



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003

IN REPLY REFER TO:  
08EVEN00-2012-TA-0019

November 16, 2011

Shane Stueckle  
Deputy Town Manager  
Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, California 92284

Subject: Proposed South Side Community Park, Yucca Valley, California

Dear Mr. Stueckle:

By letter dated October 7, 2011, Ed LaRue of Circle Mountains Biological Consultants requested, on behalf of the Town of Yucca Valley (Town), formal consultation regarding the Town's proposal to develop a community park on 37.75 acres located along Joshua Lane. Because Mr. LaRue is not a Federal agency, he cannot request formal consultation, pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended, with the U.S. Fish and Wildlife Service (Service). However, we have reviewed the information that Mr. LaRue has presented and offer you technical assistance regarding the Town's proposed development.

Mr. LaRue surveyed the site of the proposed park for individuals of the federally threatened desert tortoise (*Gopherus agassizii*) in June 2009 and October 2011. On both occasions, Mr. LaRue detected scat of desert tortoises, with fewer scat being present on the more recent visit. He did not detect either desert tortoises or their burrows on either visit. Because desert tortoises were not found during either survey, Mr. LaRue has proposed a protocol for development of the proposed park without obtaining an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act, for the take of desert tortoises.

Section 9 of the Endangered Species Act prohibits the "take" of listed species and could result in prosecution unless that take is authorized by the Service. Take is defined by the Endangered Species Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined as significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 Code of Federal Regulations 17.3). Harass is defined as an intentional or negligent act or omission that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly impair normal behavior patterns which include breeding, feeding, or sheltering (50 Code of Federal Regulations 17.3).

Mr. LaRue's proposal, which is presented in detail on page 42 of the survey report that accompanied his letter to us, calls for surveys to be performed during the winter on the northern portions of the site to determine whether desert tortoises have entered the site since the last survey. If no desert tortoises or their burrows are found, the site would be partially fenced. The reasons for the partial fence are related to assumptions that desert tortoises would move onto the site from the north or northwest but not from other directions; additionally, a wash that crosses the property would destroy any fence that crossed it, in the event of rain.

We acknowledge the merits of Mr. LaRue's proposal but offer the following suggestions that we believe are likely to improve the potential that the proposed action could be implemented without the need for an incidental take permit from the Service.

First, we recommend that the proposed park site be fenced immediately in a manner that would preclude desert tortoises from entering the site. The fencing should be completed with an experienced desert tortoise biologist present. If a desert tortoise is detected during the installation of the fence, we recommend that all work cease until the Town can discuss the situation with the Service and determine an appropriate course of action. We recommend that the entire site be fenced because desert tortoises that encounter a partial fence along the north side of the property would likely walk along it until they can again turn in the direction they were originally traveling and enter the property further to the south. The wash should also be fenced; we suggest that it be designed such that the section across the wash be able to break away during a storm so that it does not destroy a longer section of fence. The fence should be checked after any significant rainfall event and repaired as necessary to prevent desert tortoises from entering the park.

After the site is fenced, we recommend that the site be surveyed again, as described by Mr. LaRue in his third bullet on page 13. Contrary to Mr. LaRue's recommendation, however, we recommend that the surveys be conducted when desert tortoises are active to maximize the likelihood that they would be detected if they are present. If no desert tortoises are found, development of park could proceed without an incidental take permit from the Service. We would recommend that workers be provided training with regard to the appropriate procedures to follow in the unlikely event that a desert tortoise is detected during development.

If a desert tortoise is found, we recommend that the Town immediately contact the Service. We would likely recommend, at that point, that the Town apply for an incidental take permit and open the fence to the extent that the desert tortoise could leave the site if it so chose.

We appreciate your efforts to protect desert tortoises while providing recreational opportunities for the people of Yucca valley. I suggest that you consider the recommendations that we have provided in this letter and any that the California Department of Fish and Game may provide. If our recommendations differ from those of the California Department of Fish and Game, I suggest that we convene a meeting in the near future to determine an appropriate course of action.

Shane Stueckle

3

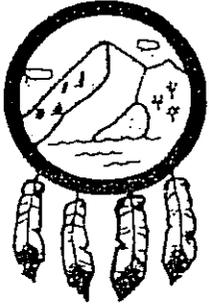
If you have any questions regarding this letter, please contact Ray Bransfield of the Ventura Fish and Wildlife Office at (805) 644-1766, extension 317.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl T. Benz". The signature is fluid and cursive, with a large, stylized "Z" at the end.

Carl T. Benz  
Assistant Field Supervisor

cc: Ed LaRue  
Tonya Moore, California Department of Fish and Game



*CIRCLE MOUNTAIN BIOLOGICAL CONSULTANTS, INC.*

P.O. BOX 3197

WRIGHTWOOD, CA 92397

PHONE/FAX: (760) 249-4948

Email: [circlemtn@yahoo.com](mailto:circlemtn@yahoo.com)

7 October 2011

Ms. Becky Jones  
California Department of Fish and Game  
36431 41st Street East  
Palmdale, California 93552

Mr. Ray Bransfield  
United States Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003

RE: Proposed South Side Community Park in Yucca Valley, San Bernardino County, CA

Dear Ms. Jones, Mr. Bransfield,

I am writing this letter on behalf of the Town of Yucca Valley (Town) to request formal consultation concerning the Town's proposal to develop a community park on habitats that have recently been occupied by the Agassiz's desert tortoise (*Gopherus agassizii*). Circle Mountain Biological Consultants, Inc. (CMBC) was contracted by the Town in June 2009 and again in October 2011 to survey for desert tortoises and other special status species on the 37.75-acre site located in the south part of the town. Our attached technical report provides detailed information that is only summarized herein.

During the first survey in 2009, CMBC found 16 adult tortoise scat, including 13 fresh scat and 3 older ones, on northern parts of the proposed park, in and adjacent to areas that had escaped a fire that burned 95% of the site in the mid-2000's. During the second survey in 2011, we found two old scat onsite, one of which was likely one of the then-older scat found in 2009, and two scat, including a very fresh one, approximately 500 feet north of the proposed site. Given these findings and the discussion presented in the attached report, we concluded that there has been no recent use of the site by tortoises but there remains the potential for a tortoise to reenter the site between now and ground disturbance.

In the technical report, we present a detailed proposal to resurvey the site this winter, fence it, and ensure that tortoises are not directly impacted by subsequent development. The purpose of the fence is to preclude tortoises from the eventual impact area and thereby avoid the need for a federal 10(a)(1)(B) permit and State 2081 permit, as there is no involvement of a federal agency that would trigger the need for Section 7 consultation.

We have advised Shane Stueckle, the Deputy Town Manager, that the detailed proposal given on pages 13 and 14 of the attached report cannot be implemented until formal approval has been granted or reasonable alternatives identified by California Department of Fish and Game and U.S. Fish and Wildlife Service. Alternatively, the Town would pursue formal incidental take permits available to private parties lacking a federal nexus, if approval or modifications cannot be granted or identified, respectively.

Please consider this a formal request for Technical Assistance and initiation of formal consultation, as described in the 2010 survey protocol issued by the U.S. Fish and Wildlife Service; and advise us of the best means to pursue conscientious development of this parcel with the best interest of both the resource and public in mind. My contact information appears on the letterhead. Mr. Stueckle's contact information follows:

Mr. Shane Stueckle, Deputy Town Manager  
Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, CA 92284  
PH: (760) 369-1265, Ext. 305  
Email: [sstueckle@yucca-valley.org](mailto:ssstueckle@yucca-valley.org)

Finally, in reading the attached report and recommendations, you will see that the proposal relies on performing clearance surveys of the site and installing the barrier between now and late January to preclude tortoises from the site after they become active next spring. As such, we appreciate your timely response to this request.

Thanks,

Circle Mountain Biological Consultants, Inc.  
Edward L. LaRue, Jr.  
Consulting Biologist

CC. Shane Stueckle, Deputy Town Manager, Town of Yucca Valley



***CIRCLE MOUNTAIN BIOLOGICAL CONSULTANTS, INC.***

**P.O. BOX 3197**

**WRIGHTWOOD, CA 92397**

**PHONE/FAX: (760) 249-4948**

**Email: [circlemtn@yahoo.com](mailto:circlemtn@yahoo.com)**

7 October 2011

Ms. Becky Jones  
California Department of Fish and Game  
36431 41st Street East  
Palmdale, California 93552

Mr. Ray Bransfield  
United States Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003

RE: Proposed South Side Community Park in Yucca Valley, San Bernardino County, CA

Dear Ms. Jones, Mr. Bransfield,

I am writing this letter on behalf of the Town of Yucca Valley (Town) to request formal consultation concerning the Town's proposal to develop a community park on habitats that have recently been occupied by the Agassiz's desert tortoise (*Gopherus agassizii*). Circle Mountain Biological Consultants, Inc. (CMBC) was contracted by the Town in June 2009 and again in October 2011 to survey for desert tortoises and other special status species on the 37.75-acre site located in the south part of the town. Our attached technical report provides detailed information that is only summarized herein.

During the first survey in 2009, CMBC found 16 adult tortoise scat, including 13 fresh scat and 3 older ones, on northern parts of the proposed park, in and adjacent to areas that had escaped a fire that burned 95% of the site in the mid-2000's. During the second survey in 2011, we found two old scat onsite, one of which was likely one of the then-older scat found in 2009, and two scat, including a very fresh one, approximately 500 feet north of the proposed site. Given these findings and the discussion presented in the attached report, we concluded that there has been no recent use of the site by tortoises but there remains the potential for a tortoise to reenter the site between now and ground disturbance.

In the technical report, we present a detailed proposal to resurvey the site this winter, fence it, and ensure that tortoises are not directly impacted by subsequent development. The purpose of the fence is to preclude tortoises from the eventual impact area and thereby avoid the need for a federal 10(a)(1)(B) permit and State 2081 permit, as there is no involvement of a federal agency that would trigger the need for Section 7 consultation.

We have advised Shane Stueckle, the Deputy Town Manager, that the detailed proposal given on pages 13 and 14 of the attached report cannot be implemented until formal approval has been granted or reasonable alternatives identified by California Department of Fish and Game and U.S. Fish and Wildlife Service. Alternatively, the Town would pursue formal incidental take permits available to private parties lacking a federal nexus, if approval or modifications cannot be granted or identified, respectively.

Please consider this a formal request for Technical Assistance and initiation of formal consultation, as described in the 2010 survey protocol issued by the U.S. Fish and Wildlife Service; and advise us of the best means to pursue conscientious development of this parcel with the best interest of both the resource and public in mind. My contact information appears on the letterhead. Mr. Stueckle's contact information follows:

Mr. Shane Stueckle, Deputy Town Manager  
Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, CA 92284  
PH: (760) 369-1265, Ext. 305  
Email: sstueckle@yucca-valley.org

Finally, in reading the attached report and recommendations, you will see that the proposal relies on performing clearance surveys of the site and installing the barrier between now and late January to preclude tortoises from the site after they become active next spring. As such, we appreciate your timely response to this request.

Thanks,

Circle Mountain Biological Consultants, Inc.  
Edward L. LaRue, Jr.  
Consulting Biologist

CC. Shane Stueckle, Deputy Town Manager, Town of Yucca Valley