



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



May 23, 2025

Keith Gardner
 Community Development Director
 City of Twentynine Palms
 6136 Adobe Road
 Twentynine Palms, CA, 92277

Dear Keith Gardner:

OFLAND HOTEL TWENTYNINE PALMS (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025050547

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Twentynine Palms (City) for the Project pursuant to 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: Ofland Development

Objective: The Project proposes to develop a luxury resort with 100 units, 2 lodges, pools, recreational areas, playgrounds, beverage services, and 25 employee housing units on undeveloped land. The Project is proposed to be developed in two phases. Phase 1 will construct 75 units, the main lodge, and 19 employee housing units. Phase 2 will construct 25 units, secondary lodge, and 6 employee housing units. The Project proposes roadway improvements along Lear Avenue and Sullivan Road. Lear Avenue will be extended south approximately 0.5 miles in length and Sullivan Road will be extended approximately 550 feet in length. All access roads and driveways will be paved with asphalt. The Project will

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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be constructed on approximately 42 acres at the centermost location of the approximate 152-acre site. The remainder of the approximate 110 acres will be designated as "Open Space Conservation" and will be preserved in perpetuity as open space. The Open Space designation will form a buffer on all sides of the parcel as follows: 500 feet in depth (west); 800 feet in depth (east); 600 feet in depth (north); 500 feet in depth (south). Currently the approximate 152-acre parcel is designated as "Single-Family Residential-Estate" under the City's General Plan Land Use and Zoning Map, but the Project proposes to zone approximately 42 acres in the centermost of the parcel as "Tourist Commercial", and approximately 110 acres on all sides of the parcel as "Open Space Conservation", allowing the development of the hotel and associated structures and the Open Space designation.

Location: The Project is located within the Mojave Desert in the City of Twentynine Palms, San Bernardino County, State of California at the southeast corner of Lear Avenue and Twentynine Palms Highway, at Assessor's Parcel Number 0614-121-15.

Timeframe: Construction of the Project is proposed to occur over a 1-year period, starting in June 2025 and ending in June 2026.

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.

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

Section IV. Biological Resources; Page 30

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. The Project may result in the take of desert tortoise, a CESA listed threatened and candidate endangered species, during construction of the Project and the life of the Project. 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: Project related activities may result in direct or indirect take of desert tortoise by reducing/eliminating habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: The MND indicates that the Project site contains suitable habitat for desert tortoise but their sign was not observed at the time the surveys were conducted on October 26, 2023. CDFW would like to note that desert tortoise could have moved into the Project area since the site was last surveyed and be present at the time of construction. Additionally, the general biological resources assessment that was conducted on October 26, 2023 did not follow the 2019 U.S. Fish and Wildlife Service (USFWS) survey guidance², which is the CDFW recommended protocol, and thus focused surveys for desert tortoise are needed to appropriately assess presence/absence of 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)³. In addition, predation from ravens and the spread of invasive

² U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for any action that may occur within the range of the Mojave Desert Tortoise (*Gopherus agassizii*).

³ U.S. Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA USA.

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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).

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation measure, BIO-1, to minimize the Project's impacts to desert tortoise. CDFW offers the following revisions to BIO-1 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-1; Desert tortoise

Prior to the issuance of any ground disturbing permit **and any ground disturbing activities occurring** on the Project site, pre-construction surveys consistent with the requirements of the USFWS 2019, "Preparing For Any Action That May Occur Within The Range Of The Mojave Desert Tortoise (*Gopherus Agassizii*):" **shall be conducted by a qualified biologist.**

If an Agassiz's desert tortoise **or its sign** is found onsite during ~~surveys construction,~~ all activities likely to affect that animal(s) must cease and the City, CDFW and USFWS must be contacted to determine appropriate steps **and the Project proponent shall fully avoid impacts to desert tortoise. If impacts to desert tortoise cannot be avoided, n**No take of the tortoise(s) **shall** may occur without prior authorization (**i.e., ITP**) from the appropriate regulatory agencies, including CDFW and USFWS.

COMMENT #2: Nesting Birds

Section IV. Biological Resources; Page 31

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern (SSC), and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project could result in direct take associated with grading, vegetation removal, and vehicle and equipment strike and indirect take associated with Project operations such as attracting predators and displacement. Further, the Project may lead to the reduction of habitat and habitat quality. For example, the Project is likely to permanently remove avian species' foraging and nesting habitat.

Why impact would occur: The MND states that the Project site contains suitable habitat for loggerhead shrike (*Lanius ludovicianus*), a CDFW SSC. Additionally, CDFW determined that the Project site has the possibility to support LeConte's thrasher (*Toxostoma lecontei*). LeConte's thrasher is a CDFW SSC and a yearlong resident in southern California, but neither the MND nor the Biological Resources Assessment analyzed potential impacts to LeConte's thrasher. Additionally, the October 26, 2023 survey was conducted outside of the time of year when bird activity is high; for example, when birds are mating/nesting in addition to foraging. Therefore, CDFW is concerned that impacts to bird species were not properly assessed. Furthermore, mitigation measure BIO-2 requires only a nesting bird pre-construction survey if vegetation removal is occurring between February 1 and August 31. CDFW would like to clarify that a pre-construction nesting bird survey is needed prior to construction regardless of the time of year to ensure that impacts to nesting birds are avoided. This is 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.).

Evidence impact would be significant: It is the Project proponent's responsibility to avoid take of all nesting birds. Fish & G. Code § 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 & G.

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Code § 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 & G. Code § 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(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to BIO-2 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-2; Migratory Bird Treaty Act

If possible, the removal of vegetation **and grading** preparatory to construction shall occur outside the nesting season (February 1 to August 31). ~~If avoidance of the nesting season is not possible,~~ **A** a nesting bird survey shall be performed by a qualified biologist no more than three days prior to construction activities. If no nests are found, construction may proceed. If active nests are found, a buffer zone of 500 feet for birds of prey and/or 300 feet for other ~~unlisted~~ birds will be put in place around the nest **and work within the buffer shall be avoided** until the young have fledged **as determined by the qualified biologist**.

COMMENT #3: Burrowing Owl (*Athene cunicularia*)

Section IV. Biological Resources; Page 31

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 MND and Biological Resources Assessment, no habitat assessment nor focused surveys for burrowing owl were conducted within or surrounding the Project site. Despite this, the Biological Resources Assessment identifies suitable habitat for burrowing owl on 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.

Specific Impact: The Biological Resource assessment recommended a focused survey for burrowing owl consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation⁴ in consideration that burrowing owl habitat is present on site. The survey conducted on October 23, 2023 was not focused in nature; therefore, the presence of burrowing owl across the Project was not properly analyzed and impacts to burrowing many be significant if burrowing owl is present. Furthermore, mitigation measure BIO-3 only requires two surveys prior to ground disturbing activities when breeding surveys according to the 2012 Staff Report should be conducted to appropriately identify burrowing owl.

Why impact would occur: Impacts to burrowing owl may be significant if burrowing owl and their sign are not properly identified through protocol level surveys. 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)^{5&6}. Potential Project impacts to burrowing owl include take of burrowing owls, their nests, or eggs and the destruction of nesting, foraging, or over-wintering habitat.

⁴ California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

⁵ Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

⁶ Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

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Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under CESA (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 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(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure to minimize the Project's impacts to burrowing owl. CDFW offers the following revisions to BIO-3 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-3; Burrowing Owl

Prior to the initiation of Project activities, a Qualified Avian Biologist shall conduct a habitat assessment for burrowing owl that is consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If the habitat assessment identified burrowing owl habitat or sign (e.g., feathers, pellets, prey remains etc.), the Project proponent shall have the Qualified Avian Biologist perform breeding season surveys for burrowing owl consistent with the 2012 Staff Report.

In addition, ~~two~~ pre-construction avoidance surveys shall be performed prior to the initiation of any ground disturbing activity on the site to confirm presence/absence of burrowing owl following previous surveys. An initial avoidance survey no less than 14 days prior to commencing ground-disturbance activities and a final survey carried out within 24 hours prior to ground disturbance shall be conducted. Should the species be identified on the site through any of the surveys, a qualified biologist shall ~~consult~~ **contact with CDFW and the Project proponent shall fully avoid impacts to burrowing owls on the development and implementation of a comprehensive burrowing owl mitigation plan. If impacts to burrowing owl cannot be fully avoided, the Project proponent should obtain a California Endangered Species Act incidental take permit pursuant to Fish and Game Code section 2080.**

COMMENT #4: American Badger (*Taxidea taxus*) and Pallid San Diego Pocket Mouse (*Chaetodipus fallax pallidus*)

Section IV. Biological Resources; Page 30

Issue: The Project may result in significant impacts to special status mammals, including American badger and pallid San Diego pocket mouse.

Specific Impact: The staging of construction equipment, vehicles, grading, and foot traffic may result in the collapse of occupied burrows or dens and result in direct mortality and/or injury to American badger or pallid San Diego pocket mouse.

Why impact would occur: The Project site is suitable for denning by American badger and foraging by pallid San Diego pocket mouse. Additionally, as stated in the Biological Resources Assessment, pallid San Diego pocket mouse has been observed approximately 2.5 miles south of the Project according to CNDDDB. Although the Project site does not contain gravelly and rocky substrates for this species, it does contain desert scrub, which is suitable for foraging by the species. As stated in the Biological Resources Assessment, no suitable burrows for American badger were observed throughout the Project site. CDFW would like to note that American badger may reuse

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old dens *or* dig new dens every night (Messick and Hornocker 1981)⁷ and the October 26, 2023 survey may not reflect the current status of American badger on the Project site. Furthermore, mitigation measure BIO-4 does not include pre-construction surveys to avoid potentially significant impacts to American badger or pallid San Diego pocket mouse.

Evidence impact would be significant: Pallid San Diego pocket mouse is listed by the NatureServe⁸ as a 'vulnerable' species and is defined as a species that is at moderate risk of extirpation within California due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors. American badger is a SSC. A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- Is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- Is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- Is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or;
- Has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status. CEQA provides protection not only for ESA and CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Without an accurate baseline of candidate, sensitive, or special status species that are present on site that is based on protocol level surveys, it is unclear if the Project proponent will avoid, minimize, or mitigate the impacts to a level less than significant.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure to minimize the Project's impacts to American badger and pallid San Diego pocket mouse. CDFW offers the following revisions to BIO-4 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-4; American Badger and San Diego Pocket Mouse

Prior to the initiation of any ground disturbing Project activities, a Qualified Biologist shall conduct pre-construction surveys throughout the Project area to determine if potential American badger dens or sign (e.g., tracks, scat, prey remains) is present on site and whether pallid San Diego pocket mouse or its sign is found. If a den or burrow is suspected to be occupied or used by either American badger or pallid San Diego pocket mouse or sign of either species is found, the Qualified Biologist shall conduct nighttime surveys during the appropriate weather to determine species presence. If American badger or San Diego pocket mouse is found onsite, and if impacts to the species cannot be avoided, ~~work in the area~~ all Project activities shall immediately cease, and a the qualified biologist and Project proponent shall consult with the California Department of Fish and Wildlife to develop a mitigation program to fully avoid impacts to American badger and pallid San Diego pocket mouse.

⁷ Messick, J.P., and M.G., Hornocker. 1981. Ecology of the badger in southwestern Idaho. Wildlife Monographs. No 76.

⁸ NatureServe Network. Accessed: Website: <https://www.natureserve.org/natureserve-network>

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COMMENT #5: Special Status Plants

Section IV. Biological Resources; Page 30

Issue: The Project may result in significant impacts to special status plant species.

Specific impact: The IS/MND does not propose a mitigation measure to avoid impacts to special status species despite stating that there is a moderate probability for numerous plant species to occur throughout the Project area. The Biological Resource Assessment did not conduct focused plant surveys staggered throughout the early, mid, and late blooming season that could have determined the presence of special status plant species within the appropriate blooming periods. Therefore, Project implementation, including grading, vegetation clearing, and construction may result in direct mortality, population declines, or local extirpation of sensitive plant communities.

Why impact would occur: The MND states that a total of 10 special status plant species have a potential to occur throughout the Project area and of those 10 plant species, 5 have the moderate potential to occur throughout the Project site. The following species were identified in the MND and the Biological Resource Assessment to have a moderate potential to occur throughout the Project area: Joshua tree poppy (*Eschscholzia androuxii*), Utah vine milkweed (*Funastrum utahense*), Parish's club-cholla (*Grusonia parishii*), little San Bernardino Mountains linanthus (*Linanthus maculatus ssp. maculatus*) and Hall's tetracoccus (*Tetracoccus hallii*). All of these species are listed under the Rare Plant Inventory by the California Native Plant Society⁹. Additionally, 3 observations for the little San Bernardino Linanthus were observed within the vicinity of the Project area at approximately 0.79 miles (2008), 1.64 miles (2008), and 1.59 miles (2011) from the Project site according to CNDDDB records.

Evidence impact would be significant: Impacts to special status plant species should be considered significant under CEQA unless mitigated to a level less than significant. Without an accurate baseline of candidate, sensitive, or special status plant species present on site based on protocol level surveys and absent a mitigation measure for special status plants, the Project proponent will likely not avoid, minimize, or mitigate impacts to a level less than significant. Impacts to special-status plant species may be significant if focused surveys that utilize species specific methodologies are not a requirement prior to any ground disturbing activities and special-status plants are not identified properly.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW recommends that the following mitigation measure be included in the final MND to avoid, minimize, and mitigate impacts to special status plants.

Mitigation Measure: BIO-6 (NEW); Special Status Plants

Prior to any ground disturbing activities, a Qualified Botanist shall conduct focused plant surveys that are consistent with the 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities⁹. The surveys shall be conducted at the appropriate time of year when plants are both evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. If any sensitive or special-status plant species is identified, the Qualified Botanist shall delineate a buffer around the plant(s) and impacts shall be fully avoided. 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 as determined by CDFW after Project analysis. If full avoidance of any California Endangered Species Act listed plant species is not feasible, the Project

⁹ California Native Plant Society, Rare Plant Program. 2025. Rare Plant Inventory Accessed: Website <https://www.rareplants.cnps.org/>

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proponent should not commence Project activities and should obtain an incidental take permit from CDFW.

COMMENT #6. Fish and Game Code 1602 Resources

Section IV. Biological Resources; Page 31

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 to and the loss of Fish and Game Code section 1602 resources

Why impact would occur: The MND states that 1.01 acres of non-wetland and ephemeral drainages occur on the Project site. The IS/MND states that the Project will not impact the drainages identified on site. However, based on Figure 7 of the Jurisdictional Delineation it appears that Project activities may encroach onto Fish and Game Code section 1602 resources. Additionally, through aerial imagery, numerous channels traverse the Project site and may be substantially impacted by Project activities. Furthermore, the MND does not provide a mitigation measure to avoid, minimize, or mitigate impacts to Fish and Game Code section 1602 resources.

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(s) to Reduce Impacts to Less than Significant: Considering all the above, CDFW recommends that the following mitigation measure be included in the final MND.

Mitigation Measure: BIO-7 (NEW); Fish and Game Code section 1602 Resources

Prior to construction activities, mapping of stream resources in the Project area shall be conducted to identify all 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 measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

Editorial Comments and/or Suggestions

Invasive and Special Status Species Awareness Education Program

Through the implementation of the Project, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. Therefore, CDFW suggests the incorporation of a worker awareness education program to educate everyone, prior to working on the Project site, regarding invasive species as well as special status species that occur or may occur on site, and any measures required to address these species if found.

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

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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 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 Emily Leon, Environmental Scientist, at Emily.Leon@wildlife.ca.gov or at (760) 644-5976.

Sincerely,

DocuSigned by:


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ATTACHMENTS

Attachment A: Mitigation Monitoring Reporting Plan

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REFERENCES

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

California Native Plant Society, Rare Plant Program. 2025. Rare Plant Inventory Accessed: Website <https://www.rareplants.cnps.org/>

Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

Messick, J.P., and M.G., Hornocker. 1981. Ecology of the badger in southwestern Idaho. Wildlife Monographs. No 76.

NatureServe Network. Accessed: Website: <https://www.natureserve.org/natureserve-network>

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

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

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>Desert tortoise (BIO-1)</p> <p>Prior to the issuance of any ground disturbing permit and any ground disturbing activities occurring on the Project site, pre-construction surveys consistent with the requirements of the USFWS 2019, "Preparing For Any Action That May Occur Within The Range Of The Mojave Desert Tortoise (<i>Gopherus Agassizii</i>)" shall be conducted by a qualified biologist.</p> <p>If an Agassiz's desert tortoise or its sign is found onsite during surveys the City, CDFW and USFWS must be contacted and the Project proponent shall fully avoid impacts to desert tortoise. If impacts to desert tortoise cannot be avoided, no take of the tortoise(s) shall occur without prior authorization (i.e., ITP) from the appropriate regulatory agencies, including CDFW and USFWS.</p>	<p>Prior to the issuance of any ground disturbing permit and any ground disturbing activities</p>	<p>Project Proponent and Qualified Biologist</p>
<p>Migratory Bird Treaty Act (BIO-2)</p> <p>If possible, the removal of vegetation and grading preparatory to construction shall occur outside the nesting season (February 1 to August 31). A nesting bird survey shall be performed by a qualified biologist no more than three days prior to construction activities. If no nests are found, construction may proceed. If active nests are found, a buffer zone of 500 feet for birds of prey and 300 feet for other birds will be put in place around the nest and work within the buffer shall be avoided until the young have fledged as determined by the qualified biologist.</p>	<p>No more than three days prior to construction activities</p>	<p>Project Proponent and Qualified Biologist</p>
<p>Burrowing Owl (BIO-3)</p> <p>Prior to the initiation of Project activities, a Qualified Avian Biologist shall conduct a habitat assessment for burrowing owl that is consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If the habitat assessment identified burrowing owl habitat or sign (e.g., feathers, pellets, prey remains etc.), the Project proponent shall have the Qualified Avian Biologist perform breeding season surveys for burrowing owl consistent with the 2012 Staff Report.</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent and Qualified Avian Biologist</p>

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<p>In addition, two pre-construction avoidance surveys shall be performed prior to the initiation of any ground disturbing activity on the site to confirm presence/absence of burrowing owl following previous surveys. An initial avoidance survey no less than 14 days prior to commencing ground-disturbance activities and a final survey carried out within 24 hours prior to ground disturbance shall be conducted. Should the species be identified on the site through any of the surveys, a qualified biologist shall contact CDFW and the Project proponent shall fully avoid impacts to burrowing owls. If impacts to burrowing owl cannot be fully avoided, the Project proponent should obtain a California Endangered Species Act incidental take permit pursuant to Fish and Game Code section 2080.</p>		
<p>American Badger and San Diego Pocket Mouse (BIO-4)</p> <p>Prior to the initiation of any ground disturbing Project activities, a Qualified Biologist shall conduct pre-construction surveys throughout the Project area to determine if potential American badger dens or sign (e.g., tracks, scat, prey remains) is present on site and whether pallid San Diego pocket mouse or its sign is found. If a den or burrow is suspected to be occupied or used by either American badger or pallid San Diego pocket mouse or sign of either species is found, the Qualified Biologist shall conduct nighttime surveys during the appropriate weather to determine species presence. If American badger or San Diego pocket mouse is found onsite, and if impacts to the species cannot be avoided, all Project activities shall immediately cease, and the qualified biologist and Project proponent shall consult with the California Department of Fish and Wildlife to develop a mitigation program to fully avoid impacts to American badger and pallid San Diego pocket mouse.</p>	<p>Prior to the initiation of any ground disturbing Project activities</p>	<p>Project Proponent and Qualified Biologist</p>
<p>Special Status Plants (BIO-6) (NEW)</p> <p>Prior to any ground disturbing activities, a Qualified Botanist shall conduct focused plant surveys that are consistent with the 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities⁹. The surveys shall be conducted at the appropriate time of year when plants are both evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. If any sensitive or special-status plant species is identified, the Qualified Botanist shall delineate a buffer around the plant(s) and impacts shall be fully avoided. If complete avoidance is not</p>	<p>Prior to any ground disturbing activities</p>	<p>Project Proponent and Qualified Botanist</p>

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<p>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 as determined by CDFW after Project analysis. If full avoidance of any California Endangered Species Act listed plant species is not feasible, the Project proponent should not commence Project activities and should obtain an incidental take permit from CDFW.</p>		
<p>Fish and Game Code section 1602 Resources (BIO-7) (NEW)</p> <p>Prior to construction activities, mapping of stream resources in the Project area shall be conducted to identify all 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 construction activities</p>	<p>Project Proponent</p>