



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 1, 2023

Jim Morrissey
County of San Bernardino
385 N. Arrowhead Avenue
San Bernardino, CA 92415

Eco Dome Campground (PROJ-2022-00019) ISMND (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2023090613

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from San Bernardino County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Eco Dome Project (Adriana and Calvin Clark)

Objective: The objective of the Project is to establish six (6) geodesic domes, each 24 feet in diameter and containing a full bathroom, outdoor deck, and hot tub, one communal dome 36 feet in diameter, with separate utility building, and outside activity areas, including a horseshoe pit, pool, bocce court, internal paths/walkways between buildings/site activities, and 212,000 square feet of gardens. Primary Project activities include grading, paving, and construction.

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Location: The Eco Dome Project is located at 57899 Linn Road, Landers, CA in the County of San Bernardino. Specifically, Assessor's Parcel Number: 063006138, Township: 2 North Range: 6 East Section: 6 at coordinates 34.29448704304477, - 116.39995336215449.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County of San Bernardino in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Desert Native Plants and Rare Plant Survey

The projects site is within the range of Little San Bernardino Mountains Linanthus (*Linanthus maculatus* ssp. *Maculatus*) a California Rare Plant Rank 1B.2 species and contains suitable habitat. According to the ISMND, the biological resources report does indicate whether a protocol rare plant survey was conducted. 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.

CDFW recommends that 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 ISMND should identify specific measures for impacts rare plants.

Following the 2018 CDFW Protocol, the ISMND 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;

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- 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.

Western Joshua Tree (*Yucca brevifolia*)

Project activities are expected to result in the permanent loss of western Joshua tree (WJT) habitat. The Project has the potential for take of WJT individuals and associated seedbank through the removal of habitat surrounding WJT; removal of roots; clearing vegetation; general operation of vehicles and heavy equipment; grading; staging equipment and stockpiling. Incidental take of WJT individuals in the form of mortality (“kill”) may occur as a result of removing emergent individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as 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”.

CDFW encourages the Project Applicant and/or the County of San Bernardino to obtain appropriate take authorization under CESA or through the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12) to mitigate impacts to WJT.

Nesting Birds

Please note that it is the Project proponent’s responsibility to avoid “take” of all nesting birds. 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”. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any

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regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

To help the project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to BIO-2 (edits are in ~~strike through~~ and **bold**)

BIO-2 Pre-construction Nesting Bird Survey: ~~If construction or other Project activities are scheduled to occur during the bird breeding season (February 1 through September 30)~~ **Regardless of the time of year**, a pre-construction nesting bird survey shall be conducted for the proposed Project plus a ~~400-foot~~ **500-foot** survey radius (where accessible) ~~during nesting bird season~~ by a Qualified Biologist to ensure that active bird nests will not be disturbed or destroyed. The survey shall be completed no more than three days prior to initial ground disturbance. If an active nest is observed, a no-work buffer shall be implemented around the nest of appropriate size for the nesting species and for the individual disturbance tolerance of the nesting pair. **The extent of the 'no-disturbance buffer', typically 300 feet (500 feet for raptors), although a smaller buffer may be determined by a qualified biologist. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. 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.** The no-work buffer shall be communicated to all personnel and shall be removed upon completion, ~~or failure, of the nest or the nest becomes inactive under natural conditions.~~

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 County of San Bernardino 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;
- b. Surveys; and
- c. An impact assessment

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CDFW appreciates the inclusion of MM BIO-1 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 ISMND 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.

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 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

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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 BIO-4 (edits are in ~~strikethrough~~ and **bold**).

BIO-4 Pre-construction Burrowing Owl Surveys and Avoidance: A Qualified Biologist shall be hired to conduct a Burrowing Owl clearance survey due to the presence of suitable Burrowing Owl habitat encountered within and adjacent to the Project site. **Prior to any ground disturbance, A-a Qualified Biologist shall conduct 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** ~~follow the survey methods outlined in the Staff Report on Burrowing Owl Mitigation (CDFG, 2012).~~ Surveys shall cover all portions of the Project site that were identified as suitable habitat. If raptors or other predators are present that may suppress Burrowing Owl activity, returning at another time or later date for a follow-up survey is recommended. If active burrows are observed, the Biologist shall demark a 500-foot protective buffer. **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, 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**

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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 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 County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Julian Potier at julian.potier@wildlife.ca.gov

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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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 measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p><u>BIO-2 Pre-construction Nesting Bird Survey</u></p> <p>Regardless of the time of year, a pre-construction nesting bird survey shall be conducted for the proposed Project plus a 500-foot survey radius (where accessible) by a Qualified Biologist to ensure that active bird nests will not be disturbed or destroyed. The survey shall be completed no more than three days prior to initial ground disturbance. If an active nest is observed, a no-work buffer shall be implemented around the nest. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. 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. The no-work buffer shall be communicated to all personnel and shall be removed upon completion, or the nest becomes inactive under natural conditions.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p><u>BIO-4 Pre-construction Burrowing Owl Surveys and Avoidance</u></p> <p>A Qualified Biologist shall be hired to conduct a Burrowing Owl clearance survey due to the presence of suitable Burrowing Owl habitat encountered within and adjacent to the Project site. Prior to any ground disturbance, a Qualified Biologist shall conduct 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 (CDFG, 2012). Surveys shall cover all portions of the Project site that were identified as suitable habitat. If raptors or other predators are present that may suppress Burrowing Owl activity, returning at another time or later date for a follow-up survey is recommended. If active burrows are observed, the Biologist shall demark a 500-foot protective buffer. 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>suitable burrows 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>		
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