



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 17, 2025

Keith Gardner
Planning Department
City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277

Hatch Road & Sullivan Road Trail (Project)
Initial Study/Mitigated Negative Declaration (IS/MND)
SCH# 2025030675

Dear Mr. Gardner:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Twentynine Palms 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

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.

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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: City of Twentynine Palms

Objective: The Project is a corridor improvement project proposed on 2.15 miles of an existing transportation corridor, including Hatch Road and Sullivan Road, located in the south-central region of Twentynine Palms in San Bernardino County, CA. Pursuant to the City's Circulation Plan and the Twentynine Palms Community Trail Master Plan, the primary Project activities include infrastructure development along Hatch Road and Sullivan Road to include a multimodal transportation system comprised of new asphalt pavement to widen the streets to 45 feet to accommodate two Class II bike lanes and a graded shoulder/pedestrian walkway and two travel lanes (each directing traffic one-way) centered along the corridor. Existing paved roadways and walkways will be incorporated into the final site design.

Location: The Project is located between Twentynine Palms Highway to the north and Adobe Road to the east in Twentynine Palms, California, 92277.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Twentynine Palms 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.

I. Specific Comments

COMMENT 1: DESERT TORTOISE (*Gopherus agassizii*)

IS/MND Section IV. Biological Resources: Discussion of Impacts, Page 27 and 29

Issue: The Project may have direct or indirect impacts to desert tortoise, a CESA threatened, proposed endangered species and the IS/MND's mitigation measure for desert tortoise, BIO-3, only addresses the need for desert tortoise pre-construction

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surveys and does not include measures to avoid, minimize, and mitigate impacts to desert tortoise if detected.

Specific impact: Desert tortoise is a State and federally listed threatened species and on April 18, 2024, the Fish and Game Commission made the finding that the petition to uplist desert tortoise from threatened to endangered status is warranted. Desert tortoise is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat due to development. Project activities related to ground disturbance and construction may result in direct take of desert tortoise and furthermore reducing habitat and wildlife connectivity. Staging of construction equipment, vehicular traffic, equipment operation, 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 of desert tortoise by vehicles or heavy equipment. Entrapment or entanglement of desert tortoises may occur within open trenches and pipes or when materials and equipment are staged and moved, which can lead to crushing or burying of individuals.

Why impact would occur: The IS/MND indicates that designated critical habitat for the desert tortoise is located approximately 1.8 miles southeast of the eastern part of the Project site. Additionally, the Project area falls within the California Wildlife Habitat Relationships (CWHR) Predicted Habitat Suitability zone, which indicates that the Project site provides highly favorable conditions for breeding, foraging, and shelter for the desert tortoise. Since the site contains suitable habitat for the desert tortoise, the implementation of the Project may pose significant impacts to desert tortoise.

Evidence impact would be significant: Desert tortoise was recently proposed to be uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. Desert tortoise populations have declined significantly in recent decades as a result of human activities in desert tortoise habitat including land development, off-road vehicle use, overgrazing, agricultural development, and military activities (USFWS 2011)². In addition, predation from ravens and the spread of invasive plant species also pose a threat to desert tortoises. 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). Additionally, studies have shown that roadways

² 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.

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contribute to the decline of desert tortoise populations, regardless of speed limits or traffic frequency (Hughson and Darby 2013)³.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW is concerned that mitigation measure BIO-3 lacks sufficient detail regarding the methodology for desert tortoise pre-construction surveys, appropriate avoidance, and adequate permitting if avoidance is not achievable. The current mitigation measure only addresses the need for surveys and does not include measures to avoid, minimize, and mitigate impacts to desert tortoise. CDFW recommends inclusion of the following changes to BIO-3 (edits are in ~~striketrough~~ and additions are in **bold**):

Mitigation Measure BIO-3: ~~One P~~pre-construction desert tortoise surveys shall be required ~~immediately~~ prior to any ground disturbance or vegetation removal **and shall be conducted by a CDFW-approved Designated Biologist(s) knowledgeable in the biology, ecology, and life history of desert tortoise.** The desert tortoise clearance survey ~~can~~**shall not** be completed ~~in parallel with the burrowing owl pre-construction surveys~~ **other surveys conducted for other species while using the same personnel and shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology⁴, ensuring 100-percent visual coverage for desert tortoise and their sign.** Installation of a perimeter fence will also be required to identify the limits of construction to minimize the Project impact footprint to the smallest extent feasible.

If the survey confirms absence, the CDFW-approved Designated Biologist(s) shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, 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 (ITP) under the Fish and Game Code section 2081] for desert tortoise is obtained.

COMMENT 2: BURROWING OWL (*Athene cunicularia*)

IS/MND Section IV. Biological Resources: Discussion of Impacts, Page 28 and Mitigation Measure, Page 29

³ Hughson, D. L., and N. Darby. 2013. Desert tortoise road mortality in Mojave National Preserve, California. California Fish and Game 99:222–232

⁴ U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).

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Issue: The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl, a CESA candidate species. Based on review of the IS/MND and Biological Resources Assessment, a habitat assessment nor focused surveys for burrowing owl were conducted within or surrounding the Project site. If the Project, including Project construction or any Project related activity during the life of this Project, could result in the take of a CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. 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”.

Specific impact: While the IS/MND requires pre-constructions surveys for burrowing owl prior to construction in BIO-2, BIO-2 does not include measures to avoid, minimize, and mitigate impacts to burrowing owl if detected. Additionally, the IS/MND concludes that no burrowing owls were observed during surveys, but this conclusion is based on a reconnaissance survey conducted in January 2025, which was not according to proper protocol (i.e., 2012 *Staff Report on Burrowing Owl Mitigation*⁵) and occurred during the non-breeding season for burrowing owl. During the non-breeding season burrowing owls are difficult to detect and in winter, burrowing owls may be less conspicuous, as they are often less active and tend to remain inside their burrows to conserve energy and stay warm.

Why impact would occur: According to the California Wildlife Habitat Relationships (CWHR 2016) and vegetation map (FVEG2015, FRAP 2015), the Project site is within “high predicted habitat suitability” for burrowing owls and the likelihood of burrowing owl occurring on site is very high considering recent occurrence of burrowing owl in the Project vicinity within the last 4 years. Burrowing owls have a high potential to move into suitable habitat prior to and during construction activities. Burrowing owls also frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Potential Project impacts to burrowing owl include take of burrowing owls, their nests, or eggs and destruction of nesting, foraging, or over-wintering habitat.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species’ habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (i.e., Fish and

⁵ California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

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Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). If Project activities could result in take, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW recommends that mitigation measure BIO-2 be revised and adopted in the final MND, as per below, (edits are in ~~strikethrough~~ and **bold**) to indicate the protocol that will be used to conduct surveys for burrowing owl and measures that will be taken if burrowing owl is detected during pre-construction surveys.

Mitigation Measure BIO-2: Prior to the initiation of Project activities, a qualified biologist shall conduct a burrowing owl habitat assessment consistent with the 2012 Staff Report on Burrowing Owl Mitigation⁶. If the burrowing owl habitat assessment identifies burrowing owl habitat or sign of burrowing owl, the Project proponent shall have a Designated Biologist(s) perform breeding season surveys for burrowing owls according to the 2012 Staff Report on Burrowing Owl Mitigation. If burrowing owls are detected on the Project site, the Project proponent shall fully avoid impacts to burrowing or obtain a CESA ITP if impacts to burrowing owl are unavoidable. To confirm presence/absence of owls following previous surveys, ~~t~~Two pre-construction burrowing owl surveys shall be performed in accordance with CDFW guidelines in the 2012 Staff Report on Burrowing Owl Mitigation. The first survey shall take place 14 to 30 days prior to ground disturbance, and the second survey within 24-hours of any ground-breaking activities. The survey area shall include all suitable habitat within the Project route, plus the proposed construction staging site and a 500-foot buffer area where accessible. The second survey is typically completed the morning prior to completing the WEAP training as established in Mitigation Measure BIO-1.

COMMENT 3: NESTING BIRDS

IS/MND Section IV. Biological Resources: Mitigation Measure, BIO-4, Page 30 of 84

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, species of special concern (e.g., loggerhead shrike), and common birds that are subject to Fish and Game Code sections 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike and nest destruction and indirect take associated with

⁶ California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

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Project operations such as attracting predators, displacement, and reduction of habitat and habitat quality.

Why impact would occur: Mitigation measure BIO-4 only requires a nesting bird pre-construction surveys if vegetation removal or grading occurs between February 1 and August 31, but this may lead to impacts to birds that nest outside of this defined window. Thus, CDFW recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. This is also considering that 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 also been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and this shift has led to a change in availability of resources (Socolar et al., 2017). Additionally, CDFW staff have observed that climate change may result in nesting bird season occurring earlier and later in the year than the historical nesting season dates. Thus, CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, migratory birds, and raptors within the Project site and surrounding area be avoided any time birds are nesting onsite.

Evidence impact would be significant: Fish and Game Code section 3503 makes it 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 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the 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.). 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) 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.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: CDFW 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. Thus, CDFW strongly recommends the following revisions to BIO-4 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final IS/MND.

Mitigation Measure BIO-4: A nesting bird survey shall be required ~~if prior to~~ **prior to** vegetation removal or grading or other site disturbance ~~is scheduled to occur between February 1 and August 31.~~ A qualified biologist shall conduct at least one nesting bird survey and more if deemed necessary by the consulting biologist, ending no more than 3 days prior to grading. All vegetation and suitable nesting habitat including open ground on the Project site, whether or not it will be removed or disturbed, shall be surveyed for nesting birds. If active nests are found on the site, they will be avoided **through appropriate avoidance buffers as established by the qualified biologist**

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and buffers shall not be impacted until after the young have fledged. If there are no nests present, ground disturbance activities can move forward.

COMMENT 4: FISH AND GAME CODE SECTION 1602 RESOURCES

IS/MND Section IV. Biological Resources: Mitigation Measure, BIO-5, Page 30 of 84

Issue: The Project as described may result in substantial impacts to unnamed ephemeral desert washes located across the Project area.

Specific impact: The Project may result in significant impacts and loss of desert wash habitat. Construction activities may result in the placement of fill material within streambeds.

Why impact would occur: Based on aerial imagery, the Project site contains at least two streams that may be directly or indirectly impacted by construction activities, including but not limited to, road realignment, road widening, drainage work, or ground disturbance. The IS/MND does not consider notification to CDFW to obtain a Streambed Alteration Agreement to authorize impacts to streams.

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. 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 watercourses with a subsurface flow.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: IS/MND does not provide a measure to minimize the Project's impacts to streambeds. Thus, CDFW strongly recommends the adoption of BIO-5 below for inclusion in the final IS/MND (edits are in **bold**).

Mitigation Measure BIO-5: Prior to construction activities, mapping of stream resources in the Project area shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alternation Agreement (Agreement). The Agreement shall include

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measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

COMMENT 5: DESERT KIT FOX (*Vulpes macrotis*)

IS/MND Section IV. Biological Resources: Mitigation Measure, BIO-6, Page 30 of 84

Issue: The Project occurs within the range and predicted habitat for desert kit fox, a species of special concern (SSC) and protected species pursuant to Title 14 of the California Code of Regulations (CCR) Section 460, which prohibits the take of the species at any time.

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 related activities may result in injury or mortality of desert kit fox (e.g., from vehicle strikes).

Why impact would occur: The IS/MND does not include an analysis of Project impacts to desert kit fox. CDFW is concerned that the IS/MND does not address potential impacts to desert kit fox, although the site does contain suitable habitat.

Evidence impact would be significant: Desert kit fox is a species of special concern and is 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 strongly recommends the adoption of the following measure, BIO-6, for inclusion in the final IS/MND (edits are in **bold**) to avoid and minimize impacts to desert kit fox.

Mitigation Measure BIO-6: No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, a Designated Biologist shall conduct a 10-meter transect survey (or reduced based on topography and vegetation) and 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.

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. The Designated Biologist shall

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determine if active dens can be avoided and buffered from Project activities to prevent take and disturbance.

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

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

COMMENT 6: SENSITIVE AND NATIVE PLANT SPECIES

IS/MND Section IV. Biological Resources: Mitigation Measure, BIO-7, Page 30 of 84

Issue: The Project site is located within the range of western Joshua tree (WJT). CDFW is concerned that the IS/MND does not address WJT. WJT is a candidate threatened species under CESA. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent should obtain an Incidental Take Permit (ITP) from CDFW under Fish and Game Code section 2081 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 onsite.

Forty-two (42) plant species were identified by the IS/MND during a general field assessment, out of which 81% were native species. Most of the plant species observed were located within the Project's graded shoulder and intermittent open spaces and included, but were not limited to: creosote bush, cheesebush, allscale saltbush, smoke tree, catclaw, bladderpod, Mexican palo verde, and Thurber's sandpaper plant. Smoke tree and palo verde are protected by the California Desert Native Plants Act.

Specific Impact: Take of WJT is defined as any activity that results in the removal of WJT or any parts thereof (CDFW 2022). The IS/MND should address the presence of all dead and live WJTs within the Project site, as well as the Project's impact on any live WJTs within and adjacent to the Project site. Access and construction occurring adjacent to WJTs in the off-site parcels could impact WJTs as a result of ground disturbing activities, encroachment, compaction, trampling, or disturbance of the root zone and seedbank by heavy equipment, vehicles or foot traffic, and increased dust, water, and wind erosion during construction.

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Additionally, vegetation removal, and other ground disturbances are likely to result in direct mortality of special status plant species due to the presence of suitable habitat.

Evidence impact would be significant: According to a search on CNDDDB and Calflora, the Project has suitable habitat for native and rare plant species. However, rare plant surveys were not conducted. Take of any CESA-listed plant species that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the [California Native Plant Society Vegetation manual](#).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: To avoid impacts to sensitive plant species, CDFW recommends the adoption of MM BIO-7 and MM BIO-8 below.

Mitigation Measure BIO-7: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018).

If any special-status plants are identified, the Project Proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and perpetual conservation and management thereof determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

Mitigation Measure BIO-8: The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section CDFW under §2081b 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,

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§§ 1927-1927.12), prior to the relocation, removal, or take. (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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: [Western Joshua Tree Conservation Act Incidental Take Permit](#). Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.

II. Additional Comments

Desert Bighorn Sheep (*Ovis canadensis nelsoni*)

Desert bighorn sheep is a fully protected species and may not be taken or possessed at any time unless authorized by CDFW according to Fish and Game Code section 4700. Desert bighorn sheep has been documented to occur adjacent to the proposed Project area and according to CNDDDB the site contains suitable habitat for desert bighorn sheep.

If desert bighorn sheep are observed at any point during the course of Project activities within or adjacent to Project areas, Permittee should cease all work in the vicinity of the observation, wait until bighorn sheep move from the area, and notify CDFW immediately for further guidance on recommencing work to ensure compliance with the fully protected status of desert bighorn sheep under Fish and Game Code. Additionally, to prevent potential transmission of disease from domestic animals to wild desert bighorn sheep, the Project Proponent should require all workers to decontaminate work boots prior to entering Project areas. Decontamination shall involve scrubbing of the soles of work boots with a 10% bleach solution, or chemically sterilizing equivalent to remove all

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organic matter and kill pathogens. Alternatively, footwear may be changed to ensure that potentially contaminated footwear does not enter Project areas. Heavy equipment previously used for farm work, including, but not limited to, sheep and goat livestock operations, shall not be utilized for Project activities.

Submitting Data on Special Status Species

CDFW strongly recommends the Project proponent to submit data to the California Natural Diversity Database at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, burrowing owl, loggerhead shrike, willow flycatcher, and desert kit fox, observed within or adjacent to the Project area. 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 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).)

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 IS/MND to assist the City of Twentynine Palms in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ravleen Kaur, Senior Environmental Scientist (Specialist) at (760) 644-5985 or Ravleen.Kaur@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

REFERENCES

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>Mitigation Measure BIO-3</p> <p>Pre-construction desert tortoise surveys shall be required prior to any ground disturbance or vegetation removal and shall be conducted by a CDFW-approved Designated Biologist(s) knowledgeable in the biology, ecology, and life history of desert tortoise. The desert tortoise clearance survey shall not be completed with other surveys conducted for other species while using the same personnel and shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology¹, ensuring 100-percent visual coverage for desert tortoise and their sign. Installation of a perimeter fence will also be required to identify the limits of construction to minimize the project impact footprint to the smallest extent feasible.</p> <p>If the survey confirms absence, the CDFW-approved Designated Biologist(s) shall ensure desert tortoise do not enter the Project area. If the</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

¹ U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).

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<p>survey confirms presence, 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 (ITP) under the Fish and Game Code section 2081] for desert tortoise is obtained.</p>		
<p>Mitigation Measure BIO-2</p> <p>Prior to the initiation of Project activities, a qualified biologist shall conduct a burrowing owl habitat assessment consistent with the 2012 <i>Staff Report on Burrowing Owl Mitigation</i>². If the burrowing owl habitat assessment identifies burrowing owl habitat or sign of burrowing owl, the Project proponent shall have a Designated Biologist(s) perform breeding season surveys for burrowing owls according to the 2012 <i>Staff Report on Burrowing Owl Mitigation</i>. If burrowing owls are detected on the Project site, the Project proponent shall fully avoid impacts to burrowing or obtain a CESA ITP if impacts to burrowing owl are unavoidable. To confirm presence/absence of owls following previous surveys, two pre-construction burrowing owl surveys shall be performed in accordance with CDFW guidelines in the 2012 <i>Staff Report on Burrowing Owl Mitigation</i>. The first survey shall take place 14 to 30 days prior to ground disturbance, and the second survey within 24-hours of any ground-breaking activities. The survey area shall include all suitable habitat within the Project route, plus the proposed construction staging site and a 500-foot buffer area where accessible. The second survey is typically completed the morning prior to completing the WEAP training as established in Mitigation Measure BIO-1.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

² California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

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<p>Mitigation Measure BIO-4</p> <p>A nesting bird survey shall be required prior to vegetation removal or grading or other site disturbance. A qualified biologist shall conduct at least one nesting bird survey and more if deemed necessary by the consulting biologist, ending no more than 3 days prior to grading. All vegetation and suitable nesting habitat including open ground on the project site, whether or not it will be removed or disturbed, shall be surveyed for nesting birds. If active nests are found on the site, they will be avoided through appropriate avoidance buffers as established by the qualified biologist and buffers shall not be impacted until after the young have fledged. If there are no nests present, ground disturbance activities can move forward.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>
<p>Mitigation Measure BIO-5</p> <p>Prior to construction activities, mapping of stream resources in the Project area shall be conducted to identify streams on site. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>
<p>Mitigation Measure BIO-6</p> <p>No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, a Designated Biologist shall conduct a 10-meter transect survey (or reduced based on</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

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<p>topography and vegetation) and 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.</p> <p>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. The Designated Biologist shall determine if active dens can be avoided and buffered from Project activities to prevent take and disturbance.</p> <p>Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Project proponent shall reschedule Project activities or submit a monitoring and passive relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles are present and dependent on parental care.</p> <p>The Designated Biologist shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove such obstructions when construction is complete. The Designated Biologist shall periodically check the inactive burrows to ensure burrows remain blocked and are not reoccupied.</p>		
<p>Mitigation Measure BIO-7</p> <p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018).</p> <p>If any special-status plants are identified, the</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

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<p>Project Proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and perpetual conservation and management thereof determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>		
<p>Mitigation Measure BIO-8</p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section CDFW under §2081b 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, or take. (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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site,</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent</p>

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<p>including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.</p>		
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