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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

May 23, 2025
Sent via email

Edgar Gonzales
Senior Planner
City of Hesperia
9700 Seventh Ave
Hesperia, California 92345
egonzalez@hesperiaca.gov

Taylor Apartment Complex (Project)
Mitigated Negative Declaration (MND)
SCH# 2025050243

Dear Edgar Gonzales:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Hesperia (City) 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.

[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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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 & 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: TPD LLC.

Objective: The Project proposes the development of a new seventy-unit multi-family residential development within a 4.71-acre site. The development will consist of 14 buildings, 8 eightplex buildings, 3 duplex buildings, 2 garage buildings, and 1 recreational building. The rest of the parcel will be developed into a 160-space parking lot and landscaping.

Location: The Project is located in the central portion of the City of Hesperia, northeast of the corner of Lime Street and C Avenue. The Project site's latitude and longitude are 34.434457°N, -117.290067°W.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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.

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

The Project may have a significant impact on burrowing owl, a CESA-listed candidate species. The MND includes a mitigation measure to prevent impacts to burrowing owl. However, Biological Resources Mitigation Measure No. 2. requires a Burrowing Owl Plan (plan) to avoid and minimize impacts to burrowing owl and that the plan be provided to CDFW for review and approval. While CDFW appreciates that Biological Resources Mitigation Measure No. 2. is in line with previous guidance, since burrowing owl became a CESA candidate species in March 2024, CDFW cannot accept the plan,

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and it is the Project proponent's responsibility to fully avoid impacts to burrowing owl. Biological Resources Mitigation Measure No. 2. should consider obtaining an Incidental Take Permit (ITP) if burrowing owls are detected through the proposed surveys in the measure and impacts cannot be avoided. Thus, the change in regulatory status for burrowing owl requires changes to the measure as recommended by CDFW below.

Biological Resources Mitigation Measure No. 2 (Revised):

Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the ~~qualified biologist and~~ Project proponent shall **fully avoid impacts to burrowing owl or should obtain a CESA ITP if impacts to burrowing owl are unavoidable** ~~prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities~~. ~~The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval~~. **In addition, t**~~T~~ake avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities **to confirm presence/absence of burrowing owl following previous surveys**. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Own Mitigation (CDFG 2012 or most recent version). If ~~the~~ **any** surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and **the Project proponent shall fully avoid impacts to burrowing owl or should obtain an ITP from CDFW if impacts are unavoidable** ~~prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval~~ prior to commencing Project activities.

COMMENT # 2: Western Joshua Tree (*Yucca brevifolia*)

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Western Joshua tree (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). 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". Additionally, WJT is protected under the Western Joshua Tree Conservation Act (WJTCA). The WJTCA was enacted in July 2023 and prohibits the import, export, take, possession, purchase, or sale of any WJT or parts thereof in California unless authorized by CDFW (Fish & G. Code §1927.2).

Although the MND reports that no western Joshua trees were found on the Project site during the field investigations conducted in October 2024, based on aerial/street imagery CDFW noted that multiple large mature western Joshua trees were present on the Project site in April 2023. Seeds and rhizomes from these trees may sprout and Project activities such as excavation, trenching, grading, and paving would result in take of these new individuals. Thus, CDFW strongly recommends the adoption of the following new measure, Biological Resources Mitigation Measure No. 4, for inclusion in the final MND:

Biological Resources Mitigation Measure No. 4 (New):

Prior to start of construction activities, a WJT census of the property shall be conducted as per CDFW's WJT Census Instructions (https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting/Census-Instructions). If WJT individuals are identified in the census and the trees are to be relocated, encroached upon, removed, or otherwise taken, the Project proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section 2081b of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the WJT Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, encroachment, 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 WJT, 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). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a WJT if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of,

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the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.

Additional Comments and Suggestions

Submitting Data on Special Status Species

CDFW strongly recommends the Project proponent submits data to the California Natural Diversity Database at https://wildlife.ca.gov/Data/CNDDB/Submitting-Data, regarding any special status species such as but not limited to: desert tortoise, Bendire's thrasher, burrowing owl, Cooper's hawk, golden eagle, LeConte's thrasher, loggerhead shrike, northern harrier, prairie falcon, Swainson's hawk observed within or adjacent to the Project area.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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.

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(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 the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Bill, Senior Environmental Scientist (Specialist) at Christopher.Bill@wildlife.ca.gov

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources		
Mitigation Measure	**Implementation Schedule**	**Responsible Party**
<u>Biological Resources Mitigation Measure No. 2</u> Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the Project proponent shall fully avoid impacts to burrowing owl or should obtain a CESA ITP if impacts to burrowing owl are unavoidable. In addition, take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities to confirm presence/absence of burrowing owl following previous surveys. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Own Mitigation (CDFG 2012 or most recent version). If any surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and the Project proponent shall fully avoid impacts to burrowing owl or should obtain an ITP from CDFW if impacts are unavoidable prior to commencing Project activities.	Prior to initiation of all ground disturbing activities	Project proponent and Qualified Avian Biologist

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Biological Resources Mitigation Measure No. 4 Prior to start of construction activities, a WJT census of the property shall be conducted as per CDFW's WJT Census Instructions (https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting/Census-Instructions). If WJT individuals are identified in the census and the trees are to be relocated, encroached upon, removed, or otherwise taken, the Project proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under Section 2081b of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the WJT Conservation Act (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, encroachment, 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 WJT, 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). Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a WJT if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height, b. One meter or greater but less than five meters in height, and c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua	Prior to initiation of all ground disturbing activities	Project proponent

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tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.		