



United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
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San Francisco, CA 94104-2828



IN REPLY REFER TO:

L7617 (PWRO-P)

DEC 14 2017

Memorandum

To: Superintendent, Tule Springs Fossil Beds National Monument

From: Acting Regional Director, Pacific West Region

Subject: Environmental Compliance for Land Acquisition and Tufa Trail Project

The *Finding of No Significant Impact* (FONSI) for acquisition of approximately 20.5 acres and construction of the Tufa Trail, as well as issuance of three easements (approximately 5.63 acres), is approved.

The briefing summarizing current status and next steps that was provided on November 27, 2017 was very helpful. Moreover, the concerted efforts of park and regional staff to coordinate with local officials to bring this much anticipated initiative to this point in the process are recognized, and are much appreciated.

Our understanding is that a Weekly Report item will be transmitted to PWR Public Affairs on December 14, 2017 – thank you for that communications piece as well.

Martha J. Lee

Attachment

Cc watch:
PWR Lands
LAKE Supt

FINDING OF SIGNIFICANT IMPACT

Villages at Tule Springs Roadway/Utility Crossings and the Tufa Trail Environmental Assessment

December 2017

Tule Springs Fossil Beds National Monument
Clark County, Nevada

PURPOSE AND NEED

The City of North Las Vegas (CNLV) is currently developing a planned community surrounded by the Tule Springs Fossil Bed Monument (TUSK). The CNLV holds a right-of-way (ROW) granted in perpetuity to construct, operate and maintain a roadway and public utility facilities (drainage, water, and sewer), of which a portion (approximately 20.5 acres) lies within TUSK. Currently, several underground utilities and a two-track road exist within the portion of the ROW area in TUSK so although the area has been previously disturbed, the roadway portion of this ROW has not been constructed. If this easement is developed, a multi-lane paved roadway could separate the sensitive Eglington Preserve area from the rest of the park. The CNLV in cooperation with the National Park Service (NPS) proposes exchanging land easements to develop The Villages at Tule Springs while minimally disturbing and bisecting TUSK. The proposed project would eliminate the potential for the CNLV to construct a major roadway that would bisect TUSK by allowing the CNLV to connect to roads and utilities to the planned community. Additionally, KBS SOR Highlands, TRS, LLC (KBS) would construct a trail, which would allow public access to TUSK, while concentrating visitor traffic and reducing the impacts of overland travel.

SELECTED ACTION

The selected Action is the Action Alternative, which was identified and analyzed in the EA as the NPS Preferred Alternative. No changes have been incorporated into the Selected Action as a result of public comments; however, several edits were made to the EA (see attached Errata). Under the Action Alternative NPS would acquire a portion of land (approximately 20.5 acres) that lies within TUSK. The CNLV would obtain from NPS three perpetual easements for utilities and/or roadways on land in the Eglington Preserve area within TUSK, totaling approximately 5.63 acres.

The proposed exchange also includes construction of approximately 3.2 miles of developed trails within TUSK to encourage visitors to access the monument in a manner that will protect park resources. This trail will be completed in phases. KBS will build the Tufa Trail during construction of the Crossings, and NPS will build the future trail system as resources become available.

ALTERNATIVES ANALYZED BUT NOT SELECTED

If the No Action Alternative were chosen, the CNLV would not relinquish the roadway portion of its ROW and would retain the right to build a roadway that would bisect a portion of TUSK. The roadway would likely be developed because it would provide the only road and utility access to the portion of the Planned Community surrounded by TUSK land. The NPS would not convey easements for the Crossings to CNLV, and KBS would not build the Tufa Trail.

ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The environmentally preferred alternative is the alternative that will promote the National Environmental Policy Act (NEPA), as expressed in Section 10 of NEPA. This alternative will satisfy the following requirements:

- 1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 2) Assure for all generations safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- 3) Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or the other undesirable or unintended consequences;
- 4) Preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- 5) Achieve a balance between population and resources use that will permit high standards of living and a wide sharing of life's amenities; and,
- 6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

The Council on Environmental Quality states that the environmentally preferable alternative is the "alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves and enhances historic, cultural, and natural resources" (46 Federal Register 18026-18038).

The Action Alternative, the Selected Action, is the environmentally preferable alternative because overall it will meet the requirements in Section 101 of NEPA. The Action Alternative calls for eliminating the potential for CNLV to construct a major roadway that would bisect TUSK while allowing the CNLV to connect to roads and utilities to the planned community. Additionally, KBS would construct a trail, which would allow public access to TUSK, while concentrating visitor traffic and reducing the impacts of overland travel. The Action Alternative will reduce construction of above-ground facilities from 20.5 acres to 10.47 acres thus lessening the effects to biological, cultural and natural resources. The Action Alternative will provide benefits that relate to visitor experiences, maintaining a balance between population and resources, and natural resources protection and thus is highly preferable to the No Action Alternative, which would degrade the visitors experience and allow more construction and impacts to natural resources.

MITIGATION AND MONITORING

Mitigation measures are specific actions designed to minimize, reduce, or eliminate impacts of alternatives and to protect TUSK. The following table outlines mitigation measures that will be implemented under the Selected Action. All mitigation will be overseen by an NPS Monitor, which may either be NPS park staff and/or a third-party environmental monitoring contractor that will function as an extension of NPS staff to ensure that the project contractor complies with all mitigation measures referenced herein.

Resource Area	Mitigation Measure
General Best Management Practices	The project area will be staked and flagged to minimize ground-disturbing activities.
	Travel and construction activities outside of the staked and flagged area will be prohibited.
	A Clark County dust control permit will be obtained and complied with as required for projects that disturb 0.25 acre or greater.
Soils	Soil conservation measures listed in the NPS Natural Resource Management Reference Manual # 77 will be followed.
	A sediment and erosion plan will be developed. Existing vegetation will be retained wherever possible to prevent erosion off-site.
	Sediment barriers and other suitable erosion control measures and run-off control devices will be installed prior to ground-disturbing activities at construction sites
Geology and Paleontological Resources	A paleontological monitor will be on-site during ground disturbing activities. If paleontological resources are discovered, the monitor would coordinate with the construction crew to stop activities, notify the NPS, and recover the resources before construction could continue.
Vegetation and Sensitive Plants	Construction staging areas will be on private land only; no vehicles or equipment will be left on NPS land overnight. A resource monitor will survey the potential staging area (even if on private land) for weed-infested areas.
	No imported topsoil (desert soil) or planted material will be used during or after the projects to avoid introducing nonnative plant species or inappropriate genetic stock of native plant species.
	If hay/straw bales are used for erosion control measures they will be certified as weed free.
	The contractor will be required to pressure-wash all equipment before being allowed into TUSK. Reclaimed areas will be monitored to ensure establishment and spread of only native species. In areas of temporary disturbance, revegetation may be required at the discretion of the NPS resource manager, and would consist of only native plants and/or seeds.
	Surface reclamation will be achieved through salvage and replacement of topsoil, salvage and replacement of vegetation, re-seeding with native species, or a combination of those methods. Only NPS-approved seed mixes will be used for reclaiming temporary disturbance areas.
Wildlife (including federally-protected)	The USFWS has issued a Biological Opinion for the project. All mitigation measures in the Biological Opinion will be implemented. Biological monitors will obtain a

Resource Area	Mitigation Measure
species and Migratory Birds)	Nevada Department of Wildlife (NDOW) Special Purposes Permit as required to handle desert tortoises in accordance with the Biological Opinion.
	Biological monitors will follow NDOW's mitigation measures for Gila monsters as denoted in Gila Monster Status, Identification and Reporting Protocol for Observations (2012).
	Habitat-altering projects or portions of projects should be scheduled outside of the bird-breeding season, which generally occurs between February 15th and August 31st. If a project must occur during the breeding season, then a qualified biologist will survey the area for nests immediately before starting construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests are found, an appropriately-sized buffer area must be established and maintained until the young birds fledge. The buffer area must connect to suitable, undisturbed habitat. As the above dates are a general guideline, if active nests are observed outside this range they are to be avoided as previously described.
Cultural Resources	Construction activities will cease if previously unidentified cultural or archeological resources are discovered and NPS/SHPO will be notified to determine a course of action as per 36 CFR § 800.13(v)(3).
Visitor Experience	Construction areas will be appropriately marked, flagged and/or restricted to minimize potential visitor safety concerns.
Water Resources	The applicant will comply with all stipulations included in the USACE 404 Permit (Letter of Permission SPK-2007-1746) and 401 Water Quality Certification (NV401-12-062).
	No Crossing structures will be placed below the ordinary high water mark.
	Erosion control measures will be implemented to intercept and capture sediment prior to entering Waters of the United States (WOUS).
	All BMPs will be in place prior to initiation of any construction activities and will remain until construction activities area completed.
	Erosion control methods will be kept in place until all construction activities are completed and the site soils are stabilized.
	Utilize existing natural drainage channels on site and more natural features, such as earthen berms or channels, rather than concrete-lined channels.
	Commit to the use of natural washes, in their present location and natural form and including adequate natural buffers, for flood control to the maximum extent practicable.
	Minimize the number of road crossings over washes and design necessary crossings to provide adequate flow-through during storm events. Consult with NPS Water Resources Division as needed.
Hazardous Materials	A Phase I Environmental Site Assessment would be completed within 90 days prior to the proposed land exchange closing.
	All fuel, transmission, or brake fluid leaks or other hazardous materials shall not be drained onto the ground or into drainage areas.

Resource Area	Mitigation Measure
	All petroleum products and other potentially hazardous materials shall be removed to a disposal facility authorized to accept such materials.
	Waste leaks, spills, or releases shall be reported immediately to NPS. The project proponent shall be responsible for spill material removal and disposal to an approved offsite landfill.
	Construction equipment will be checked daily for leaks. Servicing of construction equipment will take place only at a designated area outside the NPS boundary.
	Workers will comply with applicable Occupational Safety and Health Administration requirements.
	Construction contractor will establish a procedure for spill prevention and response.
	All fuel or hazardous waste leaks, spills, or releases will be stopped or repaired immediately and cleaned up at the time of occurrence. Spill prevention kits will be available on-site.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

The NPS used the NEPA criteria to evaluate whether the selected action will have a significant impact on the environment. As defined by 40 CFR 1508.27, significance is determined by examining the following criteria:

- 1. Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts which require analysis in an environmental impact statement:** While the Selected Action results in minor adverse impacts to geology and paleontological resources, soils, vegetation, wildlife, visitor use and experience, and water resources, these impacts are temporary and offset by long-term beneficial effects, and are not significant enough to warrant analysis in an environmental impact statement.
- 2. The degree to which public health and safety are affected:** The Selected Action will have potential short-term adverse impacts related to worker injury and spills of fuel and other fluids associated with mechanical equipment during construction of the crossings and trail. Construction sites may impact the visitor experience. An operational Environmental Health and Safety Plan will developed for the project in compliance with Occupational Safety and Health Administration (OSHA) standards, the Nevada Division of Industrial Relations requirements, and all other local, state, and NPS or federal regulatory requirements. The Safety Plan will identify site-specific safety control measures; site health and safety roles and responsibilities, speed limits; and site safety hazards and controls. Additionally, construction areas will be appropriately marked, flagged, and/or restricted to minimize potential visitor safety concerns.

3. **Any unique characteristics of the area such as proximity to historic or cultural resources, wild and scenic rivers, ecologically critical areas, wetlands, or floodplains:** No cultural resources (eligible for listing on the National Register of Historic Places); wild and scenic rivers; ecologically critical areas; wetlands or floodplains exist within the project area.
4. **The degree to which impacts are likely to be highly controversial:** No highly controversial impacts were identified during preparation of the environmental assessment or during the public review period.
5. **The degree to which the potential impacts are highly uncertain or involve unique or unknown risks:** Paleontological resources exist near the project area; however, the project has been designed to avoid these resources. A paleontological monitor will be on-site during ground disturbing activities. In the event, that a paleontological resource is discovered, the monitor would coordinate with the construction crew to stop activities, notify the NPS, and recover the resources before construction continues.
6. **Whether the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration:** No significant adverse impacts were identified during preparation of the EA. Implementation of the Selected Action neither established a NPS precedent for future actions with significant effects, nor represents a decision in principle about a future consideration.
7. **Whether the action is related to other actions that may have individual insignificant impacts, but cumulative significant effects:** The EA analyzed impacts related to geological and paleontological resources, soils, vegetation, protected and sensitive plant species, wildlife, species protected under the Endangered Species Act, cultural resources, visitor use and experience, water resources, and hazardous materials. As described in the EA, cumulative impacts were determined by combining use the impacts of the Selected Action with identified impacts from other past present, and reasonable foreseeable projects and actions. Adverse impacts of the Selected Action are minor and short-term. These impacts are offset by the long-term beneficial effects and do not result in cumulative significant impacts to any of the resource topic areas.
8. **The degree to which the action may adversely affect historic properties in or eligible for the listing in the National Register of Historic Places, or other significant scientific, archeological, or cultural resources.** No eligible cultural resources are present in the area.
9. **The degree to which an action may adversely affect an endangered or threatened species or its habitat:** The Selected Action is not likely to adversely affect federally designated critical habitat or the continued existence of the desert tortoise as determined by the U.S. Fish and Wildlife Service (USFWS) during formal Section 7 Consultation under the Endangered Species Act. The USFWS issued a biological opinion for the project on July 25, 2017.

10. Whether the action threatens a violation of federal, state, or local law or requirements

imposed for the protection of the environment: The Selected Action violates no federal, state, or local environmental protection laws. The EA for the Villages at Tule springs Roadway/Utilities Crossings and the Tufa Trail was prepared using the appropriate NPS NEPA Guidelines.

PUBLIC INVOLVEMENT AND AGENCY CONSULTATION

Scoping

TUSK issued a press release on February 8, 2017, to initiate a 30-day scoping process. At that same time, a notice was posted on the NPS website and the Planning Environment and Public Comment (PEPC) project home page. During the 30-day scoping period, six comments were received. Four comments were in favor of the project, one against, and one comment included specific questions about the project and/or management direction of the park.

Agency Consultation and Permitting Requirements

On April 12, 2017 the NPS initiated consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act by requesting a modification to the Lake Mead Recreational Area Programmatic Biological Opinion (PBO) to include TUSK. The USFWS amended the PBO as requested, and on July 6, 2017 the NPS submitted a request to append the PBO. On July 25, 2017 USFWS authorized the project under the Tule Springs Fossil Beds National Monument PBO approving the request to append (File No. of Action 08ENVS00-2017-F-0145 and 84n320-2009-F-0145-R001).

To support current NPS and Department of the Interior goals to reduce Comprehensive Environmental Response Compensation and Liability Act liability at park facilities, a Phase I Environmental Site Assessment was conducted to determine whether or not any hazardous waste sites or contamination exists prior to land purchases and transactions. No environmental concerns were identified.

On August 18, 2017, NPS initiated Section 106 Consultation with the Nevada State Historic Preservation Office (SHPO) pursuant to the National Historic Preservation Act. In a letter issued on September 14, 2017 the SHPO concurred with the NPS's determination that the cultural resources documented within the Area of Potential Effect were not eligible for listing in the National Register of Historic Places. The SHPO suggested mitigation measures that have been added to the mitigation table in this FONSI.

Tribal Consultation

Consultation letters, including maps and project information, were sent to the Chemehuevi Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, the Moapa Band of Paiute Indians, the Pahrump Paiute Tribe, and the Paiute Indian Tribe of Utah. Letters were sent to both the tribal chairman and the cultural resource staff. No specific project concerns were identified, other than a request to be notified if cultural material is discovered during project activities.

Public Review and Comment

On July 26, 2017 a press release announcing a 30-day public review period for the EA was posted on the Tule Springs National Fossil Beds website and on the PEPC website.

Public Comments were accepted through August 30, 2017. Several Comments were received including:

Villages at Tule Springs - Finding of No Significant Impact

- NDOW generally agreed with considerations and best management practices outlined in Section 2.2.3 and had several minor comments that are addressed in the attached errata pages. Additionally, NDOW stated that if the Biological Opinion includes measures for removing desert tortoise out of harm's way, a Special Purposes Permit would be required. Such authorization would also be required for removing Gila monsters out of harm's way. NDOW requested that the EA include mitigation measures presented in NDOW's Gila Monster Status, Identification and Reporting Protocol for Observation (NDOW 2012b). Although the need to relocate either species is considered unlikely, the NPS has included those mitigation measures in the above mitigation table and made the suggested adjustments in the attached errata pages.
- The Protectors of Tule Springs supports the action proposed in the EA, specifically expressing support for the limiting the development of the Grand Teton right-of-way and construction of the first trail within TUSK that would provide educational opportunities within the park.
- The U.S. Fish and Wildlife Service Desert National Wildlife Refuge Complex is in the support of the project, specifically supporting the development of trails to concentrate visitor traffic and limiting development of the Grand Teton right-of-way to allow for a large tract of undeveloped land.
- The U.S. Environmental Protection Agency (EPA) sent a letter with comments regarding the impacts of developing the private inholding as well as project impacts to Waters of the U.S. Mitigation measures for water quality have been included in the above mitigation table, while impacts associated with developing the inholding are beyond the scope of the federal action. The NPS has prepared a response letter that clarifies the scope of the project and addresses the EPA's concerns.
- The Southern Nevada Water Authority (SNWA) sent a letter regarding their existing and planned water delivery infrastructure within TUSK, which will continue to require access and maintenance in the area of the CNLV ROW to be vacated. The NPS recognizes this requirement, which does not negate the benefit of the land exchange. All aspects of the Selected Action will be coordinated, as needed, to avoid impacts to SNWA infrastructure. The NPS has prepared a response letter addressing SNWA's concerns

CONCLUSION

Based on the analysis in the EA, the mitigation measures to reduce, avoid, or eliminate impacts, and with due consideration of public response and agency coordination, the NPS has determined that the Selected Action does not constitute an action that normally requires the preparation of an environmental impact statement.

The selected action will not have a significant effect on the environment. Some short-term adverse impacts are likely to occur, but long-term impacts will be negligible and non-significant. No unmitigated adverse impacts on geology, soils, vegetation, wildlife (including threatened and endangered species), cultural resources, visitor use and experience, water resources, or hazardous materials will occur as part of the proposed project. No highly uncertain or controversial impacts, unique or unknown risks, cumulative effects, or elements of precedent were identified. Implementation of the selected action will not violate any federal, state, or local environmental protection laws. Based on the forgoing, it has been determined that an environmental impact statement will not be prepared for this project and the selected action may be implemented when the land exchange is completed and all relevant permits are obtained.

Recommended:  11/30/17
fr Superintendent, Tule Springs Fossil Beds Date
National Monument

Approved:  12/13/17
Regional Director, Pacific West Region Date

ERRATA EDITS

The following pages and lines in the EA have been modified based on public and agency comments. Strikeouts indicate verbiage that has been removed and ***bold italics*** indicates verbiage that has been added.

Page 21, Existing Environment, General Wildlife, 5th line:

Common wildlife may include species such as the Great Basin whiptail (*Cnemidophorus tigris*), desert horned lizard (*Phrynosoma platyrhinos*), black-tailed jack rabbit (*Lepus californicus*), kit fox (*Vulpes macrotis*), coyote (*Canis latrans*), eactus mice (*Peromyscus spp.*), and kangaroo rats (*Dipodomys spp.*). ***The Nevada Department of Wildlife's Wildlife Action Plan discloses multiple other species of conservation priority that may be in the project area (NDOW 2012a), which may include several reptiles, birds, and mammals. Please refer to the Nevada Wildlife Action Plan for a complete list (NDOW 2012a).***

Page 21, Existing Environment, State Protected Reptiles

The Gila monster is classified as a ***State of Nevada*** state-sensitive ***protected*** reptile (Nevada Administrative Code [NAC] 503.080.1) and ~~is protected under Nevada State law (NAC 503.090 and NAC 503.093).~~

This venomous lizard is found below 5,000 feet in elevation on rocky slopes and landscapes of upland desert scrub interspersed with desert washes (Nevada Department of Wildlife 2012b).

The desert tortoise (Gopherus agassizii) is classified as a State of Nevada protected reptile, and further classified as threatened (NAC 503.080.2) and addressed in Section 5.6 Species Protected under the Endangered Species Act.

Page 23, 1st paragraph

This program would include information on general wildlife, including migratory birds and ***Gila monsters***~~state-sensitive reptiles~~, and what workers should do if they encounter these resources. A biological monitor would be present onsite (as required in the Biological Opinion) and would appropriately monitor for migratory birds, Gila monsters, and other wildlife potentially in harm's way.

References Added

[NDOW] Nevada Department of Wildlife. 2012a. Nevada wildlife action plan. Prepared by the Wildlife Action Plan Team. Approved March 1, 2013. Reno (NV): NDOW.

NDOW. 2012b. Gila monster status, identification and reporting protocol for observations. Las Vegas (NV): NDOW Southern Region.