



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**



August 4, 2023  
*Sent via email.*

**Governor's Office of Planning & Research**

**August 4 2023**

Edgar Gonzalez, Associate Planner  
City of Hesperia  
9700 Seventh Avenue  
Hesperia, CA 92345

**STATE CLEARINGHOUSE**

SPR 21-00001-Freight Company Project  
MITIGATED NEGATIVE DECLARATION  
State Clearinghouse No. 2023070029

Dear Mr. Gonzalez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Hesperia (Lead Agency) for the SPR 21-00001 Freight Company Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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. Implementation of the Project as proposed may result in "take" as defined by State law

---

<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.

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 2

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:** City of Hesperia Planning Department

**Objective:** The objective of the Project is to construct a 12,000 square-foot warehouse, with a 1,500 square-foot office area. The project will include commercial landscaping/trees, perimeter walls/fencing, concrete curbs and gutters, concrete walkways, asphalt pavement, underground utilities, underground storm drain, catch basin and underground infiltration chambers, parking lots on the east and west ends of the warehouse/office, and loading docks on the north and south sides of the warehouse/office.

**Location:** The Project site is located in the City of Hesperia, County of San Bernardino, and is located at the northwest corner of Avenal Street and US Highway 395, Section 16, Township 4 North, Range 5 West (USGS Baldy Mesa, CA 7.5-minute quadrangle). The Project Site is also identified by the following Assessor Parcel Number: 3064-371-12, and coordinates 34.437556 latitude, -117.399861 longitude)

## **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.

### Desert Native Plants and Rare Plant Survey

The MND includes results of a General Plant and Animal survey included in Appendix B, and a Protected Plant Preservation Plan included in Appendix C. The Protected Plant Preservation Plan has a fieldwork date of April 3, 2023, on the title page, but the report has a fieldwork date of April 11, 2023. This Protected Plant Preservation Plan focuses entirely on Western Joshua Tree although in Appendix B it is stated that Short-joint beavertail (*Opuntia basilaris* var. *brachyclada*) and Sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) have been documented nearby.

The General Plant and Animal survey was conducted on September 20, 2022. CDFW is concerned the field survey did not adequately identify a species list of all plant species found on site potentially impacted due to the project. CDFW's Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018) recommends conducting botanical field surveys in the field at times of year when plants will be both evident and identifiable, which is during flowering and fruiting.

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 3

CDFW recommends that new surveys be conducted by CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with plants of the area, including special status plants and locally significant plants, and familiar with the appropriate state and federal statuses of plant collecting. Botanical field surveys should be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. It is also recommended that multiple site visits to the Project area be conducted in the early, mid, and late seasons to capture the floristic diversity at a level necessary to determine if special status plants are present. Additionally, the MND should identify specific measures for impacts rare plants.

Following the 2018 CDFW Protocol, the MND should include an assessment from project related impacts, such as:

- A discussion of the significance of special status plant populations in the project area considering nearby populations and total range and distribution;
- A discussion of the significance of sensitive natural communities in the project area considering nearby occurrences and natural community distribution;
- A discussion of project related direct, indirect, and cumulative impacts to special status plants and sensitive natural communities;
- A discussion of the degree and immediacy of all threats to special status plants and sensitive natural communities, including those from invasive species;
- A discussion of the degree and impact, if any, of the project on unoccupied, potential habitat for special status plants; and
- Recommended measures to avoid, minimize, or mitigate impacts to special status plants and sensitive natural communities.

### **California Endangered Species Act**

The California Endangered Species Act (CESA) is a California environmental law that conserves and protects plant and animal species at risk of extinction. Western Joshua tree (WJT), currently a Candidate Threatened species under CESA, has the potential to occur within the Project. Under CESA, a species classified as a Candidate is afforded the same protection as a CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). 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”. A CESA-listed or Candidate species, or any part or product of the plant or animal, may not be imported into the state, exported out of the state, “taken” (i.e., killed), possessed, purchased, or sold without proper authorization. An incidental take permit may be obtained to allow a permittee to take a CESA-listed or Candidate species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Permittees must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 4

the project. (Fish & G. Code, § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8). Additionally, project proponents have the option of either obtaining an incidental take permit or any other appropriate take authorization under CESA or obtaining a take permit under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12).

### **MM BIO-1**

If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), **or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12)**, prior to the relocation, removal, or 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 and §§ 1927-1927.12**). 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 either the purchase of conservation or mitigation bank credits or the establishment of a conservation easement, the development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. 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.

#### Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. 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."

CDFW appreciates that the City will follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW's website:

<https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 5

- b. Surveys; and
- c. An impact assessment

CDFW appreciates the inclusion of MM BIO-2 and MM BIO-3 which considers pre-construction surveys for burrowing owl, however, CDFW is concerned that according to the 2012 Staff Report on Burrowing Owl Mitigation, Take avoidance (pre-construction) surveys are intended to detect the presence of burrowing owls on a project site at a fixed period in time. The DEIR does not include the necessary survey documentation to assess project impacts to burrowing owl. According to the 2012 Staff Report on Burrowing Owl there are three progressive steps in evaluating whether projects will result in impacts to burrowing owl. The information gained from these steps will inform any subsequent avoidance, minimization and mitigation measures. The steps for project impact evaluations are: 1) habitat assessment, 2) surveys, and 3) impact assessment. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 6

and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

CDFW offers the following revisions to MM BIO-2 and MM Bio-3 (edits are in strikethrough and bold).

### **MM BIO-2**

Prior to any ground disturbance, ~~pre-construction surveys for Burrowing Owls on the project site and in the surrounding area~~ **a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted** in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. ~~shall be conducted no more than 14 days prior to the beginning of project activities, and a secondary survey must be conducted by a qualified biologist within 24 hours prior to the beginning of project construction to determine if the project site contains suitable burrowing owl or sign thereof and to avoid any potential impacts to the species. The surveys shall include 100 percent coverage of the project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance survey,~~ **The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site** Mitigation Measure BIO-3 shall apply.

### **MM BIO-3**

If active burrows or signs thereof are found ~~within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined~~

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 7

~~appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the City, 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 CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW 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. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.~~ **and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.**

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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

Edgar Gonzalez  
City of Hesperia  
August 4, 2023  
Page 8

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 City of Hesperia in identifying and mitigating Project impacts on biological resources and we request that the City of Hesperia address the Department's comments and concerns prior to adoption of the DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier (909) 938-6112 or at [julian.potier@wildlife.ca.gov](mailto:julian.potier@wildlife.ca.gov).

Sincerely,

DocuSigned by:  


84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager



Edgar Gonzalez  
 City of Hesperia  
 August 4, 2023  
 Page 9

## 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 measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p><b>Biological Resources Mitigation Measure No. 1</b>            If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), <b>or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (Fish &amp; G. Code, §§ 1927-1927.12)</b>, prior to the relocation, removal, or 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; <b>2085 and §§ 1927-1927.12</b>). 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 either the purchase of conservation or mitigation bank credits or the establishment of a conservation</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Edgar Gonzalez  
 City of Hesperia  
 August 4, 2023  
 Page 10

<p>easement, the development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. 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>implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. 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>The Western Joshua Tree Conservation Act has been approved by the California Governor’s Office. The Western Joshua Tree Conservation Act effectively replaces the function of species protection under CESA, alternative habitat replacement mechanisms, provides equal or better function and value to existing mechanisms under CESA, and is required under state law.</p>		
<p><b>Biological Resources Mitigation Measure No. 2</b></p> <p>Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (&gt;11 cm in diameter [height and width] and &gt;150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets,</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Edgar Gonzalez  
 City of Hesperia  
 August 4, 2023  
 Page 11

<p>prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site Mitigation Measure BIO-3 shall apply.</p>		
<p><b>Biological Resources Mitigation Measure No. 3</b></p> <p>If active burrows or signs thereof are found and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>