



DESERT TORTOISE COUNCIL

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Via email only

July 28, 2026

Shannon J. Casey, Contract Planner III
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-01
shannon.casey@lus.sbcounty.gov

RE: Joshua Tree Estates Initial Study/Mitigated Negative Declaration (PROJ-2023-00129)

Dear Ms. Casey,

The Desert Tortoise Council (Council) is a non-profit organization comprising 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 northern 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 and that the County contacted us directly with this opportunity. Given the location of the proposed project in habitats potentially occupied 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 that may be authorized by the San Bernardino County Planning Department (County), which we recommend be added to project

terms and conditions in the authorizing documents [e.g., issuance of permits, rights-of-ways, etc.] as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed action.

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 (DTPC) to petition the California Fish and Game Commission (Commission) in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered under the California Endangered Species Act (CESA) (Defenders of Wildlife et al. 2020). Importantly, following California Department of Fish and Wildlife's (CDFW) (2024a) status review, in their April 2024 meeting the Commission voted unanimously to accept the CDFW's petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the CESA based on the scientific data provided on the species' status, declining trend, numerous threats, and lack of effective recovery implementation and land management (CDFW 2024b). On July 15, 2025, the tortoise was officially uplisted to endangered status under the CESA (Commission 2025).

According to the Notice of Availability, Joshua Tree Estates (project) is "Located in the community of Joshua Tree, San Bernardino County, California, Assessor Parcel number (APN) 0605-051-01 bounded by Broadway Street to the north, Sunever Road to the east, Sapphire Street to the south, and La Farney Avenue to the west. Tentative Tract Map (TTM) 20668 to subdivide one (1) 80.2-acre parcel into thirty-two (32) residential lots, ranging from 2 to 2.6 acres each, for the development of thirty-two (32) single family homes. The Project site is in The Rural Living (RL) Land Use Category and Joshua Tree/Rural Living (JT/RL) Zoning District."

Appendix B to the County's Initial Study/Mitigated Negative Declaration (IS/MND), entitled, "General Biological Assessment for APN 0605-051-01 San Bernardino County, California," dated August 4, 2025, prepared by Hernandez Environmental Services (HES 2025) is the focus of the following comments.

Concerns with the HES General Biological Assessment (GBA)

On page 5 of the GBA is the statement, "Linear transects spaced approximately 50 to 100 feet apart were walked across the project site for 100 percent coverage." Whether transects were spaced

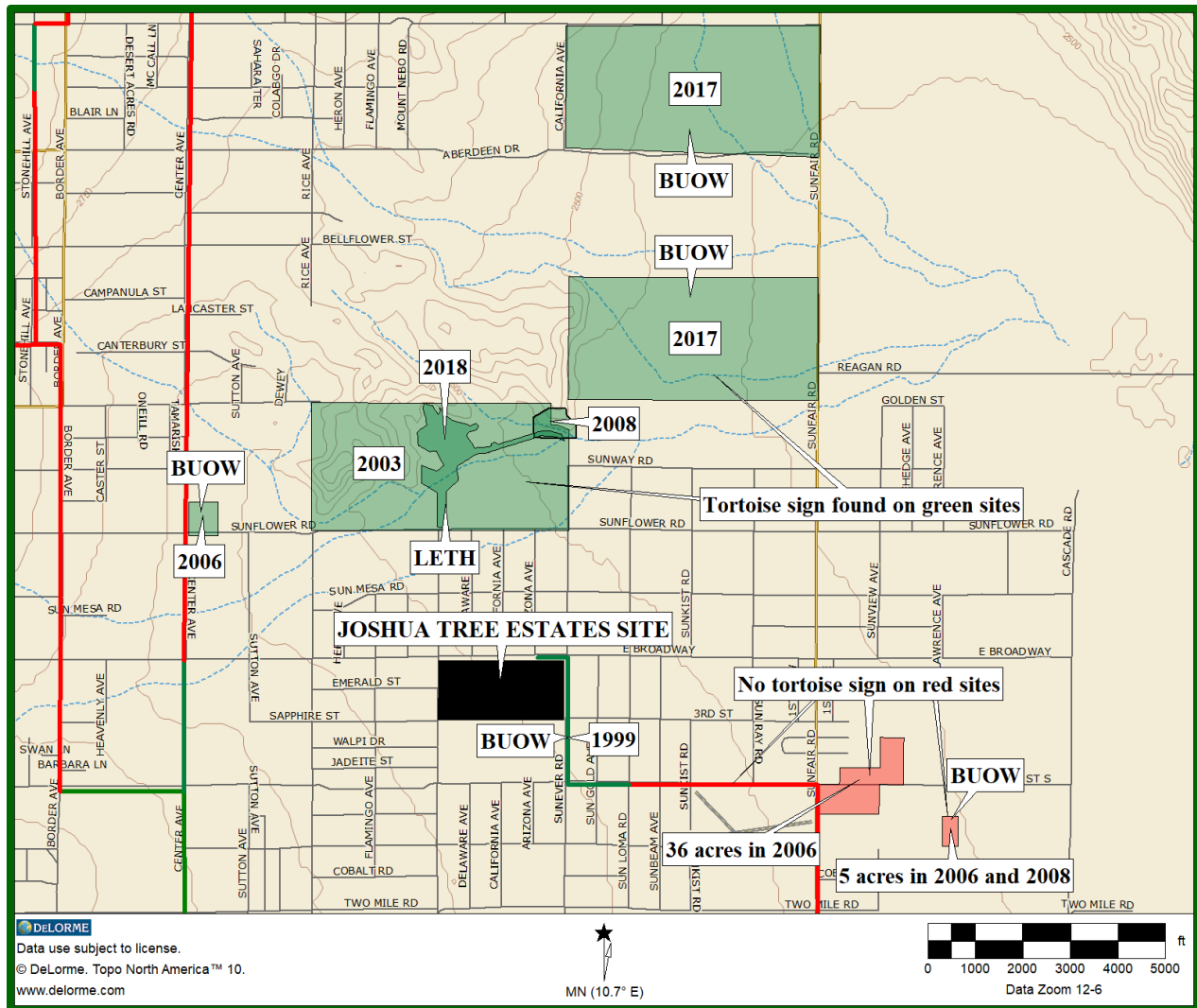
at 50- or 100-foot intervals does not matter (except it is too vague to accurately describe the specific survey method used), neither of these intervals reflects what the U.S. Fish and Wildlife Service (USFWS) requires for a 100% survey coverage (USFWS 2019a) or CDFW requires (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174633&inline>). Rather, transects should be spaced no more than 10 meters (30 feet) apart to conform to current management and the approved survey methodology by these agencies. Before the USFWS original survey protocol was identified in 1992 (USFWS 1992), we had an experience where tortoises and their sign were missed along transects spaced at 100-foot intervals but were subsequently identified on the same site when it was resurveyed along transects spaced at 30-foot intervals (Tierra Madre Consultants, Inc. 1991). In fact, 2 tortoises, 14 scat, and 6 burrows were found along transects spaced at 30-foot intervals that were missed at 100-foot intervals.

Because surveys were restricted to the subject property, HES failed to survey a reasonable “action area” for the project. The USFWS defines “action area” in the Code of Federal Regulations (CFR) 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).” Given human impacts associated with residential development (e.g., children playing in adjacent areas, roaming domestic dogs, dumping, new nesting/perching sites for common ravens, new roads and increased vehicle traffic, etc.) that would result in indirect impacts to tortoise/tortoise habitat in adjacent areas to the project, we believe that a minimum area of about 500 feet in adjacent areas would be a reasonable action area. Alternatively, the consultant should have contacted the USFWS and CDFW to determine how large of an area should have been surveyed along with other requirements of the presence-absence survey for the tortoise.

HES’s survey methodology (pages 4 and 5) does not indicate that any transects were surveyed in adjacent areas, in the action area, which is a requirement for CDFW to determine whether western burrowing owl (*Athene cunicularia*) occurs and would be affected by the proposed project. California Department of Fish and Game’s (2012; currently “CDFW”) protocol for burrowing owl surveys requires that five transects spaced at 30-meter (100-foot) intervals be surveyed in all adjacent areas that may support burrowing owls, which would equate to the action area we recommended above. Except for sparse residential development to the east and west, HES’s Figures 1 and 4 show that adjacent areas immediately north, south, and east are undeveloped and suitable for both desert tortoises and burrowing owl.

The figure on the next page of this document depicts regional surveys performed by Circle Mountain Biological Consultants, Inc. (CMBC) between 1999 and 2018 with the subject property shown as the black rectangle. One can see that except for a 36-acre site surveyed in 2006 and a 5-acre site surveyed in 2006 and again in 2008, tortoise sign has been found on every site surveyed within two miles of the subject property. Importantly, in 1999 tortoise sign was found along the portion of a pipeline that coincides with the eastern boundary of the subject property.

The figure also shows that burrowing owls (signified by “BUOW”) were found on a majority of the sites surveyed within two miles of the subject property. Note also that LeConte’s thrasher (*Toxostoma lecontei*) (signified by “LETH”) was found in 2018 on a site located 2,800 feet north of the project site.



Given that HES did not implement either the desert tortoise or burrowing owl protocol surveys, documented conclusions are inconclusive because current agency protocols for presence-absence surveys were not implemented, and any subsequent determinations made by HES and by association, the County, are suspect. Perhaps HES knew that its survey methodologies were inadequate to meet current agency standards because on page 12 they recommend that protocol surveys for desert tortoise and burrowing owl should be performed. In the meantime, the County has prepared a IS/MND based on incomplete and unacceptable survey methodologies, which seriously undermines results and conclusions by both HES and the County in the GBA and the IS/MND.

HES's recommendations improperly defer both the analysis of impacts and the formulation of mitigation to the post-approval period. The California Environmental Quality Act (CEQA) permits the details of mitigation to be developed after project approval only where the agency commits to specific, enforceable performance standards that the deferred measures must achieve [CEQA Guidelines § 15126.4(a)(1)(B)]. Here, these measures commit only to conducting surveys using the most current survey protocols at an unspecified future date, with no performance standards, no

thresholds for determining significance, and no identified mitigation to be applied if the species or sign of use by the species are found. This is an impermissible deferral. The results of the surveys are the foundation for the analysis that CEQA requires before approval, not mitigation that follows it. Surveys to determine presence-absence are not mitigation. Please complete the agency protocol surveys for the tortoise and burrowing owl and use this information in the impact analysis in the revised IS/MND, and identify enforceable mitigation with measurable performance standards, in the CEQA document before the County acts on the proposed project. This should be done in coordination with USFWS and CDFW.

On page 6 of the GBA under “Regional Connectivity/Wildlife Movement” is the statement “The site is bordered by vacant land but there is scattered residential development to the south, west and east that separate the site from other open deserts. Furthermore, there is vacant land to the east of the site that can continue to be used. No wildlife movement corridors were found to be present on the project site. Development of the site will not block any wildlife corridors or prevent species from moving between wildlife habitat zones.”

We found no information on whether existing information on the habitat connectivity identified for the tortoise was used in making this conclusion that no wildlife corridors were found to be present on the project site or the action area. We found no references from the scientific literature to support this conclusion. We are surprised by the lack of scientific research to support conclusions made in the GBA and the IS/MND because CEQA requires that agencies use the best scientific information available. To help the County comply with this requirement of CEQA, we provide information to the County so they will use it in their analysis of effects to regional connectivity/wildlife movements for the tortoise.

In searching the California Essential Habitat Connectivity Project website (<https://apps.wildlife.ca.gov/bios6/?al=2734>), we discovered that the proposed Project appears to be located in/near an area identified for terrestrial connectivity. More detailed analyses was completed under the Desert Renewable Energy Conservation Plan (DRECP) Conservation Strategy, which was completed in 2016. Under the DRECP, linkage habitats were identified for the tortoise. The proposed project appears to be located in/near an area identified as linkage habitat needed to provide population connectivity between the Ord-Rodman Tortoise Conservation Area (TCA) to the northwest of the project site and Joshua Tree National Park TCA to the south of the project site (BLM 2016). In addition, Averill-Murray et al. (2021) identified habitat linkages to connect tortoise populations between these two TCAs.

San Bernardino County should have a Conservation and Open Space Element that includes wildlife connectivity in its General Plan that is supported by scientific research to comply with Assembly Bill 1889, the “Room to Roam Act.” Please include this information in the IS/MND with respect to the tortoise and the project site.

Several scientific reports and journal articles have been written on the issue of connectivity between populations for the tortoise. A recent publication by Averill-Murray et al. (2021), mentioned above, discusses the importance of connectivity of Mojave desert tortoise populations and linkage habitats for survival and recovery. The authors 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” in linkage habitats. Furthermore, “habitat linkages among TCAs 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, effective linkage habitats are not long narrow corridors. Any development within them or adjacent to/near 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. For some types of development/human activities, the edge effect extends for hundreds of meters or more (e.g., roads = 1090 meters or more (von Seckendorff Hoff and Marlow 2002), nesting sites for ravens = 1.7 km (Holcomb et al. 2021)).

Averill-Murray et al. (2021) further notes that “To help maintain tortoise inhabitation and permeability across all other non-conservation-designated tortoise habitat [that is linkage habitats], all surface disturbance could 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 caution 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 lifetime home range for the Mojave desert tortoise is more than 1.5 square miles (3.9 square kilometers) of habitat (Berry 1986) and tortoises may make periodic forays of more than 7 miles (11 kilometers) at a time (Berry 1986). When incorporating this information on the needs of tortoises for functioning linkage habitat and their home range size, we conclude that linkage habitat for the tortoise should be at least 2 km wide (Beier 2018) or wider depending on the intrusion and severity of edge effects.

In addition, a fundamental tenet of conservation biology is the need for gene flow to occur between populations to maintain genetic diversity; this enables a species to more likely survive, especially during climate change, which enables biodiversity. Linkage habitats are important as they provide gene flow/genetic connectivity among wildlife populations to maintain viability within each species and biodiversity in the current and future distribution of species when adapting to the impacts of climate change. Consequently, development in tortoise linkage habitat that exceeds this development threshold in non-conservation-designated tortoise habitat such as the Ord-Rodman TCA to Joshua Tree National Park linkage habitat would result in the loss of the function of the linkage habitat, the loss of population connectivity, and would be considered a significant impact to the tortoise.

The information provided by the County in the IS/MND appears to contradict the information provided in the scientific literature regarding the properties of functioning linkage habitats for the tortoises. For example, the County says that the proposed Project will have minimal impacts on the linkage habitat as the remainder of the immediate vicinity of the linkage is largely undeveloped.

Wildlife will have the ability to go around the site to access the remainder of the linkage. We found no references from the scientific literature to support this conclusion especially for species such as the state endangered tortoise

The proposed project is a permanent disturbance that would result in permanent edge effects (=indirect impacts) during construction and use. Some indirect impacts are likely to extend into linkage habitat identified for the tortoise reducing its effectiveness. The County needs to analyze the functioning linkage habitat that would remain after the completion of development that would be permitted. This analysis should use the criteria provided in Averill-Murray et al. (2021) to determine whether the remaining linkage habitat would contain the requisite properties needed to function as effective linkage habitat for the tortoise. This would include (1) current conditions and the impacts from existing development and activities, (2) the addition of the construction and use of the proposed project, and (3) future planned projects and activities in the area. This would include new roads and increased vehicle use as well as other indirect impacts mentioned in this letter. The County needs to demonstrate in the CEQA document that the proposed project with existing and future planned projects is “wide enough to sustain multiple home ranges or local clusters of resident tortoises (Beier and others, 2008; Morafka, 1994), while accounting for edge effects [=indirect impacts], in order to sustain regional tortoise populations” (Averill-Murray et al. 2021). Consequently, effective linkage habitats are not long narrow corridors or washes. One tortoise home range is more than one square mile.

Please revise the CEQA document to include this information and the information on requirements for linkage habitats for the tortoise in Averill-Murray et al. (2021) when the County conducts its analysis of impacts to the tortoise on movements and population connectivity from the proposed project. After completing the analysis of impacts using the best available information from the scientific literature, the County should identify and require the implementation of effective mitigation to offset the impacts to the tortoise regarding movements, population connectivity, and linkage habitat.

On page 7 of the GBA is the statement that the burrowing owl is a “CDFW Species of Special Concern” (HES 2025), but fails to document that since 2024 western burrowing owl has been designated as a CDFW Candidate Species for Listing under CESA. Until a determination is made by the Commission, burrowing owl should be treated as if it were listed. This means that a Section 2081 incidental take permit (ITP) would be required if the proposed project would result in “take” as defined by CESA. The County does not know if burrowing owl occurs or if the project is likely to result in take because HES failed to conduct CDFW-approved protocol surveys, and this erroneous information is repeated in the IS/MND.

On page 8 of the GBA is the statement, “Desert tortoise (*Gopherus agassizii*) is a state and federally listed Threatened species.” This information is inaccurate, since the tortoise has been State-listed as Endangered since July 2025. Similarly on page 8 of ten GBA, LeConte’s thrasher and Bendire’s thrasher (*Toxostoma bendirei*) are both identified as CDFW Species of Special Concern, when in fact, both are presently designated as CDFW Candidate Species for Listing. Thus, like the burrowing owl, they are afforded the same protections as species listed under CESA. The County should contact CDFW to determine the compliance actions needed under CESA for the LeConte’s thrasher and Bendire’s thrasher with respect to the proposed project.

Concerns with the Initial Study/Mitigated Negative Declaration (IS/MND)

Given that the IS/MND is based on a biological technical report (rather than a “biological assessment,” as it is erroneously named by HES, which is a technical term applied by the USFWS to documents that fully analyze impacts to federally-listed species), it is not surprising that the IS/MND perpetuates these same errors and inaccuracies, as follows:

The IS/MND, like the HES report:

- Erroneously states on page 29 that, “Burrowing owl (*Athene cunicularia*) is a CDFW Species of Special Concern,” when in fact, it is designated as a Candidate for State Listing under CESA.
- Erroneously states on page 29 that, “Desert tortoise is a state and federally listed Threatened species,” when it is designated by CDFW as Endangered under CESA.
- Erroneously states on page 30 that both Bendire’s thrasher and LeConte’s thrasher are designated as “CDFW Species of Special Concern,” when both are currently designated as Candidates for State Listing under CESA.

HES’s recommendations to conduct formal protocol surveys for desert tortoise and western burrowing owl as “pre-construction surveys,” fail to recognize that the IS/MND should have been written based on the results of formal protocol surveys, not what appears to have been a reconnaissance survey that likely failed to detect use of the project site and adjacent areas by these two target species. Surveys to determine presence-absence are not mitigation, and requiring pre-construction surveys immediately prior to ground disturbance for as many as 32 future landowners is untenable. How will the County enforce this requirement? In fact, had tortoise sign or burrowing owl sign been found on the subject property during formal protocol surveys, it should be the current landowner that acquires ITPs so that these resources are protected when future ground disturbance occurs.

We note on page 30, that “...pre-construction Focused Surveys consistent with the requirements of the USFWS 2019/ND, “Preparing For Any Action That May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*)., [sic] are required.” The reference for these surveys is missing from the IS/MND, so it is not clear which of two survey methods is being referenced. We note that USFWS does not recognize “pre-construction surveys;” rather, it requires either “presence-absence surveys” (USFWS 2019a), which have yet to be performed, or “clearance surveys” (USFWS 2019b), which can only be conducted after CDFW and USFWS ITPs have been issued. There are no formal surveys analogous to “pre-construction surveys” where the intent of the survey is to locate listed species for which ITPs have yet to be issued.

To emphasize this point, presence-absence surveys (USFWS 2019a) require that a site be surveyed one time along transects spaced at 10-meter intervals or less, depending on site conditions. As its name implies, the function is to determine if tortoises are present or absent based on tortoise sign being found or not found, respectively. If tortoise sign is found, CDFW and USFWS typically require that ITPs be issued prior to ground disturbance. Clearance surveys (USFWS 2019b) are conducted after an ITP has been issued by USFWS and CDFW. Clearance surveys consist of

surveying the project site a minimum of two times along transects spaced no more than 5-meters apart without finding any tortoises. If a tortoise is found, the site would need to be surveyed following the protocol. Surveys are conducted during the tortoise's active season, that is when they are most likely to be found above ground, typically in April, May, September, and October. There is no third survey methodology referred to as a "pre-construction survey."

Hopefully the County can see why a "pre-construction survey," for which there are no stated USFWS methods, would not satisfy either of these USFWS protocols. We have made this point dozens of times in as many comment letters and the County does not seem to understand the conundrum. The revised IS/MND should clarify and correct these errors for the CEQA document to be defensible and clear in its descriptions and analyses as well as any permits that the County may issue for activities that include surface disturbance.

Our concerns expressed with the HES report for burrowing owl surveys and mitigation also apply to the IS/MND. For example, page 30 states, "Should the species [burrowing owl] be identified on the site, the qualified biologist shall consult with CDFW on the development and *implementation of a comprehensive burrowing owl mitigation plan* [emphasis added]. CDFW will not accept "a comprehensive burrowing owl mitigation plan" in lieu of an ITP. The revised IS/MND should clarify that if burrowing owl sign is found (pending a formal decision concerning the burrowing owl petition), an ITP would be required.

As stated in previous comment letters to the County, we offer to assist the County to work toward a scientifically supported process that the County would implement to comply with the purpose and intent of CEQA in the development of initial studies/mitigated negative declarations with respect to the desert tortoise and other species protected under the FESA and CESA.

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 continue to notify the Council at eac@deserttortoise.org of any proposed projects that may affect the desert tortoise so we may comment on them to ensure the County fully considers and implements actions to conserve these tortoises as part of its directive to conserve biodiversity on private and county-owned lands in San Bernardino County.

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

Cc: Peter Sanzenbacher, Mojave Desert Division Supervisor, peter_sanzenbacher@fws.gov

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