



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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GAVIN NEWSOM, Governor
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March 13, 2023

Patricia Villagomez, Principal Planner
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Governor's Office of Planning & Research

March 13 2023

STATE CLEARING HOUSE

Subject: Mitigated Negative Declaration (MND)
 4.85 Acre Logistics Center (Project)
 State Clearing House No. 2023020381

Dear Ms. Villagomez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Desert Hot Springs for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Snider Interests, LLC

Objective: The objective of the Project is to construct a warehouse facility for temporarily holding goods in portable storage units. The Project will consist of a 60,000 square-foot warehouse, two retention basins, 92 parking spaces, and street improvements to Calle De Los Romos. Primary Project activities include construction of the warehouse and the supporting infrastructure. This includes grading, paving, and landscaping the Project site.

Location: The Project site is located on the northeast corner of Calle De Los Romos and Avenue 19 in the City of Desert Hot Springs, California, in San Bernardino County. The Project site is vacant lot located on Assessor's Parcel Number 666-360-017 at Latitude 33.911189 N and Longitude -116.535817 W. The Project site is bordered to the north and south by undeveloped land and to the east and west by graded and/or developed land.

Timeframe: No timeframe is given for the Project.

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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COMMENTS AND RECOMMENDATIONS

CDFW appreciates the inclusion of mitigation measures BR-1 and BR-2 and offers the comments and recommendations below to assist the City of Desert Hot Springs in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. As a member of the Coachella Valley Multiple Species Habitat Conservation Plan, it is the City of Desert Hot Springs' responsibility to ensure that all appropriate development fees are collected prior to the beginning of any work on the Project site.

COMMENT #1: Impacts to Burrowing Owl (*Athene cunicularia*)

Issue: Project construction may result in injury or mortality to burrowing owl, a California species of special concern (SSC).

Specific impact: Take of burrowing owl and loss of burrowing owl habitat may occur as a result of Project-related activities. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to burrowing owl.

Why impact would occur: The Project site is within predicted habitat for burrowing owl and multiple occurrences of burrowing owl have been recorded within one mile of the Project site according to the California Natural Diversity Database (CNDDDB 2023). CDFW appreciates that field surveys were conducted for the Project in the spring and summer of 2022, and while burrowing owl or sign was not detected during the field surveys, burrowing owls may occupy the available burrows on-site at any given time, as recognized by the MND in BR-1.

Evidence impact would be significant: Burrowing owl is a CDFW SSC. CEQA provides protection not only for California Endangered Species Act-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Burrowing owl is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill".

Mitigation Measure # BR-1: CDFW recommends the following changes to mitigation measure BR-1 (edits are in ~~strikethrough~~ and **bold**) to avoid impacts to burrowing owl:

Burrowing Owl Pre-Construction Surveys

The project proponent shall ensure that a burrowing owl clearance survey **according to CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012)** is performed not more than 14 days prior to project site disturbance (clearing, grubbing, grading, and construction), and then again **within** 24-hours prior to site disturbance, as burrowing owls may colonize or recolonize the site within the time between the original survey and project activities. If any owls are identified, **Project activities shall not commence, and** the most current protocol established by the California Department of Fish and Wildlife (**2012 Staff Report on Burrowing Owl Mitigation**) **shall** ~~must~~ be followed **by a qualified biologist. The qualified biologist shall also coordinate with CDFW to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.**

COMMENT #2: Impacts to Nesting Birds

Issue: Although the entire Project site has been grubbed and graded and is devoid of vegetation, the Project site is connected to open land. The Project could result in impacts to nesting birds adjacent to the Project site and to burrowing owl and ground nesting birds on-site.

Specific impact: Material staging, stockpiling, and movement/operation of vehicles and equipment may result in take of nesting birds on-site and/or off-site.

Why impact would occur: The MND reports frequent observations of birds in the Project area during field surveys, including common raven (*Corvus corax*), mourning dove (*Zenaida macroura*), turkey vulture (*Cathartes aura*), and Say's phoebe (*Sayornis saya*). The Project site is adjacent to open land that likely provides nesting and foraging habitat

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for birds. Project noise, vibration, lighting, and dust, may indirectly impact nesting birds on adjacent habitat. In addition, the Project, although devoid of vegetation, provides suitable habitat for ground nesting birds and burrowing owl.

Evidence impact would be significant: The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. Wild bird populations in the continental U.S. and Canada have declined by almost 30% since 1970 (Rosenberg et al. 2019). Population loss is not restricted to rare and threatened species but includes many widespread and common species that may be disproportionately influential components of food webs and ecosystem function.

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Mitigation Measure # BR-3: CDFW recommends that the City of Desert Hot Springs adopts the following mitigation measure to avoid impacts to nesting birds:

Nesting Bird Pre-Construction Surveys

Within the work area and the Project's zone of influence (generally 100-300 feet), 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. The survey shall be conducted by a qualified biologist. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment. If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. The buffer shall be a minimum of 500 feet for raptors and 300 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, as confirmed by a qualified biologist. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded. If there is no nesting activity, then no further action is need for this measure.

COMMENT #3: Impacts Associated with Project Lighting

Issue: Artificial lighting on the Project site may impact species that are most active between dusk and dawn.

Specific impact: Nocturnal and crepuscular animals use natural lighting cues for hunting, mating, and sleeping. Excess lighting on the Project site may spill onto undeveloped land to the north and south and/or interfere with the natural day/night cycles of species in the vicinity.

Why impact would occur: The Project will have lighting on the building and on posts throughout the site.

Evidence impact would be significant: CDFW recognizes the adverse effects that artificial lighting has on birds and other nocturnal species such as bats. The effects are numerous and include impacts to singing and foraging behavior, reproductive behavior, navigation, and altered migration patterns.

Mitigation Measure # BR-4: CDFW recommends that the City of Desert Hot Springs adopts the following mitigation measure to avoid impacts on wildlife associated with Project-related lighting:

Artificial Night Lighting

During Project construction activities, the Project shall: (1) 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, (2) Ensure that all

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lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>), (3) Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, and (4) Properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

COMMENT #4: Workers Environmental Awareness Program (WEAP)

Issue: Development projects may have lasting impacts on local wildlife and plant species by introducing new sources of food and attracting scavenger species to the Project area.

Specific impact: Project development may bring biological hazards common to urban-wildland interface areas. Waste associated with developments can encourage opportunistic species such as coyotes and ravens (both observed in the area) to become more prevalent, posing a substantial predation hazard to local wildlife.

Why impact would occur: If waste is not managed properly, the presence of easily accessible food may increase the risk of opportunistic species.

Evidence impact would be significant: Increasing the populations of opportunistic predators such as coyotes and ravens poses a significant hazard to local, protected species such as Coachella Valley fringe-toed lizard (*Uma inornata*; SSC), flat-tailed horned lizard (*Phrynosoma mcallii*; SSC), and burrowing owl.

Mitigation Measure # BR-5: CDFW recommends that the City of Desert Hot Springs adopts the following mitigation measure to avoid attracting opportunistic species to the Project area:

Workers Environmental Awareness Program (WEAP)

A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The WEAP shall also include information on the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP shall include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area and (2) protected species that have the potential to occur on the Project site. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any individual prior to their performing any work on-site.

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 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.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Desert Hot Springs in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kevin Francis, Environmental Scientist at kevin.francis@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

California Department of Fish and Wildlife. 2022. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

California Natural Diversity Database (CNDDDB) Government [ds45]. 2023. California Department of Fish and Wildlife. Biogeographic Information and Observation System.

Rosenberg, K. V., A. M. Dokter, P. J. Blancher, J. R. Sauer, A. C. Smith, P. A. Smith, J. C. Stanton, A. Panjabi, L. Helft, M. Parr, and P. P. Marra. 2019. Decline of the North American Avifauna. Science.

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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.

Biological (BIO) Mitigation Measure (MM)	Implementation Schedule	Responsible Party
<p>MM BR-1: Burrowing Owl Surveys</p> <p>The project proponent shall ensure that a burrowing owl clearance survey according to CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) is performed not more than 14 days prior to project site disturbance (clearing, grubbing, grading, and construction), and then again within 24-hours prior to site disturbance, as burrowing owls may colonize or recolonize the site within the time between the original survey and project activities. If any owls are identified, Project activities shall not commence, and the most current protocol established by the California Department of Fish and Wildlife (2012 Staff Report on Burrowing Owl Mitigation) shall be followed by a qualified biologist. The qualified biologist shall also coordinate with CDFW to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BR-3: Nesting Bird Surveys</p> <p>Within the work area and the Project's zone of influence (generally 100-300 feet), 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. The survey shall be conducted by a qualified biologist. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment. If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. The buffer shall be a minimum of 500 feet for raptors and 300 feet for</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>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, as confirmed by a qualified biologist. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded. If there is no nesting activity, then no further action is need for this measure.</p>		
<p>MM BR-4: Artificial Lighting</p> <p>During Project construction activities, the Project shall: (1) 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, (2) Ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/), (3) Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, and (4) Properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BR-5: WEAP</p> <p>A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The WEAP shall also include information on the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP shall include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area and (2) protected species that have the potential to occur on the Project site. Interpretation shall be provided for any non-</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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English speaking workers, and the same instruction shall be provided for any individual prior to their performing any work on-site.		
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