

OHMVR Division Grants Program
CEQA Categorical Exemption Documentation
BLM Barstow Field Office (FO) Ground Operations Grant Application G22-1-04-G01

Letter to File
December 22, 2022

The OHMVR Division received Grant Application G22-1-04-G01 from the BLM Barstow Field Office (FO) for ongoing facility operations and maintenance activities in off-highway motor vehicle (OHV) recreation areas located throughout the BLM Barstow FO unit. As California Environmental Quality Act (CEQA) lead agency, the OHMVR Division evaluated the proposed activities to determine whether the project qualifies as exempt.

This Letter to File further documents the CEQA analysis performed, considering the documented decline of Mojave desert tortoise (*Gopherus agassizii*) population densities within or near the proposed project area (see, e.g., Allison and McLuckie 2018). In light of the population data, the OHMVR Division is working with the U.S. Geological Survey (USGS) to design and implement a monitoring program that assesses desert tortoise populations and impacts to the species from OHV recreation in project areas receiving funding from the OHMVR Division. The results of this monitoring effort will be used to inform compliance with Grants Program regulations related to species and habitat management. The OHMVR Division anticipates this monitoring program to be implemented in March 2023.

Given the additional biological considerations, the OHMVR Division developed this Letter to File to document the analysis of the project and rationale used to find the project exempt from CEQA. Upon reviewing the proposed Grant Application, National Environmental Policy Act (NEPA) documents, and incorporated avoidance and minimization measures, the OHMVR Division has determined that the proposed project qualifies as exempt from further CEQA analysis under CEQA Guidelines section 15301 Existing Facilities. No exceptions to these exemptions have been identified, as documented below.

Grant Activity Locations

BLM Barstow FO has received Grants Program funding since 1997 in support of its ongoing management of OHV trails, roads, and open areas on BLM lands in San Bernardino County. Per the Grant Application (p. 1):

The Barstow Field Office offers OHV recreation opportunities at five congressionally designated (PL 116-9) OHV open areas: Razor Road, Johnson Valley, El Mirage, Stoddard Valley and Dumont Dunes.

...

The Barstow Field Office (3.1 million acres total) “limited use” area (2.9 million acres) is crisscrossed with 6,486 (5,679 [West Mojave] WEMO, 807 [Northeastern Mojave] NEMO) miles of designated open routes providing for a variety of riding opportunities.

OHV recreation has a long history in the project area and has been subject to periodic federal management decisions and environmental evaluation, e.g., the Motorized-Vehicle Access

Element of the California Desert Conservation Area Plan and Environmental Impact Statement (1980), Proposed Northern and Eastern Mojave Desert Management Plan EIS (2002), West Mojave Plan EIS (2005), Desert Renewable Energy and Conservation Plan Land Use Plan Amendment (2016), and WMRNP EIS (2019). Although BLM collaborates with numerous agencies and jurisdictions, no other federal, state, or local agency has specific jurisdiction over OHV use on BLM lands (see Appendix J in BLM 2019a).

Grant activities described below may occur in any of these managed OHV routes and open areas. These facilities are designated for OHV use as described in the BLM planning documents listed above. Attachment 1 provides an overview of the BLM Barstow FO boundaries, Western Mojave Route Network OHV route detail, and maps of open areas identified below.

Description of Proposed Grant Activities

The ongoing Ground Operations grant activities are listed below as identified in the Grant Application (BLM Barstow FO 2022a, pp. 3-4). These activities are consistent with maintenance and operations activities proposed and funded in prior Grants Program cycles. Ongoing maintenance includes maintenance of established trail surfaces, riding boundaries, and visitor serving facilities and facility and resource monitoring within the designated OHV recreation areas. All activities would occur within existing OHV use areas.

The proposed project supports ongoing ground operations within 181,300 acres of four open OHV Areas – Johnson, Stoddard, Rasor, and Dumont OHV Recreation Areas – and the approximately 2-million-acre WEMO and 1-million-acre NEMO Planning Areas. Project activities would include the following:

1. Track/Road Maintenance: Maintain up to 10 miles of access road in Johnson Valley and 5 miles of access road in Stoddard Valley open to OHV vehicles utilizing a grader, water truck, and skid steer, as well as non-mechanized tools. Activities would consist of road grading, surface compaction; culvert cleaning, repair, and replacement; grade reversals; rolling dips/water bars (for water quality control); and rock armoring to prevent erosion and harden road surfaces.
2. Open Area Maintenance: Maintain staging area and campgrounds, trash removal, upkeep of kiosks (recycled material for maps), daily safety inspections, facility cleaning, stocking, repairs, picking up trash and cleaning fire rings, and vault toilet cleaning and pumping.
3. Signing: Monitor and maintain installed route signage, provide route classification for future maintenance; install open route signage through limited use areas.
4. Fencing/Barriers: Maintain fencing to delineate open area boundaries; maintain vehicle barriers, post and cable fence, and signing at main entrance locations.
5. Public Outreach: Distribute general route and open area information and maps, educate riders on safe riding practices, provide visitor service and duties associated with ensuring the safety of riders and protection of natural resources.
6. Environmental Requirements: Soil conservation monitoring including photo point monitoring, data collection, and compliance reporting; HMP preparation.
7. Other: Placement of 2.5 miles of class II road base from Hwy 247 towards Sogge Dry Lake.

CEQA Exemption 15301 Existing Facilities

Projects resulting in a physical change to the environment are subject to review under CEQA (Pub. Resources Code § 21000 et seq.) and the CEQA Guidelines (14 CCR §15000 et seq.). CEQA Guidelines section 15301 allows a categorical exemption for existing facilities¹ if there are no significant effects or exceptions as identified in CEQA Guidelines section 15300.2. Project eligibility for a categorical exemption under CEQA Guidelines section 15301 is discussed below.

Per CEQA Guidelines section 15301:

Class 1 consists of the operation, repair, maintenance permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of existing facilities itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use. Examples include but are not limited to: ... (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities...

Project Consistency. As described above in Description of Proposed Grant Activities, the project activities involve ongoing maintenance and operations of existing facilities within an established recreation area. Project activities do not expand visitor use or facility operations, do not expand the footprint of disturbance, and do not modify or authorize the underlying use designations. These actions are consistent with the CEQA Guidelines 15301 Class 1 Categorical Exemption.

Exceptions to CEQA Categorical Exemption

CEQA Guidelines section 15300.2 lists the “exceptions” to CEQA exemptions, or situations in which a Categorical Exemption cannot be used for a project. These are:

- (a) Location. CEQA qualifies the use of Categorical Exemptions for several project types (Classes 3, 4, 5, 6, and 11) by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

¹ Similar to CEQA Guidelines section 15301(c), which includes existing highways, streets, and bicycle and pedestrian trails, the Grants Regulations define “facility” to include trails, roads, grounds, and parking facilities along with other structures and support systems (15 CCR §4970.01(r)).

- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

[OHMVR Division Findings for Location, Scenic Highways, Hazardous Waste Sites, and Historical Resource Exceptions](#)

The proposed project falls under Class 1 of CEQA exempted projects involving existing facilities. The location exception for Categorical Exemptions does not apply to Class 1 exemptions (14 CCR §15300.2(a)).

There are no nearby scenic highways.

Based on review of the Department of Toxic Substances Control database (EnviroStor; <https://www.envirostor.dtsc.ca.gov/public/>) and the Regional Water Quality Control Board database (GeoTracker; <https://geotracker.waterboards.ca.gov/map/>), the BLM Barstow FO lands proposed for grant activities are not included on any list of known hazardous waste sites compiled pursuant to Government Code 65962.5 (Cortese List). The BLM Grant Application also stated the project area is not included on any lists compiled for Government Code 65962.5.

None of the actions included in the project would impact historical or cultural resources. All the maintenance actions would occur on roads or trails that have been previously surveyed or have been cleared for the occurrence of historical resources. The project includes standard stipulations to protect any unknown historic and cultural resources discovered during project activities (BLM Barstow FO 2019; see Exhibit A in Attachment 2).

[OHMVR Division Finding for Cumulative Impact Exception](#)

These maintenance activities do not create a significant environmental effect and do not combine with successive projects of the same type in the same place to cause a cumulative impact. This exception is narrower than the definition of a cumulative impact defined and applied elsewhere in the CEQA Guidelines, which is generally defined as a change that results from the incremental impact of the project being evaluated when added to other closely related projects (14 CCR §15355(b)). In contrast, the cumulative impact exception to a categorical exemption must result from "successive projects of the same type in the same place" (14 CCR §15300.2(b); emphasis added).

The proposed grant project is limited to funding continued maintenance and operations activities within established OHV use areas. Each approval of funding supports BLM efforts to maintain the conditions of the existing recreation facilities in the project area at a consistent level. No other BLM maintenance, operations, or similar projects overlap the project area. BLM has applied for funding in the general project area supporting habitat restoration within areas closed to OHVs to reduce trespass into these areas and improve habitat conditions. These restoration activities would reduce adverse effects of unauthorized OHV recreation and would not cause adverse environmental effects in the maintenance and operations area. Proposed activities when combined with past and ongoing future maintenance and operations would thus not result in a substantial adverse change in the physical conditions of the project area.

[OHMVR Division Finding for Significant Effect Due to Unusual Circumstances Exception](#)

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances*

(CEQA Guidelines §15300.2[c]; emphasis added). Substantial evidence supporting a “fair argument” that an otherwise-exempt project may cause a significant adverse environmental impact does not, in and of itself, defeat an exemption. A potentially significant effect must be “due to unusual circumstances” for the exception to apply. This exception language requires either A. a two-pronged determination that 1) an unusual circumstance exists, and 2) that the existence of the unusual circumstance creates reasonable possibility of a significant effect, or B. a determination the project will have a significant effect on the environment, necessarily establishing that some circumstance of the project is unusual (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 C4th 1086).

When evaluating whether project activities could cause or will have a significant effect, it is essential to evaluate how project activities would affect existing conditions (i.e., the baseline). A change in physical conditions is a necessary predicate for a finding of an environmental impact (see, e.g., *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356). “Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline” (*North Coast Rivers Alliance v Westlands Water Dist.* (2014) 227 CA4th 832, citing numerous cases).

For the evaluation of unusual circumstances, the OHMVR Division has considered characteristics of the proposed project activities and existing environmental conditions. As presented below, the OHMVR Division determined that there are no unusual circumstances associated with the project activities themselves. There are, however, changes in the environmental conditions in which those activities would occur (decline in the desert tortoise population) that may be considered unusual. The OHMVR Division further evaluated these conditions and determined they do not result in the project activities causing a significant environmental effect. Therefore, OHMVR Division finds that the categorical exemption exception for significant effects due to unusual circumstances does not apply to this project.

Project Characteristics

OHMVR Division has reviewed the proposed grant activities listed above and associated BLM land use planning documents and materials. OHMVR Division finds that the project activities comprise routine activities that are typical for maintenance operations. There is nothing unusual about the project features, actions, or methods that requires special consideration. As such, the project characteristics do not create an unusual circumstance (prong 1 of approach A described above for determining unusual circumstances). Further, the proposed grant project comprises ongoing operations with no increase in scope, intensity, or associated effects. As such, the established levels of use and any associated physical impacts are considered part of the existing environmental baseline. The OHMVR Division thus determined the project “will not have” a significant effect on the environment, and thus did not establish that the project is unusual (approach B described above for determining unusual circumstances).

These determinations are based on the following:

1. The proposed grant activities identified above are routine activities and considered minor in scale and duration (e.g., 15 miles of trail surface maintenance in short segments in an area with over 6,486 miles of designated routes).

2. Project activity is limited in scope and intensity. Grant activity ground disturbance is confined to existing designated routes and adjacent visitor use areas subject to OHV use. Grant activity would not occur outside of the existing disturbance footprint of the designated OHV routes or use areas. Other facility operations activities included in the grant (e.g., restroom cleaning, signage, trash removal, monitoring of trail conditions) do not create physical changes to the environment or otherwise impact sensitive resource areas.
3. Continued maintenance and operations consistent with current practices would not substantially increase visitation to the area or generate new activities that would create an offsite impact.
4. Ground operations grant activities are proposed for the purpose of managing environmental effects of OHV use and contributing toward sustainability. The grant activities themselves would not cause significant impacts.
5. There are no actions or features associated with the grant project that are unusual or that distinguish the project from other projects qualifying for the same 15301 exemption class.
6. The OHMVR Division Grants Program has annually issued grants for this same activity on BLM Barstow FO managed lands as well as other federal and local agency partners since 2006. The maintenance activities thus constitute a continuation of past activity, i.e., they are part of the project area baseline.
7. The grant activities are a continuation of ongoing maintenance and operation and do not change environmental baseline conditions. The project activity would not increase visitor use, expand visitor-serving capacity of the BLM facilities, authorize the underlying existing uses, or entitle new uses.
8. The proposed grant activities would follow standard operating practices identified in the OHV Recreation Area Maintenance, FY 2019-2024 Categorical Exclusion (BLM Barstow FO 2019; see Attachment 2).
9. The BLM Barstow FO has determined the grant project activity is consistent with applicable Land Use Plans (BLM Barstow FO 2019; see Attachment 2).
10. BLM Barstow FO has determined these activities are minor in nature and categorically excluded from further documentation under the National Environmental Policy Act (NEPA; 43 CFR § 46.210[f] and [j]), conform to BLM Categorical Exclusions pursuant to 516 DM11.9 Transportation G(2) and G(4), and no extraordinary circumstances described in 43 CFR § 46.215 potentially having effects that may significantly affect the environment apply (BLM Barstow FO 2019; see Attachment 2).

Environmental Conditions

The OHMVR Division reviewed the environmental conditions of the project site, including the status of desert tortoise populations. Specifically, the OHMVR Division considered 1) declining Mojave Desert tortoise population densities in the Western Mojave Recovery Unit; 2) a recent proposed change in status from threatened under the California Endangered Species Act to endangered; and 3) desert tortoise mortality due to vehicles.

The presence of desert tortoise habitat in the grant project area and the potential for desert tortoise to be present within grant activity work areas is neither an unusual circumstance nor a de facto exception to use of an exemption. BLM Barstow FO (and BLM Ridgecrest FO) managed

lands occur within the Western Mojave Recovery Unit for desert tortoise (see WMRNP ROD Figure 2, p. 15; BLM 2019c) and overlap with critical habitat units. Almost all Barstow FO lands are identified as Desert Tortoise Predicted Occupied Habitat (see WMRNP Fig 3.4-69 Desert Tortoise Locations; Attachment 3), and almost one million acres of designated desert tortoise critical habitat occurs within the boundaries of the BLM Barstow FO and Ridgecrest FO (see Table 3.4-10, BLM 2019a). Of note, a project impact to designated critical habitat is specifically called out as an exception only to exemption classes 3, 4, 5, 6, and 11 (14 CCR §15300.2(a)).

Though in general the federal and state Endangered Species Act listing of the desert tortoise and population concerns are not new, recent data from the U.S. Fish and Wildlife Service (USFWS) Desert Tortoise Recovery Office (USFWS 2020) show a sharp decline in the adult desert tortoise densities within western Mojave Critical Habitat. The California Department of Fish and Wildlife is reviewing a petition to reclassify the desert tortoise from threatened to endangered under the California Endangered Species Act (CESA).

The decline of the desert tortoise population and possible contributing factors related to OHV recreation such as illegal route proliferation, habitat fragmentation, and vehicle strike impacts are noted concerns. As described above, the desert tortoise monitoring program being developed with USGS will allow the OHMVR Division to better evaluate project compliance with grant regulations. Although important from a regulatory and ecological standpoint, these broader issues are separate from this CEQA review's focus on a specific grant application proposal for continued maintenance and operations and its potential impacts.

In recognizing these changed environmental conditions, OHMVR Division's CEQA analysis of the proposed grant activity included a review to determine whether such changed conditions resulted in a significant effect due to unusual circumstances. Specific to the project, the Division considered whether project activities could affect environmental changes furthering desert tortoise population decline. OHMVR Division has determined that the conditions described would not cause the proposed grant activity to have a significant environmental effect and that the CEQA Guidelines 15300.2(c) significant effect exemption to a categorical exemption due to unusual circumstances does not apply. This determination is based on the following:

1. Though the USFWS 2019 data present evidence of an adverse effect on desert tortoise from OHV activity, any such effect would not stem from the proposed grant project, which does not authorize or exacerbate continuation of OHV use or OHV impacts.
 - a. OHV use in designated areas would continue irrespective of state issuance of grant funding, but the BLM's ability to manage that use may be compromised without the funding.
 - b. BLM Barstow FO has determined that the proposed grant activities are consistent with existing land use plans governing recreational uses on BLM managed lands (see Attachment 2).
 - c. OHV use is an existing recreational activity authorized by BLM on federal lands within its jurisdiction in accordance with multiple federal land use plans and regulations (Attachment 2).
 - d. The proposed grant is for ongoing facility maintenance and operations as described above in Project Characteristics. The grant activity is limited to activities that are considered part of the existing environmental baseline and

- does not modify or authorize OHV use established by governing federal land use plans.
- e. As a state agency, OHMVR Division has no jurisdiction over federal land use management on federal lands. OHMVR Division approval of grant funding supporting ongoing maintenance and operations of OHV use areas does not entitle, direct, or otherwise control OHV activity on federal land.
2. The circumstance of a rapidly declining desert tortoise population in the project area does not alter the fact that the grant activities of ongoing facility maintenance and operations would not cause a new significant impact to desert tortoise.
 - a. No disturbance would occur outside of existing disturbed areas. As a result, grant activities do not alter desert tortoise habitat and would not result in new impacts. Environmental baseline conditions would remain unchanged.
 - b. Measures such as pre-activity surveys of the work area and monitoring are in place to specifically protect the tortoise should they be present in the grant activity work areas. BLM Standard Operating Procedures have been incorporated into the grant activities to minimize and avoid environmental impacts during project construction as listed in the OHV Recreation Area Maintenance FY2019-2024 Categorical Exclusion (BLM Barstow FO 2019; see Attachment 2. Specific measures addressing desert tortoise are listed in Categorical Exclusion, Exhibit B (see Attachment 2).
 - c. No new information has been presented to the OHMVR Division specifically linking proposed grant activities to increased desert tortoise impacts.

References

- Allison, L.J. and A.M. McLuckie. 2018. Population trends in Mojave Desert Tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology* 13(2):433-42.
- Bureau of Land Management (BLM). 2002. Record of Decision for Approved Northern & Eastern Mojave Desert Management Plan, an Amendment to the California Desert Conservation Area Plan. December 2002.
- Bureau of Land Management (BLM). 2019a. West Mojave (WEMO) Route Network Project (WMRNP) Final Supplemental Environmental Impact Statement. California Desert District. April 2019.
- Bureau of Land Management (BLM). 2019b. Director's Summary Protest Resolution Report. West Mojave Route Network Project Final Supplemental Environmental Impact Statement (WMRNP FSEIS). October 3, 2019.
- Bureau of Land Management (BLM). 2019c. Record of Decision. West Mojave Route Network Project Decision to Amend California Desert Conservation Area Plan and Implement Nine Travel Management Plans. October 3, 2019.
- Bureau of Land Management, Barstow Field Office (BLM Barstow FO). 2019. Categorical Exclusion Not Established by Statute. DOI-BLM-CA-D080-2019-0013-CX. OHV Recreation Area Maintenance, FY 2019-2024. February 20, 2019.

Bureau of Land Management, Barstow Field Office (BLM Barstow FO). 2022a. Grants and Cooperative Agreements Program, Application: Ground Operations (Final). June 4, 2022.

Defenders of Wildlife & Desert Tortoise Council. 2021. Letter to California Department of Parks and Recreation OHMVR Division, Re: Preliminary applications for 2021 OHMVR Division grant funding submitted by the Bureau of Land Management. May 4, 2021.

U.S. Fish and Wildlife Service (USFWS). 2019. Biological Opinion for the West Mojave Route Network Project, San Bernardino, Inyo, Kern, Riverside, and Los Angeles Counties, California (6840(P) LLCAD00000). September 30, 2019.

U.S. Fish and Wildlife Service (USFWS). 2020. Range-wide Monitoring of the Mojave Desert Tortoise (*Gopherus agassizii*): 2019 Annual Reporting DRAFT. Report by the Desert Tortoise Recovery Office, U.S. Fish and Wildlife Service, Reno, Nevada.

Attachments

Attachment 1: Western Mohave General Location, BLM RFO Ground Operations Grant Project Area Map: Figure 2.2-8 Alternative 5 - 2019 Western Mojave Route Network Selected Alternative, and Project Open Areas

Attachment 2: BLM Barstow FO OHV Recreation Area Maintenance, FY 2019-2024 Categorical Exclusion

Attachment 3: Desert Tortoise Locations Map: Figure 3.4-69 Western Mojave Route Network Plan