



DESERT TORTOISE COUNCIL

3807 Sierra Highway #6-4514

Acton, CA 93510

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eac@deserttortoise.org

Via email only

15 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: Baxter Quarry Revision (Project No. MRAA-2022-00004)

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 potentially 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 Uses 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.

According to the Mitigated Negative Declaration/Initial Study (MND/IS), dated August 2022, “CalPortland Company (CalPortland) operates the Baxter Quarry (CA Mine ID # 91-36-0036), an existing iron ore mining and processing facility approximately 19 miles southwest of the community of Baker in the County of San Bernardino (County). CalPortland and its predecessors have mined the Baxter Quarry (project site, quarry) since 1938, before the County enacted applicable use permit requirements. CalPortland seeks to amend its existing reclamation plan, approved by the County in 1990 (90M-02), to include the reclamation of additional iron ore reserves within the vested quarry (project, reclamation plan amendment). CalPortland’s vested quarry comprises of approximately 452 acres of private lands.”

“The existing quarry or West Deposit (19 acres), overburden stockpile, staging area (stockpiled ore), and on-site access roads consist of approximately 49 disturbed acres. The proposed amendment will include an additional approximately 69 acres explored and partially mined in the past for a total disturbance area on approximately 118 acres to be reclaimed. Based on years of mining and drilling samples, CalPortland plans to continue mining in the existing West Deposit (19 acres) and in two additional surface quarries, the Lillian Belle Deposit (15 acres) and the East Deposit (10.5 acres). In approximately 15 to 20 years, depending on iron ore demand, underground mining will be initiated from the floor of the Lillian Belle Deposit to access the approximately 4 million tons of iron ore resources in the Central Deposit.”

We appreciate as given on page 10 of the MND/IS, the Amended Plan in Section 2.6, and Appendix F that a revegetation plan is part of the plan of operations. The Council recently financed several revegetation experts to produce best management practices for restoration techniques in arid lands comprising tortoise habitats. As such, we provide that resource (Abella and Berry 2016¹) to the County and CalPortland to supplement their existing information.

¹ <https://www.dropbox.com/s/nx1b5m2b5ehya12/%23Abella%20and%20Berry%202016.pdf?dl=0>

We note the following information given on page 33, “Surveys were conducted for the desert tortoise in 2019 per latest USFWS protocols and determined that there are no desert tortoise occurrences on site or directly adjacent to it. Most of the proposed mine site is rocky outcrop/rugged hills not suitable for desert tortoise habitat. Desert tortoise[s] are documented to occur approximately 11.75 miles northwest of the Project Site.” We note in the associated biological report in Appendix A that the most recent surveys were in 2021 rather than 2019 as given above. We note that unambiguous tortoise sign has been found 8.9 miles west (CMBC 2003), and likely closer though a definitive data base of tortoise occurrence in the region is unavailable. Finally, tortoises regularly occur in “rocky outcrop/rugged hills,” which the MND/IS dismisses as unsuitable habitat.

Following are a few specific recommendations relative to the bulleted protection measures given under the subheading, “Mitigation BIO-1,” on page 35 of the MND/IS, and italicized in the following paragraphs:

“• Preconstruction surveys should be conducted no more than 30 days prior to new ground disturbance within the Lillian Belle area and for roads in the wash areas to the east;” We recommend that the County clarify that these preconstruction surveys be implemented as “clearance surveys,” which are described in Chapter 6 of the USFWS (2009) Field Manual. It is not clear why these surveys would be solely restricted to the Lillian Belle area. We recommend that this measure be amended to apply to “all new ground disturbance” throughout all areas to be mined. Please note that tortoises may be found in even the most disturbed habitats, particularly under boulders, so even barren and semi-barren areas that have been previously mined should also be surveyed.

The nine bullets fail to inform CalPortland the requisite measures to be implemented if tortoise sign *is found* during these clearance surveys. Although, with input from USFWS and California Department of Fish and Wildlife (CDFW) biologists, there may be circumstances using perimeter fences and other avoidance measures in lieu of take authorization provided by Section 10 of the Federal Endangered Species Act (FESA) and Section 2081 of the California Endangered Species Act (CESA), in most cases incidental take permits will be required if tortoise sign is found. We recommend that the County add this measure to the list of BIO-1 mitigation measures on page 35.

• To the extent possible, new disturbances on undisturbed areas shall be scheduled when tortoises are inactive (November 1 - March 15); Please note that tortoises may be active throughout the year, with heightened activity periods, particularly in the spring and fall, so caution should be exercised at all times, particularly if a perimeter fence is not installed. We strongly recommend that the dates be changed to “November 1 - February 1.” March 15 is much too late, as tortoises in this area are typically becoming active in early February.

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 funded, authorized, or carried out by the County that may affect species of 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

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

Abella S.R. and K.H. Berry. 2016. Enhancing and restoring habitat for the desert tortoise (*Gopherus agassizii*). Journal of Fish and Wildlife Management 7(1):xx-xx; e1944-687X. doi: 10.3996/052015-JFWM-046.

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>

[CMBC] Circle Mountain Biological Consultants. 2003. General biological survey and focused desert tortoise survey on ± 130 acres APNs 0540-111-18, 0540-111-19, 0540-111-21, and 0540-111-34) northwest of the community of Yermo, San Bernardino County, California. Unpublished report prepared by Sharon Dougherty on behalf of Saint Anthony Coptic Orthodox Monastery. Job #03-031. Wrightwood, CA.

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.

[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.