State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

December 6, 2023
Sent via email.

Elena Barragan
County of San Bernardino – Land Use Services
385 N. Arrowhead Ave 1st Floor
San Bernardino, CA 92415

Twentynine Palms Highway Self-Storage Center (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023110128

Dear Ms. Barragan,

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt the ISMND from the County of San Bernardino (Lead Agency) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines. [1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id., §* 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

alteration regulatory authority. (Fish and G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Kazasa Properties, LLC.

Objective: The proposed Project is for a self-storage facility consisting of an approximately 495 square foot office with 29,700 square feet of storage units. The site will also consist of 56,294 square feet of concrete paving and 15,618 square feet of landscaping.

Location: The Project is located in the northwest corner of Section 31, Township 1 North, Range 7 East, in the Joshua Tree North U.S. Geological Survey's (USGS) 7.5-minute topographic map quadrangle; Assessor Parcel Number 0604-051-13. The Project address is 62735 Twentynine Palms Highway, located 0.7 miles west of the intersection of Twenty-Nine Palms Hwy and Neptune Ave in the community of Joshua Tree, San Bernardino County.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County of San Bernardino in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

COMMENT #1: Desert Tortoise (*Gopherus agassizii*)

IS/MND, Section 3.2.3, Page 11, MM BIO-1

Issue: The Project may have impacts to Desert Tortoise, a California Endangered Species Act, threatened species, proposed endangered.

Specific Impact: Desert tortoise is a State and federally listed threatened species. This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and related activities may result in collision with, or crushing by, vehicles heavy equipment, entrapment within open trenches and pipes, entrapment or entanglement within materials and equipment staged and moved, crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; increased predation.

Why impact would occur: As the Project site contains suitable habitat for desert tortoise, as well as confirmed sightings in the surrounding parcels as recently as April 2023 (INaturalist), avoidance measures are required. While CDFW appreciates the inclusion of Mitigation Measure BIO – 1, CDFW is concerned that the measure lacks sufficient detail on the methodology regarding the survey, avoidance, and adequate planning if avoidance is not achievable. The current mitigation measure only addresses the need for surveys, but does not include measures that consider the potential of finding desert tortoise.

Evidence impact would be significant: Desert tortoise is a California Endangered Species Act (CESA)-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW recommends inclusion of the following changes to the mitigation measures for desert tortoise (edits are in strikethrough and additions are in bold):

MM BIO-1:

~~A pre-construction surveys shall be conducted for desert tortoise, prior to any ground disturbance. Surveys shall be conducted using the 2018 survey protocol for this species.~~ **A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the**

survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.

COMMENT #2: <u>Nesting Birds</u>

IS/MND, Section 3.2.4, Page 11-12, MM BIO-2

Issue: The MND includes Mitigation Measure BIO – 2 for nesting birds, which includes nesting bird surveys and setting buffer zones for existing nests. The measure states that "the nests and buffer zones shall be field checked weekly". CDFW is concerned that this may not be sufficient to ensure that the project avoids impacts to nesting birds.

Specific Impact:. Potential take of nesting birds and loss of bird nesting and/or foraging habitat.

Why impact would occur: Project activities may cause an adverse reaction to nesting birds before the weekly field check is conducted, which can lead to failure of the nest and the Project causing an unauthorized take. Additionally, the measure states that a qualified biologist shall conduct surveys only to identify nesting birds.

Evidence impact would be significant: Project proponent is responsible for complying with Fish and Game Code sections 3503, 3503.5, and 3513, which state as follows: section 3503 states that is it unlawful to take, possess, or needlessly destroy the nest or eggs or any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends a qualified biologist survey the entire Project area, not only for nesting birds, but also all bird activity to observe behavior that could be due to nest building, incubation, feeding of young and/or possible behavior that could indicate agitation and/or nest abandonment caused by Project activities. The

following recommendations are made to revise Mitigation Measure BIO – 2 (edits in strikethrough, additions in bold):

MM BIO-2:

Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) prior to Project-related disturbance to **the Project area and adjacent habitat** ~~nestable vegetation to identify any active nests~~. **Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors).** ~~If no active nests are found, no further action will be required.~~ If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon the biologists best professional judgement, **the displayed behavior (looking for indicators of stress or agitation),** the nesting species, its sensitivity to disturbance, nesting stage and expected types, intensity and duration of disturbance. The nests and buffer zones shall be field checked ~~weekly~~ **daily** by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field **in a way that does not alert predators**, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.

COMMENT #3: <u>Burrowing Owl (*Athene cunicularia*)</u>

IS/MND, Section 3.2.3, Page 11

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant. The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl.

Specific issue: CDFW is concerned regarding the MND's analysis and supporting documentation that the Project site lacks burrowing owl habitat. The MND's conclusion that, based on a single survey conducted in October 2022, determines no focused surveys are required. CDFW is concerned that there are several gaps in information that are needed to make such a determination.

Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

Why impact would occur: According to the California Natural Diversity Database (CNDDB 2023) and INaturalist (11/29/2023), there are several occurrences of burrowing owl in the vicinity of the Project site. Additionally, when comparing the Project site against habitat characteristics of burrowing owl there are no distinct physical barriers or habitat qualities that would preclude burrowing owl from occurring on site. Finally, the biological resources report indicates that there were no burrows of any kind located within the Project site and no suitable burrow surrogate species were present, however Page 10 of the Biological Resources Report also indicates that a ground squirrel was observed in the survey buffer and the site contains suitable habitat for desert tortoise. CDFW is concerned that these observations contradict the MND's determination and supporting documentation.

For these reasons, CDFW disagrees with the determination in the MND and recommends the County, as lead agency require protocol surveys provided in the 2012 *Staff Report on Burrowing Owl Mitigation* to ensure adequate evaluation of Project impacts are included within the MND.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

Burrowing owl surveys provide information needed to determine the potential effects of proposed Project and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project activity.

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends the inclusion of MM BIO-3 and MM BIO-4 which includes breeding season surveys for burrowing owl to be conducted with follow up pre-construction surveys.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a

take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

CDFW 2012 survey methodology resulting in detections. CDFW offers the following measure to adequately address burrowing owl, MM BIO-2 and MM BIO-3

MM BIO-3:

Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirement for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.

If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be review and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

MM-BIO 4:

To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

COMMENT #4: Desert kit fox (*Vulpes macrotis*)

IS/MND, Section 3.2.3, Page 11

Issue: The Project occurs within the range of desert kit fox (*Vulpes macrotis*), a species of special concern and protected species pursuant to Title 14 of the California Code of Regulations Section 460, which prohibits the take of the species at any time. CDFW recommends surveys, following CDFW-approved protocols, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine presence/absence.

Specific issue: The staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert kit fox. Project construction and activities may result in injury or mortality of desert kit fox.

Why impact would occur: The MND states that the site is marginally suitable for desert kit fox, however, lacks the supporting detail for the habitat assessment. CDFW generally considers field assessments for wildlife to be valid for a one-year period,

CDFW is concerned that the MND does not address desert kit fox, although the site does contain suitable habitat.

Evidence impact would be significant: The desert kit fox is a species of special concern and are protected from take by CDFW Code 14 CCR section 460. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Desert kit fox is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends that surveys following CDFW protocols be conducted over all areas proposed to be directly or indirectly affected by the Project to determine the presence or absence of this species and the number of desert kit fox that are present.

If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the lead agency require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to desert kit fox be incorporated into the MND. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

CDFW recommends the following Mitigation Measure be added to the MND:

MM BIO-5:

No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.

If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a

determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results.

Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care.

Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.

COMMENT # 5: <u>Artificial Lighting</u>

Issue: The MND does not analyze impacts to biological resources from artificial nighttime light and includes no mitigation measures to avoid or reduce impacts to biological resources to a level less than significant.

Specific Issue: As the Project site bisects a wildlife linkage corridor, the MND should include effective and feasible avoidance, minimization, and mitigation measures to reduce impacts to wildlife connectivity due to artificial lighting.

Why impact would occur: Specifically, the MND should provide an analysis of the current lighting regime known to be present onsite as well as an analysis of the proposed changes and the lighting regime that will occur as a result of new lighting installations through the development and comparison of Isolux diagrams. Isolux diagrams should illustrate the area and intensity over which artificial lighting will create additional light impacts over the natural landscape adjacent to the Project area.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. The introduction of electrical lighting has had profound impacts on animal physiology and behavior, and affects abundances of species and community structure (Gaston et al, 2015). Artificial light improves diurnal and crepuscular species' ability to see at night, allowing them to extend their period of activity into hours of natural darkness (Longcore and Rich 2004; Gaston et al. 2013). Conversely, other species may have reduced foraging success or reduced nighttime activity in artificially illuminated environments (Gaston et al. 2013).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that

impacts to wildlife are reduced to less than significant. CDFW recommends incorporating the following avoidance and minimization measures as conditions of approval in the MND to reduce potentially significant impacts:

MM BIO 6:

Light Impact Assessment and Avoidance. The Project shall submit to natural resource agencies, 30 days prior to the initiation of construction, Isolux diagrams that include current light levels present during Pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project. Within 60 days of Project completion the Project shall conduct a ground survey that compares predicted light levels with actual light levels through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered, additional avoidance, minimization, or mitigation measures may be required in coordination with the natural resource agencies.

MM BIO 7:

Light Output Limits All LED's or bulbs installed as a result of the Project shall be rated to emit or produce light at or under 2700 kelvin that results in the output of a warm white color spectrum.

ADDITIONAL COMMENTS and RECOMMENDATIONS

Western Joshua Tree

The Project site is located within the range of Western Joshua Tree (WJT). CDFW is concerned that the MND does not address WJT. WJT is a candidate threatened species under CESA. Species classified as a candidate species under CESA are afforded the same protection as CESA listed species. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent should obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) under §2081 of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, removal, replanting or any activity that may result in take of western Joshua Tree (WJT) onsite. California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12).

California Endangered Species Act

During candidacy of the western Joshua tree, a 290-foot buffer around each western Joshua tree parent, seedling, and sprout shall be established for full avoidance. Should

full avoidance be infeasible, CDFW strongly recommends the Project Proponent obtain an ITP from CDFW prior to initiating any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.

Further, pursuant to CESA, permanent protection and perpetual management of compensatory habitat is necessary and required to fully mitigate the taking of a CESA-listed species. CDFW recommends permanent protection through either 1) the purchase of conservation or mitigation bank credits or 2) through the establishment of a conservation easement, the development of a long-term management plan, and securing sufficient funding to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before Project activities are initiated.

Western Joshua Tree Conservation Act (Act) (Fish & G. Code § 1927 et seq.).

Permittee may submit to CDFW for its approval a Western Joshua Tree Conservation Act ITP Application (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=215337) and a census pursuant to Fish and Game Code section 1927.3, subdivision (a)(1). The census is to include size information and photographs that categorize WJT according to the following height classes: (1) Less than one meter, (2) One meter or greater but less than 5 meters, (3) Five meters or greater. For census instructions, please visit: https://wildlife.ca.gov/Conservation/EnvironmentalReview/WJT/Permitting/Census-Instructions#intro.

Wildlife linkage

The MND indicates that the Project area is within a wildlife linkage area, however, dismisses the Projects impacts to the linkage as the remainder of the linkage is largely undeveloped. California wildlife is losing the ability to move and migrate as habitat conversion and build infrastructure disrupt species habitat and cut off migration corridors (Senate Bill 790). CDFW notes that the proposed Project is directly in the middle of the linkage, bisecting the corridor. The MND concludes that the proposed Project will have a less than significant impact on the current wildlife corridor, but provides no substantial evidence to support the determination.

CDFW recommends that the MND include a detailed description of existing wildlife habitat linages and movement corridors within the Project site and a thorough analysis of the Project's potential direct and indirect impacts to mountain lion, desert bighorn sheep, meso-carnivores, desert tortoise, and small mammal populations.

Lake and Streambed Alteration Program

The MND indicates that the Project Site does not contain any streams, channels, washes, or swales that meet the definitions of Section 1600 of the State of California Fish and Game Code (FGC) under the jurisdiction of the CDFW. In reviewing the MND, aerial photographs of the Project site, and the Hydrology Study, particularly the On-Site Tributary Drainage Map, CDFW determined the proposed Project may alter several unnamed drainages and requires the applicant notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from, the bed, channel or bank of any river, stream, or lake; or deposit debris, waster other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes and water courses with a subsurface flow.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § , subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wldlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEE

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the 62735 Twentynine Palms Highway Self-Storage Facility MND to assist the City of Victorville in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marlee Poff, Environmental Scientist at email Marlee.Poff@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
Alisa Ellsworth
Environmental Program Manager

References

Gaston, K.J., Bennie, J., Davies, T.W. and Hopkins. J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biol Rev, 88: 912-927.

Gaston KJ, Visser ME, Holker, F. 2015. The biological impacts of artificial light at night: the research challenge. Phil. Trans. R. Soc. B 370: 20140133.

Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.

U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (Gopherus agassizii). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA

Attachments:

Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirement. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing mitigation measures.

Biological (BIO) Mitigation Measure	**Implementation Schedule**	**Responsible Party**
Mitigation Measure BIO-1: A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.		
Mitigation Measure BIO-2: Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) prior to project-related disturbance to the Project area and adjacent habitat. Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. Pre-construction surveys shall focus **on** both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon baseline behavior, the nesting species, its sensitivity to disturbance, nesting stage	Prior to ground- or vegetation-disturbing activities	Project Proponent

and expected types, intensity and duration of disturbance. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field in a way that does not alert predators, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.		
Mitigation Measure BIO-3: Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirement for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be review and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and	Prior to ground- or vegetation-disturbing activities	Project Proponent

dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.		
Mitigation Measure BIO-4: To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.	Prior to ground- or vegetation-disturbing activities	Project Proponent
Mitigation Measure BIO-5: No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.	Prior to ground- or vegetation-disturbing activities	Project Proponent

If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care. Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.		
Mitigation Measure BIO-6: Light Impact Assessment and Avoidance. The Project shall submit to natural resource agencies, 30 days prior to the initiation of construction, Isolux diagrams that include current light levels present during Pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project. Within 60 days of Project completion the Project shall conduct a ground survey that compares predicted light levels with actual light levels through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered, additional avoidance,	Prior to ground- or vegetation-disturbing activities	Project Proponent

minimization, or mitigation measures may be required in coordination with the natural resource agencies.		
Mitigation Measure BIO-7: Light Output Limits All LED's or bulbs installed as a result of the Project shall be rated to emit or produce light at or under 2700 kelvin that results in the output of a warm white color spectrum.	During Project Duration	Project Proponent