



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



February 22, 2024
 Sent via email

Governor's Office of Planning & Research

Feb 23 2024

James Hirsch, Senior Contract Planner **STATE CLEARINGHOUSE**
 City of Adelanto
 11600 Air Expressway
 Adelanto, CA 92301
jhirsch@ci.adelanto.ca.us

Subject: US-395 & Rancho Road Commercial Center
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2024010625

Dear James Hirsch:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the US-395 & Rancho Road Commercial Center 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 the construction of a new commercial center to be developed in two phases. The IS/MND is focused on Phase 1 of the development. The Project proponent plans to develop 4.2 acres of currently undeveloped, disturbed land. Development will include grading, paving, landscaping, construction of a four-story hotel, a drive through restaurant, a sit-down restaurant, a convenience store, and a fueling area equipped with 10 dispensers and 20 fueling positions. On-site parking for businesses will

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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account for 205 spaces. Additionally, landscaping will be provided along roadways, around buildings, and within parking areas and will total 31,864 square feet. Primary access to the site will be from the north side of Rancho Road and secondary emergency access will be provided by a 30-foot easement to access APN 0459-342-35-0000 from the adjacent parcel 0459-342-37-0000.

Location: The proposed Project is located on the northeast corner of State Highway 395 and Rancho Road in Adelanto, CA; approximate GPS coordinates 34.5622 N and -117.40471 W. The Associated Parcel Numbers (APNs) impacted by Project activities include 0459-342-31-0000, 0459-342-32-0000, 0459-342-33-0000, and 0459-342-34-0000.

Timeframe: Phase 1 for the proposed project is assumed to commence in January 2025 and would take approximately thirteen months to complete. No timeframe provided for Phase 2.

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 has concerns regarding potential impacts to special-status species and fish and wildlife resources that may be present within and directly adjacent to the proposed Project area. 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), and nesting birds to occur in the planning areas.

CDFW appreciates the inclusion of the Biological Resources Mitigation Measures in the IS/MND (pg. 38-40). 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. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

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

IS/MND—Biological Resources, Pages 38 & 66.

Issue: The IS/MND recognizes the presence of western Joshua tree (WJT), a candidate species under CESA, adjacent to the proposed Project sites but the IS/MND lacks a mitigation measure for WJT.

Specific impact: Given the location of the WJT, CDFW is concerned that the Project may impact the WJT if ground disturbance occurs within the root zone. It is unclear if the Project will maintain an appropriate buffer to avoid impacts. 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).

Why impact would occur: 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 the WJT on site and may result in the disruption to the WJT seedbank.

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

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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: In the event the Project Applicant is unable to maintain an appropriate buffer to avoid impacts to WJT, CDFW offers the following mitigation measure for inclusion in the final MND:

Biological Resources Mitigation Measure No. 8. (MM BIO-8)

The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, trimming or pruning 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 (ITP) under Section 2081 of the 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 Clearing house number. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.

COMMENT #2: Lake and Streambed Agreement

IS/MND—Hydrology and Water Quality, Page 64.

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

Specific impact: Project activities, including grading, paving, vehicle and equipment staging, and site access 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 places 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.

The IS/MND mentions an emergency access route to the Project site that would cross directly through the stream to the east of the Project. Additionally, Phase 2 of the Project (not addressed in the IS/MND) appears to substantially alter the entirety of the stream segment in the Project area. Given that impacts to the ephemeral stream are reasonably known at the time of this IS/MND, The IS/MND should evaluate all project alternatives that

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avoid and minimize potential impacts to the ephemeral stream, as it is reasonably foreseeable or known that Phases 1 and 2, as currently proposed, would result in impacts to the stream. CDFW considers the fill and permanent conversion of natural ephemeral streams to impervious surfaces a significant impact to stream resources. The conversion of a natural ephemeral stream systems to impervious managed systems results in direct, permanent impacts to the physical form and function of natural stream systems and the habitats they support, increases water flow velocity, increases erosive processes downstream, removes habitat and wildlife corridors, and prohibits groundwater infiltration. Indirect effects associated with streambed conversion include increased habitat fragmentation, increased developmental encroachment on natural stream systems, and increased maintenance activities.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates the inclusion of Biological Resources Mitigation Measures 6 and 7 and recommends that the Project proponent contact CDFW prior to impacting the stream to avoid Fish & Game Code violations. Additionally, CDFW recommends promptly conducting a jurisdictional delineation to verify the areas that must be avoided during Project activities and to help identify potential alternatives to minimize impacts to the stream.

COMMENT #3: Inadequacy of Surveys

IS/MND—Biological Resources, Pages 33-37.

Issue: The IS/MND analysis and conclusions rely on outdated biological surveys. The biological assessment conducted may no longer represent the current state of the Project site and the inventory of biological species that may be present.

Specific impact: The IS/MND bases its analysis of impacts to biological resources on a biological assessment conducted on November 22, 2021, by RCA Associates, Inc. No details of the scope and methods of the biological assessment are given in the IS/MND, and the biological study included with the IS/MND consists solely of a desert tortoise survey from 1993. Therefore, Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of sensitive plant and wildlife species that were not previously known or identified.

Why impact would occur: The IS/MND indicates surveys were conducted for burrowing owl (*Athene cunicularia*) a CDFW Species of Special Concern, the State listed threatened, proposed endangered desert tortoise (*Gopherus agassizii*), and the State listed threatened Mohave ground squirrel (*Xerospermophilus mohavensis*) but does not provide information on the timing and scope of the surveys or the survey protocol(s) used. CDFW is unable to determine whether impacts to biological resources have been disclosed and analyzed due to incomplete and/or inaccurate information about the timing, scope, and methods of the biological assessment and focused surveys.

Evidence impact would be significant: Impacts to special species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that the IS/MND be revised to provide accurate and complete information about the biological assessment, focused surveys, and other field work. Please note that CDFW generally considers field assessments for wildlife valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Focused surveys must be conducted using appropriate protocols and should be conducted at the appropriate time of year to detect the presence of special status species on-site, such as desert tortoise, burrowing owl and special status plant species.

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COMMENT #4: Piecemealing

IS/MND—Project Description, Pages 3 and 11.

Issue: The Project is split into two phases while the area of impact is focused enough that a single CEQA document would serve to fully address Project impacts over the entire (Phase 1 and Phase 2) Project area.

Specific impact: Piecemealing is the act of dividing a Project into two or more pieces and evaluating each piece separately rather than evaluating the whole of the Project in one environmental document. CEQA case law has settled that “For a phased development project, even if details about future phases are not known, future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts.” and where Action B is a subsequent action/project of Action A. (*Laurel Heights Improvement Association v Regents of University of California* [1988] 47 Cal. 3d 376).

Why impact would occur: The IS/MND does not adequately describe the whole Project, so it is unclear if impacts to biological resources are less than significant.

Evidence impact would be significant: Piecemealing is explicitly prohibited by CEQA, as it would enable a Lead Agency to downplay the apparent environmental impacts of a project by evaluating each part separately. While individual segments may have a minimal impact on the environment, collectively they could lead to a significant impact. Without a comprehensive Project description, it is impossible to establish whether the impacts on biological resources are less than significant.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that the City assess the impacts of both Phase 1 and Phase 2 of this development Project together in order to better understand the cumulative impacts of the Projects. The final IS/MND should include a detailed and accurate description of the whole Project and analyze the impacts to biological resources.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Native Landscaping: The IS/MND indicates that a total of 31,864 square feet of landscaping is proposed. To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at: [Calscape - Restore Nature One Garden at a Time](#). Water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species. Additionally, some facilities display drought tolerant, locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California’s Save our Water website: [Home - Save Our Water, California](#).

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

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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 Kevin Francis, Environmental Scientist at 909 239-0895 or kevin.francis@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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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

REFERENCES

- Brittingham, S. and L. R. Walker. 2000. Facilitation of *Yucca brevifolia* recruitment by Mojave Desert shrubs. *Western North American Naturalist* 60(4): 374-383.
- California Department of Fish and Wildlife (CDFW). 2022. Trimming of western Joshua trees and removal of dead western Joshua trees. Available at: <https://web.archive.org/web/20221031224448/https://wildlife.ca.gov/Conservation/ESA/WJT>
- California Natural Diversity Database (CNDDDB) Government [ds45]. 2023. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.
- Sweet, L. C., T. Green, J. G. C. Heintz, N. Frakes, N. Graver, J. S. Rangitsch, J. E. Rodgers, S. Heacox, and C. W. Barrows. 2019. Congruence between future distribution models and empirical data for an iconic species at Joshua Tree National Park. *Ecosphere* 10(6): e02763.
- Waitman, B. A., Vander Wall, S. B., & Esque, T. C. (2012). Seed dispersal and seed fate in Joshua tree (*Yucca brevifolia*). *Journal of Arid Environments*, 81, 1-8.

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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-8:</p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, trimming or pruning 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 (ITP) under Section 2081 of the 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 Clearing house number. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.</p> | <p>Prior to commencing ground or vegetation disturbing activities</p> | <p>Project Proponent</p> |