



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



July 24, 2023
Sent via e-mail

Jim Morrissey
County of San Bernardino
Land Use Services Department - Planning Division
385 North Arrowhead Avenue, First Floor
San Bernardino, CA 92415-0187

**Mini-Storage Facility - Conditional Use Permit- PROJ-2020-00205 (PROJECT)
NOTICE OF INTENT (NOI) TO ADOPT AN INITIAL STUDY/ MITIGATED NEGATIVE
DECLARATION (IS/MND)
SCH #: NONE**

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) was made aware of a prior Conditional Use Permit (CUP) and Notice of Intent to Adopt a Mitigated Negative Declaration prepared pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹ for a Mini Storage Facility (Project) located on the south side of Highway 189, approximately 500 feet east of the intersection of North Bay Road and Highway 189, in the Running Springs area of San Bernardino County (PROJ-2020-00205). CDFW could not obtain access to the document at the County's website and is concerned that this IS/MND may not have been circulated through the State Clearinghouse.

Circulation of CEQA Documents to the State Clearinghouse

CEQA requires lead agencies to submit draft environmental impact reports (EIR), proposed negative declarations (ND), and proposed mitigated negative declarations (MND) to the State Clearinghouse (SCH) at OPR when:

- A state agency is the lead agency, a responsible agency, or a trustee agency;
- A state agency otherwise has jurisdiction by law with respect to the Project; or
- The proposed Project is of statewide, regional, or areawide significance.²

CEQA's circulation, notice, and consultation requirements play a critical role in CDFW's trustee mandate to conserve the State's fish and wildlife resources for all the people of California.³ CDFW is concerned that the County of San Bernardino may not have circulated its MND for this Project through the State Clearinghouse. CDFW urges lead agencies to ensure environmental analyses are submitted to the State Clearinghouse as required by CEQA. Complying with these requirements, along with CEQA's responsible and trustee agency notice and consultation requirements, helps to ensure responsible and trustee agency input from CDFW during lead agency environmental review.

For more information about the state environmental review process generally and State Clearinghouse procedures, download the [State Clearinghouse Handbook](#). You may also contact the State Clearinghouse by phone at (916) 445-0613 or email at state.clearinghouse@opr.ca.gov. OPR's [November 2005 Technical Advisory regarding document submittal to the State Clearinghouse](#) may be particularly helpful to interested lead agencies.

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).)

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.

² The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000. See CEQA Guidelines, §§ 15205, subd. (b), 15206, subd. (b)(1)-(7).)

³ Fish & G. Code, §§ 711.7, 1802.

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.

In some circumstances, CDFW may also submit comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) where CDFW may need to exercise regulatory authority as provided by the Fish and Game Code. 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.

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

Assessment of Impacts to Biological Resources

Special Status Species

CDFW is concerned about the potential for special-status species to occur on or near the Project site. The Project is surrounded by forested land, and there is potential for special-status species to be impacted either directly or indirectly by Project activities. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of special-status species have been reported in less than a mile of the Project area, including, but not limited to, southern rubber boa (*Charina umbratica*) and southern California legless lizard (*Anniella stebbinsi*).

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 unclear if the assessment of the existing environmental setting with respect to biological resources has been adequately analyzed in the IS/MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the IS/MND could provide 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.

If a robust assessment of biological resources has not been completed and results circulated through the SCH as part of the IS/MND, CDFW recommends that a revised IS/MND be prepared as described in the following mitigation measure, and any necessary mitigation measures to reduce potential impacts to less than significant be adopted:

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 offsite 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.

Nesting Birds

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: Fish and Game Code 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.).

If a robust assessment of nesting birds has not been completed and results circulated through the SCH as part of the IS/MND, CDFW recommends that a revised IS/MND be prepared as described in the following mitigation measure, and any necessary mitigation measures to reduce potential impacts to less than significant be adopted. CDFW recommends any revised MND include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site.**

MM BIO-[B]: Avoidance of Nesting Birds

Nesting bird surveys shall be performed by a qualified avian biologist no more than (3) days prior to vegetation removal or ground-disturbing activities. 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. Established buffers 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.

Minimizing Impacts to Other Species

If measures to protect previously undetected wildlife on the Project site has not already been adopted, CDFW recommends inclusion of the following mitigation measure to allow non-listed, non-special-status terrestrial wildlife to leave or be moved out of harm's way:

MM BIO-[C]: Minimizing Impacts to Other Species

To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.

Noise

Construction may result in substantial noise through 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).

If a robust assessment of noise impacts to biological resources has not been completed and results circulated through the SCH as part of the IS/MND, CDFW recommends that a revised IS/MND be prepared, and any necessary mitigation measures to reduce potential impacts to less than significant be adopted. CDFW recommends the following measure be considered for inclusion in any revised MND:

MM BIO-[D:] Noise

Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use 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. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

Artificial Nighttime Lighting

Light intensity, light color, and duration of 'light-on' periods have the potential to significantly and adversely affect fish and wildlife (Syposz et al. 2021). 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).

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 should be assessed and minimized. Because of the potential for artificial nighttime lighting used during construction and during operation of the storage facility to impact biological resources, CDFW recommends the inclusion of the following mitigation measure:

MM BIO-[E:] Artificial Light

During Project construction and operation, the County shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The County shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

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>.

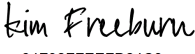
ENVIRONMENTAL DOCUMENT FILING FEES

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 Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that prior to initiation of Project activities, the County consider these comments and address and revise the document, as necessary, to include a more complete assessment of the Project's potential impacts on biological resources, as well as appropriate avoidance, minimization, and mitigation measures to ensure those impacts are mitigated to a level less than significant.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

REFERENCES

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