



DESERT TORTOISE COUNCIL

4654 East Avenue S #257B

Palmdale, California 93552

www.deserttortoise.org

eac@deserttortoise.org

Via email only

22 June 2021

Attn: Randall Porter, Caroline Woods
Bureau of Land Management
Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, CA 93555
rporter@blm.gov, cwoods@blm.gov

RE: Makayla 2 Pumice Mine Environmental Assessment (DOI-BLM-CA-D050-2021-0019-EA)

Dear Mr. Porter, Ms. Woods,

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.

We appreciate this opportunity to provide comments on the above-referenced project, which we heard about through a third party, not from the Bureau of Land Management (BLM). Given the location of the proposed project and its lengthy access road 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 during activities authorized by the BLM. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

All page numbers referenced herein are from the undated, Makayla 2 Environmental Assessment (EA; DOI-BLM-CA-DOI-D050-2021-0019, CACA-58637 and CACA-56716) accessed on the BLM's ePlanning website on 6/14/2021.

As per page 3, "Southwest Pumice LLC proposes to mine approximately 25 acres and remove 100,000 tons of pumice from BLM-managed public lands located in the Coso Mountains north and east of Coso Junction, Inyo County, California." And, page 7, "All the described Bulk Sampling Site areas have been mined previously. Based on preliminary field visits and aerial photographs, it is estimated that there is roughly $12.2 \pm$ acres of existing disturbance from past mining and prospecting activities in the general project area, not including the access roads" and page 9, "The project will result in 12.8 acres of new disturbance."

In numerous comment letters to the BLM, the Council has emphasized that BLM must ensure that laws and regulations pertinent to California Department of Fish and Wildlife (CDFW) are implemented to avoid, among other laws, violations of the California Endangered Species Act (CESA). We appreciate that the following statement appears on page 10: "CDFW shall be contacted and any regulations or mitigations proposed by this agency shall be completed, including an incidental-take permit authorizing the take of the Mohave ground squirrels. Further mitigation to reduce the impacts to less than significant levels would be specified in the 2081 Incidental Take Permit issued by CDFW."

First, the sentence should be amended to include Mojave desert tortoise, as it is state-listed as a Threatened species, which requires that any take of tortoises, including handling, must be authorized by CDFW. Although a May 2019 tortoise survey is referenced on page 21, that survey was not made available for review. We do not know, for example, if areas peripheral to both the subject property and lengthy access road were surveyed to help ascertain the likelihood of tortoise immigration onto the subject property or crossing the access road. As per the following information (USFWS 2019), a new tortoise survey may be required, and the project proponent should consult with the Palm Springs office of the USFWS to ascertain this need *prior to any ground disturbance*:

"If the survey data are more than a year old, we encourage project proponents to contact us [USFWS] at the earliest possible time to allow us to assess the specific circumstances under which the data were collected (e.g., time of year, drought/rainfall conditions, size and location of the site, etc.) and to discuss whether additional surveys would be appropriate. Spatial information can be provided in pdf and GIS formats." (USFWS 2019)

Secondly, current management and prevailing standards for the protection of Mohave ground squirrels (MGS; *Xerospermophilus mohavensis*) require that the proponent perform protocol trapping surveys [CDFG 2003 (revised 2010)] *prior to any ground disturbance*. Page 21 of the EA states that no MGS trapping studies have occurred on the subject property, so the need for this trapping survey must be discussed with pertinent CDFW personnel *prior to any ground disturbance*. Pending results of MGS and focused tortoise surveys (USFWS 2019), it may be necessary to have both MGS and desert tortoises as Covered Species in the 2081 incidental take permit that will likely be required for this project. CDFW did not participate in the Desert Renewable Energy Conservation Plan (DRECP; BLM 2016) to the extent that take of MGS is authorized by the DRECP. But, as members of the Renewable Energy Action Team (REAT) to the DRECP, both BLM and CDFW are responsible to ensure that impacts, if any, are authorized.

The proponent has the right to assume presence of MGS without trapping and to mitigate accordingly, which is the conclusion given on page of 23 of the EA (i.e., “The presence of this species is assumed”). Herein, we emphasize that development of the site will require acquisition of a 2081 incidental take permit for MGS *prior to ground disturbance* since the DRECP does not authorize take.

If the proponent decides to pursue the MGS trapping effort to document absence, the first surveys cannot be initiated until March 2022 to conform to the protocol survey [CDFG 2003 (revised 2010)]. Since desert tortoises are known to occur in Rose Valley in the vicinity of the access road and the May 2019 surveys will be three years old in 2022, it is advisable that a protocol tortoise survey (USFWS 2019) that includes the access road be completed.

With regards to sensitive plant species (page 23), Barstow woolly sunflower (*Eriophyllum mohavensis*), which is designated as a BLM-Sensitive species, was recently found approximately 9.5 miles northwest of the subject property (CMBC 2019). Prior to this range extension, the species was not known to occur north of Robber’s Roost, located approximately 30 miles south of the subject property. Given the recency of this discovery and the location of the site within the extended range of the species, it would be prudent to survey for this species at appropriate times on the subject property prior to ground disturbance. In addition, research suggests that the impacts of climate change on a species distribution is likely to change with the distribution occurring at higher latitudes and altitudes (Parmesan 2006, Loarie et al. 2008), and will likely apply to both tortoises and MGS.

With regards to Mitigation Measure 4 on page 24, Joshua trees (*Yucca brevifolia*) are to be treated as if they are endangered until the California Fish and Game Commission determines they would or would not be listed as endangered under CESA. This decision is anticipated in October 2021. The level of protection of Joshua trees under CESA far exceeds the protective measures identified in the DRECP (i.e., would require a 2081 incidental take permit prior to ground disturbance), and implementation of lesser mitigations associated with LUPA-BIO-7, such as salvage and relocation of Joshua trees, would be considered ‘take’ under CESA. We recommend that mitigation measures involving salvage or transplant of Joshua trees be implemented only after consultation with CDFW.

Since we did not have the benefit of reviewing results of the May 2019 focused tortoise survey, we do not know if surveys included areas along the rather lengthy access road from Highway 395 to the site. However, we do note that even if tortoises are absent from the 25 acres comprising the subject property, they are known to occur in Rose Valley (BLM 2005) and very likely along the access road. As such, we question BLM’s conclusion on page 29: “BLM made a No Affect call for the desert tortoise, therefore no consultation occurred with U.S. Fish and Wildlife Service, and coordination is ongoing with CA Dept. of Fish and Wildlife for a 2081 Incidental Take Permit for Mohave ground squirrel.” Absent surveys along the access road, where tortoises are more than likely to occur and may be accidentally crushed by haul vehicles associated with the mine, BLM should assume tortoises are present and consult with both USFWS and CDFW about these potential impacts. Assuming a 2081 permit is acquired for MGS, we recommend that desert tortoise (and perhaps Joshua tree) also be identified as Covered Species in that permit. We request a copy of the 2019 focused tortoise survey.

Given these observations, we ask that BLM identify and require standard protective measures, including a 15 mile per hour speed limit and perhaps tortoise crossing signs, along the access road to the site, which would be added to the mitigation measures listed on pages 23 and 24 of the EA. Additionally, there are numerous standard protective measures typically required by the BLM that are missing from the list on pages 23 and 24, such as maintaining a litter-free workplace, prohibiting firearms and pets, administering tortoise awareness programs for all mine workers prior to initial mining activities and as annual training, to name a few. Please be sure that the proponent has a complete list of all standard protective measures to be implemented so they do not limit protections to the few identified in the EA. These measures should be part of the Decision Record.

Indirect impacts to the tortoise and other listed and sensitive species and their habitats should have been identified and analyzed in the EA, which is deficient in this respect. These include increased predation, loss/degradation of habitat from invasive plant species, fire, and reduced plant productivity/recruitment from dust deposition, and as mentioned herein, ancillary impacts (e.g., increased deposition of dust on adjacent shrubs) along the access road due to increased vehicle traffic to and from the site. This impact may extend hundreds of feet or more from the dust source (e.g., mining site, road, etc.) depending on the wind pattern and velocity.

On pages 10 and 24, there are references to nesting bird surveys being required for ground disturbance that occurs between April 15 and July 15, but there is no reference supporting this time period for surveys. It has been our understanding for years that the effective dates for nesting bird surveys should be between March 15 and September 15. Since the proponent already has to consult with USFWS about new tortoise surveys and CDFW about MGS surveys or permitting, we ask that BLM also ensure the effective dates for nesting bird surveys are also discussed with knowledgeable agency biologists.

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises and other special status resources during any authorized project activities. The Ridgecrest office of the BLM has been very conscientious over the past few years in letting us know about such projects. That we were not contacted and there is only a 15-day comment period for this project are troublesome. Herein, we reiterate that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this particular project is provided to us at the contact information listed above.

Regards,



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

cc: Following CDFW personnel: scott.wilson@wildlife.ca.gov, Heidi.Calvert@wildlife.ca.gov, Leslie.MacNair@wildlife.ca.gov

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