



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Inland Deserts Region  
 3602 Inland Empire Boulevard, Suite C-220  
 Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



March 23, 2022  
 Sent via email

Governor's Office of Planning & Research

**Mar 24 2022**

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

## STATE CLEARINGHOUSE

Subject: Initial Study and Mitigated Negative Declaration  
 Summit RV and Storage  
 State Clearing House No. 2022020656

Dear Mr. Leonard:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the City of Hesperia (City) for the Summit RV and Storage Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

### 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 &

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<sup>1</sup> 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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G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

### **ASSEMBLY BILL (AB) 819**

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021 and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearinghouse (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft environmental impact reports (DEIR), proposed negative declarations (ND), proposed mitigated negative declarations (MND) must be filed electronically on CEQAnet ( <https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any notice of preparation (NOP), notice of determination (NOD), notice of completion, or notice of scoping meetings must be posted on the lead agency’s website if it has one. Also, notices of availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency’s website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk’s office or on the county clerk’s website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk’s website and physically, by hard copy, in the county clerk’s office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.
- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

### **PROJECT DESCRIPTION SUMMARY**

The Project site is in the City of Hesperia, San Bernadino County, California; Latitude 34.413334 N and Longitude -117.394104 W. The Project site is located east of Three Flags Avenue and south of Poplar Street along the Interstate (I) 15 freeway at 8899 Three Flags Avenue. The Project proposes the development of 7.33 acres as a

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recreational vehicle (RV) and personal storage facility on Assessor's Parcel Number (APN) 3064-591-014.

**Timeframe:** Project construction is expected to begin in August 2022 and last five months.

## COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the presence of eleven (11) western Joshua tree (*Yucca brevifolia*) on the Project site, a Candidate for Threatened California Endangered Species Act (CESA)-listed species. The ISMND states, that a comprehensive survey of western Joshua tree (WJT) was performed by RCA Associates, Inc. on December 16, 2021. However, CDFW is concerned that the survey as described in the ISMND's Protected Plant Preservation Plan is inadequate to assess direct impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location, as the analysis focused on the assessment of each WJT as suitable for translocation or not and not the analysis of the indirect/direct impacts to WJT identified in biological resources (BIO) mitigation measure (MM) 6 below.

CDFW is further concerned regarding the adequacy of MM BIO-1 proposed by the City to mitigate potential impacts to burrowing owl (*Athene cunicularia*) and nesting birds, as MM BIO-1 does not consider species specific protocols and timing for pre-construction surveys. Thus, CDFW offers the comments and recommendations presented below and in Attachment 1 (Mitigation Monitoring and Reporting Program) to assist the City in adequately mitigating the Project's potentially significant impacts on WJT, nesting birds, and burrowing owl. CDFW requests that the City revise and/or adopt the following mitigation measures prior to finalizing the ISMND:

1. MM BIO-1. CDFW appreciates the incorporation of MM BIO-1, which suggests pre-construction surveys for nesting birds and burrowing owl. However, MM BIO-1 does not require surveys nor outline survey protocols or timing. Because CDFW recognizes the high potential for burrowing owl and nesting birds at the Project site, CDFW recommends MM BIO-1 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

*Biological Resources Mitigation Measure No. 1.* Pre-construction surveys for burrowing owls, ~~desert tortoise,~~ and nesting birds ~~protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code~~ may need to **shall** be conducted prior to the commencement of **Project activities** ~~future ground disturbance~~ as follows:

a. Nesting Birds. ~~Appropriate survey methods and time frames shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance~~

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~~measures shall be implemented to ensure that nests are not disturbed until after young have fledged.~~ **If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. If Project activities are planned during bird nesting season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a nesting bird survey shall be conducted by a qualified biologist no more than three (3) days prior to the initiation of Project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist around each nest. The buffer shall be a minimum of 300 feet for raptors and 100 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.**

b. **Burrowing Owl**. ~~Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.~~ **No less than 14 days prior to the initiation of any Project activities within suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW. If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to CDFW for review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).**

2. **MM BIO-6**. MM BIO-2 to MM BIO-5 provide for the translocation of WJT present on-site. CDFW is concerned that the mitigation measures do not address a CESA Incidental Take Permit (ITP) for potential "take" of WJT (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt,

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pursue, catch, capture, or kill”). Translocation of WJT would be considered take and take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Further, CDFW does not consider translocation of WJT appropriate mitigation. On the other hand, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species.

MM BIO-2 requires a comprehensive survey and evaluation of WJT on-site for the Protected Plant Preservation Plan. Please consider that for the purpose of an ITP the impact assessment for each individual WJT should include a 186-foot radius in consideration of the seedbank. The 186-foot buffer is based on studies by Vander Wall et al. (2006), which demonstrate that the mean maximum dispersal of WJT seed through rodent activity is 186 feet. Thus, a 186-foot buffer around each WJT on the Project allows a full assessment of adequate size to consider all potential take. In addition, to ensure full avoidance of impacts to WJT, CDFW recommends a 300-foot buffer from Project activities.

CDFW recommends that prior to finalizing the ISMND, the City include a proper impact analysis assessing potential impacts within an 186-foot buffer zone and implementing a 300-foot buffer to avoid impacts to WJT as well as a mitigation strategy for impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location. Indirect impacts include destruction of WJT’s obligate pollinating moth (yucca moth; *Tegeticula synthetica*), while it is dormant in the soil or while it is in its flight phase, which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of habitat at the Project location could also disrupt the seed dispersal behavior of rodents, which is the primary way that WJT seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of habitat at the Project location could also eliminate nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000).

CDFW requests the ISMND adequately identify and disclose the Project’s impacts (i.e., direct, indirect, and cumulative) to WJT as noted above and propose mitigation to offset those impacts and demonstrate that impacts are less than significant and, for the purposes of CESA permitting, fully mitigated. Further, CDFW recommends MM BIO-6 below considering that at least 11 WJT are likely to be taken by the Project:

***Biological Resources Mitigation Measure No. 6.*** CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “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). Permanent protection and perpetual management of compensatory habitat

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**is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through a conservation easement, development of a long-term management plan, and funding sufficient to implement management plan tasks in perpetuity which should be completed before starting Project ground-disturbing activities or by providing financial security. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a state clearing house number, show proof of filing fees, and proof the document has been circulated.**

## **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](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](mailto: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](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 requests that the City include in the final ISMND the suggested mitigation measures (Attachment 1) offered by CDFW to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the Summit RV and Storage Project (SCH No. 2022020656) and hopes our comments assist the City of Hesperia in identifying and mitigating Project impacts on biological resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at [Corina.Jimenez@wildlife.ca.gov](mailto:Corina.Jimenez@wildlife.ca.gov).

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## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:



Alisa Ellsworth

Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov).

## REFERENCES

Brittingham, S. and L. R. Walker. 2000. Facilitation of *Yucca brevifolia* recruitment by Mojave Desert shrubs. *Western North American Naturalist* 60(4): 374-383.

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: [http://www.dfg.ca.gov/wildlife/nongame/survey\\_monitor.html](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)

Sweet, L. C., T. Green, J. G. C. Heintz, N. Frakes, N. Graver, J. S. Rangitsch, J. E. Rodgers, S. Heacox, and C. W. Barrows. 2019. Congruence between future distribution models and empirical data for an iconic species at Joshua Tree National Park. *Ecosphere* 10(6): e02763.

Vander Wall, S.B., T.C. Esque, B.A. Waitman, D.F. Haines, and M.G. Garnett. 2006. Joshua tree (*Yucca brevifolia*) seeds are dispersed by seed-caching rodents. *Ecoscience* 13: 539-543.

Waitman, B. A., S. B. Vander Wall, and T. C. Esque. 2012. Seed dispersal and seed fate in Joshua tree (*Yucca brevifolia*). *Journal of Arid Environments* 81: 1-8.

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## **ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

### **PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

### **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

<b>Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>Biological Resources Mitigation Measure No. 1</p> <p>Pre-construction surveys for burrowing owls and nesting birds shall be conducted prior to the commencement of Project activities as follows:</p> <p>a. <u>Nesting Birds</u>. If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. If Project activities are planned during bird nesting season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a nesting bird survey shall be conducted by a qualified biologist no more than three (3) days prior to the initiation of Project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. If nesting bird activity</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



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<p>is present, a no disturbance buffer zone shall be established by the qualified biologist around each nest. The buffer shall be a minimum of 300 feet for raptors and 100 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.</p> <p>b. <u>Burrowing Owl</u>. No less than 14 days prior to the initiation of any Project activities within suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW. If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to CDFW for review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).</p>		
<p>Biological Resources Mitigation Measure No. 6</p> <p>CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Project has the potential to result in</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent</p>

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<p>“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 &amp; 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through a conservation easement, development of a long-term management plan, and funding sufficient to implement management plan tasks in perpetuity which should be completed before starting Project ground-disturbing activities or by providing financial security. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a state clearing house number, show proof of filing fees, and proof the document has been circulated.</p>	<p>disturbing activities</p>	
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