



DESERT TORTOISE COUNCIL

3807 Sierra Highway #6-4514

Acton, CA 93510

www.deserttortoise.org

eac@deserttortoise.org

Via email and BLM NEPA eplanning portal

October 24, 2022

Jim Morrissey, Contract Planner
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187
Jim.Morrissey@lus.sbcounty.gov

RE: Redesign of a Phelan Civic Center Site for the Piñon Hills Community Services District
(Project No.: PRAA-2021-00040)

Dear Mr. Morrissey,

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 the 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.

As of June 2022, our mailing address has changed to:

Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510.

Our email address has not changed. Both addresses are provided above in our letterhead for your use when providing future correspondence to us.

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 San Bernardino County Land Use Services Department - Planning Division (County), 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.

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), as 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), population size fewer than 50 individuals, other factors." It is one of three turtle and tortoise species in the United States to be critically endangered. This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Desert Tortoise Council 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.

The Council is signed up to the County's system that announces the availability of projects like this Initial Study / Mitigated Negative Declaration for a Redesign of a Phelan Civic Center Site for the Piñon Hills Community Services District (Initial Study / Mitigated Negative Declaration) for public comment. Below are our comments on this document and associated documents that are meant to ensure compliance with applicable Federal and State laws and regulations/codes and implement management actions to contribute to the conservation of the tortoise listed as threatened under the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA).

In the County's notice to the public entitled "Notice of Availability (NOA) / Notice of Intent (NOI) to Adopt an Initial Study / Mitigated Negative Declaration Revision to an Approved Action for a Redesign of a Phelan Civic Center Site for the Piñon Hills Community Services District NOI," the County says, "You may obtain the document in electronic format at <http://cms.sbcounty.gov/lus/Planning/Environmental/Desert.aspx>." When we clicked on this link several times on October 20, 21, and 22, which was during the public comment period of September 24 to October 24 at 4:30 p.m., the results were always "Hmmm... can't reach this page. The connection was reset." Fortunately, we were able to access the Initial Study / Mitigated Negative Declaration and associated documents via another method. The County may want to investigate why this link was not functioning for the public to access this document during the entire public comment period.

Project Description

The Phelan Piñon Hills Community Services District (Proponent) proposes to construct, operate, and maintain a 14,034 square-foot administration building, (referred to as the "Civic Center Building") and a 17,284 square-foot Multi-purpose Community Service building on a 5-acre

parcel. The site would include parking and 35,654 square-feet of landscaping. The Proponent plans to develop the eastern adjacent 14 acres as a community park in the future. Development of the park is not included in the proposed Project, however grading of that property to provide fill material for the Civic Center is included. Storm water detention basins would be constructed on the adjacent property. The storm water improvements have been designed to avoid Joshua Trees that are on the adjacent property. The 5-acre development would occur in phases. However, for purposes of meeting California Environmental Quality Act (CEQA) requirements, the 5-acre development is evaluated herein as one phase.

The Project Site is part of the unincorporated Phelan / Piñon Hills community in San Bernardino County. The Project Site is located on Sheep Creek Road north of Warbler Road.

Comments on the Proposed Project

Biological Resources: On page 3 of the Initial Study / Mitigated Negative Declaration, under “Additional Approval Required by Other Public Agencies,” the County indicated the following:

Federal: None.

State of California: None.

We believe this statement is premature for reasons provided below for the Mohave ground squirrel (*Xerospermophilus mohavensis*), tortoise, and burrowing owl (*Athene cunicularia*). We believe additional surveys are required for these species to determine whether permits from the U.S. Fish and Wildlife Service (USFWS) and /or California Department of Fish and Wildlife (CDFW) are needed before the proposed Project may be implemented. Although we understand that the site may be heavily impacted, there is potential for any of these three species to occur, particularly burrowing owl, so protocol surveys for tortoise (USFWS 2019), Mohave ground squirrel [CDFG 2003 (Revised 2010)], and burrowing owl (CDFG 2007) are warranted.

The Initial Study / Mitigated Negative Declaration and General Biological Resources Assessment (Assessment) that accompanied the Initial Study / Mitigated Negative Declaration mentioned federal and state listed species and species of special concern that may occur in the Project area. These results were obtained by conducting a search of the California Natural Diversity Database (CNDDDB) of the Phelan quadrangle. The results indicated the Mojave desert tortoise, Crotch’s bumble bee (*Bombus crotchii*), Joshua tree (*Yucca brevifolia*), short-joint beavertail cactus (*Opuntia basilaris* var. *brachyclada*), white pygmy-poppy (*Canbya candida*), Le Conte’s thrasher (*Toxostoma lecontei*), coast horned lizard (*Phrynosoma blainvillii*), and burrowing owl have been reported from the area. However, we found no mention of the state threatened Mohave ground squirrel in the Initial Study / Mitigated Negative Declaration.

Leitner’s (2015) range map of the Mohave ground squirrel shows the proposed Project is within the range of that species. Although Leitner (2015) provided no records of Mohave ground squirrels being trapped in the project area or Phelan quadrangle, Leitner also indicated that few survey results for the Mohave ground squirrel have been conducted and reported in/near the project area. This would likely explain the absence of occurrence data in the CNDDDB. However, an absence of data from an area does not confirm the species does not occur there, so focused surveys are warranted. Given seasonal restrictions, the soonest these trapping surveys could be performed is March 2023.

We request that the Initial Study / Mitigated Negative Declaration include information about the actions the County would implement to comply with the California Endangered Species Act (CESA) for the state threatened Mohave ground squirrel. Usually, CDFW requires a project proponent to obtain a Memorandum of Understanding from CDFW and conduct protocol surveys using live traps, or that the project proponent is assuming presence and mitigating for the Mohave ground squirrel. If the former action is taken and the results indicate the presence of Mohave ground squirrels or if the latter action is taken, the County would need to contact the CDFW about obtaining a section 2081 incidental take permit before initiating ground disturbance for the proposed Project. These procedures and requirements should be added to the Initial Study / Mitigated Negative Declaration.

The Assessment recommended two mitigation measures – (1) “pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance, and (2) “if any sensitive species...are observed on the property during future activities [e.g., construction activities], CDFW and USFWS (as applicable) should be contacted to discuss specific mitigation measures which may be required for the individual species. CDFW and USFWS are the only agencies which can grant authorization for the ‘take’ of any sensitive species...”

We request these two mitigation measures be added to the Initial Study / Mitigated Negative Declaration. We remind the County that if a species listed under the FESA, CESA, or Migratory Bird Treaty Act is present during construction, the construction activity may likely be halted until the Proponent obtains an incidental take permit from USFWS and/or CDFW. Consequently, it is in the County’s best interest to implement pre-construction surveys for the tortoise, Mohave ground squirrel, and burrowing owl to determine whether these species may occur on/near the Project site and whether take may occur from implementation of the proposed Project.

We remind the County that for the tortoise, a pre-construction survey covers the entire action area for the proposed action. The “action area” is defined by the regulations for section 7(a)(2) of the FESA (50 Code of Federal Regulations 402.02), as “areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” For example, action areas frequently include the project site, access routes, areas into which desert tortoises are to be moved from the project site, and any nearby areas that if tortoises were present would result in indirect impacts to the tortoise. The action area is not limited to the “footprint” of the action nor is it limited by the authority of the Federal, State, or local agency or any other entity proposing the project; it will vary with each proposed action.

On page 11 of the Assessment, is the following sentence, “A pre-construction burrowing owl survey may be required by CDFW to determine if any owls have moved on to the site since the June 28, 2021 surveys. This information indicates that additional compliance with CDFW protocols may be needed before the proposed Project may be approved. This information should be included in the Initial Study / Mitigated Negative Declaration.” Pending findings of additional surveys for special status species to ensure compliance with FESA, CESA, and the Migratory Bird Treaty Act, it is premature for the County to state that additional approval is not required by State or Federal agencies for implementation of the proposed Project.

Hydrology and Water Quality: On page 42 on the Initial Study / Mitigated Negative Declaration, the County says, “Stormwater runoff from the Project Site would be collected in the project’s proposed retention basins (see 2021 preliminary WQMP) and utilized as a resource for groundwater recharge” and “No significant impacts are identified or anticipated and no mitigation measures are required.”

We request that these basins be designed so they do not inadvertently prevent tortoises or other animals from escaping from the basins or cause/contribute to their injury or mortality (e.g., from drowning, etc.). We suggest the County coordinate with USFWS and CDFW to ensure that prevention measures such as escape ramps are designed and maintained to be effective. For example, escape ramps in wildlife guzzlers have been ineffective in preventing tortoise drownings.

We appreciate that the design of the proposed Project would not substantially alter the existing drainage pattern of the site or area. This element is important to ensure there are no downstream impacts to soils, vegetation, and wildlife, including habitats used by Federal- and State-listed species, species of special concern, and migratory birds.

Vegetation and Landscaping: We request that landscaping is designed and implemented from a pallet of native plant species (e.g., beneficial to native wildlife, reduced irrigation need, greater assurance of plant survival, etc.). We provide for your use a recent study funded by the Council to advise proponents on effective methodologies for arid lands restoration¹.

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 San Bernardino County that may the desert tortoise, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. 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

cc: California State Clearinghouse state.clearinghouse@opr.ca.gov
Heidi Calvert, Regional Manager, Region 6, Inland and Desert Region, California Department of Fish and Wildlife, Heidi.Calvert@wildlife.ca.gov
Trisha A. Moyer, CDFW- Desert Inland Region 6, Habitat Conservation Program Supervisor, Bishop, CA Patricia.Moyer@wildlife.ca.gov

¹ <https://www.dropbox.com/s/nx1b5m2b5ehya12/%23Abella%20and%20Berry%202016.pdf?dl=0>

Literature Cited

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- Desert Tortoise Council. 2020. A Petition to the State of California Fish and Game Commission to change the status of *Gopherus agassizii* from Threatened to Endangered. Formal petition submitted on 11 March 2020.
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