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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 4, 2024
Sent via email

Christian Espinoza, Planning Technician
City of Adelanto
11600 Air Expressway
Adelanto, CA 92301
cespinoza@adelantoca.gov

Dear Christian Espinoza:

103 Unit Subdivision (LDP 23-14 & TTM 20675)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024050405

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the 103 Unit Subdivision LDP 23-14 & TTM 20675 (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: Nan Huang, MetaCapital Management

Objective: The proposed Project entails the construction of a total of 103 single-family residential units within a 17.2-acre site. Each single-family unit would feature either three-bedroom or four-bedroom floor plans. The individual units would be single level and come equipped with an enclosed two-car garage. A retention basin would be situated in the northwest corner of the site. Primary access would be provided by a main entry on the

[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.

west side of Bellflower Street, while four accessways would interconnect on the north side of Cortez Avenue. The internal drive aisles would consist of two travel lanes and would have a curb-to-curb width of 36-feet.

Location: The Project site is located in the City of Adelanto, San Bernardino County, California at Latitude, 34.57473 N and Longitude -117.42054 W. The Project encompasses two vacant parcels bounded by Lawson Avenue on the north, Bellflower Street on the east, Cortez Avenue on the south, and Lilac Road on the west with Assessor Parcel Numbers (APNs) 0459-124-36 and 0459-124-37. The land surrounding the site is composed of a mix of undeveloped, vacant land and residential developments.

Timeframe: The Project is scheduled to start construction in January 2025 and would take approximately nineteen months to complete.

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 Nesting Birds Surveys and Existing Mitigation Measure BIO-1

IS/MND page 34, Biological Assessment Report page 5.

Issue: CDFW is concerned that Mitigation Measure BIO-1, 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 Assessment Report prepared by ELMT Consulting (ELMT).

Specific impact: MM BIO-1 states that if construction occurs between February 1st and August 31st, a nesting bird survey shall be completed by a biologist. Additionally, specific buffer distances from nests are not discussed. Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species and disrupt breeding behavior.

Why impact would occur: 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). To adequately identify nesting bird presence in the Project area, nesting pre-constructions 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. If nesting birds are detected during surveys, CDFW recommends that buffers be established around nest sites with the following distances: a minimum of 300 feet for songbirds, and 500 feet for raptors. Reductions in buffers may be appropriate based on screening vegetation, ambient levels of human activities, or other factors.

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. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting birds on the Project site. 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 within the Project site be avoided any time birds are nesting on-site. Preconstruction nesting bird surveys shall be performed no more than 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 1 (MM BIO-1)

~~If construction occurs between February 1st and August 31st~~ **Regardless of the time of year**, a pre-construction clearance survey for nesting birds should be conducted **no more than** ~~within~~ three (3) days **prior** ~~of~~ **to** the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The **qualified** biologist conducting the clearance survey **shall conduct the survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas** ~~should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur~~. **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 an active avian nest is discovered during the pre-construction clearance survey, **within the work area or the Project's zone of influence (generally 100-300 feet),** construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer **shall be a minimum of 500 feet for raptors and 300 feet for songbirds**, **unless a smaller buffer is specifically** ~~will be~~ determined by the **qualified** wildlife biologist **familiar with the nesting phenology of the nesting species.** ~~and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances.~~ **The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.** Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. ~~A biological monitor~~ **The qualified biologist** should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur. **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 #2 Western Joshua tree (*Yucca brevifolia*) and Existing Mitigation Measure BIO-2

IS/MND- page 35 and Biological Assessment Report pages 7.

Issue: The IS/MND recognizes the presence of western Joshua tree (WJT), a candidate species under CESA, on the proposed Project site. The Project has the potential to result in permanent and temporary impacts to WJT. CDFW appreciates that the IS/MND includes MM BIO-2 which considers an Incidental Take Permit through the Western Joshua Tree Conservation Act (WJTCA) and CDFW for the take of 6 live WJT.

Specific Impact: Within the 17.2-acre Project site, the Project would remove six (6) live WJT in order to construct the residential units. Based on arial imagery, the Project site may contain more WJT individuals than the 6 live trees mentioned in the IS/MND and Biological Assessment Report. Ground-disturbing activities would lead to the removal of both live and dead WJT from the Project site and might impact live WJT in adjacent parcels.

Why impact would occur: Take of WJT is defined as any activity that results in the removal of WJT or any parts thereof (CDFW 2024). The IS/MND should address the presence of dead WJTs within the Project site, as well as the Project's impact on any live WJTs within and adjacent to the Project site. Access and construction occurring adjacent to WJTs in the off-site parcels could impact WJTs as a result of ground disturbance (e.g., excavation, vegetation removal, grading, and earth-moving activities); encroachment, compaction, trampling, or disturbance of the root zone and seedbank by heavy equipment, vehicles, or foot traffic; and increased dust, water, and wind erosion during construction. Under the WJTCA ITP 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: The Project as described will result in direct take of WJT and parts thereof and would result in the loss of the habitats on which they depend on. 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". Grading, ground disturbance, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in the permanent loss of WJT on the Project site and may result in the disruption to the WJT seedbank.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: Given the location of WJT on and adjacent to the Project area, 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 2 (MM BIO-2)

The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to construction, **and 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 is required to obtain **California Endangered Species Act (CESA)** ~~an~~ Incidental Take Permit (ITP) **under Section 2081(b) of the CESA, or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927-1927.12)** through CDFW for the take of ~~6~~ **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 Wildlife Code, Section 1927). The reduced Mitigation Fees are as follows [Fish and Wildlife Code, Section 1927.3 (d)]: 1.Trees 5 meters of 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. 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 of 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 #3 Burrowing Owl (*Athene cunicularia*)

IS/MND page 31, Biological Assessment Report page 8.

Issue: The Project may impact burrowing owl, a California Species of Special Concern (SSC).

Specific impact: The MND does not provide any avoidance/minimization or mitigation measures specific to burrowing owl. No burrowing owls or signs were observed during the field investigation. CDFW would like to note only one meandering transect survey was performed on September 12th, 2023, a focused survey for the species following a CDFW approved guideline, or similar approach, was not conducted. According to the Biological Assessment, the "project site and surrounding area provide suitable foraging and cover habitat for mammalian species adapted to a high degree of anthropogenic disturbance" including California ground squirrel (*Otospermophilus beecheyi)* which were observed on site. Burrowing owls may use California ground squirrel burrows throughout the Project site as overwintering, breeding, and nesting habitat. Additionally, the Project site is within burrowing owl habitat and the California Natural Diversity Database has a 2007 observation of burrowing owl within 1.29 miles of the Project site (CDFW 2024a). Burrowing owl survey guidelines recommend multiple surveys to be conducted during the breeding and nonbreeding seasons to determine if, when, and how the site is used by burrowing owls as recommended on the *Staff Report on Burrowing owl Mitigation* (CDFG, 2012*)*.

Why impact would occur: According to the Biological Assessment Report, focused burrowing owl surveys were not conducted on the Project site in accordance with the guidelines established by the *Staff Report on Burrowing owl Mitigation* (CDFG, 2012*)*. 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. Previous ground disturbing activities at the Project site have altered the vegetation cover, resulting in sparse cover similar to that preferred by burrowing owl. 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: 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, and 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). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Burrowing owls are Species of Special Concern (ca.gov) and have recently been petitioned for consideration to be listed as Endangered or Threatened under CESA. 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: The general transect survey that was conducted for the Project is not sufficient to provide a complete analysis of potential impacts to burrowing owl. CDFW recommends that prior to commencing Project activities, focused surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends the revised MND include specific avoidance and minimization measures to ensure that impacts to burrowing owls are reduced to less than significant. CDFW recommends the inclusion of MM BIO-5, which include focused surveys and pre-construction surveys:

Biological Resources Mitigation Measure 5 (MM BIO-5)

Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If the surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.

COMMENT #4: Mohave ground squirrel (*Xerospermophilus mohavensis*)

IS/MND page 31, Biological Assessment Report page 10.

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

Specific Impact: The IS/MND does not provide any avoidance/minimization or mitigation measures specific to Mohave ground squirrel. The Project and Project related activities have the potential to take Mohave ground squirrel.

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. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 17.2 acres of Mohave ground squirrel habitat.

Evidence impact would be significant: The IS/MND states that the Project site does not support a plant community suitable for Mohave ground squirrel habitat and that "the closest documented Mohave ground squirrel was captured on the western outskirts of Victorville to the southeast of the project site (CNDDB 1959)". CDFW would like to point out that the California Natural Diversity Database (CNDDB) is not exhaustive in terms of the data it houses, nor is it an absence database. A lack of recorded observations near a Project site does not provide sufficient merit to make the definitive statement that no impacts would occur without conducting protocol-level focused surveys. Mohave ground squirrels are challenging to detect, and a general survey may not provide an accurate assessment of presence/absence. The CNDDB data should not be substituted for on-site surveys. However, the Project site is within the range of the CESA threatened Mohave ground squirrel, and a more recent observation from 2011 is documented on CNDDB 2 miles away from the Project site. Additionally, desert shrub vegetation such as creosote bush scrub (*Larrea tridentata*) are known to provide habitat for Mohave ground squirrel. According to CDFW's Mohave Ground Squirrel Predicted Habitat - CWHR M073 [ds2531] GIS Dataset (ca.gov) database, the Project site provides moderately suitable habitat for Mohave ground squirrel (CDFW 2016). Without focused protocol surveys during the appropriate survey period, Project activities may adversely impact Mohave ground squirrel.

Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant: CDFW offers the following measures for inclusion in the final MND to avoid impacts to Mojave ground squirrel:

Biological Resources Mitigation Measure 6 (MM BIO-6)

A qualified biologist familiar with the species' behavior and life history shall conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground-disturbing activities commence. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW-approved location and mitigation ratio.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Management of Retention Basins: CDFW is concerned about potential impacts to biological resources resulting from management of the proposed retention basins. Retention basins have the potential to create habitat that attracts wildlife. CDFW is concerned that the basins need proper and routine management and maintenance. The MND should address 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.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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:
Alisa Ellsworth
84FBB8273E4C480...
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

REFERENCES

California Department of Fish and Game (CDFG). 2023. Mohave Ground Squirrel Survey Guidelines. Available for download at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline

California Natural Diversity Database (CNDDB) Government [ds45]. 2024. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

[CDFW] California Department of Fish and Wildlife. 2016. Mohave Ground Squirrel Predicted Habitat – CWHR M073 [ds2531]. Available at: https://map.dfg.ca.gov/metadata/ds2531.html

Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. Studies in Avian Biology 27:120-135.

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**
MM BIO-1: Regardless of the time of year, a pre-construction clearance survey for nesting birds should be conducted no more than three (3) days prior to the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. The qualified biologist conducting the clearance survey shall conduct the survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas. 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 an active avian nest is discovered during the pre-construction clearance survey, within the work area or the Project's zone of influence (generally 100-300 feet), construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by the qualified wildlife 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. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. The qualified biologist should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur. 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.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
MM BIO-2: The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to construction, and 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 is required to obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 2081(b**)** of the CESA, or under the Western Joshua Tree Conservation Act		

(WJTCA) of Fish and Game Code (§§ 1927-1927.12) 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 Wildlife Code, Section 1927). The reduced Mitigation Fees are as follows [Fish and Wildlife Code, Section 1927.3 (d)]: 1. Trees 5 meters of 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. 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 of 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.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
MM BIO-5: Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval. Take avoidance surveys shall be conducted no less than 14 days prior to the start of Project-related activities. Burrowing	Prior to commencing ground or vegetation disturbing activities	Project Proponent

owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If the surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.		
MM BIO-6: A qualified biologist familiar with the species' behavior and life history shall conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground-disturbing activities commence. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW- approved location and mitigation ratio.	Prior to commencing ground or vegetation disturbing activities	Project Proponent