

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CONSERVE SOUTHWEST UTAH, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR,
U.S. BUREAU OF LAND MANAGEMENT,
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No. 1:26-CV-00317-ABJ

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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Ex. 1	BLM and FWS, Northern Corridor Highway Record of Decision (December 19, 2024)	N/A
Ex. 2	BLM, Northern Corridor Highway Decision Record (January 21, 2026)	N/A
Ex. 3	BLM and FWS, Northern Corridor Highway Final Environmental Impact Statement (November 12, 2020)	AR099922–100225
Ex. 4	BLM and FWS, Northern Corridor Highway Record of Decision (January 13, 2021)	AR101857–102008
Ex. 5	FWS, Northern Corridor Highway Biological Opinion (November 25, 2025)	N/A
Ex. 6	Avenue Consultants, Proposed Northern Corridor Right-of-Way Biological Assessment (September 2025)	N/A
Ex. 7	FWS, <i>Effects of the Proposed Northern Transportation Route on the Threatened Mojave Desert Tortoise</i> (November 2015)	AR088353–088362
Ex. 8	Washington County Commission, Amended Habitat Conservation Plan for Washington County (October 2020)	AR099432–099891
Ex. 9	Averill-Murray, R. C., & Allison, L. J., <i>Travel Management Planning for Wildlife with a Case Study on Mojave Desert Tortoise</i> (June 2023)	N/A
Ex. 10	Utah Division of Wildlife Resources, McLuckie, A. M., et al., <i>Desert Tortoise Population Monitoring: Season Summary</i> (August 29, 2025)	N/A
Ex. 11	Allison and McLuckie, <i>Population Trends in Mojave Desert Tortoises</i> (August 31, 2018)	AR091658–091677
Ex. 12	BLM and FWS, Northern Corridor Highway Final Supplemental Environmental Impact Statement (November 2024)	N/A
Ex. 13	<i>Conserve Sw. Utah v. Dep't of Interior</i> , Settlement Agreement (August 30, 2023)	N/A

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LIST OF ACRONYMS

APA	Administrative Procedure Act
BLM	Bureau of Land Management
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FWS	Fish and Wildlife Service
NCA	National Conservation Area
NEPA	National Environmental Policy Act
RMP	Resource Management Plan
ROW	Right-of-Way
UDOT	Utah Department of Transportation
UVRU	Upper Virgin River Recovery Unit

INTRODUCTION

Plaintiffs—six conservation groups—seek a preliminary injunction prohibiting further ground disturbance associated with construction of the Northern Corridor Highway through Red Cliffs National Conservation Area (“NCA”) until this case is decided on the merits.

In early 2021, then-Secretary of the Interior David Bernhardt granted to the Utah Department of Transportation (“UDOT”) a right-of-way (“ROW”) to punch a four-lane, high-speed highway through the Congressionally designated Red Cliffs NCA and designated critical habitat for the threatened Mojave desert tortoise. Because this decision reversed nearly twenty years of scientific and administrative precedent—wherein federal agency scientists repeatedly concluded that a road across the Red Cliffs NCA would harm the conservation values of the Red Cliffs NCA and be “biologically devastating” to the threatened tortoise—and otherwise violated bedrock environmental laws, Plaintiffs sued. *See* Complaint, *Conserve Sw. Utah v. U.S. Dep’t of Interior*, Case No 21-CV-15060-ABJ (D.D.C.), ECF No. 1. Defendants and Plaintiffs ultimately settled that case, and Defendants moved to remand the challenged decisions and dismiss the case, which the Court granted. *See id.*, ECF No. 75-2 (2023 Settlement Agreement, attached as Ex. 13), ECF No. 81 (Memorandum Decision on Remand) (Nov. 16, 2023), ECF No. 83 (Order of Dismissal) (December 21, 2023).

On remand, Defendants undertook a new environmental review, issued a final supplemental environmental impact statement (“EIS”) and record of decision, and terminated UDOT’s ROW. According to Defendants, denying the ROW was required because of the adverse impacts of the Northern Corridor Highway on “Mojave desert tortoise, its designated critical habitat, and historic properties, and the [Bureau of Land Management’s (“BLM”)]

determination that the ROW is inconsistent with the specific legal direction provided in [the Omnibus Public Land Management Act] for management of the NCA.” Ex. 1 at 18.

Now, little more than a year later, Defendants have reversed the termination of UDOT’s ROW. On January 21, 2026, Defendants again granted UDOT a ROW to construct, operate, and maintain the Northern Corridor Highway. Ex. 2.

In the past several days, BLM has approved UDOT to begin initial construction of the highway, including fencing and other ground disturbing activities through the densest population of Mojave desert tortoise in the entire Red Cliffs NCA and Desert Reserve. The irreparable harm from these activities is likely to be substantially completed by the time the Court resolves this case on the merits. Plaintiffs thus seek a preliminary injunction to preserve the status quo and opportunity for meaningful relief in this case.

Plaintiffs meet the requirements for such relief. First, they are likely to succeed on the merits of their claims raised herein. As explained below, Federal Defendants violated the Omnibus Public Land Management Act (the “Public Land Act”), the Administrative Procedure Act (“APA”), and the Endangered Species Act (“ESA”) in reapproving UDOT’s ROW for the Northern Corridor Highway. Defendants’ decisions run afoul of the Public Land Act’s requirement that the Red Cliffs NCA be managed to “conserve, protect, and enhance” its wildlife and ecological resources; reflect an unexplained, unreasonable, and arbitrary reversal in agency position; and are premised on unreasonable and arbitrary assumptions about the highway’s harm to the threatened Mojave desert tortoise.

An injunction is also necessary to avoid immediate irreparable harm. As noted in the attached declaration of Judy Hohman, who retired after a 32-year career with Federal Defendant U.S. Fish and Wildlife Service (“FWS”), including as the national Mojave Desert Tortoise lead

for the agency, the immediate fencing and other activities within tortoise designated critical habitat “will cause immediate and irreparable harm to Mojave desert tortoise, and may push the entire Upper Virgin River Recovery Unit (“UVRU”) into a slide toward extirpation, which means it would not likely be possible to recover the tortoise.” Hohman Decl. ¶ 7. Hohman’s conclusion is shared by Edward LaRue, a tortoise expert with nearly 40 years’ experience working with Mojave desert tortoise, who concludes that the highway project “threatens to jeopardize tortoise populations within the Reserve, [and] is incompatible with tortoise recovery both within the Reserve and throughout [its critical habitat.]” LaRue Decl. ¶ 59.

Further, the final two factors favor injunctive relief to prevent harm to the Mojave desert tortoise, as “[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost” and thus “the balance has been struck in favor of affording endangered species the highest of priorities.” *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 184, 194 (1978).

Accordingly, Plaintiffs ask the Court for a preliminary injunction barring any ground disturbing activities along and within the approved Northern Corridor Highway ROW until this case is resolved on the merits. As explained below, given that the irreparable harm from these activities is likely to occur imminently, Plaintiffs request an expedited hearing no later than 21 days after the filing of this motion. *See* LCvR 65.1(d).

LEGAL BACKGROUND

I. The Omnibus Public Land Management Act

The Omnibus Public Land Management Act (the “Public Land Act”), signed in 2009, established the Red Cliffs NCA to “conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical,

natural, educational, and scientific resources of the National Conservation Area.” 16 U.S.C.

§ 460www(a)(1)(a). Congress also designated the Red Cliffs NCA to protect “each” endangered or threatened wildlife species located within it, including the Mojave desert tortoise. *Id.*

§ 460www(a)(2).

Congress directed that the Secretary of the Interior “shall” manage the Red Cliffs NCA “in a manner that conserves, protects, and enhances the resources of the National Conservation Area,” and Congress directed that the Secretary “shall only allow uses of the National Conservation Area that the Secretary determines would further” the statute’s underlying conservation and cultural purposes, described above. *Id.* § 460www(e).

Additionally, Congress provided that “[n]ot later than 3 years after the date of enactment of [the Omnibus Act] . . . the Secretary . . . shall develop a comprehensive travel management plan for the land managed by the [BLM] in [Washington] County.” Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 1997(b)(1), 123 Stat. 1088–89. In developing that plan, “the Secretary shall— . . . identify 1 or more alternatives for a northern transportation route in the County.” *Id.* § 1977(b)(2).

II. The Administrative Procedure Act

The APA governs judicial review of agency actions and provides a right to judicial review for any “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. The APA directs courts to “hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(2)(A). Agency actions must also be set aside if made “without observance of procedure required by law.” *Id.* § 706(2)(D).

The touchstone of arbitrary and capricious review is whether an agency “engage[d] in ‘reasoned decisionmaking.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)). “Agency action is arbitrary and capricious ‘if the agency has relied on factors which Congress has not intended it to consider’; ‘entirely failed to consider an important aspect of the problem’; ‘offered an explanation for its decision that runs counter to the evidence before [it]’; or ‘is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.’” *Am. Clinical Lab’y Ass’n v. Becerra*, 40 F.4th 616, 624 (D.C. Cir. 2022) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

When an agency changes position or reverses prior decisionmaking, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). “An ‘unexplained inconsistency’ with an earlier position renders a changed policy arbitrary and capricious.” *Children’s Hosp. Ass’n of Texas v. Azar*, 933 F.3d 764, 773 (D.C. Cir. 2019) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016)).

III. The Endangered Species Act

The Endangered Species Act, 16 U.S.C. §§ 1531–44, “broadly protects endangered and threatened animal and plant species as well as their habitats.” *Am. Rivers v. FERC*, 895 F.3d 32, 38 (D.C. Cir. 2018). Section 7 of the ESA requires federal agencies to ensure that actions they authorize, fund, or carry out neither jeopardize the existence of any listed species nor destroy or adversely modify its designated critical habitat. 16 U.S.C. § 1536(a)(2). Jeopardy results where an action reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the

reproduction, numbers, or distribution of the species. 50 C.F.R. § 402.02. Destruction or adverse modification of critical habitat occurs where a direct or indirect alteration appreciably diminishes the value of critical habitat as a whole for the survival and recovery of a listed species. *Id.*

To fulfill the substantive mandates of Section 7, federal agencies must consult with FWS, for terrestrial species. 16 U.S.C. § 1536(a)(2); *see also* 50 C.F.R. §§ 17.11, 402.01(b). The consultation results in the preparation of a biological opinion, which presents FWS’s analysis of the best available scientific data on the status of the species and how it would be affected by the proposed action. 16 U.S.C. § 1536(b)(3)(A). A biological opinion must include a description of the proposed action, a review of the status of the species and its critical habitat, a discussion of the environmental baseline, and an analysis of the direct and indirect effects of the proposed action and the cumulative effects of reasonably certain future state, tribal, local, and private actions. If the expert agency finds no jeopardy or adverse modification but determines that the action will result in an incidental “take” (i.e., killing and other harm) of a protected species, it can authorize the take through an incidental take statement. *Id.* § 1539(a)(1)(B).

FACTUAL BACKGROUND

I. Red Cliffs National Conservation Area and Mojave Desert Tortoise

A. Red Cliffs National Conservation Area

Congress designated the Red Cliffs NCA—located in Washington County in the southwestern corner of Utah—through the Public Land Act of 2009 to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the area’s resources as well as to protect the ESA-listed species therein. 16 U.S.C. § 460www(a). Red Cliffs NCA contains nearly 200 miles of non-motorized trails for hiking, mountain biking, and other

recreation, and two designated Wilderness areas lie within its boundaries. Ex. 3 at 210; Ex. 4 at 62.¹ In fiscal year 2023, the Red Cliffs NCA hosted nearly 610,000 visitors.²

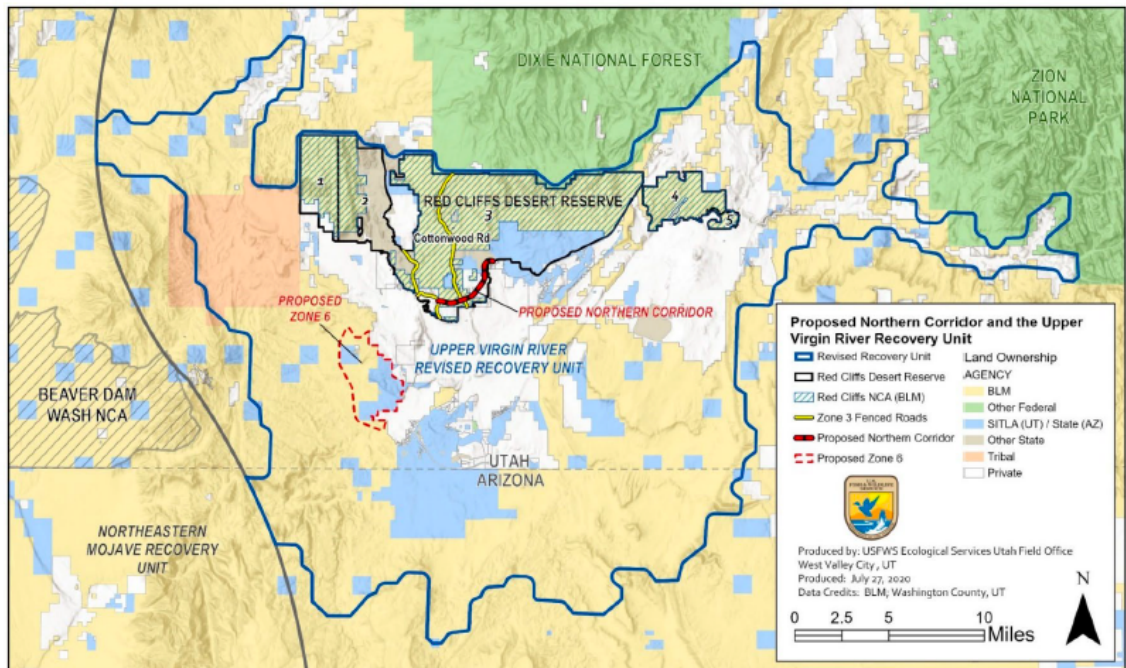


Figure 1. Map of Red Cliffs NCA showing Red Cliffs Desert Reserve, the UVRRU, and the Proposed Northern Corridor Highway and Zone 6.

Red Cliffs NCA also provides important habitat for imperiled native species, including the federally listed Mojave desert tortoise. Red Cliffs NCA contains nearly 50,000 acres of designated critical habitat for the threatened Mojave desert tortoise. Ex. 3 at 111. It is also a major component of the 62,000-acre Red Cliffs Desert Reserve (“Desert Reserve”), an area created under Washington County’s 1996 Habitat Conservation Plan to protect in perpetuity the area’s desert tortoise populations and habitat as mitigation for development elsewhere in

¹ All exhibit page number citations are to the pdf page number, which matches the bates stamped page number.

² BLM, 2023: Annual Manager’s Report, Red Cliffs National Conservation Area, at 4, https://www.blm.gov/sites/default/files/docs/2024-07/Red%20Cliffs%20NCA_508_FY23_Managers%20Report.pdf (last visited Feb. 9, 2026).

Washington County. *See* Ex. 5 at 36. The Desert Reserve as originally established is divided into five management zones. *Id.*; *see also* *Figure 1*.

B. Mojave Desert Tortoise

The Mojave desert tortoise is a long-lived, slow-growing tortoise species; it has been protected under the ESA as “threatened” since 1990.³ Ex. 3 at 118; Ex. 5 at 28; 55 Fed. Reg. 12178 (Apr. 2, 1990).

Tortoise home range varies depending on sex, location, available resources, and weather patterns, and can be as large as 220 acres. Ex. 3 at 96, 2025 NCH BA at 57. In a lifetime, an individual tortoise may use more than 1.5 square miles for habitat and may occasionally venture more than seven miles outside its home range on long-distance forays. Ex. 3 at 96; Ex. 6 at 57. Tortoises seek shelter in burrows during unfavorable conditions; shelter site availability is an important aspect of habitat suitability. Ex. 3 at 96.

In 1994, FWS designated critical habitat under the ESA for the Mojave desert tortoise and published a recovery plan dividing the species’ range into six recovery units. 59 Fed. Reg. 5820 (Feb. 8, 1994); Ex. 3 at 111; Ex. 5 at 30. The Red Cliffs NCA and Desert Reserve are included within the Upper Virgin River Recovery Unit (“UVRRU”), which encompasses 54,600 acres of contiguous critical habitat, including 46,098 acres within the Red Cliffs NCA. Ex. 3 at 111. FWS considers the UVRRU of high importance to the range-wide status of the species due to its high population densities of tortoise. Ex. 7 at 1.

Mojave desert tortoise in the UVRRU face numerous threats to their persistence and recovery, including habitat loss, fragmentation and disturbance from roads, urbanization,

³ The term “threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20).

conversion of native habitats by invasive and non-native species, predation, off-road vehicles, and wildfires. *See* Ex. 5 at 38–48; Hohman Decl. ¶¶ 73–74. Wildfires increasingly threaten tortoise populations and habitat by degrading or eliminating habitat, including by facilitating the replacement of native plant species by invasive, non-native species, which in turn fuels an annual burn-reburn cycle. Ex. 5 at 41–43; Hohman Decl. ¶¶ 5, 37–38. These patterns are exacerbated further by roads, which also increase the spread of nonnative plant species and act as wildfire ignition sources. Ex. 5 at 40, 65.

The placement of roads through tortoise habitat harms tortoises by influencing movements and behaviors, fragmenting habitats, and causing direct mortality. Ex. 5 at 38–40, 63–68; Ex. 8 at 79; Hohman Decl. ¶¶ 54, 58, 60. The breadth of this impact is a function of the size and frequency of use of the road: the bigger the road and the heavier its traffic use, the greater the direct and indirect impacts of the road on tortoises. Ex. 8 at 79; Ex. 7 at 2. A recent study recommends that the density of all roads in areas managed for the conservation of the tortoise be reduced to 0.6 km per km² or less. Ex. 9 at 1. Within the Desert Reserve, the density of roads is already 2.49 km/km². *Id.* at 5.

Despite desert tortoise’s listing under the ESA, these threats have led to steady declines in tortoise populations in the UVRRU. In 2014, a range-wide population estimate identified a decline of almost 125,000 adult tortoises over a 10-year period, which represents a nearly 37% population-wide decline. Ex. 3 at 113. Tortoise populations within the UVRRU experienced a 24% decline over this same timeframe. *Id.* at 114. Densities of tortoise in the UVRRU are declining by 3.2% per year. *Id.* at 115; LaRue Decl. ¶ 50; Hohman Decl. ¶¶ 92–93.

The area in and around the Red Cliffs NCA experienced an even more stark population decline of 41% between 1999–2019. Ex. 3 at 114–15; LaRue Decl. ¶ 49. Monitoring data from a

study by Utah Division of Wildlife Resources represented an *annualized* mortality rate of 26% within Red Cliffs NCA for 2025. Ex. 10 at 2; *see also* Hohman Decl. ¶ 44 (table of annualized tortoise mortality in Red Cliffs NCA 1998–2025). Within Zone 3, tortoise densities decreased from 3,409 adults in 2001 to 1,681 adults in 2023. Ex. 5 at 50. FWS recommends sustaining a population of 2,000 tortoises in Zone 3 to maintain long-term viability. Ex. 7 at 2. Tortoise experts with FWS and the State of Utah have recently warned that “[t]he negative population trends in most of the [Tortoise Conservation Areas] for Mojave desert tortoise indicate that this species is on the path to extinction under current conditions.” Ex. 11 at 14.

II. 2021 Approval of the Northern Corridor Highway Right-of-Way

A. UDOT’s Right-of-Way Application for the Northern Corridor Highway

In 2018, UDOT applied for a ROW for the Northern Corridor Highway, a four-lane, high-speed highway that would cross approximately 4.5 miles of Zone 3 of the Desert Reserve and Red Cliffs NCA, including 1.9 miles of BLM lands and Mojave desert tortoise critical habitat. Ex. 3 at 10, 22. Defendants prepared an EIS analyzing the impacts of the proposed highway ROW relative to other alternatives. *See id.*

Defendants’ analysis of the Northern Corridor Highway’s impacts on various resources revealed that the highway will adversely impact each and every natural and ecological resource of the Red Cliffs NCA identified to be protected under the Public Land Act, including sensitive plant species, Ex. 3 at 85; non-ESA-listed special status species, *id.* at 144–46; geology and soils, *id.* at 157–58; paleontological resources, *id.* at 161; wetlands, *id.* at 164–65; historic and cultural resources, *id.* at 204–06; scenic and visual quality, *id.* at 192; and recreation experience, *id.* at 208–09, 214–16.

The highway will significantly undermine and harm wildlife and habitat in the Red Cliffs NCA, in particular desert tortoise populations and their designated critical habitat. Ex. 3 at 92–95, 63–69, 130–37. The Northern Corridor Highway would permanently eliminate 275 acres of tortoise critical habitat within the right-of-way and indirectly impact 2,333 acres of habitat, contributing to increasing fragmentation of tortoise habitat within the Red Cliffs NCA. *Id.* at 128. The highway would bisect what the agencies consider “maybe the most important high-density cluster of desert tortoises in the recovery unit,” as illustrated in Figure 2 below. Ex. 3 at 114, 126, 133; Ex. 7 at 2; LaRue Decl. ¶¶ 51–52. This in turn may cause the tortoise population south of the highway to become “non-viable.” LaRue Decl. ¶ 52; Hohman Decl. ¶ 95C–D; Ex. 6 at 39. It would also cause the tortoise population in the Reserve generally “to continue to decline in abundance.” Hohman Decl. ¶ 95A.

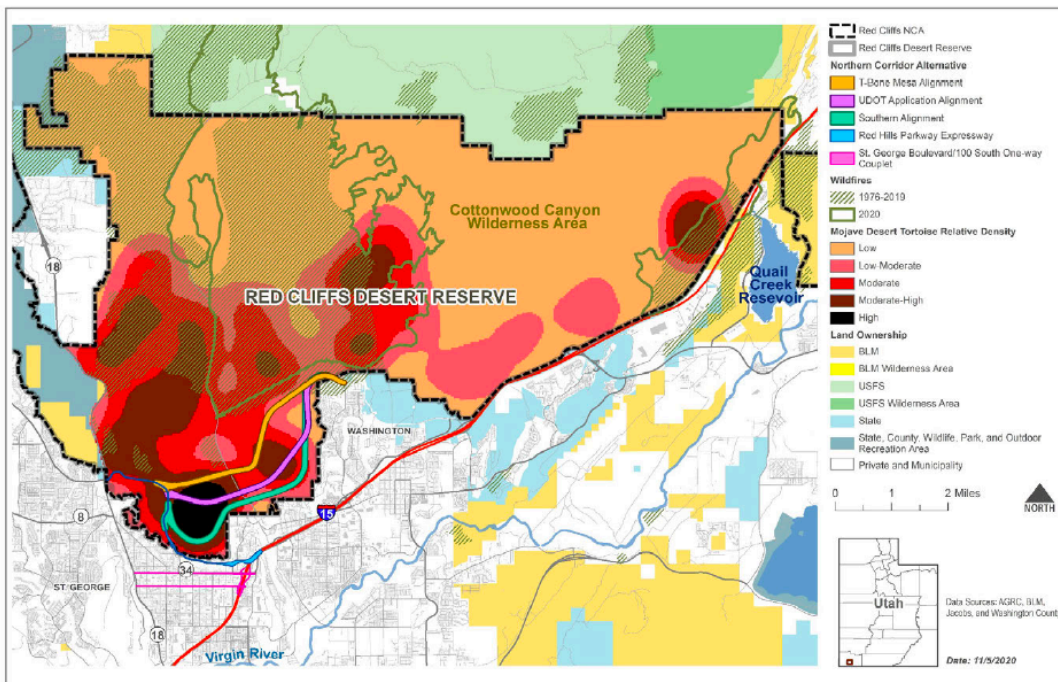


Figure 2. Mojave Desert Tortoise Density in Red Cliffs NCA and Desert Reserve.

The highway would harm tortoises directly and indirectly in many ways, including by facilitating and increasing predation; increasing noise levels that could adversely impact tortoise

behavior; increasing outbreaks of disease and reducing reproductive success; disturbing native plants important to tortoise habitat and behaviors; increasing establishment of non-native, invasive plants; and increasing human access to collect tortoises. Ex. 3 at 129–37; Ex. 5 at 56–68; Hohman Decl. ¶¶ 5, 95; LaRue Decl. ¶¶ 51–53. The highway will have a “road effect zone” on the tortoise, which is likely to reduce abundance of tortoise for up to 4.6 km from the highway. Hohman Decl. ¶ 95J; Ex. 3 at 99. These harms will result in injury and mortality to the tortoises, including by directly killing tortoises, causing physical injuries, and reducing reproductive success due to stress and disease. *See* Hohman Decl. ¶ 95.

The highway would also exacerbate the frequency and intensity of wildfires, which in turn has serious negative implications for tortoise populations and their habitat. Hohman Decl. ¶¶ 5, 37–38, 95M–P; LaRue Decl. ¶¶ 7–8, 39–42; Ex. 5 at 41–45, 64–65; Ex. 12 at 63–66. This would be additive to the existing negative impacts of recent fires in the NCA and Reserve on desert tortoise. *See* Ex. 12 at 56, 63 (2020 human-caused wildfires burned a total of 12,437 acres within the Reserve, of which 9,019 acres were designated Mojave desert tortoise critical habitat,” including in “[s]ome of the Reserve’s most densely occupied tortoise habitat . . . adjacent to Cottonwood Springs Road”). In fact, the Northern Corridor Highway is likely to shorten the burn-reburn cycle, which “may contribute to extirpation of tortoise populations.” *Id.* at 64; *see also* Ex. 1 at 20–21 (coupled with wildfire cycle, highway could “impede the recovery of this threatened species in the NCA, Reserve, and UVRU”).

These harms would not be sufficiently mitigated. The primary mitigation for these impacts would be the creation of a new part of the Desert Reserve, so-called Zone 6. Ex. 3 at 38. Zone 6 is relatively small and non-contiguous with the existing Desert Reserve and Red Cliffs NCA; it “is unlikely to support an abundance of tortoises on its own.” *See* Ex. 3 at 38, 136;

Hohman Decl. ¶ 93R; Figure 1, *supra*. It does not contain any tortoise critical habitat. *See* Ex. 5 at 33, Fig. 4 (map of tortoise critical habitat). Additionally, it is extensively used by motorized and non-motorized recreationists, which degrades soil and vegetation and increases predation, among other impacts. Ex. 3 at 136. While adding Zone 6 to the Reserve *may* reduce some of these impacts, *id.*, 49% of Zone 6 is non-federally managed land, which is subject to lesser protections, *see* Ex. 6 at 48–49. Moreover, Zone 6’s “management as part of the Reserve would have *no direct benefit* to tortoises or habitat impacted by the construction and operation of the proposed Northern Corridor.” Ex. 6 at 111 (emphasis added); *see also* Hohman Decl. ¶ 6 (“Zone 6 . . . will not . . . contribute to the long-term survival and recovery of the tortoise in the Reserve/NCA or the UVRRU.”); Hohman Decl. ¶ 95Q–R.

UDOT also plans to install bridges and culverts to reduce the highway’s impacts of tortoise habitat fragmentation. However, according to FWS, “[m]ore data is needed to understand if usage is limited by passage design or other ecological, biological, or environmental conditions and how culverts should be spaced to provide adequate connectivity.” Ex. 5 at 39. The long-term effectiveness of these measures “is unknown.” *Id.*

B. Defendants’ 2021 Approval of UDOT’s Right-of-Way and Plaintiffs’ Initial Lawsuit, Court-Ordered Remand, and Settlement

In early 2021, Defendants issued a record of decision approving UDOT’s ROW application for the Northern Corridor Highway, along with associated amendments to the governing resource management plans (“RMPs”). *See* Ex. 4.

Plaintiffs filed a lawsuit in this Court challenging Defendants’ decisions approving the ROW and amending the RMPs based on their violation of numerous environmental laws, including the Public Land Act, the Land and Water Conservation Fund Act, the National

Environmental Policy Act (“NEPA”), the National Historic Preservation Act, and the ESA. *See* First Am. Complaint, *Conserve Sw. Utah*, ECF No. 16.

After Plaintiffs moved for summary judgment, Defendants moved to voluntarily remand the ROW approval and associated decisions based on BLM’s “legal error” in issuing the ROW without complying with the National Historic Preservation Act, and “substantial and legitimate concerns regarding its compliance with NEPA,” including its lack of sufficient analysis about the impacts of recent wildfire trends. Defs.’ Motion for Voluntary Remand with Partial Vacatur at 20–21, *Conserve Sw. Utah*, ECF No. 53.

Plaintiffs and Defendants also executed a settlement agreement (“2023 Settlement Agreement”) whereby—upon the Court granting Defendants’ motion for voluntary remand—Defendants committed to reconsidering their decisions. Ex. 13 ¶¶ 3–4. The 2023 Settlement Agreement also provided “that if the new 2024 decision on the ROW application differs from the 2020 ROW decision, [BLM] will amend the RMPs to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or re-consider a similar ROW application within the NCA.” *Id.* ¶ 3b.

In November 2023, this Court granted Federal Defendants’ motion for voluntary remand, which triggered the full execution of the terms of the parties’ 2023 Settlement Agreement. This Court found Federal Defendants’ “contention that insufficient attention was given to significant wildfire activity in the Red Cliffs NCA” was “substantial and legitimate.” *Conserve Sw. Utah v. U.S. Dep’t of Interior*, Case No. 21-CV-15060-ABJ, 2023 WL 7922785, at *7 (D.D.C. Nov. 16, 2023). This Court remanded the relevant decisions to Defendants for reconsideration. *Id.* at *9.

III. 2024 Remand Decisions Terminating the Northern Corridor Highway Right-of-Way

In 2024, Federal Defendants issued new decisions pursuant to the 2023 Settlement Agreement and this Court’s remand order.

First, BLM and FWS issued a final supplemental EIS. The 2024 Supplemental EIS examined anew the incidences and impacts of wildfires in the NCA, and updated other analyses. Ex. 12 at 15. The purpose of the supplemental analysis was to “determine whether the BLM will affirm, affirm with modifications, or terminate the ROW grant.” *Id.* at 15.

Based on the supplemental EIS’s facts and analysis—showing increased threats to ecological conditions and Mojave desert tortoise populations and habitat—Defendants terminated UDOT’s ROW for the Northern Corridor Highway. *See* Ex. 1 at 18 (2024 Record of Decision terminating ROW “in light of the impacts of that ROW on Mojave desert tortoise, its designated critical habitat, and historic properties, and the BLM’s determination that the ROW is inconsistent with the specific legal direction provided in [the Public Land Act] for management of the NCA”).

Defendants found that “[a]ffirming the UDOT ROW grant . . . would not comply with [the Public Land Act’s] mandate that NCA management focus on the conservation, protection, and enhancement of threatened and endangered species that occur in the NCA.” *Id.* at 20. Instead, terminating UDOT’s ROW would “comply with [the Public Land Act’s] mandate to protect the threatened Mojave desert tortoise and its designated critical habitat in the NCA, as the Northern Corridor Highway would not be constructed across 1.9 miles of public land in the NCA.” Ex. 1 at 20. It would also avoid tortoise injuries and mortalities during highway construction, operation, and maintenance as well as avoid translocation and displacement of tortoises. *Id.* Termination of the ROW would prevent the loss of 275 acres of tortoise critical

habitat and fragmentation of an additional more than 2,300 acres. *Id.* Further, it would avoid exacerbating wildfire impacts that could “impede the recovery of this threatened species in the NCA, Reserve, and UVRU.” *Id.* at 20–21. BLM found it had authority to terminate the ROW because it was “issued contrary to the law in effect at that time.” *Id.* at 18.

BLM identified the Red Hills Parkway Expressway—an alternative that would upgrade existing road infrastructure outside of BLM lands in the NCA—as the “environmentally preferable alternative” because it “would have . . . no direct impacts on the threatened Mojave desert tortoise or its designated critical habitat in the NCA” and would “minimize impacts to the largest contiguous block of designated critical habitat for the Mojave desert tortoise in the NCA with the highest tortoise population density in the NCA.” *Id.* at 11.

BLM also stated that “because the 2024 decision on the ROW application differs from the 2021 ROW decision, the BLM will undertake land use planning amendments to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or reconsider a similar ROW application within the NCA.” *Id.* at 7.

IV. 2025–2026 Decision Approving the Northern Corridor Highway Right-of-Way

A. 2026 Environmental Assessment and Decision Record

In October 2025, less than a year after BLM terminated UDOT’s ROW, BLM issued a 12-page draft environmental assessment re-considering UDOT’s ROW for the Northern Corridor Highway based on supposed “new information” provided by UDOT “demonstrat[ing] the technical and economic infeasibility of the Red Hills Parkway Expressway.” Ex. 14 at 3. BLM “identified the UDOT ROW Alignment as the agency’s preferred alternative.” *Id.* at 5.

On January 21, 2026, BLM published a 13-page final environmental assessment and finding of no significant impact reassessing UDOT’s ROW for the Northern Corridor Highway.

Ex. 15. The same day, BLM issued a decision record approving the Northern Corridor Highway ROW, *see* Ex. 2, as well as a ROW grant to UDOT, *see* Ex. 16.

Reversing its earlier conclusion, BLM determined that approving UDOT’s ROW is compatible with federal law. Ex. 2 at 4. Specifically, BLM found that its decision complies with Section 1974 of the Public Land Act—even in the face of uncontested evidence that the highway would harm tortoise populations and habitat, and otherwise negatively impact the conservation resources for which Red Cliffs NCA was created—because, according to BLM, the highway would satisfy *a* purpose of the Act “by providing a new paved hike and bike path for recreation and scenic views.” *Id.* at 5.

BLM did not take any action to amend the RMPs, as required by the 2024 Record of Decision and 2023 Settlement Agreement. Instead, it found that the 2021 RMP amendments “remain in place as approved in 2021.” *Id.* at 8–9.

B. 2025 Northern Corridor Biological Opinion

On November 25, 2025, prior to the issuance of the final environmental assessment and decision record, FWS issued a biological opinion for BLM’s approval of the Northern Corridor Highway ROW (“2025 Northern Corridor Biological Opinion”) concluding that the highway would not jeopardize the continued existence of the Mojave desert tortoise or adversely modify designated critical habitat. Ex. 5 at 75–78.

V. Ground Disturbing Activities this Winter and Spring Will Injure and Kill Tortoises

On January 26, 2026, a few days after issuing UDOT’s ROW grant for the Northern Corridor Highway, BLM issued an initial interim notice to proceed to UDOT to begin highway construction activities, including staking and flagging of the ROW area and geotechnical sampling. Ex. 17. Just yesterday—February 9, 2026—BLM issued another interim notice to

proceed for fencing of the highway ROW, which includes grading for vegetation removal, use of heavy machinery, and tortoise clearance surveys. Ex. 18 at 1–2; *see also* Ex. 2 at 97. As soon as UDOT submits its Final Plan of Development, BLM can issue a notice to proceed for full construction of the Northern Corridor Highway. Ex. 2 at 97.

These activities will occur within the next couple of months, as “UDOT is planning on fencing the Northern Corridor [ROW] by early spring 2026.” Ex. 19 at 1. Utah Department of Wildlife Resources “will remove all Mojave Desert tortoises . . . found within the fenced ROW, process, mark, and release them to adjacent habitat.” Ex. 19 at 1. The fencing process will involve burying heavy posts a foot or more below the ground, the driving of trucks and machinery, and vegetation clearing and grading. *See* Ex. 18 at 1–2; Ex. 6 at 247–51 (recommended specifications for fencing); Ex. 2 at 97; Hohman Decl. ¶¶ 96–98. All these activities will occur within tortoise critical habitat, Ex. 5 at 33, Fig. 4. (map of tortoise critical habitat), and the highest density of tortoises in the reserve, *id.* at 52, Fig. 8; Hohman Decl. ¶ 101. As described below, once these activities begin, they will result in significant, irreversible harm.

As Plaintiffs’ experts Judy Hohman and Edward LaRue—who each have over 30 years of experience as desert tortoise biologists⁴—assert and FWS confirms, these activities are likely to degrade habitat and injure and kill tortoises in the vicinity of the ROW, causing serious and irreparable ecological and biological harm. *See* LaRue Decl. ¶¶ 8, 54–55; Hohman Decl. ¶¶ 7, 96–105, 108. Although exclusion fencing can be an important mitigation measure for reducing tortoise mortality adjacent to roads, *see* Ex. 5. at 59, it carries its own detrimental impacts. The most obvious impact of exclusion fencing is that it will render high-quality critical habitat

⁴ Plaintiffs’ experts’ extensive professional experience includes work as biologists with the FWS and regarding desert tortoise ecology in particular. Hohman Decl. ¶¶ 8–13; LaRue Decl. ¶¶ 9–27.

inaccessible to the tortoises. Hohman Decl. ¶¶ 97–102. This in turn would reduce habitat availability, increase competition among tortoises and potentially reduce survival outcomes. Hohman Decl. ¶ 103. Additionally, fencing and the associated ground-disturbance “would exacerbate existing demographic stressors by disrupting movement, connectivity, thermoregulation, and access to essential resources at a time when population recovery is already compromised, in addition to immediately fragmenting tortoise habitat.” LaRue Decl. ¶ 54. The fragmentation and displacement of tortoises through fencing “will likely result in excessive fence walking that exposes tortoises to predation, lethal temperatures, and poaching that are liable to kill tortoises.” LaRue Decl. ¶ 54; *see also* Hohman Decl. ¶¶ 95F, 97; Ex. 5 at 59. Blading and grading activities also cause irreversible damage to tortoise habitat as “[b]lading destroys vegetation, seed banks, and soils, and they will not return to pre-surface disturbance in our lifetime.” Hohman Decl. ¶ 98; *see also* Ex. 3 at 157 (sensitive soils, soil crusts, and topsoil would be disturbed by grading actions).

FWS even acknowledges that “tortoises are vulnerable to effects from ground-disturbing activities.” Ex. 5 at 60. These activities may cause fatalities and injuries from crushing, “entomb desert tortoises in their burrows or dens,” and injure and kill tortoises from increased human presence. *Id.* “Desert tortoises may also be attracted to the construction area by application of water to control dust, placing them at higher risk of death or injury.” Although tortoise clearance surveys are likely to occur prior to these activities, tortoises are difficult to locate and “an unknown number of tortoises and eggs may not be found . . . and consequently be killed by project activities.” *Id.*; *see also* Ex. 3 at 131 (“even with the most thorough surveys, animals located deep in burrows, as well as eggs, hatchlings, and juveniles, could be missed and killed”). Tortoises that are found in the ROW area “may be captured and moved to safe areas prior to any

ground disturbance,” which “may result in accidental death or injury,” spread disease, and “cause some level of stress.” Ex. 5 at 58–59.

Commencing these activities “in February through March would be particularly harmful” as tortoises are emerging from winter dormancy. LaRue Decl. ¶ 55; *see also* Hohman Decl. ¶ 97 (“Translocation of tortoises in the spring resulted in greater time spent above ground . . . which contributed to their mortality”). Indeed, these activities “may push the entire [UVRU] into a slide toward extirpation, which means it would not likely be possible to recover the tortoise.” Hohman Decl. ¶ 7, 108.

PRELIMINARY INJUNCTION STANDARDS

To obtain a preliminary injunction, a party must show: (1) it is “likely to succeed on the merits”; (2) it is “likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities” is in its “favor”; and (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). For ESA cases, “the third and fourth factors . . . are generally considered to tip in favor of the species.” *Ctr. for Biological Diversity v. Ross*, 480 F. Supp. 3d 236, 250 (D.D.C. 2020) (quoting *Conservation L. Found. v. Ross*, 422 F. Supp. 3d 12, 31 (D.D.C. 2019)); *see also Tennessee Valley Auth.*, 437 U.S. at 184, 194. “To meet these burdens, [a party] may rely on evidence that is less complete than in a trial on the merits, but the evidence he offers must be ‘credible.’” *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 173 (D.D.C. 2015) (internal citations omitted).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

Plaintiffs are likely to prevail on the merits. Of the many violations alleged in their Complaint ¶¶ 171–99 (ECF No. 1), Plaintiffs focus here on three claims to facilitate prompt resolution of this motion. A likelihood of success on any one of these claims would justify relief.

A. BLM Violated the Omnibus Public Land Management Act.

Plaintiffs are likely to prevail on their first claim challenging BLM’s ROW approval for violating the Public Land Act. *See* Complaint, First Claim for Relief ¶¶ 171–75 (ECF No. 1).

1. The Northern Corridor Highway right-of-way grant fails to comply with the Public Land Act’s mandates for management of Red Cliffs NCA.

In the Public Land Act, Congress identified two purposes for creating the Red Cliffs NCA: (1) to “conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area,” and (2) to protect “each” threatened and endangered species in NCA, including the desert tortoise. 16 U.S.C § 460www(a)(1), (2). To achieve these two purposes, the Public Land Act imposed twin statutory mandates for management of the Red Cliffs NCA. First, Congress directed that BLM “shall manage” the Red Cliffs NCA “in a manner that conserves, protects and enhances the resources of the [NCA]” *Id.* at § 460www(e)(1)(A). Second, it directed that BLM “shall only allow uses of the [NCA]” that “would further a purpose” for which the NCA was established, as set forth above. *Id.* at § 460www(e)(2).

Defendants’ approval of the Northern Corridor Highway ROW violates both of these statutory commands. As outlined above, *supra* pp. 10–12, the final EIS documented that the highway would adversely impact every natural and ecological resource protected under the

Public Land Act. *See* Ex. 3 at 85 (“adverse impacts” to sensitive plant habitat); *id.* at 144–46 (“direct and indirect adverse impacts to special status wildlife species”); *id.* at 157 (disturbance to “sensitive soils, soil crusts, and topsoil”); *id.* at 164–65 (“permanent loss or temporary construction impacts to floodplains and potential [waters of the United States]”); *id.* at 204–06 (“adverse effects to historic properties . . . cultural resources . . . [and] archaeological sites”; *id.* at 192 (“adverse[] impact[s]” to “areas with high scenic quality and high visual sensitivity”); *id.* at 214–16 (“dramatic change to the recreation setting” and a “degraded user experience”).

All these adverse impacts—documented by Defendants themselves—demonstrate that their approval of the highway violates the Public Land Act’s first statutory command that BLM “shall manage” the NCA “in a manner that conserves, protects and enhances the resources of the [NCA],” 16 U.S.C. § 460www(e)(1)(A), alone requiring reversal. For these reasons, the 2024 Record of Decision terminating UDOT’s ROW explicitly determined that “in light of the impacts of that ROW on Mojave desert tortoise, its designated critical habitat, and historic properties . . . the ROW is inconsistent with the specific legal direction provided in [the Public Land Act] for management of the NCA.” Ex. 1 at 18. But in the 2026 Decision Record, BLM never explained how approving the ROW is suddenly now consistent with this “shall manage” directive, particularly in light of its prior decision concluding that it was not. *See* Ex. 2 at 5; Ex. 1 at 20. This lack of explanation alone renders its decision arbitrary and capricious. *See Multicultural Media, Telecom, & Internet Council v. FCC*, 873 F.3d 932, 936 (D.C. Cir. 2017) (J. Kavanaugh) (agency action unlawful when it did not “adequately explain its exercise of discretion in light of the information before it”).

The record also documents that BLM’s ROW grant violates the second statutory mandate that BLM “shall only allow uses of the [NCA]” that “further a purpose” for which the NCA was

established, which expressly includes (1) “conserve[ing], protect[ing], and enhance[ing] the conservation, cultural, scientific, recreational, and educational” resources of the area; and (2) protecting the desert tortoise and its habitat. *See* 16 U.S.C. § 460www(a).

For good reason, BLM makes no effort to claim that the Northern Corridor Highway will “protect” tortoise populations and habitat, thereby meeting the second statutory purpose. Instead, BLM argues only that the Northern Corridor Highway will “enhance” the recreation, scenic, and educational resources of the NCA by providing a paved bike path with “interpretative displays that inform the public about the history and other purposes of the NCA.” Ex. 2 at 5. There are two problems with this rationale.

First, any bike path is entirely ancillary to the Northern Corridor Highway itself, which is the actual “use” at issue. Indeed, UDOT’s application never even mentions the pathway as an element of the requested ROW, noting that “the application is for a [ROW] for the construction and operation of a new highway, referred to as the Northern Corridor, and associated infrastructure.” Ex. 20 at 8; *see also* Ex. 5 at 11 (highway’s “ancillary facilities consist of several components including . . . new intersections with existing roads, bridges, and underpasses.”). At best, UDOT’s application notes that a “separate paved pedestrian/bike trail” *may* be considered as a “related structure[] and facilit[y].” Ex. 20 at 8.⁵ Allowing a secondary and wholly auxiliary bike path to define the purpose of the Northern Corridor Highway ROW is wholly unreasonable; BLM’s rationale is akin to saying the purpose of the Lincoln Monument is for access to public restrooms simply because there are restrooms in the basement. This Court can readily reject any

⁵ Further, it appears the bike path would not even be constructed until “Phase 3,” beginning in 2043. *See* Dixie Metropolitan 2023–2050 Regional Transportation Plan at 19, 22, <https://dixie-mpo.com/2019-2050-regional-transportation-plan/> (last visited Feb. 10, 2026).

effort to greenwash the four-lane, high-speed Northern Corridor Highway into a bucolic bike path.

Second, the real purpose of the Northern Corridor Highway—i.e., to “reduc[e] congestion, increas[e] capacity, and improv[e] east-west mobility on arterial and interstate roadways,” Ex. 3 at 11—will certainly not “conserve, protect, and enhance” the conservation resources of Red Cliffs NCA and “protect” Mojave desert tortoise. As discussed above, the ROW itself runs against every purpose for which the NCA was designated, including its explicit mandate to protect tortoise by bisecting the highest tortoise density area within the NCA. *See supra* pp. 10–12, 22, Figure 2; Ex. 3 at 128; *see also* Ex. 5 at 68 (“all critical habitat physical and biological features within the ROW will be permanently lost”); Ex. 3 at 130 (3-77) (indirect effects to tortoise include disturbance from noise and vibrations, human intrusion, trash and toxins, increased predation, nonnative plants, and increased wildfire risk); Ex. 6 at 85–106. These direct and indirect impacts “may result in long-term consequences to the conservation of the Mojave desert tortoise.” Ex. 3 at 131; *see also* LaRue Decl. ¶ 53; Hohman Decl. ¶ 95.

Thus, BLM’s approval of the ROW did not comply with either of the Public Land Act’s mandates governing management of the NCA and was substantively unreasonable. *See Multicultural Media, Telecom & Internet Council*, 873 F.3d at 936.

2. Approval of the Northern Corridor Highway is not necessary to comply with Section 1977 of the Public Land Act.

Reversing its earlier determination that the Northern Corridor Highway would *violate* the Public Land Act, Ex. 1 at 18, BLM now contends that approval of UDOT’s Northern Corridor Highway is required to harmonize Section 1974 and Section 1977 of that Act. Ex. 2 at 5. But BLM already rejected this argument, Ex. 1 at 20–22; Ex. 21 at 11, and it flatly misreads the plain language of the statute.

Section 1977 of the Public Land Act provides that the Secretary “shall develop a comprehensive travel management plan for the land managed by the [BLM] in [Washington] County.” Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, § 1977(b)(1), 123 Stat. 1088–89. In developing that plan, “the Secretary shall— . . . *identify* 1 or more alternatives for a northern transportation route in the County.” *Id.* § 1977(b)(2) (emphasis added). BLM reads this provision to require that it not only *identify* a route but *approve* one. This Court should reject such an atextual reading.

BLM does not point to anywhere in the express statutory language requiring it to approve a northern transportation route, let alone language requiring that route to be located through the Red Cliffs NCA. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (statutory interpretation “must begin: with the language of the statute itself” and “is also where the inquiry should end, . . . where . . . the statute’s language is plain”). This should resolve the matter.⁶

If any doubt remains, however, the legislative history confirms Plaintiffs’ plain reading of Section 1977. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 896 (1984) (“We look first to the statutory language and then to the legislative history if the statutory language is unclear.”). Here, the legislative history establishes that Congress considered—and ultimately rejected—prior efforts to require BLM to approve the Northern Corridor Highway. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 579–80 (2006) (finding “Congress’ rejection of the very language that would have

⁶ Curiously, BLM ignores its separate requirement to “develop a comprehensive travel management plan” for its public lands in Washington County “[n]ot later than 3 years after the date of enactment of [the Public Land Act].” Pub. L. No. 111-11, § 1997(b)(1), 123 Stat. 991, 1088–89. BLM has not yet completed a formal management plan despite the passage of nearly 20 years. Thus, any obligation to “identify” a northern route must wait until BLM fulfills its duty to develop a comprehensive travel plan.

achieved the result the Government urges here weighs heavily against the Government’s interpretation”).

In 2006, Congress considered and rejected two predecessor bills that would have required the establishment of a transportation corridor for the Northern Corridor Highway. These identical bills, S. 3636 and H.R. 5769 entitled the Washington County Growth and Conservation Act of 2006, stated that the Secretary “*shall establish* on public land . . . a corridor for transportation purposes.” Washington County Growth and Conservation Act of 2006, S. 3636 109th Cong. (emphasis added). During a Senate hearing on the bills, the primary bill author and sponsor, Senator Bennett, emphasized that this language would require the Secretary “to study different routes and then designate the appropriate corridor.” *See Washington County Growth and Conservation Act of 2006 and White Pine County Conservation, Recreation and Development Act of 2006: Hearing on S. 3636 and S. 3772 Before the Subcomm. on Pub. Lands and Forests of the S. Comm. on Energy and Nat. Res.*, 109th Cong. 5 (2016). These bills failed to make it out of committee.

In 2008, Congress again took up the matter. Senator Bennett introduced a new bill, S. 2834, that would have required the Secretary to “*identify* 1 or more alternatives for a northern transportation Route in the County.” Washington County Growth and Conservation Act of 2008, S. 2834, 110th Cong. (emphasis added). In a Senate hearing on that bill, senators and speakers contrasted S. 2834’s requirement for *identification* of a northern route with the earlier bills S. 3636 and S. 3772 that would have required *designation* of a northern route. *Miscellaneous Public Lands Bills: Hearing on S. 934, S. 2833, S. 2834, and H.R. 1374 Before the Subcomm. on Pub. Lands and Forests of the S. Comm. on Energy and Nat. Res.*, 110th Cong. 7–8 (2008) (Senator Bennett noting “significant changes to the previous proposal” including removal of “the corridor

designations for . . . the Northern Corridor that bisected the Red Cliffs Desert Reserve” as well as “right-of-way authorizations in areas that are environmentally sensitive”). Congress did not pass S. 2834, but a year later, Section 1977 of the Public Land Act would mirror the “identify” wording of that 2008 bill.

Finally, BLM has already satisfied its obligation under Section 1977 to “identify” a northern transportation route. The record here shows that BLM identified, considered, and rejected a northern transportation route in at least 2016 and 2024. *See* Ex. 21 at 11 (2016 RMP rejecting proposed route as failing to “satisfy the conservation purposes of the NCA for many resource values, including threatened, and endangered species, cultural resources, scenic qualities, and recreation uses, as developments within the corridor would create significant impacts on these resources”); Ex. 1 at 20–22 (2024 Record of Decision rejecting ROW because highway “would not comply with [Public Land Act’s] mandate that NCA management focus on the conservation, protection, and enhancement of threatened and endangered species” due to tortoise mortalities and translocation, critical habitat loss and degradation, and wildfires). Nothing more was required.

B. BLM’s Approval of UDOT’s Right-of-Way is an Unreasonable, Unexplained, and Arbitrary Reversal of its Prior Position.

Plaintiffs are also likely to succeed on their third claim that Defendants’ approval of UDOT’s ROW for the Northern Corridor Highway is an unreasonable, unexplained, and arbitrary reversal of its prior positions that led to rejecting the highway. *See* Complaint, Third Claim for Relief ¶¶ 180–83 (ECF No. 1).

When an agency changes position or reverses prior decisionmaking, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox Television Stations, Inc.*, 556 U.S. at 516. “An ‘unexplained

inconsistency’ with an earlier position renders a changed policy arbitrary and capricious.” *Azar*, 933 F.3d at 773 (quoting *Encino Motorcars*, 579 U.S. at 222). Although an agency is free to change its position, “it must provide ‘a *reasoned* explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.’” *Id.* (quoting *Encino Motorcars*, 579 U.S. at 212) (emphasis added).

BLM’s 2026 decision approving UDOT’s ROW for the Northern Corridor Highway is a complete about-face from its recent rejection of the same ROW. To try to justify this change in course, BLM (1) pointed to purportedly “new” evidence on route feasibility; and (2) used that evidence to facilitate a new, atextual interpretation of the Public Land Act. As explained below, this approach was transparently unreasonable.

First, BLM’s reconsideration of the ROW less than a year after its rejection of the same ROW is premised solely on purported “new information” from UDOT “demonstrat[ing] the technical and economic infeasibility of the Red Hills Parkway Expressway Alternative,” Ex. 15 at 3, which BLM indicated was the “environmentally preferable alternative” in the 2024 Record of Decision, Ex. 1 at 11. But this information was neither relevant, nor new.

The feasibility concern was not relevant because BLM’s 2024 denial of the ROW was due to harm to tortoises and impact on wildfires in Red Cliffs NCA, as well as its failure to comply with applicable legal standards, including the Public Land Act, as discussed above. *Supra* pp. 15–16, 27. Although BLM identified a different alternative as “environmentally preferable,” this procedural assessment was subordinate to the finding that the Northern Corridor ROW was inconsistent with the Public Land Act’s management requirements, and it was by no means the primary pillar supporting the ROW termination. *See* Ex. 1 at 18–21. Moreover, this

procedural determination was not in any way a federal approval of the Red Hills Parkway Expressway or an agency action in and of itself.

And the feasibility information was not new either. In fact, the 2024 Record of Decision noted that “[a] letter from UDOT requested a comment period be offered on the Red Hills Parkway Expressway . . . and *again raised concerns about the technical feasibility of this alternative.*” Ex. 1 at 25 (emphasis added). Before issuing the 2024 Record of Decision, BLM reviewed and rejected these concerns. *Id.* BLM also extensively addressed feasibility concerns with the Red Hills Parkway Expressway alternative through the 2020 Final EIS and 2024 Supplemental EIS. *See* Ex. 3 at 262–64 (alternative would eliminate direct access to some properties and require property acquisitions); Ex. 12 at 87–88 (alternative would require removal of the Switchpoint facility, displacing low-income residents); Ex. 12 at 94 (alternative would impact property access and require property acquisitions, which could result in “additional expenses . . . due to the increase in property values in Washington County”).

Instead of grappling with these facts, BLM ignored them. BLM never explained how the information submitted by UDOT in 2025 is a significant change from these already-analyzed factual circumstances, and it was improper for BLM to reverse course on this basis. *See Cnty. of Los Angeles v. Shalala*, 192 F.3d 1005, 1021 (D.C. Cir. 1999) (“where the record belies the agency’s conclusion, we must undo its action”) (quoting *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1222 (D.C.Cir.1999)); *cf. E. Bay Sanctuary Covenant v. Barr*, 385 F. Supp. 3d 922, 956 (N.D. Cal.), *aff’d sub nom. E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962 (9th Cir. 2020) (agency conclusion arbitrary and capricious when “mountain of evidence points one way” and “the agencies went the other – *with no explanation*”).

Second, BLM never adequately justified or explained its reversal in interpreting the

requirements of the Public Land Act. BLM has on several occasions rejected interpreting the Public Land Act to “require[] the BLM to approve or otherwise establish a transportation route through the Red Cliffs NCA,” and instead concluded that “the Act prohibits such a route . . . unless it furthers one of the purposes for which the NCA was established.” Ex. 22 at 3 (testimony from BLM Acting State Director). BLM confirmed this interpretation in its 2016 RMP, finding the highway would not “satisfy the conservation purposes of the NCA for many resource values.” Ex. 21 at 11. And BLM re-confirmed this interpretation in the 2024 Record of Decision where it again concluded that the highway “would not comply” with the Public Land Act’s management mandate. Ex. 1 at 20–22.

Instead of providing a reasoned explanation for its dramatic shift on the meaning and interpretation of the Public Land Act, BLM hid behind factual details regarding highway alternative feasibility. But these are neither relevant nor a reasonable basis for BLM to re-interpret its statutory obligation. And BLM’s lack of adequate explanation for its reversal in course renders the action unreasonable and unlawful. *See Encino Motorcars*, 579 U.S. at 221 (“the agency must at least display awareness that it is changing position”) (cleaned up); *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) (agency’s failure “to acknowledge and adequately explain its change in policy” was arbitrary and capricious).

Finally, further highlighting the unreasonableness of BLM’s change in position is the sequencing in which it undertook its actions. In the 2023 Settlement Agreement and 2024 Record of Decision BLM “agree[d] that if the new 2024 decision on the ROW application differs from the 2021 ROW decision, [BLM] will amend the RMPs to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or re-consider a similar ROW application within the NCA.” Ex. 13 ¶ 3b; *see also* Ex. 1 at 7, 53 (same). While Plaintiffs are not

explicitly seeking to enforce the terms of the private settlement agreement at this time, there is no dispute that BLM failed to amend the RMPs to reflect the 2024 decision before re-considering UDOT’s ROW application, nor did it explain its failure to do so. In other words, BLM did not explain why this sequencing of decisions was no longer relevant and instead rushed back to the drawing board to “reconsider” its decision. This is a textbook error under the APA. *See State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (to survive arbitrary and capricious review, “agency must . . . articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (internal quotation marks and citation omitted).

For these reasons, BLM’s reversal in course in approving UDOT’s ROW was arbitrary and capricious.

C. FWS’s 2025 Northern Corridor Biological Opinion is Arbitrary and Capricious.

Plaintiffs are also likely to establish that FWS’s 2025 Biological Opinion is arbitrary, capricious, and contrary to law. *See* Complaint, Sixth Claim for Relief ¶¶ 195–98 (ECF No.1).

1. FWS’s no-jeopardy finding for the Mojave desert tortoise was arbitrary.

The ESA mandates that FWS ensure the relevant federal action is “not likely to jeopardize the continued existence of any endangered species or threatened species.” 16 U.S.C. § 1536(a). Accordingly, FWS’s biological opinion, based on a detailed discussion of the species’ baseline condition and effects of the action, must include a finding of whether the action would cause “jeopardy” or “no jeopardy.” 50 C.F.R. § 402.14(h). FWS regulations define “jeopardy” to mean actions that “directly or indirectly . . . reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. “[E]ven where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing

additional harm.” *Am. Rivers*, 895 F.3d at 47 (quoting *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 930 (9th Cir. 2008)).

Here, FWS’s no-jeopardy finding was fatally flawed for three reasons.

a. Failure to address a tipping point

To determine whether a proposed action would jeopardize a listed species, an agency must first “know roughly at what point survival and recovery will be placed at risk.” *Ctr. for Biological Diversity v. Salazar* (“CBD”), 804 F. Supp. 2d 987, 1000 (D. Ariz. 2011) (quoting *Nat’l Wildlife Fed’n*, 524 F.3d at 936). FWS must “determine whether the proposed action will cause the species to reach that tipping point.” *Id.* at 999 (citing *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 527 (9th Cir. 2010)). Impairing the likelihood of recovery alone constitutes jeopardy. *Nat’l Wildlife Fed’n*, 524 F.3d at 936.

Courts have routinely held biological opinions unlawful due to failures to examine whether the environmental baseline and additive impacts of the proposed action push the species towards the point of diminishing survival and recovery likelihood. *See Am. Rivers*, 895 F.3d at 48 (no-jeopardy determination arbitrary because FWS assessed local take but failed to explain if or how “the local populations are insignificant to the larger populations”); *Def’s. of Wildlife v. U.S. Dep’t of Interior*, 931 F.3d 339, 354 (4th Cir. 2019) (unlawful “failure to account for the species’ already precarious state”); *W. Watersheds Project v. Haaland*, 69 F.4th 689, 711 (10th Cir. 2023) (unlawful failure to address “the Project’s likely contribution to the already-existing [higher mortality than survival] for female bears in the Project area”); *Nat’l Wildlife Fed’n*, 524 F.3d at 933; *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 527 (9th Cir. 2010); *CBD*, 804 F. Supp. 2d at 1000; *Def’s. of Wildlife v. Jewell*, 176 F. Supp. 3d 975, 1005–06 (D. Mont. 2016) (FWS failed to consider harm in relation to small population size).

FWS committed the same kind of error here. As discussed above, *see supra* at pp. 9–10, the undisputed record evidence shows that Mojave desert tortoise populations are steadily declining year-over-year. Ex. 5 at 38; *id.* at 29 (significant declines in four of five recovery units). Annual tortoise mortality steadily occurs at rates much higher than needed to maintain a stable or increasing population. Hohman Decl. ¶ 89, Table 6 (addressing UDWR monitoring reports). FWS also admitted that since the agency first developed a recovery plan in 1994, “[t]hreats facing desert tortoises have been increasing,” and “many recovery actions have not been fully implemented.” Ex. 5 at 30.

The Biological Opinion also acknowledged threats and impacts that continue to negatively affect the species and thus its survival and recovery prospects. *See id.* at 29, 38–52. And FWS’s own tortoise expert warned that “[t]he negative population trends . . . for Mojave desert tortoise indicate that this species is on the path to extinction under current conditions.” Ex. 11 at 14. Indeed, in Zone 3 of the Reserve where the highway would be located, there is already a “localized decline of adult desert tortoise abundance and density,” Ex. 5 at 50; *id.* at 52 (map), and the tortoise population has already declined below the threshold FWS considers to be necessary for a minimally viable population, Ex. 7 at 2; Hohman Decl. ¶ 90; *supra* p. 10.

Given this information, FWS was required to investigate and discuss the point at which the existing baseline conditions and threats to tortoise survival and recovery—together with the additive threats from the Northern Corridor Highway—would put tortoise further in peril, or “deepen[] the jeopardy” to tortoise. *Am. Rivers*, 895 F.3d at 47.

FWS did not do that here. FWS described the lethal crushing, habitat fragmentation, introduction of threats like weeds, fire, and predators, and other direct and indirect harms to the species the highway would cause. Ex. 5 at 56–70; *supra* pp. 11–12. But nowhere did FWS

evaluate the import of piling additional harm upon the already-dire tortoise trends and conditions.

Instead, FWS's jeopardy analysis comprised a series of short bullet points providing no explanation, discussion, or analysis about what it would take to impair the likelihood of the tortoise's survival and recovery, or whether the highway would cause impacts beyond that threshold. *See* Ex. 5 at 76–78. For example, FWS reasoned that the highway will “kill or injure” numbers of adult, juvenile, and hatchling tortoises that are but a small fraction of the population's whole. *Id.* at 76. FWS claimed that this fraction would not appreciably affect survival and recovery, but provided no explanatory basis for its conclusion. *Id.* In a population that is already “on the path to extinction under current conditions,” *see* Ex. 11 at 14, FWS must substantively explain why this amount of additional death and injury would not worsen the tortoise's survival and recovery chances, measured against an understanding of what would.

FWS's remaining bullet points do no more than surmise that translocated turtles may still contribute to survival and recovery, that culvert passage (the effectiveness of which is unproven⁷) might help alleviate fragmentation, and that vague aspirations for habitat restoration might do some good. *Id.* at 76–77.

Without assessing the biological implications of the highway's impacts, the existing perilous trends for the tortoise population, and ongoing threats *in combination*, FWS's jeopardy conclusion was speculative, unreasoned, and unlawfully narrow. ESA compliance cannot be based “on speculation or surmise.” *Bldg. Indus. Ass'n of Superior Calif. v. Norton*, 247 F.3d 1241, 1247 (D.C. Cir. 2001) (citation omitted). And FWS cannot mask the consequences of the

⁷ “[T]here is evidence to suggest that tortoises utilize culverts; however, the effectiveness of the structures in aiding long-term population health and habitat connectivity is unknown.” Ex. 5 at 39.

highway by downplaying the relative number of tortoises killed but “fail[ing] to take proper account of evidence of population decline.” *Sierra Club v. Nat’l Marine Fisheries Serv.*, 767 F. Supp. 3d 440, 469 (D. Md. 2024), *amended*, No. DLB-20-3060, 2024 WL 6817999 (D. Md. Oct. 21, 2024). Because FWS here failed to consider the tipping point at which the tortoise’s survival and recovery prospects would be placed at risk, the Biological Opinion fell far short of a legally sufficient jeopardy analysis.

b. Ignoring the highway’s relation to other development

The ESA requires FWS to examine the “effects of the action,” including indirect and cumulative effects, i.e., “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action.” 50 C.F.R. § 402.02. Thus, a legally sufficient evaluation of the highway here must consider “future development of lands rendered accessible by the agency action.” *Rocky Mountain Wild v. Dallas*, 98 F.4th 1263, 1302 (10th Cir. 2024). Courts have held that the agency must treat the growth-inducing impacts of an action as an “effect,” and that failing to consider the possibility of additional development that is evident in the record is a violation of the ESA. *See Nat’l Wildlife Fed’n v. Coleman*, 529 F.2d 359, 361 (5th Cir. 1976).

FWS stated in its no-jeopardy explanation: “We do not anticipate any future road development within the Reserve and consider the NCH changed circumstance the only substantial development project affecting the Reserve in the future.” Ex. 5 at 76. This conclusion downplays the compounding effects the highway will have on tortoise by treating it as isolated from any other development, but the statement conflicts with the record before the agency. The highway proposal plainly arises from an existing and growing demand for new roads in the area; its very premise is to facilitate increasing growth. *See* Ex. 15 at 2 (proposal “driven by the

current and forecasted population growth within the County, which will continue to increase demand on the transportation network”).⁸

In the record before FWS, the issue of development occurring in conjunction with—or indirectly caused by—the highway was repeatedly raised. Private and state-owned lands pervade the Reserve and abut the eastern portion of the highway’s route. *See* Ex. 15 at 4–5 (maps). BLM acknowledged that threats to the tortoise in this area include “potential for development . . . on non-federal lands.” Ex. 3 at 112. FWS similarly acknowledged that “landowners in the reserve may decide to develop their land.” Ex. 23 at 63. BLM concluded in 2024 that “potential effects include . . . induced growth to undeveloped areas.” Ex. 12 at 90.

Thus, FWS’s assumption about a lack of related development affecting the Reserve was contradicted by the evidence in the record. This error undermines FWS’s jeopardy conclusion because roads pose “the largest effect on wildlife movement and habitat connectivity” and are a significant vector for other harmful effects like weeds, human presence, predators, and wildfire. Ex. 5 at 39–45, 48; *supra* pp. 8–9. FWS failed its duty to fully consider the effects of the action on listed species and violated the APA and ESA by ignoring an issue that arose in the environmental analysis documents that informed the Biological Opinion. *See Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1124-25 (9th Cir. 2012) (biological opinion arbitrary and capricious for failing to discuss issue raised in consulting agency’s biological assessment and EIS); *W. Watersheds Project*, 69 F.4th at 710 (same).

⁸ *See also* Ex. 3 at 10 (“seeking to meet the transportation demands of . . . anticipated continued growth through 2050.”); *id.* at 262 (“[A]n indirect effect of added infrastructure, should it occur, is that it may induce growth to an area that might otherwise not be developed.”).

c. *Failure to assess the highway's effects in combination with baseline and cumulative effects like climate change*

ESA regulations require biological opinions to include a “detailed discussion of the environmental baseline of the listed species,” and to use that baseline to evaluate jeopardy. 50 C.F.R. § 402.14(h). If FWS fails to properly analyze the environmental baseline, “its no-jeopardy conclusions . . . are necessarily arbitrary.” *Appalachian Voices v. U.S. Dep’t of Interior*, 25 F.4th 259, 278 (4th Cir. 2022). Moreover, a biological opinion’s jeopardy determination must use the best available science, 16 U.S.C. § 1536(a)(2), and must “[a]dd the effects of the action and cumulative effects to the environmental baseline and in light of the status of the species,” 50 C.F.R. § 402.14(g)(4). To do this, FWS must adequately address climate change impacts on ESA-listed species. *Appalachian Voices*, 25 F. 4th at 271. Such a step is “critical to ensure that the action is not analyzed in a vacuum.” *Id.* at 278 (quotation omitted).

Here, FWS included a one-page discussion of the threat that “climate change and drought” poses to Mojave desert tortoise. Ex. 5 at 46. Climate change may significantly threaten the species in the future because it will increase the likelihood of future significant droughts, inhibit plant growth and limit tortoise forage, increase rates of respiratory disease, induce abnormal behavior like failures to hibernate, and spike mortality. *Id.* Increasing temperatures threaten to shrink the time tortoises can spend foraging. *Id.* And climate change is a significant factor in increasing habitat degradation, *id.* at 41, and wildfires, *id.* at 73. Yet despite reciting these threats, which may worsen over time, FWS failed to assess how the highway would affect tortoises in combination with them. Climate change appeared nowhere in the agency’s jeopardy analysis or conclusion. FWS briefly recited climate change in a list of cumulative effects, but provided no substantive analysis regarding its implications for jeopardy. *Id.* at 73.

Courts routinely strike down biological opinions that merely acknowledge climate change effects but fail to add these impacts to those from the proposed action. For example, in *Willamette Riverkeeper v. National Marine Fisheries Service*, 763 F. Supp. 3d 1203 (D. Or. 2025), the court held unlawful a biological opinion that had evaluated the “serious negative implications” of climate change on a species, but then did not analyze the effects of the proposed project “on top of” the climate change effects. *Id.* at 1237. Similarly, in *Wild Fish Conservancy v. Irving*, 221 F. Supp. 3d 1224 (E.D. Wash. 2016), the challenged biological opinion included “a detailed discussion of the effects of climate change,” but the agency failed to consider the effects of climate change “in connection with” its analysis of the effects of the proposed action. *Id.* at 1233–34; *see also W. Watersheds Project v. McKay*, No. 22-35706, 2023 WL 7042541 at *2 (9th Cir. Oct. 26, 2023) (climate change discussion was “deficient” because it failed to consider “whether the small frog population could sustain grazing-related impacts on top of potential climate change effects”); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 874 (D. Or. 2016) (biological opinion “fails properly to analyze the effects of climate change, including . . . its additive harm”).

FWS cannot acknowledge that climate change has additive effects but then decline to factor those additive effects into the substance of its jeopardy analysis. Because FWS failed to provide any explanation regarding the implications of the highway’s effects in combination with significant ongoing threats like climate change, the 2025 Northern Corridor Biological Opinion was arbitrary, capricious, and contrary to law.

2. FWS unlawfully permitted destruction and adverse modification of critical habitat.

The ESA also requires FWS to ensure that a proposed action will not result in the “destruction or adverse modification” of designated critical habitat for the species. 16 U.S.C.

§ 1536(a)(2). FWS's regulations state that destruction or adverse modification occurs where a direct or indirect alteration appreciably diminishes the value of critical habitat as a whole for the survival and recovery of a species. 50 C.F.R. § 402.02.

Here, FWS acknowledged that the highway will destroy about 275 acres of tortoise critical habitat, and will fragment and degrade approximately 2,608 acres. Ex. 5 at 77. FWS then incongruously concluded that the highway would not violate the ESA's mandate, *see id.*, which was contrary to the plain language of ESA Section 7 and otherwise arbitrary and capricious.

FWS rationalized its authorization of destroying 275 acres of critical habitat on the ground that this is but a small percentage of the whole.⁹ *See id.* But compliance with the ESA and APA requires more than this hand-waving conclusion. FWS cannot dilute the risk that the highway's habitat destruction poses to tortoise merely by pointing to a large acreage denominator. The agency itself has explained this when promulgating its regulatory definition: "[T]he size or proportion of the affected area is not determinative," FWS said. 84 Fed. Reg. 44,976, 44,983 (Aug. 27, 2019). It is not "appropriate to mask the significance of localized effects of the action by only considering the larger scale of the whole [critical habitat] designation and not considering the significance of any effects that are occurring at smaller scales." *Id.* Courts have also held that "focusing solely on a vast scale can mask multiple site-specific impacts that, when aggregated, do pose a significant risk to a species." *Gifford Pinchot Task Force v. FWS*, 378 F.3d 1059, 1075 (9th Cir. 2004), *amended* 387 F.3d 968 (9th Cir. 2004).

As FWS has noted, "[l]ocal impacts could be significant . . . where a smaller affected area of the overall habitat is important in its ability to support the conservation of the species." 84

⁹ As a legal matter, FWS cannot apply its regulatory definition in a manner that would contravene the plain language of the ESA, which flatly forecloses the destruction of designated critical habitat. 16 U.S.C. § 1536(a)(2).

Fed. Reg. at 44,983. That is certainly the case here, because the highway would “bisect[] an important high-density area” in the recovery unit. Ex. 5 at 77; *id.* at 52 (map); *see also* LaRue Decl. ¶ 52 (The “only high tortoise density area in the entire Reserve . . . would be compromised.”). Not only is it impossible to square the destruction of hundreds of acres of critical habitat with the ESA’s clear language, but FWS here failed even to rationally explain why it could dismiss destruction of critical habitat within the context of the habitat’s importance to recovery prospects. *See Nat’l Wildlife Fed’n v. Norton*, 332 F. Supp. 2d 170, 177 (D.D.C. 2004) (biological opinion unlawful where FWS made “no effort to discuss what [habitat] percentages mean for the [species]”).

Moreover, FWS cannot dismiss the degradation and fragmentation of thousands of acres of additional critical habitat based on vague and speculative aspirations for restoration projects elsewhere. *See* Ex. 5 at 77. Projects BLM will merely “work toward” over 25 years, *see id.*, cannot reasonably excuse adverse modification of critical habitat as prohibited by the ESA. 16 U.S.C. § 1536(a)(2). Nor can the “offset” promise of incremental protections for other tortoise populations in areas *outside* critical habitat suffice. *See* Ex. 5 at 77–78 (relying on Zone 6 as an excuse); *see also* Hohman Decl. ¶¶ 52–53 (critical habitat does not include Zone 6); *id.* ¶ 95Q–R (addressing Zone 6). FWS’s speculative, bullet point-level critical habitat analysis plainly fails the APA requirement for action “reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 280 (2024) (quotation omitted).

II. IMMEDIATE INJUNCTIVE RELIEF IS NECESSARY TO AVOID IRREPARABLE HARM

Ground disturbance associated with initial fencing and related activities for the Northern Corridor Highway will be underway in the next couple of weeks, and unless enjoined, is likely to be completed “by early spring 2026” before a merits decision is reached. *See* Ex. 19 at 1. The

irreparable damage to follow warrants injunctive relief because it is certain, great, actual, and imminent, such “that there is a clear and present need for equitable relief to prevent irreparable harm.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (quotation omitted). Dozens of Plaintiffs’ members live within the Project area, and many more live, work, and recreate on lands the Project will irreparably impair. *See* Plaintiffs’ Declarations attached hereto.¹⁰ Additionally, these initial construction activities pose the risk of facilitating the ultimate construction of the highway, whereby even if Defendants’ decisions are overturned for reconsideration, “the bureaucratic momentum created by [these] activities will skew the analysis and decision-making of the [agencies].” *See Colorado Wild Inc. v. U.S. Forest Serv.*, 523 F. Supp. 2d 1213, 1221 (D. Colo. 2007) (finding such harm is irreparable even if the construction activities themselves can be undone). These harms cannot be undone or compensated for.

As Plaintiffs’ experts describe, while framed by Defendants as tortoise “mitigation,” this ground disturbance will cause irreparable harm to Mojave desert tortoises and their habitat in Red Cliffs NCA and Zone 3 of the Desert Reserve. Construction of ROW and tortoise exclusion fencing will render high-quality critical habitat “inaccessible to tortoises,” fragmenting the population, increasing predation, removing part of tortoise home ranges, and increasing stressful behavior and greater energy use in drought conditions. Hohman Decl. ¶¶ 97, 100. Impacts from blading and grading of the vegetation will also be “severe.” *Id.* ¶ 98. The destruction of vegetation, seed banks, and soils “will not return to pre-surface disturbance conditions in our lifetime” meaning the area “would no longer be usable habitat for the tortoise, and this habitat

¹⁰ These Plaintiffs member declarations show irreparable harm in the absence of a preliminary injunction, as well as injury in fact that is traceable to the Northern Corridor Highway and redressable by this Court, thus confirming Plaintiffs’ Article III standing. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

. . . will be destroyed and non-native invasive annual plants will germinate in the bladed area beginning this late winter/early spring.” *Id.* Thus, even if fencing were eventually removed, the harm to tortoise habitat would be effectively irreparable. *See id.* Defendants themselves similarly acknowledge the significant harm and mortality to tortoises from ground disturbance. Ex. 5 at 60 (describing injuries and fatalities that may result from fencing and ground disturbance); *id.* at 58–59 (describing injuries, fatalities, and stress from handling of tortoises in ROW area); *supra* pp. 19–20.

The location of these activities is particularly troublesome since it will occur through “the only high-density cluster of tortoises in Zone 3.” Hohman Decl. ¶ 101. Fencing and other ground disturbance “will reduce the habitat available but not the number of tortoises using it,” increasing “competition among the confined tortoises for use of limited resources.” *Id.* ¶ 103. During droughts, these impacts are worse. *Id.* Tortoises would be “prevent[ed] or impede[d] . . . from accessing all areas they need for feeding, breeding, and shelter.” *Id.* ¶¶ 101–02. Tortoises would also be “expose[d] to extreme temperature” and subject to increased predation risk, particularly for juveniles. LaRue Decl. ¶ 55. Moreover, “[t]hese activities would exacerbate the ongoing declining trend of abundance of the tortoise population in the Reserve *pushing it toward a level below population viability.*” Hohman Decl. ¶ 105 (emphasis added). The impacts would be similar to those from “the overall construction and use of the [highway].” *Id.*

In sum, “[r]ather than serving as a protective measure, fencing, and the resulting ground disturbance, would exacerbate existing demographic stressors by disrupting movement, connectivity, thermoregulation, and access to essential resources at a time when population recovery is already compromised, in addition to immediately fragmenting tortoise habitat.” LaRue Decl. ¶ 54; *see also supra* pp. 17–20. The timing of these activities is also crucial, as they

will be “particularly harmful to dormant adult and juvenile tortoises” emerging in February and March. LaRue Decl. ¶ 55; *see also* Hohman Decl. ¶ 97 (translocation of tortoises in the spring can contribute to higher mortality). During this time of emergence, tortoises “must rapidly access forage to replenish depleted energy reserves, and failure to do so can result in starvation and mortality.” LaRue Decl. ¶ 55.

Courts have not hesitated to find a likelihood of irreparable harm in cases involving injury or mortality to protected species and their habitat. For example, in *Humane Society of U.S. v. Kempthorne*, 481 F. Supp. 2d 53 (D.D.C. 2006), *vacated sub nom. Humane Society of U.S. v. Kempthorne*, 527 F.3d 181 (D.C. Cir. 2008), the court found that killing of 43 endangered wolves constituted irreparable harm and rejected the notion that the entire species must be jeopardized to support injunctive relief. *Id.* at 69–70. Similarly, in *Center for Biological Diversity v. Ross*, the court found continued use of vertical lines posed a risk of irreparable harm to right whales, because such sublethal entanglements “may impede feeding ability and reduce reproduction even if they do not cause serious injury or death.” 480 F. Supp. 3d at 252; *see also Am. Rivers v. U.S. Army Corps of Eng’rs*, 271 F. Supp. 2d 230, 258–59 (D.D.C. 2003) (irreparable harm based on imminent and unlawful take of least tern and piping plover from operation of dam); *W. Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1255 (D. Or. 2019) (irreparable harm based on destruction of sage-grouse habitat).

III. THE BALANCE OF HARMS FAVORS AN INJUNCTION

The irreparable harm to Mojave desert tortoise and their habitat described above outweighs any harm from an injunction. In cases involving violations of the ESA and harm to protected species, “the third and fourth factors . . . are generally considered to tip in favor of the species.” *Ctr. for Biological Diversity v. Ross*, 480 F. Supp. 3d at 250 (quoting *Conservation L.*

Found., 422 F. Supp. 3d at 31); *see also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 817 (9th Cir. 2018) (equities and public interest factors *always* tip in favor of the protected species). That is because when it comes to the protection of ESA species, “[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost” and thus “the balance has been struck in favor of affording endangered species the highest of priorities.” *Tennessee Valley Auth.*, 437 U.S. at 184, 194. Additionally, as the U.S. Supreme Court has also recognized, where environmental damage is sufficiently likely, “the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Vill. of Gambell, Alaska*, 480 U.S. 531, 545 (1987).

Importantly, any claimed financial harm or temporary delay does not outweigh irreparable environmental and species harm from unlawful development on public lands. *See, e.g., S. Utah Wilderness All. v. Allred*, No. 08-cv-2187 RMU, 2009 WL 765882, at *2 (D.D.C. Jan. 17, 2009) (finding “threat of irreparable harm to public land” from oil and gas development outweighed economic harms to lessees); *Citizen’s Alert Regarding the Env’t v. U.S. Dep’t. of Justice*, No. 95-1702 GK, 1995 WL 748246, at *11 (D.D.C. Dec. 8, 1995) (economic costs of preliminary injunction did not outweigh “permanent destruction of environmental values that, once lost, may never again be replicated”). For these reasons, the balance of harms weighs in Plaintiffs’ favor.

IV. THE PUBLIC INTEREST FAVORS AN INJUNCTION

The requested preliminary injunction is also in the public interest. Again, Congress has made clear there is a strong public interest in protecting listed species. *See Tennessee Valley Auth.*, 437 U.S. at 194; *Conservation L. Found.*, 422 F. Supp. 3d at 34 (given “[t]he plain text of

the ESA,” Congress has made clear “whose hardships are to be prioritized and as to what will serve the public interest”). The public also has a strong interest in generally maintaining environmental quality. *See Nat’l Wildlife Fed’n v. Andrus*, 440 F. Supp. 1245, 1256 (D.D.C. 1977). These interests weigh strongly in favor of an injunction here, because absent such relief, initial ground-disturbing activities for the highway are likely to injure, kill, and displace Mojave desert tortoises and irreparably alter their natural habitat conditions. *See, e.g.*, Hohman Decl. ¶¶ 96–105, 108; *supra* pp. 17–20, 40–43.

Additionally, the public has a substantial interest “in having governmental agencies abide by the federal laws that govern their existence and operations.” *Newby*, 838 F.3d at 12 (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)).

V. A NOMINAL INJUNCTION BOND IS APPROPRIATE HERE

Finally, given the public-interest nature of this litigation and Plaintiffs’ nonprofit status, they respectfully request the court impose no bond or a nominal injunction bond no greater than \$100 pursuant to Federal Rule of Civil Procedure 65(c). *See, e.g., Citizen’s Alert Regarding Env’t*, 1995 WL 748246, at *12 n.10 (\$100 bond).

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant their motion for preliminary injunction to maintain the status quo during the pendency of this case. Plaintiffs also request an expedited hearing no later than 21 days after the filing of this motion.

Respectfully submitted this 10th day of February 2026.

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