

**DESERT TORTOISE COUNCIL**

3807 Sierra Highway #6-4514

Acton, CA 93510

[www.deserttortoise.org](http://www.deserttortoise.org)

[eac@deserttortoise.org](mailto:eac@deserttortoise.org)

**Via email only**

10 February 2023

Attn: Azhar Khan, Planner  
County of San Bernardino  
Land Use Services Department, Planning Division  
385 N. Arrowhead Ave 1st Floor  
San Bernardino, CA 92415  
[azhar.khan@lus.sbcounty.gov](mailto:azhar.khan@lus.sbcounty.gov)

RE: Wonder Inn Hotel/Resort (Twentynine Palms) (PROJ-2021-00163)

Dear Mr. Khan,

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 that the County of San Bernardino Land Use Services Department (County) email to us 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." In fact, it was by means of an email received from the County on 1/20/2023 that we received notification of this project, which we appreciate.

Given the location of the proposed project in habitats known to be 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 County. 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 (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.

The following information is provided in the County's Notice of Availability (NOA) and Notice of Intent (NOI), dated 1/17/2023: "A Concurrent filing of a Tentative Parcel Map to consolidate six parcels into two parcels, a General Plan Land Use Amendment from Rural Living (RL) to Commercial (C) and a Zoning Amendment from Rural Living, 5-acre minimum lot size (RL-5) to Service Commercial (CS), a Conditional Use Permit for a proposed hotel use with the conversion of an existing 4,407- square foot office building to a restaurant/lobby and the construction of 106 guest rooms, 5,031 square foot conference room, 4,666 square foot wellness center and ancillary structures on a 24.4-acre site, located at 78201 Amboy Road, Twentynine Palms" (Proposed Project). The total project area is 134.6 acres.

The County's Initial Study/Mitigated Negative Declaration Checklist, dated January 2023, provide the following additional information on page 2:

Accommodations:

- 106 pre-manufactured modular structures placed in pods that will serve as the hotel rooms (total of 42,120 SF).
- 210 vehicle parking stalls, of which 12 contain electric vehicle charging stations, and seven are compliant with the American With Disabilities Act (ADA).
- 10 dedicated to motorcycle parking.

Amenities:

- Lobby, restaurant, kitchen, clubhouse – 4,407 SF (remodel of existing commercial style building).
- Administration/Back of House – 6,310 SF pre-manufactured modular building.
- One Swimming Pool – 6,300 SF.
- Wellness Area with arrival center (a building), shade structure treatment rooms, restroom, and a shade structure fitness room (total 3,985 SF).
- A 3,300 SF multi-purpose tent for gatherings with a 1,700 SF building and restroom area.
- Astronomy pergola – an approximately 250-foot linear, landscaped pathway to an existing on-site metal structure that includes landscaping and benches, and hard surfaces to set up telescopes or sit and watch the stars.
- Sunken Garden – an approximately 250-foot linear, landscaped pathway would lead to a landscaped area that is lower than the ground surface for seating.

### Site Features:

- Landscaping features that include a variety of native palm and shade trees, water features, creosote mounds, decomposed granite trails, and water features.
- The parking lot will be asphalt chip seal, but the interior pathways and roadways and trails will be compacted decomposed granite.
- Drainage controls include construction of rock lined swales mostly along southern side of the property, intended to intercept and divert surface runoff to proposed detention ponds on both sides of the development area. This will prevent the offsite runoff from mixing with the rain water in the development zone. The outlet points for these lined swales will be fitted with detention ponds to attenuate the flow as it is released from the site. Outlets for the ponds will also include riprap pads and dissipators, if necessary. Within the development area, inlets and pipe systems will be used to intercept and convey runoff. The runoff will be brought to infiltration ponds for treatment before eventual release to its original flow path.

We note on page 5 of the Initial Study under the list of “Additional Approval Required by Other Public Agencies,” that there are no such Federal approvals and several approvals by the State of California. For reasons given herein, we believe that a Federal Section 10(a)(1)(B) incidental take permit will be required from the U.S. Fish and Wildlife Service (USFWS) under the Federal Endangered Species Act (FESA) and a Section 2081 incidental take permit under the California Endangered Species Act (CESA) will be required from the California Department of Fish and Wildlife (CDFW) before any ground disturbance occurs, which we believe will result in the take of the Federal- and State-listed Mojave desert tortoise. In addition, authorizations from both agencies may be required for the take of migratory birds under the Migratory Bird Treaty Act and its implementing regulations, and California Fish and Game Code.

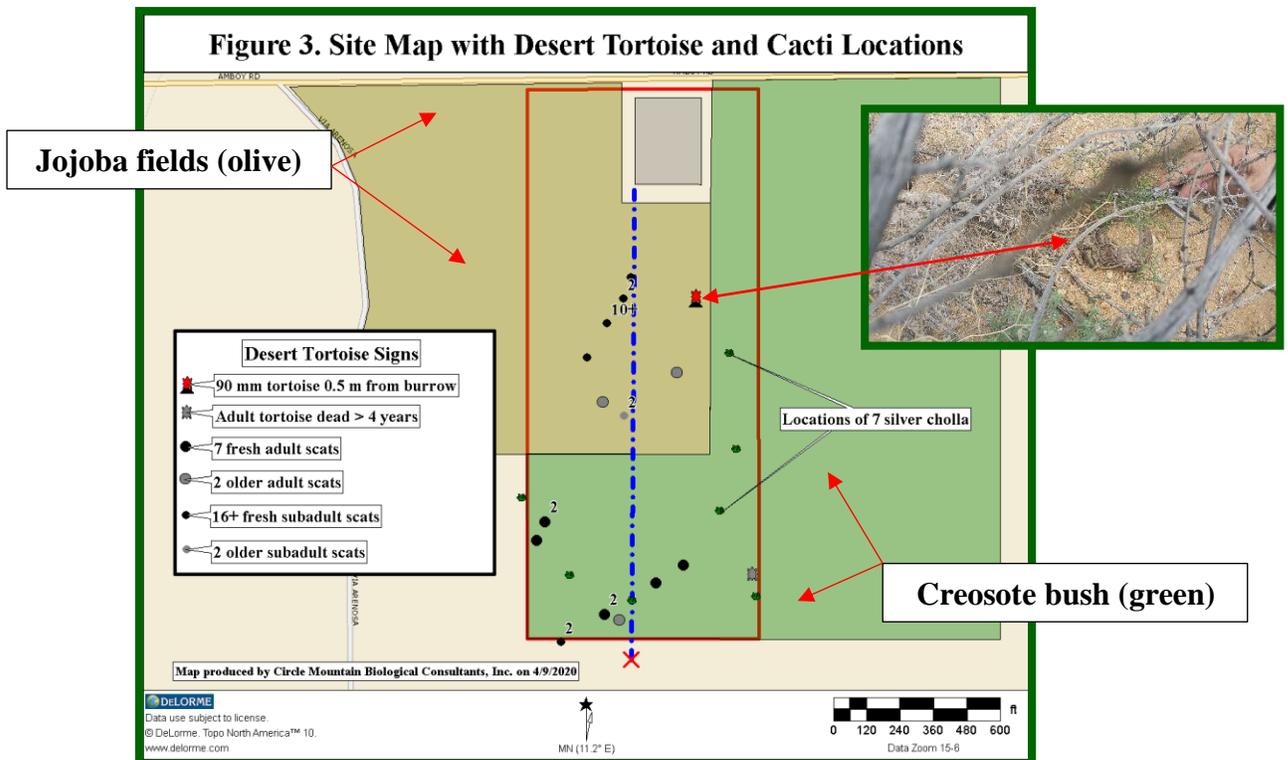
On page 30 of the Initial Study, we read “No special-status wildlife species were observed on-site during the field survey performed as part of the Habitat Assessment (HA) in Appendix B-1. Based on habitat requirements for specific species and the availability and quality of onsite habitats, the HA in Appendix B-1 identified that the Proposed Project site has a low to moderate potential to support the following species as identified in Table 4 - Summary of Sensitive Species and Potential to Occur, although none of the species in Table 3 [sic?] were identified in the field survey in Appendix B-1.” Please revise this section and add the species in the tables.

We read on page 5 of the Habitat Assessment (ELMT 2021), “All available reports, survey results, and literature detailing the biological resources previously observed on or within the vicinity of the project site were reviewed to understand existing site conditions and note the extent of any disturbances that have occurred on the project site that would otherwise limit the distribution of special-status biological resources.” Perhaps through no fault of their own, the consultant was not aware that a protocol tortoise survey and habitat assessment was conducted on 40 of the 135-acre± subject property in April 2020 (Circle Mountain Biological Consultants, Inc. 2020), which is described below. The results of this survey and assessment should be added to the HA and the California Environmental Quality Act (CEQA) document and included in the description and analysis of impacts from implementation of the Proposed Project.

Page 6 of the HA states, “ELMT biologist Travis J. McGill evaluated the extent and conditions of the plant communities found within the boundaries of the project site on March 25, 2021. Plant communities identified on aerial photographs during the literature review were verified in the field by walking *meandering transects* [*emphasis added*] through the on-site plant communities and along boundaries between plant communities.” We note later on page 16 that a “systematic search of the project site” is referenced but not described.

There is no indication that a protocol tortoise survey (USFWS 2019) was performed, either in the text or in the literature cited. We note that given a 30-year standard of surveying for tortoises of approximately four acres per hour, that it would take approximately 34 hours to survey a 135-acre site, which excludes peripheral surveys to detect western burrowing owl (*Athene cunicularia*) (CDFG 2012<sup>1</sup>), which would take several more hours. Given that Mr. McGill completed “meandering transects” on the 135-acre site on only one day, and lacking any additional information, we conclude that the requisite protocol survey was not performed.

Importantly, Mr. McGill’s reconnaissance survey was performed on 3/25/2021, approximately 11 months after CMBC (2020) performed its protocol survey on 4/6/2020. During the April survey, two biologists spent approximately eight hours performing surveys on a 40-acre portion of the same property, encompassing a portion of APN 0625-071-04 and all of APN 0625-071-09. During the CMBC survey, biologists found a 90 mm desert tortoise, the carcass of an adult tortoise that died more than four years ago, 7 fresh scats deposited in 2020 by adult tortoise(s), 2 older scats deposited prior to 2020 by adult tortoise(s), 16+ fresh scats of subadult tortoise(s), and 2 older scats of subadult tortoise(s). Following is a diagram from CMBC (2020) depicting tortoise sign:



<sup>1</sup> <https://www.dropbox.com/s/1mqiw7aqo847hzs/WonderInn.2012.pdf?dl=0>

Most of our Board members are desert tortoise field biologists, and we can state without reservations that 90% or more of the tortoise sign found in April 2020 was still present on the smaller 40-acre parcel in March 2021 when the reconnaissance survey was performed. Depending on the biologist's experience level, we are certain that tortoise sign would have been found had the appropriate protocol survey been performed. It is noteworthy that tortoise sign, including the juvenile tortoise, were found in marginal habitats in the abandoned jojoba fields (olive area shown above in Figure 3); the sign is even more common in the intact creosote bush scrub community (green areas in Figure 3); and tortoise sign almost certainly occur on the 90 acres that were not surveyed by CMBC. So, the full extent of the impact remains unknown until the entire site is surveyed along transects spaced at no wider than 10-meter intervals (USFWS 2019).

Given this information and available data from peer-reviewed scientific papers on biology of and threats to the tortoise, the Council concludes that development of this site would invariably result in the take of tortoises. Take would occur from direct, indirect, and/or cumulative impacts (e.g., increase in human subsidized predation, entrapment of tortoises in drainage control facilities, etc.), and without the State and Federal incidental take permits listed above, would be in violation of both the California Endangered Species Act and Federal Endangered Species Act. We recommend that the County require a new survey of the 135-acre± site, employing the appropriate tortoise survey protocols (USFWS 2019) onsite and burrowing owl survey protocols in adjacent areas (CDFG 2012). For tortoise surveys, this would include implementing the survey at the appropriate time of the year and by personnel deemed qualified by USFWS and CDFW. In the meantime, the Initial Study, at least with regards to Biological Resources, needs to be revised and redistributed after these surveys are performed.

Finally, given the introduction of people into tortoise-occupied habitats and the likelihood that tortoise predators, including common ravens and coyotes, are likely to be drawn onto the site and adjacent areas seeking new food and water sources (Boarman 2003, Kristan and Boarman 2003), the Council concludes that the County must require an environmental impact report (EIR) for the proposed project that addresses all direct, indirect, and cumulative impacts to tortoises in the area. Importantly, the subject property is only 2.5 miles north of the Pinto Mountains Critical Habitat Unit (USFWS 1994) and Pinto Mountains Area of Critical Environmental Concern (ACEC; BLM 2006). Among other things, the EIR must address impacts to these proximate, essential tortoise habitats (USFWS 1994). The County should require the Project Proponent to contribute to the National Fish and Wildlife Foundation's Raven Management Fund for regional and cumulative impacts as well as other measures to mitigate the direct and indirect impacts during construction and operations and maintenance of the Proposed Project.

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 County 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. 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,



Mari Quillman, Chairperson  
Desert Tortoise Council

cc. Rollie White, Assistant Field Supervisor, Palm Spring Fish and Wildlife Office, U.S. Fish and Wildlife Office, [rollie\\_white@fws.gov](mailto:rollie_white@fws.gov)

Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife, [Heidi.Calvert@wildlife.ca.gov](mailto:Heidi.Calvert@wildlife.ca.gov)

Brandy Wood, Region 6 – Desert Inland Region, California Department of Fish and Wildlife, [brandy.wood@wildlife.ca.gov](mailto:brandy.wood@wildlife.ca.gov)

California State Clearinghouse [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

### 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>

Boarman, W. 2003. Managing a Subsidized Predator Population: Reducing Common Raven Predation on Desert Tortoises. *Environmental Management* 32, 205–217 (2003). <https://doi.org/10.1007/s00267-003-2982-x>

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. The 7 March 2012 memo replacing 1995 staff report, State of California Natural Resources Agency, Department of Fish and Wildlife. Sacramento, CA.

Circle Mountain Biological Consultants, Inc. 2020. Focused Survey for Agassiz's Desert Tortoise, Habitat Evaluation for Burrowing Owl, and General Biological Resource Assessment for a 40-acre± Site (APN 0625-071-04 & 09) in the Community of Wonder Valley, San Bernardino County, California. Unpublished report dated April 2020.

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](https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf).

ELMT Consulting, Inc. 2021. Habitat assessment for The Wonder Inn Joshua Tree. Unpublished report, dated July 2021, provided by San Bernardino County Planning Department. Santa Ana, CA. 23 pp plus appendices.

- Kristan III, W.B., and W.I. Boarman. 2003. Spatial pattern of risk of common raven predation on desert tortoises. *Ecology* 84(9) September 2003: 2432-2443.  
<https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1890/02-0448>
- [BLM] U.S. Bureau of Land Management. 2006. Record of Decision: West Mojave Plan, an Amendment to the California Desert Conservation Area Plan 1980. Dated March 2006. Sacramento, CA.
- [USFWS] U.S. Fish and Wildlife Service. 1994. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.  
<https://www.dropbox.com/s/c98obavb2mn8aom/USFWS%20Critical%20Habitat%20Designation%20in%201994.pdf?dl=0>