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Via email & BLM NEPA ePlanning Portal

14 October 2024

ATTN: Tim McCain, Realty Specialist
Bureau of Land Management
2601 Barstow Road
Barstow, California 92311
tmccain@blm.gov

Re: Burlington Northern Santa Fe Barstow Area Land Sale of Four Parcels Environmental Assessment (DOI-BLM-CA-D080-2024-0012-EA)

Dear Mr. McCain,

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.

The Desert Tortoise Preserve Committee (DTPC) is a non-profit organization formed in 1974 to promote the welfare of the desert tortoise in its native wild state. DTPC members share a deep

concern for the continued preservation of the tortoise and its habitat in the southwestern deserts and are dedicated to the recovery and conservation of the desert tortoise and other rare and endangered species inhabiting the Mojave and western Sonoran deserts. The DTPC has a long track record of protecting desert tortoises and their habitat through land acquisition, preserve management, mitigation land banking, and educational outreach.

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 to receive emails for 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.”

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), “... based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units.”

This status, in part, prompted the Council to join Defenders of Wildlife and DTPC (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. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: “At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department’s [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission’s decision initiated this status review to inform the Commission’s decision on whether the change in status is warranted.”

Importantly, in their April 2024 meeting, the California Fish and Game Commission voted unanimously to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management. Among other things, this determination means that the Mohave desert tortoise population in California is deemed by the California Fish and Game Commission to be closer to extinction than when it was listed as threatened in 1989. The only status more dire than “endangered” is “extinct,” and the state of California has formally determined based on its five-year status review (CDFW 2024a) that the desert tortoise is closer to extinction than it was in 1989.

Background

In 2022, Burlington Northern Santa Fe Railway Company (BNSF) announced plans to acquire land and construct, operate, and maintain the Barstow International Gateway (BIG) Project. According to the BNSF’s website, (<https://bnsfcalifornia.com/projects/barstow-international-gateway-big/>), the “Barstow International Gateway will be an approximately 4,500-acre new integrated rail facility on the west side of Barstow, consisting of a rail yard, intermodal facility and warehouses for transloading freight from international containers to domestic containers” (Figure 1). BIG “will minimize potential community impacts in Barstow since the facility will be located near primarily undeveloped land that’s not adjacent to urbanized areas.”

“The Barstow International Gateway will allow cargo to be transported by rail directly from the ports through the Alameda Corridor to Barstow and processed efficiently between the intermodal rail facility and the on-site transload warehouse facilities, without generating additional on-road truck trips. The transload warehouses will expedite repackaging and processing of goods into domestic containers for further transport via rail across the country.”

The BIG Specific Plan area is in the City of Barstow’s western portion and is generally bound by the Mojave River on the north, Main Street on the south, Lenwood Road on the east, and Hinkley Road on the west. BIG also proposes various offsite improvements.

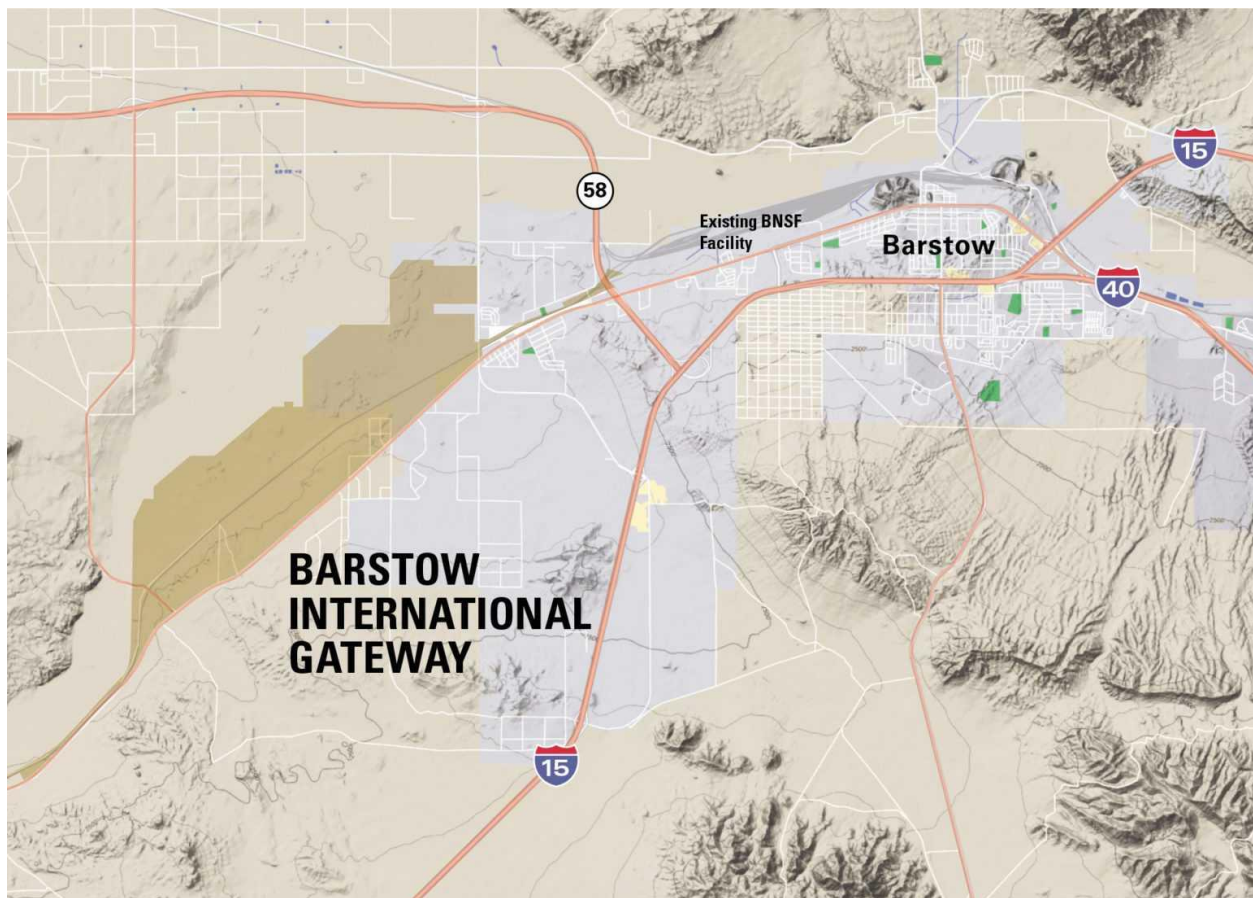


Figure 1. Location of proposed 4,500-acre Barstow International Gateway (from <https://bnsfbig.com/>).

An expanded summary of the description of the BIG Project is in Notice of Preparation (NOP) from the City of Barstow (Barstow 2024). This description includes “a rail yard, transfer warehouse center, and a private solar energy plant on approximately 5,000 acres. The rail yard would consist of a block swap yard (a facility for transferring a set of multiple railcars between trains), an intermodal facility (IMF) (to transfer freight between rail and truck carriers), and ancillary rail area (container yard, chassis storage, and maintenance of way). The Project also proposes 600 acres of offsite rail and non-rail (e.g., lead track extensions, drainage, utilities, and roadways).”

“The proposed transload warehouse center consists of approximately nine million square feet of transload warehouses that would primarily be dedicated to processing the contents of 20-foot and 40-foot international containers into 53-foot domestic containers for placement from and back onto the rail line. Importantly, the transload warehouse center would primarily serve containers processed at or destined for the BIG IMF.”

“At the BIG IMF, only a small percentage of containers would arrive at/depart via heavy trucks. The vast majority of containers would arrive at/depart from the IMF via train.” BIG would operate 24 hours a day and seven days a week. The proposed location of these facilities was provided in the City of Barstow’s NOP released to the public in February 2024.

Description of the Proposed Action

BLM’s proposed action is the direct sale of four parcels of land (APN 421-021-30, -32, -33, and 421-033-03) administered by the BLM to BNSF at market price. The four parcels totaling 30.87 acres are isolated from larger tracts of BLM-administered lands and surrounded by privately owned, undeveloped land. The purpose of the action is to respond to the request from BNSF to purchase by direct sale the four isolated parcels of land “that are surrounded by land owned by BNSF.”

According to BLM, “BNSF intends to develop the four parcels as well as the surrounding privately owned parcels as part of the BIG [Barstow International Gateway] Project, which would include the construction and operations and maintenance of an integrated rail facility. The 30.87 acres are located west of Barstow and south of the Mojave River between the National Trails Highway to the south and the BNSF tracks to the north (Figure 2). The four BLM parcels proposed for direct sale are generally surrounded by undeveloped land and are located in the center of the BIG Project.

In the BLM’s Burlington Northern Santa Fe Barstow Area Land Sale of Four Parcels Environmental Assessment (EA), BLM describes two alternatives, the No Action Alternative and the Proposed Action Alternative.

No Action Alternative – “the parcels would not be sold to the project Proponent [BNSF] and would remain public land managed by the BLM. The BLM would continue to be responsible for the management of these parcels for the foreseeable future. The parcels would remain undeveloped, and because they are inaccessible to the public, would provide no known public recreational value, precluding any potential economic benefits to the community associated with future development.”

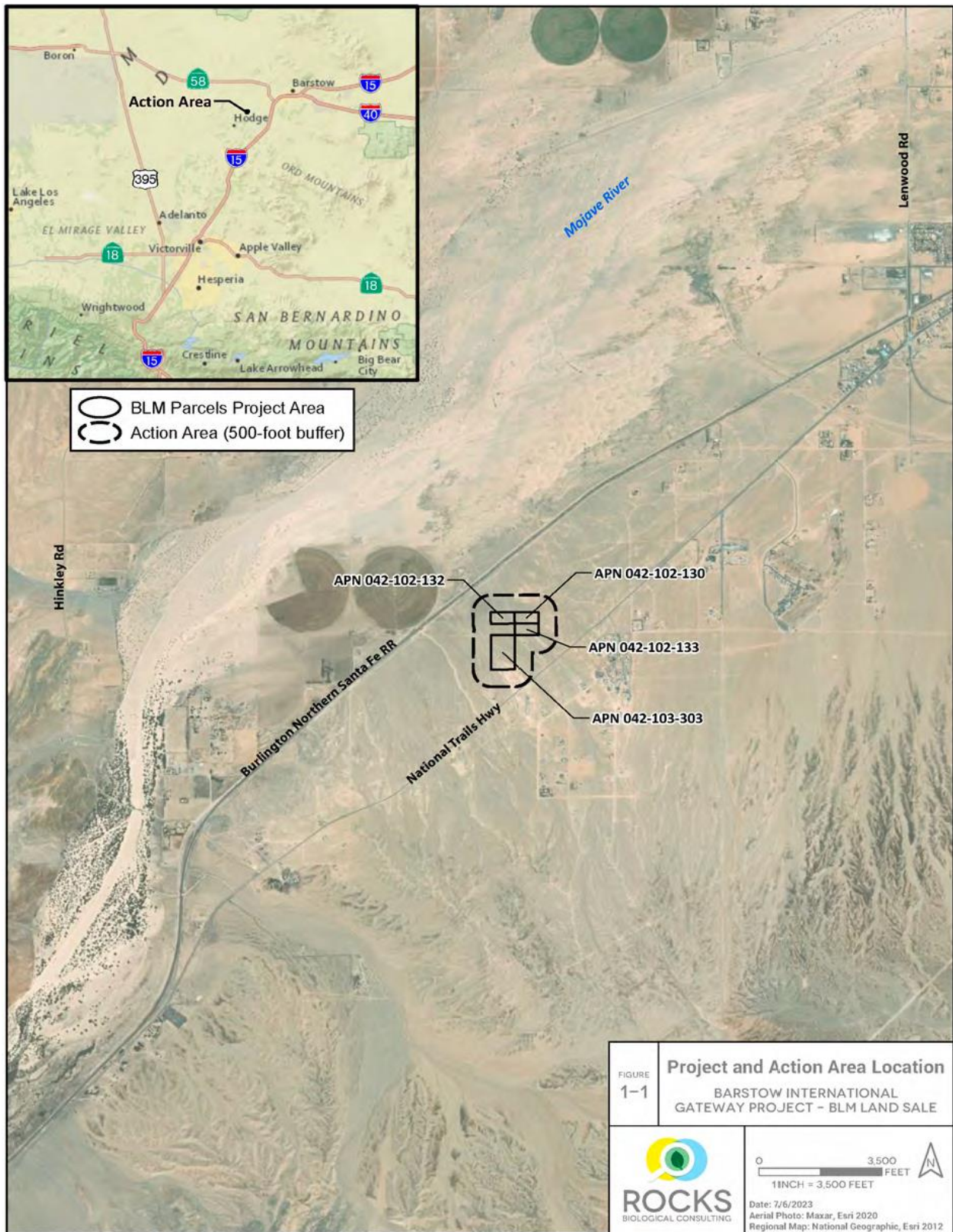


Figure 2. Location of four Bureau of Land Management parcels proposed for sale to Burlington Northern Santa Fe Railway.

Proposed Action Alternative – As stated in BLM’s EA, “BLM would sell four parcels of public land, totaling approximately 30.00 acres, through a direct, non-competitive sale to the Proponent.” “BNSF is the adjacent landowner, and owns all adjacent parcels.” “Acquisition by another entity other than BNSF could substantially harm BNSF, and potentially result in a substantial economic loss.” “A sale to BNSF would remove these isolated parcels from management and free up resources to focus on public land areas that have conservation value requiring protection and management of areas valued by the public for recreation.”

BLM considered other alternatives but dismissed them from further consideration. The other alternatives and their reasons they were dismissed are:

Competitive Bid Method Disposal – “The Proponent owns or is in the process of acquiring all parcels surrounding the four subject parcels, and, thus, would control the access to the public lands. Due to these factors, the BLM believes the parcel would not attract competitive bidding and that the additional time and expense of conducting a competitive bid sale is not warranted.”

Exchange – “this alternative was determined to not be feasible as identifying suitable parcels for exchange proved logistically difficult and the exchange would not serve the public interest.”

Comments on the Proposed Action

Consistency of Information

BLM makes statements throughout the EA that appear to be inconsistent. For example, on page 5, BLM says, “All surrounding parcels are owned by BNSF Railway,” but on page 7, BLM says, “The Proponent owns or is in the process of acquiring all parcels surrounding the four subject parcels.”

Another example of inconsistent information is that the sale of the parcels and the BIG project may be a related action with BLM’s decision having an indirect effect on the BNSF BIG project. On page 5 BLM says, “Acquisition [of the BLM parcels] by another entity other than BNSF could substantially harm BNSF, and potentially result in a substantial economic loss.” On page 9, BLM says, “the BIG Project could be completed independently of the BLM Proposed Action under consideration.”

The first statement suggests that unless the parcels are sold to BNSF via a non-competitive sale, the sale of these parcels to someone else could harm BNSF. BLM reports that BNSF wants to acquire these parcels to construct and operate their BIG project. Because we found no information that describes what this harm would be or how the denial of the acquisition of the parcels to BNSF would result in a substantial economic loss, BLM’s statements lead us to conclude this harm would be not developing the BIG project. The second statement indicates that the sale of the parcels to someone other than BNSF is not a major issue regarding the plans for implementing the BIG project. These appear to be conflicting statements.

The Council and DTPC request that BLM review the EA for consistency of information and ensure that correct and current information is provided in the EA so the public and the decisionmaker are provided with the correct information on the proposed action, its impacts, and mitigation to offset these impacts.

Compliance with BLM Regulations

On page 4 of the EA BLM states that with respect to 43 Code of Federal Regulations (CFR) § 2711.3-3 (a)(2) – speculative bidding would jeopardize a timely completion and economic viability of the project – compliance with this regulation requires satisfying two requirements, timely completion and economic viability. The reason for direct sale that BLM provides in this section of the table discusses timely completion, but we found no wording that addresses economic viability. Please provide this wording and supporting documentation in this section of the EA to demonstrate that both requirements apply.

Adequacy of Alternatives Identified and Analyzed

Based on this and other information in the EA, the Council and the DTCP believe that BLM did not provide sufficient reasons with documentation for analyzing only the No Action and Proposed Action Alternatives. The courts (e.g., *Calvert Cliffs' Coordinated Committee v. Atomic Energy Commission*) have found that the National Environmental Policy Act (NEPA) requires that an agency--to the fullest extent possible--consider alternatives to its actions that would reduce environmental damage. According to the courts a delay in the final operation of a facility may occur but is not a sufficient reason to reduce or eliminate consideration of environmental factors under NEPA.

The Council and the DTCP assert that a land exchange is a viable alternative and would reduce environmental damage by changing the management of the acquired private parcel that is currently unprotected from development/surface disturbance to one that is managed under the California Desert Conservation Act. Although land exchanges can take time, they can also be implemented efficiently if BLM makes that action a priority. The Federal Land Policy Management ACT (FLPMA) provides maximum times for completing land exchange actions, which if BLM regards this land exchange as a priority, can be reduced substantially.

For the reasons stated above, the Council and the DTCP request that BLM revise the EA to include a land exchange as a viable alternative and analyze its impacts to the resource issues especially biological resources, special status species, and the tortoise. This analysis would likely indicate that with respect to complying with NEPA and FLPMA (please see “Compliance with Section 302 of FLPMA” below), a land exchange would be the preferred alternative, not direct sale.

Compliance with Section 302 of FLPMA

Under Section 302 of FLPMA, BLM is directed to take any action necessary to prevent unnecessary or undue degradation of the lands that it manages. We found no information in the EA regarding how BLM would use the money it acquired from the sale of the four parcels to BNSF to prevent unnecessary or undue degradation of public lands in the California Desert Conservation Area, for example, to offset the loss of the functions and values of the biological resources using these parcels that would be lost from their sale and development. Please add this information in the EA and analyze how the Proposed Action Alternative would comply with this section of FLPMA.

Affected Environment, Special Status Species

For this section of the EA, we found no mention of species listed under the California Endangered Species Act or other species protected under California Fish and Game Code (e.g., Mohave ground

squirrel, kit fox, American badger, etc.) whose ranges overlap or are in the vicinity of the proposed action or the BIG project. Please add this information to the Affected Environment section of the EA.

Scientific Analysis

The EA contains statements and conclusions for which we were unable to find supporting documentation. For example, on page 7 of the EA when discussing a land exchange, BLM says, “an exchange would not serve the public interest,” but we were unable to find information or citations in the EA that support this conclusion. The public has numerous interests including biodiversity, wildlife viewing, and experiencing nature. The Proposed Action alternative through indirect and cumulative effects would allow the development of 4,500 acres of currently undeveloped land in the range of the tortoise, Mohave ground squirrel, other special status species, and species protected under California Fish and Game Code with no mitigation to offset the losses of these species and their habitats. The development of this large acreage and loss of the biological resources that occur on/use these parcels is a concern, at least to some of the public.

Some examples of statements/conclusions in the EA about resources issues for which we found no supporting documentation follow.

Action Area: BLM describes the action area for the proposed action for analyzing biological resources as “the 30.00-acre project area subject to the proposed land sale plus a 500-foot buffer for a total area of 121.80 acres.” NEPA does not define an action area, but the USFWS does as “all areas affected directly or indirectly by a Federal action, not merely the immediate area” (50 CFR 402). The action area varies in size and depends on the project and the species that may be impacted.

NEPA regulations define indirect effects (40 CFR 1508.8(b)) as effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” NEPA regulations state that the direct, indirect, and cumulative impacts of a proposed action are to be analyzed in the NEPA document.

We were unable to find information in the EA that explained, with supporting documentation, how BLM determined the areal extent of the indirect impacts to the resource issues from BLM’s proposed action. The Council and DTPC presume that the “action area” was identified in the EA to determine the indirect impacts to the tortoise. The area of indirect impacts should be determined separately for each resource issues because these indirect impacts vary for each resource issue.

For the tortoise, the lifetime home range for the Mojave desert tortoise is more than 1.5 square miles (3.9 square kilometers) of habitat (Berry 1986). This is the area the tortoise needs to survive and reproduce during its life. In addition, some tortoises may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986).

The lifetime home range of a tortoise is several times larger than the 122 acres BLM used as the “action area” for surveys and its determination of impacts to the tortoise. In addition, the indirect impacts of the proposed action to other resource issues (e.g., disruption of surface hydrology, etc.) may extend beyond the 122-acre action area used by BLM. Washes are used by tortoises as

foraging areas and for movements. Desert tortoises tend to follow washes (Jennings 1993, Peaden et al. 2017). The impacts to these washes from grading and development of the facilities for the BIG project should be analyzed in the EA especially with respect to tortoise movements, and forage availability should be analyzed as tortoises choose ephemeral stream channels or washes in which to forage especially in late spring (Jennings and Berry 2023).

We found no information in the EA to explain or support BLM's determination of the size of the action area for analyzing indirect impacts to the tortoise, other special status species, or other resource issues. By not providing this information, BLM is giving the appearance that this determination of the size of the action area is not supported by science and is arbitrary.

In Information Bulletin IB 2015-040 "Advancing Science in the BLM and BLM's Implementation Strategy" (BLM 2015), BLM says "With increased transparency in the application of science to inform management decisions, 'lack of science' will less likely be a focal point for litigation, and science will be more clearly documented in NEPA analyses." We request that BLM use science in its analyses of impacts in this EA and provide supporting documentation, especially with respect to its relevance for the tortoise and other special status species when developing conclusions about impacts and establishing the size of the action area/area of indirect impacts.

Indirect Effects

On page 7, BLM says the BIG project "... is in very early stages of development. The following analysis therefore assumes no immediate change in land use following the disposal. Potential environmental effects of the Barstow International Gateway Project, to the extent they are currently foreseeable, are analyzed and disclosed in the cumulative effects analysis."

The Council and DTPC request that BLM provide supporting documentation for the guidance it used to limit analysis of indirect and cumulative impacts of the proposed BIG project to the time frame of immediate change in land use following disposal of the parcels. This BIG project is a major action for which the City of Barstow has been preparing an environmental impact report since early 2024 because of its significant effects on the environment. The development of the 4,500-acre BIG project or any project of that size does not occur immediately after disposal of parcels of land.

As stated earlier, BLM says that the sale of the parcels to an entity other than BNSF would harm BNSF. This statement on harming BNSF indicates that "but for" the non-competitive sale of the BLM parcels to BNSF, the BIG project is not likely to occur. If the non-Federal action or its effects can be prevented or modified by BLM decision-making, then the effects of the non-Federal action are properly considered indirect effects of the BLM action and must be analyzed as effects of the BLM action (40 CFR 1508.7, 40 CFR 1508.25(c)).

From the statement made by BLM in the EA, the BIG project could be prevented or modified by the decision that BLM makes about the sale of the four parcels. Consequently, BLM should include the BIG project when it describes and analyzes the indirect impacts of the alternatives in the EA.

Fish and Wildlife Resources: In reviewing the analysis of indirect effects in the EA for fish and wildlife resources and special status species, including the tortoise, we found no analysis of the impacts from the BIG project. Rather BLM's analysis of impacts to Fish and Wildlife (page 14) is, "Based on the information currently available, the effects from future use of the four subject

parcels as part of the Barstow International Gateway project to the Action Area are expected to be minimal” and the “direct sale of the subject parcels would not result in impacts to fish and wildlife as the habitat on these parcels is of low quality.” We were unable to find information in this section of the EA that supported BLM conclusion that the habitat was of low quality and presume that BLM made this determination for all wildlife species, the parcels, and adjacent areas. Please provide information in the EA from the scientific literature that supports this conclusion.

In Appendix C – Plant and Wildlife Species Observed, Table C 1: Plant and Wildlife Species Observed within the Action Area (as well as portions of the larger, reasonably foreseeable BIG Project area) of the EA lists 37 native plant species observed and 78 native bird species (some of them nesting), 8 reptile species including the tortoise, and 9 mammal species observed.

Information posted online by the City of Barstow for the “General Plan Update and Barstow International Gateway Specific Plan Notice of Preparation of Draft Environmental Impact Report (DEIR) (NOP) (City of Barstow 2024) eight months ago included a project description and maps that show the project area and the locations of the facilities. The four parcels are in the middle of the rail yard. Currently, BNSF has a rail yard on the north side of Barstow and it is devoid of native vegetation. The BIG project’s proposed rail yard would be much larger than the existing rail yard. Since early 2024 BLM had sufficient information about the BIG project to analyze the impacts from the construction, operations, and maintenance of the project (e.g., rail yard, warehouse area, solar facility, etc.) by assessing the impacts of similar existing facilities.

Given the availability of the information on the BIG project and the numerous examples of impacts to biological resources from development and use of rail yards, warehouses, and solar facilities, the Council and DTPC do not understand how BLM arrived at this conclusion of minimal impacts for a 4,500-acre project on undeveloped land. We were unable to find information or analysis in the EA for indirect impacts to support this conclusion, especially based on the diversity of wildlife species reported in Appendix C.

Please reassess the direct and indirect impacts to fish and wildlife resources for the alternatives and include the impacts of the BIG project in these analyses. Because the analyses would result in a major change to the EA, we request that the EA be reissued to the public for review.

Special Status Species: On page 20 of the EA, BLM says, “Only one federally listed or candidate species was identified as having potential for occurrence in the Action Area, Desert tortoise (*Gopherus agassizii*). This species was not observed in the Action Area during field surveys. There is no designated critical habitat for this species within three miles of the Action Area, the Proposed Action would not result in impact to this species, given results of protocol surveys were negative for the presence of Federally listed or candidate species. As discussed above, subsequent to Section 7 consultation, the BLM made a determination of ‘No Effect’ on biological resources and USFWS concurred with this determination. Accordingly, the direct sale of the subject parcels would not result in impacts to special status species.” We found no information in this section of the EA on other special status species.

However, “Appendix F: Biological Assessment/Biological Evaluation BLM Land Sale” of the EA provides the following information. “Suitable tortoise burrows” were found in the action area; live tortoises were found 65 feet west of the action area and 0.25 mile southwest of the action area, and tortoise scat was found at a Class 1 burrow with scat and tortoise tracks at another Class 1 burrow

(page 162 of 693 of the PDF appendix document). The information in this appendix concludes that “Despite the USFWS statistical model projecting zero tortoises within the survey area, it is likely that desert tortoises are present in low densities. Two Class 1 and two Class 2 burrows were observed during the [2021] surveys, thus demonstrating signs of recent desert tortoise presence. There are several factors that may account for the lack of direct desert tortoise observation. Much of the southwest is experiencing severe drought conditions.”

A survey in February 2022 of other areas found one live desert tortoise, one Class 1 desert tortoise burrow, two Class 2 desert tortoise burrows, and other sign. “Utilizing the statistical model from the USFWS Mojave Desert Tortoise Pre-project Survey Protocols (USFWS 2019), it is estimated that there are 2.17 desert tortoises within the survey area. Geo-spatial analysis of survey data also suggests there are two desert tortoises within or near the survey area. However, the surveys were conducted out of the standard desert tortoise season and could result in an undercount of tortoises” (page 198 of 693 of the pdf appendix document). This February 2022 survey overlapped the BLM parcels.

A third survey effort occurred in May 2022 that include the BLM parcels. The survey biologist found egg shells, Class 3 burrows, and Class 2 burrow with scat and tracks (Page 225 of 693 of the pdf appendix document).

Indirect effects to the tortoise also include effects to tortoise movements and population connectivity. Averill-Murray et al. (2021) emphasized that “[m]aintaining an ecological network for the Mojave desert tortoise, with a system of core habitats (TCAs = Tortoise Conservation Areas) connected by linkages, is necessary to support demographically viable populations and long-term gene flow within and between TCAs.” “Ignoring minor or temporary disturbance on the landscape could result in a cumulatively large impact that is not explicitly acknowledged (Goble 2009); therefore, understanding and quantifying all surface disturbance on a given landscape is prudent.” For linkage habitat between TCAs, these areas must be wide enough to sustain multiple home ranges or local clusters of resident tortoises (Beier and others 2008, Morafka 1994), while accounting for edge effects, in order to sustain regional tortoise populations.” Consequently, Averill-Murray et al. (2021) found that effective linkage habitats are not long narrow corridors. The authors also found that any development within them has an edge effect (i.e., indirect impact) that extends from all sides into the linkage habitat further narrowing or impeding the use of the linkage habitat, depending on the extent of the edge effect.

To help maintain tortoise inhabitation and permeability across all other non-conservation-designated tortoise habitat, Averill-Murray et al. (2021) recommended that all surface disturbance should be “limited to less than 5-percent development per square kilometer because the 5-percent threshold for development is the point at which tortoise occupation drops precipitously (Carter and others 2020a).” They cautioned that the upper threshold of 5 percent development per square kilometer may not maintain population sizes needed for demographic or functional connectivity; therefore, development thresholds should be lower than 5 percent.

In their letter to the City of Barstow on the BIG project, California Department of Fish and Wildlife says, the construction of the BIG Project “will directly impact the Mojave River/Barstow/Camp Cady Linkage identified in Penrod et al. (2001). Also, over 70% of the [BIG] Project site has been identified by CDFW in its Areas of Conservation (CDFW, 2024b) mapping as a Conservation

Planning Linkage or Irreplaceable and Essential Corridor. Spencer, et al (2010) also identified an essential habitat area that overlaps with the Project area.”

Please revise the EA and provide an analysis of the impacts of the proposed action and BIG project to population connectivity for tortoises to the Fremont-Kramer Ord-Rodman linkage for the tortoise (Averill-Murray et al. 2021) and other wildlife species across the identified connectivity areas/movement corridors (CDFW 2024b, Penrod et al. 2001, Spencer et al. 2010).

BLM indicates that the USFWS concurred with BLM’s finding of “no effect” to the tortoise from implementation of the proposed action. Typically, when a proposed action occurs in the range of a listed species, BLM includes the USFWS’s section 7 consultation document as part of its NEPA document. However, we did not find this document in the EA. Given the survey results of the action area, the Council and DTPC are surprised that BLM made a “no effect” determination when tortoise sign and live tortoises were reported so close to the scientifically unsupported action area boundary.

The Council and DTPC request that BLM revise the EA to include a copy of the Biological Assessment with the “no effect” determination submitted to the USFWS and the USFWS’s concurrence of no effect to BLM for the proposed action including the BIG project.

According to information in Appendix C, other special status species observed in/near the action area or in a portion of the area of the BIG project included western burrowing owl (*Athene cunicularia hypugaea*), Mohave fringe-toed lizard (*Uma scoparia*), Costa’s hummingbird (*Calypte costae*), Le Conte’s thrasher (*Toxostoma lecontei*), Loggerhead shrike (*Lanius ludovicianus*), Northern harrier (*Circus hudsonius*), Swainson’s hawk (*Buteo swainsoni*). In addition, focused trapping efforts in the action area in 2022 did not result in the detection of the Mohave ground squirrel (*Xerospermophilus mohavensis*).

Although this information on the presence of these special status species is in Appendix C of the EA, we found no description or analysis of impacts from the proposed action including the indirect impacts that would include the BIG project for these species including the state threatened Mohave ground squirrel. Only the tortoise is mentioned in the Environmental Impacts – Proposed Action section of the EA.

Given the availability of the information on the BIG project and the numerous examples of impacts to tortoises and other special status species from development and use of linear projects such as rail lines and rail yards, along with warehouses and solar facilities, the Council and DTPC do not understand how BLM arrived at a conclusion of “no effect” to the tortoise and no analysis of indirect impacts to other special status species that occur in the project area including the 4,500-acre BIG project, We were unable to find information or analysis in the EA especially for indirect impacts to support this conclusion, based on the occurrence of special status species reported in Appendix C.

The Council and DTCP request that BLM revise the EA and include an analysis of indirect impacts from the construction, operations, and maintenance of the BIG project to special status species, not just species listed under the Federal Endangered Species Act, to comply with 40 CFR 1508.7 and 40 CFR 1508.25(c). Because there would be substantial changes to the EA, we request that it be recirculated to the public for review.

Analysis of Impacts to Other Natural Resource Issues

Because the EA should include the indirect impacts of the development of the 4,500-acre BIG project, this impact area affects other resource issues including drainages. The action area includes 18,559 linear feet of ephemeral drainages (page 13). The 4,500-acre BIG project would likely include more linear feet of drainages than the action area. We request that the EA be revised to include an analysis of the indirect impacts to surface hydrology especially down gradient from the location of the BIG project and the loss of soils and vegetation at the BIG project site.

Analysis of Socio-Economic Impacts/Environmental Justice

When a federal agency analyzes the environmental effects of a proposed action, those effects or impacts include adverse and beneficial direct and indirect impacts. BNSF provides information on their website for the BIG project that this project would provide substantial economic benefits to people living in and near Barstow.

In the EA, BLM describes the denial of the acquisition of the four parcels as resulting in a substantial economic loss to BNSF. This implies that BNSF's acquisition of the parcels would result in a substantial economic gain. If so, these are adverse and beneficial indirect impacts and should be analyzed in the EA.

BNSF's website for the BIG Project describes the benefits of the BIG project as bringing "thousands of much-needed direct and indirect jobs to High Desert communities," increasing "equity, opportunity, and economic competitiveness in the High Desert," (<https://bnsfbig.com/faqs/#faq-3>), and having the ability "to bring jobs and opportunity to the city [of Barstow] as it looks to the future" (<https://bnsfbig.com/faqs/#faq-4>).

In the City of Barstow's NOP, the City indicates that total non-residential development as of 2023 was 11.4 million square feet, with the BIG project adding 9 million square feet. The City projects an additional 5 million square feet from other sources by 2048. Employment figures would increase by about 8,800 jobs from the BIG project from the existing 13,600 jobs reported in 2023 in Barstow with an additional 4,700 jobs from other sources by 2048 (City of Barstow 2024). Thus, more than 50 percent of the growth from the current non-residential development and jobs in the Barstow area in the future would occur because of the BIG project.

From the information that BNSF provides on its website for the BIG project regarding the socioeconomic impacts of their project, the information provided in the NOP by the City of Barstow, and BLM's use of the term "substantial" as an impact to the socioeconomics of BNSF, the Council and DTPC conclude this information points to significant impacts to the human environment for socio-economics in the Barstow area from the direct sale of the parcels to BNSF. This indicates that the preparation of an environmental impact statement may be the appropriate NEPA document to prepare to analyze the impacts of the proposed action including the impacts of the BIG project.

The Council and DTPC believe that BLM should include socio-economics/environmental justice as a resource issue in the EA, because the BLM decision of a non-competitive disposal of the parcels is related to the development of the BIG project that would provide substantial economic benefits to people in the Barstow area. This resource issue should be analyzed in the EA under Analysis of Environmental Effects and Cumulative Effects.

Cumulative Effects Analysis

On pages 20–21, BLM’s complete analysis of the cumulative effects to special status species is:

“Under the Proposed Action, the four subject parcels would be transferred to BNSF and BNSF could utilize the parcels as part of the larger-scale Barstow International Gateway project (discussed above). Once the land sale has been approved, no further BLM action would be required.

The Proposed Action would not have adverse effects to the Action Area. Based on the information currently available, the effects from future use of these four parcels as part of the Barstow International Gateway project to the Action Area are expected to be minimal. Because the Proposed Action would not have any incremental adverse effect and that potential impacts of future use of the parcels as part of the Barstow International Gateway project are expected to be minimal, there would be no significant cumulative effects to special status species from the Proposed Action, when the impacts of the Proposed Action are added to other past, present, and reasonably foreseeable future actions, including the Barstow International Gateway project.”

In *Eagle County Colorado v. Surface Transportation Board*, 82 F.4th 1152 (D.C. Cir. 2023), the court found that a federal agency “cannot avoid its responsibility under NEPA to identify and describe the environmental effects on the ground that it lacks authority.” As stated earlier in this letter, the Council and DTPC believe the BIG project can be prevented or modified by BLM’s decision regarding BNSF’s acquisition of the four BLM parcels. Consequently, our arguments presented above regarding reasons for including the BIG project in the analysis of indirect impacts also apply to the analysis of cumulative impacts.

We understand the BIG project would operate 24 hours a day 7 days a week. Indirect and cumulative impacts would include, but are not limited to, impacts from construction of new/expanded access routes, increased vehicle traffic on linear routes (roads and rails), increased noise, lighting impacts, loss of future carbon sequestration and release of sequestered carbon from soils/vegetation during construction, release of hazardous materials from operations and maintenance of vehicles, loss of wildlife and wildlife habitat, disruption of identified connectivity areas for wildlife, modifications to surface hydrology with downgradient impacts, and loss of vegetation.

Although BLM says the BIG project is located in a development focus area (DFA) under the Desert Renewable Energy Conservation Plan (DRECP) (BLM 2016), an amendment to the California Desert Conservation Plan, the DRECP identified and analyzed impacts from development associated with renewable energy. In addition, the DRECP was finalized just after the U.S. Fish and Wildlife Service’s (USFWS) first report on the analysis of the population trend for the tortoise that showed substantial declines in tortoise numbers and densities. Since then, the tortoise in the West Mojave Desert has continued a downward trend in population density that is below the threshold for population viability. BLM should revise its cumulative effects analysis of the impacts of the connected actions and incorporate recent data on the status and trend of the tortoise in the Western Mojave Recovery Unit in the EA.

In the cumulative effects analysis of the EA, please ensure that the Council on Environmental Quality’s (CEQ’s) “Considering Cumulative Effects under the National Environmental Policy

Act” (1997) is followed, including the eight principles, when analyzing cumulative effects of the proposed action to the affected resource issues. This CEQ document is referred to in BLM’s National Environmental Policy Act Handbook (BLM 2008).

CEQ states, “Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects.” The analysis “must describe the response of the resource to this environmental change.” Cumulative impact analysis should “address the sustainability of resources, ecosystems, and human communities.”

CEQs guidance on how to analyze cumulative environmental consequences, which contains eight principles listed below:

1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or

ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis needs to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

Please add an analysis of cumulative impacts of each alternative to the EA for the resource issues following this guidance.

Note that CEQ recognizes that synergistic and interactive impacts as well as cumulative impacts should be analyzed in the NEPA document for the resource issues.

We request that the EA be revised to (1) include these eight principles in its analysis of cumulative impacts to the Mojave desert tortoise; (2) ensure that synergistic and interactive impacts from the proposed project are included in this analysis; (3) and address the sustainability of the tortoise in/near the project area and in the Western Mojave Recovery Unit especially with respect to connectivity between populations in Tortoise Conservation Areas/Critical Habitat Units (CHUs).

Following this analysis, we request that BLM demonstrate how it will mitigate for the lost functions and values described in this analysis from the disposal of the parcels by direct sale rather than a land exchange. This includes complying with BLM's Manual Section (MS-1794) and Handbook (H-1794-1) on Mitigation (BLM 2021a, b. c).

Corrections

On page 19, BLM lists the status of the tortoise as "threatened" under the California Endangered Species Act. Please change this to "endangered" using the supporting documentation provided earlier in this letter.

In Table C 1: Plant and Wildlife Species Observed within the Action Area, the tortoise is listed as federally and state endangered. Currently, the tortoise is federally listed as threatened. Please make this correction.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Council and DTPC want to be identified as Affected Interests for this and all other projects funded, authorized, or carried out by the BLM that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we request that you notify the Council and DTPC of any future proposed projects that BLM may authorize, fund, or carry out in the range of the desert tortoise in California.

Please 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,



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Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson



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