



DESERT TORTOISE COUNCIL

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Via email only

Date: July 7, 2024

Tim Wheeler, Planner
County of Riverside TLMA Planning Department
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Email: TWheeler@rivco.org

RE: Easley Solar Partially Recirculated Draft Environmental Impact Report

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."

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

We appreciate that the Council was contacted in an email from the proponent’s consultant on 5/24/2024 with the notice of this Partially Recirculated Draft Environmental Impact Report (PR DEIR), dated May 2024. Unless otherwise noted, the page numbers referenced herein are quotes from the PR EIR *given in italics* followed by our comments. We use **bold font** and ~~strike-out~~ fonts for a few recommended changes to the text. The Council has a history with this project, providing scoping comments on 10/23/2023¹ relative to the portion of the project on public lands administered by the Bureau of Land Management (BLM) and formal comments on 3/11/2024² to the Riverside County Planning Department (County) relative to the Draft EIR (DEIR), which are footnoted below and incorporated herein by reference.

First, we would like to say that in the last 13 years of reviewing and commenting on proposed projects, the County’s proactive responses to our input may be unprecedented. In our letter of 3/11/2024, we identified eight monitoring plans that were missing from the DEIR. We now see in the PR DEIR that there are 15 new monitoring plans, including the eight specific plans that we asked to be included. We also appreciate other recommended changes such as the elimination of lattice-type towers and use of monopoles, use of underground gen-tie lines, and an industrial rooftop solar alternative, which we definitely support as an alternative to developing solar facilities in tortoise habitats. So, thanks for your proactive, conscientious response to our (and other reviewers’) comments. That being said, the focus of this letter is to review those new monitoring plans and other components of the PR DEIR (e.g., best management practices) to continue to provide helpful feedback.

¹ <https://www.dropbox.com/scl/fi/et2uo4wheahljyzpul73o/Easley-Renewable-Energy-Project.10-23-2023.pdf?rlkey=szm1ruh178er2ke5g69xqf7hg&dl=0>

² <https://www.dropbox.com/scl/fi/syqjih46lvqm22y4oem49w/Easley-Renewable-Energy-Project-DEIR.3-11-2024.pdf?rlkey=kuogh9140rinlsgvi5rbc55p7&dl=0>

Specific comments for the PR DEIR:

Page 2-15, Section 2.4.3.6: *Desert tortoise, mammal, and burrowing owl clearance surveys would be conducted following* **within the fence right-of-way prior to fence installation**. If fence installation requires heavy equipment use, including blading vegetation within the right-of-way (ROW), there is the potential for take of tortoises to occur. Therefore, as indicated in **bold** and ~~strike-out~~ font above, we feel it is essential that clearance surveys be performed within the fence ROW *before* there is any ground disturbance. This is consistent with page 1 of the tortoise translocation plan (Appendix P), which states, “*Relocation and translocation of tortoises may be necessary during fence construction [emphasis added]*” and page 6 of Appendix P that calls for “*Survey for desert tortoise along planned fence routes.*”

Page 2-18, trenches and auger holes: Please be sure that best management practices (BMPs) include frequent checks of open trenches and auger holes by biological monitors and/or authorized biologists to rescue any tortoises and other wildlife that may have become entrapped. If the situation allows, all such trenches and holes should be fenced and ramps installed to allow animals to escape on their own.

Page 2-23, fencing: We note on this page that “wildlife-friendly fences” would be installed as follows: “*This [wildlife-friendly fence along the Pinto Wash Linkage] would allow desert tortoise and other wildlife passage through portions of the Project site for the life of the Project. In areas where wildlife-friendly fencing is implemented, the security fence would leave a 6- to 8-inch gap between the lower fence margin (rail or mesh) and the ground.*” Please amend this intended measure to commit the proponent to monitoring the fence to ensure that windblown and fluvial sand deposits do not fill in the gaps.

Then, on page 3.5-70, LUPA-BIO-IFS-1 to -9 (Individual Focus Species (IFS): Desert Tortoise) requires that “*Exclusion fencing must be installed around the perimeter of long-term activities in accordance with the Desert Tortoise Field Manual (USFWS, 2009) and clearance surveys, fence monitoring, and construction monitoring must be performed by a designated biologist (LUPA-BIO-IFS-4, -5).*” Since wildlife-friendly fences have gaps along the bottom side and exclusion fences are necessarily impermeable and typically buried in trenches, please clarify in the Final EIR the temporal and physical relationships between these two mutually-exclusive fence types as planned for the proposed project. We think that a map or figure showing the locations of permanent impermeable fences and wildlife-friendly permeable fences would help clarify the locations and intent of these prescriptions.

In this same section on page 3.5-70, we read the following: “*By following agency protocols for tortoise surveying, handling, and relocating, and by using qualified and permitted biological staff, individual desert tortoise would be detected for avoidance and monitoring, and mortality and injury during construction and relocation would be reduced [emphasis added].*” These protective measures are clearly intended to minimize and hopefully avoid impacts to tortoises during the initial construction phase. If exclusion fences are to be replaced later by wildlife-friendly fences that allow tortoises to immigrate onto the site, please be sure that protective measures are identified and implemented to protect those tortoises that have entered into the area, perhaps attracted by water runoff associated with cleaning panels, and particularly if vegetation is to be subsequently mowed. For example, during the maintenance phase if subsequent mowing is anticipated, we recommend that new clearance surveys be performed prior to mowing to ensure no tortoises will be injured or killed.

Page 2-24, decommissioning: Given that the goal of decommissioning is “...*the site would be restored to its pre-solar facility conditions,*” we recommend that a bullet be added to the list on page 2-24 that commits the proponent to use advanced restoration techniques to promote revegetation, which go beyond simple scarification, as given in the final bullet. As pertinent resources, we provide two important papers on desert restoration (Abella and Berry 2016, Abella et al. 2023) in the literature cited section of this letter, along with links to access these resources. We trust that techniques given in these two papers and literature that they reference will facilitate successful restoration and help inform the Vegetation Resources Management Plan given in Appendix S of the Final EIR and to implement Land Use Plan Amendment (LUPA) BIO-7. However, as new research continues to improve the efficacy of restoration efforts in the desert including restoration of the soil’s biological components needed for successful revegetation of native desert plants, we recommend that the restoration implemented use the methods identified in the scientific literature at the time of restoration.

Page 2-25, Section 2.7.2, Best Management Practices: *Utilize ‘Overland Travel’ as much as possible instead of high-impact methods like disk and roll or grading **only within fenced areas and other areas that have been previously inspected by tortoise clearance surveys.*** It is a longstanding BMP to discourage cross country vehicle travel in areas that may still be occupied by tortoises, so please clarify that such overland travel will be restricted to areas previously surveyed for and cleared of tortoises, with suggested wording provided in bold font.

Page 2-26, Section 2.7.2, Best Management Practices: *If possible, bend and pin **temporary tortoise fencing** instead of trenching it in, to minimize disturbance along the fence line.* Appendix P (Desert Tortoise Protection and Relocation Plan; DTPRP) clearly differentiates between “permanent” and “temporary” fencing, which this BMP does not. Please be sure to clarify that this pinned-down approach to fencing applies to temporary construction fences, not to permanent perimeter fences. We appreciate the intent of this BMP to minimize disturbance, but point out that this kind of temporary pinned fence is more susceptible to being undermined by erosion from rain events than are permanent fences that are installed using trenches (USFWS 2009). Therefore, we recommend that a BMP be added that commits the proponent to provide regular fence checks (daily or weekly as conditions warrant), particularly after rain events, and that breaches in the fence be repaired as soon as possible. We note that this guidance is given in the DTPRP in Section 4.6 on page 12 but is missing from the text of the PR DEIR.

Page 3.5-30, LUPA-BIO-5: “*LUPA-BIO-5 (Worker Education) requires that all activities implement a BLM-approved worker education program that describes biological resources and how to identify them, their legal protections, minimization and mitigation measures, and reporting requirements. Comprehensive training of on-site workers would ensure that they limit ground disturbance to work areas and that they avoid sensitive habitats and special-status species.*” This LUPA would be strengthened by clarifying the temporal aspect of worker education programs. Importantly, the proponent should commit to perform worker education programs for all new employees and contractors as they are employed and annual refresher education programs throughout the life of the project to ensure that all facilities workers are informed of protective measures that govern their daily work activities.

Page 3.5-68: “As a state and federally listed threatened species...” Please note that as of April 2024, the Mojave desert tortoise has been uplisted to an “Endangered” species by the California Fish and Game Commission and retains its federal listing as “Threatened,” as the PR DEIR has indicated. This change should be made here and elsewhere in the Final EIR.

Specific comments for the Desert Tortoise Protection and Relocation Plan (Appendix P):

Page 3.5-10 of the PR DEIR states, “*Most of the desert tortoise sign was concentrated within the southwest portion of the Easley Project site [emphasis added].*” Please note that on page 5 of the Desert Tortoise Protection and Relocation Plan (DTPRP), it states that “*Most of the desert tortoise sign was concentrated within the south-central portion of the Project site [emphasis added].*” We assume the DTPRP is likely more accurate and the Final EIR would need to be changed to ensure the correct part of the site is identified for the location of the nine carcass locations. Have either CDFW or USFWS biologists indicated whether the nine carcasses are to be removed from the site or will they be bladed under?

We appreciate that page 1 of the DTPRP defines relocation (in comparison to translocation) as moving tortoises no more than 300 meters from the point of detection. We then read on page 6 that, “Consistent with USFWS [U.S. Fish and Wildlife Service] 2020 Guidance on Translocation, any tortoises that are relocated out of harm’s way would be placed within 300 meters of their capture locations in suitable habitat.”

However, we were unable to find important information governing this recommendation. For example, must the relocation of tortoises be restricted to adjacent BLM lands or lands owned by the proponent, or may they be moved onto other private lands not owned by the proponent? In the Final EIR, please clarify the restrictions that govern the relocation of tortoises to adjacent recipient sites. Additionally, please clarify in the DTPRP how tortoises less than 100 mm are to be monitored when released, by whom, for how long, and measures to be implemented if the tortoises move into harm’s way or try to reenter the site, resulting in fence-walking, which can expose them to lethal temperatures. We see that larger tortoises are to be monitored with radio transmitters, but Section 8.2.1 of the DTPRP needs to be modified to explain exactly how these smaller tortoises would be tracked, and particularly for how long.

Page 8, Section 4.1, Pre-Construction Surveys: The section states, “*Qualified biologists will walk along linear transects throughout the potential fencing disturbance area a minimum of two times unless tortoises are found, in which case a third survey may be required, spaced 5 meters apart and 20 meters from the fence centerline (total = 40 meters, 130 feet) with an additional buffer area of 30 meters (100 feet), spaced at 10 meters.*” Chapter 6 of the USFWS (2009) Field Manual, page 6-1, states, “Clearance surveys at the project site must consist of at least 2 consecutive surveys of the site [emphasis added]. If desert tortoises are found during the second pass, the USFWS and appropriate State wildlife agency may require a third survey.” Please be sure that the Final EIR and subsequent guidance documents emphasize that double coverage clearance surveys are more rigorous than one-time presence-absence surveys, and that it is clearance surveys, not presence-absence surveys, that are required immediately prior to brushing or mowing the site. Details of clearance survey procedures are given on pages 10 and 11 of the DTPRP but are not so detailed or clear in the PR DEIR, so please clarify them in the Final EIR.

In addition, we prefer that the site be mowed and not brushed, because this method results in greater survival of the vegetation present on the site.

Page 11: We read the following statement, *“If juvenile tortoises are found during the first or second pass, additional focused searches will be performed in the immediate area of where it was found. It is recommended transects of 2.5 meters or less are walked within 250 meters of the located sign to maximize the chance of locating a small individual.”* We note that this is a loose interpretation of the guidance given by the USFWS (2009), which states, “If desert tortoises are found during the second pass, the USFWS and appropriate State wildlife agency may require a third survey.” The implication of this guidance is that the *entire site*, not just areas proximate to discovered juvenile tortoises, are to be resurveyed. It is erroneous to assume that additional juvenile tortoises will only be located near other juveniles found during the second survey; they may occur anywhere. In any case, the biological consultant must contact both USFWS and CDFW for guidance concerning subsequent surveys if a tortoise is found during the final survey.

Page 16, Section 6.4, Post-Clearance Procedures: The first paragraph states, *“After clearance and relocation are completed, there remains a possibility of finding tortoises within the Project site, especially juvenile tortoises. A Biological Monitor would monitor initial clearing and grading activities for any tortoises missed during the clearance survey. Should a tortoise be discovered, an Authorized Biologist would be responsible for translocating it per this Plan. **In accordance with the clearance survey protocol, initial and grading activities would cease, and the entire site would be surveyed again for additional tortoises.**”* This bold text needs to be added to the DTPRP in this section so the proponent knows they must comply with USFWS (2009) guidance for clearance surveys.

Page 16: The last paragraph at the bottom of this page states, *“Any tortoise found in the solar field after construction and during operations, prior to passage fencing installation, is most likely to have entered the site through an opening in the exclusion fence. It is likely, although not impossible, that any tortoise found during operations would not yet have constructed a burrow and would have only recently entered the site. Any such tortoise would be relocated/translocated per this plan.”* Finding such a tortoise may occur many years after construction. However, the DTPRP falls short of explaining who would handle such tortoises, if there are to be on-call biologists, and just how the tortoises would be treated until which time an authorized biologist arrives. We recommend that Section 9. Operations and Management be amended to explain if onsite personnel will be authorized to rescue and hold such tortoises or to watch them until which time a formally-approved authorized biologist arrives to relocate or translocate the animal(s).

Specific comments for the Raven Management Plan (Appendix Q):

We note that neither the Raven Management Plan (RMP) nor the PR DEIR commits the project proponent to participating in the National Fish and Wildlife Foundation’s Raven Management Fund for regional and cumulative impacts. We recommend that the RMP be amended to commit the proponent to providing the appropriate fees to this fund.

Specific comments for the Wildlife Protection and Relocation Plan (Appendix R):

It would be appropriate to add page numbers to the Wildlife Protection and Relocation Plan (WPRP) to facilitate referencing specific sections. Note in Section 2.1 what would be page 3 western burrowing owl is referred to as a “California species of special concern” (CSC species). On March 5, 2024, six conservation groups, including the Center for Biological Diversity, Santa Clara Valley Audubon Society, and Defenders of Wildlife, petitioned the California Fish and Game Commission to list the western burrowing owl (*Athene cunicularia hypugaea*) as endangered or threatened under the California Endangered Species Act (CESA). Please make this correction here and elsewhere as needed. Additionally, it is prudent to contact CDFW to see if its status as a candidate species for listing warrants more protection than is afforded to a CSC species.

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 Riverside County Planning Department that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above.

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

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Literature Cited

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- [USFWS] U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). December 2009. Region 8, Sacramento, California. <https://www.fws.gov/sites/default/files/documents/Desert-Tortoise-Field-Manual.pdf>