DESERT TORTOISE COUNCIL
3807 Sierra Highway #6-4514
Acton, CA 93510
www.deserttortoise.org
eac@deserttortoise.org

DESERT TORTOISE PRESERVE COMMITTEE, INC.
P.O. Box 940
Ridgecrest, CA 93556
www.Tortoise-Tracks.org
roger.dale@tortoise-tracks.org

MOHAVE GROUND SQUIRREL CONSERVATION COUNCIL
P.O. Box 1660
Wrightwood, CA 92397
ed.larue@mgsconservation.org

Via email only

September 1, 2025

Thomas Bickauskas
BLM Ridgecrest Field Office
Attn: Persistence Mine Comments
300 S. Richmond Rd.
Ridgecrest, CA 93555
tbickaus@blm.gov

Re: Persistence Mine Plan of Operations - Gold Discovery Group (DOI-BLM-CA-D050-2025-0009-EA)

Dear Mr. Bickauskas,

The Desert Tortoise Council (DTC) 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 Mexico, the DTC routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

The Desert Tortoise Preserve Committee (DTPC) is a non-profit organization formed in 1974 to promote the welfare of the desert tortoise in its native wild state. DTPC members share a deep concern for the continued preservation of the tortoise and its habitat in the southwestern deserts and are dedicated to the recovery and conservation of the desert tortoise and other rare and endangered species inhabiting the Mojave and western Sonoran deserts. The DTPC has a long track record of protecting desert tortoises and their habitat through land acquisition, preserve management, mitigation land banking, and educational outreach.

The Mohave Ground Squirrel Conservation Council (MGSCC) is a nonprofit organization established to assure the perpetual survival of viable populations of Mohave Ground Squirrels (MGS) throughout their historical range and any future expansion areas. The MGS, for the purposes of the MGSCC, means the mammal species known scientifically as *Xerospermophilus mohavensis*. Among our objectives pertinent to this letter is to support and to advocate for such legislative, policy, and conservation measures as will contribute to ensuring the continued survival of viable MGS populations, the connectivity of these populations, and the maintenance of their habitats in a natural condition.

Our physical and email addresses are provided above 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 DTC to join Defenders of Wildlife and DTPC to petition the California Fish and Game 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 California Fish and Game 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.

On December 13, 2023[1], the MGSCC joined Defenders of Wildlife, DTPC, and Dr. Phillip Leitner in a petition to have the U.S. Fish and Wildlife Service (USFWS) federally list MGS as threatened and to designate critical habitat. On January 17, 2025, the USFWS published a 90-day finding in the Federal Register[2]. In that document, the USFWS determined that the petition to list the MGS under the Federal Endangered Species Act (FESA) presented substantial scientific and commercial information indicating that listing the MGS as an endangered or threatened species may be warranted, pending a 12-month status review. If the USFWS's 12-month finding is that the listing is warranted, then the species becomes a candidate for listing. With the issuance of this 90-day finding, the USFWS's next step is to conduct a status review of the MGS and publish a 12-month finding. That 12-month finding will declare that listing is warranted, not warranted, or warranted but precluded.

Despite a specific request by the DTC on 3/25/2025 to be contacted about this project (DTC 2023[3]) and dozens of other requests in comment letters to the BLM Ridgecrest Field Office to be identified as an affected interest for projects affecting tortoises, it was by a third party – not the BLM – that we were informed about the proposed action. Our first alert was being contacted by the San Bernardino County Planning Department (County) for a Mitigated Negative Declaration (MND) for an opportunity to comment on the project. We (DTC et al. 2025[4]) drafted a comment letter to the County for this project that we herein incorporate by reference. In this second letter, we will strive to identify new issues that are not addressed in our letter to the County; however, we do expect the BLM to address our concerns expressed in that letter as well, which is footnoted below.

When our letter (DTC et al. 2025) was shared with the CDFW, they responded with their own letter (CDFW 2025[5]) that confirmed our concerns as to how this project will predictably impact desert tortoises and MGS, which are State- and or federally-listed species, and western burrowing owl, which is currently a candidate for State-listing, and under CESA is afforded the protections of a threatened or endangered species. Although the Sikes Act does not directly govern BLM land use, it does mandate that the BLM cooperate with the USFWS and State agencies in planning and implementing conservation programs for public lands and habitats under its control. We note that the Sikes Act is not listed in Table 1-1 of the draft environmental assessment (DEA), and ask that it be added to the table in the Final EA with an explanation as to how it does or does not affect CDFW consultation for this project. It is essential that the BLM not authorize activities that will result in the take of State-listed species by dismissing the importance of MGS surveys (DTC et al. 2025) or authorizing handling of tortoises in the absence of a State incidental take permit (ITP).

[1] https://www.dropbox.com/scl/fi/7h890e4r25ljpyyhvwq5c/Defenders-et-al.-MGS-Listing-Petition-12-13-23-FINAL.pdf?rlkey=f7ln6at8apxcovi8qgtr5g2qk&dl=0

[2] https://www.dropbox.com/scl/fi/iq0yvn5zd9mz5s7yn77wr/USFWS-finding-on-1-17-2025.pdf?rlkey=9arr6vzkq9td2ss9dggjln5nr&dl=0

[3] https://www.dropbox.com/scl/fi/8fib9n3tt9mp96hpdrd48/Gold-Discovery-Group-EA-BLM-CA.3-25-2023.pdf?rlkey=38cxvzwdqzcr0q5kjn0zh9gam&dl=0

[4] https://www.dropbox.com/scl/fi/8fib9n3tt9mp96hpdrd48/Gold-Discovery-Group-EA-BLM-CA.3-25-2023.pdf?rlkey=38cxvzwdqzcr0q5kjn0zh9gam&dl=0

[5] https://www.dropbox.com/scl/fi/hsp507b124ujzk4785gdl/Persistence-Mine-Reclamation-Plan.CDFW-Comments.8-15-2025.pdf?rlkey=sm0swfsqn1j6uwaakr1p7nd3c&dl=0

Unless otherwise noted, the following page numbers refer to the 98-page DEA, dated August 2025. Rather than provide an outline for this letter, our comments sequentially follow the outline and information given in the DEA.

With regards to mine reclamation described on page 18 and 19, we are pleased to provide the following resources to help accomplish successful arid lands restoration if the proposed mines are developed: Abella and Berry 2016 and Abella et al. 2023 (see the Literature Cited section for links to these and other cited documents).

Pages 37 and 38 indicate that only two rare plant species have been reported from the region, including Barstow woolly sunflower (*Eriophyllum mohavense*) and red rock poppy (*Eschscholzia minutiflora* ssp. *twisselmannii*). For your consideration and inclusion in the Final EA, the following rare plant species have been observed approximately nine miles east of the sites (CMBC 2022), including desert cymopterus (*Cymopterus deserticola*), pygmy muilla (*Muilla coronata*), and Mohave fishhook cactus (*Sclerocactus polyancistrus*). Whereas desert cymopterus is generally found in sandier soils than may occur on the subject properties, soils are likely ideal for pygmy muilla and fishhook cactus, which should be sought in subsequent surveys.

Two paragraphs near the top of page 49 reference protocol-level tortoise surveys performed in 2021 and again in 2024, stating that no tortoise sign was found. We received an email from an anonymous source on August 14, 2025, that a Class 1 tortoise burrow was found between the two mine sites in the fall of 2021. The "Class 1" designation means that the burrow was active and unambiguously assigned to a desert tortoise (i.e., Class 4 and 5 burrows may be occupied by tortoises but are not necessarily evidence they are present). This indicates that tortoises definitely occurred within several hundred feet of the sites – and by extension given a tortoise's mobility, likely on the sites – within several years of the ELMT surveys.

In CDFW's (2025) letter, they make the following statement on page 5: "Additionally, documents that were previously submitted to CEQAnet and are now withdrawn indicated that *desert tortoise was considered present onsite* [*emphasis* added]. Furthermore, as CDFW discussed earlier, the Project proposes desert tortoise translocation and exclusionary fencing, which would require take authorization from CDFW." We submit these additional data to the BLM so that potential impacts may be reassessed in the Final EA. CDFW emphasizes that a Section 2081 ITP would be required before any exclusionary fences can be installed or tortoises handled. Given the confirmed presence of tortoises onsite, we expect BLM to formally consult with the USFWS and possibly issue a project-specific biological opinion.

The first paragraph at the top of page 50 indicates that burrowing owl surveys were performed and that they are protected by CESA but does not report survey results until pages 52 and 53. With the inclusion of CDFW's (2025) letter on pages 8 and 9, BLM is now aware that breeding bird surveys are required by CDFW if ground disturbance does not occur within three years of the breeding bird surveys performed in 2024.

With regards to American badger, we read the following statement on page 50: "No observations of American badgers were made at the Project site and the burrows observed at the Project site during western burrowing owl surveys (ELMT 2024b) would be too small for American badgers." Badgers are rarely observed but can be identified by diagnostic foraging digs, so concluding they are absent because they were not observed is misleading and problematic. Similarly, finding badger dens is relatively infrequent compared to diagnostic digs, so dismissing burrows due to size is misleading and problematic. Given our experience in the area, badgers undoubtedly forage within the 125-acre impact footprint and should not be dismissed as having a "low potential to occur."

For MGS, the following statement is made on page 50: "CNDDB records show observations of Mohave ground squirrels within one mile of the Water Supply Sites, and approximately four miles from the proposed open pit areas (the Project site)." DTC et al. (2025) reported on page 5 that a reproductive male MGS was captured on April 15, 2022 between the two sites, approximately 200 feet east of the proposed western pit (UTM 444644/3906948, NAD 83). CDFW (2025) reported on page 3, "In 2022, CDFW consulted on the trapping for Mohave ground squirrel at the Project site and Mohave [sic] squirrel was detected on site. It was CDFW's understanding that the Project would proceed with an ITP request for Mohave ground squirrel." We provide these new data to the BLM so that they may be included in the Final EA, inform BLM so that stipulations may be amended accordingly, and so that BLM can ensure it does not authorize activities that will result in violating CESA.

Please note that the listing of MGS given on page 50, which states, "The Mohave Ground Squirrel (*Xerospermophilus mohavensis*) is a California state-threatened species," should be augmented in the Final EA to document that USFWS accepted a petition to federally-list the species in January 2025.

The following statement on page 52 is misleading for the reasons that follow: "The areas surveyed included all areas potentially directly or *indirectly affected* [*emphasis* added] by the Project, consistent with 50 CFR 402.02." It is not revealed in the DEA (as it is in the County's MND) that tortoise protocol surveys on the two mine sites were confined to the 126± acres to be directly impacted.

The June 23, 2024 ELMT Consulting (2024) report, states on pages 1 and 2, "The action area is defined as all areas to be directly *or indirectly affected* by the project (50 CFR §402.02) [*emphasis added here and below with regards to indirect impacts*]. For this project, the action area includes the limits of disturbance and all areas that have the potential to be indirectly impacted by the proposed project. Site characteristics including topography, presence of suitable habitat, and human disturbance were utilized to determine the lateral extent of the action area beyond the project footprint. The proposed action area was determined to be confined to the 126.2 acres proposed Persistence Mine site."

As such, the action area is the same size as the direct impact area, which does not by any means consider indirect impacts to the resource issues that include the tortoise, MGS, and burrowing owl. This paragraph that describes the action area for the proposed project is flawed because it fails to include the indirect impacts to these resource issues, and there is no scientific information provided to support this statement, which makes it an unsupported opinion. It is not reiterated here because it is incorporated by reference, but all of page 9 in DTC et al. (2025) provides rationale why surveys performed at the mine site, to date, have NOT addressed indirect impacts or included an adequate action area for the BLM to draw some of the conclusions it does in the DEA. This is particularly important because tortoise critical habitat shares the southern and eastern boundaries of the eastern mine site. In the Final EA, please correct the misleading statement on page 52 and the statement in the ELMT Consulting report that the action area is confined to the 126.2 acres of the proposed Persistence Mine site. Please adjust the size of the action area to include the areas indirectly impacted by the proposed action for these thee species and provide citations from the scientific literature to support the determination of the size of the action area.

The following statement is given on page 53: "With implementation of EPMs [Environmental Protection Measures] that include pre-construction surveys, biological monitors, and fencing, the impacts on general wildlife and wildlife habitat from the Proposed Action would be minor, short-term, and localized." We judge that the new mine sites would neither be minor, nor short-term, nor localized. New evidence presented herein indicates that both desert tortoises and MGS have been detected at the mine sites (CDFW 2025), and impacts to either of these species would be considered significant under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). As given in Abella and Berry (2016) and Abella et al. (2023), it may take decades for surface disturbance to recover even with conscientious reclamation. And as described on page 9 of DTC et al. (2025), contaminants raised to the surface by mining activities in the Atolia area are documented to be windblown 10 miles downwind of the mining sites (Chaffee and Berry 2006).

These impacts also raise the question of compliance with the Federal Land Policy and Management Act's (FLPMA) requirement that BLM "take any action necessary to prevent unnecessary or undue degradation of the lands." What actions is BLM requiring of the project proponent to ensure that erosion and restoration of areas experiencing surface disturbance do not remain in a degraded state or degrade adjacent areas? Please address in the Final EA how BLM is complying with this requirement of FLMPA.

We also note that CDFW (2025) has already stated (on page 5) that if exclusionary fencing is to be erected, a Section 2081 ITP would be required beforehand, which we equate with significant (not "minor") impacts.

In the same paragraph of the DEA, BLM states, "GDG [Gold Discovery Group] would conduct preconstruction clearance surveys for animals and their nests or burrows, which would avoid inadvertent mortalities to nesting birds and sensitive species" and on page 54 that a 50-foot buffer would be established for MGS. Importantly, no methods exist for conducting MGS clearance surveys. Leitner and LaRue (2014) have demonstrated that MGS burrows cannot be differentiated from other rodent burrows, so there is no way to establish 50-foot buffers from occupied MGS burrows. Given CDFW's authority to permit and minimize incidental take, we recommend that the Final EA avoid identifying ineffective BLM stipulations (e.g., implementing clearance surveys for which no methodology exists), and rather indicate that the Proponent will be required to secure a Section 2081 ITP for MGS (and likely, tortoise) and that they are responsible to implement protective measures identified in the project-specific ITP.

The following comments pertain to Appendix A: Applicant-Committed EPMs, where the italicized wording is taken from the appendix followed by our comments in regular font:

Bullet 2: *Temporary desert tortoise fencing would be installed that encompasses all proposed surface disturbances. Once fencing is installed, an interior clearance survey would be conducted to ensure no Mojave Desert Tortoises, kit foxes, Mohave ground squirrels, nesting birds, or other wildlife are within the fence prior to surface disturbing activities*. As per CDFW (2025), tortoise fencing may not be installed without first acquiring a Section 2081 ITP for take of tortoises associated with the project. Again, no clearance survey methodologies exist for MGS, which were identified on the site in 2022 (CDFW 2025, page 3), so a Section 2081 ITP is required for this species as well. Note that CDFW current management requires that ITPs be acquired for projects where MGS have been previously identified, even if the project is developed many years after MGS were detected. There is no opportunity to perform new trapping surveys, not capture MGS, claim they are absent, and claim no need for an ITP; an ITP is still required even though the MGS was captured onsite in 2022.

Bullet 3: We recommend that the following measure be modified as per the bold wording given: "*GDG would monitor the interior and exterior of the fence line weekly* ***and following storm events*** *during operations to ensure no wildlife becomes trapped in the fencing.*"

Bullet 6: With regards to the following EPM, "*Vehicle speeds shall not exceed 25 miles per hour on-site*," LUPA-BIO-IFS-9 on page A-9 states, "*Vehicular traffic will not exceed 15 miles per hour within the areas not cleared by protocol level surveys where desert tortoise may be impacted*," so the EPM should be adjusted to 15 miles per hour to avoid conflicting measures.

Bullet 9: For the following statement, "*Vehicles and equipment parked would be inspected immediately prior to being moved to ensure no desert tortoises or other wildlife are underneath vehicles,*" there should be some written guidance from BLM as to what measures would be taken if a tortoise is found under a vehicle. Namely, all mining activities must stop until which time BLM has consulted with USFWS and, depending on their discussions, the Proponent has acquired federal take authorization under a project-specific biological opinion before mining may resume.

Bullet 10: Please amend the following bullet as shown in strike-out and bold font: "*All trash and food items shall be promptly contained within closed,* ***predator*** ~~*common raven*~~*-proof*~~*ed*~~ ***(e.g., common raven, coyote, etc.)*** *containers****, and removed from the site to be disposed at a nearby licensed landfill on a daily basis****.*"

The following comments pertain to the table of BLM's Conservation Management Actions (CMAs), known as Land Use Plan Amendments (LUPAs). LUPAs or clauses therein that are not applicable to this project should be removed from Appendix A:

• Page A-3, LUPA-BIO-1: Since both MGS and tortoise sign have been observed either onsite or in the immediate vicinity, there is no latitude for the following discretionary action to be implemented, so it should be removed from consideration: "~~*BLM will not require protocol surveys in sites determined by the designated biologist to be unviable for occupancy of the species, or if baseline studies inferred absence during the current or previous active season*~~."

Page A-8, LUPA-BIO-IFS-4: As per CDFW (2025) requirements, no LUPA regarding installation of protective fencing should be implemented without first securing a Section 2081 ITP for tortoises.

• Page A-9, LUPA-BIO-IFS-5: "*…a designated biologist (see Glossary of Terms) will monitor initial clearing and grading activities* ~~*to ensure that desert tortoises missed during the initial clearance survey are moved from harm's way*~~."

• Page A-9, LUPA-BIO-IFS-8: "*If a desert tortoise is seen, it may move on its own.* ~~*If it does not move within 15 minutes, a designated biologist may remove and relocate the animal to a safe location*~~."

LUPA-BIO-IFS-39: ~~*During the typical active Mohave ground squirrel season (February 1 through August 31), conduct clearance surveys throughout the site, immediately prior to initial ground disturbance in the areas depicted in Appendix D. In the cleared areas, perform monitoring to determine if squirrels have entered cleared areas. Contain ground disturbance to within areas*~~

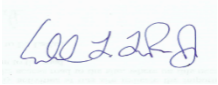
~~*cleared of squirrels. Detected occurrences of Mohave ground squirrel will be flagged and avoided, with a minimum avoidance area of 50 feet, until the squirrels have moved out of harm's way. A designated biologist (see Glossary of Terms) may also actively move squirrels out of harm's way*~~. For reasons given herein, including the absence of an ITP, no formal methodology for clearance surveys, and inability to differentiate MGS burrows from other rodent burrows, none of the provisions of LUPA-BIO-IFS-39 can be implemented without potential violation of CESA.

For similar reasons the following LUPA should be removed: "~~*LUPA-BIO-IFS-41: For any ground-disturbing (e.g., vegetation removal, earthwork, trenching) activities, occurrences of Mohave ground squirrel will be flagged and avoided, with a minimum avoidance area of 50 feet, until the squirrels have moved out of harm's way. A designated biologist (see Glossary of Terms) may also actively move squirrels out of harm's way*~~."

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises and MGS during any resulting authorized activities. Herein, we reiterate that the DTC, DTPC, and MGSCC want to be identified as Affected Interests for this and all other projects funded, authorized, or carried out by the BLM that may affect desert tortoises and/or MGS, respectively, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we request that you notify the DTC (eac@deserttortoise.org), DTPC (roger.dale@tortoise-tracks.org), and MGSCC (ed.larue@mgsconservation.org) of any future proposed projects that the BLM may authorize, fund, or carry out in the ranges of the desert tortoises and/or MGS, respectively.

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
Mohave Ground Squirrel Conservation Council, Ecosystems Advisory Committee, Chairperson

Roger Dale
Desert Tortoise Preserve Committee, President

cc. Philip DeSenze, Field Manager, Ridgecrest Field Office, Bureau of Land Management, BLM_CA_Web_RI@blm.gov
Dana Stephenson, Assistant Field Manager, Ridgecrest Field Office, Bureau of Land Management, dstephenson@blm.gov
Brandon Anderson, Acting District Manager, California Desert District Office, Bureau of Land Management, BLM_CA_Web_CD@blm.gov
Steven Recinos, Environmental Scientist, Inland Deserts Region, California Department of Fish and Wildlife, steven.recinos@wildlife.ca.gov

Ann McPherson, Environmental Review, U.S. Environmental Protection Agency, mcpherson.ann@epa.gov

Brian Croft, Assistant Field Supervisor, Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Office, brian_croft@fws.gov

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