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February 26, 2024
 Sent via email.

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Governor’s Office of Planning & Research

Feb 27 2024

STATE CLEARINGHOUSE

Dear John Moreno:

Rancho 30 Cultivation Facility
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2024010988

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the Rancho 30 Cultivation Facility 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 (Fish and G. 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: Rancho 30, LLC

Objective: The proposed Project involves the construction of a total of 16 buildings that would be used for indoor cannabis cultivation, distribution, and manufacturing. The Project would involve the following 4 phases of construction:

- Phase 1- Construction of three new buildings totaling 86,597 square feet within the 9.48-acre parcel. Two of the buildings would be a single level consisting of 34,425

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.

square feet. The third building would be a two-level building consisting of 17,747 square feet. Access to the proposed development would be provided by three new driveway connections. A total of 112 parking spaces would be provided. Landscaping would cover 48,381 square feet, including a bioswale to be located on the northeast corner of the Project site.

- Phase 2- Construction of five new buildings totaling 138,110 square feet within the 10.28-acre parcel. Three buildings would be single level structures, each consisting of 34,425 square feet of floor area. The other two buildings would consist of 10,160 and 24,675 square feet of floor space. Additionally, a 33,207 square foot retention basin would be constructed in the northeast corner. Construction of Phase 2 is scheduled to commence in the 2nd quarter of 2027.
- Phase 3- Construction of four new buildings totaling 123,675 square feet within the 11.09-acre parcel. Three buildings would be single level structures, each consisting of 34,425 square feet of floor area. The fourth building would also be a single-level structure, consisting of 20,400 square feet of floor space. Construction of Phase 3 is scheduled to commence in the 1st quarter of 2029.
- Phase 4- Construction of four new buildings totaling 131,325 square feet of floor area within the 11.09-acre parcel. Three buildings would be single level structures, each consisting of 34,425 square feet of floor area, designated for cultivation. The fourth building would be a single-level processing building consisting of 28,050 square feet of floor space. Construction of Phase 4 is scheduled to commence in the 1st quarter of 2031.

Location: The Project site is in the City of Adelanto, San Bernardino County, California at Latitude, 34.55665 N and Longitude -117.44648 W. The Project encompasses three vacant parcels situated to the south of Rancho Road and to the west of Raccoon Avenue, with Assessor Parcel Numbers (APNs) 3128-011-02, 3128-011-03 and 3128-011-04, totaling approximately 30.85 acres. The Project site is surrounded by vacant and undeveloped land to the south.

Timeframe: The Project is scheduled to start construction in the fourth quarter of 2025.

COMMENTS AND RECOMMENDATIONS

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*) and Existing Mitigation Measure BIO-1

IS/MND- page 52 and Biological Study (Joshua Tree Report) pages 40-56

Issue: CDFW appreciates that the MND includes MM BIO-1 which considers an Incidental Take Permit through the Western Joshua Tree Conservation Act (WJTCA) and CDFW for the take of 34 western Joshua trees (WJT). CDFW would like to point out that although page 42 of the Biological Study (Joshua Tree Report prepared by Bloom Biological Inc) states that "each Joshua tree stem or trunk arising from the ground is considered an individual tree, regardless of proximity to any other Joshua tree stem or trunk" it appears that the pictures taken of the WJTs on site, starting on page 47 of the Joshua Tree Report, depict more than the reported 34 trees.

Specific Impact: The Project site may contain more WJT individuals than those included in Table 1. Classification of Joshua Trees Onsite by Height (Biological Study).

Why impact would occur: Each WJT stem or trunk arising from the ground must be considered an individual tree requiring mitigation. In addition, for the purposes of the census, **the Project site** is defined as the area(s) where Project activities are expected to

occur (e.g., access, staging, construction, etc.). The **census area** is defined as the Project site plus an additional **15-meter (~50 ft)** census buffer around the Project site. If the census buffer area extends onto neighboring properties, landowner(s) permission should be obtained, whenever possible, to document any WJTs on adjacent properties. If landowner permission isn't available, WJT may be observed from the property boundary. More information regarding the WJTCA can be found here: [Western Joshua Tree Conservation Permitting \(ca.gov\)](#).

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 & G. 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".

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: Given the proposal for 48,381 square feet of landscaping, CDFW recommends preserving and relocating some of the western Joshua trees on-site. The transplantation of smaller trees can be highly successful, provided that sufficient root mass is transplanted, the process occurs during appropriate conditions, and most importantly, at least two years of regular supplemental watering is provided after transplantation to help the trees compensate for the loss of a significant portion of their root system (Goodwin and Graver 2023). CDFW recommends that the measure be revised to the following (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND:

Biological Resources Mitigation Measure 1 (MM BIO-1)

Prior to construction, the Project proponent is required to obtain an Incidental Take Permit (ITP) through CDFW for the take of **34 western** Joshua trees. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree. In lieu of completing the mitigation on its own, the permittee may elect to pay mitigation fees. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees. The City of Adelanto falls within an area of the WJTCA which qualifies for reduced Mitigation Fees for impacts to western Joshua trees (Fish & G. Code, §1927). The reduced Mitigation Fees are as follows [Fish & G. Code, §1927.3 (d)]: 1. Trees 5 meters or greater in height - \$1,000; 2. Trees 1 meter or greater but less than 5 meters in height - \$200; 3. Trees less than 1 meter in height - \$150. Fees are subject to change according to Fish and Game Code, section 1927.8 (b). Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem or trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. It is recommended that specific Joshua tree mitigation measures or determination of in-lieu fees be addressed through consultation with CDFW.

Comment #2 Desert Tortoise (*Gopherus agassizii*) and Existing Mitigation Measure BIO-2

IS/MND- page 53 and Biological Assessment Report page 16

Issue: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. A CESA incidental take permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "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 CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085).

Specific impact: CDFW is concerned that Mitigation Measure BIO-2, as currently written, is not sufficient in timing or scope to prevent impacts to the CESA-listed species, desert tortoise (*Gopherus agassizii*; threatened, candidate for endangered).

Why impact would occur: MM BIO-2 provides guidance should desert tortoise be encountered. The measure proposes translocation of desert tortoise if found present during preconstruction desert tortoise surveys. Please note that translocation of desert tortoise would be considered take and take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 & 2085).

Evidence impacts would be significant: Desert tortoise has full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species, or CESA-listed plant species that results from a project is prohibited, except as authorized by State law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Desert tortoises meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or 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 by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that presence/absence surveys for desert tortoise using the survey protocol outlined in the *US Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual* (2019 revision) were conducted on April 9 and May 2, 2023 (active season). To address potential impacts to desert tortoise, CDFW offers the following revisions to MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure 2 (MM BIO-2)

Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), a preconstruction **presence or absence** survey for desert tortoise is recommended following the USFWS guidelines for Preparing for any Action that may occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*). **The survey shall utilize a perpendicular survey route** ~~This would~~ **and** consist of one complete (100% coverage) survey of the action area prior to the initiation of construction at any time of year. The survey should be conducted **by a CDFW-approved Biologist** ~~within 7 days~~ **no more than 48 hours** prior to **Project activities or construction and after any pause in Project activities lasting 30 days or more** ~~beginning by a City Approved Biologist~~. **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 the start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoises do not enter the Project area.** If desert tortoise is found on the project site during preconstruction surveys, construction will be halted until the tortoise has left the area on its own and is no longer in danger. If the tortoise does not leave on its own, translocation of desert tortoise should only be conducted with necessary federal ESA and state CESA permitting, and via an approved translocation plan pursuant to the above permits. Prior to the start of construction or any ground disturbance, a qualified biologist should prepare a ~~Desert Tortoise Translocation Plan (DTRP)~~ **desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. The Project proponent shall submit to CDFW for review and approval the desert tortoise-specific avoidance plan.** ~~to be administered during the construction and operation of the project. The DTRP should be submitted to the City of Adelanto for review and approval and shall be updated and utilized for translocation and monitoring after construction. The DTRP should include, but not be limited to the following:~~

- ~~1. Discussion on temporary construction fencing (if any);~~

- ~~2. Description of clearance surveys of permanent exclusion areas,~~
- ~~3. Transportation and release procedures,~~
- ~~4. Construction schedule,~~
- ~~5. Translocation/relocation areas,~~
- ~~6. Monitoring and reporting~~

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.

Comment #3 Burrowing Owl (*Athene cunicularia*) and Existing Mitigation Measure BIO-4

IS/MND- page 53 and Biological Assessment Report page 17

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.

Specific impact: CDFW is concerned that Mitigation Measure BIO-4, as currently written, is not sufficient in timing or scope to prevent impacts to burrowing owl.

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 Project site. 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 impacts would be significant: 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.” Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or 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 by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that focused surveys/breeding season surveys were conducted for burrowing owl following CDFW’s *Staff Report on Burrowing Owl Mitigation*. Although no sign of burrowing owl was detected within the Project site or within the 500 ft. buffer, the Project contains suitable habitat. CDFW recommends MM BIO-4 be revised to include further details if burrowing owls were to be found during the pre-construction surveys (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure 4 (MM BIO-4)

Prior to the initiation of construction activities ((i.e., grubbing, clearing, staging, digging), a “take avoidance survey” should be conducted by a ~~City-Approved~~ **qualified** Biologist for the project site and surrounding 500 ft radius utilizing the methodology provided in CDFW’s 2012 Staff Report on Burrowing Owl Mitigation. This survey should be conducted ~~no less more~~ **no less more** than 14 days prior to initiation of ground disturbance activities. **If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed.** Should no Burrowing Owls be detected during the initial “take avoidance survey” the survey should be repeated within 24 hours prior to ground disturbance **to determine if the Project site contains burrowing owl or sign thereof 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.

~~Should Burrowing Owls be detected, avoidance and minimization measures should be developed through the monitoring of the owls by the City Approved Biologist. If Burrowing Owls are detected, no ground disturbing activities should occur except in accordance with the CDFW 2012 Staff Report or with written authorization by CDFW staff. Burrowing Owls shall not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed by the City Approved Biologist and approved by the applicable local CDFW office and submitted to the City. The plan should follow the requirements of the CDFW 2012 Staff Report.~~

If active burrows or signs thereof are found within the development footprint during the preconstruction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist that 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. All occupied burrows shall be mapped in an aerial photo. At least 7 days prior to the expected start of any Project-related ground disturbance activities, or restart of activities, the City of Adelanto shall provide a burrowing owl survey report and mapping to CDFW. 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.

Comment #4 Mohave Ground Squirrel (*Xerospermophilus mohavensis*) and Existing Mitigation Measure BIO-5

IS/MND- page 53 and Biological Assessment Report page 17

Issue: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. A CESA incidental take permit (ITP) is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "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 CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 and 2085).

Specific impact: CDFW is concerned that Mitigation Measure BIO-5, as currently written, is not sufficient to prevent impacts to the CESA-listed species Mohave ground squirrel (*Xerospermophilus mohavensis*; threatened).

Why impact would occur: The measure proposes translocation of Mohave ground squirrel. Please note that translocation of Mohave ground squirrel would be considered take and take of any CESA-listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 & 2085).

Evidence impacts would be significant: The Project site is within the range of the CESA threatened Mohave ground squirrel and the Project site support suitable habitat for Mohave ground squirrel. Mohave ground squirrel meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or 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 by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW appreciates that Mohave ground squirrel surveys were conducted following CDFW guidelines. These surveys involved five consecutive days of live-trapping during three predefined sessions: Session 1 (March 15 – April 30); Session 2 (May 1-31); Session 3 (June 15 – July 15). Additionally, three Browning Strike Force HD ProX model game cameras were deployed within the Mohave ground squirrel focused survey grid. CDFW recommends MM BIO-5 be revised to include further details if Mohave ground squirrel were to be found during the pre-construction Mohave ground squirrel surveys (edits are in ~~strikethrough~~ and **bold**):

Biological Resources Mitigation Measure 5 (MM BIO-5)

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.

~~The City Approved Biologist shall be present onsite during the initiation of construction activities (i.e., grubbing, clearing, staging, digging) and daily during all construction to monitor for the presence of Mohave ground squirrel. If Mohave ground squirrel is found on the project site during construction, construction will be halted until the ground squirrel has left the area on its own and is no longer in danger. If the ground squirrel does not leave on its own, translocation of ground squirrels should only be conducted by an approved biologist with necessary permitting and with the approval of CDFW.~~

COMMENT #5 Nesting Birds Surveys and Existing Mitigation Measure BIO-6

IS/MND- page 48,54 and Biological Assessment Report page 17

Issue: CDFW is concerned that Mitigation Measure BIO-6, as currently written, is not sufficient in timing or scope to prevent impacts to nesting birds. The Project site provides nesting and foraging habitat as stated in the Biological Study conducted by Bloom Biological Inc (BBL).

Specific impact: The results of the 2023 field surveys identified 20 bird species on-site and adjacent to the Project site including common raven (*Corvus corax*), red tailed-hawk (*Buteo jamaicensis*), horned lark (*Eremophila alpestris*), verdin (*Auriparus flaviceps*) and loggerhead shrike (*Lanius ludovicianus*; California Species of Special Concern (SSC)). Verdin were observed nesting in one of the cholla plants located on the Project site, and the Biological study states “it is clear that this site has been used by this nesting pair for at least several years as indicated by multiple nests present in the cactus” (BBI; 2023). A horned lark nest was observed in a creosote bush (*Larrea tridentata*) on the Project site and four hatchlings were observed on May 25,2023. “There were many other horned lark present onsite, and it is possible that there were additional nests present which went undetected within the denser creosote bush onsite” (BBI,2023). An active red-tailed hawk’s nest was observed in a utility transmission tower located 490 feet to the east of the Project site in an adjacent parcel. A common raven’s nest was also observed in a neighboring utility tower. Additionally, an individual loggerhead shrike was observed foraging within the project site during nearly all of the survey dates.

Why impact would occur: Biological Resource Mitigation Measure No.6 states that “If vegetation removal must be conducted during the nesting bird season (February 1 through

September 1), a biologist should first conduct a survey to determine whether any birds are nesting in the area.” While the measure establishes dates when songbirds and raptor generally tend to nest, it is important to remember that the timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. Species that nest outside the peak breeding season should also be considered (e.g., hummingbirds may nest year-round, and raptors may nest outside the peak breeding season). In addition, because the duration of a pair to build a nest and incubate eggs varies considerably, CDFW does not consider seven (7) days between surveying for nesting behavior and/or nests and construction activities as appropriate. To adequately identify nesting bird presence in the Project area, nesting pre-construction surveys should be conducted by a qualified biologist **no more than three (3) days prior to the initiation of project activities**, at the appropriate time of day/night, during appropriate weather conditions **regardless of the time of the year**.

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. The Project will involve grading and removal of existing vegetation to make way for the development. 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).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: To address the above issues and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site**. Preconstruction nesting bird surveys shall be performed within **3 days** prior to Project activities to determine the presence and location of nesting birds. CDFW recommends that the measure be revised to the following (edits are in ~~strikethrough~~ and **bold**) for inclusion in the final MND:

Biological Resources Mitigation Measure 6 (MM BIO-6)

To reduce impacts to less than significant ~~In order to avoid impacts to nesting birds it is recommended that the following mitigation measure be employed: Any necessary clearing and removal of vegetation for project development should be conducted outside of the typical nesting season for birds. If vegetation removal must be conducted during the nesting bird season (February 1 through September 1), a biologist should first conduct a survey to determine whether any birds are nesting in the area. The survey should occur within 7 days prior to beginning work and include a search for nesting raptors within 500 feet line-of-sight of the project and all other bird nests within or adjacent to the project site. If nesting bird activity any active nests are found, a “no disturbance” buffer should be implemented by the biologist and no activity should occur within the buffer until after all young have fledged from the nest. Exceptions may be made to the buffer distance if a biological monitor is present onsite when work is occurring.~~ **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 #6 Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides and recommended Mitigation Measure BIO-9

Issue: Cannabis cultivation sites often use substantial quantities of pesticides, including insecticides, and rodenticides.

Specific Impact: The MND lacks a discussion on whether the Project's cultivation activities will involve pesticides such as fungicides, herbicides, insecticides, and rodenticides.

Why impact would occur: Anticoagulant rodenticides and rodenticides that incorporate "flavorizers" that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020, the general use of second-generation anticoagulants is now banned in California.) Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to nontarget wildlife and result in prolonged/inhumane death. California Department of Pesticide Regulation stipulates that pesticides must meet certain criteria to be legal for use on cannabis. For details, visit: [Legal Pest Management Practices for Cannabis Growers in California](#).

Evidence impact would be significant: Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berry 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside. Nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009). Raptors (e.g., hawks and owls) and mammalian carnivores (e.g., coyotes, foxes, etc.) are some of the common victims of secondary poisonings by anticoagulant rodenticides (Mendelsohn and Paz 1977, Gabriel et al. 2018).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends minimizing the use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6).

CDFW recommends that the City of Adelanto include a mitigation measure conditioning the Project to develop a plan to avoid, minimize, and mitigate the impacts of pesticides used in cannabis cultivation. CDFW recommends inclusion of the following mitigation measure to reduce impacts to less than significant:

Biological Resources Mitigation Measure 9 (MM BIO-9)

Prior to construction and issuance of any grading permit, the City of Adelanto should develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers." (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Native Landscaping: The IS/MND indicates that a total 48,381 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](#).

Management of Bioswale Basins: CDFW is concerned about potential impacts to biological resources resulting from management of the proposed bioswale basins. Because retention basins have the potential to create habitat that attracts wildlife, CDFW is concerned that the basins need proper management. The retention basins will have to be maintained, which poses concerns about work period/season, nesting birds, vegetation removal, and sensitive species surveys, as well as the potential need for a Lake and Streambed Alteration Agreement to maintain the basin. The IS/MND should include an analysis of these issues.

Role of Lake and Streambed Alteration Agreement Program in Cannabis Licensing:

The California Department of Cannabis Control (DCC) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from DCC, cultivators must have a Lake or Streambed Alteration Agreement (LSA) Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the [Environmental Permit Information Management System \(ca.gov\)](#). Cannabis cultivators may learn more about cannabis cultivation permitting at: [Cannabis Cultivation Permitting](#).

- **Self-Certification**-Cannabis cultivation projects that will not substantially modify any river, stream, or lake, can complete the online self-certification. CDFW will review the information and determine whether a notification is required. If a notification is not required, CDFW will provide the applicant with a written verification that an LSA Agreement is not required. Please note that if any part of the cultivation is located outdoors, the Project will not qualify for self-certification. To qualify for self-certification, cultivation projects must be in a permanent structure with walls and a roof, and impervious floor.

Biological Report and Surveys: The CDFW appreciates that Bloom Biological staff conducted botanical inventories, habitat assessments and focused surveys of the Project

site and 500-foot buffer. During the surveys conducted between April 9 and July 7, 2023, Bloom Biological Inc biologists detected 23 plant species, 20 bird species, 4 mammal species, 3 reptile species, and 5 insect species on the Project site. The Project is composed of a creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) shrubland alliance, and it was observed to have at least thirty-four (34) western Joshua trees of varying ages and health. Additionally, several species of birds were observed nesting and foraging on the Project site. Notably, no burrowing owls, Mohave ground squirrels or desert tortoises were detected during the focused surveys. Please note that CDFW generally considers biological 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. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases as is the case with Rancho 30 Cultivation.

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:

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(For) Alisa Ellsworth
Environmental Program Manager

ec: 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 construction, the Project proponent is required to obtain an Incidental Take Permit (ITP) through CDFW for the take of western Joshua trees. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the project site, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree. In lieu of completing the mitigation on its own, the permittee may elect to pay mitigation fees. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees. The City of Adelanto falls within an area of the WJTCA which qualifies for reduced Mitigation Fees for impacts to western Joshua trees (Fish and G. Code, §1927). The reduced Mitigation Fees are as follows [Fish and G. Code, §1927.3 (d)]: 1. Trees 5 meters or greater in height - \$1,000; 2. Trees 1 meter or greater but less than 5 meters in height - \$200; 3. Trees less than 1 meter in height - \$150. Fees are subject to change according to Fish and Game Code, section 1927.8 (b). Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem or trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. It is recommended that specific Joshua tree mitigation measures or determination of in-lieu fees be addressed through consultation with CDFW.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-2: Prior to the initiation of construction activities (i.e., grubbing, clearing, staging, digging), a preconstruction presence or absence survey for desert tortoise is recommended following the USFWS guidelines for Preparing for any Action that may occur Within the Range of the Mojave Desert Tortoise (<i>Gopherus agassizii</i>). The survey shall utilize perpendicular survey route and consist of one complete (100% coverage) survey of the action area prior to the initiation of construction at any time of year. The survey should be conducted by a CDFW-approved Biologist no more than 48 hours prior to Project activities or construction and after any pause in Project activities lasting 30 days or more. Pre-construction surveys cannot be combined with other surveys conducted for other species while</p>	<p>Prior to commencing ground or vegetation</p>	<p>Project Proponent</p>

<p>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 the start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoises do not enter the Project area. If desert tortoise is found on the project site during preconstruction surveys, construction will be halted until the tortoise has left the area on its own and is no longer in danger. If the tortoise does not leave on its own, translocation of desert tortoise should only be conducted with necessary federal ESA and state CESA permitting, and via an approved translocation plan pursuant to the above permits. Prior to the start of construction or any ground disturbance, a qualified biologist should prepare a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. The Project proponent shall submit to CDFW for review and approval the desert tortoise-specific avoidance plan. 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>disturbing activities</p>	
<p>MM-BIO-4: Prior to the initiation of construction activities ((i.e., grubbing, clearing, staging, digging), a “take avoidance survey” should be conducted by a qualified Biologist for the project site and surrounding 500 ft radius utilizing the methodology provided in CDFW’s 2012 Staff Report on Burrowing Owl Mitigation. This survey should be conducted no more than 14 days prior to initiation of ground disturbance activities. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. Should no Burrowing Owls be detected during the initial “take avoidance survey” the survey should be repeated within 24 hours prior to ground disturbance to determine if the project site contains burrowing owl or sign thereof 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.</p> <p>If active burrows or signs thereof are found within the development footprint during the preconstruction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist that 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. All occupied burrows shall be mapped in an aerial photo. At least 7 days prior to the expected start of any project-related ground disturbance activities, or restart of activities, the City of Adelanto shall provide a burrowing owl survey report and mapping to CDFW. 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</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>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.</p>		
<p>MM-BIO-5: 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>
<p>MM-BIO-6: To reduce impacts to less than significant it is recommended that the following mitigation measures be employed: 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,</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>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>MM-BIO-9: Prior to construction and issuance of any grading permit, the City of Adelanto should develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers." (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>