, Appellant Spotts wrote: “The EA says that there would be eight culvert crossings associated with the combination of the new secondary road and Southern Corridor interchange. But there is no discussion of whether or how these culverts may be designed and constructed to provide for any tortoise movements.”

BLM’s response was: “As stated in Section 2.2, on page 6 of the EA, the eight culverts that would go underneath the proposed ROW would be extensions of existing culverts that currently go underneath the Southern Parkway. These extensions would be the same specifications as the current culverts. The BO states that the BLM and the USFWS will work with engineers to come up with a design that will be ideal for the desert tortoise. Additionally, the BO states that “The existing wildlife culverts under the Southern Parkway will be extended through the Project area. The BLM and our office (USFWS) will provide the necessary direction for culvert size and construction specifications. No changes in the text are required.”

As previously noted, BLM and FWS do not have tortoise survey data for the area surrounding this proposed road location. Appellant Spotts’ EA comment on culverts was in the context of asking how culverts would “provide for any tortoise movements.” BLM’s response talked about extending existing culverts with the same dimensions and using a design to be determined later. This is confusing because if the new culverts are extensions of the existing ones with the same dimensions, then it is unclear what remains to be designed later. This confusion is not remedied in the EA or AR. But the absence of any mandate to survey the tortoises in the surrounding area makes it difficult to know what appropriate tortoise data may be used for this

future culvert design process. Proper culvert design should use good data on the presence, density, and movement patterns of tortoises in the general area. BLM does not have such data, nor is BLM committed to obtaining it. The purpose of the current and new culverts would be to maximize opportunities for tortoises in the area, that would otherwise be blocked, to move as necessary for their breeding, survival, or to establish new home ranges. BLM was arbitrary by not taking the important culvert mitigation issue seriously in its final EA.

6.5. BLM violated NEPA and APA because the EA arbitrarily failed to consider and analyze potential fire risks and impacts, and some measures to mitigate them

From his October 21, 2020 EA letter, Appellant Spotts wrote: “Cheatgrass fires pose a huge ongoing threat to tortoise habitats, and many human-caused fires begin along or adjacent to roads. The EA does not address this specific and significant potential threat. There is no mention of potential mowing or herbicide spraying along the right-of-way to reduce this threat.”

BLM’s response was: “4 Noxious Weeds and Invasive Species

4.01 The EA does not address the potential threat of cheatgrass fires adjacent to roads.

Construction of the proposed road would not increase the potential threat of cheatgrass fires in the area. No increase in cheatgrass would be anticipated, and fire potential would not increase beyond that currently existing adjacent to the Southern Parkway. Applicant-committed mitigation and conservation measures are identified in the Section 2.2.1.6 of the EA and are addressed in the BO to ensure that cheatgrass and cheatgrass fire potential does not increase due to project development. No change in the text is required.”

Cheatgrass and fire are perhaps the greatest combined threat to Mojave desert and other natural ecological communities in the West. Cheatgrass fires have already destroyed or degraded millions of acres of public lands. These fires are generally increasing in scope and are a major contributing cause to the decline of tortoise, sage grouse, and other wildlife species.

There is clear scientific evidence that the risk of human caused ignitions is much greater along roads and highways. For example, two devastating fires in tortoise habitat in this county occurred last year – both connected to roads. In one case, teenagers shot fireworks off a road. In the other case, a blown tire on a freeway caused the fire. These fire related risks and serious

examples linked to roads are described in BLM's contemporaneous Northern Corridor Highway Draft and Final Environmental Impact Statements. Roads also change drainage patterns in a manner that tends to help the establishment and spread of cheatgrass. In many places, cheatgrass invasion has been linked to the ground disturbance from construction of new roads. People may throw lit cigarettes out of vehicle windows, trailer chains may spark on the roadway, blown tire fragments may careen into roadside vegetation, and people parking off paved surfaces may cause fires ignited by their vehicles' catalytic converters.

As such, BLM's contention that this proposed new road poses no increased cheatgrass or fire risk is patently ridiculous. And BLM's failure to respond, in the EA text or AR, to Appellant Spotts' request to evaluate mowing or spraying herbicides in the right-of-way as fire risk mitigation was arbitrary and capricious under the APA.

6.6. BLM violated NEPA and APA by arbitrarily failing to carry forward, consider, or analyze a proposal to acquire 18 acres of poppy habitat as a mitigation measure

One of the EA mitigation measures is a donation of \$50,000 (EA page 11). There are internal communications (AR Index Item 24, July 14, 2020 "Mitigation Measures Discussion" BLM meeting) that explain an 18-acre site on SITLA land could be acquired and protected as mitigation for the loss of bear-claw poppy habitat. Apparently, this site was going to be evaluated by a BLM employee and The Nature Conservancy may be asked to assist with this possible mitigation acquisition. However, once this stage is set on the 18-acre parcel, the AR goes silent on what subsequently may or may not have occurred. The cost of this 18-acre parcel would be about \$50,000, so that mitigation donation may indeed be used to acquire and protect that parcel. But there are no details about how that donation would be used, whether it could only be used to acquire the 18-acre parcel, and who would be responsible for the long-term

monitoring and protection of that parcel. There is also nothing about what happens if this acquisition does not occur, or the parcel is acquired but not properly monitored and protected in the future.

The new road would cause direct, indirect, and cumulative adverse impacts on dwarf bear-claw poppies and their “seed banking” habitats. But the final EA text and other AR documents provide no clarity on how this possible and ostensibly permanent poppy related mitigation would be achieved. Appellants discovered this issue in reviewing the AR because it was not otherwise apparent. Appellants believe that BLM was arbitrary by not addressing this potential mitigation and related issues in the draft EA so that the public would have been aware of it and had the opportunity to comment.

6.7. BLM violated NEPA and APA because the EA arbitrarily failed to analyze how a proposed 10-acre exclusion would provide adequate mitigation

From his October 21, 2020 EA letter, Appellant Spotts wrote: “The EA describes using fencing to establish a ten-acre habitat monitoring area. It is not clear how this would effectively mitigate for adverse impacts. Ten acres is too small of an area for even a large portion of an average tortoise home range. The EA should be revised to explain what this ten-acre area is intended to achieve, where it would be located, and whether its proposed size would be sufficient.”

BLM’s response was: “# Public Concerns by Resource Topic Respondent # Response
3.04 The EA describes using fencing to establish a 10-acre habitat monitoring area. It is not clear how this would effectively mitigate adverse impacts. Ten acres is too small of an area for even a large portion of an average tortoise home range. What is the 10-acre site intended to achieve and where would it be located? 1 As part of Section 7 consultation with the USFWS, the 10-acre site would be enhanced and restored by the BLM as part of the tortoise mitigation. A fence would protect the site in order to establish a long-term habitat monitoring plot. The BLM and the USFWS worked with researchers to identify a 10-acre plot that was “at-risk” but would protect both tortoise and dwarf bear poppy from grazing impacts and OHV/mountain bike use. Specifically, the BO states “The BLM will permanently fence 10 acres of modeled suitable desert tortoise habitat to enhance and restore the habitat. The BLM will also establish long-term habitat monitoring plots within the fenced area. This conservation measure will also benefit the dwarf bear-poppy, as it is co-located in occupied habitat. Val Springs was selected as the fencing location based on desert tortoise habitat features, degraded habitat conditions from unauthorized

recreation, and aerial (drone) imagery that identified 275 dwarf bear-poppy plants within the monitoring area. No change in the text is required.”

Appellant Spotts acknowledges that this BLM response addresses some of the points in his comments. However, it is incomplete because it failed to respond to perhaps the most important point: “... whether its proposed size would be sufficient.” As previously described, 10 acres would only be a small portion of a tortoise’s normal home range. So protecting 10 acres alone would not be sufficient to ensure the survival of even one tortoise. Protecting 10 acres of poppy habitat could have some benefits, but if future livestock grazing, mountain biking, and OHV use continues to degrade and fragment the surrounding habitat, then a 10-acre “protected island” may be insufficient for the long-term viability of this poppy population. Despite Appellant Spotts’ request, the final EA text and the AR documents do not explain how the 10-acre limit was developed. As such, BLM was arbitrary by picking a 10-acre limit for this protective enclosure that may not be effective in terms of achieving permanent mitigation. BLM had an obligation to explain how this 10-acre mitigation site limit was arrived at, and whether it would provide sufficient mitigation. BLM arbitrarily failed to do so.

6.8. BLM violated NEPA, APA and FLPMA by arbitrarily failing to consider and analyze degradation of its ACEC in the proper RMP conformance context and by failing to follow correct procedures for proposing to amend RMP ACEC-related decisions

Under FLPMA (43 USC 1701 et seq), BLM is required to identify, propose, and designate appropriate ACECs when developing or revising its Resource Management Plans (RMPs). ACECs are defined in FLPMA (43 USC 1702(a)), “The term “areas of critical environmental concern” means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and

wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.”

Note that this definition includes the admonition to BLM to “prevent irreparable damage” to the resources, values, or processes that the ACEC designation was intended to protect. In this case, BLM’s final EA admits that the proposed road in the ACEC would cause permanent and therefore “irreparable damage” to some of the resources and values that this specific ACEC was designated to protect.

Once ACECs are designated, it is clearly the intent of FLPMA for BLM to protect the relevant and important natural and cultural resources in those ACECs that were intended for such protection. Among other things, BLM should strive to pursue less harmful alternatives when a proposed project may harm those ACEC resources. This is common sense and consistent with the basic FLPMA purpose of designating and protecting ACECs.

In this case, as previously described, BLM did not pursue any potential action alternatives that could have avoided adverse impacts in its ACEC. According to the AR, BLM did not raise concerns with Brennan Development, Washington City, or UDOT about potential harm to the ACEC resources. BLM chose to abdicate any duty to defend its ACEC and instead allowed the applicants from the start to do what they wanted. This was a fundamental betrayal of BLM’s FLPMA duty to strive to protect its ACECs, and to work for alternatives that would avoid harming them. And this BLM betrayal was not only a substantive violation under FLPMA, but also procedural violations of NEPA and the APA because of its previously described failure to identify and analyze a reasonable range of alternatives that might have avoided harmful ACEC impacts.

In his October 21, 2020 EA letter, Appellant Spotts wrote: “BLM through this EA

appears to accede its discretion to UDOT fiat, even when this may cause otherwise unnecessary harm to Mojave desert tortoises, dwarf bear-claw poppies, and the integrity of BLM's own ACEC.”

In its October 27, 2020 comments, Appellant CSU wrote: “4. Unjustified Impacts to the ACEC. There will clearly be significant impacts to the ACEC. Per BLM guidance, “Areas of Critical Environmental Concern or ACEC designations highlight areas where special management attention is needed to protect important historical, cultural, and scenic values, or fish and wildlife or other natural resources.” “ACECs are areas within existing public lands that require special management to protect important and relevant values.” “The area contains many ESA-listed species and cultural resources (see attachment photo 5). Disturbance of this area appears arbitrary, contrary to BLM’s own guidance, and should be avoided.”

BLM’s response was: “Conformance with the BLM’s land use plan as it applies to the Proposed Action is outlined in Section 1.5 of the EA. The impacts to the ACEC that would result from project development are analyzed in Section 4.2.1.6 of the EA. The BLM has completed Section 7 consultation with the USFWS regarding the impacts to the ESA-listed species. No cultural resources/historic properties are located within the area of potential effects were identified by the BLM archeologist as noted in the ID Team Checklist in Appendix A of the EA. No change in the text is required.”

In this BLM response, note the contention that plan conformance is “outlined in Section 1.5 of the EA.” In reviewing Section 1.5, it is simply a listing of relevant RMP decisions including those relating to this specific ACEC. There is no explanation to reconcile these decisions with the proposed action.

These referenced BLM RMP decisions include (from Final EA, page 3):

- “b) The Red Bluff and Warner Ridge/Fort Pearce habitat areas will be designated and managed as Areas of Critical Environmental Concern (ACECs). Specific prescriptions that will be applied to these areas are described in the section of this plan on ACECs under Special Emphasis Areas
- c) To reduce conflicts and additional disturbance, habitat areas will be designated as rights-of-way avoidance areas and closed to fuelwood and mineral materials sales. Plants will be protected by restricting mountain bike use and off-road vehicle travel to designated roads and trails. (BLM 1999, 2.23)”

And from Final EA, page 4: “Finally, the RMP’s management goals and decisions related to Warner Ridge/Fort Pearce Area of Critical Environmental Concern (ACEC) are as follows: AC-03: The Warner Ridge/Fort Pearce ACEC encompasses 4,281 acres. This area contains the endangered dwarf bear-claw poppy, the threatened Siler pincushion cactus, important riparian values along the Fort Pearce Wash, historic sites, and highly erodible soils, all of which are at risk from off-road travel, road proliferation, urban growth, and human encroachment. The area also contains essential habitat for waterfowl, the gila monster, spotted bat, raptors, and other nongame species which have suffered from

habitat loss caused by urbanization and development in the St. George area. The following prescriptions will be applied to protect and improve these values:

- b) The area will be closed to fuelwood and mineral materials sales and designated a right-of-way avoidance area. BLM will work with sponsors of the Southern Transportation Corridor to define an environmentally preferred route through the area that will minimize impacts to the resources being protected
- d) Motorized travel will be limited to designated roads and trails. Fencing, barricading, and signing will be employed as necessary to eliminate unauthorized vehicle access and impacts to protected resources (BLM 1999, 2.62–2.63)”

Note that this RMP decision specifically designates this ACEC as a “right-of-way avoidance area” and references “road proliferation” as one of the specific risks to the ACEC.

In its response, BLM then refers to the Section 4.2.1.6 EA analysis of effects. This analysis confirms that the permanent damage to be avoided in ACECs would actually occur.

It states in pertinent part: “4.2.1.6 Would Project Implementation (Construction and Maintenance Activities) Result in the Loss of Warner Ridge/Fort Pearce ACEC Values Located Within the Project Area? The project area is located within approximately 51.1 acres of the northern end of the Warner Ridge/Fort Pearce ACEC (approximately 1 percent of the 4,286-acre ACEC). Project development would remove ACEC values that overlap the proposed ROW on a permanent basis. As described above, construction activities would adversely affect dwarf bear-poppy and desert tortoise habitat. In addition to loss of habitat, construction activities could produce dust, affecting the pollination success of the endangered dwarf bear-poppy through loss of seed bank”.

BLM therefore not only fails to explain conformance with the ACEC related decisions in Section 1.5 but also then goes on to confirm non-conformance with those decisions by admitting in Section 4.2.1.6 that “Project development would remove ACEC values that overlap the proposed ROW on a permanent basis.” On its face, this is a clear violation of FLPMA and BLM’s planning regulations. What is the point of designating ACECs if BLM is so willing to approve permanent damage in them?

In light of the current SGFO RMP ACEC related decisions, BLM should, at a minimum, in accepting this ROW application, have noticed this EA process in the Federal Register as a proposed RMP amendment to weaken the existing ACEC decisions so the project could then be approved. This is what is supposed to occur, and it did not.

For example, on the proposed Lake Powell Pipeline, because one alignment would go through the BLM Arizona Strip Field Office's (ASFO) existing Kanab Creek ACEC, BLM properly noticed a proposed RMP amendment relating to this ACEC as part of that NEPA process. In this case, however, the BLM SGFO handled this EA process in a very low-profile manner, with no public scoping, and mere posting on BLM's ePlanning web site. BLM failed to provide the required Federal Register notice of a proposed RMP amendment that would enable them to consider this ROW through the ACEC during this NEPA process.

7. CONCLUSION

Based on the foregoing, Appellants respectfully request that the Board remand and set-aside BLM's EA, DR, and FONSI for the Long Valley Road Extension Right-of-Way Project (DOI-BLM-UT-C030-2020-0004-EA) until the legal violations described herein are cured and BLM has achieved full compliance with NEPA, FLPMA, and the APA.

Respectfully submitted this 22nd of February 2021.

/s/ Thomas J. Butine
Signed by Thomas J. Butine
for Conserve Southwest Utah

/s/ Richard Spotts
Signed by Richard Spotts

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2021, I sent this STATEMENT OF REASONS via email as agreed to the Interior Board of Land Appeals, Respondent BLM and its SOL attorney, Washington City, and with copies sent to Appellants as follows:

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END OF STATEMENT OF REASONS