

DESERT TORTOISE COUNCIL

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Via email only

12 July 2023

Jon Braginton, Contract Planner
County of San Bernardino
Land Use Services Department - Planning Division
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San Bernardino, CA 92415
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RE: Initial Study and Mitigated Negative Declaration for 28 Palms Ranch Campsite Project -
Conditional Use Permit (PROJ-2022-00056)

Dear Mr. Braginton,

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 that you email to us 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 the San Bernardino County Land Use Services Department (County) contacted the Council directly so we would have the opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species listed as threatened under the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA) during activities funded, authorized, or carried out by the County, which we assume will be added to the Decision

Record for this project as needed. 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 had 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.

We have reviewed the Initial Study for the PROJ-2022-00056 28 Palms Ranch Campsite Project – Conditional Use Permit APN: 0609-121-15 & 0609-121-14), and offer the following comments and attachment for your consideration, placement into the permanent administrative/decision record for this project, and incorporation into the final California Environmental Quality Act (CEQA) document.

Description of Proposed Project

According to the Initial Study, the Applicant, Erin Stevenson of 28 Palms Ranch, is requesting a Conditional Use Permit (CUP) to construct and operate "an Authentic Mongolian Yurt camping destination," a commercial use. The project site has a land use of Rural Living (RL) and is zoned for Rural Living – 5 Acre Minimum (RL-5).

The Applicant has partially developed the 10-acre, 2-parcel project site – the easterly parcel currently has 6 Yurts (APN 0609-121-14) and the adjoining westerly parcel (APN 0609-121-15) currently has 3 undeveloped Yurt structures, all without an approved CUP. The Applicant has been directed by the County to cease all further expansion of the project until California Environmental Quality Act (CEQA) clearance is obtained and is approved under the CUP. Once the CUP is approved, the project would be required to adhere to all mitigation in the CEQA Mitigation Monitoring Reporting Plan (MMRP) and Conditions of Approval from all County Departments as codified in the CUP.

When completed the project would have 5 new and 6 existing Yurts, each with full camping accommodations including, but not limited to, barbecues, covered picnic tables, outdoor showers, indoor restrooms, and open fire rings. Each Yurt would be about 19 feet in diameter, about 7.5 feet in height, and installed on concrete slabs that do not require mass grading. The outdoor showers

would have insulated plumbing to protect against freezing temperatures in the winter months. The Applicant would be required to install each of these amenities in conjunction with the new 5 Yurts on the westerly parcel, while the existing 6 Yurts on the easterly parcel would be brought up to County standards. Parking would accommodate 32 vehicles, 2 parking spaces for each Yurt and 10 overflow parking spaces. The parcels have continuous roads/driveways meandering throughout the 10 acres to provide vehicle access to each Yurt.

Restrooms at the 6 existing Yurts would use aboveground HomeBiogas generators to dispose of wastewater and food products. If not approved, the HomeBiogas system would be used in conjunction with 4 new septic systems to process solid waste from each bathroom. Grey water from the sinks and showers would connect directly, through new lateral piping, to the new septic systems sites. For the 5 new Yurts, the proposed project would install up to 5 new HomeBiogas Generators. Each septic systems would service 2 to 3 Yurts.

On-site utilities are water service by the City of Twentynine Palms and electrical service by Southern California Edison (SCE). These utility services would be extended to the 5 new Yurts. Construction would require trenching for the utility lines (2 to 3 feet deep) and septic system (10 feet deep).

The proposed project would retain the two existing single-family homes, one on each parcel. One house would be used by the owner to manage the campground. The other would be used by the owner's family or as a long-term rental.

There is no description of solid waste disposal/containment at the project site.

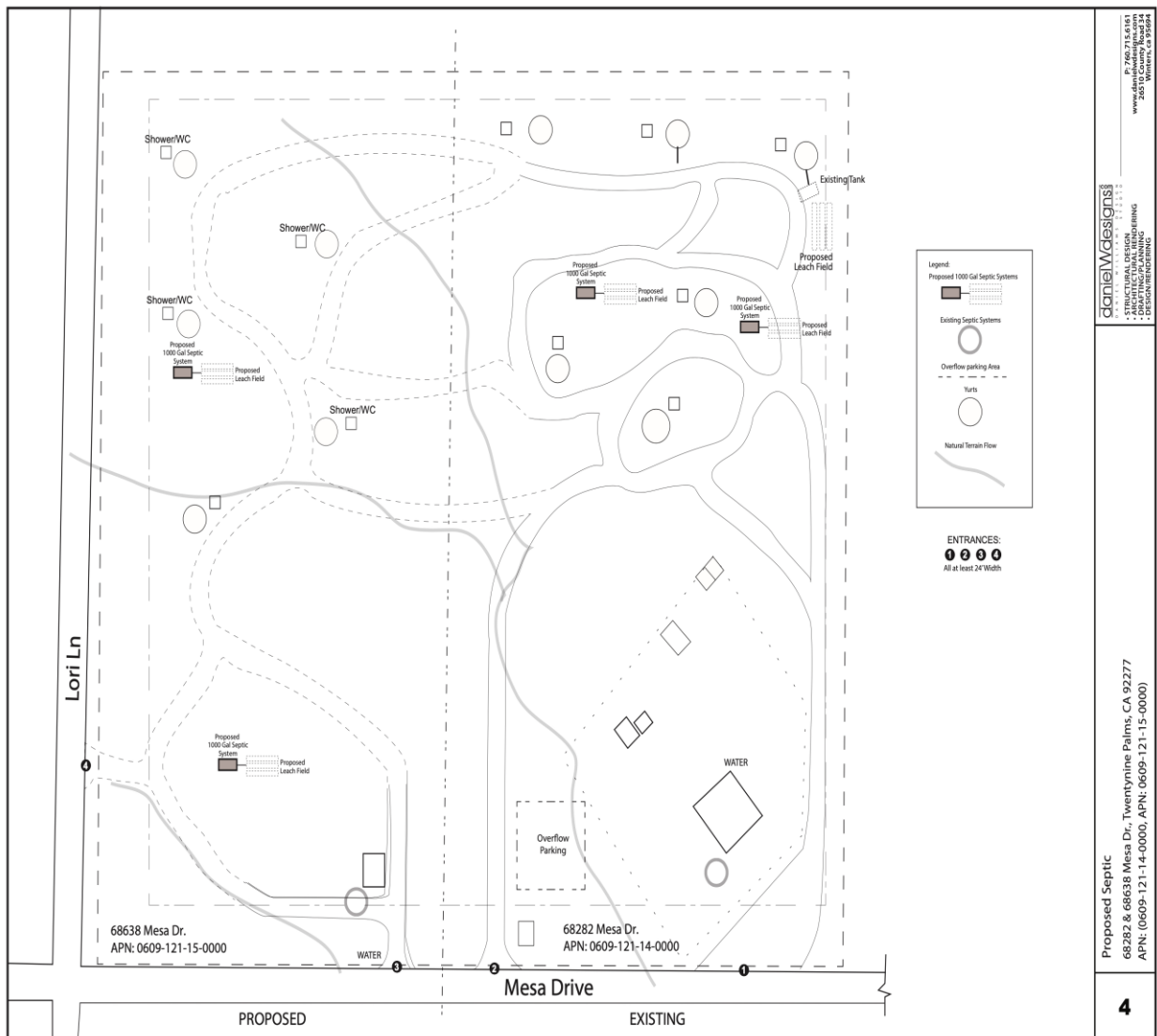
The internal roadways to the Yurts would be installed through surface grading with a small tractor to enable the continuation of internal access roads from the easterly parcel to the westerly parcel. During this effort, vegetation will be avoided to the extent feasible to maintain the native landscape. No asphalt or paving is proposed, and access roads and parking areas will be surface graded. If fugitive dust is observed, access roads will be covered with compacted pea gravel, sprayed with water, or utilize other means of dust minimization.

Desert-appropriate landscaping will be installed throughout the whole of the site, including non-invasive, shrubs and other plants native to the region.

Ingress and egress from the site is along Mesa Drive. A new entrance will be provided along Lori Lane. Site access would be clearly marked and illuminated with solar lights for evening use and for the internal onsite accessible roadways.

Construction would begin in July of 2023 and be completed by August of 2023.

The proposed project would be located at 68638 and 68682 Mesa Drive, Desert Heights, California, within the Rural Living (RL) Land Use Community and Zoning District (RL-5), City of Twentynine Palms Sphere of Influence (SOI), unincorporated community of Desert Heights, San Bernardino County, California. It is within the County's designated area for Biotic Resources for Burrowing Owl and Desert Tortoise – Medium Population and the Western Mojave Recovery Unit for the tortoise.



Comments on the Initial Study

Additional Approvals That May Be Required By Other Public Agencies

In this section of the Initial Study is the following statement:

“The U.S. Fish and Wildlife Service (USFWS) and/or CDFW may need to be consulted regarding threatened and endangered species that may occur within an area of potential effects (APE). This could include consultations under the Fish and Wildlife Coordination Act.”

Instead of “consultations under the Fish and Wildlife Coordination Act,” we believe the County meant to say “compliance with the Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), and Migratory Bird Treaty Act.” The Fish and Wildlife Coordination Act is for federal projects affecting surface waters.

Under the FESA and CESA, threatened and endangered species are protected from “take.” Take includes hunting, capturing, trapping, wounding, harming, harassing, and may include loss of habitat. Similarly, migratory birds are protected from “take” under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Codes.

The project site is in an area designated for Biotic Resources for Burrowing Owl and Desert Tortoise, the owl is a migratory bird and the tortoise is a threatened species under FESA and CESA.

The Council recommends that the County’s CEQA document be revised to reflect the protections afforded these species under this County designation, and protections afforded these and other special status species (e.g., kit fox, American badger, etc.) and migratory birds under FESA, CESA, MBTA and California Fish and Game Codes. Given their distribution they are likely to occur on/near the project site. In the CEQA document and any mitigation plans, the County should require the Applicant to contact USFWS and CDFW prior to any surface disturbance to determine whether the Applicant needs (1) an authorized biologist to conduct preconstruction surveys for the tortoise, burrowing owl, and other protected/special status species; (2) to obtain incidental take permits for the proposed construction, use, and maintenance of the proposed project; and (3) conduction clearance surveys and further mitigate for destruction/degradation of tortoise habitat/potential take of tortoises. In addition, the Applicant should contact the USFWS and CDFW to determine the appropriate mitigation to be implemented for conducting unauthorized activities in habitats of listed and specials status species for the Applicant is now requesting approval. Incidental take permits may be needed as, for example, take may occur during construction (e.g., trapping tortoises in trenches needed for installation of water lines, gas lines, and septic systems), maintenance (e.g., trapping tortoises in trenches needed to repair water/gas lines and septic systems, excess use of water to control fugitive dust and improperly contained solid waste that attract predators such as common ravens and coyotes, etc.). Please see comment below under “Biological Resources.”

Compliance with California Executive Order

On October 7, 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 complies with this executive order.

Climate Change

The Initial Study has a section that analyzes impacts to air quality from a human health perspective. However, we found no section that analyzes the impacts of the Proposed Project during the construction, use, and maintenance phases, on climate change and effects on wildlife and habitats. When looking at each project individually in the region, the impacts are likely be minor. However, cumulative impacts should be analyzed and presented with referenced or supporting data in this CEQA document. Given the importance of this environmental factor/resource issue (e.g., Governor’s October 7, 2020 Executive Order) and its rapid and substantial impacts to many Mojave Desert species and the ecosystem (Smith et al. 2023), we request that an analysis of the proposed Project on climate change and wildlife including the tortoise be included in the CEQA document.

Air Quality

Under Air Quality Standards, please revise the information in the Initial Study to include the U.S. Environmental Protection Agency's (US EPA) proposed change to lower the current standard for particulate matter for PM_{2.5} from 12 µg/m³ to 9-10 µg/m³.

Also under this section, for the Mitigation Program for fugitive dust, the Applicant would:

- Apply soil stabilizers or moisten inactive areas.
- Water exposed surfaces to avoid visible dust leaving the construction site (at least 2-3 times/day).
- Cover any stock piles with tarps at the end of each day and as needed during the construction day.
- Provide water spray during loading and unloading of earthen materials.

While we appreciate efforts to reduce pollution from particulate matter, water should be used sparingly so it does not form surface water (e.g., puddles) or flow across the surface. These puddles and flows attract tortoise predators including common ravens and coyotes. The increased presence of tortoise predators would contribute to increased predation of tortoises or harm tortoises – part of the definition of “take” that is prohibited under FESA. The Council requests that the mitigation program for the use of water be limited to require that no puddles or flow of water on the soil surface would occur from water used on the 10 acres for construction, use, and maintenance of the campground.

Biological Resources

CEQA's Omission of Indirect Impacts to Biological Resources: Under the issue “Biological Resources,” the Initial Study (page 38) responds to six questions from a CEQA Handbook to determine whether the impacts of a proposed project would need to be analyzed in an environmental impact statement. The first is for direct impacts or habitat modification to listed, proposed, or candidate species followed by impacts to riparian habitat or sensitive natural community, impacts to wetlands, substantial interference with the movement of wildlife, conflicts with local ordinances protecting biological resources, and conflicts with a habitat conservation plan or natural community conservation plan.

We are concerned about the first question. It appears to address only direct impacts and those that occur on the project site. For the proposed project, the site of direct impacts is small and may not provide habitat for permanent occupancy of the tortoise and other special status animal species (e.g., western burrowing owl, kit fox, etc.). However, these species may use the areas adjacent to the project site along with the project site. Species in the area of the proposed project may be indirectly impacted by the construction, use, and/or maintenance of the project, and these activities may result in incidental take of these species that would violate federal laws/regulations and/or state laws/regulations (California Fish and Game Codes).

For the tortoise, many reasons for its substantial decline in the last few decades have been because of indirect impacts. One example of an indirect impact from the project's construction, use, and/or maintenance that may result in take of the tortoise is increased tortoise predation. Common ravens are known to prey on juvenile desert tortoises based on direct observations and circumstantial evidence, such as shell-skeletal remains with holes pecked in the carapace (Boarman 1993). The

number of common ravens increased by 1,528% in the Mojave Desert since the 1960s (Boarman 1993). This increased in raven numbers is attributed to unintentional subsidies provided by humans in the Mojave Desert.

In the Mojave Desert, common ravens are subsidized predators because they benefit from resources associated with human activities that allow their populations to grow beyond their “natural” carrying capacity in the desert habitat. Kristan et al. (2004) found that human developments in the western Mojave Desert affect raven populations by providing food subsidies, particularly trash and road-kill. Boarman et al. (2006) reported raven abundance was greatest near resource subsidies (specifically food = trash and water). Human subsidies include food and water from landfills and other sources of waste, reservoirs, sewage ponds, agricultural fields, feedlots, gutters, as well as perch, roost, and nest sites from power towers, telephone poles, light posts, billboards, fences, freeway or railroad overpasses, abandoned vehicles, and buildings (Boarman 1993). Subsidies allow ravens to survive in the desert during summer and winter when prey and water resources are typically inactive or scarce. Boarman (1993) concluded that the human-provided resource subsidies must be reduced to facilitate a smaller raven population in the desert and reduced predation on the tortoise.

Coyotes are known predators of tortoises. High adult tortoise mortality from coyote predation was reported by Petersen (1994), Esque et al, (2010) and Nagy et al. (2015) in part if the range of the tortoise. In some areas, numbers of ravens correlated positively with coyote abundance (Boarman et al. 2006). Lovich et al. (2014) reported tortoise predation may be exacerbated by drought if coyotes switch from preferred mammalian prey to tortoises during dry years. Because the Mojave Desert has been in a multi-decade drought (Stahle 2020, Williams et al. 2022) due to climate change and drought conditions are expected to continue and intensify in future years, increased predation pressure from coyotes on tortoises is expected to continue.

The project would likely increase the availability of human-provided subsidies for predators of the tortoise including the common raven and coyote during construction, use, and maintenance. For example, during the construction phase the water used to control dust (AQ-1 Fugitive Dust Control) to water exposed surfaces at least 2-3 times a day and the solid waste generated during construction including food brought to the project site by workers for meals, etc., are examples of food and water subsidies for ravens and coyotes that would attract these predators to the project site and increase their numbers in the surrounding area. Grading the site would expose, injure, or kill fossorial animals and provide a subsidized food source for ravens. During the use and maintenance phases, the presence of food waste in waste containers would provide food subsidies for ravens and coyotes.

These subsidies of tortoise predators could be easily mitigated by requiring Best Management Practices (BMPs) that include using water for dust suppression so it does not form puddles or streams, no draining of Jacuzzis or hot tubs (if they are part of the proposed project) on the surface where water would be available to predators, requiring solid waste containers that are predator-proof, wind-proof, and regularly maintained by the Applicant/Owner of the property, etc. We request that these BMPs be added to the CEQA document and the Applicant/Owner be required to implement them. Please see the Council’s (2017) “A Compilation of Frequently Implemented Best Management Practices to Protect Mojave Desert Tortoise during Implementation of Federal Actions” for examples of BMPs for the tortoise, many of which are applicable to the proposed project. While the title mentions implementation of Federal actions, the BMPs should also be

implemented on non-Federal projects to minimize the likelihood of take under FESA or CESA.

We request that the County revise the CEQA document to include an analysis of increased predation and other indirect impacts to the tortoise that may occur from the construction, use, and maintenance of the proposed project. The County should require the Applicant/Owner to implement BMPs to substantially reduce/eliminate these indirect impacts to the tortoise and other special status species. Coordination with the USFWS and CDFW should occur in the development of these BMPs. In addition, the County should require the Owner/Applicant to contribute to the National Fish and Wildlife Foundation's Raven Management Fund for regional and cumulative impacts of projects that subsidize common ravens (USFWS 2010) and other predators of the tortoise and other wildlife, as other project proponents have done for projects on private property in San Bernardino County.

Surveys for Special Status Species: The Initial Study says, "No reptilian species were observed during the field investigation" and a "BRA [biological resources assessment] survey was conducted by ELMT Consulting in March 2023 to identify potential habitat for special status wildlife and habitats within the project area." When we read the BRA, it said the biologist "conducted a field survey and evaluated the condition of the habitat within the project site and surrounding areas (survey area) on December 15, 2022." "The habitat assessment was conducted to characterize existing site conditions and to assess the probability of occurrence of special-status plant and wildlife species that could pose a constraint to project implementation."

Because the survey was conducted in mid-December, this would be a time when few reptile species, including the tortoise, would be above ground and active because of the cold temperatures, not birds would be nesting, and few native annual or herbaceous perennial plants would be growing above ground. Thus, the results of the BRA would not provide an accurate assessment of the presence or use of the parcels by special status species.

The Initial Study said the BRA dealt with "*Assessor Parcel Number 0609-121-15-00100, Totaling 5 Acres.*" Thus, according to the Initial Survey document, the BRA assessed only half of the area for which the CUP for commercial development is being requested.

The survey methodology implemented to conduct the habitat assessment and probable occurrence of special status species was described in the BRA as "walking meandering transects through the on-site plant communities and along boundaries between plant communities" and "a systematic search."

From the information provided in the BRA, we conclude that protocol surveys for desert tortoise (USFWS 2019) and burrowing owl (CDFG 2012) were not conducted and nor were appropriate plant surveys. Please see the definition of "Action area" in the sections on "Special Status Plants" and "Special Status Animals" below. Because the tortoise spends most of its time underground in burrows, especially during winter months, the scientifically tested USFWS pre-construction survey should be implemented to ensure the accuracy of survey results. CDFW should also be consulted as they may have additional survey requirements.

Special Status Plants: According to the Initial Study, the BRA identified 5 plant species and 5 wildlife species that have been recorded as occurring in the Sunfair quadrangle, also the location

of the project. However, this document reported the project site had “a low potential to support” the five plant species including western Joshua tree (*Yucca brevifolia*).

Recently the California legislature passed the Western Joshua Tree Conservation Act (https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB122). The County should ensure that the Applicant complies with all the requirements of this legislation to conserve the western Joshua tree for any Joshua trees that may occur currently or in the future on the 10 acres/two parcels during the construction, use, and maintenance of the proposed project. Consequently, on page 40 of the Initial Study, the paragraph that begins “[n]one of the aforementioned special-status plant species are federally or State listed as endangered or threatened and have only been listed by the CNPS as Rare Plant Rank species” should be revised to include the new protections afforded the western Joshua tree.

According to the CDFW website, the Applicant should conduct a literature review of special status plant species found in/near the project area as determined by a California Natural Diversity Database (CNDDDB) (CDFW 2022) literature review. These species should be sought during field surveys and their presence/absence discussed in the CEQA document. Surveys are to be completed at the appropriate time of year by qualified biologists (preferably botanists) using the latest acceptable methodologies (CDFW 2018).

In addition, CDFG (2010) lists plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or “CHIPs.” Biologists completing surveys on behalf of the Applicant should document such communities where they occur in the project area and indicate how impacts to them will be minimized in the CEQA document. Please revise the CEQA document to include this information.

Special Status Animals: The proposed project is located in the range of the tortoise, western burrowing owl (*Athene cunicularia*), and other special status species, and the project site contains suitable habitat components for them on or adjacent to the project site. However, for several reasons, we disagree with the statement in the Initial Study, “[w]ith implementation of the pre-construction clearance surveys, impacts to these special-status species will be less than significant and no mitigation will be required.”

First, this statement is confusing as it combines the names of two types of USFWS surveys, tortoise preconstruction surveys and tortoise clearance surveys (USFWS 2009). Preconstruction surveys are conducted to determine whether tortoises/tortoise sign are present in the action area for the proposed project (USFWS 2019). The “action area” is defined as in 50 Code of Federal Regulations 402.2 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 Code of Federal Regulations §402.02). Thus, the preconstruction survey area is larger than the project footprint. CDFW has adopted the USFWS’s preconstruction survey as the methodology to use (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>) to determine tortoise presence/use of the area.

If the results of the preconstruction surveys indicate the likelihood of presence, then tortoise clearance surveys (USFWS 2009) are conducted immediately prior to the initiation of ground disturbing work associated with the proposed project. Both types of surveys are conducted by biologists authorized by the USFWS and CDFW to comply with FESA and CESA. We remind the

County that this and any other discretionary action funded, carried out, or authorized by the County such as issuance of a permit, must comply with FESA and CESA.

Protocol surveys for western burrowing owl (*Athene cunicularia*) (CDFG 2012) should be completed. In addition to surveying the property, the protocol (CDFG 2012) 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, CDFG (2012) describes appropriate minimization and mitigation measures that would be implemented.

Second, this statement presumes that no tortoises/tortoise sign or sign of western burrowing owl, and nesting birds will be found on the project site or in the action area when preconstruction and clearance surveys are conducted. Assumptions should not be made unless they are presented as such and developed based on existing data that are presented to support the assumption. Please see “Using Science to Support Conclusions” below.

From the limited information provided in the Initial Study, the BRA did not define the “action area” and conduct surveys of it for the tortoise. In addition, there is no indication in the BRA or Initial Study that (1) a preconstruction survey was conducted following USFWS and CDFW protocols for the tortoise, (2) surveys for burrowing owl and other special status species following CDFW survey protocols were implemented, and (3) surveys were conducted by biologists authorized by the USFWS and CDFW.

Third, if one or more of the surveys indicate the presence of these special status species or their sign (indicating the action area is used by special status species, then mitigation would be needed under the FESA and/or CESA as described in the incidental take permits and/or other authorizations for this project.

For these reasons, we request the Initial Study be revised to require the implementation of the USFWS and CDFW survey requirements for tortoise and burrowing owl, and remove unsupported conclusions that “[w]ith implementation of the pre-construction clearance surveys, impacts to these special-status species will be less than significant and no mitigation will be required.” Rather, after consultation with USFWS and CDFW, the mitigation these agencies require under FESA and CESA should be added as mitigation requirements.

Utilities and Service Systems

In this section, we were not able to find a discussion of how solid waste would be managed at the project site. As mentioned above, improperly contained solid waste attracts predators of the tortoise such as common ravens and coyotes. This increase in tortoise predators in the project area would increase tortoise predation in the area. The CEQA document should be revised to require the Applicant/Owner provide containers for solid waste at each Yurt that are windproof and predator proof.

Using Science to Support Conclusions

As mentioned above, in the Biological Resources section of the Initial Study, there are several statements/conclusions that are presented with no data and/or citations to support these

statements/conclusions. For example, the following statements/conclusions are presented, “Based on habitat requirements for specific species and the availability and quality of onsite habitats, it was determined that the proposed project site has a low potential to support burrowing owl (*Athene cunicularia*), prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), and desert tortoise (*Gopherus agassizii*). It was further determined that the project site does not provide suitable habitat for any of the other special-status wildlife species known to occur in the vicinity of the site.” “With implementation of the pre-construction clearance surveys, impacts to these special-status species will be less than significant and no mitigation will be required.”

For habitat connectivity, the following statement is in the Initial Study, “The site was not identified as occurring within or adjacent to a recognized wildlife corridor.”

We were unable to find data and citations from peer-reviewed scientific journal articles that support these statements/conclusions. We strongly recommend that the Initial Study be revised to show the data presented on the location of tortoise habitat (e.g., Nussear et al. 2009, etc.) and areas identified for connectivity (e.g., Averill-Murray et al 2021, etc.) and use these and other data from the scientific literature to support statements/conclusions about the action area.

In summary, the Council requests the CEQA document present the data collected for the proposed project and support conclusions with citations from the scientific literature. Based on the results of agency-required surveys, the County should require the applicant/Owner to implement effective mitigation to avoid, minimize, and compensate for the direct and indirect impacts to the tortoise/tortoise habitat and to other special status species. This effective mitigation should be added to the Mitigation Monitoring and Reporting Plan along with the requirement for its implementation.

Hazards and Hazardous Materials

To address CEQA question/issue “g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?” the Initial Study quotes **Policy HZ-1.2 New development in environmental hazard areas**.

“We require all new development to be located outside of the environmental hazard areas listed below. For any lot or parcel that does not have sufficient buildable area outside of such hazard areas, we require adequate mitigation, including designs that allow occupants to shelter in place and to have sufficient time to evacuate during times of extreme weather and natural disasters.

- Flood: 100-year flood zone, dam/basin inundation area
- Geologic: Alquist Priolo earthquake fault zone; county identified fault zone; rockfall/debris-flow hazard area, medium or high liquefaction area (low to high and localized), existing and county identified landslide area, moderate to high landslide susceptibility area)
- Fire: Moderate fire hazard severity zones.”

The Initial Study claims that “the proposed project is located in an area removed from high fire hazard areas within the County” and “No mitigation measures are required.” However, earlier in this section of the Initial Study, is the following statement, “According to the San Bernardino Countywide Plan Fire Hazard Severity Zones Map (Figure IX-4), the proposed project is located in an area with Moderate wildfire risk.”

We are confused as we do not believe the project meets the criterion of Policy HQ-1.2 because the proposed project is located in a moderate fire hazard severity zone,

Habitat disturbance from development and other sources in the Mojave Desert has promoted the establishment of nonnative plants, so that native annual plants are now intermixed with, or have been replaced by invasive, nonnative Mediterranean grasses (Drake et al. 2016). We contend that while grading removes vegetation, surface disturbance combined with climate change encourages the establishment and proliferation of invasive non-native annual grasses creating a carpet that, when dry, form a continuous fuel source to feed the size, intensity, and frequency of wildfires in the Mojave Desert.

Whereas some plant communities have evolved under fire regimes and are dependent upon fire for seed germination, plant communities within the Mojave Desert are not dependent on a fire regime and therefore are highly impacted by fire (Brown and Minnich 1986, Brooks 1999). As noted by Johansen (2003) natural range fires are not prevalent in the Mojave and Sonoran Deserts, because with native vegetation there is not enough vegetation present (too many shrub interspaces) to sustain a fire.

In the last few decades, however, invasion of mid-elevation shrublands by non-native *Bromus madritensis* ssp. *rubens* and *Bromus tectorum* (Hunter 1991) have been highly correlated with increased fire frequency in the Mojave Desert (Brooks and Berry 2006, Brooks and Matchett 2006). Some sites will never regain a species composition similar to pre-fire conditions. This alteration of species composition may have significant impacts on ecosystem function, fire re-occurrence and habitat for native animals (Fenstermaker 2012).

We request that the County require the Applicant to implement Best Management Practices to control invasive non-native annual plants on the parcel on a recurring basis to reduce the likelihood of wildfires and minimize the spread of these invasive plants to nearby areas. This would include removing non-native annual plants before they produce seed so the cycle of seed production and storage as seed banks in the soil is substantially reduced.

Cumulative Impacts/Mandatory Findings of Significance

Two of the three questions in the CEQA Handbook for Mandatory Findings of Significance are applicable to the tortoise. They are:

Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

and

Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?)

To assist the County in answering these two questions regarding the impacts to the tortoise, we are attaching Appendix A – Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit. Note that the proposed project is in the Western Mojave Recovery Unit, the tortoise populations in this Unit are below and have been below the density needed for population viability for almost a decade, and the density of tortoises continues to decline in the Western Mojave Recovery Unit. Also note that the tortoise cannot achieve recovery, that is, be removed from the list of threatened species under FESA unless it achieves recovery in all five recovery units including the Western Mojave Recovery Unit (USFWS 2011). Recovery includes having viable populations. We conclude that having populations below the density needed for population viability means these population are below the level needed to be self-sustaining and any additional impact to these populations would exacerbate this density below the level of self-sustaining. We conclude the answer to these two questions is “yes.” Please include this information in the CEQA document.

Mitigation Measures

We request that the proposed Mitigation Measure BIO-1 be reworded (underlined words) to say:
If desert tortoise or tortoise sign is found in the action area during the preconstruction survey by an authorized biologist, coordination will need to occur with USFWS and CDFW to determine whether the Applicant needs to obtain an incidental take permit from these agencies.

In addition, we request that additional mitigation measures be required, including:

- Each Yurt will be provided with a container for solid waste and these containers must be windproof, predator proof, and closed when not being accessed.
- The use of water outdoors is limited such that no puddles on the soil surface would occur on the 10-acre project site from construction, use, and maintenance of the campground
- The Applicant will contribute to the Raven Management Fund managed by the National Fish and Wildlife Raven Foundation to mitigate for regional and cumulative impacts of projects that subsidize common ravens (USFWS 2010) and other predators of the tortoise and other wildlife, as other project proponents have done for projects on private property in San Bernardino County.
- If tortoise habitat as indicated by habitat models is degraded or destroyed from the implementation of the proposed project, the Applicant should mitigate for the loss and degradation of tortoise/tortoise habitat.
- Because the Applicant completed the unauthorized development of 6 Yurts and partial development of 3 Yurts, the County should require punitive damages in the form of additional mitigation/compensation for the loss/degradation of tortoises/tortoise habitat and other special status species/habitats. Such punitive damages would deter others from conducting unauthorized development and violating, federal, state, and local laws. We recommend that the Applicant coordinate with a private or non-profit land conservancy in the Mojave Desert and after conducting a Property Analysis Record (e.g.,

<https://www.cnlm.org/par/>) or PAR-like analysis with the land conservancy to determine the ecological functions and values lost/degraded by the unauthorized development, the Applicant should replace the functions and values through land acquisition and/or habitat restoration.

- The current and future landowner(s) will implement Best Management Practices to control invasive non-native annual plants on the parcel on a recurring basis to reduce the likelihood of wildfires and minimize the spread of these invasive plants to nearby areas. This would include removing non-native annual plants before they produce seed so the cycle of seed production and storage as seed banks in the soil is substantially reduced.

The project is located within the County's designated area for Biotic Resources for Burrowing Owl and Desert Tortoise. Consequently, the County should require compensation for building and operating a new commercial business in this designated area.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the County that may affect species of desert tortoises. As an Affected Interest, the Council requests that the County contact the Council via email to advise us of the opening date of the public comment period for any proposed action that may affect tortoises/tortoise habitat. In addition, we request and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. We ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



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

Attachment: Appendix A: Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit

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Appendix A Demographic Status and Trend of the Mojave Desert Tortoise including the Western Mojave Recovery Unit

Status of the Population of the Mojave Desert Tortoise: The Council provides the following information for resource and land management agencies so that these data may be included and analyzed in their project and land management documents and aid them in making management decisions that affect the Mojave desert tortoise (tortoise).

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 California Desert Conservation Area (CDCA).

As the primary land management entity in the range of the Mojave desert tortoise, the Bureau of Land Management's (BLM's) implementation of a conservation strategy for the Mojave desert tortoise in the CDCA through implementation of its Resource Management Plan and Amendments through 2014 has resulted in the following changes in the status for the tortoise throughout its range and in California from 2004 to 2014 (**Table 1, Table 2**; USFWS 2015, Allison and McLuckie 2018). The Council believes these data show that BLM and others have failed to implement an effective conservation strategy for the Mojave desert tortoise as described in the recovery plan (both USFWS 1994a and 2011), and have contributed to tortoise declines in density and abundance between 2004 to 2014 (**Table 1, Table 2**; USFWS 2015, Allison and McLuckie 2018) with declines or no improvement in population density from 2015 to 2021 (**Table 3**; USFWS 2016, 2018, 2019, 2020, 2022a, 2022b).

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 below the population viability threshold. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change in Status for the Western Mojave Recovery Unit – Nevada and California

- This recovery unit had a 51 percent decline in tortoise density from 2004 to 2014.

- Tortoises in this recovery unit have densities that are below viability.

Change in Status for the Superior-Cronese Tortoise Population in the Western Mojave Recovery Unit.

- The population in this recovery unit experienced declines in densities of 61 percent from 2004 to 2014. In addition, there was a 51 percent decline in tortoise abundance.

- This population has densities less than needed for population viability (USFWS 1994a).

Table 1. Summary of 10-year trend data for the 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) or showing a decline from 2004 to 2014 are in red.

Recovery Unit: Designated Critical Habitat Unit ¹ /Tortoise Conservation Area	Surveyed area (km ²)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km ² (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

¹ U.S. Fish and Wildlife Service. 1994b. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.

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.

Recovery Unit	Modeled Habitat (km ²)	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%

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/TCA	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.

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 below the population viability threshold. 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 by about 2030.

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.

Important points to note from the data from 2015 to 2021 in Table 3 are:

Change in Status for the Mojave Desert Tortoise in the Western Mojave Recovery Unit:

- Density of tortoises continues to decline in the Western Mojave Recovery Unit
- Density of tortoises continues to fall below the density needed for population viability from 2015 to 2021

Change in Status for the Mojave Desert Tortoise in the Colorado Desert Recovery Unit:

- The population that had the highest density in this recovery unit had a continuous reduction in density since 2018 and fell substantially to the minimum density needed for population viability in 2021.

Change in Status for the Mojave Desert Tortoise in the Northeastern Mojave Recovery Unit:

- Two of the three population with densities greater than needed for population viability declined to level below the minimum viability threshold.
- The most recent data from three of the four populations in this recovery unit have densities below the minimum density needed for population viability.
- The population that had the highest density in this recovery unit declined since 2014.

Change in Status for the Mojave Desert Tortoise in the Eastern Mojave Recovery Unit:

- Both populations in this recovery unit have densities below the minimum density needed for population viability.

Change in Status for the Mojave Desert Tortoise in the Upper Virgin River Recovery Unit:

- The one population in this recovery unit is small and appears to have stable densities.

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. Despite claims by USFWS (Averill-Murray and Field 2023) that a large number of individuals of a listed species and an increasing population trend in part of the range of the species prohibits it from meeting the definitions of endangered, we are reminded that the tenants of conservation biology include numerous factors when determining population viability. The number of individual present is one of a myriad of factors (e.g., species distribution and density, survival strategy, sex ratio, recruitment, genetics, threats including climate change, etc.) used to determine population viability. In addition, a review of all the available data does not show an increasing population trend (please see Tables 1 and 3).

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