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DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 3, 2021

Governor's Office of Planning & Research

September 03 2021

STATE CLEARINGHOUSE

Ryan Leonard, Senior Planner
City of Hesperia
Planning Department
9700 Seventh Avenue
Hesperia, CA 92345

Subject: UNITED STATES COLD STORAGE HESPERIA PROJECT (PROJECT)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2020069036

Dear Mr. Leonard:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from City of Hesperia 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

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.

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: United States Cold Storage

Objective: The objective of the Project is to construct a refrigerated distribution/warehouse facility for the storage and distribution of food products throughout the southwestern United States. Primary Project activities include construction of a building on the northern portion of the Project Site that is proposed to be a total of 520,000 square-feet, and a second building on the southern portion of the property is proposed to be a total of 525,000 square-feet. Each building would also include a 71,352 square-foot loading dock for truck trailers that includes a 23,522 square-foot area for driver services. The Proposed Project also includes construction of a bioretention basin on the northeast corner of the site to capture and treat stormwater. A solar array field is proposed to be installed in the east portion of the Project Site to serve the facility. Additional proposed Project activities are the construction of passenger vehicle parking spaces and landscaping.

Location: A 78.81-acre property located in the City of Hesperia, San Bernardino County, east of US Highway 395, between Yucca Terrace Dr and Avenal St. Assessor's Parcel Numbers 3064-421-01, -02 & -03.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist City of Hesperia 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. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1:

Section 4.3, Page 17

Issue: The DEIR identifies impacts to western Joshua tree potentially significant and will be less than significant with mitigation incorporated. The environmental document describes the environmental baseline of western Joshua tree at the Project site as 135 individuals. As a candidate species, western Joshua tree has full protection under CESA and take of the species (including removal of western Joshua tree or similar actions) requires authorization under CESA. The DEIR states implementation of Mitigation Measure BIO-1 by transplanting 69 individuals will reduce impacts to less than significant for compliance with the California Desert Natives Plant Act and the City of Hesperia Protected Plant Ordinance. Then, the DEIR specifies impacts will also be mitigated through a CESA incidental take permit.

Specific impact: The Project will impact western Joshua tree individuals, seedbank and habitat. The determination of the impacts to western Joshua tree was analyzed to be less than significant with mitigation incorporated, however the mitigation has not been identified to date as it is deferred to the proposed incidental take permit. The only proposed mitigation identified in the impact analysis is relocation, which would not reduce the impact to the species to less than significant. Therefore, the mitigation measures have not been clearly identified in the DEIR, and the significance determination relies on undefined mitigation.

Why impact would occur: The environmental document does not fully assess the magnitude of incremental change to the baseline of the species in consideration of loss of individuals (without consideration of relocation), seedbank, and associated habitat that will result from Project activities. Additionally, the proposal of relocating western Joshua tree to comply with the California Desert Natives Plant Act and the City of Hesperia Protected Plant Ordinance is a form of take in the context of CESA. A determination that the impacts are less than significant is brought forward in the DEIR, but the mitigation is not identified that will bring the impact to less than significant with mitigation incorporated.

Evidence impact would be significant: The impact to western Joshua tree focuses on the removal of 135 individuals and relocating 69 of these individuals. As a part thereof, the seedbank of western Joshua tree is protected under CESA. The DEIR does not address the loss of seedbank, or the habitat quantity, habitat quality, distribution, potential for seedbank occurrence, and connectivity that will also be impacted by the proposed Project. CDFW does not agree the implementation of transplanting 69 individuals will offset the significant impacts to the species, as the

proposal is a form of take. CDFW considers relocation a minimization measure rather than a mitigation measure.

To minimize significant impacts: CDFW acknowledges the inclusion of Mitigation Measure BIO-1 and statement that through the incidental take permit additional compensatory mitigation will be required in the context of CESA. CDFW recommends the environmental document be updated to fully assess the impact to western Joshua tree to include the seedbank, and associated habitat. CDFW also recommends the mitigation is clearly identified in the DEIR that will bring impacts to less than significant. CDFW must comply with CEQA for issuance of a CESA ITP (See Cal. Code Regs., tit. 14, § 783.3.). It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the environmental document prepared for the Project.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2:

Section 2-5 – 2-6

Issue: As written in Table 2-1 of the environmental document, the Impact BIO-1 states, “The Proposed Project could result in habitat modifications or removal of habitat for protected species including the desert tortoise, Mohave ground squirrel, burrowing owl, nesting birds, desert native plants, and the Joshua tree.” The impact is identified as potentially significant, and the level of significance after mitigation is identified as less than significant with mitigation incorporated, however there is no mitigation measure for desert tortoise and Mohave ground squirrel.

Specific impact: The environmental document assumes absence of desert tortoise and Mohave ground squirrel live individuals and habitat in the Biological Resource section analysis, yet still considers the species as potentially impacted due to removal of habitat.

Why impact would occur: Habitat assessments and literature review were performed rather than protocol level surveys to determine presence or absence of desert tortoise and Mohave ground squirrel. CDFW does not consider habitat assessments as an adequate method to determine if these species will be on-site and impacted by the Proposed Project.

Evidence impact would be significant: The DEIR states there is a potential significant impact to the species yet does not define the environmental baseline or the incremental change to the environmental baseline of these species in the impact assessment. Additionally, no mitigation measures are proposed. Should take of desert tortoise and Mohave ground squirrel occur as a result of the Project or Project-related activities, the action will be a significant impact and subject to state law.

To reduce impacts to less than significant: If the environmental document identifies desert tortoise and Mohave ground squirrel as potentially significantly impacted due to loss of habitat, CDFW recommends the baseline of the Project site in regard to these species be established through protocol level surveys for desert tortoise (see [Desert Tortoise Field Manual \(fws.gov\)](https://www.fws.gov/)), and Mohave ground squirrel (see [Mohave Ground Squirrel Survey Guidelines](#)). CDFW recommends the survey results help inform the baseline conditions described in the EIR and any mitigation measures to offset the significant impact be provided in the final environmental document. CDFW recommends applying for an incidental take permit should CESA-listed species presence be confirmed. Should the DEIR not be updated per CDFW's comment, please note should presence of desert tortoise or Mohave ground squirrel be determined at a later date, an update to the EIR will be required for CDFW to issue an ITP.

III. Editorial Comments and/or Suggestions

Comment 3: Please update the California Endangered Species Act status of desert tortoise to be threatened and candidate endangered throughout the DEIR.

Comment 4: The definition of take on page 4.3-6 is incorrectly referenced. Per Fish and Game Code section 86, "take: means hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill. Fish and Game Code section 2080 defines the prohibitions.

Comment 5: Please note, the definition of stream on page 4.3-8 does not relate to Fish and Game Code section 1602, CDFW recommends removing the reference. The section also lacks details on notification requirements, and the instances in which a notification is required are not fully explained. Additionally, the language regarding fully protected species appears to be erroneously placed in this section.

Comment 6: CDFW makes note that the Biological Resource Assessment acknowledges potential desert kit fox burrows on-site. Desert kit fox is protected per 14 CCR § 460, take is prohibited.

Comment 7: Cumulative impacts to burrowing owl and nesting birds was assessed on page 4.3-2-4 to be less than significant due to the implementation of Mitigation Measures BIO-1 and BIO 2. CDFW believes the referenced Mitigation Measures should be BIO-2 and BIO-3. To improve the Mitigation Measure BIO-2 to meet the City of Hesperia's assessment, CDFW recommends the proposed avoidance and passive exclusion plan (if one should be required) include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation (see [Staff Report on Burrowing Owl Mitigation](#)) such that the habitat acreage, number of burrows, and burrowing owls impacted are replaced to offset the impact. CDFW also has concerns with the date range of nesting bird season, defined as March 15th to September 15th in BIO-3. CDFW recommends this range be reconsidered and extended as evidence of nesting in California has been documented outside of these dates. BIO-3 also lacks the time period prior to project activities in which the survey will take place. CDFW recommends no more than 3 days. CDFW also recommends City of Hesperia update both measures to indicate the surveys shall be performed by a qualified biologist.

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 found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 DEIR to assist City of Hesperia in identifying and mitigating Project impacts on biological resources.

Ryan Leonard, Senior Planner
City of Hesperia
September 3, 2021
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Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at 760-219-9452 or Ashley.Rosales@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
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Environmental Program Manager

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