

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT
PALM SPRINGS-SOUTH COAST FIELD OFFICE**

**DECISION RECORD
ENVIRONMENTAL ASSESSMENT CA-660-06-04**

NAME of PROJECT: Art Smith Trail Reroute / Art Smith Trail Fence / Hopalong Cassidy Trail Construction / Northern Schey Trail Segment Closure

DECISION: It is my decision to approve the proposed action as described in Environmental Assessment (EA) number CA-660-06-04. Mitigation measures to limit disturbances to wildlife habitat, minimize soil erosion, protect cultural resources, reduce impacts to visual resources, minimize establishment of invasive weeds, ensure effectiveness of new fences, and protect desert tortoises are incorporated as stipulations. Compliance with these stipulations and all other measures identified in the EA to protect resource values is hereby required. A copy of this Decision Record and attendant conditions of approval (stipulations) shall be in the possession of the on-site operator (party or parties constructing trails and installing fences) during all undertakings approved herein.

Specifically, the following actions are approved on BLM public lands; locations of the affected BLM public lands are identified:

1. Construction of a segment of the Art Smith Trail reroute from the Art Smith Trailhead to the boundary with nonfederal lands: NE1/4 NE1/4 Section 12, Township 6 South, Range 5 East, San Bernardino Base and Meridian.
2. Installation of a fence in Dead Indian Canyon: NW1/4 NE1/4 Section 12, Township 6 South, Range 5 East, San Bernardino Base and Meridian.
3. Installation of a portion of a fence in Carrizo Canyon: SE1/4 NE1/4 Section 12, Township 6 South, Range 5 East, San Bernardino Base and Meridian.
4. Seasonal closure of trail segments in Dead Indian Canyon from January 1 through September 30 that are located west of the fence described above (#2), except for the Art Smith Trail where it ascends from the floor of Dead Indian Canyon: N1/2 N1/2 Section 12, Township 6 South, Range 5 East, San Bernardino Base and Meridian.
5. Year-round closure of a segment of the Art Smith Trail where it ascends from the floor of Dead Indian Canyon to the boundary with nonfederal lands, and year-round closure of certain trails that proceed in a westerly direction from the Art Smith Trail and are located north of the canyon floor: N1/2 NW1/4 Section 12, Township 6 South, Range 5 East, San Bernardino Base and Meridian.
6. Year-round closure of a segment of the northern Schey Trail from the Art Smith Trail to the boundary with State lands in Magnesia Spring Ecological Reserve: N1/2 N1/2 Section 2, Township 6 South, Range 5 East, San Bernardino Base and Meridian.

7. Construction of segments of the Hopalong Cassidy Trail: W1/2 NW1/4 NW1/4 NW1/4 Section 36, Township 5 South, Range 5 East; W1/2 SW1/4 SW1/4 Section 30, Township 5 South, Range 6 East; and SW1/4 NW1/4 SW1/4 Section 30, Township 5 South, Range 6 East; San Bernardino Base and Meridian.

RATIONALE: The approved action is in conformance with applicable land use plans and will not cause unnecessary or undue degradation.

FINDING OF NO SIGNIFICANT IMPACT: Environmental impacts associated with the proposed action have been assessed. Based on the analysis provided in Environmental Assessment CA-660-06-04, I conclude the approved action is not a major federal action and will result in no significant impacts to the environment under the criteria in Title 40 Code of Federal Regulations §§ 1508.18 and 1508.27. Preparation of an Environmental Impact Statement to further analyze possible impacts is not required pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969.

APPEALS: This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at Title 43 of the Code of Federal Regulations (CFR), Part 4, and the information provided in Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Palm Springs-South Coast Field Office, Bureau of Land Management, U.S. Department of the Interior, 690 West Garnet Avenue, P.O. Box 581260, North Palm Springs, California 92258, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, pursuant to Title 43 of the Code of Federal Regulations, Part 4, Subpart E, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

APPROVED BY: /s/ Gail Acheson
Field Manager
Palm Springs-South Coast Field Office

 November 29, 2005
Date

STIPULATIONS

STIPULATIONS TO LIMIT DISTURBANCES TO WILDLIFE HABITAT WHEN CONSTRUCTING TRAILS AND INSTALLING FENCES

1. The alignments for new trails and fences shall be refined in the field to the greatest extent practicable to limit disturbances to barrel cactus, ocotillo, mesquite, acacia, palo verde, and other native trees and plants providing important wildlife habitat.
2. In order to comply with the Federal Migratory Treaty Bird Act, any vegetation or tree removal between February 1 and August 15 shall require a qualified biologist to conduct as least one nesting bird survey (more if deemed necessary by the biologist) ending no less than three days prior to removal. In the event that active nests are found, exclusionary fencing shall be placed 200 feet around each nest.

STIPULATIONS ADDRESSING SOILS AND EROSION, AND SEISMIC/SLOPE STABILITY WHEN CONSTRUCTING TRAILS

1. The trail alignment shall avoid placement of trail users immediately below areas of unstable slope or perched rock to the greatest extent practicable.
2. Trail placement and design shall limit gradient or steepness to the greatest extent practicable.
3. Trails shall include periodic stormwater runoff diversions (water bars) to minimize trail erosion from local flooding events.

STIPULATIONS ADDRESSING DISCOVERY OF CULTURAL RESOURCES WHEN CONSTRUCTING TRAILS

1. If cultural resources are uncovered during trail construction, construction activities in the immediate area shall be halted and a qualified archaeologist shall survey the area to determine their appropriate disposition.

STIPULATIONS TO REDUCE IMPACTS TO VISUAL RESOURCES WHEN CONSTRUCTING NEW TRAILS AND INSTALLING FENCES

1. Where possible, construction of trails in continuous straight lines shall be avoided. Irregular lines that repeat lines of the characteristic landscape shall be incorporated into trail design to the extent practicable.
2. Vegetation and landforms shall be used where possible to screen views of new trails.
3. When constructing side-hill bench cuts, surface disturbances downhill of the trail's tread shall be minimized. Cuts shall be shaped to appear as natural forms. Freshly broken rock faces shall be treated with an asphalt emulsion or paint to reduce color contrasts, if necessary.
4. Non-reflective fence materials shall be used if not cost prohibitive.

STIPULATIONS TO MINIMIZE THE ESTABLISHMENT OF INVASIVE WEEDS ON CLOSED TRAILS

1. Ripping or similar disturbances to trails in conjunction with their decommission and removal shall be limited to trail segments within view of open trails for monitoring purposes.
2. Placement of rocks and dead vegetation on closed trails beyond view of open trails is allowed to discourage use of the closed trails.

STIPULATIONS TO ENSURE EFFECTIVENESS OF NEW FENCES

1. The City of Palm Desert, BLM, and/or CDFG shall provide for the periodic (at least monthly) inspection of project-related fencing in Dead Indian and Carrizo Canyons.
2. Cuts or breaks in fencing shall be repaired within 30 days.

STIPULATIONS FOR THE PROTECTION OF DESERT TORTOISES DURING CONSTRUCTION OF NEW TRAILS AND INSTALLATION OF FENCES IN DEAD INDIAN AND CARRIZO CANYONS (the following stipulations are not applicable to activities occurring outside Dead Indian and Carrizo Canyons)

1. A field contact representative (FCR) who will be responsible for overseeing compliance with protective stipulations for the desert tortoise and for coordination on compliance with the BLM shall be designated. The FCR must be on-site during construction activities. The FCR shall have the authority to halt all activities that are in violation of the stipulations. The FCR shall have a copy of all stipulations when work is being conducted on the site. The FCR may be a crew chief or field supervisor, a project manager, any employee of the project proponent, or a contracted biologist.
2. All employees of the project proponent who work on-site shall participate in a tortoise education program prior to initiation of field activities. The BLM has developed an appropriate desert tortoise education program for this purpose (see pages 6 and 7 of this Decision Record).
3. Only biologists authorized by the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the BLM shall handle desert tortoises. The BLM or project proponent shall submit the name(s) of the proposed authorized biologist(s) to the USFWS for review and approval at least 15 days prior to the onset of activities. No activities shall begin until an authorized biologist is approved. Authorization for handling shall be granted under the auspices of the Section 7 consultation.
4. The area of disturbance shall be confined to the smallest practical area, considering topography, placement of facilities, location of burrows, public health and safety, and other limiting factors. Work area boundaries shall be delineated with flagging or other marking to minimize surface disturbance associated with vehicle straying.
5. Where practical, no access road shall be bladed to the project site. Cross-country access shall be the standard for temporary activities. A qualified biologist shall select and flag the access route, whether cross-country or bladed, to avoid burrows and to minimize disturbance to vegetation.

6. Workers shall inspect for tortoises under a vehicle prior to moving it. If a tortoise is present, the worker shall carefully move the vehicle only when necessary and when the tortoise would not be injured by moving the vehicle, or shall wait for the tortoise to move out from under the vehicle.
7. Desert tortoises, if encountered, shall be approached no closer than five (5) yards.
8. Upon locating a dead or injured tortoise, the FCR is to notify the BLM Palm Springs-South Coast Field Office. The information provided by the FCR must include the date and time of the finding or incident (if known), location of the carcass or injured animal, cause of death (if known), and other pertinent information.
9. No dogs shall be allowed at a work site.
10. All trash and food items shall be promptly contained within closed, raven-proof containers. All trash and food items are to be removed from the project site on a daily basis.

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DESERT TORTOISE EDUCATION PROGRAM

In accordance with *Biological Opinion for Small Projects Affecting Desert Tortoise Habitat in Imperial, Inyo, Kern, Los Angeles, Riverside, and San Bernardino Counties, California (1-8-97-F-17)* issued by the U.S. Fish and Wildlife Service (Service) to the California Desert District, Bureau of Land Management (BLM) on August 22, 1997, all employees of the project proponent who work on-site must participate in a tortoise education program prior to initiation of field activities. The information contained herein constitutes such an education program.

The desert tortoise (*Gopherus agassizii*) is a large, herbivorous reptile found in portions of the California, Arizona, Nevada, and Utah deserts. It also occurs in Sonora and Sinaloa, Mexico. In California, the desert tortoise occurs primarily within the creosote, shadscale, and Joshua tree series of Mojave desertscrub, and the lower Colorado River Valley subdivision of Sonoran desertscrub. Optimal habitat has been characterized as creosote bush scrub in which precipitation ranges from two to eight inches, diversity of perennial plants is relatively high, and production of ephemerals is high. Soils must be friable enough for the digging of burrows, but firm enough so that burrows do not collapse. In California, desert tortoises are typically associated with gravelly flats or sandy soils with some clay, but are occasionally found in windblown sand or in rocky terrain. Desert tortoises occur in the California desert from below sea level to an elevation of 7,300 feet, but the most favorable habitat occurs at elevations of approximately 1,000 to 3,000 feet.

Desert tortoises are most active in California during the spring and early summer when annual plants are most common. Additional activity occurs during warmer fall months and after summer rain storms. Desert tortoises spend the remainder of the year in burrows, escaping the extreme conditions of the desert.

On August 4, 1989, the U.S. Fish and Wildlife Service published an emergency rule listing the Mojave population of the desert tortoise as endangered. In its final rule, dated April 2, 1990, the Service determined the Mojave population of the desert tortoise to be threatened. The Service designated critical habitat for the desert tortoise in portions of California, Nevada, Arizona, and Utah in a final rule, published February 8, 1994.

Critical habitat is designated by the Service to identify the key biological and physical needs of the species and key areas for recovery, and focuses conservation actions on those areas. Critical habitat is composed of specific geographic areas that contain the biological and physical attributes essential to the species' conservation within those areas, such as space, food, water, nutrition, cover, shelter, reproductive sites, and special habitats. These features are called the constituent elements of critical habitat. The specific constituent elements of desert tortoise critical habitat are: sufficient space to support viable populations within each of the six recovery units and to provide for movement, dispersal, and gene flow; sufficient quality and quantity of forage species and the proper soil conditions to provide for the growth of these species; suitable substrates for burrowing, nesting, and overwintering; burrows, caliche caves, and other shelter sites; sufficient vegetation for shelter from temperature extremes and predators; and habitat protected from disturbance and human-caused mortality.

Determination of the Mojave population of the desert tortoise as threatened and designation of critical habitat affords protection to the population and its habitat under the federal Endangered Species Act of 1973, as amended. A programmatic biological opinion—*Biological Opinion for Small Projects Affecting Desert Tortoise Habitat in Imperial, Inyo, Kern, Los Angeles, Riverside, and San Bernardino Counties, California*—was issued to the Bureau of Land Management by the Service on August 22, 1997. For

certain activities that result in a small amount of surface disturbance to desert tortoise habitat (less than two acres), the Service determined such activities are not likely to jeopardize the continued existence of the desert tortoise or result in destruction or adverse modification of critical habitat upon implementation of applicable mitigation measures identified in the biological opinion.

Any “take” of desert tortoises without special exemption is prohibited by Section 9 of the Endangered Species Act. “Taking” is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. “Harm” is further defined to include significant habitat modification or degradation that results in death or injury to desert tortoises by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Violations of the Endangered Species Act may result in fines and/or imprisonment.