



August 8, 2012

California Energy Commission  
Dockets Office, MS-4  
Docket No. 09-RENEW EO-01  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: DRECP Overview of Alternatives, July 25, 2012

To Whom It May Concern:

On behalf of the Desert Tortoise Preserve Committee, Inc. (DTPC Inc.) and its more than 1500 members and supporters, we are submitting preliminary comments on the Overview of DRECP Alternatives presented to the public during the July 25 - 26, 2012 Stakeholder Meetings. To comprehensively review the DRECP Alternatives, the DTPC Inc. requests the time period for comments be extended until August 26, 2012 or later. We feel a comment period of less than thirty days for plan alternatives that affect the entire California desert is insufficient. Furthermore, we have not had time to inform and obtain feedback from our members, many of whom have volunteered at the Desert Tortoise Research Natural Area over many years.

#### PRIMARY CONCERN

The primary purposes of the Desert Tortoise Preserve Committee, Inc., a nonprofit charitable organization incorporated in 1974, is to promote the welfare of the desert tortoise (*Gopherus agassizii*) in the wild and to establish and assist in the establishment of preserves for the desert tortoise. The DTPC Inc., in collaboration with the Bureau of Land Management and other state and federal agencies, helped establish the Desert Tortoise Research Natural Area (DTRNA) in Kern County, California. Since the creation of the DTRNA, the DTPC Inc. has used Congressionally-appropriated Land and Water Conservation Funds, private donations, and mitigation funds received through contractual agreements with developers and state and federal agencies to acquire private lands within and adjacent to the DTRNA. Title to substantial acreage the DTPC Inc. acquired within the DTRNA was transferred to the Bureau of Land Management with the understanding that it would continue to be protected under existing federal mandates. In addition to transferring lands in fee title to the Bureau of Land Management, the DTPC Inc. also has conveyed and is in the process of conveying conservation easement deeds to the State of California as required by state Incidental Take Permits and Streambed Alteration Agreements.

We were shocked and dismayed to discover that multiple alternatives for *Development Focus Areas* in the DRECP encompass most of the Desert Tortoise Research Natural Area, as well as a large area of critical habitat in the adjacent Rand Mountains and Fremont Valley. By recommending that power plant developers *focus* on areas that include the DTRNA, and other public lands comprising critical habitat for threatened and endangered species, the participating government agencies threaten 40 years of land-use planning, management, and protection of threatened and endangered species by the Bureau of Land Management, the U.S. Fish and Wildlife Service and the California Department of Fish and Game. To offer up alternatives in which the Desert Tortoise Research Natural Area is included in a Development Focus Area is to violate the public trust. It also sets up the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game for lawsuits for statutory violations and for breaching contractual obligations made under state and federal laws requiring mitigation by developers on past projects for the destruction of critical habitat for threatened and endangered species in other areas. By adopting any of the alternatives that create development pressures on habitat in and around the DTRNA, the DTPC Inc. and regulatory agencies are also exposed to significant legal liability for unauthorized trespass and degradation of conservation values of habitat that are to be strictly managed under conservation easement terms.

## BACKGROUND HISTORY OF THE DESERT TORTOISE RESEARCH NATURAL AREA

Starting in 1972, the Bureau of Land Management has consistently made decisions to protect what is now the Desert Tortoise Research Natural Area, and first closed the area to recreational vehicle activity in its 1973 *Interim Critical Management Plan for Recreation Vehicle Users in the California Desert*. The Desert Tortoise Preserve Committee Inc. formed in 1974 with the objective of establishing a “preserve” or Natural Area in the Rand Mountains and Fremont Valley, and has been a very active partner in the protection and management of the area for almost 40 years. The DTPC Inc. was the first organization to raise funds for fencing the DTRNA, which took place in 1979 and 1980, and for the land acquisition in the area. With publication of the BLM’s 1980 *California Desert Plan*, the DTRNA and its designation as an Area of Critical Environmental Concern became official. The DTRNA was dedicated formally by representatives from the Secretary of the Interior’s office and Congress in an April 1980 ceremony. In the same year, Congress withdrew the public lands within the DTRNA from the general land laws, 1872 mining laws, and livestock grazing. Thus, the Desert Tortoise Research Natural Area was even more protected than designated Wilderness, where livestock grazing can occur. In 1994, the U.S. Fish and Wildlife Service published the *Desert Tortoise (Mojave Population) Recovery Plan*. In this Plan and appendices, the DTRNA was protected but not designated as critical habitat. Given the 1980 protections and the boundary fencing, the DTRNA was considered more protected than anywhere else in the California deserts. Similarly, what was then Joshua Tree National Monument was not designated as critical habitat, as it was considered to be adequately protected.

A major challenge for the DTPC Inc. and Federal and State agencies has been acquiring the inholdings within the DTRNA. At the time of its formation, a checkerboard of public and private lands existed within the Natural Area boundaries. Continuing from the 1970s to the present, the DTPC Inc. raised funds, and has sought and obtained grants to purchase these inholdings. Once the DTPC Inc. was able to independently accomplish land acquisitions, a mitigation land bank was formed. The DTPC Inc. sold some lands to the BLM, was reimbursed from Congressionally-appropriated Land and Water Funds, and purchased more land within the DTRNA. Both State and Federal government agencies have provided

funds and have directed mitigation funds to the DTPC Inc. for land acquisition and stewardship. These entities include, but are not limited to the California Energy Commission, California Department of Transportation, California Department of Fish and Game, and Bureau of Land Management. These mitigation monies have been directed primarily to land acquisition and stewardship at the DTRNA for the desert tortoise, Mohave ground squirrel and burrowing owl. Each mitigation project has its own legally binding agreement for management and protection of the desert tortoise and/or other sensitive wildlife species and habitats. The California Department of Fish and Game has also acquired properties within the DTRNA, which even if excluded from Development Focus Areas, would be negatively impacted by energy development in surrounding public lands.

In the late 1990s and early 2000s, the DTPC Inc. developed a land-acquisition plan to expand the DTRNA to better connect with critical habitat designated in the Fremont Valley and Rand Mountains along the eastern boundary. In the Bureau of Land Management's *Western Mojave Plan*, the DTRNA was again shown as protected, along with the expansion lands to the west and east. These expansion lands are private lands, and already over 4,970 acres have been acquired through mitigation monies from highway and utility projects, among others. Each of these acquired land parcels or collections of parcels have formal, legal agreements requiring protection and conservation, not development.

In 2009 and 2010, the DTPC Inc. obtained grants totaling \$167,000 from the California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division to add 6 linear miles of tortoise-exclusion fencing to the existing hog-wire fencing at the DTRNA in areas most affected by off-highway vehicle recreation. The DTPC Inc. has also received additional funds from 2009 to 2011 to install signs and conduct educational programs in and around the DTRNA. Thus, the State has recently dedicated funds for additional protections. During the last two years, State of California (Parks and Recreation) also funded a study comparing tortoise populations and habitat on the DTRNA, in critical habitat in Fremont Valley, and on private lands with an objective of obtaining sufficient information to better direct management, including recreation. Preliminary findings, made available in January of 2012, indicate that the DTRNA supports substantially more tortoises per square mile than do adjacent private lands and critical habitat because of the protective management.

In addition to its importance as protected habitat for wildlife, the DTRNA truly serves as an important area for research, educational outreach, and contemplative recreation. Universities, colleges, and government research agencies have undertaken major projects researching tortoises, Mohave ground squirrels and other mammals, birds, lizards, and vegetation in this protected, fenced area. These projects have resulted in many publications that help guide conservation in the desert, and there are more projects currently in process. In 1989, the DTPC Inc. and BLM developed a Naturalist Program. Drawing on shared funds, they have staffed Naturalists at the DTRNA for 3 months every spring since then. The DTRNA typically receives over 1000 visitors during this 3 month period, and Naturalists give several programs to school and community groups, while interacting with almost all visitors passing through.

Currently, the DTPC Inc. and BLM Ridgecrest Field Office collaboratively manage the DTRNA under a Cooperative Agreement, guided by the 1988 Sikes Act Management Plan for the Desert Tortoise Research Natural Area and Area of Critical Environmental Concern, and are working together to update the plan. Although the 1980 Congressional withdrawal of the DTRNA from the general land laws, mining, and grazing expired in 2000, the DTPC Inc. and the public were assured that this withdrawal

would be renewed. Despite frustrating delays in this process, BLM field managers assured the DTPC Inc. as recently as June 2012 that the area will remain protected and withdrawn from mineral entry, grazing and other deleterious land uses. To assist in the DRECP planning process and to ensure that the DTRNA was adequately considered in development of the DRECP reserve system, the DTPC Inc. provided a list and map of mitigation land acquisitions to the BLM California Desert District Office in June of 2012. This information does not appear to be adequately included in the maps of Alternatives issued on July 25, 2012.

Given the history of substantial protective designations and the vast amount of resources invested in the acquisition, protection, and management of land for sensitive wildlife species in this area, the DTPC Inc. considers the failure to include the DTRNA as a legally protected area to be a breach of trust by the Bureau of Land Management, not only with the DTPC Inc., but with the public at large. The treatment of the DTRNA and expansion area as Development Focus Areas is at odds with existing land management plans and commitments by federal and state government agencies. It is a complete turn-around done under a fast-track planning system with very little public involvement. Furthermore, members of our board were informed that employees of the BLM California State Office have told BLM field office employees and the public that the DTRNA is not protected and is thus open to be included in Development Focus Areas. We feel this reflects a fundamental disregard for well-established conservation priorities under both federal and state management plans, and we question how this decision was made.

#### COMMENTS ON DRECP ALTERNATIVES

While the preceding comments have mainly focused on the inclusion of the DTRNA and associated expansion areas within Development Focus Areas, we have concerns about *all* of the alternatives. We hope a longer comment period will be granted to allow a more thorough review of the different alternatives and their scientific basis, as we perceive many serious conflicts with areas of important biological resources, and even with the DRECP's own Conservation Area Design and Assembly Principles.

Alternatives for the DRECP need to constitute real alternatives for agencies, the public, and developers to consider. However, most of the alternatives propose Development Focus Areas that include protected lands, even if they do not fall under the classification of "legislatively and legally protected lands" used by the DRECP planners. The inclusion of the DTRNA is only one example of this; all lands acquired for mitigation of impacts for other development projects should be excluded from renewable energy development. We find it disconcerting that Alternatives 2, 3, 4, and 5 are being proposed despite obvious conflicts with a number of conservation principles such as the conservation of large, contiguous blocks of habitat for covered species, wildlife and habitat connectivity, conservation at the ecosystem level, and the maintenance of local ranges of environmental gradients to provide for shifting species distributions, such as may occur with climate change. Although the extent of some of these conflicts is reduced in Alternative 1, inclusion of the Federal Solar PEIS variance zones may result in a loss of connectivity between important protected habitat and known populations of covered species.

Finally, we feel that future drafts of alternatives should overlay existing renewable energy projects, as well as existing and proposed transmission lines, on the maps showing the Development Focus Areas and plan-wide conservation areas, to allow for a more accurate evaluation of the adequacy of conservation

lands given current and future impacts due to renewable energy. The implications of Special Recreation Management Areas should also be clarified; we feel their definition (*administrative units where the existing or proposed recreation opportunities and recreation setting characteristics are recognized for their unique value, importance, and/or distinctiveness*) is vague. It is important that stakeholders and the public understand how plan-wide conservation areas on public lands will actually be managed.

As proposed, the DRECP alternatives seem to reflect a fundamental disconnect with the DRECP's primary mission. Indeed, if a private renewable energy developer proposed to develop a power plant on many of the lands within identified Development Focus Areas, surely the U.S. Fish and Wildlife Service, California Department and Fish and Game, California Energy Commission, and the Bureau of Land Management would have significant objections to any level of approval. Why, then, would the DRECP propose Development Focus Areas that violate basic conservation planning principles and policies?

#### SUMMARY

The DTPC Inc. believes there is much work to be done in providing a real set of alternatives for the DRECP, which will include more consideration of wildlife connectivity and ecosystem level conservation, and which will accurately designate protected private and public lands, and exclude them from Development Focus Areas. Simply put, *Development Focus Areas* should not include existing Research Natural Areas, Areas of Critical Environmental Concern, critical habitat or lands acquired with public donations and mitigation funds for the protection of habitat for the desert tortoise, burrowing owl, Mohave ground squirrel and other sensitive species. As we've outlined in this letter, the DTRNA has a long and rich history of protective designations, land acquisition, and management for the conservation of desert tortoises and other sensitive species; it should be represented as a legally and legislatively protected area and excluded from any DRECP Development Focus Area.

Sincerely,



Mary Jane McEwan  
President of the Board of Trustees  
Desert Tortoise Preserve Committee Inc.

Attachments: Maps showing DRECP Development Focus Area Alternatives in relation to the Desert Tortoise Research Natural Area (5 pages)

CC: Senator Diane Feinstein  
Senator Barbara Boxer  
James Kenna, California State Director, Bureau of Land Management  
Mike Pool, Acting Director, Bureau of Land Management  
Charlton Bonham, Director, California Department of Fish & Game

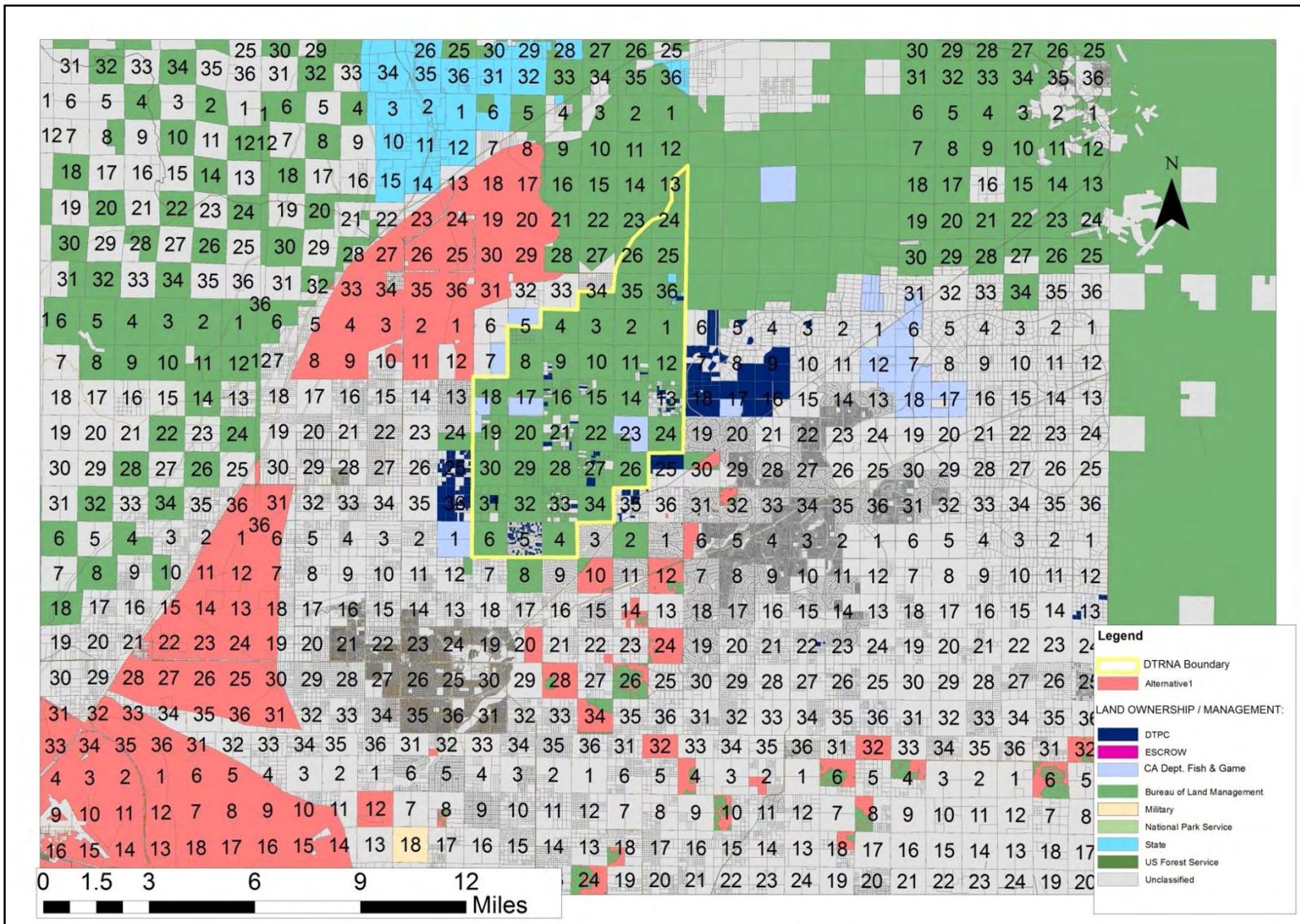


Figure 1. DRECP Alternative 1 relative to Desert Tortoise Research Natural Area. Map prepared using GIS shapefiles provided by DRECP, California Department of Fish and Game, Bureau of Land Management, and Desert Tortoise Preserve Committee, Inc.

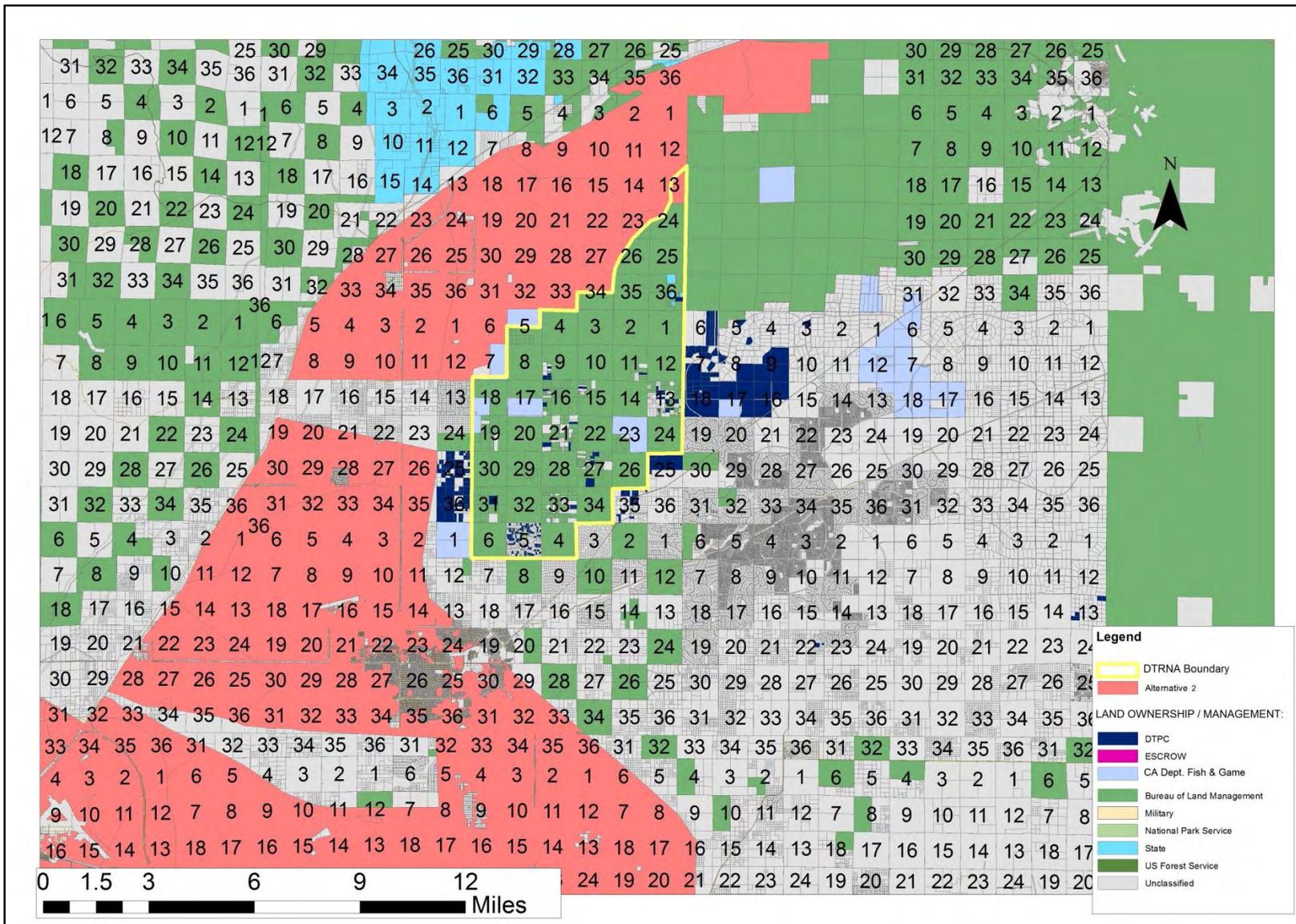


Figure 2. DRECP Alternative 2 relative to Desert Tortoise Research Natural Area. Map prepared using GIS shapefiles provided by DRECP, California Department of Fish and Game, Bureau of Land Management, Kern County, and Desert Tortoise Preserve Committee, Inc.

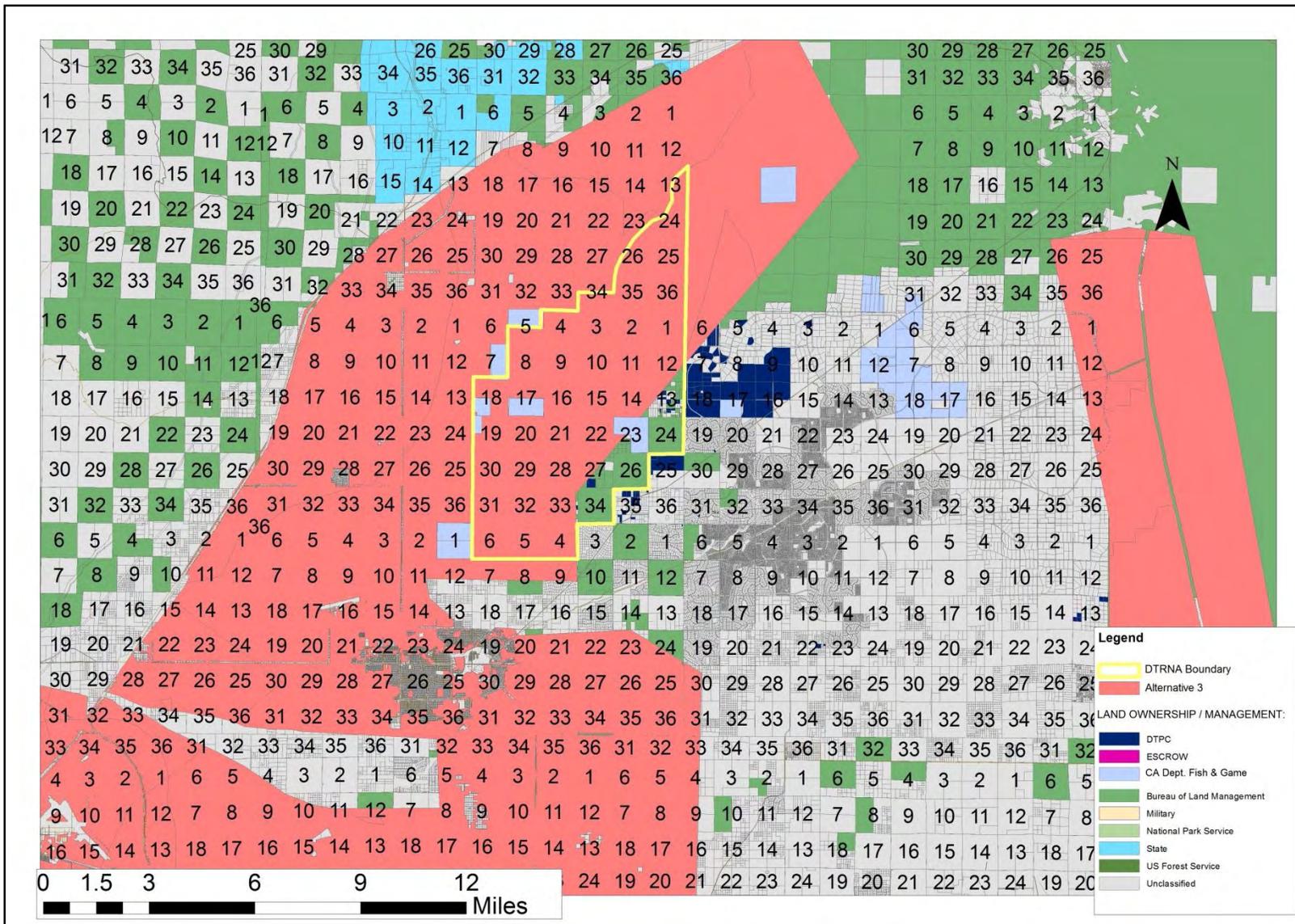


Figure 3. DRECPC Alternative 3 relative to Desert Tortoise Research Natural Area. Map prepared using GIS shapefiles provided by DRECPC, California Department of Fish and Game, Bureau of Land Management, Kern County, and Desert Tortoise Preserve Committee, Inc.

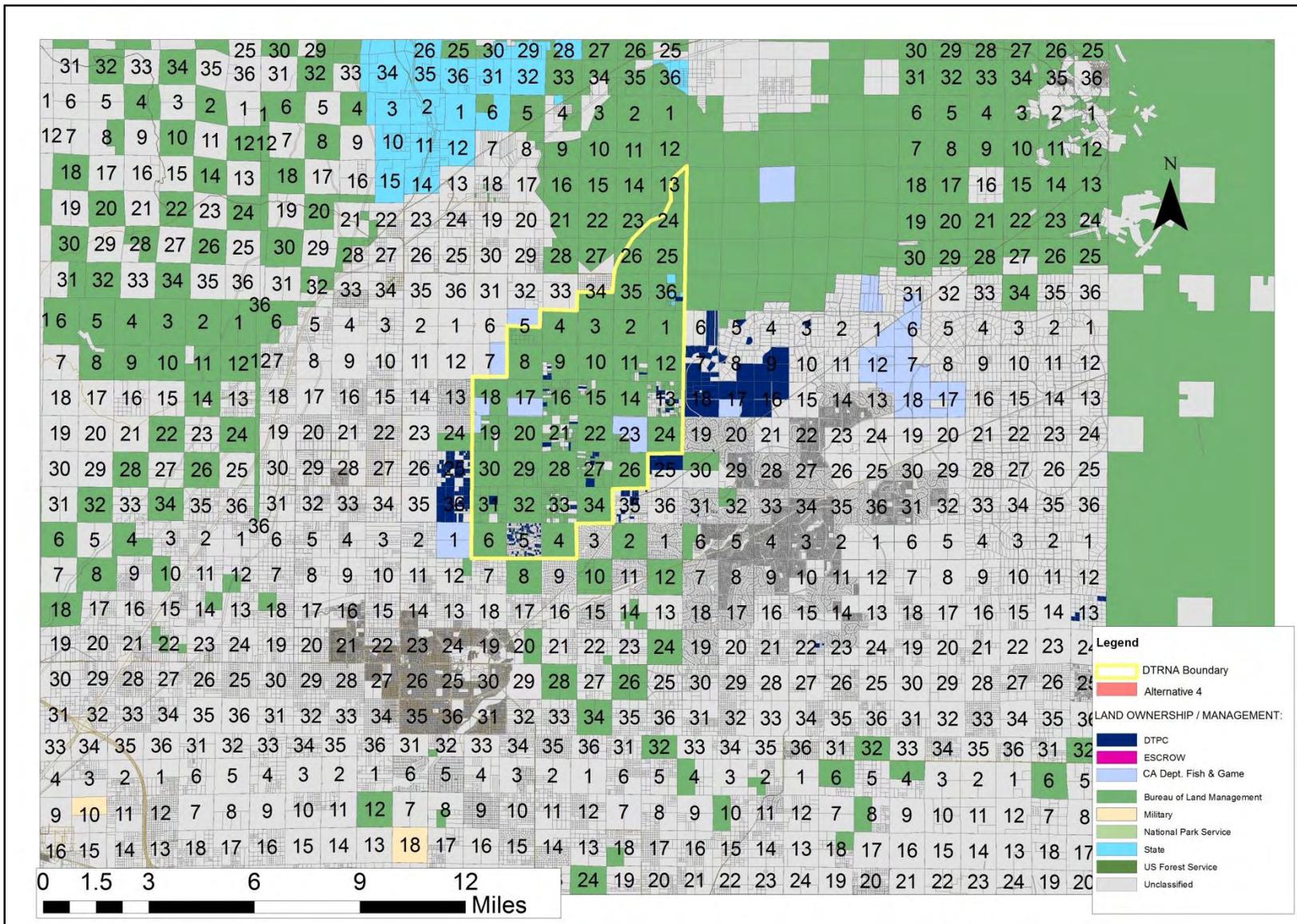


Figure 4. DRECP Alternative 4 relative to Desert Tortoise Research Natural Area. Map prepared using GIS shapefiles provided by DRECP, California Department of Fish and Game, Bureau of Land Management, Kern County, and Desert Tortoise Preserve Committee, Inc.

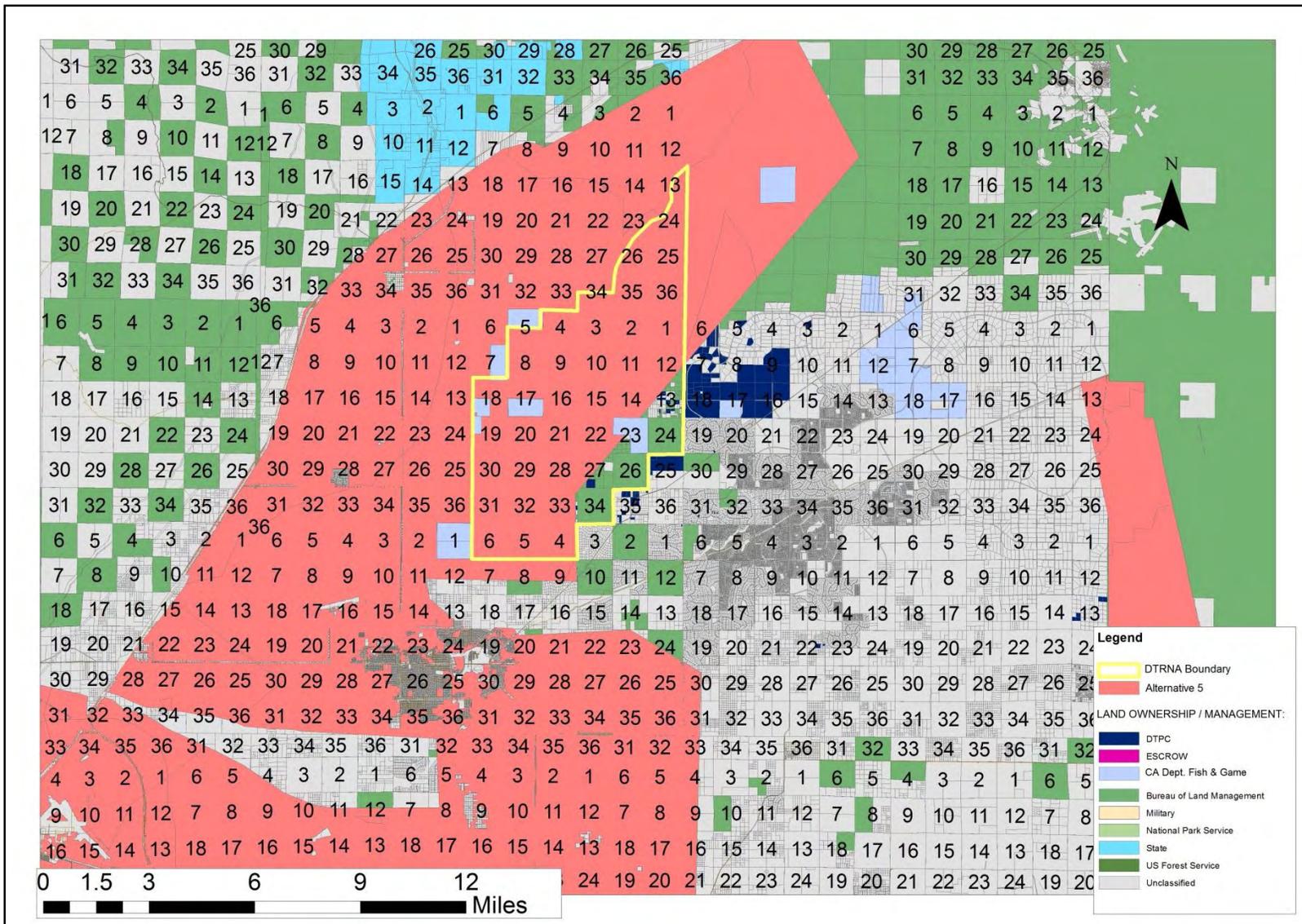


Figure 5. DRECP Alternative 5 relative to Desert Tortoise Research Natural Area. Map prepared using GIS shapefiles provided by DRECP, California Department of Fish and Game, Bureau of Land Management, Kern County, and Desert Tortoise Preserve Committee, Inc.