



DESERT TORTOISE COUNCIL

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To: Mr. Jeffery Childers, Soda Mountain Solar Project Manager
Bureau of Land Management
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553
sodamtnsolar@blm.gov

RE: Formal comments on the Draft Environmental Impact Statement for Soda Mountain Solar project (CACA 49584)

Dear Mr. Childers,

The Desert Tortoise Council (Council) is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

Herein, we provide formal comments on the Draft Environmental Impact Statement (Draft EIS) for Soda Mountain Solar project (CACA 49584):

1. Measure 71 in Table 2-5, page 2-32 of the Draft EIS states: "An adequate number of trained and experienced monitors must be present during all construction and decommissioning activities in unfenced areas, depending on the various construction tasks, locations, and season. The approved biologist shall be on site from April 1 through May 31 and from September 1 through October 31 (active season) during ground-disturbing activities in areas outside the exclusion fencing, and shall be on-call from November 1 to March 14 (inactive season)." This particular measure implies that only active tortoises found aboveground are subject to impacts. In fact, ground-disturbing activities are just as likely to impact tortoises in their burrows, regardless of the season. Additionally, both adult and subadult tortoises may be active and out of their burrows year-round, which is facilitated by warmer temperatures in the winter months and rainfall in the summer months.

We strongly recommend that authorized biologists be onsite for **all** ground-disturbing activities, throughout the year. The wording in APM 71 on page 3.4-29 should require that authorized biologists and/or environmental monitors be onsite whenever ground-disturbing activities occur, regardless of the time of year; excepting those fenced areas that have already been cleared of tortoises during previous clearance surveys. We also note that none of these seasonal restrictions are reiterated in Section 3.4.8, where detailed descriptions of tortoise mitigation measures are presented.

2. Measure 73 in Table 2-5, page 2-32 states: “Compensatory habitat mitigation shall be provided at a 1:1 ratio for impacts to suitable desert tortoise habitat during construction. A habitat compensation plan will be prepared to the approval of CDFW, USFWS, and BLM.” Whereas the BLM is likely to assess a per-acre compensation fee for development, California Department of Fish and Wildlife (CDFW) will require habitat compensation, endowment funds, and enhancement fees. It is extremely unlikely that CDFW will accept only 1:1 habitat compensation. Rather than state the compensation ratio will be 1:1, it is advisable to state that the compensation ratio will be determined in consultation with CDFW and other agencies. We suggest that AMP 73 given on page 3.4-29 be modified to reflect this reality. Discussions under Mitigation Measure 3.4-2d on pages 3.4-60 and -61 may also need to be modified.

3. Under **Alternative E**, the No Action Alternative, “The BLM would continue to manage the land consistent with the site’s multiple use classification as described in the CDCA Plan. Based on the CDCA Plan amendments made in the Solar PEIS ROD, for future applications the site would be identified primarily as variance areas open to future applications for solar development, subject to the procedures identified in the Solar PEIS, and some exclusion areas in the southeast portion of the site that would be closed to such applications. In the case of variance areas, future projects would still require a CDCA Plan Amendment to move forward. These projects would be subject to applicable laws and land use plans” (Section 2.6.1., page 2-36). Although the Council appreciates that this alternative would result in no project at this site, we prefer Alternative G, since Alternative E would leave the site open to future solar development.

4. Under **Alternative G**, “The BLM would continue to manage the land consistent with the site’s multiple use classification as described in the CDCA Plan with the exception that solar development would be precluded on the site” (Section 2.6.3., page 2-37). As such, Alternative G has the advantage of specifically excluding this particular site from future solar development, and is the Council-preferred alternative.

5. It is not clear in the Section 2.8.1 discussion of site alternatives that the proponent considered thousands of acres of biologically-impaired habitats east of Barstow, between Interstate-15 and Interstate-40, for example, although there is one mention of the Barstow Marine Corps Logistics Base on page 2-41. In a number of places, it seems that if the alternative site does not occur between Las Vegas and Barstow it is unacceptable, which dismisses thousands of acres of impaired private lands in the Victor Valley, for example. It seems as if all potential alternatives had the same regional restriction that the site must occur along I-15 between Vegas and Barstow, which eliminates many other, better suited alternative sites outside this corridor.

6. Section 2-7, page 2-38 concludes, “The CEQA Guidelines define the environmentally superior alternative as that alternative with the least adverse impacts to the project area and its surrounding environment; therefore, Alternative E [No Action Alternative] is considered the environmentally superior alternative for CEQA purposes because it would not create any of the localized impacts of the Project, even though would have a less beneficial impact than that of the Project on greenhouse gases.” Although Alternative G is preferred, Alternative E is also an acceptable alternative to the Council.

7. The proponent hired Peter Woodman to conduct protocol tortoise surveys, which are reported in Kiva Biological Consulting (2013). Therein, Woodman recommends that the eastern half of the East Array be excluded from development to avoid occupied tortoise habitat. Which of the alternative configurations follow this considered recommendation? It is not clear from the alternatives presented in the Draft EIS that Woodman’s recommendations were followed. We recommend that such an alternative be included in the Final EIS and that it be fully analyzed for its reduced impacts to tortoises compared to the proponent’s preferred alternative.

8. Contrary to the statements in Section 3.3.3.1 on page 3.3-17, the West Mojave Coordinated Management plan (WEMO Plan) was not adopted as a habitat conservation plan, was not implemented by either San Bernardino County or the City of Barstow, and does not provide for streamlined approaches for private entities to satisfy endangered species act requirements. Its prescriptions do apply to public lands managed by the BLM, as stated in the Draft EIS. These inaccuracies are repeated in Section 3.4.3.1 on page 3.4-21.

9. On page 3.4-9, the Draft EIS reports the following with regards to tortoise distribution in the study area: “Tortoise activity on the Project site *seems to be limited to the East Array area* [emphasis added], where sign was moderately wide-spread, particularly at the foot of the mountains to the east. Carcasses of two tortoises were detected in the North Array study area, but south of the North Array site, and tortoise sign was not detected in the South Array study area.” The statement is somewhat misleading with regards to tortoise activity northwest of Interstate 15, as the presence of carcasses is still indicative of tortoise activity, even if only historical, in the North Array study area. This is critically important when the amount of compensable habitat is determined; **all** portions of all arrays, including those with only carcasses, are compensable.

10. Importantly, the descriptions referenced above fail to recognize that 5 tortoise burrows, 3 rock cover sites, 9 scat, and 3 carcasses were found at the Opah Ditch Mine in 2001 by AMEC, which is in the vicinity of the North Array study area, as reported in Panorama’s 2012 report and depicted in Figure 10, therein. We note that these tortoise sign are presented in Figure 3.4-1 of the Draft EIS, but are not mentioned in the text, and provide evidence that tortoise sign is not limited to the East Array area as stated on page 3.4-9. Survey Results presented in the text on pages 3.4-8 and 3.4-9 must be augmented by results depicted in the appendices to be comprehensive in the Final EIS, particularly when known, published data clearly show that more than two dead tortoises occur (or have recently occurred) within the North Array study area, all of which must be considered compensable habitat.

11. On page 3.4-15, the Draft EIS fails to acknowledge that on 26 June 2013, Townsend's big-eared bat was identified as a candidate species for endangered species listing in California by the Fish and Game Commission. Whereas the state and federal statuses are given for all other animals in Section 3.4.2.3., State and federal statuses are omitted for Townsend's big-eared bat in this discussion. This may be explained by the date of the comprehensive biological report of March 2013 (Panorama Environmental Inc. 2013), but since the Draft EIS is dated November 2013, the June 2013 designation should have been acknowledged in the Draft EIS and impacts to this candidate species must be analyzed in the Final EIS.

12. Since Townsend's big-eared bat is currently designated as a candidate for State listing, we feel that the analysis in the Final EIS must be substantially greater than that given in the Draft EIS. As above, the Final EIS also needs to divulge this recent designation, which may warrant more mitigation than is currently provided for in the Draft EIS. The significance discussion given under Section Impact Wild-7 on page 3.4-69 should be expanded to discuss impacts to this new candidate species.

13. On page 3.4-19, the Draft EIS indicates that only one burrow with American badger digs was found. During our brief reconnaissance surveys on 12/12/2012, LaRue and Radakovich found 11 diagnostic badger digs within the North Array area and 8 digs within the East and South Array areas. We note that there are no mitigation measures identified in Table 2-5 for this species. Given our survey observations on only a fraction of the project area, we suggest that American badger is far more common than the Draft EIS suggests, and that mitigation measures are warranted to minimize impacts to this California Species of Special Concern. Although Kiva Biological Consulting (2013) indicates that badger sign was recorded (page 2 in Methods), it is not mentioned in the Results section. We cannot tell in Figures 7 and 8 which digs were attributed to badgers versus canids, as they are depicted with the same symbol.

14. Although we understand that the raven management plan is still to be submitted to the regulatory agencies, the Council believes that the proponent should commit to providing funds to the U.S. Fish and Wildlife Service (USFWS) for raven control and management. In a February 2011 biological opinion (8-8-10-F-66) to the Joshua Basin Water District, the USFWS (2011) required that the water district provide \$105/acre of impact to this raven control program. As a recent standard applied to other projects in the West Mojave, the Council feels that this fee should also apply to this project.

15. With regards to impacts, it is not clear why on page ES-1 of the Executive summary, the Draft EIS indicates that **2,557 acres** would be disturbed; on page 3.4-31, **2,455.57 acres** are identified as being permanently lost; and in the biological technical report (page E.1-12 in Appendix E), Table 1.3-1 reports that **2,968.5 acres** would be permanently lost. As the Draft EIS indicated in footnotes to several tables and on page E.1-10 in Volume 2, all impacts are considered permanent, so it's not clear why there are so many discrepancies among reported impact acreages. We strongly suggest that the estimated compensable habitat be identified in the Final EIS under Mitigation Measure 3.4-2d, which currently describes compensable impacts without ever estimating the acreage to be compensated.

16. Although the fourth paragraph on page 3.4-33 indicates there is an undisclosed estimate of the number of tortoises that may be present on the Project site, the Draft EIS never reveals this number. Assuming the biologists used the USFWS formula for estimating the number of tortoises that may occur based on survey findings, this estimated number must be included in the Final EIS to accurately determine the level of anticipated take, and to allow the regulatory agencies to determine how accurate that estimate is, if the project is developed.

17. Although the Draft EIS was circulated in November 2013, it never refers to Peter Woodman's (Kiva Biological Consulting 2013) April and May 2013 surveys of the three arrays, a North Translocation Area, South Relocation Area, and Burrowing Owl Buffer Areas. In fact, translocation areas are not specifically discussed in the Draft EIS, as they must be in the Final EIS. Many of the results given in the Draft EIS are corroborated by Woodman's findings, which are never divulged. Woodman also reports the estimated tortoise density of two adult animals, but this is not in the Draft EIS. The Final EIS must fully divulge the results of Woodman's survey results for it to be complete and acceptable.

18. The Final EIS needs to assess Woodman's (Kiva Biological Consulting 2013) findings to determine if the South Relocation Area and North Translocation Area are appropriate to receive displaced tortoises. On page 4, Woodman reports that five tortoise carcasses were found in the North Translocation Area. Does this indicate that the North Translocation Area may not be acceptable if only dead tortoises are found there? Similarly, tortoise sign had a "limited distribution" in the South Relocation Area; as such, is it still appropriate to receive displaced tortoises? The Final EIS needs to consider these data and determine if these translocation areas will or will not be appropriate. If not, does the proponent plan to survey new translocation areas?

19. Please note in Section 3.4.8 on page 3.4-51 that the Designated Biologist and field contact representative are not synonymous. Whereas the Designated Biologist serves to implement all protective measures and minimize impacts to tortoises and occupied habitats, the field contact representative serves as the liaison among the many involved parties, particularly in regards to compliance reporting. In practice, the Designated Biologist and field contact representative are rarely the same person.

20. We strongly recommend that Mitigation Measure 3.4-2b on page 3.4-58 be modified to indicate that the agency-approved Desert Tortoise Translocation Plan (DTTP) must be finalized and approved **before** any ground-disturbance activities occur or any tortoises are handled. As written, the Draft EIS indicates that a draft DTTP has been written (see page 3.4-33) but the formal mitigation measure fails to indicate a timeframe in which the DTTP must be completed. As above, will the proponent choose new translocation areas and analyze them in the Final EIS? We strongly discourage displacing tortoises into areas where only dead or no evidence of tortoises are found. How will potential for disease transmission among translocated and host tortoises be considered in the DTTP?

21. Under Mitigation Measure 3.4-2c-4b on page 3.4-59, in the event a tortoise is found dead, the Final EIS should reference any restrictive measures that may be required by either USFWS or CDFW. If that mortality results in exceeding the mortality take limit identified in the federal biological opinion, for example, project construction may need to be halted until formal consultation is reinitiated. This and any other remedial actions should be documented in the Final EIS.

22. Mitigation Measure 3.4-2d on pages 3.4-60 through 3.4-63 provides extensive, detailed information about acquiring compensation lands but only indirectly refers to habitat management without requiring that an agency-approved habitat management plan is drafted by the approved management entity. The Final EIS must specify that a habitat management plan will be written for acquired lands, address threats to those lands based on field surveys identifying those threats, and state that the compensatory lands will be managed in perpetuity and not be subject to future development.

23. We suggest that Mitigation Measure 3.4-5a on page 3.4-64 be amended with a fourth stipulation that indicates emergency measures to be implemented if a tortoise is accidentally injured or killed during routine operations and maintenance. This amended measure should also indicate that BLM, USFWS, and CDFW will be contacted immediately to provide input into how future injuries and mortalities can be avoided. It should also assess whether incidental take statements in the biological opinion or State 2081 permit have been met or exceeded by the particular event.

24. Mitigation Measure 3.4-5b on pages 3.4-64 and -65 fails to mention that the Worker Education Awareness Program (WEAP) should be administered on, at least, an annual basis to all facility employees, which is the industry standard for all other public agencies whose employees provide routine operation and maintenance activities in occupied tortoise habitats.

In conclusion, we appreciate that the Draft EIS dealt with most of the points the Council raised in our scoping letter (Desert Tortoise Council 2012), including points 1 and 2 (alternative sites are discussed); 3 and 4 (no longer emphasizing how badly disturbed the habitats are); 5, 6, and 7 (survey quality increased with detection of tortoises, where the proponent formerly asserted no impacts would occur); 8 (incidental take permits are being solicited); 9 (fringe-toed lizards were found in the area like we had suggested); 10 (better reference to existing studies); 11 (like we found in December 2012, burrowing owls are known to be on the site); 12 (similarly, American badger occurs, though the Draft EIS still fails to determine the level of impact); and 13 and 14 (the Draft EIS is more accurate regarding tortoise occurrence rather than referring to inferior tortoise habitats). Finally, we are still in support of Alternative G, as the location of the proponent's preferred alternative site was poorly chosen and would result in the loss of good-to-pristine habitats.

Submitted by,



Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson
Edward L. LaRue, Jr.

Literature Cited

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