



DESERT TORTOISE COUNCIL

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Via email only

Date: 16 September 2024

To: Matthew Toedtli, Kate Miyamoto, Monica Ammann

Bureau of Land Management

Palm Springs – South Coast Field Office

1201 Bird Center Drive

Palm Springs, CA 92262

BLM_CA_PS_MorongoCommunicationSite@blm.gov; kmiyamoto@blm.gov; mammann@blm.gov

Re: Morongo Canyon Highway 62 Multi-Tenant Wireless Broadband Communications Site project in San Bernardino County (DOI-BLM-CA-D060-2020-0005-EA, CACA105877335, Legacy CACA 053787)

Dear 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.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an “environmentally friendlier way” of receiving correspondence and documents rather than “snail mail.”

The Mojave desert tortoise is among the top 50 species on the list of the world’s most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature’s (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), “... based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in

the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units.”

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024) stated: “At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department’s [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission’s decision initiated this status review to inform the Commission’s decision on whether the change in status is warranted.”

Since providing scoping comments on this project in March 2022, in their April 2024 meeting, the California Fish and Game Commission voted unanimously to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management. Among other things, this determination means that the Mohave desert tortoise population in California is deemed by the California Fish and Game Commission to be closer to extinction than when it was listed as threatened in 1989. The only status more dire than “endangered” is “extinct,” and the state of California has formally determined based on its five-year status review (CDFW 2024) that the desert tortoise is closer to extinction than it was in 1989.

We appreciate that the Bureau of Land Management (BLM) contacted the Council directly via email on 8/23/2024. We previously submitted scoping comments¹ on 3/21/2022, which are incorporated by reference and included in the footer at the bottom of this page. Unless otherwise noted, the page numbers referenced below are taken from the BLM’s draft environmental assessment (Draft EA), dated August 2024.

On page 1, we read, “The Morongo Canyon at Highway 62 Multi-Tenant Wireless Broadband Communications Site Project (Project) site is located approximately 0.5-mile north westerly of Highway 62 and just westerly of the community of Morongo, California (Figures 1-1 and 1-2 in Appendix A). The approximate coordinates for the Project site are Latitude: 34° 02’29” N; Longitude: 116° 35’48” W with an elevation of 2,853 feet above mean sea level (AMSL).”

The Draft EA fails to address the Council’s (2022) question given at the bottom of page 2 as to why the proponent has apparently intentionally selected our public lands to construct this project, and not purchased private lands for that purpose. Whereas we understand that the BLM is necessarily restricted to assessing issues and impacts as they relate to *public lands*, we feel that it was a fair, and persisting unanswered question, that the Draft EA failed to consider ALL lands,

¹ <https://www.dropbox.com/scl/fi/rm0bo5huj7jp694x6qby5/Morongo-Highway-62-Communication-Site-Project.3-21-2022.pdf?rlkey=fm25kt93p57w5vf5sffdm2xvs&dl=0>

including *private lands*, that may be used for the project. Whereas Section 2.4.1.1 of the Draft EA indicates that no additional *public lands* would meet the proponent’s requirements, it fails to indicate if private lands would satisfy the proponent’s needs. It would appear from the Draft EA that if the cell tower were moved 500 feet to the east, for example, it would occur on private lands (if for sale), still satisfy the proponents needs, and not result in ill-advised use of our public lands. Our assumption is that the proponent has chosen our public lands to develop this tower for ease of permitting and perhaps reduced costs of not needing to acquire private lands, and that development of this tower on public lands is not the highest and best use of our lands. We believe that the Final EA should have a section entitled, “Alternative Locations on Private Lands” that, among other things, documents the proponents research into such lands and why they would or would not be suitable.

As given on page 2-1, we question the construction of “A new access road, 24 feet wide and approximately 2,347 feet long with six turnouts (20 feet wide x 50 feet long) spaced every 300 feet,” through undeveloped desert tortoise habitats. In the following image, taken from Figure 2-1 on page 9 of Appendix F, the Biological Evaluation Report, we see the access road originating on Magnolia Avenue and terminating at the site, also depicting both Pinon Drive and Vista Grande, which appear to approach the site to within several hundred feet from the east and north, respectively. Whereas the Draft EA addresses the use of existing transponders, towers, and call boxes (pages 2-5 and 2-6), it fails to assess alternative access to the site, which we believe may be accomplished without a new half-mile road being constructed through tortoise habitats. Please be sure that the Final EA addresses alternate access to the site. This configuration again suggests that the proponent has gone out of their way to identify access on our public lands while use of existing roads on private lands may avoid the loss of 1.3± acres of tortoise habitat to this new access road.



It was evident at both the 2022 and 2024 public meetings, where 100 or more individuals expressed opposition to the project (LaRue attended both meetings, and doesn’t recall a single testimony advocating the tower), that the BLM has been put in an awkward position of accommodating what should be private development on our public lands. One wonders if the project would be opposed by the San Bernardino County Planning Department, assuming the county would be more responsive to public opinion and not approve the project, compared to the BLM, which rarely says “no” to any development.

Although this rationale may appear to be a non-biological argument, it does have biological implications when one considers the likelihood of crushing tortoises along a half-mile access road through desert tortoise habitats compared to the lower likelihood of crushing tortoises along existing roads through residential neighborhoods. If the BLM chooses to ignore public opposition to the project, including that of the Council, at the very least the new access road should be barricaded, gated, or otherwise blocked so that only project-related personnel are allow to use it, and that speed limits not exceed 15 miles per hour by facilities employees.

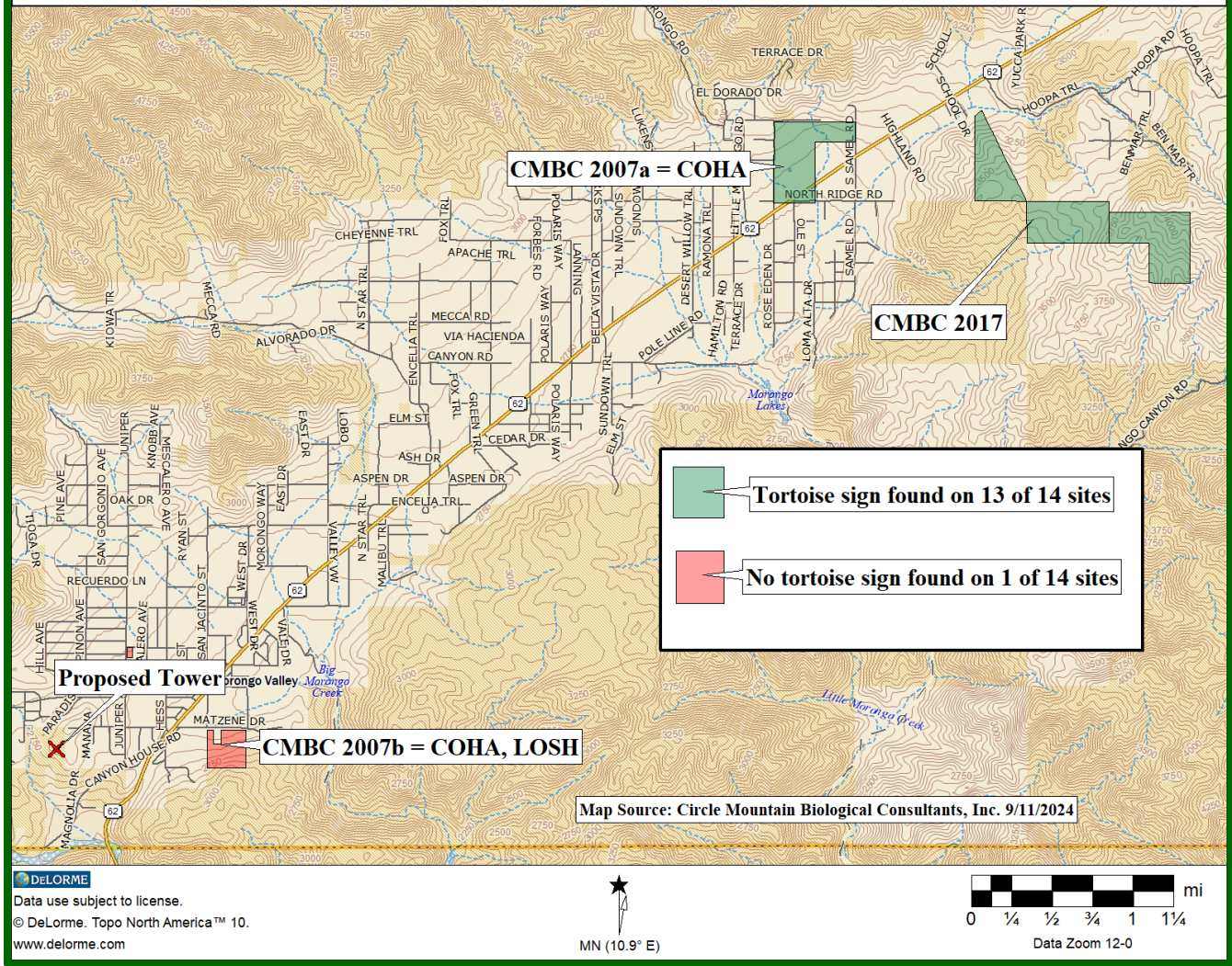
Whereas the BIO-2 measure given on page E-3 in Appendix E has a 15 mph speed limit during construction, operations, and maintenance there is no measure identified to preclude the public from using this road, which we believe should be added to the Applicant's Proposed Measures. We read the following recommendation on page 3-7: "Though it is unlikely for desert tortoises to be present on the Project footprint, to avoid a potential take and all potential negative effects, biological monitoring during construction of the cell tower **and access road** should occur (Ironwood 2023)." We ask that the stipulation be revised to include construction of the access road as well, as signified by the bold wording.

In Section 3.1 on page 3-1, we read, "The area included for the biological resource assessment includes the footprint of the project (lease area and new access road footprint) plus an additional 25-feet [sic] buffer. Together, these areas make up the 'biological study area' used to assess impacts." Did either the consultant or BLM discuss an appropriate "action area" for this project with the U.S. Fish and Wildlife Service (USFWS)? The "action area" is defined in 50 Code of Federal Regulations 402.2 and the USFWS 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 100% coverage survey area is larger than the project footprint/project site. CDFW has adopted the USFWS's 100% coverage survey as the methodology to use (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>) to determine tortoise presence/use of the action area and whether take would occur. We are concerned that introducing 3,000 gallons of fuel into an area that is very likely prone to wildfires warrants a much larger area to be assessed than a 25-foot buffer. It is also not clear to us if the "25-feet [sic] buffer" referenced on page 3-1 is the same as the "0.25-mile buffer" study area referenced on page 3-2. Please clarify in the Final EA.

With regards to desert tortoise, Section 3.1.1 on page 3-2 reports that, "...desert tortoise, has a moderate potential to occur based on a review of occurrence records, habitat quality, and habitat modeling. However, no desert tortoise signs or presence were observed during the 2016, 2021, or 2023 surveys completed by Ironwood Consulting." Biologists with Circle Mountain Biological Consultants, Inc. (CMBC) have performed approximately 300 focused desert tortoise surveys on 16,000 acres in the Morongo Basin, which extends from Twentynine Palms into the Morongo Valley. The map on the following page shows that tortoise signs have been found on 13 of the 14 sites surveyed in the Morongo Valley (CMBC 2007a, 2007b, 2017). Although these positive tortoise occurrences were observed between 5.5 and 7.0 miles northeast of the proposed tower, the similarity is that all of these tortoise-occupied sites were found in hilly and mountainous areas adjacent to residential development, very much like habitats occurring at the proposed tower site. We also know from Dr. Jeff Lovich's studies that numerous tortoises occur among the windmills five to seven miles south of proposed tower, so the project site is surrounded on all sides by tortoise habitats.

We provide this as additional tortoise information for the Final EA, to emphasize our concern that the access road is too long and situated completely in tortoise habitats for the BLM to definitively dismiss its possible impact to tortoises over the life of the project. If a tortoise is adversely affected during operations and maintenance for the life of the project, the project *may affect* the desert tortoise, which would trigger the need for Section 7 consultation under the Federal Endangered Species Act (FESA). The likelihood of harming a tortoise along the access road increases if the general public is allowed to use the newly provided access road, which would not occur *but for* the project.

Results of 14 focused tortoise surveys between 2007 and 2017



With regards to other rare wildlife, we agree with Ironwood’s (2023) conclusion that there are suitable foraging habitats for Cooper’s hawk (signified by “COHA” in the above figure) and loggerhead shrike (“LOSH” above), which have both been observed within a mile of the subject property (CMBC 2007b). When the site is resurveyed for burrowing owl occurrence, we recommend that a buffer area also be identified that is larger than the 20-foot wide access road and 0.5-acre cell tower site.

Finally, we applaud the BLM and applicant for identifying extensive tortoise protection measures in Appendix E. Measure DT-9 commits the proponent to “Raven nest surveys would be conducted twice yearly between March 15 and June 1, and separated by at least 30 days,” but does not specify for how many years such surveys would be performed. We recommend that Measure DT-9 be modified in the Final EA to clarify for how many years these studies would be performed.

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 BLM 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 notify the Desert Tortoise Council at eac@deserttortoise.org of any proposed projects that BLM may authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*, *G. flavomarginatus*) so we may comment on them to ensure BLM fully considers actions to conserve these tortoises as part of its directive to conserve biodiversity on public lands managed by BLM.

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

Literature Cited

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. <https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en>

[CDFW] California Department of Fish and Wildlife. 2024. Status Review for Mojave Desert Tortoise (*Gopherus agassizii*). Report to the California Fish and Game Commission. California Department of Fish and Wildlife, 715 P Street, Sacramento, CA 95814. 228 pp. with appendices. <https://fgc.ca.gov/CESA#adt>

[CMBC] Circle Mountain Biological Consultants, Inc. 2007a. Reconnaissance survey for desert tortoise, burrowing owl, and other important biological features on a 100-acre± site (APNs 0580-211-04 & -05 and APNs 0580-221-07 & -08) in the community of Morongo Valley, San Bernardino County, California. Unpublished letter report prepared by Ed LaRue on behalf of Chris Wagner and Chad Hanna. Job 07-049. Wrightwood, CA.

Circle Mountain Biological Consultants, Inc. 2007b. Focused resurvey for desert tortoise and western burrowing owl and general biological resource assessment for a 32.5-acre± site (APN 0584-191-02) in the community of Morongo Valley, San Bernardino County, California. Unpublished report prepared by Ed LaRue on behalf of Conrad DeRosa. Job 07-064. Wrightwood, CA. (Same as Job 05-018, #269).

Circle Mountain Biological Consultants, Inc. 2017. Reconnaissance surveys and habitat assessments for desert tortoise and other special status species in San Bernardino County, California. Unpublished report prepared by Ed LaRue on behalf of Mojave Desert Land Trust. Job #17-012. Wrightwood, CA.

Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf

[Council] Desert Tortoise Council. 2022. Scoping comments for Morongo Highway 62 Communication Site Project. Unpublished letter report submitted to the Palm Springs office of the BLM, dated 3/21/2024. 8 pp.

Ironwood Consulting. 2023. InterConnect Communication Tower Site – Hidden Morongo. Unpublished report prepared on behalf of InterConnect Towers, LLC for the BLM. 422 pp including appendices.

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