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Sent via e-mail

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**CUP23-0019 IS23-0024 Brian Welsh - Imperial RV Storage (PROJECT)
NEGATIVE DECLARATION (ND)
SCH #2024051372**

Dear Jim Minnick and Derek Newland:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from Imperial County 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 & 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 and 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 alteration regulatory authority. (Fish & 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 & 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: Brian Welsh

Objective: The Project proposes a recreational vehicle (RV) and off-road vehicle storage, maintenance, and repair business to be built in two phases. The property is divided by the Osage Drain. The first phase of the Project will be in the southern portion of the property south of the drain, proposing 150 parking spaces, and the second phase proposes an additional 150 spaces in the northern portion of the property. The Project will include grading and paving the Project site.

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.

The proposed Project will consist of covered and uncovered RV and off-road vehicle parking with onsite maintenance and repair services to be conducted in the existing structures onsite. There are 6 proposed dump stations to empty RV waste tanks, and an Onsite Waste Water Treatment System (OWTS) is proposed to handle this waste. The OWTS will be permitted through the California Regional Water Quality Control Board.

There will be 3 to 5 employees depending on the season with the busy season expected to be between October and May. Office hours are proposed as 8 am to 5 pm with access hours for storage being 24 hours per day, seven days per week. Security for the site will include fencing, lighting, gating, and a manager who will reside in a proposed caretaker residence on-site.

Location: The Project will be located at 760 E Hwy 78, Brawley, California 92227; Imperial County; Assessor's Parcel Number 049-310-002-000, near the intersection of Hwy 111 and Hwy 78, which is two miles west of the Project site. The Project area is approximately 25.35 acres in size, and the Alamo River runs along the western boundary of the Project site. The latitude and longitude for this Project site are 32°58'56.6" N, 115°28'00.6" W.

Timeframe: The ND does not provide any information regarding the timeframe for the proposed Project.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist Imperial County (County) in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. The ND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Timing of Construction and Construction Activities

Initial Study/Negative Declaration (IS/ND) Document, Section #II, Page #8

Issue: CDFW is concerned that the Project description does not provide a complete and accurate description of the Project's timeline. More information is needed regarding the schedule of construction activities for the Project's two separate phases to ensure the impacts of the Project are reduced to a level less than significant.

Specific impact: The ND (p. 8) states that "the first phase of the project is the southern portion of the property south of the drain and would include 150 parking spaces total with the second phase being on the northern portion of the property with an additional 150 proposed parking spaces." However, no further information is provided regarding a construction schedule for each separate phase of the Project. If the Project site is left vacant or left graded and inactive in the interim period between construction phases, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls). Burrowing owls frequently move into disturbed areas prior to and during construction since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Without a complete Project description regarding the construction schedule, CDFW cannot accurately assess the impacts to biological resources that have potential to occur.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate Project

description, the ND likely provides an incomplete assessment of Project-related impacts to biological resources.

Recommended Potentially Feasible Mitigation Measure: CDFW recommends that Imperial County recirculate a revised Mitigated Negative Declaration (MND) that includes a complete Project description with details regarding the timeline for all Project activities in each phase.

II. Environmental Setting and Related Impact Shortcoming

COMMENT #2: Assessment of Biological Resources

IS/ND Document, Section #IV, Page #17

Issue: The ND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

Specific impact: The ND bases its analysis of impacts to biological resources on the Imperial County General Plan's Conservation and Open Space Element from 2016. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. CDFW is concerned that no recent biological field assessment and no recent focused or protocol-level surveys were performed for the detection of special-status species on the Project site and in the surrounding area. CDFW is concerned about the potential for special-status species to occur on or near the Project site. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported within a 3 mile radius of the Project area including, but not limited to, the following: **Invertebrates:** Crotch's bumble bee (*Bombus crotchii*); **Reptiles:** Colorado Desert fringe-toed lizard (*Uma notata*), flat-tailed horned lizard (*Phrynosoma mcallii*); **Birds:** burrowing owl (*Athene cunicularia*), crissal thrasher (*Toxostoma crissale*), fulvous whistling-duck (*Dendrocygna bicolor*), Gila woodpecker (*Melanerpes uropygialis*), least bittern (*Ixobrychus exilis*), loggerhead shrike (*Lanius ludovicianus*), long-billed curlew (*Numenius americanus*), long-eared owl (*Asio otus*), mountain plover (*Charadrius montanus*), northern harrier (*Circus cyaneus*), peregrine falcon (*Falco peregrinus*), prairie falcon (*Falco mexicanus*), redhead (*Aythya americana*), tricolored blackbird (*Agelaius tricolor*), white-faced ibis (*Plegadis chihi*), white-tailed kite (*Elanus leucurus*), yellow-breasted chat (*Icteria virens*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*); **Mammals:** American badger (*Taxidea taxus*), big free-tailed bat (*Nyctinomops macrotis*), pallid bat (*Antrozous pallidus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), southern grasshopper mouse (*Onychomys torridus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western yellow bat (*Lasiurus xanthinus*).

Recent surveys during the appropriate times of the year are needed to identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and determine whether impacts to biological resources have been mitigated to a level that is less than significant.

Evidence impact would be significant: Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been adequately analyzed in the ND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the ND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that

significant environmental impacts of the proposed Project are adequately investigated and discussed.

Recommended Potentially Feasible Mitigation Measure: To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the results of recent biological surveys as described in the following mitigation measure, as well as mitigation measures to reduce impacts to less than significant.

Mitigation Measure BIO-[A]: Assessment of Biological Resources

Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for CDFW-recommended MM BIO-[A] through MM BIO-[F].

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #3: Nesting Birds

IS/ND Document, Section #IV, Page #17

Issue: CDFW is concerned that the ND does not sufficiently identify Project impacts to nesting birds or ensure that impacts are reduced to a level less than significant.

Specific impact: Page 17 of the ND states that “the project has an irrigation drain running through [the site] and the Alamo River running along the western boundary.” The riverine and riparian habitat associated with the Alamo River and Osage Drain are suitable for multiple nesting bird species. Those nesting bird species (see COMMENT #2: Assessment of Biological Resources) have the potential to be directly or indirectly impacted by the proposed Project activities.

CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak nesting season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017).

CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting onsite. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

Evidence impact would be significant: It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code 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 Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code 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: CDFW recommends the County add the following measure for nesting birds in a revised MND to ensure that impacts to nesting birds are reduced to less than significant:

MM BIO-[B]: Nesting Birds

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of Project construction. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

COMMENT #4: Burrowing Owl

IS/ND Document, Section #IV, Page #17

Issue: CDFW is concerned that the ND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are reduced to a level less than significant.

Specific impact: Page 17 of the ND states that the project site is located on "disturbed land" and "is within the 'Burrowing Owl Species Distribution Model' according to the Imperial County General Plan's Conservation and Open Space Element." CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs (Haug et al. 1993), and that burrowing owls may

occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity (Gervais et al. 2003). In addition, burrowing owls frequently move into disturbed areas prior to and during construction since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). In Imperial Valley, burrowing owls are highly dependent on irrigation canals for nesting habitat (Wilkerson and Siegel 2011). CNDDDB/BIOS report occurrences of burrowing owl less than 1.5 miles from the Project site.

Impacts to burrowing owls 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. CDFW notes that impacts to burrowing owls could also occur outside of the peak nesting season because burrowing owls may start breeding earlier (in January) and because young owls may still be dependent on the adults until later in the fall. In addition, because some burrowing owls are resident in burrows year-round, impacts to this species could also occur outside of the peak nesting season.

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.” Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code 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 Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code 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: CDFW recommends adding a mitigation measure for burrowing owl in a revised MND with specific avoidance and minimization measures to ensure that impacts to burrowing owls are reduced to less than significant. CDFW recommends that prior to commencing Project activities for all phases of Project construction, focused surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends Imperial County include the following Mitigation Measure in a revised MND:

MM BIO-[C]: Focused and Pre-Construction Surveys for Burrowing Owl

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If

impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

For all phases of Project construction, preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation (2012 or most recent version)*. Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.

COMMENT #5: Lake and Streambed Alteration (LSA) Agreement

IS/ND document, Section #IV, Page #17

Issue: The ND does not include mitigation measures to avoid or reduce impacts to streams and their associated resources to a level less than significant.

Specific impact: Page 17 of the ND states, “The proposed project is located on an industrial zoned parcel which has an existing Imperial Irrigation District (IID) irrigation drain running through the property which empties into the Alamo River running along the western boundary of the parcel.” CDFW review of aerial imagery indicates the presence of riverine and riparian habitat associated with the Alamo River and Osage Drain within the boundary of the Project site, as well as riverine and riparian habitat associated with the Alamo River along the western boundary of the Project site. The ND does not provide an assessment of stream resources nor details on the proximity of construction activities to these resources. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Potential direct and indirect impacts to the streams and associated fish and wildlife resources, such as burrowing owl, resulting from Project construction are subject to notification under Fish and Game Code section 1602.

Evidence impact would be significant: 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, waste or other materials that could pass into any river, stream or lake. 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 watercourses with a subsurface flow. It may also apply to work undertaken within the

flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification, visit: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Recommended Potentially Feasible Mitigation Measure: Because of the potential for impacts to resources subject to Fish and Game Code section 1602, CDFW recommends Imperial County include the following additional mitigation measure in a revised MND to ensure that impacts to streams and associated fish and wildlife are reduced to a level less than significant:

MM BIO-[D]: CDFW's Lake and Stream Alteration (LSA) Program

Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

COMMENT #6: Artificial Lighting

IS/ND Document, Section #I, Page #15

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

Specific impact: The proposed Project will result in new sources of artificial nighttime lighting adjacent to riverine/riparian habitat and open agricultural land. The ND (p. 15) states, "The proposed project would have lighting at night for security purposes as well as to allow storage customers accessing the property at night to pick up or drop off their RV." The ND indicates that lighting will be shielded; however, no further details are provided. Impacts to biological resources resulting from the use of artificial nighttime lighting during construction and during 24-hour operation of the Project are not analyzed, and no mitigation measures are proposed. Designs for lighting to be used during operation of the Project should be included in a revised MND, along with details of artificial nighttime lighting to be used during construction. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

Evidence impact would be significant: There is riverine/riparian habitat within the Project site and immediately west of the Project site—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. In addition, the Project is surrounded by agricultural land that may also support wildlife. Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation

(Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure: Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include details of the use of artificial nighttime lighting proposed for construction and operation of the Project and an analysis of impacts to biological resources, as well as specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. CDFW recommends the County include the following mitigation measure in a revised MND:

MM BIO-[E]: Artificial Nighttime Light

During Project construction and the lifetime operations of the Project, the County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County and Project proponent shall ensure that lighting for Project activities is shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

COMMENT #7: Construction Noise

IS/ND Document, Section #XIII, Page #23

Issue: The ND does not include an assessment of the impacts of construction noise on biological resources. Additionally, the ND does not include mitigation measures to avoid or reduce impacts to biological resources from construction noise to a level less than significant.

Specific impact: The ND (p. 23) states, “The proposed project may produce the most noise during grading and paving operations on the site...construction noise, from a single piece of equipment or a combination of equipment, shall not exceed 75 dB Leq, when averaged over an eight (8) hour period, and measured at the nearest sensitive receptor.” CDFW is concerned that the ND does not acknowledge or assess the impacts to biological impacts that have potential to occur due to construction noise. Direct and indirect impacts may occur to nesting birds and other wildlife using riverine/riparian habitat within and near the Project site and agricultural land in proximity to the Project site.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017).

Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Recommended Potentially Feasible Mitigation Measure: Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include a noise impact assessment and an analysis of impacts to biological resources accompanied by specific avoidance and minimization measures to ensure that impacts to wildlife are avoided or reduced to less than significant. CDFW recommends adding the following mitigation measure to a revised MND:

MM BIO-[F]: Construction Noise

During all Project construction, the County shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The County shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

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, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist Imperial County in identifying and mitigating Project impacts on biological resources. CDFW concludes that an ND is inappropriate for the Imperial RV Storage Project because it does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the ND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete Project description and a complete assessment of biological resources. The CEQA Guidelines indicate that recirculation is required when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete Project description and a complete assessment of biological resources, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

Questions regarding this letter or further coordination should be directed to Julia Charpek, Environmental Scientist, at 909.354.0937 or Julia.Charpek@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Cindy Castaneda

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For
Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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Attachment 1: Mitigation Monitoring and Reporting Program (MMRP) for Biological Resources

| Mitigation Measure (MM) Description | Implementation Schedule | Responsible Parties |
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| <p>MM BIO-[A]: Assessment of Biological Resources Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p> | <p>Prior to Project construction activities</p> | <p>Imperial County</p> |
| <p>MM BIO-[B]: Nesting Birds Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of Project construction. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p> | <p>No more than 3 days prior to vegetation clearing or ground-disturbing activities</p> | <p>Imperial County</p> |
| <p>MM BIO-[C]: Focused and Pre-Construction Surveys for Burrowing Owl Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied</p> | <p>Focused surveys: Prior to the start of Project-related activities Preconstruction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance</p> | <p>Imperial County</p> |

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| <p>burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>For all phases of Project construction, preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p> | | |
| <p>MM BIO-[D]: CDFW’s Lake and Stream Alteration (LSA) Program Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p> | <p>Prior to Project activities and issuance of any grading permit</p> | <p>Imperial County</p> |
| <p>MM BIO-[E]: Artificial Nighttime Light During Project construction and the lifetime operations of the Project, the County and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County and Project proponent shall ensure that lighting for Project activities is shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The County and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p> | <p>Throughout construction and the lifetime operations of the Project</p> | <p>Imperial County</p> |
| <p>MM BIO-[F]: Construction Noise During all Project construction, the County shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind</p> | <p>During all Project construction</p> | <p>Imperial County</p> |

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| turbine systems. The County shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source. | | |
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