



DESERT TORTOISE COUNCIL

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Via email only

16 March 2018

To: Russell Brady, Project Planner
Riverside County Planning Department
4080 Lemon St., 12th Floor
Riverside, CA 92501
rbrady@rivco.org

RE: Paradise Valley Specific Plan Draft Environmental Impact Report No. 506

Dear Mr. Brady,

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 these species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Our comments pertain to the Notice of Completion (NOC) for Draft Environmental Impact Report (Draft EIR) No. 506 for Paradise Valley Specific Plan, which includes Specific Plan No. 339, General Plan Amendment No. 686 (GPA), and Change of Zone No. 6915 (CZ). SCH#2015101031. Given the location of the proposed project in the Chuckwalla Critical Habitat Unit for Agassiz's desert tortoise (*Gopherus agassizii*) and conservation areas for desert tortoise identified in the Coachella Valley Multispecies Habitat Conservation Plan (CVMSHCP), our comments mostly pertain to evaluating the feasibility of developing the proposed project at this location.

Although the CVMSHCP provides for incidental take of tortoises, the Council maintains that the Paradise Valley project was not envisioned by the plan and that the conservation provided for in that plan (see CVMSHCP, Table 4-116) will be significantly undermined by this project. The proposed project would eliminate almost 5,000 acres of U.S. Fish and Wildlife Service (USFWS)-designated Critical Habitat for Agassiz's desert tortoise (USFWS 1994a; Figure 4.4-3)

and CVMSHCP-designated Core Habitat for desert tortoise (Figures 4.4-6, 4-4.11, and 4-4.12), as well as sever a CVMSHCP-designated Desert Tortoise Core Linkage Area (Figure 4.4-9). As such, the Council contends that this project must be independently analyzed by the USFWS and California Department of Fish and Wildlife (CDFW). The Council contends that the project, if pursued, must be considered under separate state 2081 and federal 10(a)(1)(B) incidental take permits; that take associated with the project not be covered by the CVMSHCP.

Development of the project would result in the permanent loss of nearly 5,000 acres of Critical Habitat for the desert tortoise. The Council views the proposed location of the project site to be the most significant threat to the integrity of the Chuckwalla Critical Habitat Unit since the tortoise was federally listed in 1990 (USFWS 1990). Given that every acre of the proposed development would result in adverse modification of tortoise Critical Habitat, we find that this project would seriously undermine the effectiveness of the Colorado Desert Recovery Unit (USFWS 1994b, 2011) to function as intended.

The Draft EIR and supporting biological reports fail to consider the effect of development of the project on the primary constituent elements of the desert tortoise, which is a requirement for any action or project proposed within Critical Habitat. In addressing the effect of the proposed project on the primary constituent elements of desert tortoise Critical Habitat, we ask that the Riverside County Planning Department follow the pattern of analysis utilized by the USFWS. The analysis must describe how the project would provide 1) sufficient space to support viable tortoise populations within the Chuckwalla Critical Habitat Unit and provide for movements, dispersal, and gene flow; 2) sufficient quantity and quality of forage species and the proper soil conditions to provide for the growth of such species; 3) suitable substrates for burrowing, nesting, and overwintering tortoises; 4) burrows, caliche caves, and other shelter sites; 5) sufficient vegetation for shelter from temperature extremes and predators; and 6) habitat protected from disturbance and human-caused mortality. Failure to maintain these Critical Habitat features constitutes adverse modification and a jeopardy Biological Opinion.

The Endangered Species Act stipulates that the areas containing one or more of these primary constituent elements may require special management considerations or protection. As shown in Figure 4.4-9, the site would effectively sever the 89,000-acre Desert Tortoise and Linkage Conservation Area of the CVMSHCP. Development of this site would completely sever the east-west connectivity intentionally designed in the CVMSHCP and eliminate half of the north-south connectivity in the northwestern part of the Critical Habitat unit and the Chuckwalla Bench Area of Critical Environmental Concern (ACEC) located to the south.

Again, the CVMSHCP (CVAG 2007) Environmental Impact Statement failed to foresee or analyze a project with this level of impact to regional conservation and recovery of tortoises. Given the size of the project and its location in an area important for movement of individuals and gene flow between desert tortoise conservation areas, the Council is deeply concerned that the project would undermine the conservation objectives of the Chuckwalla Critical Habitat Unit and Desert Tortoise and Linkage Conservation Area and pose a serious threat to desert tortoise populations in the region. The Biological Opinion on the CVMSHCP did not take into account a project of this nature. A new analysis by the USFWS of the impact to Critical Habitat is required.

We have identified the following deficiencies in the Draft EIR:

- The Draft EIR fails to adequately document tortoise declines in the region. The regional impacts of the project and adverse modification of tortoise Critical Habitat must take into account significant tortoise declines documented in USFWS (2014 and 2017b) and be fully analyzed in the Final EIR.
- In referencing the Northern and Eastern Colorado Desert Coordinated Management Plan (NECO; BLM 2002), the Draft EIR correctly indicates on page 4.4-21 that the subject property is not found on public lands managed by the Bureau of Land Management (BLM). However, given the significant impacts to tortoise habitat connectivity between BLM lands to the south and National Park Service (NPS) lands to the north in Joshua Tree National Park, the Final EIR needs to consider the indirect impacts that could seriously detract from tortoise recovery on public lands in the Colorado Desert Recovery Unit.
- The following statement on page 4.4-31, “46,350 acres of the Desert Tortoise Linkage Conservation Area [DTLCA] shall be conserved” fails to acknowledge the severity of the project to completely sever the east-west connectivity shown in Figure 4.4-2. This statement is misleading and fails to acknowledge how the proposed project would undermine the function of the Desert Tortoise Linkage Conservation Area located north of Interstate 10.
- The project, if implemented, would serve as an attractant to the common raven (*Corvus corax*), and would subsidize local raven and coyote (*Canis latrans*) populations resulting in their growth. Ravens and coyotes subsidized by the development would range far into desert tortoise Critical Habitat, placing increased and unsustainable predation pressure on tortoise populations. Furthermore, free-ranging pet dogs living in the development would access adjacent lands in desert tortoise Critical Habitat, placing further increased predation pressure on tortoise populations. The effects of these subsidized predators would extend several miles beyond the boundaries of the development, yet they were not considered in the Draft EIR.
- In our scoping comments (Desert Tortoise Council 2015), we asked how the proximity of this project would affect tortoise habitats currently protected on nearby Joshua Tree National Park. We also asked that tortoise densities to the north within the Park and to the south in the Chuckwalla Critical Habitat Unit be documented. We are unable to find this information in the Draft EIR, which we find deficient in this respect. The Final EIR must document tortoise densities and analyze these impacts.
- Similarly, in our scoping comments we asked the following questions that have not been answered in the Draft EIR: “Where would displaced tortoises be translocated? Will they be fitted with radio transmitters and tracked for what period of time? How will the proponent determine impacts to the host tortoises in the translocation area? Will there be disease screening for displaced tortoises and how will diseased tortoises be treated in the translocation plan?”

- We are concerned that several indirect effects of the proposed project on the desert tortoise and its habitat were not analyzed adequately in the Draft EIR. In addition to predator subsidies and increase predation on the desert tortoise, indirect effects include increased off-highway vehicle (OHV) activities from demands by the new village residents and visitors, and interruption/alteration of surface hydrology. The newly introduced human population at Paradise Valley and its visitors would likely result in a substantial increase in OHV use to areas adjacent to the project footprint. These OHV activities would crush desert tortoises and likely lead to increased collection. OHV activities would also crush vegetation or cover it with dust, thereby removing or substantially reducing vegetation cover needed by the desert tortoise to survive temperature extremes, to avoid predation, and to provide nest sites. Further, OHV activities would compact soils making it difficult for revegetation of native plants to occur, transport non-native plant propagules to the area that out-compete and substantially reduce the occurrence of native plant species needed by tortoises for nutrition and reproduction. These adverse impacts would extend several miles outside the proposed project footprint and result in a temporal and spatial loss of desert tortoise and tortoise habitat.
- For surface hydrology, the construction of the Paradise Valley project will deprive/alter areas down slope of the proposed project from receiving surface water (e.g., sheet flow) that they currently receive and alter the timing when released water is received. Because native vegetation is already on the edge of being able to survive harsh desert conditions, any deprivation/alteration of delivery of surface water will result in reduced density and size (i.e., cover) of perennial woody vegetation. This vegetation is necessary for the desert tortoise for protection from extreme temperatures and predators. Similarly, perennial and annual native herbaceous vegetation would be reduced. It is necessary for food, reproduction, and recruitment. Climate change is exacerbating the harsh desert conditions. Thus, the adverse impacts to hydrology from the proposed project to desert vegetation and the desert tortoise will extend several square miles down slope of the footprint of the proposed project.

Furthermore, the terms and conditions identified in Table ES-1 (Summary of Impacts and Mitigation; see also pages 4.4-64 through 4.4-69 of the Draft EIR) suggest that the author is not familiar with current standards, and that current standards must be identified in the Final EIR and implemented, as follows:

MM Bio-3, page ES-25. The term “Acceptable Biologist” should refer to “Authorized Biologist,” which must be approved by both the USFWS and CDFW, and needs to be clarified in the Final EIR.

MM Bio-3, page ES-25. With regards to the following statement, “Prior to grading within CVMSHCP modeled desert tortoise habitat, an Acceptable Biologist [sic] will conduct a presence/absence survey of the Development area and adjacent areas within 200 feet of the Development area...,” presence/absence surveys are performed to determine if tortoises occur on a given project site. So, a formal presence/absence tortoise survey (USFWS 2017) needs to be performed during the activity periods of April-May or September/October to determine if tortoises occur, and if they do occur, to determine the distribution and estimated density of tortoises that may be affected. The results of this survey must be reported in the Final EIR.

We note that the most recent desert tortoise surveys were performed in 2007 (Psomas 2007), which is 10 years older than the current standards (USFWS 2017a). Given that the results of tortoise surveys are valid for the period of only one year, the Council finds that the Draft EIR is based on dated information that would not likely portray current tortoise densities and distribution on the subject property or meet current survey protocol standards. We maintain that new protocol tortoise surveys must be performed and documented in the Final EIR.

MM Bio-3, page ES-25. None of the dates reported in this section is correct. For example, performing presence/absence surveys between “February 15 and October 31” does not conform to the April-May or September/October survey dates given in USFWS (2009, 2010, 2017a). Similarly, performing clearance surveys between “February 15 to June 15 and September 1 to October 31” is inaccurate. Assuming tortoises occur anywhere on the proposed development site, clearance surveys are performed only after a CDFW 2081 incidental take permit and a USFWS 10(a)(1)(B) incidental take permit are acquired.

MM Bio-3, page ES-25. The following statement is incorrect: “If fresh sign of desert tortoise is located, the Development area must be fenced with tortoise-proof fencing and a clearance survey conducted during the clearance window.” Rather, if fresh sign of desert tortoises is located anywhere within the proposed project area, the project proponent must acquire a CDFW 2081 incidental take permit and a USFWS 10(a)(1)(B) incidental take permit before any ground disturbance can occur.

MM Bio-3, page ES-25. With regards to the following statement, “A presence/absence survey is valid for 90 days or indefinitely if tortoise-proof fencing is installed around the Development site,” the statement is incorrect. Presence/absence surveys are valid for the period of one year (USFWS 2017).

MM Bio-3, page ES-25. With regards to the following statements, “If fresh sign of desert tortoise is located, the Development area must be fenced with tortoise-proof fencing and a clearance survey conducted during the clearance window” and “All tortoises encountered will be moved from the Development site to a specified location” would be in violation of both the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA) unless the state and federal incidental take permits identified above are first acquired.

MM Bio-3, page ES-26. Please note that the following reference, “Guidelines for Handling Desert Tortoises During Construction Projects, revised July 1999” is outdated. Any movement of tortoises, following permit issuance, must comply with the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009).

MM Bio-3, page ES-27 and -28. The measures identified on these two pages for the referenced “Inactive Season Protocol” are not up to the standards that are required by 2018 state and federal incidental take permits. Assuming tortoises occur and state and federal incidental take permits are acquired, the more stringent measures given in those two permits must be followed and replace the measures identified in the “Inactive Season Protocol.”

MM Bio-3, page ES-28 and -33. The measures identified on these six pages for MM Bio-4 are not up to 2018 standards that are required by state and federal incidental take permits. Knowing that tortoises occur and that independent state and federal incidental take permits should be acquired, the more stringent measures given in those permits must be followed and replace the measures identified in MM Bio-4.

For climate change and greenhouse gas emissions, we believe that analysis of effects in the Draft EIR should be a two-pronged approach. It should analyze (1) climate change/greenhouse gas emissions effects from implementation of the proposed action (e.g., Paradise Valley proposed project) and (2) the relationship of climate change effects to that proposed action. We do not believe an analysis of climate change effects on the proposed action was provided in the Draft EIR and request that one be included in the Final EIR. For example, climate change may affect the proposed action by substantially increasing the severity of flood events. If this increased severity is not adequately considered in the design and implementation of the hydrologic plan for Paradise Valley, the results would be a failure of storm water retention basins. Such failures would be similar to breaching small dams and result in severe erosion of washes and water overflowing wash banks and flowing overland. The result would be loss of desert vegetation and wildlife, including desert tortoise habitat and animals.

Given the significance of this proposed impact, the Council believes that the impacts cannot be mitigated at all, much less in the context of the CVMSHCP. The County spent four years and millions of dollars developing and putting the MSHCP in place. The Council believes that approval of this single large project violates the MSHCP conservation measures so substantially that the federal incidental take (10a)(1)(B) permit should be withdrawn. If jeopardy were determined on the basis of a given recovery unit or adverse modification of Critical Habitat, the Council contends that this project would jeopardize the continued existence of tortoises in the Colorado Desert Recovery Unit.

Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other Riverside County projects that may affect 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

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