



DESERT TORTOISE COUNCIL

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Via email only

16 January 2023

Attn: Reuben J. Arceo, Contract Planner
County of San Bernardino, Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187
reuben.arceo@lus.sbcounty.gov

RE: Comments on Draft Initial Study and Mitigated Negative Declaration for the Alien Commercial Center, Baker, California

Dear Mr. Arceo,

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.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that San Bernardino County email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We thank San Bernardino County (County) for contacting us directly about the availability of this document prepared under the California Environmental Quality Act (CEQA), and appreciate this opportunity to provide comments on the above-referenced project. Given that the proposed project may contribute to take of the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities authorized by San Bernardino County, which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), as it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), population size fewer than 50 individuals, other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

We reviewed the Draft Initial Study and Mitigated Negative Declaration (MND) for the Alien Commercial Center in Baker, California and offer the following comments for your consideration and incorporation into the final document.

Description of Proposed Action

According to the MND, Steeno Design Studio Inc. (Proponent) is proposing to construct and operate a 20-pump fueling station, a 20,400 square-foot convenience store, a 3,864 square-foot coffee shop with a drive-through lane, entry ways, and parking for 226 standard parking spaces, 8 Americans with Disabilities Act-accessible parking spaces, and 16 electric vehicle charging stations on a 4.99-acre (217,369 square feet) parcel. Landscaping would total 31,173 square feet. Three underground storage tanks (USTs) would be installed (one for the storage of 91 octane, another for 87 octane gasoline, and one for diesel fuel). The fueling station and convenience store would be open 24 hours a day.

The parcel is bordered by Baker Boulevard to the south, a drainage easement to the west, open desert to the north, and commercial development to the east. It is on the north side of Soda Dry Lake in San Bernardino County, located entirely on private lands. Some of the parcel is currently occupied by the vacant Santa Fe Motel. The motel's buildings occupy 16,630 square feet plus an in-ground concrete pool. The motel would be demolished and the parcel regraded.

Using Science, Implementing Agency Coordination, and Complying with Environmental Requirements

We believe the purpose of a CEQA document is to (1) conduct an analysis using the best available data of the direct, indirect, and cumulative impacts of a proposed action on the environment and use this analysis to adopt, modify with mitigation, or reject the proposed action; and (2) document compliance with applicable environmental laws, regulations, policies, and plans. Unfortunately, the MND does not appear to have accomplished these purposes.

For example, in the MND, the Proponent indicates that a National Pollutant Discharge Elimination System permit is needed from the State of California. However, we found no information in the MND that consultation with California Department of Fish and Wildlife (CDFW) had occurred to determine whether a Streambed Alteration Agreement under California Fish and Game Code 1600 is needed. We note that a waterway or drainage is located on the west side of the parcel. We were unable to determine from the project description whether this waterway would be affected by the proposed action. So, please be sure that appropriate field analyses are conducted by experienced personnel and CDFW contacted to see if a 1600 Streambed Alteration Agreement is required.

Additionally, there is section in the MND entitled “Consultation with California Native American Tribes” in which consultation is required to identify and address potential adverse impacts to tribal cultural resources from the proposed action. However, we saw no such requirement for consultation regarding biological resources with the U.S. Fish and Wildlife Service (USFWS) and CDFW for compliance with the Federal Endangered Species Act (FESA), Migratory Bird Treaty Act (MBTA), California Endangered Species Act (CESA), or California Fish and Game Codes (e.g., streambeds, migratory birds, etc.).

Please include information in the CEQA document that (1) the Proponent or the County has consulted with these agencies regarding these protected/regulated biological resources, and report in the CEQA document the results of these consultations; and (2) the be sure the proposed action complies with these legal, regulatory, and policy requirements, or state that these requirements are not applicable and why. Absent this information, the public does not know if these requirements were overlooked by the County or Proponent.

Compliance with California Executive Order

On October 7, 2020, Governor Newsom issued Executive Order N-82-20¹ to combat the biodiversity crisis and climate change crisis. To demonstrate compliance with the purpose and intent of this executive order, we request that the County include information in subsequent environmental document(s) how the MND complies with this executive order and other relevant executive orders.

Climate Change

The MND has a section that analyzes impacts to air quality from a human health perspective. However, we found no section that analyzes the impacts of the proposed action, including the construction and operation phases, on climate change and effects on wildlife and habitats. When looking at each project individually, impacts may be minor. However, cumulative impacts should be analyzed and presented with referenced or supporting data in this CEQA document. Given the importance of this resource topic (e.g., Executive Order N-82-20) and its rapid and substantial impacts to many Mojave Desert species and the ecosystem (Smith et al. 2023), we request that an analysis of the proposed action on climate change and wildlife including the tortoise be included in the MND.

Using Science to Substantiate Environmental Impacts

Under each resource issue is a section with this title. In the MND, several determinations regarding impacts to resources are made with little or no data to support these determinations. In Executive Order N-82-20, the Governor called on agencies to use the “best available science” in dealing with the biodiversity and climate change crises. To help in implementing this Executive Order, we ask that this and all CEQA documents the County prepares/approves should use data, preferably the best available science, to analyze each impact to each resource issue and then make a determination based on the cited data. We request the MND be updated to provide data from scientific journals, research reports, and protocol/statistical surveys regarding direct, indirect, and cumulative impacts to the tortoise, other wildlife species, and their habitats in the MND from implementation of the proposed action.

¹ <https://www.dropbox.com/s/wytoq87u36xhaya/%24Climate%20Change%20Eecutive%20Order%2010.07.2020-EO-N-82-20-.pdf?dl=0>

For example, under Biological Resources (pages 30-32), the MND says, “the project site and the adjacent properties do not contain any naturally occurring habitats and associated flora and fauna.” To us, this statement means that a qualified biologist conducted protocol surveys approved by the CDFW and USFWS on the project site and adjacent properties. Yet no citations of the results of survey reports or other citations are provided in the MND, leaving us to believe that no surveys, particularly in adjacent areas to the north, have been performed, where Google Earth shows naturally occurring habitats. Consequently, we conclude the this statement in the Biological Resources section is not supported, nor are the best available data or any data provided. Rather, the MND provides opinion apparently based on assumptions

The MND then concludes that “no impacts will occur” to biological resources. We were unable to find references to scientific journal articles or results from protocol or scientific surveys of the project site and adjacent areas that support this conclusion. Please note that tortoises and tortoise signs have been found in disturbed areas and urban areas (CH2M Hill Engineers 2017, USFWS 2017). We request that the CEQA document be amended with data that support statements such as “no impacts will occur.” Relevant documentation would include a description of the approved methodologies to survey the parcel and adjacent areas [USFWS (2019) for desert tortoise and CDFG (2012) for burrowing owl, among others], and measures that are to be implemented to protect biological resources found (or not) during those surveys.

We do not agree that no impacts will occur. For example, in the MND we found no mention of indirect impacts or cumulative impacts to biological resources including the tortoise. The proposed action would likely increase the availability of subsidies for predators of the tortoise (Boarman 1993, Boarman et al. 2006, Kristan and Boarman 2003) during construction and operation. The indirect and cumulative impacts should be analyzed in the CEQA document and mitigation required to fully offset these impacts. Such mitigation during construction and operations of the proposed action would include, but is not limited to, ensuring that all discarded food and garbage/trash is promptly deposited in wind-proof and raven/coyote-proof containers; prohibiting the feeding of wildlife; and ensuring that water from sources supplied by humans would not be allowed to form puddles.

The County should require that the Proponent contribute to the National Fish and Wildlife Foundation’s Raven Management Fund for regional and cumulative impacts of projects that subsidize common ravens (USFWS 2010) and other predators of the tortoise and other wildlife, as other project proponents have done for projects on private property in San Bernardino County. Please update the MND to include this and other indirect and cumulative impacts to the tortoise and other wildlife and appropriate mitigation to offset these impacts.

Hazardous Materials

The project description includes underground storage tanks for storage and dispensing of gasoline and diesel fuels. Impacts from the use and maintenance of these tanks and the fuels is considered less than significant because they are regulated by the U.S. Environmental Protection Agency (US EPA) and California Environmental Protection Agency (Cal EPA). Please note that the Mojave tui chub (*Siphateles bicolor mohavensis* = *Gila bicolor mohavensis*) is a species listed as endangered under FESA and CESA and is a fully protected species. This species occurs in three water bodies on the west side of Soda Dry Lake and their water is provided by subsurface waters from Soda Dry Lake.

We are concerned that if an underground storage tank leaks or if cleanup measures from a spill are not immediately and effectively implemented, contamination from a leak or spill may eventually migrate via subsurface flow to the west side of Soda Dry Lake. It would contaminate the water bodies where the Mohave tui chub occurs and result in their injury or death. Consequently, we request that the County analyze the current US EPA and Cal EPA requirements and determine whether their maintenance and spill cleanup requirements would effectively prevent any migration of fuel to the west side of Soda Dry Lake and into water bodies of the Mohave tui chub.

We suggest coordinating with U.S. Geological Survey to obtain information on subsurface groundwater flows in the Baker area and coordination with USFWS, CDFW, and Mojave National Preserve on this issue. The USFWS and CDFW have regulatory responsibilities for the tui chub and the National Park Service at Mojave National Preserve is the land manager for these three water bodies and habitat for the tui chub.

We are confused by the inclusion of the following document – Mitigation Monitoring and Reporting Program Initial Study/Mitigated Negative Declaration Alien Commercial Center, Baker, California. Although this is the title, the document is about another project, identified as the proposed “Star Point Properties Sixth Street Warehouse Project.” Please clarify this discrepancy.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises and other special status biological resources during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by San Bernardino County that may affect the Mojave desert tortoise, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



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

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Literature Cited

- Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. <https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en>
- Boarman, W.I. 1993. When a native predator becomes a pest—A case study, in Majumdar, S.K., Miller, E.W., Baker, D.E., Brown, E.K., Pratt, J.R., and Schmalz, R.F., eds., Conservation and resource management: Easton, Pennsylvania Academy of Science, p. 186–201.
- Boarman, W.I., M.A. Patten, R.J. Camp, and S.J. Collis. 2006. Ecology of a population of subsidized predators: Common ravens in the central Mojave Desert, California. *Journal of Arid Environments* 67 (2006) 248–261. <https://www.sciencedirect.com/science/article/abs/pii/S0140196306003016>
- [CDFG] California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural Resources Agency, Department of Fish and Wildlife. Sacramento, CA.
- California Executive Order. 2020. Executive Order N-82-20. Executive Department State of California. <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-signed.pdf>
- CH2M HILL Engineers. 2017. Hinkley Groundwater Remediation Project Habitat Conservation Plan. San Bernardino County, California. August 1, 2017.
- Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf
- Kristan III, W.B., and W.I. Boarman. 2003. Spatial pattern of risk of common raven predation on desert tortoises. *Ecology* 84(9) September 2003: 2432-2443. <https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1890/02-0448>
- Smith, C.I., L.C. Sweet, J. Yoder, M.R. McKain, K. Heyduk, and C. Barrows. 2023. Dust storms ahead: Climate change, green energy development and endangered species in the Mojave Desert. *Biological Conservation* 277 (2023) 109819. https://www.researchgate.net/profile/Cameron-Barrows/publication/365925179_Dust_storms_ahead_Climate_change_green_energy_development_and_endangered_species_in_the_Mojave_Desert/links/6388e3fd7d9b40514e045c01/Dust-storms-ahead-Climate-change-green-energy-development-and-endangered-species-in-the-Mojave-Desert.pdf
- [USFWS] U.S. Fish and Wildlife Service. 2010. Common raven predation on the desert tortoise. USFWS, Ventura Fish and Wildlife Office, Ventura, CA.
- [USFWS] U.S. Fish and Wildlife Service. 2017. Draft Hinkley HCP Environmental Assessment. August 2017.
- [USFWS] U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.