



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



July 11, 2025

Leilani Henry
 Assistant Planner
 City of Hesperia
 9700 Seventh Avenue
 Hesperia, CA, 92345

Dear Leilani Henry:

TENTATIVE TRACT MAP NO. 20674 (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025061403

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 to 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. 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: ZAB, LLC

Objective: The Project proposes a Tract Map to subdivide approximately 4.53 gross acres into 20 single-family residential lots ranging from 5,638 square feet to 10,029 square feet. Additionally, the Project proposes to construct new pavement, curb, gutter, parkway, water and sewer lines and a storm drain retention basin. Construction phases are proposed to consist of site preparation, grading, building construction, paving, and architectural coating.

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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Location: The Project site is located on the northwest corner of Hollister Street and Afton Avenue within the City of Hesperia, San Bernardino County, State of California. The Project site is on Assessor's Parcel Number: 3057-051-09.

Timeframe: Construction of the Project is proposed to begin in 2025 and last approximately 12 months and the Project is proposed to completed in 2026.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates the detailed measures in the draft MND to avoid and minimize impacts to biological resources. CDFW recommends only minor modifications to the measures 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. Thus, CDFW strongly recommends the following revisions to BIO-1, BIO-2, and the adoption of BIO-3 (NEW) (edits are in ~~strike through~~ and **bold**) for adoption in the final MND.

BIO- 1. Pre-Construction Burrowing Owl Surveys.

Prior to the issuance of a grading permit, a preconstruction survey for Burrowing Owls shall be conducted in accordance with California Department of Fish and Wildlife approved protocols **in the Staff Report on Burrowing Owl Mitigation** (CDFG 2012 or most recent version), ~~for each species no more than 30 days prior to ground- disturbing activities in accordance with best practices identified by the California Department of Fish and Wildlife.~~ If ground-disturbing activities are delayed for more than 30 days (including the restarting of activities after project/ground-disturbing delays of 30 days or more), additional surveys will be required. If burrowing owls are observed on the project site **or within the vicinity of the Project site at any time** during future surveys, the California Department of Fish and Wildlife shall be immediately notified, **and the Project Proponent shall fully avoid impacts to burrowing owl or should obtain a CESA ITP** and mitigation measures shall be required to reduce impacts to less than significant. ~~Acceptable mitigation measures are described in the Staff Report on Burrowing Owl Mitigation, State of California Natural Resources Agency, Department of Fish and Game, March 7, 2012.~~

BIO- 2. Pre-Construction Nesting Bird Survey.

Prior to **any ground disturbing activities and** the issuance of a grading permit, the following ~~note~~ **nesting bird surveys** shall be **completed** ~~placed on the grading plan:~~

"Regardless of the time of year and within 3 days prior to any ground disturbing Project activities ~~During the nesting bird season (between March 15 and September 15),~~ a qualified **avian** biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified **avian** biologist within 300 feet of all work areas, no more than 3 days prior to commencement of Project activities. If active nests containing eggs or young are found, a qualified **avian** biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and **determined by the qualified avian biologist and** range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified **avian** biologist determines that the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined that the young have fledged or the project is finished. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. **If at any time during Project activities, a California Endangered Species Act listed bird species is observed nesting on site, the Project Proponent shall immediately halt Project activities and contact CDFW Inland Deserts Region 6."**

BIO-3. Western Joshua Tree (NEW). The western Joshua tree (WJT) is a candidate threatened species under the California Endangered Species Act. If WJT individuals are to be relocated, encroached upon, removed, or otherwise taken, the Project

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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 Project Proponent 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 Project Proponent 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 Project Proponent mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. 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 Project Proponent to relocate one or more of the western Joshua trees.

EDITORIAL COMMENT

CDFW would like to comment regarding the buffers discussed on Page 26. To clarify, while CDFW has recommended for previous projects that information in the census be provided with these initial buffers based on CDFW's review of the project, however, these buffers are determined on a project-by-project basis.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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 the City of Hesperia in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist, at Emily.Leon@wildlife.ca.gov or at (760) 644-5976.

Sincerely,

DocuSigned by:

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For Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

Luis Benitas, Project Applicant
ZAB, LLC
Luis@luisbenites.com

Ernest Perea
EPC Environmental Inc
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ATTACHMENTS

Attachment A: Mitigation Monitoring Reporting Plan

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: [Microsoft Word - BUOW Staff Report final_030712 REV 1.doc \(ca.gov\)](#)

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Attachment A

Mitigation Monitoring and Reporting Plan

| Biological Resources (BIO) | | |
|--|---|--|
| Mitigation Measure | Implementation Schedule | Responsible Party |
| <p><u>BIO- 1. Pre-Construction Burrowing Owl Surveys</u></p> <p>Prior to the issuance of a grading permit, a preconstruction survey for Burrowing Owls shall be conducted in accordance with California Department of Fish and Wildlife approved protocols in the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). If ground-disturbing activities are delayed for more than 30 days (including the restarting of activities after project/ground-disturbing delays of 30 days or more), additional surveys will be required. If burrowing owls are observed on the project site or within the vicinity of the Project site at any time during future surveys, the California Department of Fish and Wildlife shall be immediately notified, and the Project Proponent shall fully avoid impacts to burrowing owl or should obtain a CESA ITP.</p> | <p>Prior to the initiation of ground disturbing activities and again within 3 days Prior to the initiation of ground disturbing</p> | <p>Project Proponent and Qualified Avian Biologist</p> |
| <p><u>BIO- 2. Pre-Construction Nesting Bird Survey</u></p> <p>Prior to any ground disturbing activities and the issuance of a grading permit, the following note nesting bird surveys shall be completed:</p> <p>Regardless of the time of year and within 3 days prior to any ground disturbing Project activities, a qualified avian biologist shall conduct pre-project nesting bird surveys, implement nest buffers, and conduct monitoring at all active nests within the work area and surrounding 300-foot buffer. Nesting bird surveys shall be conducted by a qualified avian biologist within 300 feet of all work areas, no more than 3 days prior to commencement of project activities. If active nests containing eggs or young are found, a qualified avian biologist shall establish an appropriate nest buffer. Nest buffers are species-specific and determined by the qualified avian biologist and range from 15 to 100 feet for passerines and 50 to 300 feet for raptors, depending on the planned activity's level of disturbance, site conditions, and the observed bird behavior. Established buffers shall remain until a qualified avian biologist determines that the young have fledged or the nest is no longer active. Active nests shall be monitored until the biologist has determined that the young have fledged or the project is finished. The qualified biologist has the authority to stop</p> | <p>Within 3 days prior to any ground disturbing activities</p> | <p>Project Proponent and Qualified Avian Biologist</p> |

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| <p>work if nesting pairs exhibit signs of disturbance. If at any time during Project activities, a California Endangered Species Act listed bird species is observed nesting on site, the Project Proponent shall immediately halt Project activities and contact CDFW Inland Deserts Region 6.</p> | | |
| <p><u>BIO-3. Western Joshua Tree</u></p> <p>The western Joshua tree (WJT) is a candidate threatened species under the California Endangered Species Act. If WJT individuals 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 Project Proponent 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 Project Proponent 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 Project Proponent mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. 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 Project Proponent to relocate one or more of the western Joshua trees.</p> | <p>Prior to the initiation of activities</p> | <p>Project Proponent</p> |