



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 18, 2021
Sent via email

Governor's Office of Planning & Research

Nov 19 2021

STATE CLEARINGHOUSE

Mr. James Hirsch, Contract Planner
City of Adelanto
11600 Air Expressway
Adelanto, California 92301

Subject: Initial Study and Mitigated Negative Declaration
Conditional Use Permit (CUP) 21-16 Boutique Purple Development
State Clearing House No. 2021100510

Dear Mr. Hirsch:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from City of Adelanto (City) for the Conditional Use Permit 21-16 Boutique Purple Development Project (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

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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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

The Project site is in the City of Adelanto, San Bernadino County, California; Latitude 34.5599 N and Longitude -117.4547 W. The Project site is located on Koala Road between Violet Road and Rancho Road. The Project proposes development of 3.03 acres for cannabis cultivation on Assessor's Parcel Number (APN) 3210-631-14-0000, which totals 3.04 acres. The Project proposes the construction of six two-story buildings (97,428 square-feet total) for cannabis cultivation, distribution, and manufacturing. In addition, fifty-eight standard parking spaces are proposed.

Timeframe: Project construction is planned in four phases and proposed to begin in January 2022. The entire Project is expected to take one year to complete.

COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the potential for special status species, including candidate threatened species western Joshua tree (*Yucca brevifolia*), to occur within the Project area, but does not provide details of the surveys or the surveys reports/results undertaken to assess biological resources. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within and surrounding the Project area and to identify the level of impacts on those species. Absent these details, and supporting documentation, it is unclear whether the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources have been adequately identified, disclosed, and mitigated and whether those impacts are less than significant.

CDFW offers the comments and recommendations presented below and in Attachment 1 (Mitigation Monitoring and Reporting Program) to assist the City in adequately mitigating the Project's potentially significant impacts on biological resources and requests that the City adopt the below mitigation measures (also see Attachment 1) prior to finalizing the ISMND.

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Assessment of Biological Resources

Nesting Birds

CDFW appreciates the incorporation of Biological Resources Mitigation Measure (MM) No. 1, which considers nesting bird pre-construction surveys. However, CDFW is concerned that MM No. 1 is conditioned to only require surveys during the peak bird nesting season considering that birds, such as hummingbirds may nest year-round. Furthermore, MM No. 1 defines bird nesting season as February 1 to August 31. Please note that nesting may commence before and/or after this timeframe. For example, some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31. 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. As such, CDFW offers the following revisions to MM No.1 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 1

If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. If project activities are planned during bird nesting season (**generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1** ~~February 1 to August 31~~), a nesting bird survey shall be conducted **by a qualified biologist** ~~within thirty~~ **no more than three (3)** days prior to ~~any~~ **the initiation of project** ground-disturbing activities, including, but not limited to clearing, grubbing, and/or rough grading to ~~ensure birds protected under the Migratory Bird Treaty Act (MBTA) are not disturbed by on-site activities~~ **prevent impacts to birds and their nests.** ~~The survey will be conducted by a qualified biologist.~~ If nesting bird activity is present, ~~based on the species,~~ a no disturbance buffer zone shall be established **by the qualified biologist** around each nest. **The buffer shall be a minimum of 300 feet for raptors and 100 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.** If there is no nesting activity, then no further action is needed for this measure.

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Burrowing Owl (*Athene cunicularia*)

CDFW appreciates the incorporation of MM No. 2 and MM No. 3, which considers burrowing owl pre-construction surveys and avoidance buffers, respectively. Please note that CDFW does not consider sole reliance on buffers appropriate to fully avoid and otherwise protect burrowing owl. CDFW recommends that the City notify CDFW if owls are found to be present onsite and develop a conservation strategy in cooperation with CDFW to mitigate for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. CDFW offers the following revisions to MM No. 2 and No. 3 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 2

Prior to ~~the issuance of a grading permit~~ **or any other ground-disturbing activity**, a pre-construction burrowing owl clearance survey 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, by a qualified biologist within 14 days prior to the beginning of project **activities** ~~construction~~, 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 habitat** 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, Mitigation Measure BIO-3 shall apply.

Biological Resources Mitigation Measure No. 3

If ~~occupied~~ **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 ~~through consultation with the California Department of Fish and Wildlife (CDFW). The buffer zones may vary~~ **and shall be no less than 300 feet** depending on burrow location and burrowing owl sensitivity to human activity, and no construction activity shall occur within a buffer zone(s) until appropriate avoidance and minimization measures are determined ~~though consultation with CDFW. If~~ **determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls.**

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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.

Western Joshua Tree (*Yucca brevifolia*)

CDFW appreciates the recognition that CEQA documentation is needed as part of the California Endangered Species Act (CESA) Incidental Take Permit (ITP) application process for western Joshua tree, as a candidate threatened species under CESA.

Currently, the ISMND has MM No. 4 dedicated to potential transplanting of western Joshua trees. CDFW is concerned that transplantation does not meet the standard of full mitigation for take of western Joshua trees, as acknowledged by the ISMND. The ISMND also lacks a mitigation measure to describe how the western Joshua trees, including the seedbank, will be protected in place should the species be listed under CESA and an ITP not be obtained, or if the species remains a candidate at the time of proposed Project implementation.

Furthermore, the Project could also result in indirect impacts to western Joshua tree from destruction or modification of habitat at the Project location. Indirect impacts include destruction of western Joshua tree's obligate pollinating moth (*yucca* moth, *Tegeticula synthetica*), while it is dormant in the soil or while it is in its flight phase, which would impact the ability of western Joshua tree to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of habitat at the Project location could also disrupt the seed dispersal behavior of rodents, which is the primary way that western Joshua tree seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of habitat at the Project location could also eliminate nurse plants that are critical for western Joshua tree seedling survival (Brittingham and Walker 2000). CDFW requests the ISMND adequately identify and disclose the Project's impacts (i.e., direct, indirect, and cumulative) to the biological resources noted above and propose mitigation to offset those impacts and demonstrate that impacts are less than significant and, for the purposes of CESA permitting, fully mitigated.

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If the Project, including the Project construction or any Project-related activity during the life of the Project, may impact or result in take of a candidate or CESA-listed species, CDFW recommends that the Project proponent seek appropriate CESA authorization prior to Project implementation. CDFW therefore recommends that BIO-4 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 4

~~The City of Adelanto's Municipal Code (17.57.040) requires that the City comply with the County of San Bernardino's ordinances on Joshua trees. County of San Bernardino's Municipal Code (Chapter 18.01.060) requires preservation of Joshua trees given their importance in the desert community. Furthermore, Tthe project Applicant will be required to obtain an **California Endangered Species Act (CESA)** Incidental Take Permit (ITP) from the State of California Department of Fish and Wildlife (CDFW) related to the removal, replanting or any development activity that may affect the Joshua Trees located on-site. A qualified County-approved biologist or arborist should be retained to conduct any future relocation/transplanting activities and should follow the protocol of the County's Municipal Code (Appendix B: Chapter 18.01). The following criteria will be utilized by the contractor when conducting any future transplanting activities.~~

- ~~A. The Joshua trees will be retained in place or replanted somewhere on the site where they can remain in perpetuity or will be transplanted to an off-site area approved by the County where they can remain in perpetuity. Joshua trees which are deemed not suitable for transplanting will be cut-up and discarded as per County requirements. **During candidacy of the western Joshua tree, all western Joshua trees and parts thereof shall be buffered for avoidance. A qualified biologist shall establish a 290-foot buffer around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the buffer. Should avoidance be infeasible (during candidacy or if the species is listed under CESA), CDFW recommends that the Project Proponent apply for an Incidental Take Permit from CDFW prior to initiating Project activities.**~~
- ~~B. Earthen berms will be created around each tree by the biologist prior to excavation and the trees will be watered approximately one week before transplanting. Watering the trees prior to excavation will help make excavation easier, ensure the root ball will hold together, and minimize stress to the tree.~~
- ~~C. Each tree will be moved to a pre-selected location which has already been excavated and will be placed and oriented in the same direction as their original direction. The hole will be backfilled with native soil, and the transplanted tree will be immediately watered. The biologist will develop a watering regimen to ensure the survival of the transplanted trees. The watering regimen will be based upon the needs of the trees and the local precipitation.~~

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Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

CDFW has concerns that the Project is within the range of the CESA threatened Mohave ground squirrel (MGS), and the ISMND confirms the presence of burrows suitable for the species. However, the ISMND does not anticipate the presence of Mohave ground squirrel due to urbanization. Because CDFW is aware of an occurrence of Mohave ground squirrel in 2020 in the vicinity of the Project, just north of the Southern California Logistics Airport, CDFW is concerned that surveys were not performed to confirm presence. Therefore, CDFW recognizes the potential for Mohave ground squirrel at the start of construction and recommends pre-construction Mohave ground squirrel surveys and observations and requests the City adopt the following mitigation measures:

Biological Resources Mitigation Measure No. 5

Pre-construction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG 2010) or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.

Desert Tortoise (*Gopherus agassizii*)

Desert Tortoise is a state-threatened, proposed endangered species, as such CDFW is concerned that the ISMND lacks a mitigation measure for pre-construction desert tortoise surveys, because the Project site is within the desert tortoise range and contains suitable habitat for desert tortoise: creosote bush scrub. To address potential direct/indirect impacts to desert tortoise, CDFW recommends the inclusion of the following mitigation measure prior to the City adopting the ISMND:

Biological Resources Mitigation Measure No. 6

A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for

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desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.

Imperiled and Rare Plants

CDFW is concerned that an analysis was not completed to form a complete inventory of rare plants within the Project area and to identify the level of impacts on those species identified as potentially present and thus whether the Project's impacts have been adequately identified, disclosed, and mitigated.

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The ISMND should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

CDFW recommends that prior to adopting the ISMND, the City complete focused surveys following accepted protocol/methods and updates the ISMND to reflect the survey results and any changes in mitigation to address Project impacts. CDFW recommends the below measure be added to the ISMND to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. If species are documented on-site during surveys and avoidance is infeasible, to adequately offset impacts, CDFW recommends the City considers purchasing credits from a mitigation bank or acquiring and conserving in perpetuity lands with the target resources.

Biological Resources Mitigation Measure No. 7

Prior to Project implementation, and during the appropriate season, the City shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar

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with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys shall 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.

If any rare plants or sensitive vegetation communities are identified, the City shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.

If the Project has the potential to impact a State-listed species, the City should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.

Lake and Streambed Alteration (LSA)

Based on review of aerial photography from the California State Water Resources Control Board, at least two ephemeral drainage features, merging into one, traverse the central portion of the Project site. The California Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; <https://epims.wildlife.ca.gov>). Cannabis cultivators may learn more about cannabis cultivation permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>.

CDFW recommends MM No. 8 below, considering CDFW's role in cannabis permitting:

Biological Resources Mitigation Measure No. 8

Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under

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section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

Cannabis-Specific Impacts on Biological Resources

CDFW recommends that the City consider cannabis-specific impacts to biological resources that may result from the Project activities.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. (Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside.) Nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). Anticoagulant rodenticides and rodenticides that incorporate “flavorizers” that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020, the general use of second-generation anticoagulants is now banned in California.) Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to nontarget wildlife and result in prolonged/inhumane death. California Department of Pesticide Regulation stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For details, visit:

<https://www.cdpr.ca.gov/docs/cannabis/questions.htm>;
<https://www.cdpr.ca.gov/docs/county/cacltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

CDFW recommends that the City include a mitigation measure conditioning the Project to develop a plan to avoid, minimize, and mitigate the impacts of pesticides used in

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cannabis cultivation. CDFW recommends inclusion of the following mitigation measure focused on avoiding impacts to biological resources:

Biological Resources Mitigation Measure No. 9

Prior to construction and issuance of any grading permit, the City of Adelanto shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers." (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.

Artificial Light

Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in greenhouse structures and indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

The ISMND indicates that Project activities will involve glass or translucent plastic on building roofs and gables for greenhouses to allow natural daylight use. Because of the potential for artificial light to impact nocturnal wildlife species and migratory birds that fly at night, CDFW recommends the following mitigation measure:

Biological Resources Mitigation Measure No. 10

Light shall not be visible outside of any structure used for cannabis cultivation. This shall be accomplished by: employing blackout curtains where artificial light is used to prevent light escapement, eliminating all

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nonessential lighting from cannabis sites and avoiding or limiting the use of artificial light during the hours of dawn and dusk when many wildlife species are most active, ensuring that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>), and using LED lighting with a correlated color temperature of 3,000 Kelvins or less. All hazardous waste associated with lighting shall be disposed of properly and lighting that contains toxic compounds shall be recycled with a qualified recycler.

Noise

Construction and operation of cannabis facilities may result in a substantial amount of noise through road use, equipment, and other project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 decibels (Barber et al. 2009). (For reference, normal conversation is approximately 60 decibels, and natural ambient noise levels [e.g., forest habitat] are generally measured at less than 50 decibels.) Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Considering the above, CDFW recommends MM No. 11 below to restrict the use of equipment to hours least likely to disrupt wildlife and to suppress device noise.

Biological Resources Mitigation Measure No. 11

Project construction shall not occur during the hours of dawn and dusk when many wildlife species are most active. To suppress Project noise, the Project shall implement the use of mufflers and all generators shall be enclosed.

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

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Database (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 IS/MND to assist the City of Adelanto in identifying and mitigating Project impacts on biological resources. CDFW concludes that the IS/MND does not adequately identify or mitigate for the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that the ISMND include a more complete assessment of the Project's potential impacts on biological resources, as well as appropriate avoidance, minimization, and mitigation measures. CDFW recommends that the City adopt the recommended mitigation measures (Attachment 1) offered by CDFW prior to finalizing the ISMND to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for Boutique Purple Development Project and hopes our comments assist the City of Adelanto identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Senior Environmental Scientist (Specialist), at (909) 544-1177 or at Cindy.Castaneda@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

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ec: HCPB CEQA Program
Habitat Conservation Planning Branch
CEQAcommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Jessie Flores, City Manager, City of Adelanto
jflores@ci.adelanto.ca.us

REFERENCES

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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 measure.

Mitigation Measure	Implementation Schedule	Responsible Party
Biological Resources Mitigation Measure No. 1 If construction occurs during the non-nesting season (typically September 16 through December 31), a pre-	Prior to commencing ground- or vegetation-	Project Proponent

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<p>construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 300-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. If project activities are planned during bird nesting season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), a nesting bird survey shall be conducted by a qualified biologist no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist around each nest. The buffer shall be a minimum of 300 feet for raptors and 100 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. If there is no nesting activity, then no further action is need for this measure.</p>	<p>disturbing activities</p>	
<p>Biological Resources Mitigation Measure No. 2</p> <p>Prior to grading or any other ground-disturbing activity, a pre-construction burrowing owl clearance survey 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, by a qualified biologist within 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 burrowing owl or sign thereof 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If active burrows or sign thereof are found within the development footprint during the pre-construction clearance survey, Mitigation Measure BIO-3 shall apply.</p>		
<p>Biological Resources Mitigation Measure No. 3</p> <p>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 appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls.</p> <p>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.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Biological Resources Mitigation Measure No. 4</p> <p>The project Applicant will be required to obtain a California Endangered Species Act (CESA) Incidental Take Permit (ITP) from the State of California Department of Fish and Wildlife (CDFW) related to the removal, replanting or any development activity that may affect the Joshua Trees located on-site.</p> <p>During candidacy of the western Joshua tree, all western Joshua trees and parts thereof shall be buffered for avoidance. A qualified biologist shall establish a 290-foot buffer around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the buffer. Should avoidance be infeasible (during candidacy or if the species is listed under CESA), CDFW recommends the Project Proponent apply for an Incidental Take Permit from CDFW prior to initiating Project activities.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 5</p> <p>Pre-construction surveys following the <i>Mohave Ground Squirrel Survey Guidelines</i> (CDFG 2010) or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 6</p> <p>A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities during desert tortoise active season</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>(April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p>		
<p>Biological Resources Mitigation Measure No. 7</p> <p>Prior to Project implementation, and during the appropriate season, the City shall conduct botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>the taxonomic level necessary to determine rarity and listing status.</p> <p>If any rare plants or sensitive vegetation communities are identified, the City shall either avoid the occurrence, with an appropriate buffer, or mitigate the loss of the occurrence through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far away from the Project site (i.e., within a separate watershed) or is not occupied by or available to special status species.</p> <p>If the Project has the potential to impact a State-listed species, the City should apply for a California Endangered Species Act Incidental Take Permit with the California Department of Fish and Wildlife.</p>		
<p>Biological Resources Mitigation Measure No. 8</p> <p>Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 9</p> <p>Prior to construction and issuance of any grading permit, the City of Adelanto shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2)</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with “flavorizers.” (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.</p>		
<p>Biological Resources Mitigation Measure No. 10</p> <p>Light shall not be visible outside of any structure used for cannabis cultivation. This shall be accomplished by: employing blackout curtains where artificial light is used to prevent light escapement, eliminating all nonessential lighting from cannabis sites and avoiding or limiting the use of artificial light during the hours of dawn and dusk when many wildlife species are most active, ensuring that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/), and using LED lighting with a correlated color temperature of 3,000 Kelvins or less. All hazardous waste associated with lighting shall be disposed of properly and lighting that contains toxic compounds shall be recycled with a qualified recycler.</p>	<p>During Project Activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 11</p> <p>Project construction shall not occur during the hours of dawn and dusk when many wildlife species are most active. To suppress Project noise, the Project shall implement the use of mufflers and all generators shall be enclosed.</p>	<p>During Project Activities</p>	<p>Project Proponent</p>