



DESERT TORTOISE COUNCIL

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Via email only

2 August 2019

William Webster, Needles Field Office

1303 S. Highway 95

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wwebster@blm.gov

RE: Environmental Assessment (DOI-BLM-CA-D090-2019-0013-EA) 40-95 Junction
Communication Site

Dear Mr. Webster,

The Desert Tortoise Council (Council) is a 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 desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Agassiz's desert tortoise (*Gopherus agassizii*) (synonymous with "Mojave desert tortoise"), our comments pertain to enhancing protection of this species during activities authorized by the Bureau of Land Management (BLM).

The following statements are given on page 5 of the Draft Environmental Assessment (Draft EA): "A portion of the existing access road associated with Alternative 1 occurs in the eastern end of MTNM [Mojave Trails National Monument]. Approximately 600 feet of the existing access road occurs within MTNM. Construction of this portion of the Proposed Action would not result in impacts to special-status species or their habitats." Although this statement is likely true so long as protective measures are implemented, please be aware that there may be indirect impacts and even direct impacts if a tortoise enters the construction area if the access road is graded or improved, particularly since tortoise sign was found during surveys, as per page 11 of the Draft EA.

Therefore, we recommend that all construction personnel attend a tortoise awareness program and that all activities potentially impacting tortoises be monitored by authorized biologists approved by the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS), **and California Department of Fish and Wildlife (CDFW)**. This recommendation should also be applied to the decommissioning activities as outlined in Section 2.2.5 on page 7 of the Draft EA.

Although measure DT-4 on page C-5 requires that the education program recommended above be implemented, it is noteworthy that the Draft EA fails to disclose that the Agassiz's desert tortoise is also State-listed as Threatened. Therefore, InterConnect Towers, LLC (Proponent) is obligated to have biologists also authorized by CDFW and to acquire a State 2081 Incidental Take Permit (2081 ITP) if tortoises or occupied tortoise habitats are to be impacted by the project. Failure to acquire the 2081 ITP and subsequent handling of a tortoise or destruction of occupied tortoise habitats would be in violation of the California Endangered Species Act (CESA), unless BLM has a programmatic Memorandum of Understanding (MOU) permitting this activity, which is not identified in the Draft EA and of which we are not aware.

Given the above statement, the following measures given in Section 1.3.2. on pages C-5 through C-8 cannot be implemented unless a 2081 ITP is acquired before implementing the action(s): DT-3, DT-6 (if the installation of the fence results in take of tortoises), DT-7, DT-8 (burrows may not be excavated nor tortoises handled), DT-9, and DT-10.

There is a discrepancy with the following statement given on page 4 of the Draft EA (“...the BLM has determined the baseline ground disturbance for the CDNCL [California Desert National Conservation Lands] is 0.87% and, therefore, does not exceed the CDNCL ground disturbance cap. *Therefore, no mitigation would be required* [italics added]” and the discussion given on page 19, which states: “...direct effects to desert tortoise habitat would be mitigated at a ratio of 1:1, per Table 18 of the DRECP LUPA, for a total of 0.42 acre.” The Council understands that the impacts are mitigable, and supports the need for mitigation given on page 19 as opposed to the statement that mitigation is not required given on page 4.

Given the following statement on page 19, we recommend that tortoise crossing sign(s) be posted, particularly if Alternative 1 is constructed: “While soils would be compacted and vegetation would be removed, desert tortoise would likely continue to occasionally occupy the access road alignment.” This requirement should be added as Applicant Proposed Measure (APM) T-2, in Section 1.1.4, on page C-2 or may be added to GM-2, which already requires 15 mph speed limit signs.

Page 19 of the EA also states: “Indirect effects to desert tortoise could also occur as a result of increased common raven presence, increased dispersed recreational use, introduction of invasive nonnative plant species, wildfires, and increased runoff and sedimentation during heavy rain events and flooding.” Based on the information presented in the Draft EA and particularly because of the locations of the two alternatives, the Council believes that each of these indirect effects would be lessened if Alternative 2 were chosen. As such, the Council herein recommends that Alternative 2 be chosen and Alternative 1 rejected.

The Proponent working with the BLM should consider a more direct approach to the Alternative 2 site that does not require the relatively long route to the south that doubles back to the freeway. Is it possible that blading a 100-foot long path along the south side of the freeway from the entrance access road heading east would avoid this long, seemingly needless access route to the south?

We note on page 9 and in Figure 1-2 that both Alternatives 1 and 2 would impact washes, which are likely considered to be jurisdictional waters of the State. Although this is a federal action on public lands managed by the BLM, the Proponent is still obligated to follow state regulations. Therefore, the Proponent must contact the appropriate office of the CDFW to confirm that a Section 1600 Streambed Alteration Agreement (1600 Agreement) will be required and issued before any ground disturbance occurs on the subject property. Given that take of desert tortoises is likely for this project (i.e., the project may affect tortoises), we anticipate that one of the stipulations of the 1600 Agreement will be that a 2081 ITP is required prior to ground disturbance.

Finally, in this and other recent BLM documentation, we note that the Desert Tortoise Council 1994 document is no longer being recommended by either USFWS or CDFW. Rather, all tortoises should be handled as per the analogous, replacement guidelines that are documented in USFWS (2009).

We appreciate this opportunity to provide input and trust that our comments will further protect tortoises during authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this particular project is provided to us at the contact information listed above.

Regards,



Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Literature Cited

U.S. Fish and Wildlife Service (USFWS). 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.