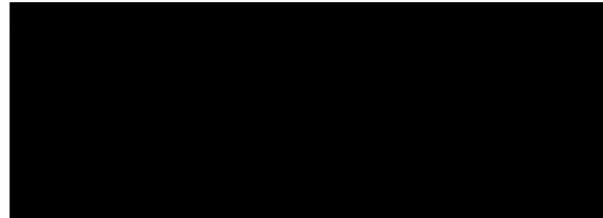


June 5, 2006

Carrie Hyke, Supervising Planner
San Bernardino County, Land Use Services Department,



RE: NOTICE OF PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR NURSERY PRODUCTS LLC. APPLICATION FOR A CONDITIONAL USE PERMIT TO ESTABLISH A SITE FOR CO-COMPOSTING OF BIO-SOLIDS AND GREENWASTE ON APPROXIMATELY 160 ACRES LOCATED IN THE UNINCORPORATED COMMUNITY OF HINKLEY. Dated May 5, 2006

Dear Ms. Hyke:

The Desert Tortoise Preserve Committee and the Desert Tortoise Council would like to offer the following comments for consideration in the preparation of the Environmental Impact Report (EIR) for the above referenced proposal to locate a site for co-composting of bio-solids and green waste on a quarter square mile of desert just south of Highway 58. The project site is within habitat designated as critical to the conservation and recovery of the desert tortoise. The Desert Tortoise Council was established in 1976 to promote the conservation of the desert tortoise in the southwestern United States and Mexico. The Council organizes the Annual Desert Tortoise Council Symposium, the Annual Tortoise Handling Workshop, and has produced 21 volumes of Symposium Proceedings since 1976. The Desert Tortoise Preserve Committee has worked since 1974 to promote the welfare of the desert tortoise and the species that share its habitat through preserve development and management, and through education and research. The Desert Tortoise Preserve Committee has an ongoing tortoise barrier-fencing project at Harper Lake Road near to the project site and is well acquainted with the project area.

The proposed location of the project is habitat for a number of listed and sensitive species including the desert tortoise and the Mohave ground squirrel. Because the project will have long lasting, direct and indirect impacts on these listed species and likely result in their take, the project proponents will need to obtain incidental take permits from both the United States Fish and Wildlife Service (FWS) and from the California Department of Fish and Game (CDFG).

The *Guidelines for Implementation of the California Environmental Quality Act (CEQA)* defines an EIR as an informational document which will inform public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible



ways to minimize the significant effects, and describe reasonable alternatives to the project. In order to satisfy the CEQA Guidelines, the following concerns regarding the desert tortoise and Mohave ground squirrel should be addressed in the Environmental Impact Report:

(1) National Environmental Quality Act (NEPA) requirements.

The eastern boundary of the project site borders public lands managed by the Bureau of Land Management. This public land is designated critical habitat for the desert tortoise and is within the boundaries of the Fremont-Kramer Desert Wildlife Management Area (DWMA). The Fremont-Kramer DWMA is a conservation area for both the desert tortoise and the Mohave ground squirrel. The project details made available for our review are insufficient for us to determine if any permits or actions will be required from the Bureau of Land Management. Because of the environmental significance of this project, any requirements for action by the Bureau to facilitate this project would require preparation of an Environmental Impact Statement (EIS). If this is so, CEQA Guidelines require that preparation of the EIR should be combined with the EIS to facilitate the environmental review process.

(2) Take of the Federal- and California-listed threatened desert tortoise, *Gopherus agassizii*, on the site.

The project site is entirely within desert tortoise habitat. The Desert Tortoise Preserve Committee has records of numbers of desert tortoises along nearby Harper Lake Road. Tortoise sign was identified on nearby BLM lands during the survey efforts for the BLM's West Mojave Plan planning effort. Additional, detailed surveys are required to document the tortoise population, to develop take avoidance measures, and to devise an appropriate tortoise relocation plan to minimize take during development of the project.

(3) Take of the California-listed threatened Mohave ground squirrel, *Spermophilus mohavensis*, on the site.

The project site is within the boundaries of the Fremont-Kramer DWMA. This DWMA is designated as a Mohave ground squirrel habitat conservation area. Trapping surveys are required to document the presence or absence of Mohave ground squirrels at the site. In addition, the FWS is currently considering a petition to list the Mohave ground squirrel under the federal Endangered Species Act. This should be acknowledged in the EIR.

(4) Take of the Federal- and California-listed threatened desert tortoise, *Gopherus agassizii*, off-site and during the life of the project.

The project's sensitive location assures that if implemented, the project will have on-going impacts on the conservation and recovery of the desert tortoise for the long-term. The EIR should consider a range of reasonable alternatives such as choice of less sensitive locations for the project, and a project site that it is completely enclosed. The EIR should also review the contribution the project will make to all the threats to the desert tortoise that are outlined in the Fish and Wildlife Service's 1994 *Desert Tortoise (Mojave Population) Recovery Plan*.

Other ongoing specific threats posed by this project include:

(a) Indirect And Direct Effects Of Biosolids On Desert Tortoises:

There are numerous unanswered questions about the safety, environmental effect, and propriety of applying Biosolids or sewage sludge to open lands, even when applied



in accordance with federal and state regulations. Biosolids may contain a number of toxic substances including various heavy metal toxicants.

Biologists have known for many years that desert tortoises are at risk for metal-toxicity [e.g. Jacobson et al., 1991 *J. Wildlife Diseases* 27: 296-316] and mercury may accumulate in their livers. Heavy metals have been implicated as potential contributing factors in a dyskeratinizing disease that affects the species in some areas [e.g. see Jacobson et al., 1994 *J. Zoo. Wildlife Med.* 25: 68-81]. Heavy metals such as arsenic, lead, cadmium and nickel have been found in ill and dying wild tortoises and are linked to upper respiratory tract disease, shell lesions, bladder stones and other serious illnesses. These toxicants may have contributed to increased mortality rates in some tortoise populations. One of the likely sources is considered to be air-borne pollutants.

The EIR must review the composition and variability of composition of the biosolids in order to determine the likely environmental impacts of the project on the desert tortoise.

The EIR must also determine the likely wind plume for all the waste components, including the biosolids, proposed for dumping at the site.

(b) Indirect And Direct Effects Of Biosolids On Desert Tortoise Critical Habitat:

The Mojave Desert is notorious for its strong and persistent winds. Indirect effects of wind-borne biosolids over large areas of desert tortoise critical habitat are a foreseeable, significant concern.

Biosolid-derived pollutants are likely to negatively impact the food chain, become concentrated in food plants, and then when these plants are eaten become even more concentrated in animals. This must be addressed in the EIR.

The EIR must consider the impacts of the increased particulate matter from the projects "windrows" on the respiratory-disease prone desert tortoise.

The EIR must consider the likely contribution that biosolid dispersal will make on alien plant and weed invasions. Biosolids are a rich source of nitrogen, and nitrogen supplementation may accelerate the spread of noxious, exotic weeds that displace native plants. Dr. Matthew Brooks in his 1998 University of California, Riverside doctoral dissertation clearly established that nitrogen supplementation preferentially enhanced weed proliferation over native plant growth in Mojave Desert test plots. Weed proliferation has been recognized as an issue of national significance. The February 1999 Presidential Executive Order stated that invasion of exotic species was costing the government billions of dollars each year, and affecting agriculture, many endangered and threatened species, and other aspects of the environment. Desert tortoises are selective feeders. Weed invasions can seriously impact the quality and quantity of desert tortoise forage.

The EIR must consider the increased risk of desert fires posed by the project. Build up of noxious weeds is increasing the fuel load in the desert and has contributed to a dramatic increase in the extent and incidence of desert fires. Prevailing winds in the project area are such that weed proliferation would trend towards Harper lake Road and Highway 58. This is a special concern because most desert fires originate at roads, and composting piles themselves are known to spontaneously combust. Desert fires place both humans and animals at risk. Fires also destroy native desert shrubs that are not fire-



adapted, and facilitate type-conversion of viable habitat to one dominated by alien weeds.

(c) Other Indirect And Direct Effects Of the Project On the Desert Tortoise and Mohave Ground Squirrel:

The project will operate round the clock. Deliveries of biosolids and other waste will be made by truck. The Checklists indicates that the site will receive up to 2,000 tons of waste in up to 522 truck trips each day. The Checklist does not indicate where these trucks will be coming from or what the route will be into the project site. Presumably, the bulk of the truck traffic will travel to the site from Highway 58. These trucks will travel along roads through desert tortoise and Mohave ground squirrel habitat. This will result in ongoing take of these two species throughout the entire life of the project. This impact must be fully analyzed in the EIR.

Truck traffic will also increase the amount road killed mammals, rodents and birds on desert roads in the area. This will increase opportunities for subsidized scavengers such as ravens allowing more of them to remain in the area year round. Ravens are known predators of hatchling and young desert tortoises. This foreseeable impact must be fully analyzed in the EIR.

(5) Impacts to the Fremont Kramer Desert Wildlife Management Area & Area of Critical Environmental Concern.

The project is located within the boundaries of the Fremont Kramer DWMA and Area of Critical Environmental Concern. For a number of reasons, including providing foraging opportunities for subsidized predators such as ravens, landfills are considered incompatible with desert tortoise recovery. The West Mojave Plan that established the Fremont Kramer DWMA specifies “counties and cities would ensure that no new landfills are constructed inside DWMA’s or within five miles of them” (DT-27). This issue must be addressed in the EIR.

(6) Consistency with Regional Plans.

CEQA Guidelines require that an EIR discuss any inconsistencies between the proposed project and applicable general plans and regional plans. The project lies within the Bureau of Land Management’s West Mojave Plan planning area. The federal portion of the WMP plan was completed in March 2006. As outlined in (5) above the project lies in the WMP’s Fremont Kramer DWMA and is an incompatible use. The EIR should address both this issue and the implications of this project to the nascent HCP component of the WMP.

(7) Cumulative Impacts.

The EIR should fully analyze all the cumulative impacts to the desert tortoise and Mojave ground squirrel. We suggest the project proponents incorporate the cumulative impacts analysis from the West Mojave Plan as a starting point.

(8) Mitigation For Impacts.

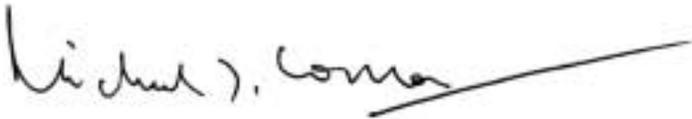
The EIR should provide detailed mitigation measures to offset all identified environmental impacts to the desert tortoise in order to fulfill the “fully mitigated” requirement of the California Endangered Species Act. In formulating the appropriate measures to achieve this requirement, the EIR should consider the following:



- (a) The project will effectively eradicate or make unsuitable for occupation 160 acres of desert tortoise and Mohave ground squirrel habitat. This acreage is the baseline for determination of replacement habitat.
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- (c) Because the project is located in designated critical habitat and the project is an incompatible use, the mitigation ratio for replacement habitat used should be considerably higher than the minimum laid down in the WMP. A ratio of 10:1 i.e. 1600 acres or higher, would seem more in line with CDFG's requirements for other projects.
- (d) Consistent with the WMP plan's prescription against landfills, the EIR should require the entire project to be enclosed within a solid, roofed structure. This would mitigate a number of the impacts outlined in (4) above.
- (e) The project must incorporate adequate safeguards to manage impacts to desert tortoises from ravens and other subsidized predators. All artificial water sources and effluent should be closed or covered.
- (f) All roads to the site within the DWMA that will be used by truck traffic generated by the project must be permanently fenced on both sides with tortoise barrier fencing. To avoid further habitat fragmentation in the area the project proponents must also install tortoise and wildlife culverts under fenced areas of road.
- (g) The sensitive location of the project ensures that intensive management will be required to minimize the impacts from the project in perpetuity. Adequate funding provisions must be made to establish a management endowment sufficient to cover the costs of managing both the replacement habitat and monitoring and ameliorating the ongoing effects to the habitat surrounding the project.
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We thank you again for this opportunity to provide scoping comments for preparation of this Environmental Impact Report. Please keep us informed of any decisions or actions related to this or similar projects. If you require more information, please feel free to contact me by telephone at [REDACTED]

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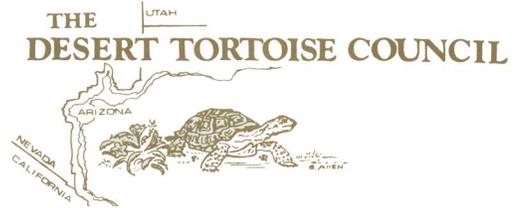
Michael J. Connor, Ph.D.

**DESERT TORTOISE PRESERVE COMMITTEE
DESERT TORTOISE COUNCIL**

[REDACTED]



Desert Tortoise Preserve
Committee, Inc.



June 5, 2006

Carrie Hyke, Supervising Planner
San Bernardino County, Land Use Services Department,
Advance Planning Division



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