DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
SOUTHERN NEVADA FISH AND WILDLIFE OFFICE
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LAS VEGAS, NV 89130

FINDINGS OF NO SIGNIFICANT IMPACT

Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit (ESPER0003714) and Implementation of the Spring Mountain Raceway and Motor Resort Northern Expansion Project Habitat Conservation Plan for the Desert Tortoise (*Gopherus agassizii*), Pahrump, Nye County, Nevada

We, the U.S. Fish and Wildlife Service (Service), have completed an Environmental Assessment (EA) for our proposed issuance of an incidental take permit (ITP), pursuant to section 10(a)(l)(B) of the Endangered Species Act (Act), to Spring Mountain Raceway, LLC (Applicant or Permittee) for the implementation of the Spring Mountain Raceway Northern Expansion Project Habitat Conservation Plan (HCP) for the desert tortoise (*Gopherus agassizii*). This document is incorporated by reference as described in 40 CFR 1508.13 (HCP). We briefly present why the EA (and other documents made available during the public comment period) supports our Finding of No Significant Impact (FONSI) and the reasons why the proposed action would not have a significant effect on the human environment.

DESCRIPTION OF THE PROPOSED ACTION

The Applicant seeks an ITP for the desert tortoise in connection with the development and operations of the proposed 227-acre Spring Mountain Raceway Northern Expansion Project (Project) in Nye County, Nevada. The desert tortoise is the only "Covered Species" under the ITP. The ITP would authorize the incidental take of the desert tortoise in association with covered activities in the proposed HCP for a 5-year permit term.

Alternatives Considered

The EA describes the probable effects of this action on the human environment under two alternatives: No Action and the Proposed Action.

No Action Alternative

Under the No Action alternative, the Service would not issue an ITP in association with the HCP. As a result, none of the effects described below under the Project are expected to occur under this alternative. The No Action Alternative is not expected to have significant effects to wetlands, floodplains, or to the human environment.

Proposed Action (Issuance of an ITP)

We would issue an ITP to the Applicant for the take of desert tortoises within the 227-acre Project Area resulting from translocation of tortoises from the Project area to an adjacent area and construction of the project. The Applicant has prepared a proposed HCP as part of the application for an incidental take permit and submitted it to the Service. The HCP presents a program to avoid,

minimize, and mitigate the effects of the incidental take of desert tortoises potentially resulting from development, operation, and maintenance of the northern expansion. Under the Project, we would issue an ITP to the Applicant for the covered activities described in the HCP. This would include the construction of a 3.6 mile extension of the existing paved racetrack, a stormwater detention basin to collect precipitation and allow it to release at a safe speed through the Project area, a facility to house classrooms and offices, a parking area, and a paved paddock area for preparing cars to access the racetrack.

Avoidance and minimization measures intended to reduce effects of covered activities on the desert tortoise are described in the EA and described in further detail in the HCP. Prior to construction, an authorized desert tortoise biologist (ADTB) will perform clearance surveys and relocation of desert tortoises found in harm's way to avoid and minimize effects to the species. Desert tortoises found during clearance surveys for the northern expansion would be relocated to suitable habitat, adjacent to the Project area. Exclusion fencing surrounding the northern expansion would prevent relocated tortoises from returning to the Project area, thereby reducing the potential for tortoises to be injured or killed during construction and operation of the northern expansion. In addition, an ADTB would be on-call during construction activities to avoid and minimize effects to desert tortoises discovered after the clearance survey.

The Applicant would mitigate for the effects of the incidental take by translocating desert tortoise found in the Project area as a condition of the Service's incidental take permit. Clearance surveys and the removal of desert tortoises found within the fenced Project area would be conducted as detailed in the Translocation Plan found in appendix D of the HCP. Given the small number of adult tortoises expected to be found within the Project area, and the availability of suitable habitat adjacent to the Project area, it was determined moving these tortoises to the adjacent recipient site would result in less stress to these animals and to the resident population given the released tortoises are likely familiar with the area and the released and resident tortoises are expected to have encountered each other in the past. Tortoises of sufficient size (>180 mm) would be fitted with radio transmitters and monitored weekly during the active season and monthly during the inactive season for one year post translocation. The Applicant will use the radio transmitters to monitor translocated tortoise health, to evaluate if the translocated tortoises return to the Project area, and to gain additional information on the dispersal movements of translocated tortoises.

The Applicant would provide all employees with a Worker Environmental Awareness Program Training, which will inform them of the legal status of the desert tortoises, actions that are prohibited, penalties for taking prohibited actions, and conservation/mitigation measures to be implemented during construction and operation of the facility.

The Applicant would extend its existing weed and litter control programs from the existing facility to the expansion area to manage the potential contributions of construction activities to the spread of non-native plant species and to reduce the potential for subsidizing predators.

To mitigate for the loss of occupied, suitable habitat, the Applicant would make a remuneration payment of $923 per acre of land to be permanently lost through the construction of the northern expansion. The $923 per acre fee is based on the Remuneration Fee that the Service recommends that Federal agencies propose and assess for desert tortoise habitat disturbance for those projects covered under section 7 of the Act, as well as the requirement that the conservation program for the

HCP include both minimization and mitigation measures in a manner that fully offsets the impacts of the taking. Funding for the implementation of the conservation measures through the remuneration payment ($209,521) will be provided by the Applicant soon after issuance of the permit and before groundbreaking activities begin. The funds will be used for a habitat improvement project in the nearby Stump Springs and Trout Canyon translocation areas that improve habitat condition for desert tortoise by removing invasive plants, including invasive grasses. The project will directly benefit desert tortoise recovery by both improving habitat, and specifically foraging habitat, in an important focus area for desert tortoise population augmentation, and will also serve to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species. The Applicant would submit reports to the Service during the 5-year duration of the ITP. After completion of the clearance surveys, the Applicant would submit a Translocation Summary Report and an Incidental Take Report prepared by an ADTB. The Applicant would also submit Annual Reports summarizing translocated tortoise monitoring, construction progress, compliance with all mitigation measures, incidental take, and other items relevant to the HCP.

Impact Topic Area

Based on both internal and external scoping of the proposed Federal action of issuance of an ITP and a review of a National Environmental Policy Act (NEPA) document developed for the transfer of the lands by Bureau of Land Management (BLM) to the Applicant, the following impact areas were analyzed in the EA: Air Quality, Wildfire, Invasive Weeds, Noise, and Special Status Species, including Threatened and Endangered Species, Migratory Birds, and State Protected Species.

PUBLIC INVOLVEMENT AND REVIEW

Notice of the availability of the draft EA and HCP was published in the Federal Register on October 2, 2020 (85 FR 62318). Public comments were accepted through November 2, 2020. The Service received seven comments during the public review period, including comment letters from the U.S. Environmental Protection Agency (EPA) and the Desert Tortoise Council (DTC). Comments are addressed in appendix A of this document.

DECISION

Effects on the Human Environment

The attached EA was prepared to analyze and disclose potential environmental impacts pursuant to the National Environmental Policy Act. The Project area analyzed in the EA includes the 227-acre proposed raceway expansion area for which the Applicant is seeking an ITP and the adjacent tortoise translocation area managed by the BLM. Only the EA and those documents made available during the public comment period were used in this FONSI. The EA supports the following findings:

Air Quality

Based on the emissions estimated to occur in the EA, the Project would have minimal impacts on air quality, resulting from PM10 emissions due to the construction activities and from operation of

the facility. Project emissions of fugitive dust is expected and would be temporary in nature and would be mitigated using Best Management Practices required by NDEP Surface Area Disturbance Permit and Nye County Dust Control Plan. The track expansion would be paved, and dust would be removed weekly using PM10 compliant street sweepers, as is the practice at the existing track. The 227-acre expansion would have the direct effect on air quality of potentially increasing PM10 emissions by less than 0.045% over the baseline air quality conditions.

SMR cars, trucks, and motorcycles would be driven on the existing adjacent track as well as in the expansion area. Generally, these vehicles would be production vehicles which burn premium unleaded fuels. As described in the EA, the construction of this expansion would result in an increase of less than 0.5% in the number of vehicle-miles traveled per day in the Pahrump Valley, resulting in an inconsequential contribution to air quality.

Activities within the Tortoise Release Area would include a small amount of driving on existing roads and walking to release tortoises removed from the Project area and then to locate and monitor the tortoises fitted with transmitters.

Therefore, the direct, indirect, and cumulative impacts to Air Resources from construction and maintenance of the SMR facilities would not be significant.

Wildfire

During construction operations, increasing the risk of human-caused wildfires is temporary in nature and would not have a lasting effect. The incremental fire risk from construction activities would be mitigated by using best management practices as described in section 3.3.2 of the EA. The Project would eliminate existing sources of ignition from the 227 acres, such as non-native plant species. The removal of approximately half of the fuels (vegetation) on the 227-acre site would reduce the potential for wildfires. During operations, traffic would travel through the existing site primarily on paved or bladed roads, minimizing potential sources of ignition. Facility expansion design incorporates defensible and survivable space to protect human safety and infrastructure from wildfire and utilizes roads and similar developments as fuel breaks. Based on each of these factors, the Project would have no adverse impact to the management of fire and fuels.

Noise

Noise from the Project would be generated during both construction and operation of the expansion. Construction noise from the operation of heavy equipment is expected and would be temporary in nature; construction activities would be restricted to daytime hours and last less than 52 weeks over a five-year period. Impact and vibration noise are not expected as described in section 3.3.4 of the EA. Based on the models and maximum number of vehicles and heavy equipment in operation at any given time, construction noise is expected to be between 70 dB and 85 dB at 50 feet distant from the Project area boundary, which would only encompass users of Wheeler Pass Road and receptors at the north side of the current SMR boundary, which includes a gravel pit operations. Operation of the track expansion would not substantially increase noise as compared to current operations. Although the expansion would allow a slight increase in the total number of cars on the track at any given time, the relative increase would not substantially add to the overall daytime track noise.

All construction and operations activities would comply with construction noise guidelines used by the Department of Transportation and the Nye County Development Agreement. Nighttime ambient noise levels would be unaffected since track nighttime operations are restricted by the Nye County Development Agreement. Therefore, noise impacts from construction and operation would fall below restrictions already limiting noise at the SMR facility.

Biological Resources - Vegetation

Construction of the SMR expansion would require grading of approximately half of the 227 acres of native vegetation initially, but may include the entire area in the future. Impacts resulting from construction are considered long-term because impacts would span the life of the SMR facility. The creosote bush-white bursage scrub present within the Project area is common throughout the region and includes no unique associations or habitats.

Covered activities associated with construction and maintenance of the SMR facility would have the potential to introduce non-native plant species. The bare ground resulting from the vegetation removal provides an opportunity for non-native invasive and noxious weed species to colonize the Project area. However, the Applicant would continue to implement weed control measures and follow Best Management Practices currently used on the existing facility throughout the Project area as described in sections 3.3.2 and 3.3.3 of the EA. This would mitigate the introduction and spread of noxious and/or invasive weeds to the Project site and to adjacent lands. The Project would also directly impact cactus and yucca species regulated by the Nevada Division of Forestry. The Applicant is encouraged to salvage the cactus and yucca present on the site and incorporate them into landscaping as described in section 3.3.5.3 of the EA. Therefore, with the inclusion of the avoidance, minimization, and mitigation measures, the direct, indirect, and cumulative impacts to vegetation would not be significant.

Biological Resources - Wildlife

Under the Project, the construction of the expansion of the SMR facility would directly affect approximately 227 acres of suitable habitat for common wildlife species found in the region, as well as desert tortoises, burrowing owls, migratory birds, and Gila monsters as described in sections 3.3.5 of the EA.

Direct impacts during the constructing, operating, and maintaining of the SMR expansion facility could include disturbance, injury, or mortality of desert tortoises, burrowing owls, migratory birds, and Gila monsters. Disturbance, injury, or mortality may result from individuals being crushed or buried in open burrows, unauthorized collection, noise or vibrations from heavy equipment, increased human activity, vehicle strikes, and encounters with pets belonging to workers or visitors.

Desert tortoises could also die or become injured during their capture and translocation if these methods are performed improperly, particularly during extreme temperatures. To minimize the potential of a desert tortoise being injured or killed by construction equipment and activities on site, the Applicant would fence the entire SMR expansion area with desert tortoise exclusion fencing and conduct clearance surveys to translocate found tortoises. Translocated desert tortoise health will be monitored weekly during the active season and monthly during the inactive season for one year post-translocation.

Other listed species described in the EA, including southwestern willow flycatcher and the Yuma clapper rail do not occur in the Project area and will not be directly impacted by the SMR expansion.

Migratory birds in the Project area may also be disturbed and/or displaced from the construction and operation of the Project. Suitable habitat for the burrowing owl occurs on the Project site and in the immediately adjacent lands to the northeast and east, however, burrowing owls have not been documented in the Project area. Implementation of the mitigation measures presented in the HCP to avoid or minimize potential impacts to migratory birds within the Project area would reduce impacts to the birds potentially present in the area. Impacts to migratory birds are not anticipated to be significant.

The direct impacts of the Project on the state protected Gila monster would be loss of habitat, mortality, and harassment of individual animals, if they wander into the area of activity. Gila monsters have not been documented in the Project area and so are not expected to be impacted.

Therefore, with the mitigation measures identified in the EA, the direct, indirect, and cumulative impacts of the Project would not have a significant impact on wildlife.

CONCLUSIONS

It is my determination that the Project is not a major Federal action significantly affecting the quality of the human environment under section 102(2)(c) of National Environmental Policy Act. Accordingly, an environmental impact statement on the Project is not required. An EA has been prepared in support of this finding and is attached. The EA is also available from the Service's Southern Nevada Fish and Wildlife Office upon request.

GLEN KNOWLES Digitally signed by GLEN KNOWLES
Date: 2021.03.05 11:06:21 -08'00'

Deputy Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service

Date

APPENDIX A - RESPONSE TO COMMENTS

The following are responses to comments on the draft EA and HCP. Summaries of comments and responses from the Service and the Applicant are listed below.

Comments from the General Public

On October 2, 2020 Jean Public expressed their opposition to the Project. The Service thanks you for your comment.

On October 5, 2020 Jacob Brand of Grand Valley State University asked several questions (underlined). Questions are followed with the Service's response.

- How will tortoise burrows be located and evacuated? Tortoises in the Project area will be located and evacuated during clearance surveys by trained Desert Tortoise Biologists.
- Why are the tortoises using the property to begin with and is it the reproductive season and will there be a stipulation for construction? Tortoises are using the property because resources are available. All desert tortoises will be cleared from the site during the active season, prior to construction in the Project area.
- How will the death of a tortoise impact the effective population? The predicted number of tortoises expected to be in the Project area is 6. This low number of tortoises would have a negligible effect on the effective population size.
- Will you do a population survey in the Project area before issuing the permit? Yes, surveys were completed in 2018, prior to the release of the HCP for public comment and the data from those surveys was used in the HCP to determine the number of desert tortoises that may be in the Project area.

On October 11, 2020 Albert Youngwerth stated his support for the Project citing a balance between increased economic opportunity and endangered species protection. The Service thanks you for your comment.

On November 1, 2020 an anonymous comment was submitted asking if "we really need to damage 227 acres to build more raceway." The Service thanks you for your comment.

On November 1, 2020 Victoria Lopez requested the Project be canceled due to the potential for poor outcomes for tortoises. The Service does not have the authority to cancel proposed projects. The comment also notes the risk of missing tortoises prior to construction. Clearance surveys will be performed by authorized desert tortoise biologists prior to construction. Tortoises located within the Project area will be relocated to adjacent land and will be monitored for 1-year post-translocation. Proposed minimization and mitigation measures give the Service confidence the effects to the species will be minimal and properly compensated.

Comment Letters Received

Desert Tortoise Council

On October 31, 2020 the Desert Tortoise Council (DTC) submitted a comment letter. Summaries of comments from the letter and the Service's response to those comments are included below. The Service will address comments from the DTC comment letter by addressing comments in the order

they appear in the document. Because the letter was 26 pages long, comments have been assigned numbers that correspond to specific passages in the letter.

Comments on the HCP

Plan Area

DTC 1: The DTC requested information and maps of all areas that will be used for any activities described in the HCP, including covered activities and the conservation program, including the translocation area and the area(s) where mitigation funds would be spent. Section 1.3 of the HCP describes the plan area, including the permit area, the recipient area for release of desert tortoises translocated from the permit area, and the off-site mitigation area. Maps of these areas are provided in Appendix A of the HCP. The restoration project funded through remuneration fees is included in section 6.7 of the HCP.

Anticipated Take

DTC 2: The DTC requested information and analysis of effects to resident tortoises in the recipient area, including harassment and the status of tortoises and demographic consequences with respect to their survival and recovery in the Plan Area, the Eastern Mojave Recovery Unit, and the range of the species. Effects to the local population are minimal due to the likelihood of moving a small number of adult tortoises a short distance. Moving desert tortoises a short distance reduces the effects to the species because the tortoises will be translocated into an area that is already likely part of their home range and the time needed to move the tortoises will be short in duration. Additionally, the small number of tortoises translocated will have minimal effects to the species in the Plan Area, the Eastern Mojave Recovery Unit, and the range of the species. Section 5.6 of the HCP discusses the effects to the species in the Plan Area, the Eastern Mojave Recovery Unit, and the range of the species.

Detention Basin

DTC 3: The DTC requested additional information regarding the operation and maintenance of the detention basin. The detention basin will be completely surrounded by desert tortoise fencing within the Project area and therefore, desert tortoises will not have access to this area. The detention basin will be operated and maintained for the life of the SMR. Additional details regarding the detention basin can be found in section 2.1.1.4 of the HCP.

Biological Goals and Objectives

DTC 4: The DTC requested additional information regarding biological goals and objectives. The DTC expressed concern that objectives would not be met because desert tortoise exclusion fencing would not be erected south of the Project area. Desert tortoise exclusion fencing will be connected to exclusion fencing for the existing facility and the entire 227-acre Project area will be inaccessible to desert tortoises. Desert tortoise exclusion fencing for the Project area is addressed in section 2.1.1.1 of the HCP, section 2.2.1 of the HCP, section 2.3.2 of the HCP, section 6.6.2 of the HCP, section 3.1 of Appendix D of the HCP, and guidelines for construction are included in Appendix E. Desert tortoise exclusion fencing combined with pre-construction clearance surveys, health assessments, and post-translocation monitoring will allow SMR to achieve the first two biological objectives.

For the third biological objective, the DTC requested specific conservation projects be listed in the HCP. Section 6.7 of the HCP has been updated with the specific off-site restoration project funded

through in lieu fees. Prior to construction, SMR will pay in lieu fees to offset the loss of habitat to the National Fish and Wildlife Foundation. The funds would be directed toward restoring the Stump Springs and Trout Canyon translocation areas by removing invasive plants, including invasive grasses. The project is expected to benefit desert tortoise recovery by both improving habitat, and specifically foraging habitat, for desert tortoise, but also by serving to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species. Updates on the progress for projects will be included in reports. The Stump Springs and Trout Canyon translocation areas are administered by the BLM. These areas are considered regional augmentation sites, which will serve to grow the Mojave desert tortoise population in southern Nevada and enhance connectivity in the Eastern Mojave Recovery Unit. The restoration of this habitat will have direct benefits to the species and its recovery. There are no plans to develop these augmentation sites. The long-term success of Stump Springs and Trout Canyon translocation areas will be a multi-agency collaboration between the Service, BLM, and the U. S. Geological Survey.

Exclusion Fence

DTC 5: The DTC expressed concerns that the HCP does not provide information about the existing SMR fencing and whether exclusion fencing is present. Section 1.2.1 notes "the existing facility is bounded on all sides by desert tortoise exclusion fencing, block walls and residences, or other commercial development and is not accessible to desert tortoises. The existing facility was surveyed prior to the construction of the facility, therefore no tortoises could access the northern expansion from or through the existing facility." Section 6.6.2.1 states "shade structures outside the fence will remain in place and maintained for the duration of operation and management of the facility." Shade structures on the inside of the fence for the project area will be "removed after clearance surveys have been conducted, tortoises have been translocated, blading activities have been completed, and one desert tortoise activity season has passed."

DTC 6: The DTC expressed concern that the SMR will not maintain the desert tortoise exclusion fence outside of the 5-year permit term. SMR will continue to maintain the desert tortoise exclusion fencing as long as the business operates or until other developments preclude desert tortoises from having access to the SMR Project boundary as outlined in section 1.4 of the HCP.

Draft Translocation Plan

DTC 7: The DTC requested measures be added to the Translocation Plan (Appendix D of the HCP) ensuring that resident tortoises are not affected by implementation of the Translocation Plan. No substantial impacts to resident desert tortoises are anticipated given the small number of adult desert tortoises being released in the recipient area. Also, due to the short translocation distance, translocated tortoises are expected to be familiar with the recipient area and individual tortoises found there. As outlined in section 5 of Appendix D of the HCP, translocated tortoise health will be monitored using telemetry one year post-translocation. In addition, resident tortoises encountered in the recipient area will be numbered for future identification and will also receive health assessments. Additional measures are not warranted due to the small number of translocated tortoises and the short distance of translocation.

DTC 8: The DTC noted inconsistency in the size of translocated desert tortoises that would receive transmitters. Only translocated tortoises greater than 180 mm MCL will have transmitters attached for monitoring. The HCP has been corrected to reflect this.

DTC 9: The DTC inquired how habitat quality and threats were assessed in the recipient site and if the site would be able to support the translocated tortoises. The condition of the habitat was assessed qualitatively by experienced desert tortoise biologists, who provided a general assessment of the area. Given the short distance of the translocation and the general habitat, threat factors in the area are the same as for the tortoises at their current location. There is no meaningful difference in what the tortoises would be exposed to whether translocated or not. Translocation capacity relative to depleted populations pertains to adult tortoises only (i.e., up to 6 for SMR), not to juveniles. Conservatively estimating a potential dispersal area of approximately 5 square kilometers (1.5 square kilometer dispersal radius * ~3/4 accessible habitat; $(3.14*1.5^2) * 0.75 = 5.3$ square kilometers), the maximum expected increase in density would be 1.2 adult tortoises per square kilometer. This would be a negligible increase in density, regardless of the precise density in the recipient site.

DTC 10: The DTC requested an explanation for the attachment of transmitters for monitoring. Tortoises with transmitters monitored weekly during the active season will provide information on whether problems arise due to homing, interactions with the Project fence, and on the maximum dispersal distance for 1 year post-translocation.

DTC 11: The DTC noted that tortoises moved greater than 500 meters from their capture location are expected to wander and settle up to 6.5 kilometers from their release point. The data in the Service's translocation guidance on "short-distance" translocations comes from comparison of tortoises moved more than 500 meters and tortoises moved several kilometers; tortoises moved intermediate distances were not available for comparison. For this small number of adult tortoises (i.e., ~6), we assume that the observed locations are not the closest point within their home ranges to the boundary fence and that moving a tortoise a short distance farther than 500 meters will have minimal effect compared to moving it several kilometers. The telemetry monitoring will help evaluate this assumption.

DTC 12: The DTC inquired why there is no control site and why 44 tortoises is considered a small number from a statistical perspective. As indicated above, translocation numbers and monitoring are based on adult tortoises. As stated in the translocation plan, juveniles (<180 mm) are discounted due to their naturally higher mortality rate and minimal competition for resources with adult desert tortoises. Therefore, establishing a detailed monitoring program with a paired control for approximately 6 adult translocated tortoises would add little to our information base on long-term effectiveness of translocating tortoises. Also, the guidance states that monitoring under such circumstances will be evaluated on a case-by-case basis. For this Project, the Service settled on gathering data on homing and movement of tortoises translocated short to intermediate distances.

DTC 13: The DTC requested the flowchart from the Service's Translocation Guidance (Service 2020) be used to explain how the translocation plan (Appendix D of the HCP) complies. Below is a response to each of the steps (underlined) in the referenced flow chart (Figure 1 in Service 2020):

- Avoid or minimize need for translocation: We are responding to the Applicant's proposal to lawfully complete the Project and thus cannot avoid translocation.
- Estimate # of tortoises on project site: 6 adults and 36 juveniles and hatchlings.
- Linear project or <25 ha? No.
- Regional augmentation site identified? Not for this Project. The translocated tortoises will remain in a population adjacent to the existing Project area that connects with the recently

established Stump Springs regional augmentation site.

- Identify recipient and control sites (except for projects with small numbers of tortoises): As explained above, due to the small number of tortoises being translocated, control sites and long-term monitoring are of limited value.
- Any tortoises to be moved >300 m? Potentially.
- Recipient-site buffer: As described above, due to the short distance tortoises will be translocated, we expect less dispersal than the maximum projected by the guidance.
- Survey recipient site to determine translocation capacity: As described above, increasing density by approximately 1.2 adults per square kilometer will have a negligible effect on density and translocation capacity.
- Health assessments at recipient and control sites: Not necessary under the guidance due to the short distance and small numbers. (Visual health assessments of the translocated tortoises and resident recipient site tortoises will be conducted.)

The rest of the flowchart deals with pre-translocation monitoring, which will be followed as described

Mitigation for Loss of Mojave Desert Tortoise Habitat

DTC 14: The DTC states "the permit issuance criteria require the USFWS to determine if the measures in the HCP will minimize and mitigate the impacts of the taking to the maximum extent practicable [section 10(a)2(B) of the federal Endangered Species Act (FESA)]. The HCP Handbook clarifies what this means – 'completely mitigating any impacts expected to remain after avoidance and minimization measures are implemented. In other words, fully offset means the biological value that will be lost from covered activities will be fully replaced through implementation of conservation measures with equivalent biological value. Fully offset also means the mitigation is commensurate (equal) with the impacts of taking.'" The HCP handbook goes on to state in the same paragraph, "the statutory standard will also be met where the applicant demonstrates that while the HCP will not completely offset the impacts of the taking, the minimization and mitigation provided in the plan represent the most the applicant can practicably accomplish." With the vast majority of Nye County land currently managed by the Bureau of Land Management, mitigating for the loss of 227 acres by acquiring private lands is not practicable. With little available land for preservation or creation of habitat, mitigation efforts in the region have instead focused on restoration and enhancement of habitat. "Conservation measures can be any of the avoidance, minimization, or mitigation actions taken to meet goals and objectives of the HCP." Applying remuneration funds to projects designed to restore and enhance desert tortoise habitat in the region is the most the applicant can practicably accomplish and is, therefore, commensurate with the impact of taking.

The DTC requested the source for the $923 per acre remuneration fee and a list of projects the fee will support. The fee was based on the Remuneration Fee that the Service recommends that Federal agencies propose and assess for desert tortoise habitat disturbance for those projects covered under section 7 of the Act, as well as the requirement that the conservation program for the HCP include both minimization and mitigation measures in a manner that fully offsets the impacts of the taking. The funding will support the off-site restoration project listed in section 6.7 of the HCP. The Stump Springs and Trout Canyon areas are population augmentation sites where habitat restoration will have direct benefits to the species. There are no plans to develop these augmentation sites. The long-term success of Stump Springs and Trout Canyon Translocation areas will be a multi-agency

collaboration between the Service, BLM, and the U. S. Geological Society. The project is expected to benefit desert tortoise recovery by both improving habitat, and specifically foraging habitat, for desert tortoise, but also by serving to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species.

DTC 15: The DTC also requested an in lieu fee agreement be included in the HCP. An in lieu fee agreement is not required for an HCP and 10(a)(1)(B) permit. The Project is discrete and short-term in nature and involves a small number of tortoises, thus an in lieu fee agreement is not necessary given the Project's limited scope and duration.

Timing of Construction and Mitigation

DTC 16: The DTE expressed a concern that a clear timeline for implementing the mitigation measures be included in the HCP and that the "resource value achieved for the tortoise from the mitigation precede the resource values lost." The funding for mitigation measures must be available prior to beginning projects to restore and enhance desert tortoise habitat. As stated in the HCP handbook, "if the HCP's mitigation cannot be implemented until after impacts, the applicant needs to include acceptable instruments in the HCP for ensuring implementation of the mitigation." The funding for these mitigation measures will be transferred to the Service soon after permit issuance and the restoration project will begin as soon as possible. The area chosen for restoration consists of regional population augmentation sites managed by the Bureau of Land Management. The timing of the mitigation will occur, as stated in the HCP handbook, "concurrent with or as soon as possible after the impacts of the taking occur." Additionally, annual reports will contain updates on mitigation measures to further ensure compliance.

Monitoring

DTC 17: The DTC requested reporting of the mitigation measures in order to monitor the effectiveness of the mitigation projects. The monitoring program annual reports will include updates on the allocation and disbursement of remuneration funds by the Service to a habitat restoration project and updates on the status of the project to which those funds have been applied can be found in Section 6.7 of the HCP. Annual reporting will include updates on the mitigation restoration project as stated in Section 7.1 of the HCP.

Adaptive Management

DTC 18: The DTC requested an adaptive management section to explore alternate ways to meet management objectives. The DTC also states, "adaptive management is not discussing; it is learning, discussing, and doing." The Project is discrete and short-term in nature and involves a small number of tortoises. Adaptive management is not expected for a project of this nature. As stated in the HCP handbook, "the scope of an HCP's monitoring, reporting and adaptive management program should be commensurate with the scope, duration, and certainty of the HCP's conservation program and the project impacts." Additionally, the HCP handbook goes on to state "monitoring programs for HCPs with lesser impacts of short duration might only involve filing simple reports that document whether the HCP has been implemented as described." The proposed project is predicted to effect just 6 desert tortoises and 227 acres of desert tortoise habitat. However, potential adaptive management measures are discussed in the Section 7.4, Section 7.5.4, and Appendix D of the HCP. Adaptive management triggers include tortoise behaviors that put the animals at risk and strategies for implementing adaptive management procedures that include contacting the Service if any tortoises are at risk.

Changed Circumstances

DTC 19: The DTC requested the HCP address potential changed circumstances of wildfire and disease transmission in the recipient site and the off-site mitigation area. Changed circumstances, as addressed in the HCP handbook, "are circumstances that can be reasonably anticipated." The recipient site is adjacent to the Project Area and tortoises translocated from the project area will likely remain within their range when translocated to the recipient site. Wildfires and disease transmission due to translocation of tortoises from one region of their range to another part of their range is no more likely than without translocation and would not be reasonably anticipated to occur. The tortoises being translocated will likely have already interacted with and be familiar with tortoises in the recipient site. Translocating tortoises into an adjacent area does not necessarily increase the risk of wildfire or disease transmission. Plants within the Project Area and recipient site were surveyed and few invasive plants were present. SMR controls the spread of invasive plants through weed management and are committed to removing invasive plants from their property for the duration of operation of the raceway.

The mitigation project includes restoration activities and would not be reasonably anticipated to result in disease transmission in tortoises because tortoises will not be handled. Wildfires occurring in mitigation areas are managed by the BLM as Area(s) of Critical Environmental Concern (ACEC) and are being addressed and minimized by the BLM. Since part of the restoration will be to remove non-native grasses from the mitigation area, the action is expected to result in the decreased likelihood of wildfire.

Funding

DTC 20: The DTC requested inclusion of assurances that funding for implementing the Conservation Program. The funding for conservation measures described in the HCP will be transferred to a third-party, with confirmation of the deposit of the funding and necessary agreements being provided to the Service for concurrence, before any ground disturbing activity is initiated. Implementation of the conservation measures will occur as soon as possible to maximize the efficient use of the funds.

Impacts to Mojave Desert Tortoise from Implementation of the HCP

DTC 21: The DTC stated "in the HCP handbook (USFWS & NMFS 2016), the USFWS says, when 'analyzing the effects from plan implementation to the covered species, various tools including climate change effects analysis and population viability analysis should be considered. The Habitat Conservation Plan (HCP) must contain an analysis of the impact which will likely result from the taking of the covered species. The impact of the taking may have population or species-level effects substantially greater than just the number of individuals or acres of species habitat.' Please add an analysis of these impacts to the tortoise in the HCP." The quote attributed to the HCP handbook is not available in the text, rather, portions of the quote can be found in different sections of the handbook. The HCP handbook does not state that climate change analysis should be considered. The HCP handbook states "climate change can be an important consideration to provide context for decisions during the HCP development process." Though climate change is an important factor for all species, the impact of climate change on the conservation measures of this discrete, short-term HCP are minimal and do not require an independent analysis to "adjust the conservation strategy," as stated in the HCP handbook.

According to the HCP handbook, a population viability analysis (PVA) "is a species-specific method of risk assessment frequently used in conservation biology" and "is a statistical approach

that utilizes ecological data to bring together species characteristics and environmental variability and forecasts population health and extinction risk." The HCP handbook does not state that a PVA "should be considered." The HCP handbook states, "PVA is useful for comparing scenarios and how they may affect the risk of extinction." The SMR expansion will result in the loss of 227 acres representing approximately 0.0058% of the available habitat in the Eastern Mojave Recovery Unit for the desert tortoise. Additionally, the maximum estimated take of 6 tortoises from the Project Area accounts for approximately 0.024% of the estimated number of adult tortoises in the Eastern Mojave Recovery Unit. The risk of extinction to the species due to this discrete, short-term project is very unlikely. The utility of a PVA for this project is extremely limited and will not contribute to the determination of the conservation measures.

The HCP contains an analysis of the impacts which will likely result from the taking of the covered species in section 5.6 of the HCP. The Service expects the impacts at the population level and species level to be minimal due to the small number of desert tortoises being translocated a short distance into a recipient area adjacent to the Project Area. Given the discrete and short-term nature of the Project, and the small number of tortoises affected, a detailed analysis of population and species-level impacts is unnecessary.

Alternatives Considered

DTC 22: The DTC requested the Applicant include alternatives to their Project and the no action alternative. Alternatives to acquiring the land for the Project were addressed in the EA. The evaluation of additional alternatives is not required.

Issuance of an Incidental Take Permit based on the Draft HCP

DTC 23: The DTC suggested the Applicant revise the HCP in order to meet permit issuance requirements. Permit issuance requirements have been addressed in the revised HCP and the Service believes the revised HCP meets our requirements for permit issuance.

Comments on the EA

Disclosure Statement

DTC 24: The DTC requested a disclosure statement be included in the EA. Appendix A of the EA includes a disclosure statement.

Take

DTC 25: Section 1.6 of the EA states "SMR does not require an ITP to expand onto the privately held land. However, a take during construction of the expansion would violate the ESA and thus SMR would be subject to federal penalties." The DTC has requested the Applicant revise their statement to state "take during construction or operations and maintenance of the track including the expansion of the track onto the 270-acre northern parcel would violate the ESA." If an ITP is issued, the HCP will provide the necessary guidelines under which take of a listed species is regulated. Measures to prevent desert tortoises from gaining access to the facility during operation and maintenance are addressed in the HCP. Specifically, the desert tortoise exclusion fence will prevent desert tortoises from having access to the facility prior to the construction of the northern expansion, during construction of the northern expansion, and for as long as the facility operates or other development precludes tortoises from having access to the Project boundary.

Action Alternatives

DTC 26: The DTC requested development of the eastern parcel be considered for expansion as an alternative to development of the northern parcel. There are no plans at this time to expand operations onto the eastern parcel and the Service cannot require the applicant to move the project to a different location.

Vegetation

DTC 27: The DTC stated the description of vegetation in Table 2 of the EA should include a description of competition between native and non-native forbs. The Project will directly address the introduction of non-native plant species through its weed management program which will be implemented for the life of the Project and through restoration of the off-site mitigation area funded by in-lieu fees.

Habitat Fragmentation

DTC 28: The DTC states that "future planned development of the eastern parcel would result in a "pinch point" of tortoise habitat on the east side of the Town of Pahrump." There are currently no plans to develop the eastern parcel. The size, location, and configuration of the Project would have little additional effect of fragmentation through exacerbation of this "pinch point." The Project is bounded to the south by the existing raceway facility, which is fully-contained and inaccessible to desert tortoises; to the west by established gravel pits, and to the north by an established gravel pit and additional lands granted for expansion of the existing facility, which is surrounded by a tortoise exclusion fence. Given this configuration and location in relation to the adjacent facilities, the development of this Project area does not contribute to the additional fragmentation of desert tortoise habitat or decrease existing connectivity in the area.

Invasive/Noxious Weeds

DTC 29: The DTC states that the Nevada Revised Statues (NRS) cited in the EA does not mention all species of non-native plants in Nevada. The DTC lists five species (*Bromus rubens, Bromus madritensis, Bromus tectorum, Schismus arabicus,* or *Schismus barbatus*) of invasive grasses that are not present in the NRS and goes on to describe their impact. The DTC also states the EA should be revised to include occurrence of these species in the plan area and appropriate mitigation developed to prevent or deter their spread in the plan area. Section 3.1 and 3.3.3 of the EA lists 2 of these invasive species (*Bromus rubens* and *Schismus barbatus*) as present, but not abundant in the Project Area. The listing of species not present in the NRS demonstrates the consultants were identifying non-native species not found in the NRS list, including those genera the DTC lists. Minimization measures to reduce the spread of invasive species during construction are listed as a minimization measure in section 1.4.1 of the EA and outlined in Section 6.3.4 of the HCP.

The DTC also requests the draft EA use the Nevada Department of Wildlife GIS Data Clearinghouse to determine if other wildlife species have been observed in or near the project area. This is not a requirement of the HCP process. Observations made by consultants during their surveys and site visits are sufficient.

Additionally, section 6.7 of the HCP outlines an off-site restoration project funded through in lieu fees. The funds would be directed toward restoring the Stump Springs and Trout Canyon translocation areas by removing invasive plants, including invasive grasses. The project is expected to benefit desert tortoise recovery by both improving habitat, and specifically foraging habitat, for desert tortoise, but also by serving to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species.

Effects of Action Alternative
DTC 30: The DTC requested the estimated number of desert tortoises be added to section 4.2 of the EA. Information on numbers of desert tortoises in the Project area has been added to this section.

Future Expansion
DTC 31: The DTC states the use of air quality data calculated from the 620-acre parcel SMR owns indicates the Applicant has concrete plans to develop the eastern parcel. The EA utilized the analysis of potential effects on air quality assuming a full-build out as summarized in the BLM EA S030-2018-0004 for the land transfer. The Applicant states that utilizing this data in no way indicates the eastern expansion is inevitable, and that the Applicant currently has no plans to develop the eastern parcel.

Plan Area
DTC 32: The DTC states that in the Environmental Consequences section of the Draft EA, direct and indirect impacts are only analyzed for the northern parcel (e.g. the Project footprint). The DTC requests all areas described in the HCP, including covered activities and the conservation program, have analyses included in the HCP for resource issues of wildfire, invasive/non-native plants, and special status species. The Environmental Consequences section of the EA does consider direct, indirect, and cumulative impacts of the entire Project to the entire Project area, not just the immediate Project footprint.

Cumulative Impacts
DTC 33: The DTC claims the EA does not meet the NEPA standard of high-quality scientific information and they request additional analysis be included in the EA. NEPA requires the analysis should be commensurate with potential impacts. This Project has minor impacts. A detailed analysis and discussion of the viability of tortoise populations is beyond the scope of this Project.

Environmental Protection Agency

On November 2, 2020 the U. S. Environmental Protection Agency submitted a comment letter. Summaries of comments from the letter and the Service's response to those comments are included below.

Air Quality
The EPA proposed additional mitigation measures to reduce exhaust emissions during construction of the Project. The Service encouraged the Applicant to consider the EPA's additional mitigation measures. SMR plans to implement a traffic and parking management plan to minimize traffic interference and maintain traffic flow, in accordance with applicable County ordinances and Nevada Department of Transportation regulations. The traffic and parking management plan will help to minimize use, trips, and unnecessary idling of heavy equipment. Exhaust from construction fleet vehicles will meet applicable emissions standards (NAC 445B Control of Emissions: Heavy-Duty Motor Vehicles).

The Applicant has also stated that "the project is located in the Pahrump Valley Hydrographic Area (HA 162), which as the EPA notes, is in attainment for ozone and oxides of nitrogen. Only a portion of adjacent Clark County, specifically the Las Vegas Valley (HA 212), has been designated as Non-Attainment for Ozone. Although HA 162 and HA 212 are adjacent, their shared boundary, the Spring Mountains, form an effective barrier to airflow between the two airsheds. The barrier to

airflow effectively impedes the contribution of pollutants from HA 162 to HA 212. Based on EPA's Nevada Las Vegas Non-Attainment Area Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards - Technical Support Document (EPA, 2018), specifically (1) 2015-2017 regional air quality monitoring data showing exceedance events, and (2) the 24-hour HYSPLIT Back Trajectories for exceedance events in the Las Vegas Valley that did not identify any sources in Pahrump Valley (HA 162), the construction vehicle emissions from the Project would not be expected to affect air quality in Clark County within the Las Vegas Non-Attainment Area (HA 212)."

Migratory Birds

The EPA noted the EA does not include information on new power transmission infrastructure in the Project area. Section 2.1.1.6 of the HCP states all utilities (power, phone, water, sewer, and other services) will be constructed subsurface and will connect to existing service lines within the existing facilities to the south of the expansion area.

DOCUMENTS INCORPORATED BY REFERENCE

BEC Environmental, Inc. 2021. Habitat conservation plan for proposed 227-acre northern expansion of the Spring Mountain Raceway and Motor Resort. Prepared for Spring Mountain Raceway, LLC. February, 2021. Pahrump, Nevada.

BEC Environmental, Inc. 2021. Environmental assessment for proposed issuance of a Mojave desert tortoise incidental take permit for the Spring Mountain Raceway and Motor Resort. Prepared for Spring Mountain Raceway, LLC. Pahrump, Nevada.

EPA, 2018. Nevada Las Vegas Non-Attainment Area Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards - Technical Support Document.

U. S. Fish and Wildlife Service & National Oceanic and Atmospheric Administration 2016. Habitat Conservation Planning and Incidental Take Permit Processing Handbook. December 21, 2016. https://www.fws.gov/endangered/esa-library/pdf/HCP_Handbook.pdf.

U. S. Fish and Wildlife Service. 2020. Translocation of Mojave Desert Tortoises from Project Sites: Plan Development Guidance. June 2020. U.S. Fish and Wildlife Service, Las Vegas, Nevada.