



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



October 6, 2025

Sent via email.

Oliver Mujica
Contract Planner III
San Bernardino County
385 N. Arrowhead Avenue, 1st Floor
San Bernardino, CA 92415
Oliver.Mujica@lus.sbcounty.gov

Dear Oliver Mujica:

CACTUS CLUB HOTEL (PROJECT)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2025090539

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an IS/MND from San Bernardino County 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: Evoque Modern LLC

Objective: The Project will combine three parcels (see 'Location' below for parcels) to create 4 new parcels (Parcel 1, 5.28 acres; Parcel 2, 2.57 acres; Parcel 3, 2.56 acres; and Parcel 4, 2.24 acres) and proposes the development and operation of a two-story hotel with 20 rooms and associated infrastructure on Parcel 1. Parcels 2 and 3 will remain vacant.

Location: The Project is located within the unincorporated community of Joshua Tree at 66121 Twentynine Palms Highway, County Bernardino County, State of California; Assessor's Parcel Number's 0608-051-12, 0608-051-03, 0608-051-04.

Timeframe: Not Specified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Bernardino County 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: Nesting Birds

CDFW appreciates that the MND included a measure for a pre-construction survey for nesting birds (i.e., BIO-2). However, BIO-2 limits pre-construction surveys for nesting birds to the typical bird nesting season (i.e., February to August). CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, migratory birds, and raptors within the Project site and surrounding area be avoided *any time* birds are nesting onsite. This is in consideration that studies have shown that migratory bird species arrive earlier in the season partially in response to higher temperatures influenced by climate change (Usui et. al. 2016). In addition, in response to warming, birds have been reported to breed earlier and CDFW staff have observed that climate

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change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates.

Further, 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 regulation adopted pursuant thereto. As such, CDFW recommends the following revisions (additions are in **bold** and deletions are in ~~strikethrough~~) to BIO-2 for incorporation in the final MND:

Mitigation Measure BIO-2: Nesting Bird Pre-Construction Surveys (Revised)

~~Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds.~~ To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) **within 3 days** prior to project-related disturbance to nestable vegetation to identify any active nests. **Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures Surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors).** If no active nests are found, no further action will be required. If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field-checked ~~weekly~~ **daily** by a qualified biological monitor **and shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed).** The biologist may choose to **adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location.** The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.

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COMMENT #2: Fish and Game Code Section 1602 Resources

The MND states that the Project area was surveyed with 100 percent visual coverage and no definable bed and bank was observed on the Project area. CDFW appreciates that the MND surveyed for potential Fish and Game Code section 1602 resources; however, according to the California Natural Diversity Database (CNDDDB) a mapped blue line stream flows through the Project area and several smaller potential Fish and Game Code section 1602 resources are present throughout the Project area that may be impacted by Project activities, such as grading and filling. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. A Lake and Streambed Alteration Agreement is required when a project activity may substantially adversely affect fish and wildlife resources. CDFW strongly recommends the Project Proponent notify CDFW for a Lake or Streambed Alteration Agreement. Thus, CDFW recommends adoption of BIO-4 below in the final MND:

Mitigation Measure BIO-4: Fish and Game Code Section 1602 Resources (New)

Prior to any ground disturbing Project activities, the Project proponent shall notify CDFW pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Lake or Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

COMMENT #3: Burrowing Owl (*Athene cunicularia*)

The MND states that the Project area was surveyed on February 2, 2023, and no burrows or suitable habitat was observed on the Project site. The MND's Biological Resource Assessment specifically states, "Based on the February 2023 field survey, the site does not contain suitable habitat for this species. No burrowing owls were observed during the site visit. No portion of the project site showed any evidence of past or present BUOW activity. No suitable burrows, feathers, whitewash, or castings were found. Additionally, the site does not contain a suitable burrow surrogate species (i.e., California ground squirrel (*Otospermophilus beecheyi*)). Consequently, the MND did not propose pre-construction surveys for burrowing owl.

According to CNDDDB, the Project area is within the predicted habitat for burrowing owls. Furthermore, CNDDDB recorded burrowing owl occurrences within 2 miles of the Project

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area. Since the 2023 biological survey, burrowing owl may have moved into the Project area and impacts to burrowing owl may be significant if full avoidance is not achieved. Impacts to burrowing owl may be significant if burrowing owl and their sign are not properly identified through protocol level surveys prior to construction. Burrowing owls have a high potential to move into suitable habitat prior to and during Project activities.

Burrowing owl is a protected species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species, if it establishes onsite. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). If Project activities could result in 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".), appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities. In conclusion, CDFW recommends adoption of BIO-5 below in the final MND to avoid and minimize impacts to burrowing owl that may be present at the time of construction:

Mitigation Measure BIO-5: Burrowing Owl Pre-Construction Surveys (New)

Prior to the initiation of any ground disturbing activity on the Project site, two pre-construction avoidance surveys shall be performed to confirm presence/absence of burrowing owl consistent with the 2012 Staff Report on Burrowing Owl Mitigation². An initial avoidance survey no less than 14 days prior to commencing ground-disturbance activities and a final survey carried out within 24 hours prior to ground disturbance shall be conducted by a qualified Avian Biologist. Should the species be identified on the site through any of the surveys, the Project Proponent shall immediately contact CDFW and fully avoid impacts to burrowing owls. If impacts to burrowing owl cannot be fully avoided, the Project Proponent should obtain a California Endangered Species Act incidental take permit pursuant to Fish and Game Code section 2080.

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

² California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

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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 draft IS/MND to assist San Bernardino County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

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Alisa Ellsworth
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ATTACHMENT

A. Mitigation and Monitoring Reporting Plan

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REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: A Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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Attachment A
Mitigation Monitoring and Reporting Plan

Measure Number	Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
BIO-2	To avoid impacts to nesting birds (common and special status), a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) within 3 days prior to project-related disturbance. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If no active nests are found, no further action will be required. If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field-checked daily by a qualified biological monitor and shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation	Within 3 days of initiation of Project activities	Project Proponent and Qualified Avian Biologist

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	are displayed). The biologist may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.		
BIO-4 (NEW)	Prior to any ground disturbing Project activities, the Project proponent shall notify CDFW pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Lake or Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.	Prior to the initiation of any ground disturbing activity	Project Proponent
BIO-5 (New)	Prior to the initiation of any ground disturbing activity on the Project site, two pre-construction avoidance surveys shall be performed to confirm presence/absence of burrowing owl consistent with the <i>2012 Staff Report on Burrowing Owl Mitigation</i> . An initial avoidance survey no less than 14 days prior to commencing ground-disturbance activities and a final survey carried out within 24 hours prior to ground disturbance shall be conducted by a qualified Avian Biologist. Should the species be identified on the site through any of the surveys, the Project Proponent shall immediately contact CDFW and fully avoid impacts to burrowing owls. If impacts to burrowing	Prior to the initiation of any ground disturbing activity	Project Proponent and Qualified Avian Biologist

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	owl cannot be fully avoided, the Project Proponent should obtain a California Endangered Species Act incidental take permit pursuant to Fish and Game Code section 2080.		
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