



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 11, 2023
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
Tentative Tract Map No. 20514
State Clearinghouse No. 2022120468

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 Tentative Tract Map (TTM) 20514 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ For the purposes of this comment letter, “Applicant” will refer to Joshua Tree 10 Victorville 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

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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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, 34.54425 N and Longitude -117.40508 W. The Project site is a vacant lot occupied by desert scrub habitat located east of Jonathan Street and north of Holly Road on Assessor's Parcel Numbers (APNs): 3128-241-09 and 3128-241-14. The Project site is bordered by vacant land to the north, east, and west with an existing housing development located directly south beyond Holly Road. The Project will subdivide approximately 14.51 acres into 83 single-family lots with a minimum lot size of 5,000 square feet.

Timeframe: The Project was expected to begin in 2022, last 380 days, and be completed in the year 2024.

COMMENTS AND RECOMMENDATIONS

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*)

Project activities are expected to result in the removal of at least three (3) western Joshua tree (WJT) individuals, a candidate species under CESA, and in the permanent loss of at least fourteen (14) 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 WJT individuals 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 synthetica*) which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019);

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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 the WJT seedbank using a 186-foot buffer (Vander Wall et al. 2006) from each WJT.

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 as stated in the IS/MND. As such, CDFW encourages the City to obtain a CESA Incidental Take Permit (ITP) for WJT to fully mitigate 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 a 300-ft buffer from the Project site, the Project Applicant should also obtain take authorization for those WJT. Please visit CDFW’s [Incidental Take Permits \(ca.gov\)](https://www.cdffw.ca.gov/Incidental-Take-Permits) 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 ~~strike through~~):

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

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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 (*Athena cunicularia*)

As documented in the Biological Resource Assessment (BRA), the Project site supports suitable habitat for burrowing owl, a California Species of Special Concern (SSC). However, no focused surveys were conducted to determine presence/absence of burrowing owls. 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). Burrowing owls are known to occur throughout the City of Adelanto and adjoining cities like Victorville. A search of the California Natural Diversity Database (CNDDB) yielded thirty-one (31) occurrences of burrowing owl within a five-mile radius of the Project site.

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 14 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 potential impacts to burrowing owl and burrowing owl foraging, breeding, and nesting habitat.

Protection Status. Burrowing owl is designated by CDFW as an 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 should be implemented as per MM BIO-3 below.

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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 MND 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 ~~strike through~~ and **bold**) in the final MND, as per below to avoid impacts to burrowing owl:

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 **activities 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.

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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 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 2 miles of the Project. If present, take of MGS could result from Project construction and activities including equipment staging, equipment 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 the CESA (§670.5(b)(6)(A), T14, CCR)

Avoidance. The final 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 Project proponent should consider obtaining an ITP as noted in MM BIO-4.

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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, MGS occurs within the Project vicinity, and the Project site supports suitable habitat for MGS, CDFW recommends that the City move forward with proposed MM BIO-4 as revised below (edits are in ~~strikethrough~~ and **bold**):

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 CDFW. The pre-construction surveys shall cover the Project Area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the **Project Proponent shall consult with CDFW on next steps, including obtaining an ITP** ~~observation shall be immediately reported to CDFW.~~

Desert Tortoise (*Gopherus agassizii*)

CDFW appreciates that a habitat assessment for the desert tortoise, a state-threatened, proposed endangered species, was conducted on January 4, 2022. The habitat assessment determined that the Project site “supports very marginal habitat for the 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. Desert tortoise have been documented to occur within the vicinity of the Project area (CNDDDB).

Take of desert tortoise may occur as a result of Project-related activities such as crushing of desert tortoise-occupied burrows from construction equipment, vehicles, and foot traffic. Additionally, Project activities such as grading, ground disturbance, and vegetation clearing may also result in take of desert tortoise. The Project may also result in the loss of approximately 14 acres of desert tortoise habitat.

Protection Status. Desert tortoise is a state-threatened, proposed endangered species under CESA.

Avoidance. CDFW appreciates that the IS/MND is conditioned to avoid impacts to desert tortoise through pre-construction surveys (MM BIO-5 below) and notification to CDFW of desert tortoise presence during construction (MM BIO-8 below). In areas where desert tortoise may be present and cannot be avoided, CDFW reinforces that the Project proponent should obtain a CESA ITP as noted in MM-BIO-5 below.

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Mitigation. CDFW appreciates the inclusion of MM BIO 5, MM BIO-7 and MM BIO-8 and encourages that the City move forward with these measures as per below to avoid impacts to desert tortoise (edits are in ~~strike through~~ and **bold**):

Mitigation Measure BIO-5

Desert Tortoise Pre-Construction Survey. A CDFW – approved biologist shall conduct pre-construction presence/absence surveys for desert tortoise during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise preconstruction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Preconstruction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented.

Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the CDFW approved biologist shall ensure desert tortoise do not enter the Project area.

Should desert tortoise presence be confirmed during the survey, 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 of desert tortoise cannot be achieved, the Project Proponent shall not undertake Project activities, and Project activities shall be postponed until appropriate authorization (i.e., California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Fish and Game Code section 2081) is obtained.

If complete avoidance of desert tortoise is infeasible, CDFW recommends that the Project Proponent apply for a CESA ITP and prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and shall be consistent with project permits and current USFWS and CDFW guidelines. The Plan shall also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site, **which shall apply if BLM lands are to serve as recipient sites.**

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Prior to construction, the Plan shall be subject to the review and approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within occupied desert tortoise habitat and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio determined by CDFW after Project analysis.

Mitigation Measure BIO-7

Deceased or Injured Tortoise Within the Project Site: USFWS and CDFW shall be **immediately** informed of any injured or deceased desert tortoise (and other special-status species) found on site (**immediate** verbal notice within 24-hours and ~~written notification within 5-days~~).

Mitigation Measure BIO-8

Desert Tortoise Avoidance: If during project activities a desert tortoise is discovered within the project site, all activities shall immediately stop and the CDFW shall be immediately notified (within 24 hours). Coordination with respective State (**i.e., CDFW**) and Federal resource agencies shall be required prior to restarting activities to determine appropriate avoidance, minimization, and mitigation measures.

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.

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 appreciates the inclusion of MM BIO-9 "Nesting Bird Pre-Construction Survey" and supports the adoption of MM BIO-9 with minor edits (edits are in ~~strike through~~ and **bold**) in the final MND to avoid impacts to nesting birds, as per below:

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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 activity, then no further action is needed for this measure. **If an active nest is encountered during 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 may 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 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.

According to the IS/MND no streams or riparian habitat (Fish and Game Code section 1602 resources) are present on the Project site, but based on review of aerial

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photography from the California State Water Resources Control Board, a channel and associated riparian vegetation transects the site entering from the southwest border at a dirt road, known as Jonathan Street and running north onto the Project site and adjacent parcels located to the west (APNs: 3128-201-25, 34-128-201-21). The Project plans on paving Jonathan Street as referenced under IS/MND's Proposed Improvements, Section 3.3, and this activity along with other Project activities (e.g., grading) are likely to substantially impact Fish and Game Code section 1602 resources. No jurisdictional delineation was conducted so CDFW is unclear of the extent or the number of channels that may be impacted as well as the riparian habitat that exists. CDFW recommends that the final IS/MND adopts MM BIO-10 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW-executed Lake and Streambed Alteration Agreement.

Avoidance. CDFW recommends fully avoiding impacts to the channel and associated riparian habitat. If avoidance is not feasible, CDFW recommends the City notify CDFW pursuant to Fish and Game Code section 1602 as per MM BIO-10 below.

Mitigation. CDFW recommends that as part of the notification of Lake and Streambed Alteration the Applicant provides a jurisdictional delineation and acreage of temporary and permanent impacts to Fish and Game Code section 1602 resources and propose mitigation to offset impacts to Fish and Game Code section 1602 resources, if impacts thereto cannot be avoided.

Mitigation Measure BIO-10

Lake and Streambed Alteration Notification. Prior to construction and issuance of any grading permit, the Project Applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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, §§

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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.

Mitigation. To avoid impacts to sensitive plant species, CDFW recommends MM BIO-11 below. As re-iterated 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

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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 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.cnddb.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 \(ca.gov\)](https://www.cnddb.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.)

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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. 20514 (TTM 20514) (SCH No. 2022120468) 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.

Sincerely,

DocuSigned by:

Alisa Ellsworth

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

REFERENCES

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California Native Plant Society. 2022. Manual of California Vegetation. Available from: [Manual of California Vegetation \(MCV\) | California Native Plant Society \(cnps.org\)](https://www.cnps.org)

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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 (MM)	Implementation Schedule	Responsible Party
<p>MM BIO-1 Western Joshua Tree Incidental Take Permit</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 & 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 Proponent/Applicant</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>MM BIO-2 Burrowing Owl Pre-Construction Survey</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 activities 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 Proponent/Applicant</p>

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<p>MM BIO-3 Burrowing Owl Avoidance/Relocation</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 Proponent/Applicant</p>
<p>MM BIO-4 Mojave Ground Squirrel Pre-Construction Survey</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 Proponent/Applicant</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 pre-construction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the Project Proponent shall consult with CDFW on next steps, including obtaining an ITP.</p>		
<p>MM BIO-5 Desert Tortoise Pre-Construction Survey</p> <p>A CDFW –approved biologist shall conduct pre-construction presence/absence surveys for desert tortoise during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise preconstruction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Preconstruction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project Activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented.</p> <p>Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent/Applicant</p>

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<p>CDFW approved biologist shall ensure desert tortoise do not enter the Project area.</p> <p>Should desert tortoise presence be confirmed during the survey, 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 of desert tortoise cannot be achieved, the Project Proponent shall not undertake Project activities, and Project activities shall be postponed until appropriate authorization (i.e., California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Fish and Game Code section 2081) is obtained.</p> <p>If complete avoidance of desert tortoise is infeasible, CDFW recommends that the Project Proponent apply for a CESA ITP and prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and shall be consistent with project permits and current USFWS and CDFW guidelines. The Plan shall also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site, which shall apply if BLM lands are to serve as recipient sites.</p> <p>Prior to construction, the Plan shall be subject to the review and approval of the CDFW and</p>		
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<p>the USFWS. Impacts shall be offset through acquisition of compensatory land within occupied desert tortoise habitat and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio determined by CDFW after Project analysis.</p>		
<p>MM BIO-7 Deceased or Injured Tortoise Within the Project Site</p> <p>USFWS and CDFW shall be immediately informed of any injured or deceased desert tortoise (and other special-status species) found on site (immediate verbal notice within 24-hours).</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent/Applicant</p>
<p>MM BIO-8 Desert Tortoise Avoidance</p> <p>If during project activities a desert tortoise is discovered within the project site, all activities shall immediately stop and the CDFW shall be immediately notified (within 24 hours). Coordination with respective State (i.e., CDFW) and Federal resource agencies shall be required prior to restarting activities to determine appropriate avoidance, minimization, and mitigation measures.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent/Applicant</p>
<p>MM BIO-9 Nesting Bird Pre-Construction Survey</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>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent/Applicant</p>

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<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 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 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>MM BIO-10 Lake and Streambed Alteration Notification</p> <p>Prior to construction and issuance of any grading permit, the Project Applicant should</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent/Applicant</p>

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<p>obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>disturbing activities</p>	
<p>MM BIO-11 Pre-construction rare plant clearance survey</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</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent/Applicant</p>

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<p>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.</p>		
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