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Via email only

April 15, 2019

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Re: Response to April 1, 2019 email requesting comments on the Draft Environmental Assessment for Test and Evaluation and Training Activities at the Cuddeback Range at Naval Air Weapons Station China Lake – November 2018

Dear Ms. Bresler:

This letter is in response to your email of April 1, 2019. Thank you for providing the Desert Tortoise Council (Council) with copies of the Epsilon Biological Evaluation (2017), Biological Assessment, and Biological Opinion for the Cuddeback Range at Naval Air Weapons Station – China Lake, California (herein "NAWS"). In your email, you asked the Council to provide any additional comments it might have on the Draft Environmental Assessment for Test and Evaluation and Training Activities at the Cuddeback Range at Naval Air Weapons Station China Lake (Draft EA) as a result of review of these documents. You requested these comments be sent to you by the end of the day Tuesday, 16 April 2019.

After reading these three documents, we are providing you with our comments. Our comments have not changed regarding our insistence the Navy needs to 1) prepare an environmental impact statement (EIS) or conduct equivalent analysis and mitigation; 2) develop alternatives in addition to those in the Draft EA (as would occur in the preparation of an EIS); 3) address the segmentation of the Navy's analysis of impacts based on information provided by the Navy in the Draft EA; 4) accurately represent the status and trend of the Mojave desert tortoise and its habitat/critical habitat within the boundary of the proposed action, the affected Area of Critical Environmental Concern (ACEC)/Tortoise Conservation Area (TCA), the Superior-Cronese

Recovery Unit, and range-wide; 5) analyze the effects of the Navy's proposed action on the ability of the desert tortoise to survive and recover within the boundary of the proposed action for the next 20+ years (the duration of the Navy's lease), the affected ACEC/TCA, recovery unit, and range-wide; 6) analyze cumulative impacts; 7) develop and implement plans for actions to avoid/reduce/minimize adverse effects to the tortoise and its habitat/critical habitat that are standards for other federal actions; and 8) describe and implement mitigation to offset remaining adverse effects especially given the status and trend of the tortoise in the Superior-Cronese ACEC/TCA and West Mojave Recovery Unit.

The Council identified 16 issues in our scoping letter and again in our comment letter on the Draft EA because we were not able to find an analysis of them in the Draft EA. We thank the Navy for partially addressing issues 9, 15, and 16 from our December 21, 2018 comment letter in the Biological Evaluation and Biological Assessment. We urge the Navy to incorporate and fully address these 16 issues in the Navy's National Environmental Policy Act (NEPA) document.

We request the Navy clarify its description of operational and target areas. In the Biological Assessment, the Navy says there are "existing operational and target areas" that would be used in the Cuddeback Range, but we found no explanation of why these areas are existing. This area has not been used by the military for training or testing since 1983. The Navy's wording implies that Navy or another military entity has been using these areas even though they have been managed by the BLM from 1983 to 2015, or it implies the Navy initiated use in 2015 without appropriate environmental compliance (e.g., with the Federal Endangered Species Act). We request clarification of this description of these "existing operational and target areas" in the Navy's NEPA document.

The Biological Assessment provided information that we did not recall in the Draft EA. Consequently, we have comments on this information that we consider new.

In the "Authorized Biologist" section of the Biological Assessment, we were unable to find a description of when an Authorized Biologist will be present for what activities and when a Biological Monitor will be present for what activities. This section only indicates that an Authorized Biologist will select a Monitor according to the USFWS 2009 Field Manual. Please include a list of activities when an Authorized Biologist will be present versus when a Biological Monitor will be present.

The Navy says, "The new perimeter fence would not alter the quality and quantity of forage species…" We disagree. Anytime there is surface disturbance in the desert and the disturbance is caused by vehicles or heavy equipment, there is a high likelihood of the transport and/or establishment of nonnative plant propagules. Surface disturbance means the seeds of nonnative plants have an advantage over native plants as the soil crusts have been broken and nitrogen deposition in the soil is increased. This condition favors the establishment of nonnative annual plants over native plant species.

We recommend that the Navy require the fence contractor to clean the vehicles (including the tires and tracks) and equipment used in fence construction to reduce the spread/occurrence of nonnative plants at the Cuddeback Range. This is a standard mitigation measure by the National Park Service and Bureau of Land Management (BLM). We recommend that the Navy monitor the fenceline for the occurrence of nonnative plant species and implement actions to remove nonnative annual plants before they produce seed.

The Navy has documented tortoise mortalities from vehicle strike on access roads. To reduce this occurrence, the Navy would "…post signs for reduced speed limits where appropriate." We believe this is inadequate to substantially reduce or eliminate access road mortality. "Where appropriate" is not defined. It could mean that several documented incidents of mortality would need to occur at a particular location before a speed limit sign would be posted. In addition, there is no mention of enforcement of the speed limit. NAWS is a large military base and personnel on the base are known to drive in excess of the speed limit especially when travelling to areas more than a few miles from Mainside. We encourage the Navy to post slow speed limit signs in areas of tortoise habitat and that the speed limits be enforced through various means (e.g., clauses in contracts with contractors and enforcement by appropriate military personnel of all drivers on the base).

The Navy says "Construction of the proposed new access road would remove approximately 55 acres (22.3 hectares) of Designated Critical Habitat in the action area. The total reduction of habitat in the action area resulting from construction of the new access road would be less than 5 percent." While the area of the fence may comprise 5 percent of the action area, we found no information on the quality and arrangement of the vegetation/tortoise habitat in the remaining 95 percent of the action area. This is a crucial piece of data that is needed to analyze the effects of the proposed action. For example, if only 10 percent of the action area contains suitable habitat quality for the tortoise and half of that is to be removed during fence construction, the effect of fence construction is different than if 100 percent of the action area contains suitable habitat. In addition, the BA should include an analysis of the arrangement of the habitat. This information is important with respect to providing connectivity within and among tortoise populations. We request that the Navy analyze and map the effects of the proposed action on desert tortoise critical habitat for the Superior-Cronese Critical Habitat Unit.

We appreciate the Navy's acknowledgement of the effects of noise and vibration to the tortoise and its habitat. However, we note that in the Draft EA, Biological Assessment, and Biological Opinion, there is no description and analysis of effects to the tortoise or its habitat/critical habitat from the range of electromagnetic spectrum that the Navy is testing below, on, or above the ground in the project area. The Navy is testing/using instruments/weapons/communications (e.g., laser systems for targeting, weapons, communication, etc.) that use energy waves in the electromagnetic spectrum at the Cuddeback Range. Because this is a major component of the Navy's proposed action, we believe the Navy should analyze their effects on various size classes of the tortoise with respect to physiology, reproduction, and behavior and the tortoise's habitats/critical habitat.

We note three activities for which there is the likelihood of take, but we found no analysis of them in the Biological Assessment and Biological Opinion. These three are the use/deposition/ clean-up of environmental contaminants (past or current use), maintaining dirt roads, and trenching/burying equipment. We found brief or no descriptions of these compounds/activities and no analysis of effects to the tortoise or its habitats, including critical habitat. For environmental contaminants, we request the NEPA document include an analysis of the effects of payloads and expendables (i.e., what are the environmental contaminants) to the tortoise and its habitat. This analysis would include any adverse effects to the tortoise and its habitat from actions taken to neutralize or remove these environmental contaminants and how long it would take the Navy to initiate/complete cleanup from when the contaminants were initially discharged.

For road maintenance, the Navy says in the Biological Assessment, "All existing and proposed roads would receive periodic maintenance, as needed." We found no description what this maintenance activity would be, when it would be performed, analysis of its direct and indirect effects to the tortoise, or if maintenance activities would be monitored. Would maintenance include grading? Tortoises like to use berms for excavating burrows, and grading a berm may result in take of a tortoise. Would an Authorized Biologist or Monitor be present during the road maintenance to ensure that a tortoise is not injured or killed from a vehicle/blade strike or buried? Similarly, the conformation of a berm can become a barrier to the movement of a tortoise. Would road maintenance be limited to times of the year when temperatures are cold and it is unlikely that tortoises would be active, aboveground? This information should be included in the Navy's NEPA document.

We thank the Navy for clarifying in the Biological Assessment that the Integrated Natural Resources Management Plan (INRMP) for Naval Air Weapons Station – China Lake (NAWS) would include the Cuddeback Range. This is an important first step to ensure that the lands in the Cuddeback Range are managed for the benefit of the desert tortoise while maintaining their use for the Navy's military mission. In the Biological Assessment, the Navy says, "The current INRMP includes specific management objectives for desert tortoise intended to maintain a viable population of desert tortoises and support Recovery Plan (USFWS 2011) efforts to maintain stable tortoise Critical Habitat areas and eventual delisting." We applaud this effort. We request the Navy share its data on how it is maintaining viable populations of the desert tortoise at NAWS including the Cuddeback Range. Recent analysis of multi-year data from the USFWS (2015) indicates that the Fremont-Kramer and Superior-Cronese populations of the desert tortoise (the Cuddeback Range is included in the latter) are at densities below the viability threshold. Thus, it is crucial that all of the Superior-Cronese be managed for the benefit of the tortoise and minimization of adverse effects. This information should be included in the Navy's NEPA document.

One of these management objectives is to "maintain habitat quality and integrity" for the tortoise. Again, we support the Navy in implementing this management objective for the tortoise and urge the Navy to include this information their NEPA document. In the Cuddeback Range, we presume that to accomplish this management objective the Navy has collected baseline data for habitat quality parameters that are important to tortoises regarding soils (including soil crusts), vegetation for nutrition and cover, and locations of habitats to provide habitat connectivity. We also presume this means the Navy will periodically 1) collect these data to evaluate any change in habitat quality or integrity that is important for the tortoise; 2) analyze and map these changes; 3) implement on-the-ground adaptive management if management objectives are not being met; and 4) share this information with the USFWS, California Department of Fish and Wildlife, and adjacent land managers (i.e., BLM and Desert Tortoise Preserve Committee, which manages the adjacent Pilot Knob cattle allotment).

Another management objective is to "participate with recovery planning and other regional planning initiatives to help establish stable tortoise populations." Again, we applaud this effort by the Navy. We request the Navy include this information in its NEPA document and expand this objective to include implementation of initiatives that are developed during recovery planning.

We note the existing NAWS INRMP was finalized in 2014; INRPMs typically undergo a major review/ possible revision every 5 years. The Council is an interested party in the review/revision of the Navy's INRMP for NAWS. Under the Sikes Act Improvement Act, the Council is requesting to be notified of all opportunities to participate in the development and review of any changes/revisions to the NAWS INRMP.

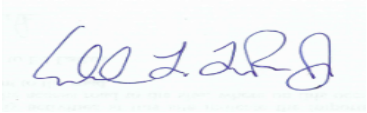
According to the Biological Opinion, the "Navy will continue the management and conservation of natural and cultural resources in the NAWS through the installation's Legislative Ecological Impact Statement Implementation Plan." Please explain what this plan is and how it compares to the INRMP for NAWS.

One conservation action that the Navy would implement is "Partnering with the Bureau of Land Management (Bureau), which manages lands adjacent to the Cuddeback Range, and the Desert Tortoise Preserve Committee (DTPC), which owns adjacent lands, to coordinate and implement recovery actions for the desert tortoise in or adjacent to the Cuddeback Range." (USFWS 2019) We would like to see the NEPA document list the recovery actions that the Navy and BLM promise to implement.

We urge the Navy to implement all Conservation Recommendations in the biological opinion to the Navy (USFWS 2019) in the Cuddeback Range.

Again, we thank the Navy for providing the three documents that we requested for soliciting any additional comments we might have on the Draft EA. Should you have any questions regarding these comments, please contact me at the email address in our letterhead.

Regards,



Edward L. LaRue, Jr., M.S.
Chair, Ecosystems Advisory Committee

Literature Cited

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