



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



January 10, 2023  
Sent via email

James Hirsch, Contract Planner  
City of Adelanto  
Community Development Department, Planning Division  
11600 Air Expressway  
Adelanto, CA 92301

Subject: Initial Study and Mitigated Negative Declaration  
Tentative Tract Map No. 20486  
State Clearinghouse No. 2022120476

Dear Mr. Hirsch:

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 Tentative Tract Map (TTM) 20486 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> For the purposes of this comment letter, "Applicant" will refer to Higher Ambition Holdings, LLC, or subsequent project proponents that tier from this IS/MND.

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

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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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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 Bernardino County, California; Latitude, 34.53617 N and Longitude -117.43364 W. The Project site is a vacant lot occupied by desert scrub habitat located east of Aster Road and north of Cactus Road on Assessor's Parcel Numbers (APN): 3128-421-01 and 3128-421-05. The Project will subdivide approximately 40 acres into 166 single-family residential lots with a minimum lot size of 5,000 square feet. Four drainage basins will also be constructed for flood control and runoff retention.

Timeframe: Construction of the Project is anticipated to begin in 2023 and last approximately 31 months.

### **COMMENTS AND RECOMMENDATIONS**

On December 21, 2022, CDFW staff viewed the Project site at APN 3128-421-01 and APN 3128-421-05 from Cactus Road. Staff observed stockpiling of soil on the Project site along Cactus Road up to Daisy Road. Particularly, mounds of soil were observed abutting a western Joshua tree (WJT) located on the southern section of the Project site, which may result in adverse impacts to the root system and seedbank. CDFW is concerned that the Project began before CDFW had the opportunity to comment on the Project and in the absence of necessary permits with CDFW. **CDFW recommends that ground disturbing activities on the Project site cease immediately until the City considers our recommendations below and obtains all necessary CDFW permits**, including but not limited to a CESA Incidental Take Permit (ITP) for WJT. Please see Assessment of Biological Resources section below for other applicable CDFW permits.

CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

### **Assessment of Biological Resources**

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

As a candidate species under CESA, CDFW appreciates that focused surveys were conducted to quantify WJT present on the Project site. According to the Biological Resource Assessment (BRA) there are 158 WJT within the 40-acre Project site. An

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additional 36 WJT are also identified within a 300-foot (ft) buffer from the Project site. Several WJT in the 300-ft buffer are located along dirt roads where paving will occur, as depicted on the IS/MND's Proposed Improvement Plans. CDFW estimates that up to 194 WJT may be impacted by Project activities resulting in a permanent loss of at least 40 acres of WJT habitat. The Project has the potential for take of WJT individuals, and associated seedbank through the removal of individuals and roots; clearing vegetation; general operation of vehicles and heavy equipment; grading; staging equipment and stockpiling. Incidental take of individuals of WJT in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

CDFW appreciates that the IS/MND acknowledges potential indirect impacts to WJT including: impacts to WJT's obligate pollinating moth (*Tegeticula syntheticca*) which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019); the disruption of the seed dispersal behavior of rodents, the primary way that WJT seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012); and the elimination of nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000). CDFW also appreciates that the IS/MND includes an impact analysis assessing potential impacts to WJT using a 300-foot buffer from the Project site, but the impact analysis was a visually estimate and an impact analysis using a 186-foot buffer (Vander Wall et al. 2006) from each WJT is also necessary to determine impacts to the seedbank. CDFW recommends that a desktop impact analysis be conducted implementing a 186-foot and a 300-foot buffer to determine impacts to WJT individuals and WJT seedbank.

Protection Status. WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill".

Analysis and Disclosure. CDFW is currently reviewing and providing comments for five projects in the City of Adelanto. All but one has WJT onsite. The IS/MND should have analyzed the cumulative impacts due to current, future, and foreseeable projects in the City of Adelanto. Thus, in the final MND, the City should consider current, planned, and future projects when analyzing Project impacts.

Avoidance. Avoidance of WJT is not feasible and translocation of WJT is proposed in the IS/MND. Please note that CDFW generally does not support the use of salvaging, translocation, or transplantation as a mitigation strategy for unavoidable impacts to WJT. As such, CDFW encourages the City to obtain a CESA Incidental Take Permit (ITP) for WJT to fully mitigate for impacts to WJT, as proposed by the City in biological (BIO) mitigation measure (MM)-1 below. If the Project Applicant is unable to avoid impacts to WJT within the 300-ft buffer, the Project Applicant should also obtain take

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authorization for those WJT. Please visit CDFW's [Incidental Take Permits \(ca.gov\)](https://www.cdfw.ca.gov/) webpage for more information regarding ITPs.

Mitigation. CDFW appreciates the inclusion of MM BIO-1 "Western Joshua Tree Incidental Take Permit" in the IS/MND and supports the adoption of MM BIO-1 in the final MND, as per below to mitigate impacts to WJT (edits are in ~~strikethrough~~):

#### Mitigation Measure BIO-1

Western Joshua Tree Incidental Take Permit. If any western Joshua trees (WJT) are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) ~~under CDFW~~ under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or 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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through either the purchase of conservation or mitigation bank credits or the establishment of a conservation easement, the development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.

#### **Burrowing Owl (*Athene cunicularia*)**

As documented in the BRA, the Project site supports suitable habitat for the burrowing owl; however, no focused surveys were conducted to determine presence/absence of burrowing owl. Burrowing owl surveys should be conducted whenever burrowing owl habitat or sign is encountered on or adjacent to (within 150 meters) a project site and follow protocols set forth in CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012).

Project construction may result in injury or mortality of burrowing owls, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may result in the permanent loss of 40 acres of breeding, wintering, and foraging habitat for burrowing owl. CDFW recommends that the City review and follow requirements for burrowing owl as outlined in the 2012 Staff Report to ensure the Project meets burrowing owl survey requirements and to avoid impacts to burrowing owl and burrowing owl foraging, breeding, and nesting habitat.

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Protection Status. Burrowing owl is a CDFW species of special concern (SSC). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Burrowing owl is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill”.

Avoidance. Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. While overwintering burrowing owl may be less likely to be detected as they overwinter underground in burrows. In areas where burrowing owl may be present, ground disturbing should be avoided. If burrowing owl are found within the Project area during pre-construction surveys (see MM BIO-2 below) or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation shall be implemented as per proposed MM BIO-3 below.

Mitigation. In areas where burrowing owl may be present, CDFW recommends that the City follow the recommendations and guidelines provided in the [Staff Report on Burrowing Owl Mitigation](#) (2012 Staff Report: CDFW 2012c). The 2012 Staff Report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. Impact assessments should evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance by the Project. If impacts to burrowing owl or their associated habitat are to occur, the Project should be conditioned such that the Applicant protects or creates habitat appropriate for burrowing owl. Habitat should be secured or created based on site-specific analysis and consider the wide variation of natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area. Mitigation for permanent impacts to nesting, occupied, and satellite burrows and burrowing owl habitat should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. If mitigation occurs offsite, it should include (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) be sufficiently large acreage with the presence of fossorial mammals. Suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range wide. Therefore, CDFW supports the inclusion of MM BIO-2 and MM BIO-3 with minor revisions (edits are in ~~strikethrough~~ and **bold**), in the final MND, as per below to avoid impacts to burrowing owl:

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#### Mitigation Measure BIO-2

Burrowing Owl Pre-Construction Survey. Prior to any ground disturbance, pre-construction surveys for Burrowing Owls on the project site and in the surrounding area in accordance with the *Staff Report on Burrowing Owl Mitigation*, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, shall be conducted no more than 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 suitable burrowing owl or sign thereof 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, **Project activities shall not commence, and** Mitigation Measure BIO-3 shall apply.

#### Mitigation Measure BIO-3

Burrowing Owl Avoidance/Relocation. 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. 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.

#### **Mohave Ground Squirrel (*Xerospermophilus mohavensis*)**

The BRA states that "the habitat is not prime Mohave ground squirrel habitat and is very unlikely to support populations of the species". CDFW disagrees with this statement, especially when presence/absence of MGS was not determined through focused surveys and "occupiable burrows" are present. The Mohave ground squirrel (MGS) is

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listed as threatened by the State of California and the Project site is within the range of MGS. According to a search of the California Natural Diversity Database (CNDDDB), Mohave ground squirrels (MGS) have occurrences within 1 mile of the Project vicinity. Take of MGS could result from Project construction and activities including equipment staging; mobilization; grading; ground disturbance; vegetation clearing; and trampling or crushing of MGS-occupied burrows from construction equipment, vehicles, and foot traffic. Indirect impacts to MGS could result from habitat fragmentation, which is the leading cause for MGS's decline (Gustafson 1993).

Protection Status. MGS is listed as threatened under CESA (§670.5(b)(6)(A), T14, CCR).

Avoidance. The IS/MND is conditioned to avoid impacts to MGS through pre-construction surveys (see MM BIO-4 below). In areas where MGS may be present and cannot be avoided, the Applicant should obtain an ITP as noted in MM-BIO4.

Mitigation. CDFW recommends that the Applicant follow the recommendations and guidelines provided in the [Mohave Ground Squirrel Survey Guidelines](#) (CDFG 2010) or most recent version to avoid impacts to MGS. Since the Project is within the range of MGS and the Project site supports suitable habitat for MGS, CDFW recommends that the City move forward with proposed MM BIO-4 below (edits are in ~~strikethrough~~ and **bold**) to avoid and/or mitigate impacts to MGS:

Mitigation Measure BIO-4

Mojave Ground Squirrel Pre-Construction Survey. Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or the most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by **the California Department of Fish and Wildlife (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 **Incidental Take Permit (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 preconstruction 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 **Project Proponent shall consult with CDFW on next steps, including obtaining an ITP** ~~observation shall be immediately reported to CDFW.~~

### **Loss of Bird Nesting and/or Foraging Habitat**

Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of desert scrub vegetation onsite. The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses.

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Protection Status. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Avoidance. The final MND should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The final MND should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site.

Mitigation. CDFW supports the inclusion of MM BIO-9 “Nesting Bird Pre-Construction Survey” with minor edits (edits are in **bold**) in the final MND, as per below to avoid impacts to nesting birds:

#### Mitigation Measure BIO-9

Nesting Bird Pre-Construction Survey. Regardless of the time of year, 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 500- foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, 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.

The survey shall be conducted by a qualified biologist. 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 nesting bird activity is present **within the work area or the Project’s zone of influence (generally 100- 300 feet)**, a no-disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction or abandonment. If nesting bird activity is present, a no-disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. 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 can survive independently from the nests, as confirmed by a qualified biologist. 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. If there is no nesting

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activity, then no further action is needed for this measure. **If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.**

### **Lake and Streambed Alteration**

CDFW has authority over activities in rivers, streams and lakes that will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish and Game Code section 1602). For any such activities, the Project Applicant should provide written notification of Lake and Streambed Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602.

The BRA reports the presence of a channel onsite. As confirmed by CDFW through aerial imagery, a channel transects the Project site entering from the southern boundary and runs north before it runs off-site at the northwestern corner of Aster Road. However, no jurisdictional delineation was conducted so CDFW is unclear of the extent or number of channels that may be impacted as well as the riparian habitat that may exist.

CDFW is unclear on the plans for the reported channel. The IS/MND's Hydrology Report states that the development of the site will not change Project area drainage patterns, but the Hydrology Report does not state whether the channel will be left in its natural condition along with any associated riparian vegetation or if the channel will be modified. Based on the IS/MND's Site Plans: Pre and Post Conditions (Appendix A), the Project will also construct retention basins for flood control. Considering the scope of the Project as depicted on Appendix A, the Project is likely to substantially affect the existing stream patterns and geomorphologic processes onsite through containment and diversion of the channel, alteration of the streambank and/or streambed, and elimination of any riparian habitat present. CDFW recommends that impacts to the channel and any associated riparian habitat, which are subject to Fish and Game Code section 1602 be authorized through a Lake and Streambed Alteration Agreement (see MM BIO-10 below).

Avoidance. It is unlikely that impacts to Fish and Game Code section 1602 resources may be avoided and CDFW appreciates that the City proposed MM BIO-10 to permit impacts through a Lake and Streambed Alteration Agreement.

Mitigation. CDFW recommends that the City revise MM BIO-10 as per below (edits are in ~~strikethrough~~ and **bold**) to help address any substantial impacts to Fish and Game Code section 1602 resources:

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### Mitigation Measure BIO-10

Compensatory Mitigation for Jurisdictional Waters. Prior to the issuance of a grading permit or any earth disturbing activities within the jurisdictional waters **and Fish and Game Code section 1602 resources** identified as ~~Lot D on Tentative Tract Map No. 20486~~, the Project Proponent shall obtain any required regulatory permits required by California Department of Fish & Wildlife (CDFW) (**i.e., Lake and Streambed Alteration Agreement**), US Army Corps and a Section 401 Water Quality Certification from the RWQCB for temporary and/or permanent impacts to the jurisdictional area **and Fish and Game Code section 1602 resources** that are regulated by the USACE, CDFW, and the RWQCB. Impacts shall be mitigated **to off-set impacts** achieve a “no net loss”, or as modified **as determined** by the regulatory agencies through the permitting process, **including a Lake and Streambed Alteration Agreement.**

### Impacts to Sensitive Plant Species

CDFW is concerned the Project may affect sensitive plant species with the potential to occur onsite, such as sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) considering no floristic surveys were performed. Sagebrush loeflingia has a state rare plant ranking of 2B.2 thereby indicating it is rare, threatened, or endangered in California. Grading, vegetation removal, and other ground disturbances are likely to result in direct mortality of sensitive plants.

Protection Status. Take of any CESA-listed plant species (i.e., WJT) that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B (i.e., sagebrush loeflingia) generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 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 \(MCV\) | California Native Plant Society \(cnps.org\)](#) (CNPS 2022).

Avoidance. The final MND should include measures to fully avoid and otherwise protect special status, sensitive, and rare plant species, and plant communities from Project-related direct and indirect impacts. The Project should discuss how the Project has been designed to avoid impacts to special status plant species so that CDFW may assess whether impacts have been lowered to less than significant. 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) before the City adopts the MND.

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Mitigation. To avoid impacts to sensitive plant species, CDFW recommends MM BIO-11 below. As indicated in MM BIO-11, if sensitive plant species are present, the City should avoid the plant(s), if complete avoidance is not feasible, the City should mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/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 (i.e., WJT), the Project Applicant should apply for a CESA ITP with CDFW.

Mitigation Measure BIO-11

**Pre-construction rare plant clearance survey. Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area 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). 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 the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/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 Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.**

## **ADDITIONAL COMMENTS AND RECOMMENDATIONS**

### **Drought-Tolerant Landscaping**

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

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drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: [Around the Yard \(saveourwater.com\)](http://AroundtheYard.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 \(ca.gov\)](http://SubmittingData.to.the.CNDDDB.ca.gov). 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 \(ca.gov\)](http://CNDDDB-PlantsandAnimals.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 IS/MND for the City of Adelanto Tentative Tract Map No. 20486 (TTM 20486) (SCH No.2022120476) 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).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480  
Alisa Ellsworth

Environmental Program Manager

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## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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

## **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.

| <b>Biological (BIO) Mitigation Measures (MM)</b>  | <b>Implementation Schedule</b>   | <b>Responsible Party</b>           |
|---|--|------------------------------------|
| <p><b>MM BIO-1 Western Joshua Tree Incidental Take Permit</b></p> <p>If any western Joshua trees (WJT) are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW) under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or 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") of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 &amp; 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through</p> | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| <p>either the purchase of conservation or mitigation bank credits or the establishment of a conservation easement, the development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.</p>   |  |                                    |
| <p><b>MM BIO-2 Burrowing Owl Pre-Construction Survey</b></p> <p>Prior to any ground disturbance, pre-construction surveys for Burrowing Owls on the project site and in the surrounding area in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i>, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, shall be conducted no more than 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 suitable burrowing owl or sign thereof 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, Project activities shall not commence, and Mitigation Measure BIO-3 shall apply.</p> | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| <p><b>MM BIO-3 Burrowing Owl Avoidance/Relocation</b></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. 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 propose 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 Applicant/Proponent</p> |
| <p><b>MM BIO-4 Mojave Ground Squirrel Pre-Construction Survey</b></p> <p>Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or the most recent version shall be</p>   | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| <p>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 preconstruction 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 Project Proponent shall consult with CDFW on next steps, including obtaining an ITP.</p>  |  |                                    |
| <p><b>MM BIO-9 Nesting Bird Pre-Construction Survey</b></p> <p>Regardless of the time of year, 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 500- foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, 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.</p> <p>The survey shall be conducted by a qualified biologist. 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 nesting bird activity is present within the work area or the Project’s zone of influence (generally 100- 300 feet), a no-disturbance buffer zone shall be established by the qualified biologist around each nest to</p> | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| <p>prevent nest destruction or abandonment. If nesting bird activity is present, a no-disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. 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 can survive independently from the nests, as confirmed by a qualified biologist. 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. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.</p> |  |                                    |
| <p><b>MM BIO-10 Compensatory Mitigation for Jurisdictional Waters</b></p> <p>Prior to the issuance of a grading permit or any earth disturbing activities within the jurisdictional waters and Fish and Game Code section 1602 resources, the Project Proponent shall obtain any required regulatory permits required by California Department of Fish &amp; Wildlife (CDFW) (i.e., Lake and Streambed Alteration Agreement), US Army Corps and a Section 401 Water Quality Certification from the RWQCB for temporary and/or permanent impacts to the jurisdictional area and Fish and Game Code section 1602 resources that are</p>  | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| <p>regulated by the USACE, CDFW, and the RWQCB. Impacts shall be mitigated to off-set impacts as determined by the regulatory agencies through the permitting process, including a Lake and Streambed Alteration Agreement.</p>   |  |                                    |
| <p><b>MM BIO-11 Pre-construction rare plant clearance survey</b></p> <p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area 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). 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 the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a</p> | <p>Prior to commencing ground- or vegetation-disturbing activities</p> | <p>Project Applicant/Proponent</p> |

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| mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW. |  |  |
|--|--|--|