



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



October 14, 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 22-10 & LDP 22-07
State Clearinghouse No. 2022090447

Dear Mr. Morales:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Adelanto (City) for the Violet & Aster Road, CUP 22-10 & LDP 22-07 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, 34.562122 N and Longitude -117.437216 W. The Project site is located on the northwest corner of Violet Road and Aster Road. The Project includes development of 21.86 acres for cannabis cultivation on Assessor’s Parcel Number (APN) 0459-441-38-0000. The Project involves the construction of nineteen buildings that will be used for cannabis cultivation, distribution, and manufacturing. The total floor area of the buildings will be 324,220 square-feet and the individual buildings would range in size from 10,000 square feet to 34,620 square feet. The project also includes a total of 364 parking spaces, 33 loading spaces, 314,360 square feet of landscaping and a stormwater detention basin.

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

COMMENTS AND RECOMMENDATIONS

On June 3, 2022, CDFW staff visited the Project site at APN 0459-441-38-0000 (Property) in the City of Adelanto. During the visit, staff observed mass grading in close proximity to an ephemeral stream, and activities that are in violation of Fish and Game Code section 2080 for the unauthorized take of four western Joshua trees (WTJ) on site. Although the Notice of Violation specifically states that all grading and construction should stop, CDFW staff observed additional grading activities on September 29, 2022. CDFW appreciates that the Project proponent has provided CDFW the IS/MND. As stated in the Notice of Violation, an ITP requires compliance with CEQA, prior to the execution of an ITP.

The Hydrology and Water Quality section of the IS/MND states that “there are no stream channels or natural drainages that occupy the property” and as a result, the potential impacts will be less than significant. CDFW disagrees with this statement, CDFW staff observed an ephemeral stream on site which is located immediately adjacent to the observed grading (Figure 1). On October 3, 2022, CDWF staff met with Alan Brown, a Project consultant. Alan stated that the stream on site would be avoided and requested impacts be excluded. If the Project cannot avoid impacts to the stream, CDFW strongly recommends that the City of Adelanto obtain a Lake and Streambed Alteration Agreement to mitigate for impacts to Fish and Game Code Section 1602 resources. 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

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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>. In addition, CDFW recommends that the IS/MND address the city-wide master drainage plan and analyze how this project will affect multiple, on-going projects in the City of Adelanto. A comprehensive drainage plan is needed to integrate drainages across the city and account for cumulative impacts. Thus, CDFW recommends that the IS/MND include an analysis of impacts of the Project on local biological resources as well as hydrological resources. The IS/MND should also include an analysis of cumulative impacts (e.g., groundwater overdraft, loss of habitat, etc.) from the increasing concentration of cannabis-related projects in the City of Adelanto and the surrounding area.

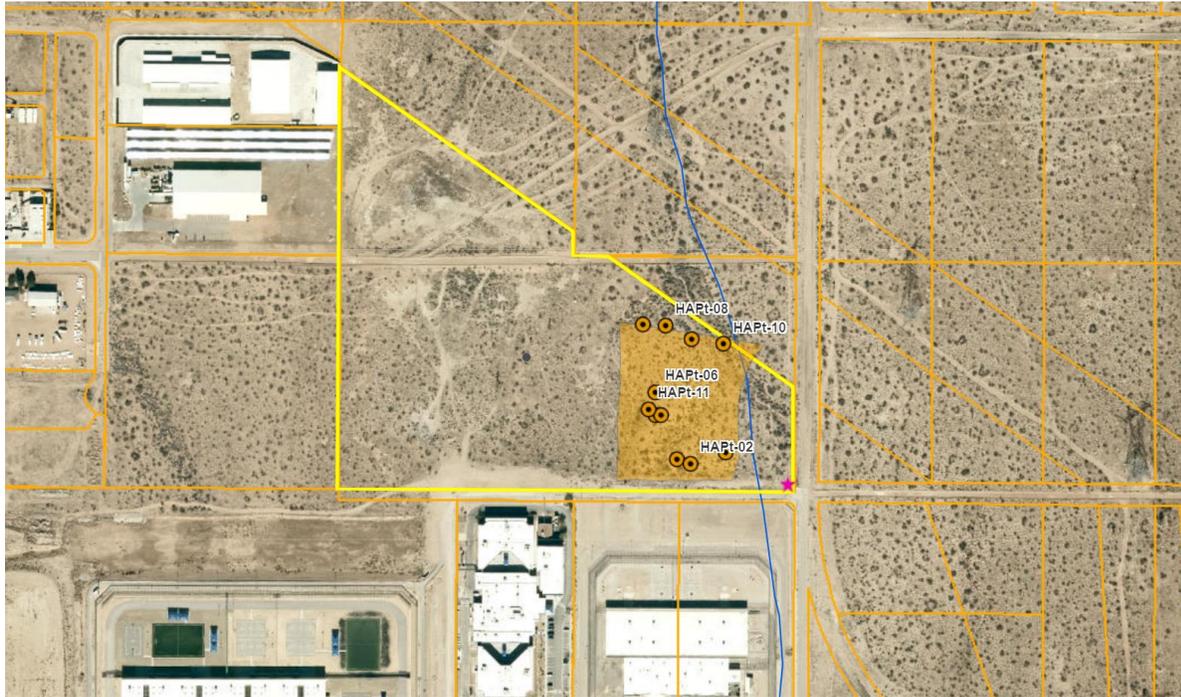


Figure 1- Map depicting the property boundaries of APN 0459-441-38-0000, habitat alteration points and mapped National Hydrography Dataset stream documented during the June 3, 2022, site visit.

The IS/MND recognizes the potential for desert tortoise (*Gopherus agassizii*), Mohave ground squirrel (*Xerospermophilus mohavensis*), burrowing owl (*Athene cunicularia*), and nesting birds to occur within the Project area. The IS/MND also recognizes the presence of western Joshua tree (*Yucca brevifolia*) on the Project site, a Candidate species under the California Endangered Species Act (CESA). Although the IS/MND indicates that a biological assessment was conducted on November 22, 2021, by RCA Associates Inc., details of the scope and methodology of the biological assessment are

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absent in the IS/MND, and the biological assessment report has not been made available to CDFW. 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 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 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 burrowing owl, desert tortoise, Mohave ground squirrel, western Joshua tree (WJT), nesting birds and other Fish and Game Code section 1602 resources.

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

Regardless of the time of year, ~~If construction occurs during the non-nesting season (typically September 16 through December 31),~~ a pre-construction sweep survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity ~~sweep~~ survey within the Project areas (including access routes) and a ~~300-~~ **500**-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 ~~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~~ **500** feet for raptors and ~~400~~ **300** 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

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areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. **Active nest(s) and an established buffer distance(s) 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 needed for this measure.

Western Joshua Tree (*Yucca brevifolia*)

The IS/MND recognizes the presence of WJT on the Project site. Although CDFW appreciates that the IS/MND considers a CESA Incidental Take Permit (ITP) for the removal of additional WJT, CDFW is concerned that focused surveys were not conducted to quantify WJT present on the Project site. CDFW has determined that the Project has at least 30 WJT on site, including the 4 WJT addressed in the Notice of Violation.

CDFW recommends that prior to finalizing the IS/MND, the City include an impact analysis assessing potential impacts to WJT within a 186-foot buffer zone, 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 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 western** 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. For full avoidance of WJT a 300-foot buffer around each western Joshua tree parent, seedling, and sprout shall be established. Project activities may not occur within the buffer. ~~around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the buffer.~~ Should full avoidance be infeasible (during candidacy or if the species is listed under CESA), CDFW recommends that the Project Proponent obtain an Incidental Take Permit from CDFW prior to initiating Project activities.

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Desert Tortoise (*Gopherus agassizii*)

CDFW appreciates that a habitat assessment for desert tortoise was conducted on November 21, 2021. The habitat assessment determined that the Project site does not support desert tortoise. It is worth noting that the habitat assessment was completed outside of the desert tortoise active season (active season is typically April to May or September to October) when desert tortoise is unlikely to be detected. As a state-threatened, proposed endangered species, CDFW appreciates the inclusion of MM BIO-6, which requires a pre-construction desert tortoise survey. Since the IS/MND adopted a mitigation measure previously recommended by CDFW for desert tortoise, CDFW offers the following minor revisions to MM BIO-3 (edits are in ~~strike~~ 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 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.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

The Project includes 314,360 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).

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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 \(ca.gov\)](#). 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 \(ca.gov\)](#).

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 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.2022090447) 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

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Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
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.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p>Biological Resources Mitigation Measure No. 1.</p> <p>Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, 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 500 feet for raptors and 300 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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>can survive independently from the nests. Active nest(s) and an established buffer distance(s) 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 needed for this measure.</p>		
<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 activity that may result in take of western 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. For full avoidance of WJT a 300-foot buffer around each western Joshua tree parent, seedling, and sprout shall be established. Project activities may not occur within the buffer. Should full avoidance be infeasible (during candidacy or if the species is listed under CESA), CDFW recommends that the Project Proponent obtain 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.6.</p> <p>Prior to construction, a CDFW-approved biologist shall conduct a protocol level presence or absence survey</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent</p>

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<p>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>disturbing activities</p>	
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