



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Jun 28 2022**

June 28, 2022  
Sent via email

**STATE CLEARINGHOUSE**

Louis Morales, Project Planner  
City of Adelanto Community Development Department, Planning Division  
11600 Air Expressway  
San Bernardino, CA 92301

Subject: Initial Study and Mitigated Negative Declaration  
Hatter Holding  
State Clearinghouse No. 2022060347

Dear Mr. Morales:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the City of Adelanto (City) for the Hatter Holding Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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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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 Bernardino County, California; Latitude, 34.570822 N and Longitude -117.446306 W. The proposed Project site is located to the southeast of the intersection of Panther Avenue and Air Expressway. The Project proposes development of 2.74 acres for cannabis cultivation on Assessor’s Parcel Number (APN) 0459-432-23-0000. The proposed Project involves the construction of three two-story buildings that would be used for cannabis cultivation, distribution, and manufacturing. The total floor area of the buildings will be 73,125 square-feet and each building will be 24,375 square feet. In addition, a total of 69 parking spaces are proposed.

**Timeframe:** The construction of the proposed Project is anticipated to commence in January 2023 and will take approximately nine months to complete.

## **COMMENTS AND RECOMMENDATIONS**

CDFW appreciates that the City has adopted Biological (BIO) Resources Mitigation Measures (MM) previously recommended by CDFW for previous projects in the City of Adelanto (e.g., Boutique Purple Development). CDFW offers minor updates to the mitigation measures presented below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program), along with comments and recommendations to assist the City in adequately mitigating the Project’s potentially significant impacts on desert tortoise, western Joshua tree (WJT), Fish and Game Code section 1602 resources, and nesting birds.

### **Assessment of Biological Resources**

#### Nesting Birds

CDFW appreciates the incorporation of MM BIO-1: Nesting Bird Pre-Construction Survey and offers the following revisions (edits are in ~~strikethrough~~ and **bold**)

Biological Resources Mitigation Measure No. 1

**All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds.** If construction occurs during the non-nesting season (typically

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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 **cannot begin outside of the 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 within 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. **Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts.** If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist **to be marked on the ground** 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. **Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.** If there is no nesting activity, then no further action is need for this measure.

#### Western Joshua Tree (*Yucca brevifolia*)

The MND recognizes the presence of WJT on the Project site. Although CDFW appreciates that the MND considers a CESA Incidental Take Permit (ITP) for the removal of WJT, CDFW is concerned that no focused surveys were conducted to quantify WJT present on the Project site. Based on aerial imagery, CDFW has determined that the Project has at least ten WJT on site. Thus, CDFW recommends that prior to finalizing the MND:

- (1) The City prepare and circulates the results of the a comprehensive WJT survey and include results in the final MND. The comprehensive WJT survey should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project area; b) the age class of each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site.
- (2) The City include a proper impact analysis assessing potential impacts within a 186-foot buffer zone and implementing a 300-foot buffer to avoid impacts to WJT as well as

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a mitigation strategy for impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location.

Further, CDFW offers the following minor revisions to MM BIO-4 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 4.

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 **result in take of** affect the Joshua Trees located on-site. **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”.**

**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 300-foot buffer** around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the 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.

Desert Tortoise (*Gopherus agassizii*)

CDFW appreciates that a habitat assessment for desert tortoise was conducted during the desert tortoise active season. The habitat assessment determined that the Project site does not support any desert tortoise. As a state-threatened, proposed endangered species under CESA, CDFW appreciates the inclusion of MM BIO-6, which requires a pre-construction desert tortoise survey. Since the ISMND adopted a mitigation measure previously recommended by CDFW for desert tortoise, CDFW offers the following minor updates to MM BIO-6 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 6.

**Prior to construction**, A 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 **and after any pause in Project activities lasting 30 days or more** 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 desert tortoise and their sign. Results of the survey shall be submitted to CDFW. If the survey confirms absence, the CDFW approved biologist shall

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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 (**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”**) 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.

#### Lake and Streambed Alteration Notification

Page 142 of the ISMND’s Biological Resources Assessment (BRA) states that a potential channel was observed that runs through the middle of the property from south to north, but page 147 of the BRA states that potential drainage channels were not observed within the Project site. Thus, CDFW recommends that the City follow through with proposed MM BIO-8 (below), so that potential Project impacts to Fish and Game Code section 1602 may be assessed by CDFW.

#### 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 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.

#### **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 found at the following link: [Submitting Data to the CNDDDB \(ca.gov\)](https://www.wildlife.ca.gov/submitting-data). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](https://www.wildlife.ca.gov/cnddb).

#### **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

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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

Along with all other biological mitigation measures in the ISMND's MMRP, CDFW requests that the City include in the final MND revised MM BIO-1, MM BIO-4, and MM BIO-6 (Attachment 1) offered herein by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources. CDFW appreciates the opportunity to comment on the ISMND for the City of Adelanto Hatter Holding Project (SCH No. 2022060347) and hopes our comments will assist the City in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Lydia Rodriguez, Senior Environmental Scientist (Specialist) at [Lydia.Rodriguez@wildlife.ca.gov](mailto:Lydia.Rodriguez@wildlife.ca.gov).

## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov).

## REFERENCES

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).  
USFWS Desert Tortoise Recovery Office. Reno, NV.

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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.

<b>Biological Resources Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p><b>Biological Resources Mitigation Measure No. 1</b></p> <p>All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors and February 1 through September 1 for passerine birds. 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 cannot begin outside of 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 within 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present, a no disturbance buffer zone shall be established by the qualified biologist to be marked on the ground 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. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is need for this measure.</p>		
<p><b>Biological Resources Mitigation Measure No. 4.</b></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 activity that may result in take of Joshua Trees located on-site. 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”.</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 300-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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



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<p>species is listed under CESA), CDFW recommends that the Project Proponent apply for an Incidental Take Permit from CDFW prior to initiating Project activities.</p>		
<p><b>Biological Resources Mitigation Measure No. 6.</b></p> <p>Prior to construction, 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 and after any pause in Project activities lasting 30 days or more 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 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 (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”) 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>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>