



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Aug 29 2022

STATE CLEARINGHOUSE

August 26, 2022
Sent via email

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

Subject: Initial Study and Mitigated Negative Declaration
Violet & Aster Road, CUP 21-17 & LDP 21-15
State Clearinghouse No. 2022080150

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 Violet & Aster Road, CUP 21-17 & LDP 21-15 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed

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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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, 34.56073 N and Longitude -117.43536 W. The Project site is located on the southeast corner of Violet Road and Aster Road. The Project includes development of 2.44 acres for cannabis cultivation on Assessor’s Parcel Number (APN) 0459-108-09-0000. The Project involves the construction of two buildings that will be used for cannabis cultivation, distribution, and manufacturing. The total floor area of the buildings will be 20,000 square-feet and each building will be 10,000 square feet. In addition, a total of 22 parking spaces, 4 loading spaces, and 63,300 square feet of landscaping are proposed.

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

COMMENTS AND RECOMMENDATIONS

The ISMND recognizes the potential for burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*) and nesting birds to occur within the Project area. The ISMND also recognizes the presence of western Joshua tree (*Yucca brevifolia*) on the Project site, a Candidate species for listing as Threatened pursuant the California Endangered Species Act (CESA). In addition, a review of CNDDB and BIOS, indicates that Beaver Dam breadroot (*Pediomelum castoreum*) occurs within 80 meters of the Project site. Plants such as Beaver Dam breadroot with California Rare Plant Rank 1B indicate plants that are rare, threatened, or endangered in California and elsewhere.

Although the ISMND indicates that a biological assessment was conducted on November 22, 2021, by RCA Associates Inc., no details of the scope and methods of the biological assessment are given in the ISMND, and the biological assessment report has not been made available with the ISMND. Absent these details, and supporting documentation, CDFW is concerned that: 1) the impact 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, 2) whether the Project’s impacts (i.e., direct, indirect, and cumulative) to biological resources have been adequately identified, disclosed, and mitigated, and 3) whether 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

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biological resources and requests that the City adopt the below mitigation measures (also see Attachment 1) prior to finalizing the ISMND.

Assessment of Biological Resources

Pre-construction Surveys and Sweeps

CDFW appreciates the incorporation of biological resources (BIO) mitigation measure (MM) MM BIO-1 which considers pre-construction surveys for nesting birds and special-status species, such as desert tortoise and burrowing owl. CDFW offers the below revisions to MM BIO-1 (edits are in ~~strikethrough~~ and **bold**) and recommends the inclusion of MM BIO-3 which considers pre-construction sweeps and MM BIO-4 which considers pre-construction surveys for nesting birds.

Biological Resources Mitigation Measure No. 1

A qualified biologist shall conduct Ppre-construction surveys **within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as** ~~for~~ burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and **Game** ~~Wildlife~~ Code. ~~shall be conducted prior to the commencement of project related ground disturbance.~~ **The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas.** Appropriate survey methods and timeframes shall be established, **as outlined in MM BIO-3 and MM-BIO-4 below** to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise **or Mohave ground squirrel**, are **detected** ~~encountered~~, **and avoidance is infeasible, proper authorization (i.e., incidental take permitting)** from the USFWS and CDFW ~~must~~ **shall** be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.

Western Joshua Tree (*Yucca brevifolia*)

The MND recognizes the presence of western Joshua tree (WJT) on the Project site. Although CDFW appreciates that the MND considers a Protected Plant Plan, CDFW is concerned that no focused surveys were conducted to quantify or determine the age classifications of WJT present on the Project site. Based on aerial imagery, CDFW has determined that the Project has at least ten WJT on site.

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CDFW recommends that prior to finalizing the ISMND, the City include an 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 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. CDFW offers the following revisions to MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure No. 2.

Prior to obtaining a grading permit and any Project activities starting, including site clearing, grubbing, grading, etc., if any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (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”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.

To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.

Additionally, if the Project has the potential to result in take of WJT, A a Protected Plant Plan shall be developed and shall identify methods, locations, and criteria for transplanting those Joshua trees that would be removed during Project construction. As required by the San Bernardino County Development Code, Joshua trees proposed for removal shall be transplanted or stockpiled for future transplanting, **as feasible ~~wherever possible~~ once an **and only after an** ITP has been granted by the CDFW. **It is worth noting that CDFW does not consider translocation to be appropriate mitigation for impacts to WJT.****

Biological Resources Mitigation Measure No. 3

A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project

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areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any known nesting bird(s) and/or special-status species and shall verify that no addition/new nesting bird(s) and/or special-status species have occupied the Project areas or adjacent habitats. If any additional/new nesting bird(s) and/or special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, Permittee shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.

Nesting Birds

Biological Resources Mitigation Measure No. 4

During nesting bird season, a preconstruction survey for active bird nests shall be conducted onsite and within 500 feet of the Project site by a qualified biologist no more than three (3) calendar days prior to initiating all Project activities. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment.

If an active nest is detected, a 'no-disturbance buffer' shall be established around occupied nests to prevent nest destruction and disruption of breeding or rearing behavior. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. 'No-disturbance buffers' shall be maintained until the end of the breeding season or until a qualified biologist has determined that the nestlings have fledged. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.

Special Status Plants

CDFW is concerned that surveys conducted on November 22, 2021, were not appropriately timed to identify, and detect rare plants like Beaver Dam breadroot (*Pediomelum castoreum*) as surveys were not focused and were conducted at a time of year when plants are often hard to identify. CDFW therefore recommends a thorough, floristic-based assessment of special status plants at the appropriate time(s) of year, using the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW 2018 or most recent version),

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before the City of Adelanto adopts the MND. CDFW recommends including the following mitigation measure:

Biological Resources Mitigation Measure No. 5.

Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

The Project includes 63,000 square feet of landscaping around the perimeter of the property. Because California has entered another period of extended drought, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: [Around the Yard \(saveourwater.com\)](https://www.saveourwater.com).

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/CNDDDB). 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: [CNDDDB - Plants and Animals \(ca.gov\)](https://www.wildlife.ca.gov/CNDDDB-Plants-and-Animals).

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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 requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered 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 Violet and Aster Road (SCH No.2022080150) 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.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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

REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and

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Sensitive Natural Communities. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p>Biological Resources Mitigation Measure No. 1.</p> <p>A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as fox burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Game Code. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.</p>		
<p>Biological Resources Mitigation Measure No. 2.</p> <p>Prior to obtaining a grading permit and any Project activities starting, including site clearing, grubbing, grading, etc., if any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (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”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.</p> <p>To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the securing of sufficient funds to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Additionally, if the Project has the potential to result in take of WJT, a Protected Plant Plan shall be developed and shall identify methods, locations, and criteria for transplanting those Joshua trees that would be removed during Project construction. As required by the San Bernardino County Development Code, Joshua trees proposed for removal shall be transplanted or stockpiled for future transplanting, as feasible once and only after an ITP has been granted by the CDFW. It is worth noting that CDFW does not consider translocation to be appropriate mitigation for impacts to WJT.</p>		
<p>Biological Resources Mitigation Measure No. 3.</p> <p>A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any known nesting bird(s) and/or special-status species and shall verify that no addition/new nesting bird(s) and/or special-status species have occupied the Project areas or adjacent habitats. If any additional/new nesting bird(s) and/or special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, Permittee shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 4.</p> <p>During nesting bird season, a preconstruction survey for active bird nests shall be conducted onsite and within 500 feet of the Project site by a qualified biologist no more than three (3) calendar days prior to initiating all Project activities. Surveys shall include any potential habitat (including trees, shrubs, the</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment.</p> <p>If an active nest is detected, a 'no-disturbance buffer' shall be established around occupied nests to prevent nest destruction and disruption of breeding or rearing behavior. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. 'No-disturbance buffers' shall be maintained until the end of the breeding season or until a qualified biologist has determined that the nestlings have fledged. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.</p>		
<p>Biological Resources Mitigation Measure No. 5.</p> <p>Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>