

DESERT TORTOISE COUNCIL

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Via email only

11 March 2024

Riverside County Planning Department
Attn: Tim Wheeler, Project Planner
4080 Lemon Street, 12th Floor
PO Box 1409
Riverside, CA 92502
TWheeler@rivco.org

RE: IP Easley Renewable Energy Project Draft Environmental Impact Report
(CUP 220021/PUP 230002/VAR 230003/DA 2200016/SCH 2022110240)

Dear Mr. Wheeler,

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 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."

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats used by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities authorized by Riverside County (County), which we recommend be added to project terms and conditions in the authorizing document (e.g., issuing a conditional use permit, etc.) as appropriate. 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), "... 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 the 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. In its status review, the California Department of Fish and Wildlife (CDFW) (2024) 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 February 2024 status review, CDFW concluded: "**The Department's recommendation is that uplisting the Mojave Desert Tortoise is warranted.**" Receipt of this [status review] report is to be placed on the agenda for the next available meeting [expected in April 2024] of the Commission after delivery [at the February meeting]. At that time, the report will be made available to the public for a 30-day public comment period prior to the Commission taking any action on the petition."

The Council thanks the County for notifying us of the availability of the DEIR for public comment.

Description of the Proposed Project and Alternatives

The County analyzed a No Project alternative and two action alternatives in the DEIR.

No Project Alternative: Under this alternative, the construction of the Easley Renewable Energy Project and associated infrastructure would not occur.

Alternative 1, Proposed Project Alternative: IP Easley, LLC (Applicant), is proposing to construct, operate, maintain, and decommission an up to 400-megawatt (MW) solar photovoltaic (PV) electricity generating station and up to 650 MW battery energy storage system (BESS) facility, electrical substation, gen-tie lines and associated access roads on 990 acres of private land and 2,745 acres of land administered by the Bureau of Land Management (BLM) in Riverside County, California (Figure 1). Perimeter fencing would be installed around the boundary of the developed areas using chain-link perimeter fences. Access to the project site would be provided by newly constructed access roads from Highway 177/Rice Road and throughout the interior of the project limits. Ingress/egress would be accessed via locked gates located at multiple points.

A 6.7-mile 500 kilovolt (kV) generation-tie (gen-tie) line would mainly traverse BLM-administered land across the Oberon Renewable Energy Project site and connect into an existing substation on the Oberon Project site, an adjacent solar and energy storage facility owned by Intersect Power. From the Oberon Substation, the power generated by the Easley Project would be transmitted to the electrical grid at the SCE Red Bluff Substation via the existing Oberon 500 kV gen-tie line. Project construction is anticipated to take approximately 20 months. Public lands administered by BLM within the Project solar application area include lands designated as Development Focus Area (DFA) by the BLM Desert Renewable Energy Conservation Plan (DRECP) and associated Record of Decision, and thus, have been identified for renewable energy development.

The Applicant is seeking a 40-year conditional use permit from the County for this project.

The proposed project is located in Riverside County near the community of Desert Center and in the Colorado Desert Recovery Unit for the Mojave desert tortoise. Elevations at the project site range from approximately 800 feet (244 meters) amsl in the southwest and 550 feet (168 meters) amsl in the northeast. The Chuckwalla Critical Habitat Unit and BLM Area of Critical Environmental Concern (ACEC), a Tortoise Conservation Area (TCA), abuts the western boundary of the project site and the Joshua Tree TCA is approximately four miles north of the project site (Figure 2).

The BLM will prepare and rely on its own environmental review document in accordance with the National Environmental Policy Act (NEPA). If approved, BLM will issue a right-of-way (ROW) grant for portions of the project on federal lands managed by BLM.

Alternative 2, Lake Tamarisk Alternative: This Alternative would be similar to the proposed project but would remove approximately 30 acres of solar panels closest to the community of Lake Tamarisk, such that the project solar panels would be approximately 0.45 miles (2,350 feet) from the northeast corner of the Lake Tamarisk Desert Resort community, compared to 750 feet under the proposed project. The BESS would be moved at least 0.7 mile to the northeast (farther from the community of Lake Tamarisk), on either BLM-administered land (Substation Alternative A) or private land adjacent to SR-177/Rice Road (Substation Alternative B). The 500 kV gen-tie line from both of the Alternative substation location options would exit the substation to the south and would cross SR-177/Rice Road before turning to the southwest to parallel the roadway on BLM land within the Easley site to rejoin the proposed route where it would cross SR-177/Rice Road onto the Oberon Project.

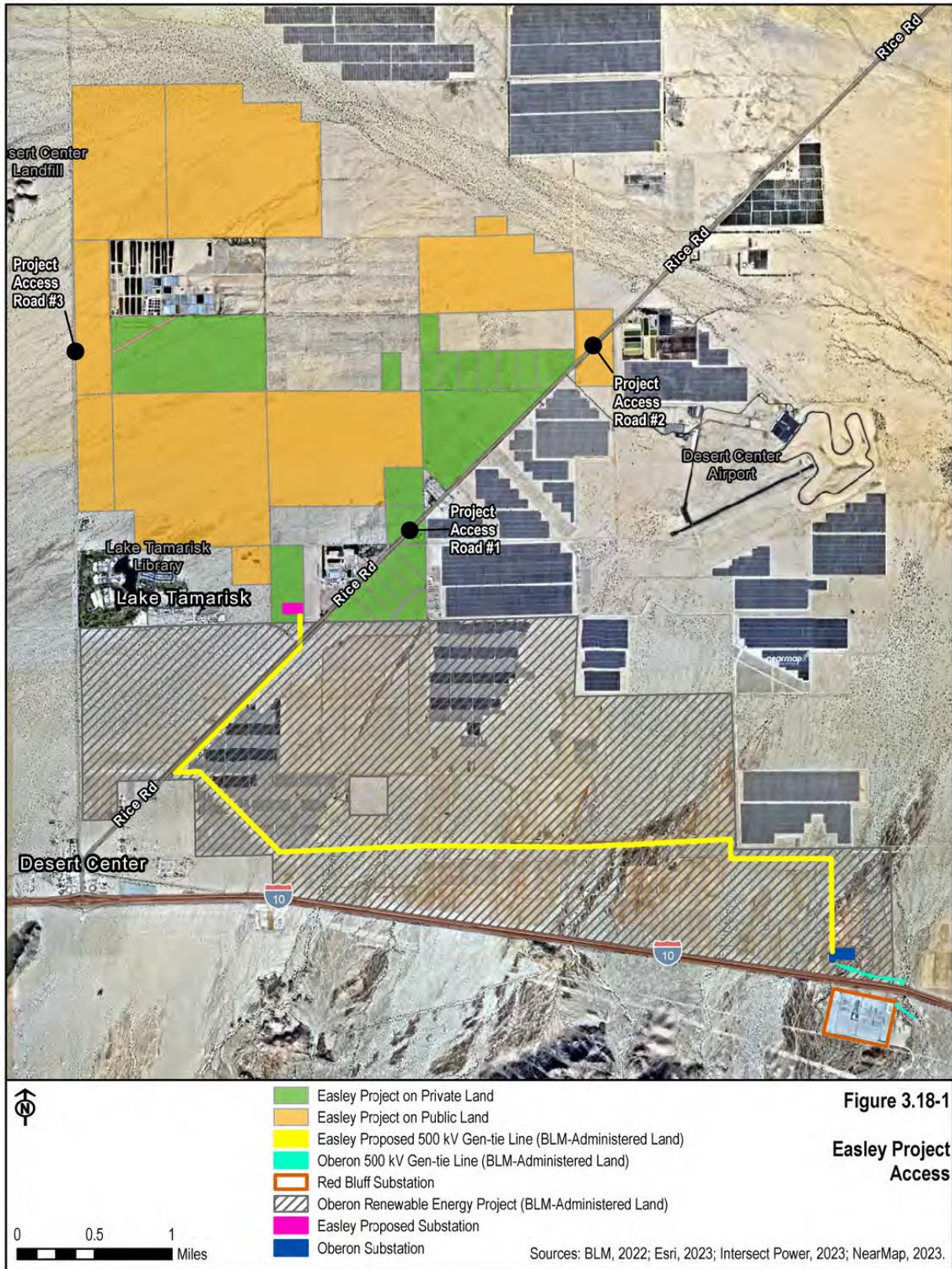


Figure 1. Locations of Easley Solar Project, land ownership, and access routes.

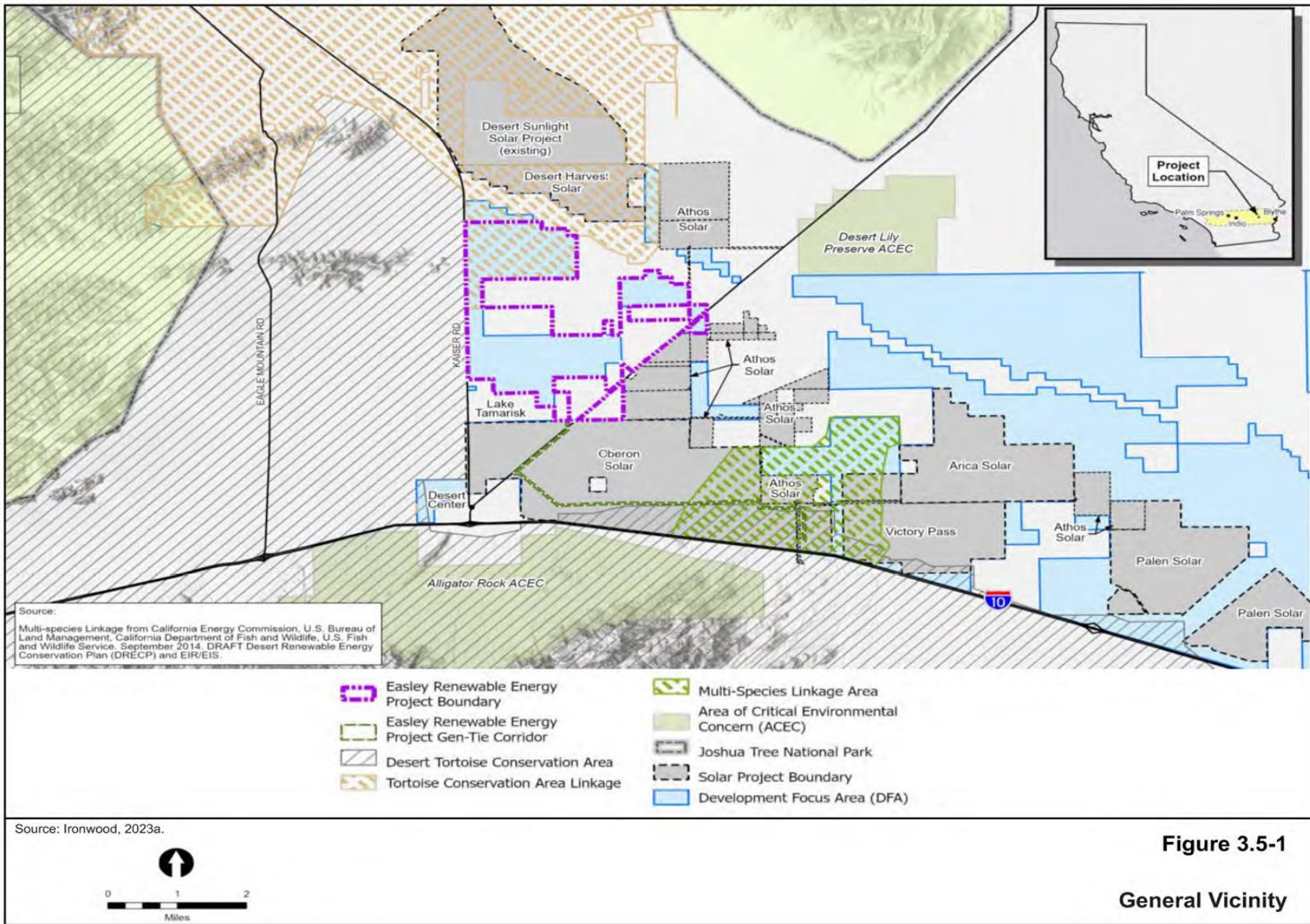


Figure 2. Location of proposed Easley Solar Project, existing solar projects, and land use designations.

Alternatives Considered and Eliminated from Further Analysis

The County considered several alternatives to the two action alternatives described above. These included the following:

The County considered a Federal Land Alternative, an alternative east of Highway 177 on BLM land in the DFA for renewable energy where more acreage was identified and the location would be farther from the Lake Tamarisk Desert Resort community. This alternative was eliminated because of engineering challenges within the active sand transport corridor and significant biological resources development constraints from compliance with the DRECP Conservation and Management Actions (CMAs) and resource buffers.

A Private Land Alternative was suggested that would develop the solar facility on other private lands elsewhere. This alternative was rejected because it is considered speculative and infeasible based on the number of landowners whose agreements would be required, and because the environmental impacts would likely be equal to or greater than the proposed site, which is located on disturbed private land and BLM-administered land that is within a DRECP DFA.

Distributed Solar Technology was rejected because the transaction costs of obtaining multiple rooftops, the complexity of mobilizing construction crews across multiple projects including the transporting and deployment of construction materials in a less efficient manner, the additional work needed to prepare rooftops to support a solar installation, and the need to develop the deals to secure the same amount of PV-produced electricity make this type of alternative infeasible. In addition, it is unlikely that the project could achieve its storage goals and provide energy when the sun is not shining.

Comments on the DEIR

The Council provided scoping comments to BLM on the proposed project on October 23, 2023. We have attached a copy of this comment letter and request that the County address and analyze in the FEIR all the issues identified in our letter that are not specific to BLM.

The Council did not receive a notice of preparation of an environmental impact report from the County, so we did not participate in the County's scoping process for the Easley Solar Project. The Council has submitted comment letters on past projects when Riverside County was the lead California Environmental Quality Act (CEQA) agency, including Desert Quartzite Solar Project (November 7, 2018) and Paradise Valley Specific Plan Draft Environmental Impact Report (March 16, 2018). In these letters as in all our comment letters, we routinely request that the agency implementing CEQA notify the Council of future proposed projects that may affect the Mojave desert tortoise. The Council is concerned that Riverside County has been overlooking our requests in earlier letters. Once again, we request that the County notify the Council when it is initiating CEQA compliance for proposed projects that may affect the tortoise.

Environmental Setting, Impacts, and Mitigation Measures

Biological Resources

The Council found that the information and analyses in the DEIR for biological resources was science-based and used recent journal articles to analyze impacts, especially with respect to the tortoise. In our experience, the application of this science-based knowledge to the analysis of the tortoise/tortoise habitat is atypical for a County led CEQA document.

Western Burrowing Owl: The burrowing owl and its sign were reported present on the project site. The California Fish and Game Commission was recently petitioned to list the burrowing owl as threatened in the southern desert portion of its range in California. Please revise the EIR to reflect this action.

Microphyll Woodlands: Figures 3.5-3a through 3.5-3e show numerous washes and microphyll woodlands (aka desert dry wash woodland) throughout the project site with a flow from southwest to northeast toward Pinto Wash. In the DEIR, the County states, “[t]he Easley Project site is situated on a low-gradient alluvial plain and is intersected by numerous unnamed ephemeral drainages that flow northeast toward Big Wash, near the confluence with Pinto Wash.” The occurrence and abundance of this vegetation is important with respect to how the Applicant proposes to maintain it, how it may affect the photovoltaic heat island effect, and how the construction activities may affect the surface hydrology that is necessary to support it discussed below.

Photovoltaic Heat Island Effect: The DEIR provides information on the results of recent studies on the effects of PV panels on ambient and soil temperatures. However, we believe that not all the findings of these scientific papers were reported with respect to their application to the proposed project. For example, in the DEIR the County says, “unlike the solar farms in these studies, the proposed Project would maintain vegetation under the solar panels, which would be mowed and rolled to a height of 12 inches to preserve vegetation and facilitate more effective post-construction site revegetation.” “Woody vegetation, such as palo verde trees, that are in areas adjacent to infrastructure where it does not affect solar panel performance would be partially cut, leaving the lower trunk intact to allow regrowth of branches and leaves.” Further, the County says, “[i]t is anticipated that many species [of plants] will regenerate post-construction due to preservation of desert vegetation during the construction phase.”

The implication of this language in the DEIR is that retention of vegetation is likely to mitigate the soil and air temperature increases from the installation and use of PV panels. However, a majority of the volume of above-ground biomass of perennial vegetation would be removed, especially the tall woody shrubs and trees along numerous washes supporting microphyll woodlands at the project site. All vegetation under the PV panels would be no taller than 12 inches. This mowing would result in a substantial reduction plant biomass that provides shade and evapotranspiration that cools air and ground temperatures, and would likely result in a substantially reduced ability of the surviving vegetation to reduce air and ground temperatures at the project site. Ongoing maintenance activities to prune the vegetation under and adjacent to the PV panels would keep this ability to reduce air and soil temperatures at a reduced level from the current level.

We request that the County provide references to support this assumption of vegetation regeneration and cooling and to analyze the extent that the surviving vegetation would regenerate and offset the heat island effect during the 40-year permit term, especially considering the slow growth of woody perennial vegetation in the Colorado division of the Sonoran Desert. This analysis should incorporate the recurring pruning of vegetation under and adjacent to the PV panels.

Additionally, Devitt et al. (2022) reported that large photo voltaic facilities similar to the proposed Easley Solar Project raised the air and soil temperatures not only on the project site but significant heat was moving from the solar facility into the plant community, especially in the first 200–400 m (656 to 1,312 feet) off the project site. This rise in temperature also impacts the availability of soil moisture and the ability of burrowing animals such as the tortoise in nearby areas to reduce their body temperatures at night to conserve energy and moisture. The impacts of elevated soil and air temperatures to areas adjacent to the proposed project should be analyzed in the EIR including impacts to the survival, growth, and recruitment of native vegetation. This is important to the tortoise because the area immediately west of the proposed project is designated critical habitat for the tortoise.

Surface Hydrology and Soil Moisture: In the DEIR, the County says. “[c]ertain areas of the site with **highly** [emphasis added] irregular topography that provide important hydrologic functions to the site would be avoided by Project design.” This sentence concerns us because it does not mention whether areas in the project site with less than highly irregular topography (i.e., small washes) would not be graded/have their hydrology modified.

Devitt et al. (2022) reported that “Construction of roads, transmission lines and utility scale solar photovoltaic facilities can decouple up-gradient washes from down-gradient locations.” They reported that the decoupling of the wash system at the solar site “led to a significant decline in soil moisture, canopy level NDVI values and mid-day leaf xylem water potentials.” Over time especially combined with climate change, this impact may result in reduced plant reproduction, growth, and survival for plants downgradient of the decoupling sites including plants not on the project site.

According to the map provided in the DEIR with topographic information about the project site, there is methodology for the PV solar panels to be installed and maintained with no grading of the surface area. Implementation of this methodology would ensure that the existing surface flows are not decoupled or disrupted and the existing surface flows that convey surface water downgradient from the southwest portion of the project to the northeast portion are maintained. Disruption of existing surface hydrology would likely impede the already slow growth rate of perennial vegetation or may result in plant mortality both on the project site and downgradient. When plants die, they release carbon from their roots, stems, and leaves into the atmosphere and contribute to climate change. Given the current climate change conditions, there is an increasing need for carbon sequestration, not carbon release, therefore, an increasing need to, as a minimum, maintain native plants and not disrupt the surface hydrology of the project site.

Critical Habitat: The proposed project is located immediately adjacent to tortoise critical habitat (USFWS 1994). This critical habitat unit has already been directly and indirectly impacted by other anthropogenic activities, and the proposed project would result in additional impacts. The USFWS designates critical habitat to provide habitat that contains the primary constituent elements in sufficient quantities to maintain viable populations of desert tortoises within the five recovery units for the tortoise. Critical habitat designation is intended to help reduce the risk associated with the near-term reduction in desert tortoise numbers and cumulative loss of habitat anticipated from ongoing management plans. Unfortunately, tortoise densities and numbers have declined substantially, and are below the threshold for viable populations in most recovery units. This means that critical habitat is no longer providing the primary constituent elements in sufficient quantities to maintain viable populations of desert tortoises.

We request that the EIR analyze the impacts of the proposed project on this critical habitat unit and the cumulative impacts on the ability of this critical habitat unit to maintain viable populations of desert tortoises.

Additionally, we request that a buffer area be established between the project area and designated critical habitat. This would result in the project being moved to the east. The size of the buffer area would be determined through consultation with USFWS and CDFW and use of the most recent research results to determine the areal extent of direct and indirect impacts and the needs of the tortoise.

Appendix C should be updated so it describes the Chuckwalla TCA as immediately west of the project site, not immediately south.

Desert Tortoise Surveys: In the DEIR, the County reported that “[w]ildlife surveys conducted in 2019-2022 conformed to full coverage desert tortoise protocol surveys with 10-meter transects on the Project site.” This description is unclear and appears to conflict with information depicted in Figure 7. Study Areas in Appendix C. Biological Resources Technical Report of the DEIR. This figure shows that only part of the project site was surveyed using 10-meter transects. The tortoise protocol survey is to survey the action area USFWS (2009), not part or all of the project site. The USFWS defines “action area” the Code of Federal Regulations (CFR) and the Desert Tortoise Field Manual (USFWS 2009, 2019) as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02).” Thus, the action area includes more than the project site. The County should consult with the USFWS and CDFW to determine whether the area surveyed for the tortoise complies with this requirement.

Fragmentation of Tortoise Habitat: Devitt et al. (2022) reported that “[f]ragmentation of desert ecosystems can be expected with large scale solar energy development” and that “fragmentation will be exacerbated by high-density placement of these facilities, which can be anticipated based on the investment in grid infrastructure in a given area.” This scenario applies to the DFA in which the proposed project is located. Devitt et al. (2022) suggested that “the spacing between solar facilities (policy decision) will be a critical factor in terms of preserving high quality habitat for the desert tortoise and other threatened species” because of the indirect impacts of PV solar facilities to adjacent areas. Fragmentation of tortoise habitat affects tortoise movements and linkage habitats discussed below.

Tortoise Movements and Linkage Habitats: We recommend that this section in Appendix C on Wildlife Movements be updated to include information that some tortoises may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986).

In analyzing the figures provided in the DEIR on the location of the proposed project, the project site follows the edge of Big Wash on both sides. This placement will likely infringe on the function of Big Wash to provide connectivity habitat for the tortoise and likely other wildlife species. In addition, the Pinto Wash Linkage (PWL) was identified as an interconnection area for the tortoise between the Joshua Tree TCA and Chuckwalla TCA by the BLM (2016) in the Desert Renewable Energy and Conservation Plan (DRECP). However, the southern portion of the PWL falls within a DFA designated by the DRECP. The development of this DFA would likely remove a key portion of this linkage habitat that supports connectivity between these two TCAs. We make this termination using recent information published on the needs of the tortoise for linkage habitat, some of which was published after the Record of Decision for the DRECP.

Washes are used by tortoises as important foraging areas, for movements within local populations, and as linkage habitats between populations. Desert tortoises tend to follow washes (Peaden et al. 2017, Gray et al. 2019). In addition, tortoises choose ephemeral stream channels or washes in which to forage especially in late spring (Jennings and Berry 2023). The impacts from the placement of the proposed project adjacent to Big Wash would likely impact the quality of this foraging area and its use for tortoise movement in/through the area by the local tortoise population and from the northwest, the Joshua Tree TCA.

Regarding population connectivity for the tortoise, 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.

The Council requests that mitigation be developed and implemented to address the impacts to both the local and regional tortoise habitat linkages that would be impacted by the proposed project. We recommend that an additional mitigation measure be included that provides assurances that tortoises could use Big Wash for foraging and to move through the area. This would include management of the wash to exclude other uses (OHV in particular), construction of a tortoise/wildlife crossing where the wash flows across Rice Road, and construction and maintenance of tortoise exclusion fencing along Rice Road where it is not already fenced.

In addition, to help mitigate the impacts to the degradation of the PWL, the Applicant should analyze the remaining availability of connectivity at a regional scale and provide or enhance movement corridors connecting populations north and south of I-10 including areas west of the project site. Connectivity of populations is a major focus of scientific investigations and agency recommendations in recent years, and is supported by the Council on Environmental Quality's (CEQ) (2023) Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors. Following this federal Guidance is important because the Applicant needs BLM to issue a tight-of-way for the proposed project to be constructed.

The EIR should analyze how the proposed project will or will not appreciably reduce the connectivity for the tortoise and other wildlife species across I-10, alternatives that exist to the west of the project site to provide for movements between tortoise populations and other wildlife species, and mitigation measures that should be implemented to facilitate the use of these linkage alternatives using information from Blanchard et al. (2021), Fairbank et al. (2021), and Huijser et al. (2023).

Compliance with the FESA and CESA: We found no information in the DEIR of the County, in coordination with BLM, would complete formal section consultation under the Federal Endangered Species Act (FESA) with USFWS and obtain an incidental take permit under the CESA from CDFW for the tortoise. We recommend that the biological opinion and ITP, when issued, be included in the Final EIR (FEIR) and that the FEIR be updated to include the terms and conditions of these documents in the mitigation measures that will be implemented.

Section 3.5.2.2. State Laws, Regulations, and Policies: This section should include information on relevant executive orders issued by the Governor of California that address biological resources and how the proposed project complies with these orders. For example, in 2020 Governor Newsom issued an executive order (N-82-20) 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 the CEQA document on how the proposed project and required mitigation complies with this and other relevant executive orders.

Cumulative Impacts

CEQA defines cumulative impact as “[i]mpacts resulting from the proposed Project when combined with similar effects of other past, present, and reasonably foreseeable future projects, regardless of which agency or person undertakes such projects (cumulative impacts could result from individually insignificant but collectively significant actions taking place over time).” The significance of each impact is determined based on an analysis of the impact, compliance with any recommended mitigation measure, and the level of impact remaining compared to the applicable significance criteria relevant to a particular resource.

The County selected the geographic scope of the cumulative impacts analysis for the tortoise and other biological resources to be western Riverside County. However, for other resource issues, a defined regulatory unit for the specific resource was used (e.g., for surface water, the hydrologic basin). The geographic scope selected for cumulative impacts analysis should be appropriate for each resource issue. The USFWS (2011) defined the Colorado Desert Recovery Unit for the tortoise and the proposed project occurs in this recovery unit. Because each recovery unit must meet recovery criteria before the tortoise can be delisted, this regulatory unit is appropriate to determine whether the proposed project is have a significant impact on the tortoise. Otherwise, the County's selection of geographic scope for the tortoise of part of Riverside County gives the appearance of being arbitrary. The Council requests that the County use this recovery unit as the regulatory unit for the geographic scope of the cumulative impacts analysis for the tortoise in the EIR.

Under Section 3.5.4. CEQA Significance Criteria, the Council appreciates that Riverside County added the significance criteria listed below:

- Have a substantial adverse effect, either directly or through habitat modifications, on any endangered, or threatened species, as listed in Title 14 of the California Code of Regulations (Sections 670.2 or 670.5) or in Title 50, Code of Federal Regulations (Sections 17.11 or 17.12) (Impact BIO-1).
- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (Impact BIO-2).

In previous comment letters on proposed actions analyzed under CEQA, the Council strongly recommended that the CEQA Guidelines for significance criteria be revised to include these criteria as well as indirect impacts.

The County states in the DEIR that “As the number of solar projects and other development and land use changes increase in the region, the cumulative impacts to biological resources, such as habitat loss also increase.” This sentence applies to the tortoise. The project site is used by the tortoise because of the numerous carcasses found on the site. However, we found no mitigation for the loss of tortoise habitat that would occur from the construction and use of the proposed project. The Council requests that the County require the Applicant to purchase, improve, and manage in perpetuity for the tortoise the equivalent ecological functions and values that would be lost and degraded from implementation of the proposed project including indirect and off-site impacts.

This mitigation requirement is hinted at with the following wording in the DEIR, “This [cumulative impacts] analysis presumes that MMs BIO-1 through BIO-12, identified in Section 3.5.9, would be implemented, that the Project would comply with DRECP CMAs on BLM lands, and that the Project's offsite compensation package would be developed to mitigate the Project's impacts to biological resources.” We were unable to find information in the DEIR that described/discussed the offsite compensation package. Please provide this information in the FEIR.

Tracking Cumulative Impacts: We request that Riverside County add this project and its impacts to a database and geospatial tracking system for special status species, including the Mojave desert tortoise, that track the cumulative impacts (e.g., surface disturbance, paved and unpaved routes, linear projects, invasive species occurrence, herbicide /pesticide use, wildfires, etc.), management decisions, and effectiveness of mitigation for each project. Without such a database and tracking system, the County is unable to analyze cumulative impacts to special status species (e.g., desert tortoises, etc.) with any degree of confidence.

Mitigation

The DEIR should require that all mitigation measures and plans require (1) a science-based monitoring component and implementation of the monitoring, and (2) implementation of adaptive management as soon as the monitoring indicates the mitigation is not fully effective. This should be implemented until the mitigation measure is fully effective.

Several mitigation and monitoring requirements are listed in the DEIR under Biological Resources including the development of mitigation plans. According to the County's Notice of Availability, the DEIR identified the following issues as having one or more significant effects on the environment, despite the incorporation of all feasible mitigation. As a result, adoption of a Statement of Overriding Considerations will be required pursuant to CEQA for the project to be approved.

- Project Specific: Aesthetics and Agriculture and Forestry
- Cumulative and Project Specific: Aesthetics

We presume that the County is assuming that the mitigation plans, once developed, for the biological resources including the tortoise/tortoise habitat will be highly effective at minimizing the direct, indirect, and cumulative impacts of the project to a level of less than significant. If our presumption is correct, we are unsure how the County can reach this conclusion when the required mitigation plans have not been developed. Some examples are provided below.

Mitigation Measure (MM) BIO-4 Integrated Weed Management Plan requires the Applicant to prepare and implement an Integrated Weed Management Plan (IWMP) to minimize or prevent invasive weeds from infesting the site or spreading into surrounding habitat. The methodology used to determine baseline information and changes in abundance, species composition, and locations is unknown along with the methods that would be implemented. Herbicide use is a method frequently implemented but mechanical methods may also be used. The Easley project site borders designated critical habitat for the tortoise; thus, care must be taken to ensure that the method(s) used do not adversely impact this habitat or the tortoise. In addition, other methods including directed energy should be implemented when feasible.

The mitigation plans should be completed and provided in the EIR so the public and the County can review them and determine the effectiveness of the proposed mitigation. Stating that a mitigation plan will be developed even if this statement includes "using the best available science" is not adequate or appropriate, as the preparers are not always experts on the best available science for that specific subject. When mitigation plans are included in the public review process, this

provides the public with the opportunity to provide comments based on their diverse knowledge and experience regarding the adequacy and soundness of the proposed mitigation plans. This public review process increases the likelihood that the mitigation plans when reviewed and finalized will be effective when implemented. The Council recommends that this and all mitigation plans be include in the EIR and NEPA document that BLM is preparing.

When implementing the proposed project, an authorized biologist would be required. We recommend that, in addition to the Applicant nominating a qualified individual to serve as an Authorized Desert Tortoise Biologist for approval by the US Fish and Wildlife Service (USFWS), the approval of the CDFW for an authorized biologist must also be obtained.

MM BIO-5 Vegetation Resources Management Plan only requires that the Applicant prepare and implement a Vegetation Resources Management Plan (VRMP), to be reviewed and approved by CDFW, BLM, and Riverside County. There are no requirements of native vegetation composition, methods to be used for revegetation, success criteria, monitoring requirements, or length of time the Applicant would be required to monitor the revegetation efforts and implement additional methods if not successful. Again, the County is assuming that the mitigation plans that have yet to be written will provide certain levels of effective mitigation and is not requiring monitoring and adaptive management. In addition, this Plan does not include the restoration phase of the project.

The USFWS should be added as an agency that approves the Vegetation Resources Management Plan.

MM BIO-6 Wildlife Protection includes the development of a Traffic Control Plan. One major access route for the proposed project is the road on the west side of the project and adjacent to tortoise critical habitat. Von Seckendorff Hoff and Marlow (2002) reported that they detected reductions in tortoise numbers and sign from infrequent use of roadways to major highways with heavy use. There was a linear relationship between traffic level and reduction. For two graded, unpaved roads, the reduction in tortoises and sign was evident 1.1 to 1.4 km (3,620 to 4,608 feet = 0.68 to 0.87 mile) from the road. The Traffic Plan should specify the actions that would be implemented to ensure that the increased traffic on this access road from the project does not adversely impact tortoises because of the increased frequency of road use and increased area of the road effect zone. The County should consider fencing the road to prevent tortoise from accessing the road and being killed or collected during the construction phase of the project.

This mitigation measure also identifies the use of netting to prevent wildlife exposure to hazards. While well-intentioned, netting located on or near the ground has entrapped tortoises whose limbs become tangled in the netting and die (e.g., camouflage netting used at the Marine Corps Air Ground Combat Center). The Council recommends that if netting is used, it must be at least 2 feet of the ground to prevent adult tortoises from accessing it and regularly monitored.

MM BIO-7 Desert Tortoise Protection requires the Applicant to obtain incidental take authorization from USFWS and CDFW to address any potential take of desert tortoise, including authorization to handle or translocate the desert tortoise. Desert tortoises shall be handled or translocated according to a Desert Tortoise Relocation Plan, pending approval by both agencies.

Again, this Plan is not included in the DEIR. The Council requests that the lessons learned from all past and recent tortoise relocation/translocation efforts (e.g., Fort Irwin translocation, MCAGCC translocation, Mack and Berry (2023), etc.) be applied in the development and implementation of this Plan. These lessons learned would include:

- only moving tortoises in the fall prior to winter brumation,
- providing protection from predators,
- not releasing tortoises during a drought year,
- not releasing tortoises until they are a minimum size,
- ensuring that the recipient site is able to support the additional tortoises including providing adequate nutritious native forage and cover sites,
- when several recipient sites are of similar value, moving tortoises to the site closest to their current home range,
- monitoring tortoise movements and survival for several years to determine whether the effort was successful as the County assumes it would be, etc.

In addition, because this is a mitigation measure, the location where tortoises are moved to should be protected from future development or surface disturbance (e.g., grazing, OHV use, etc.). The location of the mitigation lands should be clearly recorded and delineated on maps.

A Raven Management Plan is required. This Plan is not included in the DEIR. We reiterate our reasons why including this and other mitigation plans should be required as part of the DEIR. The current wording of what is required in this Plan does not include implementation of management or monitoring actions to reduce or eliminate subsidies for or the occurrence of ravens in/near the project site. The Council recommends this Plan be expanded to a Predator Management Plan for the tortoise. Please revise the EIR to require management, monitoring, and adaptive management actions for this project in this Plan.

The following sources of subsidized resources should be included in the Predator Management Plan: water, wildlife injured and/or killed during construction, and anthropogenic trash. We presume that nest sites for common ravens would be provided by the project because the Applicant would not use lattice towers for the gen-tie line. The proposed project would likely increase the availability of human-provided subsidies for predators of the tortoise, including the common raven and coyote, during the construction, operations and maintenance, and decommissioning phases. For example, during the construction phase the water used to control dust, and the fossorial animals killed or injured during grading for some of the project's facilities would become a human subsidized food source for common ravens.

The waste from food brought to the project site by workers for meals is another example of food subsidies for ravens, coyotes, and feral, free-roaming dogs that would attract these predators to the project area and increase their numbers in the surrounding area including adjacent critical habitat.

MM BIO-9 Gen-tie lines would allow the use of lattice towers with the addition of practices to discourage their use by raptors or common ravens for perching or nesting (e.g., addition of anti-perching devices). The Council's concern is that these additions or practices to discourage use by common ravens are not always effective and are not maintained for the life of the tower/project. Consequently, the Council strongly recommends that this mitigation measure be modified so that lattice towers are not allowed. We recommend that the tubular design with insulators on horizontal cross arms (monopole) be used.

MM BIO-12 Streambed and Watershed Protection should be more protective. As stated above, ground-disturbing activities in jurisdictional waters of the State should not occur in areas where solar panels, new access roads, or gen-tie lies are placed. The language in the DEIR focuses on stormwater management. It does not address the decoupling of up-gradient washes from down-gradient locations and the importance of providing this surface water connections to the occurrence and survival of desert vegetation, especially microphyll woodlands. We request that this section be revised to address the importance of this surface water connection in maintaining existing vegetation, especially because of the increasing severity of the impacts of climate change and because the County claims in the DEIR that retaining vegetation under and adjacent to the solar panels will reduce the heat island effect to air and ground temperatures at the project site.

This mitigation measure requires that if any spills occur, the cleanup of all spills will begin immediately. RWQCB, CDFW, BLM, and Riverside County will be notified immediately by the Applicant of any spills and will be consulted regarding clean-up procedures. Because listed species (FESA) and migratory birds (Migratory Bird Treaty Act) may be impacted by a spill, the USFWS should be consulted regarding clean-up procedures.

Additional Mitigation: The County should add a mitigation measure and require the Applicant to restore the project site to its pre-project conditions, especially with respect to surface hydrology, soils, and vegetation, when decommissioning is completed. Thus, the project should have four phases – construction, operations and maintenance, decommissioning, and restoration.

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 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 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 notify the Desert Tortoise Council at eac@deserttortoise.org of any proposed projects that County may consider authorizing, funding, or carrying out in the range of the desert tortoise so we may provide comments to ensure the County fully considers actions to conserve the tortoise as a species listed under CESA and FESA and to conserve biodiversity.

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,



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

Attachment: Scoping Comments on Easley Renewable Energy Project (DOI-BLM-CA-D060-2023-0010-EA) dated October 23, 2023

- cc. California State Clearinghouse, state.clearinghouse@opr.ca.gov
Trisha A. Moyer, Region 6 – Desert Inland Region, Habitat Conservation Program Supervisor, California Department of Fish and Wildlife, Bishop, CA, Patricia.Moyer@wildlife.ca.gov
Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov
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Tim Gilloon, Field Manager, Palm Springs Field Office, Bureau of Land Management, tgilloon@blm.gov
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Kristina Drake, Desert Tortoise Recovery Office Coordinator, U.S. Fish and Wildlife Service, karla_drake@fws.gov
Rollie White, Assistant Field Supervisor, Palm Spring Fish and Wildlife Office, U.S. Fish and Wildlife Office, rollie_white@fws.gov

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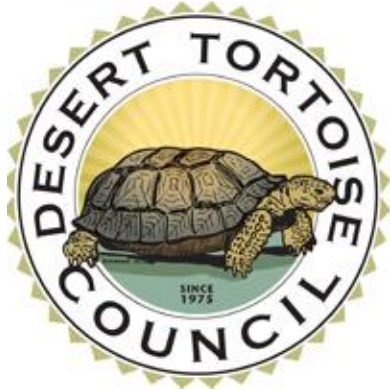
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Attachment: Scoping Comments on Easley Renewable Energy Project
(DOI-BLM-CA-D060-2023-0010-EA) dated October 23, 2023



DESERT TORTOISE COUNCIL

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Acton, CA 93510

www.deserttortoise.org

eac@deserttortoise.org

Via email only

23 October 2023

Attn: Tamara Faust, Daniel Kasang, Brandon Anderson
Bureau of Land Management, Palm Springs – South Coast Field Office
1201 Bird Center Drive, Palm Springs, CA 92262
blm_ca_cdd_easley_solar@blm.gov, tfaust@blm.gov, dkasang@blm.gov, bganderson@blm.gov

RE: Easley Renewable Energy Project (DOI-BLM-CA-D060-2023-0010-EA)

Dear Ms. Faust,

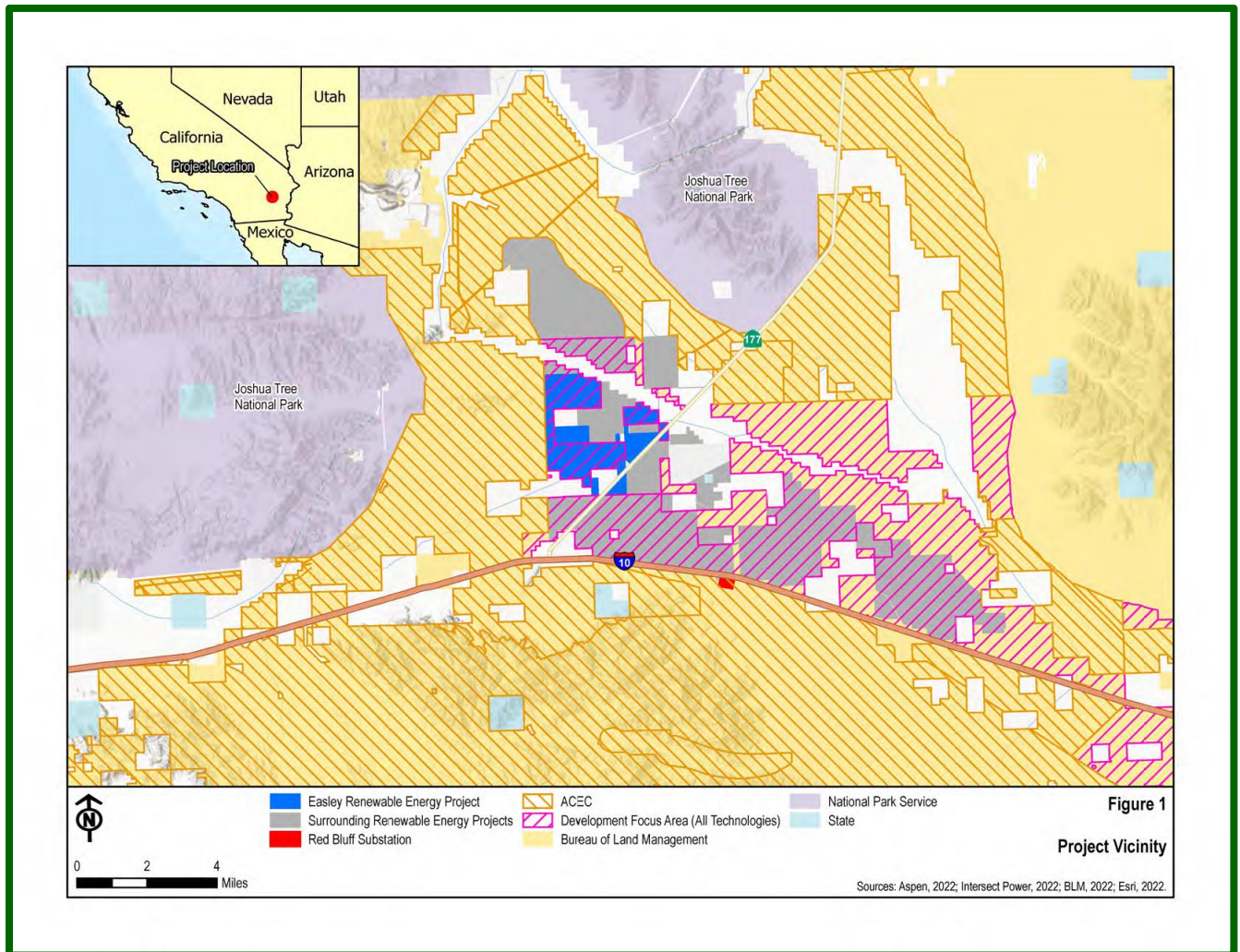
The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation 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 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.”

We appreciate that you contacted us on 9/14/2023 via email enabling 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 include recommendations intended to enhance protection of this species and its habitat during activities authorized by the Bureau of Land Management (BLM), which we recommend be added to project terms and conditions in the authorizing document (e.g., right of way grant, etc.) as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

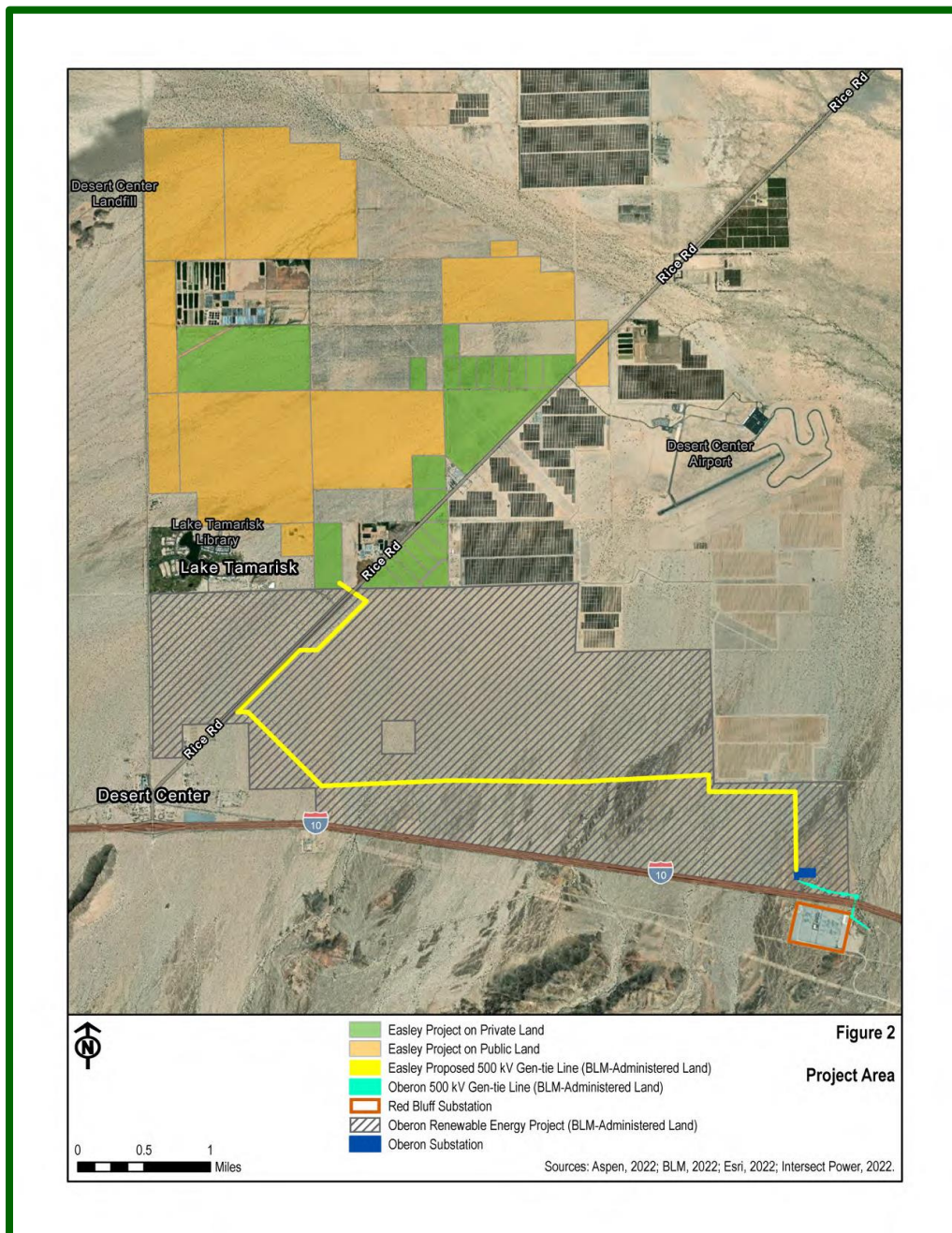
Project Description

The following project description is taken from the Plan of Development (POD) prepared by Aspen Environmental Group, prepared for Intersect Power-IP Easley, LLC, 41 pages, dated September 2023: “The proposed Project application area is located on approximately 3,735 acres of private (990 acres) and BLM (2,745 acres)-administered land, in Riverside County north of Desert Center, California (see Figure 1). The project would generate and store up to 400 megawatts (MW) of renewable electricity via arrays of solar photovoltaic (PV) panels, battery energy storage system (BESS), and appurtenant facilities. A 6.7-mile 500 kilovolt (kV) generation-tie (gen-tie) line would mainly traverse across the Oberon Project site and connect into an approved substation that is under construction on the approved Oberon Renewable Energy Project site, an adjacent solar and energy storage facility owned by Intersect Power. From the Oberon onsite substation, the power generated by the Easley Project would be transmitted to the SCE Red Bluff Substation via the Oberon 500 kV gen-tie line, which is expected to be online by the end of 2023.”



Also on page 1, “Public lands within the Project solar application area are lands designated as Development Focus Area (DFA) [see cross-hatched areas in Figure 1] by the Desert Renewable Energy Conservation Plan (DRECP) and associated Record of Decision (ROD), and thus, have been targeted for renewable energy development. Because the proposed Project is partially located on federal land under management of the U.S. Bureau of Land Management (BLM), the BLM is the lead agency under the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321 et seq. Riverside County will be the lead agency under the California Environmental Quality Act (CEQA).”

Both Figure 1 and Figure 2, below, show the exorbitant amount of solar development in the region:



Scoping Comments

The purpose of scoping is to allow the public to participate in an “early and open process for determining the scope of issues to be addressed, and for identifying the significant issues related to a proposed action” [40 Code of Federal Regulations (CFR) 1501.7]. Our initial concern is that the BLM indicates that a Draft Environmental Assessment (DEA) would be prepared for this project. We believe that a project of this scope, size, and significance must be analyzed more rigorously and that a Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR) should be prepared. As such, we will refer to the impending NEPA/CEQA document as the “DEIS/DEIR.”

We ask that the DEIS/DEIR provide for the following information:

1. Discuss how this proposed project fits within the management structure of the current land management plan for the area [e.g., California Desert Conservation Area Plan (CDCA Plan) (BLM 1980 as amended), DRECP (2016), and meets the regulatory requirements and most important, the statutory requirements under the Federal Land Policy and Management Act (FLPMA).
2. Provide maps of critical habitat for the Mojave desert tortoise (USFWS 1994a) and other areas identified by the U.S. Fish and Wildlife Service (USFWS) as essential to the survival and recovery of the tortoise (e.g., linkage habitats between desert tortoise populations).
3. Provide maps of Areas of Critical Environmental Concern (ACECs), and other areas identified for special management by BLM [e.g., National Conservation Lands (NCLs)].
4. Provide maps of all areas identified by CDFW and BLM as managed for the tortoise and other wildlife species and if those lands are mitigation lands for previous projects.
5. Provide maps with the locations of existing and proposed solar development projects and transmission lines (already provided in the BLM’s notice, to be included at sufficient resolution in the DEIS/DEIR).
6. Provide maps that identify the ownership of the lands associated with the proposed project and ownership of surrounding lands.

Please be sure that the project adheres to and fully implements measures, regulations, and policies in the following documents:

- BLM Special Status Species Management. Handbook 6840.
- BLM Sensitive Species List for Arizona. Arizona Instructional Memorandum AZ-IM-2017-009.
- BLM Mitigation Handbook (H-1794-1).
- BLM Mitigation Manual (MS-1794)
- BLM Instruction Memorandum IM 2021-046 on Mitigation
- BLM Habitat Connectivity on Public Lands Instruction Memorandum 2023-005
- Council on Environmental Quality’s (CEQ) Policy for Implementing NEPA, “Guidance for Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors”

Proposed Action and Alternatives Considered

We fully expect that BLM will comply with all applicable statutes, regulations, Executive and Departmental Orders, BLM manuals, and other requirements as they pertain to this project. BLM should demonstrate in the DEIS/DEIR that the proposed project meets all these requirements with respect to the tortoise, that the proposed project will:

- be in conformance with decisions in current land use plan(s) and the FLPMA with respect to sustained yield;
- be consistent with priority conservation, restoration, and/or adaptation objectives in the best available landscape-scale information (e.g., for tortoise population connectivity, management of native land species and reduction/elimination of non-native, invasive species, etc.);
- be in an area with low or comparatively low resource conflicts and where conflicts can be resolved;
- be located in, or adjacent to, previously contaminated or disturbed lands;
- minimize adverse impacts on important fish and wildlife habitats and migration/movement corridors including the desert tortoise;
- minimize impacts on lands with wilderness characteristics and the values associated with these lands;
- not adversely affect lands donated or acquired for conservation purposes, or mitigation lands identified in previously approved projects such as translocation areas for desert tortoise; and,
- be sure the applicant has coordinated with governments and agencies, including consideration of consistency with officially adopted plans and policies (e.g., conservation plans).
- Significant cumulative impacts on resources of concern should not occur as a result of the proposed project (i.e., exceeding an established threshold such as population viability for the tortoise and connectivity between tortoise populations).
- BLM's analysis must use current data on the tortoise for the project area, population, and range wide, as population numbers and densities have substantially declined in many areas along with the recent destruction of habitat from fires, so environmental documents should publish the data/knowledge currently available.

We have serious concerns about BLM's commitment to manage effectively for the sustained yield of the tortoise, particularly in this region that has been overwhelmed with solar development as allowed for in the DRECP. These concerns include past actions regarding:

- Mitigation to improve conditions within the connectivity areas, and if these options do not exist, mitigation may be applied toward the nearest tortoise conservation area (e.g., an ACEC for which tortoise has been identified in the Relevant and Important Criteria or critical habitat); and
- a plan included in the DEIS/DEIR that would effectively monitor desert tortoise impacts, including verification that desert tortoise connectivity corridors are functional. The required Federal Endangered Species Act (FESA) consultation should further define this monitoring plan.

Regarding the first concern, we believe that a multiagency approach is best to ensure BLM is meeting its obligations, soliciting review and input from pertinent federal and state resource agencies, Tribal governments/agencies, and non-governmental organizations (NGOs). Mitigation of impacts should include, in priority order, avoidance, minimization and compensation for unavoidable impacts. Mitigation should at a minimum offset all direct, indirect, and cumulative impacts, especially given the status and trend of the tortoise (please see *Affected Environment - Status of the Populations of the Mojave Desert Tortoise* below). BLM should ensure it is effectively implementing its section 7(a)(1) conservation mandate under the FESA.

Mitigation should be applied only in areas where the lands are effectively managed for the benefit of the tortoise for both the short-term and long-term. As currently managed, BLM ACECs in the California Desert Conservation Area are not meeting this criterion. Consequently, mitigation should be implemented on lands with a durable conservation designation, or on privately owned lands with a conservation easement or other legal instrument that ensures conservation in perpetuity. Please see *Mitigation Plans* below for additional concerns and requested requirements.

Regarding the second concern, a monitoring plan should (1) be scientifically and statistically credible; (2) be implementable; and (3) require BLM/project proponent to implement adaptive management to correct land management practices if the mitigation is not accomplishing its intended purposes. Compliance with Chapter 11 of the BLM National Environmental Policy Act (NEPA) Handbook H-1790-1 BLM (2008a) is needed to ensure this occurs.

We note that a federal appellate court has previously ruled that in an EIS a federal agency must evaluate a reasonable range of alternatives to the project including other project and mitigation sites, and must give adequate consideration to the public's needs and objectives in balancing ecological protection with the purpose of the proposed project, along with adequately addressing the proposed project's impacts on the desert's sensitive ecological system [*National Parks & Conservation Association v. Bureau of Land Management*, Ninth Cir. Dkt Nos. 05-56814 et seq. (11/10/09)]. Therefore, the Council requests that the BLM describe the purpose and need for this project and develop and analyze other viable alternatives, such as rooftop solar, which we believe constitute "other reasonable courses of actions" (40 CFR 1508.25).

The Council supports alternatives to reduce the need for additional solar energy projects in relatively undisturbed tortoise habitats in the Mojave Desert. For example, the City of Los Angeles has implemented a rooftop solar Feed-in Tariff (FiT) program, the largest of its kind in America. The FiT program enables the owners of large buildings to install solar panels on their roofs, and sell the power they generate back to utilities for distribution into the power grid.

We request that BLM include an urban solar alternative. Under this alternative, owners of large buildings or parking areas would grant the project proponent permission to install solar panels on their roofs and cover parking areas, and sell the power they generate back to utilities for distribution into the power grid.

This approach puts the generation of electricity where the demand is greatest, in populated areas. It may also reduce transmission costs; greenhouse gas emissions from constructing energy projects far from the sources of power demand and materials for construction; carbon sequestration lost from degrading/destroying thousands of acres of native vegetation for decades or longer to construct and operate this one project; the number of affected resources in the desert that must be analyzed under the NEPA; and mitigation costs for all direct, indirect, and cumulative impacts; monitoring and adaptive management costs; and habitat restoration costs following decommissioning. The DEIS/DEIR should include an analysis of where the energy generated by this project would be sent and the needs for energy in those targeted areas that may be satisfied by urban solar. We request that at least one viable alternative be analyzed in the DEIS/DEIR where electricity generation via solar energy is located much closer to the areas where the energy will be used, including generation in urban/suburban areas.

In addition, BLM should include another viable alternative of locating solar projects on bladed or highly degraded tracts of land (e.g., abandoned agricultural fields). Such an alternative would not result in the destruction of desert habitats and mitigation for the lost functions and values of these habitats. These losses and mitigation are costly from an economic, environmental, and social perspective.

The latter two alternatives are important to consider to minimize or avoid the loss of vegetation that sequesters carbon. Studies around the world have shown that desert ecosystems can act as important carbon sinks. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). Given the current climate change conditions, there is an increasing need for carbon sequestration. Because vascular plants are a primary user of carbon and the proposed Project would result in the loss/degradation of thousands of acres of plants and their ability to sequester carbon for decades or longer unless successful measures are implemented to restore the same biomass of native vegetation as it is being destroyed, it is imperative that the proposed project not result in the loss of vegetation.

The DEIS/DEIR should consider the monitoring results of recently developed solar projects where soils have been bladed versus those facilities where the vegetation has been mowed or crushed and allowed to revegetate the area. In the latter case, it may be appropriate to allow tortoises to enter the facilities and re-establish residency (i.e., repatriate) under the solar panels as vegetation recolonizes the area. We see on page 16 of the POD that mowing is the currently described project alternative. It should be designed/implemented as a scientific experiment to add to the limited data on this approach to determine the extent of effects on Mojave desert tortoise populations and movements/connectivity between populations, which is an important issue for this species, particularly over the long-term (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). Long-term monitoring for the life of the project would need to be included to accurately evaluate the effectiveness of this strategy.

Connected Actions

Pursuant to Section 1508.25 of the Council on Environmental Quality's (CEQ) regulations (40 CFR 1508.25), any DEIS/DEIR must cover the entire scope of a proposed action, considering all connected, cumulative, and similar actions in one document. Pursuant to Section 1506.1(a) of these regulations, an agency action cannot "[l]imit the choice of reasonable alternatives" before reaching a final decision in a published [Record of Decision] (ROD). These regulations ensure agencies will prepare a complete environmental analysis that provides a "hard look" at the environmental consequences of all proposed actions instead of segmenting environmental reviews (Novack 2015). Please explain whether any current proposed actions within the region are connected and if not, why.

Affected Environment

Status of the Population of the Mojave Desert Tortoise: The Mojave desert tortoise is an indicator species and umbrella species of ecosystem health (Berry and Medica 1995). Indicator species are used to monitor environmental changes, assess the efficacy of management, and provide warning signals for impending ecological shifts. An umbrella species is a species whose conservation is expected to confer protections to a large number of co-occurring species. Thus, when the Mojave desert tortoise is declining in density, numbers, and recruitment, this decline is an indicator of environmental change that is degrading the desert environment, ineffective management by land management agencies, and a warning that ecological shifts in the Mojave and Colorado deserts are occurring. In addition, this decline indicates that other species in the Mojave and Colorado deserts are also declining in density, numbers, and recruitment. Consequently, BLM should consider the data on the demographic trend of the tortoise as a "wake-up call" that more must be done to effectively manage for the tortoise and other species in the Mojave and Colorado deserts. Impacts on other local and wide-ranging species and their habitats should be analyzed in the DEIS/DEIR.

The Council provides the following information for the proponent so that these or similar data may be included in the DEIS/DEIR. The Council believes that BLM's failure to implement recovery actions for the Mojave desert tortoise as given in the recovery plan (both USFWS 1994b and 2011) has contributed to tortoise declines between 2004 to 2014 (Table 1; USFWS 2015). There are 17 populations of Mojave desert tortoise described below that occur in Critical Habitat Units (CHUs) and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the CDCA.

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for Mojave desert tortoise. The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km² and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km² (10 breeding individuals per mi²) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red.

Recovery Unit: Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km²)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km² (SE)	% 10-year change (2004–2014)
Western Mojave, CA	6,294	24.51	2.8 (1.0)	-50.7 decline
Fremont-Kramer	2,347	9.14	2.6 (1.0)	-50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	-56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	-61.5 decline
Colorado Desert, CA	11,663	45.42	4.0 (1.4)	-36.25 decline
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	-29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	-37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	-64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	-52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	-60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	4,160	16.2	4.5 (1.9)	+325.62 increase
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	3,446	13.42	1.9 (0.7)	-67.26 decline
El Dorado Valley, NV	999	3.89	1.5 (0.6)	-61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	-56.05 decline
Upper Virgin River	115	0.45	15.3 (6.0)	-26.57 decline
Red Cliffs Desert	115	0.45	15.3 (6.0)	-26.57 decline
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	25,678	100.00		-32.18 decline

Table 2. Estimated change in abundance of adult Mojave desert tortoises in each recovery unit between 2004 and 2014 (Allison and McLuckie 2018). Decreases in abundance are in red, with the pertinent recovery unit highlighted in yellow.

Recovery Unit	Modeled Habitat (km²)	2004 Abundance	2014 Abundance	Change in Abundance	Percent Change in Abundance
Western Mojave	23,139	131,540	64,871	-66,668	-51%
Colorado Desert	18,024	103,675	66,097	-37,578	-36%
Northeastern Mojave	10,664	12,610	46,701	34,091	270%
Eastern Mojave	16,061	75,342	24,664	-50,679	-67%
Upper Virgin River	613	13,226	10,010	-3,216	-24%
Total	68,501	336,393	212,343	-124,050	-37%

Important points from these tables include the following:

Change in Status for the Mojave Desert Tortoise Range-wide

- Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.
- Eleven of 17 populations of the Mojave desert tortoise are no longer viable. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change in Status for the Mojave Desert Tortoise in California

- Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the Northern and Eastern Colorado Desert (NECO), Northern and Eastern Mojave Desert (NEMO), and Western Mojave Desert (WEMO) Plans.

- Eight of 10 populations of the Mojave desert tortoise in California are no longer viable. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.

- The two viable populations of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable in about 2020 and 2031.

Change in Status for the Mojave Desert Tortoise on BLM Land in California

- Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.

- Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria

- The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service, which has increased 178 percent in 10 years.

The Endangered Mojave Desert Tortoise: The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range...” In the California Endangered Species Act (CESA), the California legislature defined an “endangered species” as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species’ range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and California Fish and Game Commission.

Table 3. Summary of data for Agassiz’s desert tortoise, *Gopherus agassizii* (=Mojave desert tortoise) from 2004 to 2021 for the 5 Recovery Units and 17 Critical Habitat Units (CHUs)/Tortoise Conservation Areas (TCAs). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km² and standard errors = SE), and percent change in population density between 2004-2014 (USFWS 2015). Populations below the viable level of 3.9 breeding individuals/km² (10 breeding individuals per mi²) (assumes a 1:1 sex ratio) (USFWS 1994a, 2015) or showing a decline from 2004 to 2014 are in **red**.

Recovery Unit: Designated CHU/TCA &	% of total habitat area in Recovery Unit & CHU/TC A	2004 density/ km ²	2014 density/ km ² (SE)	% 10- year change (2004– 2014)	2015 density/ km ²	2016 density/ km ²	2017 density/ km ²	2018 density/ km ²	2019 density/ km ²	2020 density/ km ²	2021 density/ km ²
Western Mojave, CA	24.51		2.8 (1.0)	-50.7 decline							
Fremont-Kramer	9.14		2.6 (1.0)	-50.6 decline	4.5	No data	4.1	No data	2.7	1.7	No data
Ord-Rodman	3.32		3.6 (1.4)	-56.5 decline	No data	No data	3.9	2.5/3.4*	2.1/2.5*	No data	1.9/2.5*
Superior-Cronese	12.05		2.4 (0.9)	-61.5 decline	2.6	3.6	1.7	No data	1.9	No data	No data
Colorado Desert, CA	45.42		4.0 (1.4)	-36.25 decline							
Chocolate Mtn AGR, CA	2.78		7.2 (2.8)	-29.77 decline	10.3	8.5	9.4	7.6	7.0	7.1	3.9
Chuckwalla, CA	10.97		3.3 (1.3)	-37.43 decline	No data	No data	4.3	No data	1.8	4.6	2.6
Chemehuevi, CA	14.65		2.8 (1.1)	-64.70 decline	No data	1.7	No data	2.9	No data	4.0	No data
Fenner, CA	6.94		4.8 (1.9)	-52.86 decline	No data	5.5	No data	6.0	2.8	No data	5.3
Joshua Tree, CA	4.49		3.7 (1.5)	+178.62 increase	No data	2.6	3.6	No data	3.1	3.9	No data
Pinto Mtn, CA	1.98		2.4 (1.0)	-60.30 decline	No data	2.1	2.3	No data	1.7	2.9	No data
Piute Valley, NV	3.61		5.3 (2.1)	+162.36 increase	No data	4.0	5.9	No data	No data	No data	3.9

Northeastern Mojave AZ, NV, & UT	16.2		4.5 (1.9)	+325.62 increase							
Beaver Dam Slope, NV, UT, & AZ	2.92		6.2 (2.4)	+370.33 increase	No data	5.6	1.3	5.1	2.0	No data	No data
Coyote Spring, NV	3.74		4.0 (1.6)	+ 265.06 increase	No data	4.2	No data	No data	3.2	No data	No data
Gold Butte, NV & AZ	6.26		2.7 (1.0)	+ 384.37 increase	No data	No data	1.9	2.3	No data	No data	2.4
Mormon Mesa, NV	3.29		6.4 (2.5)	+ 217.80 increase	No data	2.1	No data	3.6	No data	5.2	5.2
Eastern Mojave, NV & CA	13.42		1.9 (0.7)	-67.26 decline							
El Dorado Valley, NV	3.89		1.5 (0.6)	-61.14 decline	No data	2.7	5.6	No data	2.3	No data	No data
Ivanpah Valley, CA	9.53		2.3 (0.9)	-56.05 decline	1.9	No data	No data	3.7	2.6	No data	1.8
Upper Virgin River, UT & AZ	0.45		15.3 (6.0)	-26.57 decline							
Red Cliffs Desert**	0.45	29.1 (21.4-39.6)**	15.3 (6.0)	-26.57 decline	15.0	No data	19.1	No data	17.2	No data	
Rangewide Area of CHUs - TCAs/Rangewide Change in Population Status	100.00			-32.18 decline							

*This density includes the adult tortoises translocated from the expansion of the MCAGCC, that is resident adult tortoises and translocated adult tortoises.

**Methodology for collecting density data initiated in 1999.

Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry *et al.* 2021), which 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), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered.

The summary of data above indicates that BLM's current management actions for the Mojave desert tortoise are inadequate to help recover the desert tortoise. BLM has been ineffective in halting population declines, which has resulted in non-viable populations. The Council believes that these management actions are inadequate in preventing the extirpation of the Mojave desert tortoise in California and Nevada.

Standardized Surveys – Desert Tortoise and Other Species

For the DEIS/DEIR to fully analyze the effects and identify potentially significant impacts, the following surveys must be performed to determine the extent of rare plant and animal populations occurring within areas to be directly and indirectly impacted.

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDDB; CDFW 2023) for rare plant and animal species reported from the region. The results of the CNDDDB review would be reported in the DEIS/DEIR with an indication of suitable and occupied habitats for all rare species reported from the region based on performing the species-specific surveys described below.

CDFG (2010) lists hundreds of plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or "CHIPs." Biologists completing surveys on behalf of the project proponent should document such communities where they occur and indicate how impacts to them will be minimized.

The project proponent should fund focused surveys for all rare plant and animal species reported from the vicinity of the proposed project. Results of the surveys will determine appropriate permits from CDFW, BLM, and USFWS and associated avoidance, minimization, and mitigation measures. Focused plant and animal surveys should be conducted by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

Specialized Reptile Surveys: Since there are loose, shifting sands within/near the impact areas of the panels, along the gen-tie lines, or access routes, focused surveys for Mojave fringe-toed lizards (*Uma scoparia*) should be performed (University of California, Riverside 2005, 2007).

Migratory Birds/Eagles: BLM should ensure that all actions it authorizes are implemented in compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and associated regulations, executive orders, and policies (e.g., Driscoll 2010, Pagel et al. 2010) to avoid mortality or injury to migratory birds and harassment of eagles.

Burrowing owl: Surveys for western burrowing owl (*Athene cunicularia*) should be coordinated with the USFWS as the species is protected under the Migratory Bird Treaty Act and with CDFW (2012). In addition to the project footprint, the 2012 protocol requires that peripheral transects be surveyed at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to determine the potential indirect impacts of the project on this species. If burrowing owl sign is found, CDFW (2012) describes appropriate minimization and mitigation measures that would be required. Also note that BLM should demonstrate in the DEIS/DEIR how it will comply with “E.O. 13186 – Responsibilities of Federal Agencies To Protect Migratory Birds.” If burrowing owl sign is found, BLM and the project proponent should develop a science-based relocation/mitigation/monitoring/adaptive management plan with the USFWS and CDFW and ensure that this plan is implemented.

Mojave Desert Tortoise Surveys: Formal protocol surveys for Mojave desert tortoise (USFWS 2019) must be conducted at the proper times of year. Because USFWS (2009) and CDFW require only experienced biologists to perform protocol surveys, USFWS and CDFW biologists should review surveyors’ credentials prior to initiating the surveys. Per this protocol, since the impact area is larger than 500 acres, the surveys must be performed in the time periods of April-May or September-October so that a statistical estimate of tortoise densities can be determined for the “action area” (please see below). If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether “take” under FESA or CESA is likely to occur from implementation of the proposed project. If tortoises are present, the project proponent must obtain a biological opinion under Section 7(a)(2) from the USFWS for activities on federal lands/actions and a Section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

We note the following wording on page 15 of the POD: “...temperature thresholds for *clearance surveys* [*emphasis added*] may be up to 40 degrees Celsius (C) (104 degrees F) in areas that do not have a high modelled desert tortoise occupancy; and/or historical data did not have active desert tortoise sign within the area or in immediate adjacent areas.” Before this measure is implemented, the proponent needs concurrence from both the USFWS and CDFW. *Clearance surveys*, which are intended to remove all tortoises from an impact area (USFWS 2009) must necessarily follow *presence-absence protocol surveys* (USFWS 2019), which are intended to detect tortoises and their signs and to estimate tortoise abundance within the action area. Therefore, determinations for clearance surveys should not be based on “modelled” or “historical” data, as cited above. Rather, these determinations must be based on presence-absence survey data specifically collected for this project during the spring and/or fall as identified in USFWS (2019).

We request that protocol-level surveys be performed at the area of the proposed project *and in any translocation area that are being considered* in the DEIS/DEIR. The results of these surveys should be published in the DEIS/DEIR and should include density estimates for each alternative assessed.

To determine the full extent of impacts to tortoises and to facilitate compliance with the FESA and CESA, authorized biologist(s) must consult with the USFWS to determine the action area for this project. The USFWS defines “action area” the Code of Federal Regulations and their Desert Tortoise Field Manual (USFWS 2009) as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02).”

The Council’s persisting concern is that proponents of solar projects continue to identify a single site for development without any attempt to identify alternative sites. As such, when focused studies reveal significant accumulations of tortoises on the proponent’s selected site, because there is only one site identified for the project, there is no opportunity to select an alternative site where impacts would be minimized.

Too often, a single impact footprint is identified, all surveys are restricted to that site, and no alternative sites are assessed, as required by NEPA. We are concerned that this project has already pre-determined the project footprint. As such, there may be other areas of lower tortoise densities where impacts could be minimized. However, those areas would not be considered if the project footprint is predetermined before survey data are available. As such, we request that more than one site, preferably three, be identified and analyzed in the DEIS/DEIR and that the alternative with the fewest impacts to tortoises be analyzed for development.

If that is not feasible, we ask that the “action area” of the proposed project be several times larger than the project footprint so that those portions of the site with fewer tortoises could be selected. Proponents of the Gemini Solar Site in southern Nevada, for example, ignored these recommendations, and displaced more than 100 tortoises, when based on their presence-absence tortoise surveys, a shift of the site to the east would have avoided many of those animals.

It is current management to require desert tortoise protocol surveys (USFWS 2019) on a given site, but all too often translocation sites are ignored. We feel strongly that protocol surveys should occur on multiple or enlarged sites as given above *and* on all proposed translocation sites, assuming tortoises will be translocated.

Mojave Desert Tortoise Impacts Analysis:

Analysis of Direct and Indirect Impacts: The alternatives analysis should include an economic analysis that provides the total cost of constructing the proposed project versus other alternatives, so the public can see how much the total cost of each alternative is. This would include an analysis of the costs of replacing all public resources that would be lost from granting the proposed project including direct, indirect, and cumulative impacts. Please note, this analysis would include habitat replacement or restoration costs including the time needed to achieve full replacement, not just acquisition, management, monitoring, and adaptive management costs.

The DEIS/DEIR should include a thorough analysis of the status and trend of the tortoise in the action area, tortoise conservation area(s), recovery unit(s), and rangewide. Tied to this analysis should be a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of solar development including construction, operation and maintenance, decommissioning, and restoration of the public lands. The DEIS/DEIR should use the data from focused plant and wildlife surveys in their analysis of the direct, indirect, and cumulative impacts of the proposed project on the Mojave desert tortoise and its habitat, other listed species, and species of special concern designated by USFWS, CDFW, and BLM.

We expect that the DEIS/DEIR will document how many acres would be impacted directly by solar arrays, access roads to the site, administration/maintenance buildings, parking areas, transmission towers, switchyards, laydown areas, internal access roads, access roads along gen-tie lines, a perimeter road, perimeter fencing, substations, battery storage (e.g., the project footprint). We also request that separate calculations document how many acres of desert tortoise habitats would be temporarily and permanently impacted both directly and indirectly (e.g., “road effect zone,” etc.) by the proposed Project. As given below, these acreages should be based on field surveys for tortoises not just available models.

Road Effect Zone: We request that the DEIS/DEIR include information on the locations, sizes, and arrangements of roads to the proposed project and within it, who will have access to them, whether the access roads will be secured to prevent human access or vandalism, and if so, what methods would be used. The presence/use of roads even with low vehicle use has numerous adverse effects on the desert tortoise and its habitats that have been reported in the scientific literature. These include the deterioration/loss of wildlife habitat, hydrology, geomorphology, and air quality; increased competition and predation (including by humans); and the loss of naturalness or pristine qualities.

Vehicle use on new roads and increased vehicle use on existing roads equates to increased direct mortality and an increased road effect zone for desert tortoises. Road construction, use, and maintenance adversely affect wildlife through numerous mechanisms that can include mortality from vehicle collisions, and loss, fragmentation, and alteration of habitat (Nafus et al. 2013; von Seckendorff Hoff and Marlow 2002).

In von Seckendorff Hoff and Marlow (2002), they reported reductions in Mojave desert tortoise numbers and sign from infrequent use of roadways to major highways with heavy use. There was a linear relationship between traffic level and tortoise reduction. For two graded, unpaved roads, the reduction in tortoises and sign was evident 1.1 to 1.4 km (3,620 to 4,608 feet) from the road. Nafus et al. (2013) reported that roads may decrease tortoise populations via several possible mechanisms, including cumulative mortality from vehicle collisions and reduced population growth rates from the loss of larger reproductive animals. Other documented impacts from road construction, use, and maintenance include increases in roadkill of wildlife species as well as tortoises, creating or increasing food subsidies for common ravens, and contributing to increases in raven numbers and predation pressure on the desert tortoise.

Please include in the DEIS/DEIR analyses, the five major categories of primary road effects to the tortoise and special status species: (1) wildlife mortality from collisions with vehicles; (2) hindrance/barrier to animal movements thereby reducing access to resources and mates; (3) degradation of habitat quality; (4) habitat loss caused by disturbance effects in the wider environment and from the physical occupation of land by the road; and (5) subdividing animal populations into smaller and more vulnerable fractions (Jaeger et al. 2005a, 2005b, Roedenbeck et al. 2007). These analyses should be at the population, recovery unit, and rangewide levels.

In summary, road establishment/increased use is often followed by various indirect impacts such as increased human access causing disturbance of species' behavior, increased predation, spread of invasive species that alters/degrades habitat, and vandalism and/or collection. The analysis of the impacts from road establishment and use should include cumulative effects to the tortoise with respect to nearby critical habitat and other TCAs/occupied habitats, areas identified as important linkage habitat for connectivity between nearby critical habitat units/TCAs/occupied habitats as these linkage areas serve as corridors for maintaining genetic and demographic connectivity between populations, recovery units, and rangewide (see *Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units* below). These and other indirect impacts to the Mojave desert should be analyzed in the DEIS/DEIR from project construction, operations and maintenance, decommissioning, and habitat restoration.

Desert Tortoise Habitat Linkages/Connectivity among Populations and Recovery Units: The DEIS/DEIR should analyze how this proposed project will impact the movement of tortoises relative to linkage habitats/corridors. The DEIS/DEIR should include an analysis of the minimum linkage design necessary for conservation and recovery of the desert tortoise (e.g., USFWS 2011, Averill-Murray et al. 2013, Hromada et al. 2020), and how the project, along with other existing projects, would impact the linkages between tortoise populations and all recovery units that are needed for survival and recovery. We strongly request that the environmental consequences section of the DEIS/DEIR include a thorough analysis of this indirect effect (40 Code of Federal Regulations 1502.16) and appropriate mitigation to maintain the function of population connectivity for the Mojave desert tortoise and other wildlife species. Similarly, please document how this project may impact proximate conservation areas, such as BLM-designated ACECs and USFWS-designated critical habitat.

Jurisdictional Waters in California: A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages. This analysis should be reviewed by the CDFW as part of the permitting process and a section 1600 Streambed Alteration Agreement acquired, if deemed necessary by CDFW.

Mitigation Plans

The DEIS/DEIR should include effective mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats. The mitigation should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation should include a fully-developed desert tortoise translocation plan, including protection of tortoise translocation area(s) from future development and human disturbance in perpetuity; raven management plan; non-native plant species management plan; fire prevention plan; compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use; and habitat restoration plan when the lease is terminated and the proposed project is decommissioned.

All plans should be provided in the DEIS/DEIR so the public and the decisionmaker can determine their adequacy (i.e., whether they are scientifically rigorous and would be effective in mitigating for the displacement and loss of tortoises and degradation and loss of tortoise habitat from project implementation). Too often, such plans are alluded to in the draft environmental document and promised later, which does not allow the reviewers to assess their adequacy, which is unacceptable. If not available as appendices in draft documents, all indicated plans must be published in the final environmental documents. Their inclusion is necessary to determine their adequacy for mitigating direct, indirect, and cumulative impacts, and monitoring for effectiveness and adaptive management regarding the desert tortoise. If these plans are not provided, it is not possible for BLM, other decisionmakers, and the interested public to determine the environmental consequences of the project to the tortoise.

These mitigation plans should include an implementation schedule that is tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include an effectiveness monitoring plan to collect data to determine whether success criteria have been met, and identify/implement actions that would be required if the mitigation measures do not meet the success criteria.

BLM Manual 6840: Special Status Species Management includes the following BLM directives (BLM 2008b) that are applicable to the Mojave desert tortoise:

6840.01 Purpose. The purpose of this manual is to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are: (1) species listed or proposed for listing under the FESA, and (2) species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the FESA, which are designated as BLM sensitive by the State Director(s).

6840.02 Objectives. The objectives of the BLM special status species policy are (1) to conserve and/or recover FESA-listed species and the ecosystems on which they depend so that FESA protections are no longer needed for these species, and (2), to initiate proactive conservation measures that reduce or eliminate threats to BLM-sensitive species to minimize the likelihood of and need for listing of these species under the FESA. With respect to the Mojave desert tortoise, we request that the Proposed action or other alternatives contribute to meeting objectives in BLM Manual 6840 – Special Status Species Management (BLM 2008b).

Translocation Plan - Translocated Tortoises & Translocation Sites: How many tortoises will be displaced by the proposed project? How long will translocated tortoises be monitored? Will the monitoring report show how many of those tortoises lived and died after translocation and over time? Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises? Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? How will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions that may exacerbate translocation success? Were tortoises translocated to a site where they would be protected from threats (e.g., off-highway vehicles, future development, etc.)? These questions should be answered in the Environmental Consequences section of the DEIS/DEIR.

The project proponent should implement the USFWS' Translocation Guidance (USFWS 2020) and coordinate translocation with BLM and CDFW. In addition, the proponent's project-specific translocation plan should be based on current data and developed using lessons learned from earlier translocation efforts (e.g., increased predation, drought). (see *Desert Tortoise Translocation Bibliography Of Peer-Reviewed Publications*¹ in the footnote).

The Translocation Plan should include implementation of a science-based monitoring plan approved by the USFWS and CDFW that will accurately assess these and other issues to minimize losses of translocated tortoises and impacts to their habitat. For example, the health of tortoises may be jeopardized if they are translocated during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions are present at the time of project development, we request that the proponent confer with the USFWS and CDFW immediately prior to translocating tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought. One viable alternative if such adverse conditions exist is to postpone site development until which time conditions are favorable to enhance translocation success.

Moving tortoises from harm's way, the focus of the Translocation Guidance, does not guarantee their survival and persistence at the translocation site, especially if it will be subject to increased human use or development. In addition to the Translocation Guidance and because translocation sites are mitigation for the displacement of tortoises and loss of habitat, these sites should be managed for the benefit of the tortoise in perpetuity. Consequently, a conservation easement or other durable legal designation should be placed on the translocation sites. The project proponent should fully fund management of the site to enhance it for the benefit of the tortoise in perpetuity.

Tortoise Predators and a Predator Management Plan: Common ravens are known predators of the Mojave desert tortoise and their numbers have increased substantially because of human subsidies of food, water, and sites for nesting, roosting, and perching to hunt (Boarman et al. 2006). Coyotes and badgers are also predators of tortoises. Because ravens can fly at least 30 miles in search of food and water daily (Boarman et al. 2006) and coyotes can travel an average of 7.5 miles or more daily (Servin et al. 2003), this analysis should extend out at least 30 miles from the proposed project site.

The DEIS/DEIR should analyze if this new use would result in an increase in common ravens and other predators of the desert tortoise in the action area. During construction, operations and maintenance, decommissioning, and restoration phases of the proposed project, the BLM should require science-based management of common raven, coyote, and badger predation on tortoises in the action area. This would include the translocation sites.

For local impacts, the Predator Management Plan should include reducing/eliminating human subsidies of food and water, and for the common raven, sites for nesting, roosting, and perching to address local impacts (footprint of the proposed project). This includes buildings, fences, and other vertical structures associated with the project site. In addition, the Predator Management Plan should include provisions that eliminate the pooling of water on the ground or on roofs.

¹ https://www.fws.gov/nevada/desert_tortoise/documents/reports/2017/peer-reviewed_translocation_bibliography.pdf

The Predator Management Plan should include science-based monitoring and adaptive management throughout all phases of the project to collect data on the effectiveness of the Plan's implementation and implement changes to reduce/eliminate predation on the tortoise if existing measures are not effective.

For regional and cumulative impacts, the BLM should require the project proponent to participate in efforts to address regional and cumulative impacts. For example, in California, the project proponent should be required to contribute to the National Fish and Wildlife Foundation's Raven Management Fund to help mitigation for regional and cumulative impacts. This Fund was established in 2010 and unfortunately has not revised its per acre payment fees to reflect increased labor and supply costs during the past decade to provide for effective implementation. The National Fish and Wildlife Foundation should revise the per acre fee.

We request that for any of the transmission options, the project use infrastructure (particularly towers) that prevent raven nesting and perching for hunting. For example, for gen-ties/transmission lines the tubular design pole with a steep-pointed apex and insulators on down-sloping cross arms is preferable to lattice towers, which should not be used. New fencing should not provide resources for ravens, like new perching and nesting sites.

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010), "The BLM's biological assessments and the USFWS' biological opinions for the CDCA plan amendments reiterate the need to address the common raven and its potential impacts on desert tortoise populations." Please ensure that all standard measures to mitigate the local, regional, and cumulative impacts of raven predation on the tortoise are included in this DEIS/DEIR, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase (USFWS 2010).

Fire Prevention/Management Plans: The proposed project could include numerous infrastructure components that have been known to cause fires. Lithium-ion batteries at the project site have the potential to explode and cause fires and are not compatible with using water for fighting fires. Photovoltaic panel malfunctions have caused vegetation to burn onsite. We request that the DEIS/DEIR include a Fire Prevention Plan in addition to a Fire Management Plan specifically targeting methods to deal with explosions/fires produced by these batteries/panels as well as other sources of fuel and explosives on the project site.

Habitat Compensation Plan: When the project proponent seeks an incidental take permit from the CDFW, because their project would result in take of a listed species under CESA (e.g., Mojave desert tortoise), compensatory mitigation would be required. The mitigation lands must be occupied by the species and secured and managed in perpetuity for the listed species. Hence, the DEIS/DEIR should include a Habitat Compensation Plan for the loss/degradation of habitat. This plan should calculate how it will fully mitigate for the impacts of the proposed project including direct, indirect, cumulative, and temporal impacts.

Climate Change and Non-native Plants

Climate Change: We request that the DEIS/DEIR address the effects of the proposed action on climate change warming and the effects that climate change may have on the proposed action. For the latter, we recommend including: an analysis of habitats within the project area that may provide refugia for tortoise populations; an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge that the BLM require the project proponent to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the project area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire prevention and fire response.

Impacts from Proliferation of Nonnative Plant Species and Management Plan: The DEIS/DEIR should include an analysis of how the proposed project would contribute to the spread and proliferation of non-native invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed project may affect the frequency, intensity, and size of human-caused and naturally occurring fires. For reasons given in the previous paragraph, we strongly urge that the BLM require the project proponent to develop and implement a management and monitoring plan for nonnative plant species. The plan should integrate management/enhancement of native vegetation with fire prevention and fire response to wildfires.

Hydrology and Water Quality

Regarding water quality of surface and ground water, the DEIS/DEIR should include an analysis of the impacts of water acquisition, use, and discharge for panel washing, potable uses, and any other uses associated with this proposed project, and cumulative impacts from water use and discharge on native perennial shrubs and annual vegetation used for forage by the Mojave desert tortoise, including downstream and downstream impacts. The DEIS/DEIR should analyze how much water is proposed to be used during construction and operation; how any grading, placement, and/or use of any project facilities will impact downstream/downslope flows that are reduced, altered, eliminated, or enhanced. This analysis should include impacts to native and non-native vegetation and habitats for wildlife species including the Mojave desert tortoise, for which washes are of particular importance for feeding, shelter, and movements.

Therefore, we request that the DEIS/DEIR include an analysis of how water use during construction, operations and maintenance, decommissioning, and habitat restoration will impact the levels of ground water in the region. These levels may then impact surface and near-surface flows at springs, seeps, wetlands, pools, and groundwater-dependent vegetation in the basin. The analyses of water quality and quantity of surface and ground water should include appropriate measures to ensure that these impacts are fully mitigated, preferably beginning with avoidance and continuing through CEQ's other forms of mitigation (40 CFR 1508.20).

Federal Land Policy and Management and Federal Endangered Species Act

Federal Land Policy and Management Act (FLPMA): In 1976, Congress passed the FLPMA and established the CDCA Plan “to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple uses and sustained yield, and the maintenance of environmental quality.” Congress further declared “the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed; the use of all California desert resources [including rare and endangered species of wildlife, plants, and fishes] can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations...”

Congress wrote a lengthy definition of “multiple use” for the management of public lands and their various resource values. The definition included “... the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”

Congress defined “sustained yield” as the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. The Mojave desert tortoise and its habitats are renewable resources.

The definition of “environmental quality” is a set of properties and characteristics of the environment, either generalized or local, as they impinge on human beings and other organisms. It is a measure of the condition of an environment relative to the requirements of one or more species and or to any human need or purpose. Thus, BLM must consider the quality or condition of the environment of the Mojave desert tortoise with respect to the species’ requirements for persistence and must maintain this habitat quality.

The Council believes that BLM’s management of the Mojave desert tortoise and its habitats in California, in particular, is not in compliance with FLPMA or the purposes for establishing the CDCA in California. The large number of non-viable populations and downward trend in population densities for the Mojave desert tortoise in the CDCA confirm non-compliance with the “immediate and future protection of public lands,” “conserving resources for future generations,” and definitions of multiple use, sustained yield, and environmental quality.

Section 7(a)(1) of the Endangered Species Act: Section 7(a)(1) of the Endangered Species Act states that all federal agencies “...shall... utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act.” In Section 3 of the FESA, “conserve,” “conserving,” and “conservation” mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition...”

The Council believes that the data given herein demonstrate that BLM's management of the Mojave desert tortoise and its habitat under the CDCA Plan and Plan Amendments has not been effective in meeting BLM's Section 7(a)(1) mandate of carrying out programs for its conservation. To meet its Section 7(a)(1) responsibilities, the BLM needs to adopt and implement the management actions of the one population of the Mojave desert tortoise in California that is increasing, which is managed by the National Park Service (NPS). The NPS' land management practices are closer to managing areas of land as reserves, which is what the 1994 recovery plan (USFWS 1994b) described as part of the recovery strategy for the Mojave desert tortoise.

While BLM designated Desert Wildlife Management Areas (DWMAs) as one part of the recovery strategy, it did not implement the other parts of the recovery strategy. According to the Recovery Plan, DWMAs were to be managed as reserves; that is, they were areas of land to keep, save, preserve, or protect tortoises and their habitats. BLM not only did not identify and implement needed recovery actions within each DWMA to manage the DWMAs as protected areas for the Mojave desert tortoise, in California, DWMAs were eliminated with the BLM's Record of Decision for the Desert Renewable Energy Conservation Plan (DRECP) (BLM 2015).

When analyzing and implementing aspects of the project, we request that BLM demonstrate how it is contributing effectively to the conservation and recovery of the Mojave desert tortoise, in California, the Colorado Desert Recovery Unit, and Chuckwalla CHU/TCA/population. We request that BLM show how mitigation for the project will do more than offset all direct, indirect, and cumulative impacts so that the status of the Mojave desert tortoise as described herein will improve. By providing this information, BLM would demonstrate its compliance with section 7(a)(1) of the FESA for the Mojave desert tortoise.

Cumulative Effects

With regards to cumulative effects, the DEIS/DEIR should list and analyze all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands. The Council asks that the relationship between this proposed project and the DRECP (BLM 2015) be analyzed, as the project occurs within a designated Development Focused Area (DFA) identified in the final Record of Decision by the BLM for the DRECP (BLM 2016). We also expect that the environmental documents will provide a detailed analysis of the "heat sink" effects of solar development on adjacent desert areas and particularly Mojave desert tortoise in addition to climate change.

In the cumulative effects analysis of the DEIS/DEIR, please ensure that the CEQs "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 tortoise and its habitats. 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." For example, the DEIS/DEIR should include data on the estimated number of acres of tortoise habitats degraded/lost and the numbers of tortoises that may be lost to growth-inducing impacts in the region.

For federal projects where the lead agency funds, authorizes, or carries out some part of the project, CEQs guidance on how to analyze cumulative environmental consequences is given in the 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.

To help BLM understand the complexity of the cumulative and interactive nature of multiple anthropogenic threats to desert tortoise populations and to help develop BLM's analysis of cumulative impacts in the DEIS for this project, we have included a map of some of these multiple threats and their relationships to other threats (Tracy et al. 2004) (please see Figure 1).

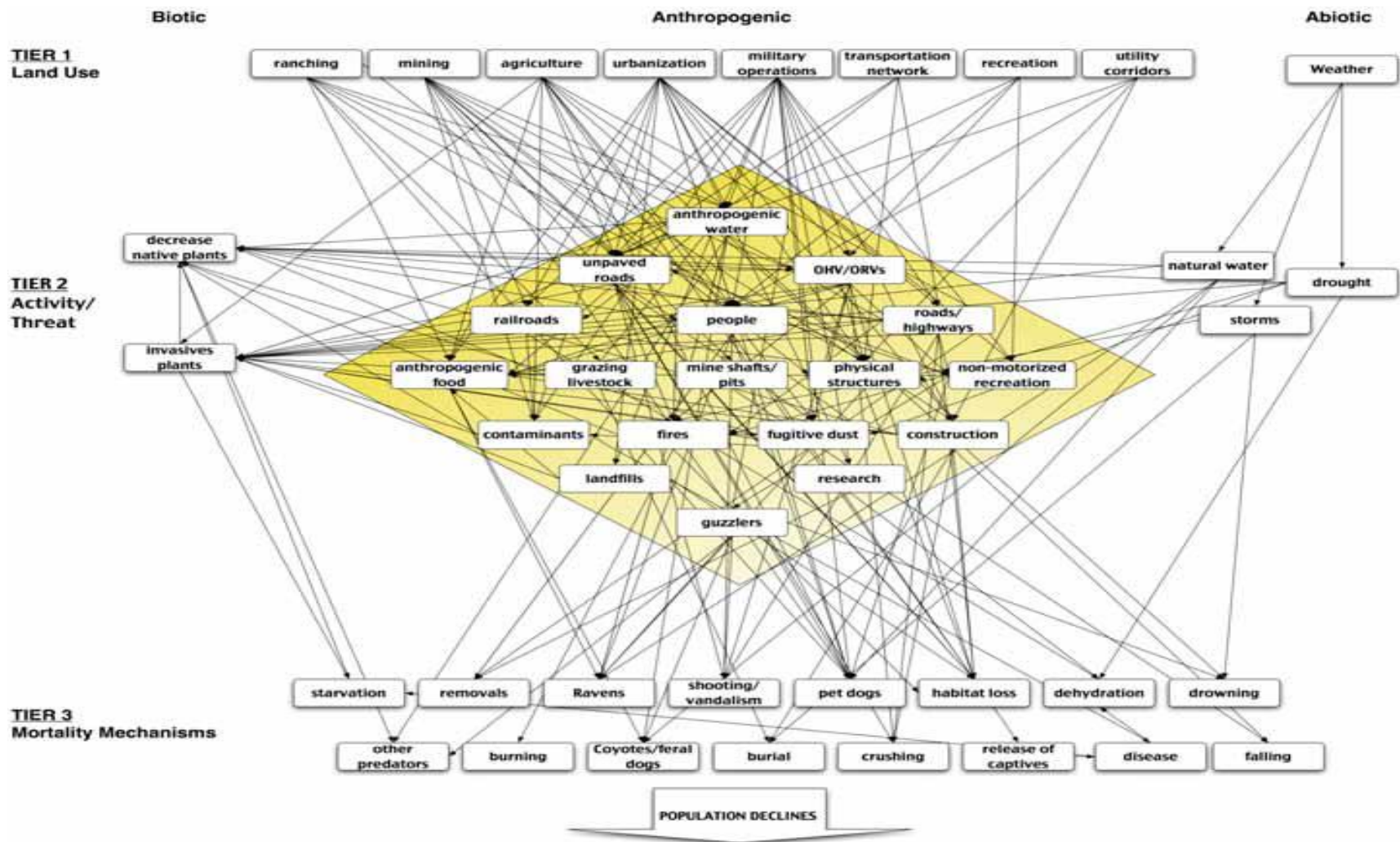


Figure 1. Network of threats demonstrating the interconnectedness between multiple human activities that interact to cause mortality and prevent recovery of tortoise populations. Tier 1 includes the major land use patterns that facilitate various activities (Tier 2) that impact tortoise populations through a suite of mortality factors (Tier 3). Just one land use results in several activities that are threats to the tortoise and cause numerous mortality mechanisms (from Tracy et al. 2004).

Note that CEQ includes analysis of interactive and synergistic impacts with cumulative impacts. We request that the DEIS/DEIR (1) include these eight principles in its analysis of cumulative impacts to the Mojave desert tortoise; (2) address the sustainability of the tortoise in the region/given the information on the *Status of the Mojave Desert* given herein; and (3) include mitigation along with monitoring and adaptive management plans that protect desert tortoises and their habitats during construction, operation, maintenance, and decommissioning of approved facilities.

In addition, we request that BLM add this project and its impacts to a database and geospatial tracking system for special status species, including Mojave desert tortoises, that track cumulative impacts (e.g., surface disturbance, paved and unpaved routes, linear projects, invasive species occurrence, herbicide /pesticide use, wildfires, etc.), management decisions, and effectiveness of mitigation for each project. Without such a tracking system, BLM is unable to analyze cumulative impacts to special status species (e.g., desert tortoises) with any degree of confidence.

We appreciate this opportunity to provide scoping 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 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 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.

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