



DESERT TORTOISE COUNCIL

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Via email only

21 March 2022

Attn: Kate Miyamoto, Monica Ammann, Matt Toedtli
Bureau of Land Management, Palm Springs Field Office
1201 Bird Center Drive
Palm Springs, CA 92262

Emails: kmiyamoto@blm.gov, mammann@blm.gov, BLM_CA_PS_MorongoCommunicationSite@blm.gov

RE: Scoping comments for Morongo Highway 62 Communication Site Project

Dear Ms. Miyamoto, Ammann, and Mr. Toedtli,

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.

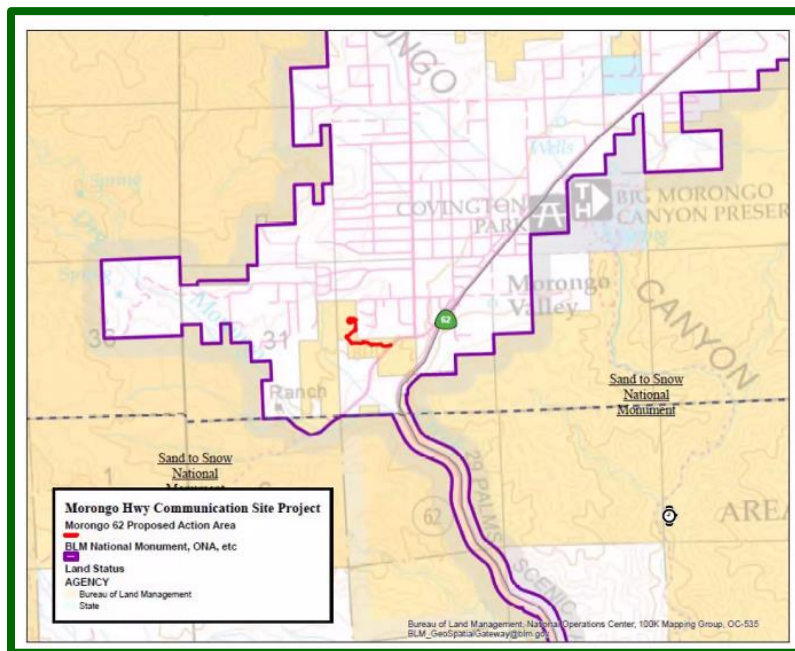
We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats potentially occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the Bureau of Land Management (BLM), 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.

Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers

Mojave desert tortoise to be Critically Endangered (Berry et al. 2021). As such, it is a “species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors.” It is one of three turtle and tortoise species in the United States to be critically endangered.

There is very little information available on BLM’s eplanning website, which mirrors the March 2, 2022 news release, as follows: “The applicant, InterConnect Towers LLC, has applied for a right-of-way to develop a communication site with *an access road* [emphasis added] and ancillary facilities on approximately 2.2 acres of public lands near Morongo Valley in southeastern San Bernardino County.” The Federal Register Notice, dated February 8, 2022 provides the following information: “The proposed project is located west of Highway 62 in Morongo Valley, California. The proposed project is within general public lands, as identified in the Desert Renewable Energy Conservation Plan (DRECP) amendment to the CDCA Plan.”

Unfortunately, there were no maps available in either of these information sources. We were able to capture the following screen shot during the public meeting on March 17, 2022, which shows the location of the proposed site, shown as the red line:



We question the rationale for locating this tower on public lands managed by BLM. It appears that the tower is within 2,000 feet of the San Gorgonio Wilderness, with extensive public lands to the east, which surround several square miles of private lands. So, it is apparent that the proponent has chosen to locate the tower on an exceedingly small amount of BLM lands that are surrounded by private lands. As a means of addressing our question - “Why has the proponent not planned to put the tower on private lands that it either leases or owns?” - we ask that an alternative be analyzed that does not include a CDCA Plan Amendment, that constructs the tower on private lands, preferable on lands that have already been substantially impacted by human activity. Please see our comments on cumulative impacts and climate change below.

The project description indicates the tower would result in impacts to 2.2 acres and only vaguely references an “access road” without indicating how long it would be or where it would be located. May we assume that this access road is an existing road, and if so, would it be widened or otherwise improved? We see from the above screen shot that the access road would occur on BLM lands and if it is to be widened, it would be necessary for the BLM to document the actual impact, which may be more than 2.2 acres. As with the above comment, we ask that alternative access roads be identified and assessed, particularly if tortoise sign is found or where one alternative may result in fewer stream crossings than the currently proposed alternative. In addition, if this access road is a new road, we request that it be physically blocked from public use to discourage the myriad of direct and indirect impacts to the human environment, including the desert tortoise and its habitat, from authorized and unauthorized activities that result from the public’s use of roads (e.g., injury and mortality to wildlife, soil compaction, dust, loss of native vegetation, noise, spread and proliferation of non-native annual grasses, increased fires, etc.).

Importantly, the project appears to be within a few miles of research conducted by Dr. Jeffrey Lovich where he has performed tortoise studies within the nearby wind turbine farm. In the interest of BLM’s cumulative effects analysis (see below) and affected environment discussion, please be sure the Draft Environmental Assessment (DEA) documents these studies in the context of potential impacts to this isolated population of tortoises.

Prior to ground disturbance, please be sure that a U.S. Fish and Wildlife Service (USFWS) protocol tortoise survey (USFWS 2019) is performed on and adjacent to the 2.2-acre impact area *and along* the entire length of the proposed access road. In fact, it is essential that the BLM with input from the USFWS determine what an appropriate “action area” is for this project and to complete protocol surveys within that identified action area. If tortoise sign is found, we assume that Section 7 consultation would occur between BLM and USFWS and that a Section 2081 incidental take permit would be solicited from the California Department of Fish and Wildlife (CDFW).

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDDB; CDFW 2022a) for rare plant and animal species reported from the region. The results of the CNDDDB review would be reported in the DEA with an indication of suitable and occupied habitats for all rare species reported from the region based on performing species-specific surveys described below.

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

Protocol surveys for western burrowing owl (*Athene cunicularia*) (CDFG 2012) should be completed. Note that 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 *and along the access road* 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 required.

There are special status plant species found in the region surrounding the Project area (e.g., triple-ribbed milk-vetch, *Astragalus tricarinatus*, which is federally listed as Endangered), which would be determined by a CNDDDB (CDFW 2022b) literature review, the results of which should appear in the DEA. Surveys must be completed at the appropriate time of year by qualified biologists (preferably botanists) using the latest acceptable methodologies (CDFG 2009).



The image to the left was provided on the BLM’s website, showing that the tower would be a latticework structure that may be more than 100 feet tall (200 feet was mentioned during the public meeting), although that information is not given in available documents. Such a lattice structure could provide nesting substrates for the common raven (*Corvus corax*), which is a known predator of desert tortoises. BLM is very much aware of the predation issue by common ravens on tortoises, and committed in its DRECP Land Use Plan Amendment (BLM 2016) to do the following:

“Subsidized Predators Standards

LUPA-BIO-6: Subsidized predator standards, approved by BLM, in coordination with the USFWS and CDFW, will be implemented during all appropriate phases of activities, including but not limited to renewable energy activities, to manage predator food subsidies, water subsidies, and breeding sites including the following:

- Common Raven management actions will be implemented for all activities to address food and water subsidies and roosting and nesting sites specific to the Common Raven. These include identification of monitoring reporting procedures and requirements; strategies for refuse management; as well as design strategies and passive repellent methods to avoid providing perches, nesting sites, and roosting sites for Common Ravens.
- The application of water and/or other palliatives for dust abatement in construction areas and during project operations and maintenance will be done with the minimum amount of water necessary to meet safety and air quality standards and in a manner that prevents the formation of puddles, which could attract wildlife and wildlife predators.
- Following the most recent national policy and guidance, BLM will take actions to not introduce, dispose of, or release any non-native species into areas of native habitat, suitable habitat, and natural or artificial waterways/water bodies containing native species.
- All activity work areas will be kept free of trash and debris. Particular attention will be paid to “micro-trash” (including such small items as screws, nuts, washers, nails, coins, rags, small electrical components, small pieces of plastic, glass or wire, and any debris or trash that is colorful or shiny) and organic waste that may subsidize predators. All trash will be covered, kept in closed containers, or otherwise removed from the project site at the end of each day or at regular intervals prior to periods when workers are not present at the site.
- In addition to implementing the measures above on activity sites, each activity will provide compensatory mitigation that contributes to LUPA-wide raven management.”

We ask that BLM fully implement the latest standards with respect to the design, construction, operation, maintenance, and decommissioning of the proposed project. For example, as part of the design phase, a new design would be used, like a monopole, and during the operation and maintenance phase, the proponent would obtain and implement a depredation permit and hire an experienced biologist for the life of the project to monitor for and remove raven nests during every nesting season so as to not provide new nesting opportunities.

We request that the BLM analyze the cumulative impacts of the proposed project to the Mojave desert tortoise. Please see *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345-46 (D.C. Cir. 2002) in which the court decided that agencies must analyze the cumulative impacts of actions in environmental assessments. In the cumulative effects analysis of the DEA, please ensure that the CEQ's "Considering Cumulative Effects under the National Environmental Policy Act" (1997) is followed, including the eight principles, when analyzing cumulative effects of the proposed action to the tortoise and its habitats. CEQ states, "Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." The analysis "must describe the response of the resource to this environmental change." Cumulative impact analysis should "address the sustainability of resources, ecosystems, and human communities."

CEQ's guidance on how to analyze cumulative environmental consequences, which contains eight principles listed below:

1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis need to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

In addition, BLM should include a cumulative impacts analysis of the proposed project on climate change. Vegetation sequesters carbon. Studies around the world have shown that desert ecosystems can act as important sinks to sequester carbon. For example, the California deserts account for nearly 10 percent of the state's carbon sequestration; below ground in soil and root systems, and above ground in biomass. Protecting this biome can contribute to securing carbon stores in the state (MDLT 2021). However, when plants die, they release carbon from their roots, stems, and leaves into the atmosphere and contribute to climate change. Given the current climate change conditions, there is an increasing need for carbon sequestration, not carbon release, therefore, an increasing need to, as a minimum, maintain native plants.

The proposed project would likely result in the loss/degradation of plants and their ability to sequester carbon for decades or longer. Although the proposed project has a small footprint, the cumulative impacts of it when combined with the numerous actions that BLM authorizes, has authorized, and the unauthorized activities occurring on BLM land that destroy vegetation means it would be contributing to climate change. Consequently, BLM should conduct a cumulative impacts analysis of the proposed project with respect to climate change. Analyzing alternatives and implementing ones that avoid or minimize the reduction/loss of native vegetation is important to combat climate change; it is imperative that proposed project not result in the loss of native vegetation. Finally, because BLM's ongoing discretionary actions and those in the foreseeable future are likely contributing to climate change, these impacts should be addressed with respect to their effects on the Mojave desert tortoise at the population level, recovery unit, and range-wide.

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 BLM that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Despite this persisting request in all our comment letters and a directed letter to BLM¹, a third party, not the BLM, informed us of this 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.

Respectfully,



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

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¹ <https://www.dropbox.com/s/mlwe60a9lchxy56/BLM%20CDCA%20District%20Manager%20DTC%20as%20an%20Affected%20Interest.11-7-2019.pdf?dl=0>

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