



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
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December 21, 2023
Sent via email

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Dear Louis Morales:

City of Adelanto 6th Cycle 2021-2029 Housing Element Update
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2023110567

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the 6th Cycle (2021-2029) Housing Element Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

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

Proponent: City of Adelanto

Objective: The Project proposes a housing element update to address the City housing needs for the October 2021 to October 2029 planning period. The Housing Element is a State-mandated policy document that provides direction to meet existing and projected future housing needs for all income levels. The 6th Cycle Housing Element Update does not authorize site-specific residential development on properties identified as candidate sites for housing, instead the Initial Study and accompanying Mitigated Negative Declaration provide an overall analysis of potential environmental impacts that may occur

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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and, if so, would necessitate further environmental study for the site-specific developments proposed. The City must identify land zoned for residential use to meet the City's new Regional Housing Needs Assessment (RHNA) target and must provide goals, objectives, policies, and programs to meet the housing needs of the City's citizens. The Southern California Association of Governments (SCAG) Regional Housing Needs Assessment (RHNA) estimated the 2021-2029 future housing construction need for Adelanto to be 3,763 units. The 3,763 units allocated to the City are divided into the following categories: 394 very low-income units, 566 low-income units, 651 moderate-income units, and 2,152 above moderate-income units.

Location: The Project sites are located in the City of Adelanto, within San Bernardino County. Undeveloped land zoned for residential development was identified in the 6th Cycle Housing Element Update as candidate sites for future residential development to accommodate the City of Adelanto's future housing need. The areas include:

- **Subarea 1** – This subarea occupies 288 acres and is bordered on the north by Bartlett Avenue, on the south by Violet Road, on the east by Highway 395, and on the west by Bellflower Street. This sub area consists of 108 vacant parcels.
- **Subarea 2** – This subarea occupies 694 acres and is bordered by Auburn Avenue to the north, Air Expressway to the south, Bellflower Street to the east, and Steven Street to the west. This subarea consists of 466 vacant parcels. Properties within the identified housing candidate sites are designated for residential development. Both subareas are located west of US-395 and north of State Route 18. The combined acreage of the two identified subareas is 982 acres; vacant areas within the two subareas is 574. The two subareas are estimated to be able to accommodate 6,905 dwelling units.
- **R3-30 Sites** – These sites include four vacant parcels on 28.03 acres situated in the southern section of the city.
- **Affordable Housing Overlay (AHO)**- These include 35 parcels situated on 111.44 acres identified by developers or City staff for future residential development, sites identified to accommodate residential development throughout the City, and areas designated for intensified residential development.

Timeframe: None provided.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW is concerned regarding potential impacts to special-status species that may be present within the proposed Project areas. There are special-status species that have been observed in the vicinity of the planning areas and may be present within the planning areas. The City of Adelanto has identified 721 undeveloped parcels to meet the City's RHNA. Development of all parcels could result in approximately 1,409 acres of habitat loss. CDFW appreciates that the IS/MND recognizes the potential for burrowing owl (*Athene cunicularia*, CDFW species of special concern), desert tortoise (*Gopherus agassizii*, State Threatened proposed endangered species), Mohave ground squirrel (*Xerospermophilus mohavensis*, state-threatened), sensitive plants including western Joshua tree (*Yucca brevifolia*, candidate species for listing as Threatened pursuant CESA), and nesting birds to occur in the planning areas.

CDFW also appreciates the "Implementing Programs" included in the Adelanto North 2035 Sustainable Plan as referenced on pages 52-53 of the IS/MND. Given the program level nature of the housing element update, CDFW recognizes the deferment of project-specific surveys and analysis. It is CDFW's expectation that site-specific project approvals would be subject to their own CEQA review. CDFW conducted a preliminary review of open spaces identified in the IS/MND as candidate sites for future development. All areas identified have the potential to support wildlife including special-status species given the undeveloped nature of the vacant land identified by the housing element update and potential for vegetative communities. CDFW recommends that all applicants of future development Projects, at minimum, have a qualified biologist conduct biological

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assessments as indicated by OS-21 of the Adelanto North 2035 Sustainable Plan. Recent surveys during the appropriate times of the year are needed to inform and identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and to determine whether impacts to biological resources have been mitigated to a level that is less than significant. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. All biological assessments associated with OS-21 and other relevant “Implementing Programs” documents pertaining to biological resources should be included in project-specific CEQA documentation and circulated for CDFW review prior to approval.

Again, CDFW appreciates the inclusion of the “Implementing Programs.” CDFW offers the comments and recommendations below to assist the City of Adelanto in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Mitigation measures provided below provide more specific guidance and facilitate more robust analysis of the potential impacts to species and their habitats than those identified in the Adelanto North 2035 Sustainable Plan.

COMMENT #1: Western Joshua Tree (*Yucca brevifolia*)

IS/MND—Biological Resources, Page 59-60.

Issue: The IS/MND recognizes the presence of western Joshua tree (WJT), a candidate species under CESA, on the proposed Project sites.

Specific impact: The project has the potential to impact WJT and associated habitat considering that WJT is highly dependent upon a network of species interactions for successful seed germination and seedling survival, and as such, are highly sensitive to habitat alteration. For example, WJT exclusively rely on yucca moth pollination (*Tegeticula synthetica*) to sexually recruit new individuals (Sweet et al. 2019), rodent seed-dispersing behavior, as this is the primary way WJT seeds are buried deep enough for successful germination (Waitman et al. 2012), and on nurse plants critical for WJT seedling survival (Brittingham and Walker 2000). Grading, ground disturbance, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in the permanent loss of mature and juvenile WJT on future development sites and may result in the disruption to the WJT seedbank.

Why impact would occur: Take of WJT is defined as any activity that results in the removal of WJT or any parts thereof and may include impacts to the seedbank surrounding one or more WJT (CDFW 2023).

Evidence impact would be significant: 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”. Further, at the time of this writing, the California state legislature has enacted the Western Joshua Tree Conservation Act (WJTCA) which aims to provide protection of WJT while removing some of the barriers faced by developers when working on or adjacent to sites where the species is present. For more information on the WJTCA, please visit the CDFW [Western Joshua Tree Conservation Efforts and Permitting](#) website.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND provides a measure to mitigate the Project’s impacts to western Joshua trees and recognizes the need for an Incidental Take Permit. CDFW offers the following revisions to MM BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND:

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Biological Resources Mitigation Measure 1: Western Joshua Tree

The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:

- Prior to the initiation of Joshua tree removal, **relocation, replanting or any activity that may result in take of WJT on site, the Project Proponent should** obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 **of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (WJTCA)** of Fish and Game Code (§§ 1927-1927.12). **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”. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). To execute a CESA ITP or WJTCA ITP, CDFW requires documentation of CEQA compliance. CDFW requires CEQA documentation to include proof of filing fees and State Clearinghouse circulation, including assignment of a State Clearinghouse number.** The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.
- ~~Mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those impacted by the Project. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW) - approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 while it is being considered as a candidate or if it is listed under the CESA.~~
- Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.
- An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work.
- A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers.
- The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord.
- Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross Joshua tree habitat outside or on route to the Project area.
- The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid unauthorized take of an individual Joshua tree.
- ~~The Project analyzed impacts to western Joshua trees by applying the 186-foot and 36-foot buffer zone overlap with the project boundaries of two adjacent proposed developments. Any impacts to overlapping Joshua trees will be analyzed by CDFW.~~
- The Western Joshua Tree Conservation Act has been signed and put into effect by the California Governor’s Office. In the event that the Western Joshua Tree Conservation Act is implemented for the project, effectively providing a streamlined mitigation approach under CESA and Western Joshua tree conservation, alternative habitat replacement mechanisms, providing equal or better function and value to existing mechanisms under CESA, will be implemented as required under state law.

COMMENT #2: Sensitive Plant Species

IS/MND—Biological Resources, Page 57.

Issue: CDFW is concerned the Project may affect sensitive plant species with the potential to occur on the proposed Project sites.

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Specific impact: Grading, vegetation removal, and other ground disturbances are likely to result in direct mortality of sensitive plants

Why impact would occur: 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 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 2023)

Evidence impact would be significant: According to a search of the California Natural Diversity Database (CNDDDB), three special-status plant species, Mohave monkeyflower (*Diplacus mohavensis*; state rank (S) two (S2)), beaver dam breadroot (*Pediomelum castoreum*; S2) and sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*; S2) have occurrences within the Project sites.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: Since the Project sites have the potential to support sensitive plant species, CDFW appreciates the Implementing Program 0S-27, on page 57, which addresses the need for floristic surveys for special-status plant species. To avoid impacts to sensitive plant species, CDFW recommends the adoption of MM BIO-2 below.

Biological Resources Mitigation Measure 2

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 Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Applicant 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.

COMMENT #3: Burrowing Owl (*Athene cunicularia*)

IS/MND—Biological Resources, Page 54 and 57.

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Issue: The IS/MND acknowledges the potential for burrowing owl, a species of special concern (SSC) to occur given their historical occurrence within the general area and the large tracts of open desert within the proposed Project sites

Specific impact: Potential take of burrowing owl and loss of burrowing owl habitat.

Why impact would occur: Burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring on the sites identified for future development. CDFW is aware of active burrows and burrowing owl observations (Circle Mountain Biological Consultants, habitat assessment November 17, 2022) occurring within 515 meters from the most southern parcel (APN 3128-541-10-0000) identified in the Affordable Housing Overlay for future development. Development of this area would require ground disturbance (e.g., trenching, grading, soil compaction, burrow loss, and earth-moving activities) and vegetation removal. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance.

Evidence impact would be significant: Habitat loss due to development is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing owl are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). Burrowing owl is a CDFW [Species of Special Concern – The California Biologist's Handbook \(biologistshandbook.com\)](http://biologistshandbook.com). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to Species of Special Concern (SSC) which can be shown to meet the criteria for State listing. Burrowing owl is a 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.”

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates the inclusion of “Implementing Programs” addressed in page 57 of the IS/MND and Mitigation Measures from the 1994 General Plan Final EIR outlined on page 54 which considers pre-construction surveys for nesting birds and special-status species, such as burrowing owl, desert tortoise and Mohave ground squirrel. CDFW offers the following species-specific measure and recommends the adoption of MM BIO-3 to assist the City in adequately mitigating the Project’s potentially significant impacts to burrowing owl.

Biological Resources Mitigation Measure 3

Burrowing Owl focused surveys. Prior to commencement of construction activities (i.e., demolition, earthwork, clearing, and grubbing), focused surveys will be conducted by a qualified biologist during the breeding season, as defined by the Staff Report on Burrowing owl Mitigation (CDFG 2012). Four breeding season survey visits shall be conducted: (1) at least one site visit between February 15 and April 15, and (2) a minimum of three survey visits, at least 3 weeks apart, between April 15 and July 15, with at least one visit after June 15. Take avoidance surveys for burrowing owl will be conducted within the study area. The take avoidance surveys will be conducted within 14 days and repeated 24 hours prior to construction activities (i.e., demolition, earthwork, clearing, and grubbing) to determine presence of burrowing owl. If take avoidance surveys are negative and burrowing owl is confirmed absent, then ground disturbing activities will be allowed to commence, and no further mitigation would be required.

If burrowing owl is observed during focused surveys and/or take avoidance surveys within any portion of the study area, active burrows will be avoided by the project in

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accordance with the CDFW's Staff Report (CDFG 2012). CDFW will be immediately informed of any burrowing owl observations. A Burrowing Owl Protection and Relocation Plan (plan) will be prepared by a qualified biologist, which must be sent for approval by CDFW prior to initiating ground disturbance. The plan will detail avoidance measures that will be implemented during construction and passive or active relocation methodology. Relocation will only occur outside of the nesting season (September 1 through January 31).

COMMENT #4: Desert Tortoise (*Gopherus agassizii*)

IS/MND—Biological Resources, Page 56.

Issue: The Project sites are within the known distribution of desert tortoise (CNDDDB) state-threatened, proposed endangered species under CESA.

Specific impact: Potential take of desert tortoise and loss of desert tortoise habitat.

Why impact would occur: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and direct mortality and/or injury to desert tortoise.

Evidence impact would be significant: Desert tortoise is a state threatened, proposed endangered species. Primary threats to desert tortoise are habitat loss resulting from urban/industrial development, agriculture development, degradation of habitat by off-highway vehicles (OHV), intentional killing of tortoises, and killing by cars and OHV (Doak, Kareiva, Kleptka, 1994). Future development may result in the loss of potential desert tortoise habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that the IS/MND consider potential impacts to desert tortoise as evidenced by Implementing Program OS-22 referenced on page 56 which calls for future development projects to consult with CDFW to determine the need for desert tortoise surveys. Since the proposed Project areas are located within documented desert tortoise range, CDFW recommends that a qualified biologist conduct surveys, during the appropriate survey period following the protocol contained in the [Mojave desert tortoise survey protocol \(fws.gov\)](https://www.fws.gov/press/2019/08/20190820-mojave-desert-tortoise-survey-protocol). CDFW offers the following species-specific mitigation measure below to avoid impacts to desert tortoise:

Biological Resources Mitigation Measure 4

Focused Protocol Presence/Absence Desert Tortoise Survey. A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. 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 absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance 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 under Fish and Game Code section 2081] is obtained.

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COMMENT #5: Mohave ground squirrel (*Xerospermophilus mohavensis*)

IS/MND—Biological Resources, Page 51 and 56.

Issue: The Project site contains suitable habitat for the California Endangered Species Act (CESA)-threatened Mohave ground squirrel.

Specific impact: Potential take of Mohave ground squirrel and loss of Mohave ground squirrel habitat.

Why impact would occur: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave ground squirrel.

Evidence impact would be significant: Project sites are within the range of the CESA threatened Mohave ground squirrel and the Project sites support suitable habitat for Mohave ground squirrel.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that the City adopt MM BIO-5 below:

Biological Resources Mitigation Measure 5

Mohave Ground Squirrel Pre-construction Survey. Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or 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, and the observation shall be immediately reported to CDFW.

COMMENT #6: Nesting Birds

IS/MND—Biological Resources, Page 51.

Issue: Development facilitated by the Project could impact nesting birds directly or through habitat loss and modification.

Specific impact: Construction of housing during the nesting bird season could cause nesting birds to abandon their nests and a decrease in feeding frequency. This could result in loss of fertile eggs and nestlings. In addition, development facilitated by the Project could result in loss of nesting habitat or degrade habitat quality and function in areas adjacent to a project.

Why impact would occur: Project implementation could result in the loss of nesting and/or foraging habitat for ground-nesting species onsite.

Evidence impact would be significant: The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. 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).

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Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends pre-construction nesting bird surveys be required no more than three (3) days prior to vegetation clearing or ground disturbance activities regardless of time of year, as instances of nesting could be missed if surveys are conducted sooner. To avoid impacts to nesting birds, CDFW recommends the adoption of MM-BIO 6 below:

Biological Resources Mitigation Measure 6

Nesting Bird Pre-Construction Survey. Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present 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 to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.

COMMENT #7: Ephemeral streams

IS/MND—Biological Resources, Page 57.

Issue: Development facilitated by the Project could impact stream resources subject to notification pursuant to Fish and Game Code section 1602.

Specific impact: Construction of housing pursuant to the Project could divert or obstruct stream flows, substantially alter the bed, bank, or channel of a stream, use or deposit materials subject to notification pursuant to Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream and lake resources that should otherwise be avoided, minimized, or addressed in an agreement with CDFW.

Why impact would occur: Project implementation will result in physical changes to the landscape (e.g., grading) and could physically alter lake or streambed resources.

Evidence impact would be significant: California place great value on streams and the resources they provide. 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 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.

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The IS/MND mentions Implementing Program OS-28 on page 57, which requires that a qualified biologist survey the areas to be impacted for future projects to determine impacts to hydrological features. CDFW recommends the adoption of MM BIO-7 below to address potential impacts to Fish and Game Code section 1602 resources.

Biological Resources Mitigation Measure 7

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.

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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 appreciates the opportunity to comment on the MND to assist the City of Adelanto in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Lydia Rodriguez, Senior Environmental Scientist Specialist at 909 544-9932 or Lydia.Rodriguez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

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

ATTACHMENTS

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

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Attachment A Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM BIO-1 Prior to the initiation of Joshua tree removal, relocation, replanting or any activity that may result in take of WJT on site, the Project Proponent should obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the California Endangered Species Act (CESA), or any other appropriate take authorization under CESA or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927-1927.12). 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”. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12). To execute a CESA ITP or WJTCA ITP, CDFW requires documentation of CEQA compliance. CDFW requires CEQA documentation to include proof of filing fees and State Clearinghouse circulation, including assignment of a State Clearinghouse number. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW) -approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 while it is being considered as a candidate or if it is listed under the CESA. Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees. An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work. A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers. The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord. Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross Joshua tree habitat outside or on route to the Project area. The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>any reasonable measure to avoid unauthorized take of an individual Joshua tree.</p> <p>The Western Joshua Tree Conservation Act has been signed and put into effect by the California Governor's Office. In the event that the Western Joshua Tree Conservation Act is implemented for the project, effectively providing a streamlined mitigation approach under CESA and Western Joshua tree conservation, alternative habitat replacement mechanisms, providing equal or better function and value to existing mechanisms under CESA, will be implemented as required under state law.</p>		
<p>MM-BIO-2: 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 Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Applicant 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.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO-3: Burrowing Owl focused surveys. Prior to commencement of construction activities (i.e., demolition, earthwork, clearing, and grubbing), focused surveys will be conducted by a qualified biologist during the breeding season, as defined by the Staff Report on Burrowing owl Mitigation (CDFG 2012). Four breeding season survey visits shall be conducted: (1) at least one site visit between February 15 and April 15, and (2) a minimum of three survey visits, at least 3 weeks apart, between April 15 and July 15, with at least one visit after June 15. Take avoidance surveys for burrowing owl will be conducted within the study area. The take avoidance surveys will be conducted within 14 days and repeated 24 hours prior to construction activities (i.e., demolition, earthwork, clearing, and grubbing) to determine presence of burrowing owl. If take avoidance surveys are negative and burrowing owl is confirmed absent, then ground disturbing activities will be</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>allowed to commence, and no further mitigation would be required. If burrowing owl is observed during focused surveys and/or take avoidance surveys within any portion of the study area, active burrows will be avoided by the project in accordance with the CDFW's Staff Report (CDFG 2012). CDFW will be immediately informed of any burrowing owl observations. A Burrowing Owl Protection and Relocation Plan (plan) will be prepared by a qualified biologist, which must be sent for approval by CDFW prior to initiating ground disturbance. The plan will detail avoidance measures that will be implemented during construction and passive or active relocation methodology. Relocation will only occur outside of the nesting season (September 1 through January 31).</p>		
<p>MM-BIO-4: <u>Focused Protocol Presence/Absence Desert Tortoise Survey.</u> A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. 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 absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance 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 under Fish and Game Code section 2081] is obtained.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO-5: <u>Mohave Ground Squirrel Pre-construction Survey.</u> Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or 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, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>MM-BIO-6: <u>Nesting Bird Pre-Construction Survey.</u> Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present 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 to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO-7: <u>Lake and Streambed Alteration Notification.</u> 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.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>