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9 January 2009

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Habitat Conservation Planning Branch
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

RE: Copper Mountain Community College Expansion Site, Copper Mountain
Community College District, Permit Number 2081-2005-028-06

Dear California Department of Fish and Game,

Circle Mountain Biological Consultants, Inc. (CMBC) has been contracted by the Copper Mountain Community College District (District) to facilitate implementation of pertinent mitigation measures for the above referenced project, which resulted in the incidental take of the desert tortoise (*Gopherus agassizii*) as authorized by Incidental Take Permit Number 2081-2005-028-06 from the California Department of Fish and Game (Department). Since the project has no federal nexus, a federal Section 10(a)(1)(B) incidental take permit was issued by the U.S. Fish and Wildlife Service (Service) in 2007.

Authorized ground-disturbing activities began with campus expansion on 15 September 2008 when the right-of-way for fences around the Impact Area and Translocation Area were bladed and the fences subsequently installed. Critical ground disturbance effectively culminated on 24 November 2008 when approximately 43 acres of the 50-acre± Impact Area were completely bladed and grading began. Although active construction continues within the fenced Impact Area, the main likelihood of taking tortoises effectively ended on 24 November 2008.

CMBC has completed two companion documents including (1) "Tortoise Profiles," which documents observations for as many as 16 tortoises observed on campus between 15 September and 9 October 2008 and (2) "Construction Monitoring 15 September to 24 November 2008," which summarizes all biological monitoring during early expansion activities when tortoises would most likely be affected. Herein, CMBC reports compliance with the Mitigation and Monitoring Reporting Program outlined in the Department's permit.

This is the third ongoing report on compliance with Department measures outlined in the Mitigation and Monitoring Reporting Program (MMRP) tables, which list each of the mitigation measures required of the District. The first two reports completed by CMBC were on 7 March 2007 for activities in 2006 and 4 February 2008 for activities in 2007, which have been sent to pertinent Department personnel and are available upon request from Ed LaRue of CMBC.

Attachment A includes the same MMRP tables with updated information since the last summary report of February 2008. Those measures that were previously implemented prior to 4 February 2008 are highlighted in green; those that were implemented between 4 February 2008 and 9 January 2009 are highlighted in blue; and those still outstanding are highlighted in red. The mitigation measure number (MM#) given in the MMRP tables and Permit Condition (Condition#), which correspond to the subsection in the incidental take permit are given below where additional information is necessary.

MM1, Condition 4.1.1. *Before initiating ground-disturbing activities, Permittee shall designate a Field Contact Representative ("FCR") responsible for communications with the Department and overseeing this Permit. The Department shall be notified in writing prior to commencement of ground-disturbing activities of the representative's name, business address, and contact information, and shall be notified in writing if a substitute representative is designated.*

Since the issuance of the Department's incidental take permit in 2006, there have been two previous Field Contact Representatives (FCR), including Kindred Murillo and Richard Treece. Information for the current FCR, who has been active throughout all ground-disturbing activities follows:

Mr. Dan Cain, Interim Director of Facilities Projects
Copper Mountain College
6162 Rotary Way, P.O. Box 1398
Joshua Tree, California 92252
Direct line: (760) 366-5295
Fax: (760) 366-5252
Cell phone: (760) 910-3181
Email: dcain@cmccd.edu

Though not expressly required by this measure, another important coordinator with regards to implementing and overseeing various biological measures and programs is Dr. Paul Delaney:

Dr. Paul Delaney, Ph.D., D.C., Professor of Biology
Copper Mountain College
6162 Rotary Way, P.O. Box 1398
Joshua Tree, California 92252
Direct line: (760) 366-3791 x 0257
Fax: (760) 366-3973
Cell phone: (310) 804-7436
Email: pdelaney@cmccd.edu

MM2, Condition 4.1.2. *A biologist (“Designated Biologist”) knowledgeable and experienced in the biology and natural history of the Covered Species shall monitor construction activities in areas of Covered Species habitat to help avoid the take of individual animals and to minimize habitat disturbance. At least 30 days prior to ground-disturbing activities, Permittee shall submit to the Department in writing the proposed Designated Biologist’s name(s), qualifications, business address, and contact information for review. The Designated Biologist must be approved by the Department prior to the commencement of ground-disturbing activities.*

MM3, Condition 4.1.3. *Tortoises may only be handled by those biologists authorized to handle tortoises by the Department through a Memorandum of Understanding (“Authorized Biologist”). The Authorized Biologist must be approved by the Department prior to the commencement of any activity which could result in the handling of tortoises. “Permitted Biologists,” as used throughout this Permit, may be either the Designated Biologist or Authorized Biologist.*

Edward L. LaRue, Jr. (SCP #801217-01) and Sharon Dougherty (SCP #801196-05) of CMBC were identified as Authorized Biologists by the Department in letters dated 10 May 2007 at which time project-specific Memoranda of Understanding were also issued. LaRue and Dougherty were also identified as Authorized Biologists by the Service on 5 October 2007.

On 7 March 2007, in the first of seven attempts to receive Department authorization, CMBC provided background information for Patricia Seamount and Michael Gallagher to be approved as Authorized Biologists and Michael Radakovich to be approved as a Designated Biologist. Although Seamount and Gallagher were approved by the Service on 5 October 2007, the Department failed to respond to the following requests for approval for these personnel:

CMBC attempts to receive approval for Seamount, Gallagher, and Radakovich:

7 March 2007 – Letter to Curt Taucher, Rebecca Jones, HCP Branch, General Counsel
15 March 2007 – Email to Rebecca Jones
26 September 2007 – Email to Rebecca Jones
2 October 2007 – Email to Rebecca Jones
6 February 2008 – Letter to Curt Taucher and Rebecca Jones
6 February 2008 – Email to Rebecca Jones
15 February 2008 – Email to Rebecca Jones

Department responses received:

27 September 2007 – Receive email from Rebecca Jones on education program but no comments relative to monitors
5 February 2008 – Receive email from Rebecca Jones that she needs biological information for all potential MOU holders, which is sent on 6 February 2008

In the absence of Department approval but with approval by the Service, the Authorized Biologists implementing measures and handling tortoises included Ed LaRue, Patricia Seamount, and Michael Gallagher. Michael Radakovich functioned as a Designated Biologist, and briefly handled a tortoise on one occasion as LaRue passed it over the fence from the Impact Area into the Translocation Area. Shawn Gonzales functioned as Designated Biologist, but given his relative lack of experience (two years working with LaRue), did not handle any tortoises.

MM4, Condition 4.1.4. *Permittee shall conduct an education program for all persons who will work on-site during Project implementation and construction. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology of the Covered Species, the habitat needs of the Covered Species, its status under CESA, and the management measures provided in this Permit. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the program, employees shall sign a form stating that they attended the program and understand all protection measures. These forms shall be filed at the work site office and shall be made available to the Department upon request.*

The tortoise awareness program was provided to the Department (Rebecca Jones) and Service (Brian Croft) on 15 March 2007 and again on 26 September 2007 after receiving no feedback. On 27 September 2007, Jones responded with two comments on the education program. These changes were made and this program administered on numerous occasions. Two noteworthy gatherings were 16 September 2008 when LaRue administered the program to Premiere Construction prior to fence installation and Dan Cain administered the program to Valley Fence. Then, on 17 September 2008 LaRue administered an awareness program to more than 50 contractors, including the video presentation, "A Delicate Balance," produced by Edwards Air Force Base. Numerous smaller programs were administered, including "tailgate briefings" when one or two new personnel came by. Dan Cain maintains the master sign-up sheet for all construction-related personnel.

MM5, Condition 4.1.7. *A trash abatement program shall be initiated during pre-construction phases of the Project and shall continue throughout duration of the Project. Trash and food items shall be contained in closed (raven-proof) containers and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.*

The Trash Abatement Policy was developed in February 2008, had an effective date of 10 April 2008, and is available from Dan Cain upon request.

MM6, Condition 4.1.8. *The Permittee shall clearly delineate the property boundaries of the Project site with fencing, stakes, or flags and shall similarly delineate the limits of construction areas.*

The 85-acre± Translocation Area and 50-acre± Impact Area were first staked and then fenced between 15 and 25 September 2008. The Translocation Area fence will remain in perpetuity. The Impact Area fence will remain in place for the duration of construction, which is estimated to be 18 months or until the spring/summer of 2010.

MM7, Condition 4.2.1. *The Permittee shall notify the Department and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing and vegetation-disturbing activities.*

This measure was implemented with previous compliance reports on 7 March 2007 and 4 February 2008 and with the current compliance report.

MM8, Condition 4.2.2. *The Permittee shall notify the Department fourteen (14) calendar days before initiating ground-disturbing activities.*

A draft letter from FCR, Dan Cain to Rebecca Jones of the Department and Brian Croft of the Service dated 12 September 2008 informed the Department of the start-date of 16 September 2008 with installation of perimeter fences around the Impact Area and Translocation Area.

MM9, Condition 4.3.1. *A special 84-acre on-site facility intended to safely harbor translocated tortoises (Translocation Area) as shown on the attached map (Exhibit 5) shall be designated prior to the start of ground-clearing and vegetation-clearing activities. The 84-acre Translocation Area shall be fenced, using specifications found in 4.3.3 below, and protected to safely harbor the animals found onsite, including those that will be displaced by construction, prior to translocating tortoises into the Translocation Area. Prior to installing the fence, a Permitted Biologist shall conduct a 100% coverage tortoise survey as described in 4.3.5 below for the fence alignment. Permittee shall be responsible for maintaining the fence around the Translocation Area as long as tortoises are present within the Translocation Area.*

MM10, Condition 4.3.2. *Tortoises found during pre-construction surveys shall be translocated out of harm's way into the Translocation Area. Only an Authorized Biologist may handle tortoises.*

MM11, Condition 4.3.3. *Prior to clearing vegetation from a given phase of construction, a tortoise-proof fence shall be erected around the perimeter of the area on which permanent facilities will be developed. Once the phase is fenced, tortoises shall be removed from the area and placed into the Translocation Area. The fence shall be maintained in place until construction is completed. The 1" x 2" wire mesh fence shall be fastened securely to posts at intervals sufficient to ensure integrity of the fence. The wire mesh shall extend at least 18 inches above the ground and 12 inches laid out at a right angle to the fence (extending away from the interior), flush with the surface of the ground or buried with soil and rock to prevent tortoises from entering the site.*

The right-of-way (ROW) for the Translocation Area was staked and bladed beginning on 16 September 2008. Prior to blading the ROW, five biologists excavated approximately 700 rodent burrows from the fenceline ROWs looking for hatchling tortoises. A permanent tortoise-proof fence was installed between 16 and 25 September 2008 around the Translocation Area and a temporary fence around the Impact Area. A minor amendment from the Service dated 10 June 2008 authorized the District to place a three-

strand fence around the Translocation Area rather than a chain-link fence, which saved the (nonprofit) District thousands of dollars. As reported in the "Tortoise Profiles" document, at least nine tortoises are known to occur inside the fenced Translocation Area, including two unmarked tortoises, two tortoises already inside the area that were marked, and five tortoises that were processed, marked, and translocated into the Translocation Area from the Impact Area. The District will be responsible for monitoring the fences and maintaining their integrity in perpetuity.

MM15, Condition 4.3.5. *Prior to installing the construction fence, a Permitted Biologist shall survey the alignment along which the fence will be installed. When a burrow is encountered, the fence line shall be moved when possible so that any tortoise burrows will remain on the outside of the fenced area. The Permitted Biologist shall consider the direction of the burrow, recognizing that burrows may be 30 to 40 feet long. So, not only the burrow opening but also the burrow's approximate end shall be considered and excluded if the fence line is to be altered. Any tortoise burrows found within the proposed fence line that cannot be avoided shall be hand excavated by the Authorized Biologist prior to clearing of the fence line or installation of the fence. Burrow excavation procedures are given in Desert Tortoise Council (1999). The Permitted Biologist shall remain on-site to monitor the installation of the fence.*

As given above, biologists excavated more than 700 rodent burrows within both the Impact Area and Translocation Area fenceline ROWs. The mutual fenceline between the two areas was realigned to avoid two burrows of an adult male tortoise (DT1) on 16 September 2008 (see Exhibits 1, 2, and 3 for DT1 in "Tortoise Profiles"). Similarly, a subadult tortoise (DT2) was avoided on 16 September 2008 (see Exhibit 1 and 2 for DT2 in "Tortoise Profiles"). Finally, four pallet burrows of adult tortoise(s) were avoided along the eastern boundary of the Translocation Area on 16 September 2008 (see Exhibits 4 and 5 in the "Construction Monitoring" document). In avoiding these burrows, the District encroached onto an adjacent landowner's property and had to realign the fence on 9 October 2008 at the landowner's request (see Exhibits 17 and 18 in "Construction Monitoring"). This realignment resulted in losing two of the four burrows, none of which showed any recent indication of tortoise use.

MM16, Condition 4.3.6., 1st half. *After installing the construction fence, and before any other activities occur within the fenced area, the Permitted Biologist shall conduct 100% coverage surveys for tortoises. If possible, and depending on the size of the phase, the surveys shall occur immediately after installation of the fence, and several days prior to brushing or grading activities. The site shall be searched three times unless no tortoises are found on the second search. Burrows shall either be excavated as they are found or flagged for excavation later. Each burrow shall also be carefully checked for viable tortoise eggs.*

Given that hatchling tortoises were found in the Impact Area, LaRue opted to implement a different, more thorough approach to surveying that required flagging all rodent burrows and then excavating them to look for hatchling tortoises. In so doing, five biologists excavated more than 11,000 rodent burrows between 15 September and 2 October 2008 and found five tortoises, including one adult and four subadults. A total of

17 definite tortoise burrows was excavated between 17 September and 9 October 2008. Following this in depth effort, three biologists surveyed the site one last time along transects spaced at 15-foot intervals on 14 October 2008. Then on 15 and 16 October 2008, they proceeded to excavate 810 rodent burrows in a final effort to clear the site of tortoises. As such, a total of approximately 12,000 rodent burrows was excavated searching for hatchling tortoises. No additional tortoises were found, nor was any found when the site was cleared and grubbed between 19 and 24 November 2008. Although three hatchlings were observed during these activities, no tortoise eggs were found. Construction was ideally timed, as tortoises generally hatch in September and October and all viable nests had hatched or were hatching during the timing of these surveys.

MM16, Condition 4.3.6., 2nd half. *The Designated Biologist shall submit a plan to the Department for disposition of tortoise eggs when necessary, prior to translocation of eggs. When eggs are found, the Authorized Biologist shall move the eggs outside the impact zone in such a way that the viability of the eggs is not adversely affected by their movement (see Desert Tortoise Council 1999).*

A site-specific translocation plan was developed by Dr. Paul Delaney with input from LaRue, Rebecca Jones of the Department, and Brian Croft of the Service. Dated 7 October 2007, the translocation plan has specific provisions for translocating tortoise eggs and is available upon request from Dr. Delaney.

In September and October 2008, the five biologists excavated 17 known tortoise burrows and 12,000 rodent burrows that may have been occupied by hatchling tortoises. No eggs were detected during these extensive efforts, nor were any eggs ever found during blading and grubbing activities in late November 2008. Even so, of the 16 tortoises observed on the campus by tortoise biologists, three were judged to be hatchlings that had emerged in 2008. So even though eggs certainly occur in the area, none was observed.

MM17, Condition 4.3.12. *All tortoises removed from the construction area and translocated into the Translocation Area will be marked and monitored for a period of at least 5 years. A monitoring plan shall be prepared and submitted to the Department for approval prior to translocation of any tortoise into the Translocation Area.*

The five tortoises rescued from the Impact Area and two others found inside the fenced Translocation Area were marked "CMC1" through "CMC7," which will facilitate subsequent identification when the Translocation Area is surveyed annually in the spring. As given in Section 5.1 of the Translocation Plan (dated October 2007), the Translocation Area will be surveyed each year in the spring to monitor marked tortoises and to find and mark any unmarked tortoises.

MM18, Condition 4.1.5. *Firearms and domestic dogs shall be prohibited from the Project site and site access routes during construction and development of the Project.*

This measure has been iterated in all tortoise awareness programs, has not yet been an issue, and will continue to be enforced by District personnel, particularly FCR, Dan Cain.