



VIA FOIAONLINE.GOV

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Re: Freedom of Information Act Request

Dear FOIA Officers:

On behalf of Conserve Southwest Utah, I hereby submit this request for information under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). This request pertains to all agency records under the possession and control of the Fish and Wildlife Service (FWS) upon receipt of this request, including the Washington, D.C. Headquarters, the FWS Region 6 office, and any and all other relevant FWS offices. Pursuant to FOIA, Conserve Southwest Utah hereby requests copies of all agency records and other documents referring or relating to the following issues:

1. Any and all records constituting the so-called "Decision File" or "Decision Record," and any and all documents and materials directly or indirectly considered by FWS regarding the Record of Decision and Approved Resource Management Plan Amendments for the Northern Corridor Right-of-way, Red Cliffs National Conservation Area Resource Management Plan, and St. George Field Office Resource Management Plan, dated

January 2021, and the Final Environmental Impact Statement considering the Northern Corridor Highway in Red Cliffs National Conservation Area, dated November 2020.

2. Any and all records the agency considered and/or relied upon to grant the Incidental Take Permit to Washington County regarding Implementation of the Amended Habitat Conservation Plan for the Threatened Mojave Desert Tortoise in Southwestern Utah, dated January 2021.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), I request that responsive documents be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies' possession. I further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like.

Defined Terms

The term "records" as used herein includes the original and all non-identical copies, however produced or reproduced, of any written or graphic matter, as well as computer files, including but not limited to writings, handwritings, drawings, graphs, charts, maps, correspondence, faxes, electronic mail (i.e., emails), attachments to electronic mail, any other electronic communications, notes of telephone conversations or of meetings or conferences, minutes of meetings, interoffice communications, memoranda, studies, analyses, results of investigations, photographs, sound recordings, electronically stored information, other data compilations from which information can be obtained, and any other documentary material, regardless of physical form or characteristics.

The term "relating to" as used herein means addressing, constituting, mentioning, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

The term "Northern Corridor" refers to the 4-lane highway across BLM-administered lands in the Red Cliffs NCA for which the Utah Department of Transportation (UDOT) applied for a right-of-way.

FOIA Response

Under FOIA, the Agency must make a determination on this request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination consists of a statement whether the agency will comply with request, the reasons therefore, and informs the requester of the right to appeal an adverse decision. Please forward currently available records as soon as possible and others as they become available.

If you have questions as to the scope of this request, please feel free to contact me. If you believe any portion of this request is exempt from disclosure under FOIA, please segregate that portion, and provide a detailed description of each withheld document, the legal basis for withholding such document, and the reasons for asserting such a claim. Specifically, please

provide an exemption log identifying each document for which the exemption is claimed, together with the following information: date, sender, recipient, type (e.g. letter, memorandum, telegram, chart, photograph, etc.), subject matter of the document, the basis on which exemption is claimed, and the paragraph(s) or subparagraph(s) of this request to which the document responds. FOIA provides that if only a portion of a record is exempt from release, all reasonably segregable portions shall be provided. Thus, if recipients assert that a portion of a record that I have requested is exempt, please provide me with a copy of the remainder of the record and provide in the exemption log the information specified above for the portion being treated as exempt. If Recipients assert that the exempt portions cannot be reasonably redacted, please state in detail the reasons for that assertion.

Request for a Fee Waiver

Conserve Southwest Utah (CSU) respectfully requests a waiver of any costs or fees related to this request under 5 U.S.C. § 552(a)(4)(A)(iii) because the subject of the requested governmental records has a direct connection with identifiable government activities, the information requested is in the public interest, it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not made in CSU's commercial or economic interest.

CSU is a non-profit organization exempt from taxation under 26 U.S.C. § 501(c)(3) that is incorporated under the laws of the State of Utah and headquartered in St. George, Utah. It is comprised of a grassroots coalition of local citizens committed to protecting the natural resources and quality of life in Washington County, Utah through direct advocacy of conservation and by promoting Smart Growth policies that enable conservation, for the benefit of present and future generations. CSU began as a citizen reaction to the introduction of the Washington County Growth and Conservation Act of 2006 ("Act") which would have required the construction of the Northern Corridor. CSU's founding members organized a local constituency which successfully helped change the Act into the 2009 Omnibus Public Lands Bill, which established the BLM's conservation mandate and Red Cliffs NCA that is threatened by the Northern Corridor Project targeted by this request. In 2018, CSU provided monthly communications to 1400 newsletter subscribers; education and outreach programs to 1200 Washington County residents; published over 15 letters to the editor and Op-Eds in local and regional newspapers; and provided weekly outreach and updates to 550 followers on social media. Governmental documents obtained through this FOIA request will be shared with CSU's growing audience and the larger community through letters to the editor and op-eds, social media, outreach and education, workshops, public forums, and member communications.

CSU and its members actively work to protect and restore the Red Cliffs NCA and other public lands through public education, stewardship, volunteer programs, and environmental advocacy. The disclosure of the requested governmental documents to CSU will significantly contribute to public understanding of government activities because these documents are not readily available to the public without such a request. These are not the type of documents the agency routinely publicizes or otherwise broadly disseminates to the public on a normal basis. Thus, a FOIA request is required to obtain the documents. In addition, CSU will use its skills and expertise to analyze these documents, which are often complex and difficult to understand without special

training or experience, to assess the environmental impact of any efforts to undermine protections for National Conservation Areas. This assessment will then be of significant use to CSU's efforts to educate the public about the government's activities in the region.

Expedited Processing

Additionally, CSU respectfully requests expedited processing of this request. FOIA provides for expedited processing of requests for agency records and directs agencies to "process as soon as practicable any request for records to which [they have] granted expedited processing." 5 U.S.C. § 552(a)(6)(E)(iii). Expedition is available in cases in which the person requesting the records demonstrates a compelling need. *Id.* § 552(a)(6)(E)(i). A compelling need may be shown where, "with respect to a request made by a person primarily engaged in disseminating information," there is an "urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* § 552(a)(6)(E)(v)(II); *see also* 43 C.F.R. § 2.20(a)(2).

CSU meets the requirements of 43 C.F.R. § 2.20(a)(2)(1)-(4). There is an urgent need for this information, as BLM and the U.S. Fish and Wildlife Service have finalized approval of the Right-of-Way for the Northern Corridor Highway and an Incidental Take Permit. Understanding the underlying facts informing these approvals is critical in understanding the decisions themselves. BLM has issued a final decision on the right-of-way (ROW) as a full force and effect decision, which makes it immediately implementable under BLM's ROW regulations. In other words, the ROW permits UDOT to begin ground disturbing activity. Thus, there is an urgent need for immediate access to all public information about the information that BLM relied on to grant the ROW. The value of this information will be diminished if CSU does not have immediate access to it.

The records requested here concern the construction of a highway through or up to the edge of the Red Cliffs NCA—a matter that has generated considerable public interest—and these records are necessary to ensure that the public is sufficiently informed of the factual basis underlying the government's actions now that a final action has been taken. Dissemination of information regarding the Northern Corridor is urgent because there are congressional and regulatory efforts to require or allow construction to begin which will lead to significant changes in land management in the affected areas in the near term. Accordingly, the public needs to have access to pertinent information in an expedited fashion to evaluate and engage with its government on this drastically-changed approach in an effective manner.

While CSU is not a representative of the news media, a primary focus and purpose of the organization is the dissemination of information about the Red Cliffs NCA, including providing online information accessible for free to the public-at-large and newsletters to members of the organization. Indeed, CSU has managed to attract national, regional and local press coverage of the Northern Corridor Highway and has recently testified in opposition to the Northern Corridor highway before the House Natural Resources Committee. The breadth and depth of media coverage of the Northern Corridor highway demonstrates that this issue is "breaking news" of general public interest within the meaning of FOIA's expedited review requirements, and that CSU has the ability to disseminate the information to a sufficiently broad swath of the public.

Accordingly, CSU's FOIA request meets the requirements for expedited processing established in 43 C.F.R. § 2.20.

I look forward to your response regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 43 C.F.R. § 2.20(d).

I further look forward to receiving your response to this Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 216(a). I reserve the right to appeal a decision and seek all available legal remedies in response to any withholding of any information, a denial of our request for expedited processing, or denial of our request for a waiver or limitation of fees.

Please send electronic copies of the documents to me at the address immediately below.

**Rebecca L. Strauss
Advocates for the West
1320 W Franklin St.
Boise, ID 83702**

Alternatively, you may send the documents electronically to me at rstrauss@advocateswest.org. If you have any questions about this request, please feel free to contact me. Thank you very much.

Sincerely,

/s/ Rebecca L. Strauss
Rebecca L. Strauss
ADVOCATES FOR THE WEST
208.342.7024
rstrauss@advocateswest.org