



DESERT TORTOISE COUNCIL

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Via email only

14 September 2022

Attn: Steven Valdez, Senior Planner
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187
Steven.Valdez@lus.sbcounty.gov

RE: Bagdad Chase Gold Mine and Reclamation Plan (Project No. MRP-2021-00002)

Dear Mr. Valdez,

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.

As of June 2022, our mailing address has changed to:

Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510

Our email address has not changed. Both addresses are provided above in our letterhead for your use when providing future correspondence to us.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by 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 Land Use Planning Department (herein, "County"). Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments 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 (Desert Tortoise Council 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.

The following project information is taken from the Mitigated Negative Declaration/Initial Study (MND/IS) provided at the County's website (<https://lus.sbcounty.gov/planning-home/environmental/desert-region/>): "The Bagdad Chase Mining Company LLC (Bagdad Chase) submitted a Reclamation Plan (Plan) for the Bagdad Chase Mine. The Bagdad Chase Mine (project or mine site) has been explored and mined intermittently since the late 1800s and is located on patented (private) lands owned by Bagdad Chase. It was a major gold source in the County of San Bernardino (County) in the period from 1903 to 1953 with an estimated 340,000 ounces of gold produced. Bagdad Chase plans on reopening the historic gold mine within the Stedman/Buckeye Mining District located about 50 miles east of Barstow and seven miles south of Ludlow and Interstate 40 (I-40). The proposed mining, processing, and exploration activities will consist of approximately 244 acres within 511.75 acres of private lands."

We note the following on page 36 of the MND/IS: "Mitigation Measure BIO-2: Desert Tortoise • A pre-construction **clearance** survey be conducted thirty (30) days prior to ground disturbing activities in undeveloped areas to confirm the absence of desert tortoise within the boundaries of the survey area. Survey transects should be **spaced at 10-meter (33-foot) intervals** throughout the undeveloped portions of the project area to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign" (bold emphasis added). Please note that there is a discrepancy between the bold phrases, "clearance" and "spaced at 10-meter (33-foot) intervals." Clearance surveys are described in Chapter 6 of the U.S. Fish and Wildlife Service (USFWS 2009), which indicates that the site is surveyed a minimum of two times at 5-meter intervals, not at 10-meter intervals for a single pass. So, please be sure the consultant performs actual clearance surveys to ascertain absence. Clearance surveys should be performed (a) to conclusively determine that no tortoise sign is found on a given site, as is the case for the current project, or (b) for the purposes of removing tortoises when they are known to occur, but only after incidental take permits have been obtained.

Several of our Board members have performed desert tortoise surveys in the immediate area and are surprised to learn that no tortoise sign was found. While working as a California Department of Fish and Wildlife (CDFW) biologist, one of our Board members found a tortoise just offsite about 10 years ago. We question the consultant's decision to not survey the disturbed areas or alongside the extensive access road. As per the aerial exhibit provided in Figure 4 on page 12 of the ELMT Consulting, Inc. (2021) biological resources report, green areas are shown as creosote bush scrub and brown areas, which were presumably not surveyed, are characterized as "disturbed." However, shrubs are clearly visible in the brown-shaded areas, and many of us have found tortoises in such areas. According to the MND/IS, active mining has not occurred since 1953, so it is entirely likely that tortoises are found in "disturbed" areas that were not surveyed. Neither the acreage of the site nor the acreage that was surveyed are given in the 2021 biological resources report, whereas the MND/IS indicates the mine footprint to be 244 acres, so we are unable to determine the full extent of the surveys.

We also note on page 13 in Section 4.3.3 that the ELMT Consulting, Inc. report lists desert tortoise as one of the reptiles that occurred, and on page 19 states, "**Due to the [tortoise] sign observed during the initial field investigation** desert tortoise focused presence/absence surveys were conducted on October 29, 2020 and May 14, 2021" (bold emphasis added). It is suspicious that tortoise signs were found during initial investigations, which are not disclosed in the report, but none was found during subsequent focused protocol surveys.

We also know that the entire access road to the site runs through occupied desert tortoise habitats yet surveys were restricted to the mine area, alone. We believe there is a very high likelihood of a haul truck injuring or crushing a tortoise between the site and Interstate 40 particularly if the mine operates for 30-plus years. Absent a Biological Assessment, there is no real analysis of these types of long-term impacts, so we assert that a more rigorous analysis is warranted, that the initial study is insufficient to fully analyze impacts to tortoises, particularly along the haul road and likely within the mine footprint.

Given these observations, we strongly recommend that the County enlist an independent third party, experienced tortoise biologist or consulting firm to perform new protocol presence/absence surveys (USFWS 2019) *of the entire area*, both disturbed and not. Otherwise, the clearance surveys are likely to reveal tortoise signs at a time the proponent is ready to initiate mining, and it will likely take several years for the USFWS and CDFW to issue their incidental take permits. If any tortoise sign is found, we believe that the County should require a formal Biological Assessment and suspect that a mitigated negative declaration may no longer be applicable if take of this threatened species will occur during mining.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises 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 authorized by the County 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 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.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc. California State Clearinghouse, state.clearinghouse@opr.ca.gov
Heidi Calvert, CDFW Regional Manager, heidi.calvert@wildlife.ca.gov

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>

Desert Tortoise Council. 2020. A Petition to the State of California Fish and Game Commission to change the status of *Gopherus agassizii* from Threatened to Endangered. Formal petition submitted on 11 March 2020.

ELMT Consulting, Inc. 2021. Bagdad Chase Mines, San Bernardino County, California, Biological Resources Report. Unpublished report prepared for Bagdad Chase Mine. Santa Ana, CA.

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

[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.