FINDINGS AND RECOMMENDATIONS FOR THE ISSUANCE OF A SECTION 10(A)(1)(B) INCIDENTAL TAKE PERMIT ASSOCIATED WITH THE SPRING MOUNTAIN RACEWAY HABITAT CONSERVATION PLAN

I. DESCRIPTION OF PROPOSED ACTION

The U.S. Fish and Wildlife Service (Service) proposes to issue an Incidental Take Permit (ITP or Permit) to the Spring Mountain Raceway (SMR, project proponent) under the authority of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue the Permit to the Applicant for a period of 5 years.

The document used in the preparation of this statement of findings and recommendations is the Final Habitat Conservation Plan for the Spring Mountain Raceway; Approximately 227 Acres, Nye County, Nevada, T20S R54E Sections 27, and 28, September 2020; Prepared for Spring Mountain Raceway, 4767 S Highway 160, Pahrump, Nevada 89048; Prepared by: BEC Environmental. Inc., 7241 West Sahara Avenue, Suite 120, Las Vegas, Nevada 89117. This document is incorporated by reference.

Under the proposed action and Permit number ESPER0003714, SMR would receive take coverage for activities proposed in association with the development of 227 acres of vacant land in Pahrump, Nevada, for construction of the SMR Northern Expansion project. The project proponent has developed a habitat conservation plan in support of their permit application. The HCP describes activities associated with development of the expansion project, the effects of those activities on the Mojave desert tortoise, and measures the project proponent would take to avoid, minimize, and mitigate the effects.

The purpose of the project is to construct, operate, and maintain additional SMR facilities on private land. The project will result in an additional 3.6 miles of racetrack, a stormwater detention basin, two 4,800 square foot classroom buildings with guest parking, and a paddock area for parking and preparation of cars for use on the track (Figure 3). The track will not include the installation of lighting; night operations will not be conducted. Access to the expansion area will be through the existing SMR facility. The entire Project Area will be surrounded by a desert tortoise exclusion fence (approximately 10,000 feet). The project proponent is applying for an incidental take permit because the proposed project is located within desert tortoise habitat and take will be unavoidable as a result of constructing and operating the expansion facilities on the project site.

The Project Area is located approximately 0.3 miles northeast of the intersection of Nevada State Road 160 and Wheeler Pass Road in Nye County, Nevada. The SMR expansion will be constructed on 227 acres of vacant private land within Mount Diablo Meridian, Township 20, South Range 54 East, in portions of sections 27 and 28.

Construction activities will be done in stages to reduce any potential impacts to protected species and to minimize dust and noise generation. The duration of construction activities is expected to last approximately 5 years. Construction of the SMR expansion will include:

- Clearance of the perimeter boundary line of tortoises and/or burrows in preparation of tortoise-exclusion fence installation. After clearance activities, the fence line will be bladed using a Cat 140 blade (or similar equipment) and a water truck for dust control. A minimal disturbance of the fence line area will be conducted, creating enough room to be able to drive a full-sized pickup truck and a skid-steer tractor (a small, rigid-frame, engine-powered tractor with lift arms) along this area in order to install posts and tortoise fencing in accordance with current USFWS design and construction standards. The fence will include three horizontal strands of barbed wire on the top of the tortoise fence to keep other animals and people from entering the property. This activity will take approximately six weeks to complete. Once the fence has been completed, the desert tortoise clearance survey of the Project Area will be conducted to locate all desert tortoises in the area and translocate the tortoises in accordance with the HCP Translocation Plan and the Incidental Take Permit (ITP).
- A survey team will stake the track layout for the 3.6-mile track extension, detention basin for flood control, and other project components. This will be accomplished using a full-sized utility truck to setup survey equipment, and the property will be walked by the surveyor team while setting stakes at 50-foot intervals. This activity will take five days to complete.
- The detention basin, paddock area, classroom, parking lot, and track alignment will be cleared of vegetation, in preparation for the grading and paving of the 50-foot wide track surface. This will be accomplished by using a 15,000-gallon Caterpillar® (CAT) water pull, a CAT 140 Motor Grader and CAT 631 Motor Scraper (or similar equipment) to remove all vegetation and make a drivable surface for water trucks and equipment. The graded track alignment will be watered regularly for two weeks to prepare the ground surface for grading, compaction, and track construction. These activities will take approximately four weeks.
- Grading and contouring of the detention basin, paddock area, classroom, parking lot, and track alignment will include moving a minimal amount of topsoil or surface material to keep the track as close to the original surface contour as possible. The actual paved track surface will be approximately one foot above the natural grade to keep water from ponding on the track surface. This will be accomplished using two CAT 631 Motor Scraper, two CAT water pulls, two CAT 140 Motor Graders, and a CAT 966 Wheel Loader (or similar equipment). The grading will be a rough grade using the materials on site to reach a compaction of 90% minimum below the finished grade. After the rough grade is completed a locally sourced (Nevada Department of Agriculture certified weed-free) crushed aggregate material will be brought in to create a six-inch deep surface below the Asphaltic Concrete surface. The materials will be locally sourced from an existing gravel pit operation and hauled to the site using existing paved roads along Nevada State Highway 160 and into the site through the existing SMR. The gravel will be hauled in belly dump trailers which create very low impact to dust disturbance. These activities are anticipated to take approximately eight weeks to complete.

- Paving of the track surface will use an Asphaltic Concrete mix using AC 30 Asphalt oil for asphalt binding, and locally sourced materials mixed and shipped from less than two miles from the job site. There will be a 2.5-inch bottom binding course-laid using an asphalt paving machine and three roller machines, one rubber tire roller and two steel drum rollers, to achieve a 90% compaction of the materials. This track surface will take four days to complete, after which the wear surface will be laid using the same common oil mixture with a small amount of binding materials including fly ash and cement powder, to ensure early stability and long term wear ability of the track surface. This procedure will allow for a life span of approximately 20 years. Paving of the paddock and parking area for the classroom will be conducted during this phase as well. This full process will take two weeks to complete.
- After the track surface has cured for one week, the edges of the track (50 feet either side of the track alignment), including vehicle runoff areas, will be cleaned and smoothed (graded) to provide a safe and clean track surface. The edges will be watered and rolled to create a solid crust which will eliminate dust from blowing and debris from being pushed onto the track surface in the event of a car running off the track surface. This activity will be accomplished using a water truck and a CAT 140 Motor Grader (or similar equipment) and a steel drum roller and take approximately three weeks.
- Construction of the classroom buildings will begin at the end of track construction, while the track cures. The building will be constructed in accordance with the Nye County Building Permit. The building will be Slab-on-Grade, wood framed construction with a stucco and stone exterior. A paved parking lot and minimal, xeric landscaping (palm trees) around the building will be constructed per the Nye County Development Agreement. The construction contractors will access the project using Nye County maintained roads. Building construction will require approximately 120 days.
- Utilities will be installed to provide power, phone, water, sewer, and other services as deemed necessary to the Classroom Facilities. All utilities will be constructed subsurface and will connect to existing service lines within the previously developed portions of the track facility to the south. Infrastructure for utilities and services to support the proposed expansion is largely already in place. The facility currently receives power from Valley Electric Association, and water and sewer are provided through onsite facilities operated by the Great Basin Water Company. Solid waste collection services are provided by C&S Waste Solution's Pahrump Valley Disposal. Projected construction activities, including soil/gravel compaction and dust control, will necessitate use of up to 15 acre-feet (4,900,000 gallons) over the course of the approximately 10-month construction period. Projected maximum water use in support of the classrooms, vehicle paddock skid pads, track maintenance, and up to 50 additional full-time employees and additional resort guests each year is 7.5 acre-feet per year (2,500,000 gallons/year). Classroom facility water use by employees, students and customers, water staging for intermittent photo shoots and track upkeep and cleaning using a PM10-compliant street sweeper represent the only significant uses of water at the site after development and during normal business operations. The specific water rights dedication requirement in support of the proposed development will be determined and managed by the utility company in accordance with established Orders of the State Engineer and Nye County Code.

SMR will implement a litter control program during construction. All trash, including food scraps will be stored in a predator-resistant container and removed from the construction area each day. During operations of the facility, SMR employees will remove litter from the Project Area and all fences throughout the year.

SMR will avoid the introduction of non-native weed plant species during construction, and then manage species in the event they become established. The introduction of these plant species will be avoided by ensuring all equipment is cleaned of soils and vegetative material before entering the Project Area. All fill or aggregate material to be imported to the Project Area will be sourced from certified weed-free sources facilities.

To prevent the establishment of weeds in the Project Area during operation, SMR will continue inspection of developed areas on a regular basis to identify any weed introduction or invasion. When noxious weed species are observed, they are removed and disposed of through the solid waste hauling service. When weed invasions become too large for manual removal, SMR will use commercially approved herbicides in accordance with their labeling.

The project proponent proposes to implement the following measures to minimize and mitigate impacts to desert tortoise and other species:

- Installation of a permanent tortoise exclusion fence around the west, north and east boundaries of the SMR Expansion Project Area (approximately 10,000 feet) prior to construction activities is proposed to ensure tortoises do not gain access to the project site and wander into harm's way.
- Perform desert tortoise clearance surveys. A clearance survey will be performed prior to installation of the exclusion fence to clear animals from the fence installation area. After the exclusion fence is installed, a clearance survey will be performed in the Project Area. Tortoises found in the Project Area would be moved to a translocation area northeast of the Project Area and monitored. The proposed Translocation Plan is included as appendix D in the HCP.
- Exclusion fencing will be inspected and repaired daily during the desert tortoise active season during construction. Upon completion of the construction activities, the fence will be inspected and repaired weekly during the first active season following construction. The fence will be inspected and repaired once monthly after the first active season and for the remainder of the life of the facility or until adjacent development precludes tortoise access to the area. The fence will be inspected within 24 hours following a rain-fall event that may damage the fence during the active season or within 7 days following the event in the less-active season. Necessary repairs to the fence will be implemented within 48 hours after the inspections during the active season and within 7 days in the less-active season.
- Implementation of a litter control program would be instituted to minimize the potential to attract predators to the area.
- Implementation of a weed management plan would be instituted to minimize the introduction or spread of noxious weeds
- Implementation of a Worker Environmental Awareness Program would be presented to all workers at the site prior to them beginning work at the site.

- During all construction activities, if a Gila monster is observed, all activities which may cause it harm will be halted and a qualified and permitted biologist will capture the lizard, place it in a secure container in a safe location, and notify NDOW in accordance with their NDOW permits.
- Conduct migratory bird nest surveys prior to and during construction activities if vegetation removal occurs during the typical bird nesting season. Occupied nests and an appropriate buffer would be flagged for avoidance until the young have fledged.

Off-setting Mitigation:

- SMR will provide funding ($209,521 total) for the permanent loss of 227 acres of suitable desert tortoise habitat. This funding will be used for a habitat improvement project in the nearby Stump Springs and Trout Canyon desert tortoise translocation areas to improve habitat condition for desert tortoise by removing invasive plants, including invasive grasses. The project will directly benefit desert tortoise recovery by both improving habitat, and specifically foraging habitat, in these important focus areas for desert tortoise population augmentation, and will also serve to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species.

Documentation of tortoise activity will be compiled throughout the duration of activities. Reports will be submitted directly to the Service at the conclusion of the monitoring efforts and annually. Annual reports will include:

1. Brief summary or list of project activities accomplished during the reporting year;
2. Project impacts;
3. Description of any take that occurred;
4. Brief description of any new or additional conservation strategies implemented;
5. Translocation monitoring results, including health assessments, distance between capture and release points, and the maximum dispersal distance;
6. Description of any circumstances that made adaptive management necessary and how it was implemented;
7. Description of any changed or unforeseen circumstances that occurred and how they were dealt with; and
8. Description of any minor or major amendments.

II. ALTERNATIVES CONSIDERED

SMR has not identified construction alternatives other than the proposed development of the facility as planned. The land was purchased for the expressed purpose of expanding the existing facility to the north with the addition of new track and facilities. While only a portion of the area would be converted to paved track, the entire 227 acres would be unavailable to desert tortoises.

III. PUBLIC INVOLVEMENT

On October 2, 2020, the Service published a notice of availability of an incidental take permit application for the desert tortoise in the Federal Register. Publication of the notice initiated a 30-

day public comment period that ended on November 2, 2020. Copies of the notice, a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA), and a draft habitat conservation plan (HCP) were made available to the public for review and comment both online (Docket No. FWS-R8-ES-2020-0115 at http://www.regulations.gov) and from the Southern Nevada Fish and Wildlife Office located in Las Vegas. The Service received substantive comments from the Desert Tortoise Council and the Environmental Protection Agency.

IV. INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS

Section 10(a)(2)(A) of the Act and associated implementing regulations (50 CFR 17.22 and 17.32) require submission of a conservation plan along with an application for an incidental take permit. No incidental take permit may be issued by the Service unless the conservation plan specifies: (i) the impact that will likely result from such taking; (ii) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and (iv) such other measures that the Service may require as being necessary or appropriate for purposes of the plan.

Section 10(a)(2)(B) of the Act and associated implementing regulations (50 CFR 17.22 and 17.32) mandate that the Service shall issue a permit if the following criteria are met: (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; (v) other measures the Service may require as being necessary or appropriate for purposes of the plan will be met; and (vi) the Service has received such other assurances as may be required that the plan will be implemented.

With regard to the permit application and the HCP submitted by the applicant, and requirements under section 10(a)(2)(B) of the Act and our implementing regulations, we make the following findings:

1. The taking will be incidental.

The take of desert tortoise within the project area will be incidental to, and not the purpose of the lawful implementation of the covered activities. The permittee must comply with all other Federal, State, and local requirements for covered activities associated with the Permit.

2. The permittee will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.

The HCP developed by the project proponent contains measures intended to minimize and mitigate the take of the desert tortoise authorized under the incidental take permit. These measures are summarized in Section I of these findings. The project proponent has

developed the HCP pursuant to the incidental take permit issuance criteria codified at 50 CFR 17.32(b)(2).

Based on the biology of the species, the broad range-wide distribution of the species, the results from presence/absence surveys conducted in the project area, the limited geographic scope of the project area, and land ownership of the habitat surrounding the project area, the minimization and mitigation measures are biologically adequate to provide conservation for the desert tortoise. Removing desert tortoises from the project site prior to commencement of construction activities will substantially minimize impacts to tortoises that may occur within the construction area. Installation of a permanent tortoise exclusion fence with shade structures prior to commencement of construction activities will ensure tortoises that may occur in adjacent habitat do not wander on to the project site and be placed in harm's way.

To mitigate for the loss of occupied, suitable habitat, the Applicant will provide funding ($209,521) for desert tortoise recovery soon after issuance of the permit and before groundbreaking activities begin. The funds will be used for a habitat improvement project in the nearby Stump Springs and Trout Canyon translocation areas that improves habitat condition for desert tortoise by removing invasive plants, including invasive grasses. The project will fully mitigate the loss of desert tortoise habitat by benefitting desert tortoise recovery through habitat improvement, specifically foraging habitat, in an important focus area for desert tortoise population augmentation, and will also serve to refine techniques for desert tortoise habitat restoration that can be applied in the Eastern Mojave Recovery Unit and potentially range-wide for the species.

Considering the above information, the Service has determined that the proposed project minimizes and mitigates impacts to desert tortoise to the maximum extent practicable while maintaining the value of the project for economic development.

3. The permittee will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.

Costs associated with implementation of the HCP are described in section 8.1 of the HCP. The project proponent will provide funding to: install and inspect permanent desert tortoise exclusion fencing with shade structures around the west, north, and east perimeters of the project area, conduct desert tortoise clearance surveys and desert tortoise translocation monitoring, monitor for tortoises during construction, on-site/on-call monitoring, provide off-setting mitigation, and monitoring and reporting. An estimate of the total cost of implementing these measures is provided in table 5 of the HCP.

Effects to desert tortoise from construction of the expansion project are expected to be low; therefore, unforeseen circumstances are not expected to occur. However, in case of an unforeseen event, the project proponent has included procedures to address changed and unforeseen circumstances in section 9.2 of the HCP.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Service finds that the taking to be authorized under the proposed Permit will not appreciably reduce the likelihood of the survival and recovery of the federally listed desert tortoise in the wild. The Act's legislative history establishes the intent of Congress that this issuance criterion be identical to a finding of "no jeopardy" pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto (50 CFR 402.02). As a result, the Service has reviewed the Spring Mountain Raceway HCP under section 7 of the Act.

In the Biological Opinion (Service 2020), which is incorporated herein by reference, the Service reviewed the current status of the desert tortoise; the environmental baseline for the desert tortoise in the action area; and the direct, indirect, and cumulative effects of the proposed action (issuance of the Permit and implementation of the HCP), including the adverse effects to the covered activities. The Service concludes in the Biological Opinion that the proposed Permit will not jeopardize the continued existence of the threatened desert tortoise. The Service reached this conclusion based on the following: (1) Project impacts to desert tortoise will be minimized or avoided through implementation of measures described in the proposed action; the project proponent and their contractors will implement numerous measures (e.g., clearance surveys, authorized desert tortoise biologists, desert tortoise monitors) to ensure that most tortoises are located and moved out of harm's way and potential desert tortoise injury and mortality is minimized on project work sites; (2) most adult desert tortoises on the project site will be found and translocated; most or all of these tortoises are expected to survive translocation; (3) the Applicant will provide funding as mitigation for a habitat restoration project in the Trout Canyon and Stump Springs Translocation Areas that will benefit desert tortoise recovery by improving habitat conditions in a important focus area for desert tortoise population augmentation; (4) effects to genetic and demographic connectivity are expected be negligible from the project, and mitigation to improve habitat in the Trout Canyon and Stump Springs translocation areas are expected to benefit connectivity; (5) the project would not significantly affect the rangewide number, distribution, population connectivity, or reproduction of the desert tortoise. Desert tortoises that are moved out of harm's way and placed within their home range will remain in the wild with no long-term adverse effects to survival and reproduction; (6) the number of desert tortoises anticipated to be killed or injured is very low relative to the estimated number of tortoises occurring within the action area and impacted recovery unit; (7) the amount of desert tortoise habitat proposed to be permanently disturbed is very small relative to the amount available within the Eastern Mojave recovery unit; (8) there will be no impacts to desert tortoise designated critical habitat; and (9) the magnitude of the effects to desert tortoise will not delay or preclude recovery of the species.

5. Other measures the Service requires as necessary or appropriate for purposes of the plan will be met.

The Spring Mountain Raceway HCP incorporates all elements determined by the Service to be necessary for approval of the HCP and issuance of the Permit.

6. The Service has received the necessary assurances that the HCP will be implemented.

We find that the Spring Mountain Raceway HCP provides the necessary assurances that the HCP will be implemented by the applicant.

V. General Criteria and Disqualifying Factors – Findings

The Service has no evidence that the Permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b) and (c). The applicant has met the criteria for the issuance of the Permit, and no disqualifying factor exists that would prevent the Permit from being issued under current regulations.

VI. Recommendation on Permit Issuance

Based on these findings with respect to the proposed action, I recommend issuance of section 10(a)(1)(B) incidental take permit number ESPER0003714 in accordance with the Spring Mountain Raceway HCP.

Date GLEN KNOWLES Digitally signed by GLEN KNOWLES Date: 2021.03.05 11:04:11 -08'00'

Glen Knowles
Field Supervisor
Southern Nevada Fish and Wildlife Office

LITERATURE CITED

BEC Environmental, Inc. 2021. Habitat Conservation Plan for Spring Mountain Raceway, Nye County, Nevada. Prepared for Spring Mountain Raceway, LLC, Pahrump, Nevada. 44 pages + appendices.

U.S. Fish and Wildlife Service. 2021. Biological Opinion on the Issuance of a Section 10(a)(1)(B) Incidental Take Permit for the Spring Mountain Raceway Habitat Conservation Plan. Service File No. 08ENVS00-2021-F-0037.