State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 22, 2024
Sent via email

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

Dear James Hirsch:

Auburn Development, Ecosave III LDP 23-02 (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024071012

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the Auburn Development, Ecosave III LDP 23-02 (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.

[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.

PROJECT DESCRIPTION SUMMARY

Proponent: Jason Ye, Ecosave-Development LLC

Objective: The proposed Project entails the construction of a 306,106 square foot warehouse building on a 17.4-acre site. The new building would include 295,606 square feet of warehousing floor area and 10,500 square feet of office floor. The Project includes a total of 205 parking stalls, 60 trailer stalls, 45 dock-high truck doors,103,798 square feet of landscaping, a 37,903 square-foot water retention area and an 8-foot-tall perimeter fence. Furthermore, 18,515 square feet of the site is dedicated to street improvements.

Location: The Project site is located in the City of Adelanto, San Bernardino County, California at Latitude 34.59284 N and Longitude -117.4031 W. The site is bounded by Pearmain Street to the west, Barcelona Avenue to the south, Auburn Avenue to the north, and Adelanto Road to the east with Assessor Parcel Number (APN) 0459-053-54.

The Project site is currently undeveloped, land surrounding the site is composed of a mix of undeveloped, vacant land and commercial developments.

Timeframe: The Project is scheduled to start construction in January 2025 and would take approximately nine 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 Inadequacy of surveys and Mitigation Measure BIO-1 on page 34

Biological Resource Assessment page 4, IS/MND page 34, and 95

Issue: The IS/MND analysis and conclusions rely on outdated biological surveys. The biological assessment conducted may no longer represent the current state of the Project site and the inventory of biological species that may be present. Additionally, the surveys were conducted outside of the recommended survey times for multiple species. The IS/MND outlines the implementation of pre-construction surveys for special status species, as proposed in Biological Resources Mitigation Measure No. 1 (BIO-1) on page 34, and additionally for nesting birds on page 95 (also BIO-1). CDFW has concerns that BIO-1 on page 34 primarily consists of pre-construction surveys, deferring the development of effective mitigation strategies to a later date instead of providing species-specific measures in the IS/MND.

Specific impact: The IS/MND bases its analysis of impacts to biological resources on transect surveys described in the biological assessment conducted on November 15, 2022, RCA Associates, Inc biologists. Focused surveys were not conducted. Therefore, Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of sensitive plant and wildlife species that were not previously known or identified. MM BIO-1 on page 34, requires pre-construction surveys to identify special-status species but does not specify survey methodology or avoidance measures. The provisions described in the IS/MND may not be adequate to reduce the Project's impacts to levels that would be less than significant.

Why impact would occur: The IS/MND states that "the site supports minimal amount of wildlife" and that future development of the site would have minimal impact on the general biological resources present on the site. CDFW disagrees with these statements. The Biological Assessment indicates a reconnaissance survey was performed on November 15, 2022. Reconnaissance surveys can be used to gather general information about the habitat, but it should not be used to determine the presence or absence of candidate,

sensitive, or special status species. The survey was conducted on November 15, 2022, when sensitive species such as desert tortoise, Mohave ground squirrel and sensitive plant species are inactive. Additionally, site conditions may have changed since November 15, 2022. The IS/MND states that the implementation of pre-construction biological surveys as mitigation measures, proposed in BIO-1, will result in less than significant impacts to special status species. However, without establishing an appropriate biological baseline utilizing professionally accepted survey standards, the IS/MND cannot disclose the potential Project impacts, nor can it develop specific and enforceable avoidance, minimization, or mitigation measures. Given that a number of sensitive species including burrowing owl, Mohave ground squirrel and desert tortoise are known to occur within the vicinity of the Project and within similar habitat, baseline biological surveys are necessary to conclude the absence of a species. If the absence of the species is not established, it may be reasonably assumed that the species are present, and specific and enforceable avoidance, minimization, and mitigation measures should be developed.

Evidence impact would be significant: Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Without an accurate environmental baseline of present candidate, sensitive, or special status species and the delay in development of specific avoidance, minimization, and mitigation measures, it is unclear if the mitigation measures proposed to be implemented by the Project Proponent will avoid, minimize, or mitigate the impacts to a level below significant adverse effect.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: The IS/MND should include a Project impact analysis on sensitive species based on professionally accepted survey methodologies, including but not limited to, desert tortoise[2], Mohave ground squirrel[3], rare plants[4] and burrowing owl[5] (see comments below). With such information, the City of Adelanto can identify and analyze the potential impacts to candidate, sensitive, or special status species in or adjacent to the Project area and develop mitigation measures that can avoid, minimize, or mitigate impacts to the species to lessen the adverse significant effects. CDFW recommends inclusion of the following changes to the mitigation measure BIO-1 on page 34 of the IS/MND and BIO-1 on page 95 (edits are in strikethrough and additions are in **bold**). CDFW also recommends the species-specific mitigation measures BIO-4-8 below:

Biological Resources Mitigation Measure 1 (MM BIO-1)

Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint with the potential to be affected, including Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380) for which suitable habitat is present within or adjacent to the Project. The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. 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

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[2] US Fish and Wildlife Service. December 2009. Desert Tortoise (Mojave Population) Field Manual (*Gopherus agassizii*). Desert-Tortoise-Field-Manual.pdf (fws.gov)
[3] California Department of Fish and Wildlife. October 2023. California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines (January 2003, revised July 2010, October 2023). CDFW Mojave Ground Squirrel Survey Guidelines (ca.gov)
[4] California Department of Fish and Wildlife. March 20, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (ca.gov)
[5] California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Microsoft Word - BUOW Staff Report_final_030712 REV 1.doc (ca.gov)

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, or if surveys are completed during periods of drought.

~~Pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of project related ground disturbance. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.~~

Biological Resources Mitigation Measure ~~1~~ 3 (MM BIO-~~1~~ 3)

Regardless of the time of year, a preconstruction **clearance** 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. Preconstruction 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 #2 Western Joshua tree (*Yucca brevifolia*) and Existing Mitigation Measure BIO-2

IS/MND- page 33-35 and Biological Assessment Report page 7.

Issue: The Project will impact western Joshua tree (WJT), a candidate species pursuant the California Endangered Species Act. Currently, mitigation measure BIO-2 identifies translocation of the western Joshua trees as per City requirements. As a CESA candidate species, please note that take (see Fish & G. Code § 86) of western Joshua tree, including translocation, is prohibited except as authorized pursuant to CESA or the Western Joshua Tree Conservation Act (WJTCA), (Fish & G. Code, §§ 1927-1927.12). CDFW does not recognize translocation alone as a sufficient form of mitigation.

Specific Impact: As stated in the IS/MND, the Project proponent would need to obtain the appropriate incidental take permit (ITP) from CDFW under CESA or the Western Joshua Tree Conservation Act (ca.gov) for any living or dead western Joshua trees present within the Project site prior to ground-disturbing activities (CDFW 2024). Within the 17.4-acre Project site, the Project would remove at least sixty-eight (68) WJT in order to construct the building structure. 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: Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals;

eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

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). Additionally, western Joshua tree is protected under the WJTCA. The WJTCA was enacted in July 2023 and prohibits the import, export, take, possession, purchase, or sale of any western Joshua tree in California unless authorized by CDFW (CDFW 2024). 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: CDFW appreciates that the IS/MND provides a measure to minimize the Project's impacts to western Joshua trees. CDFW offers the following revisions to MM BIO-2 (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 the initiation of western Joshua tree removal, relocation, replanting, trimming, or pruning or any activity that may result in take of WJT on site, the Project Proponent should obtain California Endangered Species Act Incidental Take Permit under Section 2081b of the CESA, or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927- 1927.12). California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee.

The Project site 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. Additionally, CDFW may require relocation of WJT based on the final WJT census. A Relocation Plan must be approved by CDFW prior to the issuance of a WJTCA ITP.

The following ~~mitigation~~ **minimization** measures are applicable to the Joshua Tree that is present on the project site.

1. The Joshua tree will be retained in place or replanted somewhere on the site where they can remain in perpetuity or will be transplanted to an off-site area approved by the city where they can remain in perpetuity. Joshua trees which are deemed not suitable for transplanting will be cut-up and discarded as per City requirements.

2. Earthen berms will be created around each tree by the biologist prior to excavation and the trees will be watered approximately one week before transplanting. Watering the trees prior to excavation will help make excavation easier, ensure the root ball will hold together, and minimize stress to the tree.

3. The tree will be moved to a pre-selected location which has already been excavated and will be placed and oriented in the same direction as their original direction. The hole will be backfilled with native soil, and the transplanted tree will be immediately watered. A numbered metal tag was placed on the north side of the tree and the tree was also flagged with surveyor's flagging. The biologist will develop a watering regimen to ensure the

survival of the transplanted trees. The watering regimen will be based upon the needs of the trees and the local precipitation.

Comment #3 Burrowing Owl (*Athene cunicularia*)

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

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

Specific impact: The IS/MND does not provide any avoidance/minimization or mitigation measures specific to burrowing owl, instead it outlines the implementation of pre-construction surveys for special status species including burrowing owl, as proposed in BIO-1. CDFW would like to note that only one reconnaissance survey was performed on November 15, 2022, a focused survey for the species following a CDFW approved guideline, or similar approach, was not conducted and the site supports suitable habitat. Additionally, the survey is outdated and not sufficient in timing and scope to detect burrowing owl on the Project site.

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. The Project will involve grading and removal of existing vegetation to make way for the development. If burrowing owl burrows are not properly detected, prior to ground disturbance, site preparation, and grading could destroy habitat and result in take of burrowing owl.

Evidence impacts would be significant: Habitat loss 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 owls 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 Species of Special Concern (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 3513Inadequate 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 the MND include an analysis of the potential Project impacts on burrowing owl. The analysis should be based on and include 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-4:

Biological Resources Mitigation Measure 4 (MM BIO-4)

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.**

Pre-construction 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 8.

Issue: The Project site is within the range of the CESA-threatened Mohave ground squirrel (MGS, *Xerospermophilus mohavensis*) and contains potentially suitable habitat.

Specific Impact: The IS/MND does not provide any avoidance/minimization or mitigation measures specific to Mohave ground squirrel. Focused surveys were not conducted, and the site contains occupiable burrows as stated in the IS/MND. Therefore, the Project and Project related activities have the potential to take MGS.

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 17.4 acres of Mohave ground squirrel habitat.

Evidence impact would be significant: The IS/MND states that the Project site supports “minimal suitable habitat” for Mohave ground squirrel due to the presence of occupiable burrows. While the biological assessment concludes that the species is not likely to inhabit the site due to lack of documented sightings in the immediate are, 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 an observation from 2011 is documented on CNDDB 3.6 miles away from the Project site. Additionally, desert shrub vegetation such as creosote bush scrub (*Larrea tridentata,* present at Project site) 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 IS/MND to avoid impacts to Mohave ground squirrel:

Biological Resources Mitigation Measure 5 (MM BIO-5)

Prior to Project approvals, 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.

COMMENT #5: Desert Tortoise (*Gopherus agassizii*)

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

Issue: The Project may impact desert tortoise, a California Endangered Species Act threatened species and its habitat.

Specific impact: The IS/MND does not provide any avoidance/minimization or mitigation measures specific to desert tortoise. The Project site is located within suitable desert tortoise habitat however focused surveys were not conducted. The Project and Project related activities have the potential to take desert tortoise.

Why impact would occur: This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. 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 desert tortoise. Project construction and operation may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment or entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation.

Evidence impact would be significant: Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization *prior* to Project implementation. This may include an incidental take permit or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081). Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: Since the proposed Project area is located within documented desert tortoise range, CDFW recommends that a qualified biologist conduct surveys, during the appropriate survey period following the protocol contained in the Mojave desert tortoise survey protocol (fws.gov). CDFW offers the following species-specific mitigation measure below to avoid impacts to desert tortoise:

Biological Resources Mitigation Measure (MM-BIO-6)

A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained.

COMMENT #6: Special-Status Plant Species

Biological Assessment Report page 13.

Issue: Page 13 of the IS/MND states that the Project site contains scarce vegetation of non-native species; therefore, impacts to the general biological resources in the surrounding area are expected to be negligible. CDFW would like to note that a single reconnaissance survey was conducted on November 15, 2022, outside of the flowering season for Beaver Dam breadroot (*Pediomelum castoreum*) and Booth's evening-primrose (*Eremothera boothii ssp. boothii*) which have the potential to occur on the Project site. Protocol-level botanical surveys were not conducted.

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the IS/MND. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center* v. *County* of *Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete *(Sundstrom* v. *County* of *Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry* v. *City* of *Murrieta (1995)* 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc.* v. *County* of *Orange* (2005) 131 Cal. App. 4th 777).

Specific impact: The project has the likelihood of project-related impacts to special status plant species due to ground-disturbing activities associated with the development of the Project site.

Why impact would occur: The Project has the potential to impact two special status plants, but the IS/MND does not include proposed mitigation for these species.

Evidence impact would be significant: Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in the Manual of California Vegetation and California Native Plant Society (cnps.org) (CNPS 2023).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW offers the following Mitigation Measures for Sensitive Plant Species:

Biological Resources Mitigation Measure 7 (MM BIO-7):

Pre-construction rare plant clearance survey: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging).

Biological Resources Mitigation Measure 8 (MM BIO):

If complete avoidance of a special status plant is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through off-site compensation including: 1) permanent protection of an existing off-site native population; 2) permanent protection of an off-site introduced population; 3) a combination of 1) and 2); or 4) mitigation banking. The ratio of acquisition to loss must in most cases exceed 1:1 for any species. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Management of Detention Basins: CDFW is concerned about potential impacts to biological resources resulting from management of the proposed 34,903 square-foot landscaped detention basin. Detention basins have the potential to create habitat that attracts wildlife. CDFW is concerned that the basins need proper management and maintenance. The IS/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:
Brandy Wood
4D759253408941E...

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

REFERENCES

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: Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint with the potential to be affected, including Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380) for which suitable habitat is present within or adjacent to the Project. The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. 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, or if surveys are completed during periods of drought.	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 the initiation of western Joshua tree removal, relocation, replanting, trimming, or pruning or any activity that may result in take of WJT on site, the Project Proponent should obtain California Endangered Species Act Incidental Take Permit under Section 2081b of the CESA, or under the Western Joshua Tree Conservation Act (WJTCA) of Fish and Game Code (§§ 1927-1927.12). California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. The Project site 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 -	Prior to commencing ground or vegetation disturbing activities	Project Proponent

$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. Additionally, CDFW may require relocation of WJT based on the final WJT census. A Relocation Plan must be approved by CDFW prior to the issuance of a WJTCA ITP. The following minimization measures are applicable to the Joshua Tree that is present on the project site. 1. The Joshua tree will be retained in place or replanted somewhere on the site where they can remain in perpetuity or will be transplanted to an off-site area approved by the city where they can remain in perpetuity. Joshua trees which are deemed not suitable for transplanting will be cut-up and discarded as per City requirements. 2. Earthen berms will be created around each tree by the biologist prior to excavation and the trees will be watered approximately one week before transplanting. Watering the trees prior to excavation will help make excavation easier, ensure the root ball will hold together, and minimize stress to the tree. 3. The tree will be moved to a pre-selected location which has already been excavated and will be placed and oriented in the same direction as their original direction. The hole will be backfilled with native soil, and the transplanted tree will be immediately watered. A numbered metal tag was placed on the north side of the tree and the tree was also flagged with surveyor's flagging. The biologist will develop a watering regimen to ensure the survival of the transplanted trees. The watering regimen will be based upon the needs of the trees and the local precipitation.		
MM BIO-3: Regardless of the time of year, a preconstruction clearance 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. Preconstruction 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)	Prior to commencing ground or vegetation disturbing activities	Project Proponent

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.		
MM BIO-4: 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. Pre-construction 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.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
MM BIO-5: Prior to Project approvals, 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	Prior to commencing ground or vegetation disturbing activities	Project Proponent

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.		
MM BIO-6: A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with the U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
MM BIO-7 Pre-construction rare plant clearance survey: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project	Prior to commencing ground or vegetation disturbing activities	Project Proponent

area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging).		
MM BIO-8 If complete avoidance of a special status plant is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through off-site compensation including: 1) permanent protection of an existing off-site native population; 2) permanent protection of an off-site introduced population; 3) a combination of 1) and 2); or 4) mitigation banking. The ratio of acquisition to loss must in most cases exceed 1:1 for any species. The ratio should be higher for rarer species, particularly for those that occupy irreplaceable habitats.	Prior to commencing ground or vegetation disturbing activities	Project Proponent