



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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February 14, 2025
 Sent via email

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C&C Scrap Metal Services (CUP 23-07 & LDP 23-09) (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025010275

Dear Christian Espinoza:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Adelanto for the 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: Amado Landin

Objective: The objective of the Project is to develop a scrap metal and recycling business that consists of office space, a warehouse, trash enclosures, loading docks, truck scale, and an infiltration basin totaling 108,9000 square feet on the 2.5-acres lot. The Project will also provide 12 parking spaces and 16,342 square feet of landscaping. Off-site improvements include the extension of Lupin Street.

Location: The Project site is located west of Richardson Road and north of Mojave Dr in the City of Adelanto, San Bernadino County at Latitude 34.53089 N and Longitude

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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-117.4704 on Assessor's Parcel Number (APN) 3129-491-08. The Project site is surrounded by vacant and undeveloped land to the north, south, west and east.
Timeframe: The Project is scheduled to start construction in January 2025 and would take approximately eight 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 potential for the Project to have a significant impact on biological resources, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Project Description and Related Impact Shortcoming

Comment #1: Incomplete Description of Project Activities

IS/MND page 17

Issue: CDFW is concerned with the lack of detail in the Project description provided in the IS/MND. The IS/MND does not adequately describe the off-site improvements, which include the Lupin Street extension from Richardson Road.

Specific impact: The IS/MND states that Lupin Street would be expanded from Richardson Road westward approximately 660 feet and that the future right of way width would be 20 to 30 feet. Exhibits for the off-site improvement area are not provided.

Evidence impact would be significant: Compliance with CEQA is predicated on a complete and accurate description of the Project. Without a complete and accurate Project description, the IS/MND likely provides an incomplete assessment of Project-related environmental impacts and CDFW is unable to provide a meaningful analysis of potential Project impacts to biological resources.

CDFW Recommendations: CDFW recommends that a revised IS/MND provide a detailed and accurate description of the off-site improvement component and include exhibits and project boundary maps.

II. Environmental Setting and Related Impact Shortcoming

COMMENT # 2 Western Joshua Tree (*Yucca brevifolia*) :

ISMND Page #33 and Appendix B – Biological Resource Assessment

Issue: The IS/MND recognizes the presence of western Joshua tree (WJT), a candidate species under California Endangered Species Act (CESA), near the proposed Project site. However, the IS/MND does not provide a discussion related to the Project's impact on WJT nor provide mitigation measures. Ground-disturbing activities may impact WJT on the Project site and adjacent parcels.

Specific impact: The IS/MND states that "there are no Joshua trees on site" and as a result, no impacts to the species would occur. Based on aerial imagery, it appears that several WJT are located within 50 feet of the Project site and within the proposed expansion area of Lupin Street. No exhibits for the off-site improvements or a WJT survey/census were included in the IS/MND or Biological Resource Assessment (BRA). Without a discussion or analysis of the Project impacts, the CEQA document may not have sufficient information for CDFW to issue a CESA or Western Joshua Tree Conservation Act Incidental Take Permit (WJTCA ITP). If CDFW determines that the CEQA analysis is not sufficient to issue the permit, additional CEQA documents will be required prior to issuance of a permit.

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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 all dead and live WJTs within the Project site, including the off-site improvement area as well as the Project's impact on any 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 disturbing 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.

Evidence impact would be significant: The Project as described would result in the loss of the habitats on which WJT 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, vegetation clearing, staging of construction equipment, vehicles, and foot traffic may result in direct or indirect loss of WJT on the Project site, might impact WJT in adjacent areas, and may result in the disruption to WJT seedbank.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significance: The IS/MND should be revised to discuss the Project's direct and indirect impacts on any WJT within the Project site, and adjacent areas and provide information on WJTs that will be removed and/or remain on site. Given the location of WJT on and adjacent to the Project area, CDFW offers the following mitigation measure for inclusion in the final IS/MND:

Biological Resources Mitigation Measure 1 (MM BIO-1)

The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, trimming, or pruning or any activity that may result in take of WJT on site, the Project Proponent should obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 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. Mitigations fees are updated annually. For the current fees, please visit: [Western Joshua Tree Conservation Act Incidental Take Permit](#).

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

IS/MND Section 3, Page 33, and Appendix B – Biological Resource Assessment

Issue: On October 25th, 2024, the western burrowing owl was designated as a candidate CESA-listed species. The Project may impact burrowing owl and its habitat. The IS/MND does not include mitigation measures for burrowing owl. Furthermore, the general biological survey that was conducted on April 18, 2023, between 4:45pm and 5:23pm by Powell Environmental Consultants is not sufficient in timing and scope to detect burrowing owl. CDFW is concerned that the IS/MND does not sufficiently identify Project impacts to burrowing owl nor ensure impacts are mitigated to a level less than significant.

Specific impact: The BRA states that no burrowing owl nesting sites are available, CDFW would like to note only one reconnaissance survey was conducted on the project site no species-specific surveys were completed. The IS/MND also acknowledges that burrowing owls could utilize the site to forage yet does not recommend any burrowing owl surveys or mitigation measures. Without this information, CDFW is concerned that the habitat assessment may not have been conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version), which recommends surveying adjoining areas within 500 feet.

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Why impact would occur: Burrowing owls have been known to use highly degraded and marginal habitats where existing burrows are available. As stated on page 33 of the IS/MND, the site was not surveyed for burrowing owl. The nest and roost burrows of the burrowing owl are most commonly dug by ground squirrels, but they have also been known to use a variety of other species' dens or holes (Gervais, J.A., Rosenberg, D.K., & Comrack, L.A., 2008). Burrowing owls may use small mammal burrows throughout the Project site and adjacent areas as overwintering, breeding, and nesting habitat. Additionally, the California Natural Diversity Database (CNDDDB) dataset, [Burrowing Owl Predicted Habitat](#) (CDFW 2024) display a high potential for burrowing owl presence within the Project area, along with several observations of burrowing owls within 5 miles of the Project site (CDFW 2024). Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of burrowing owl not previously identified. Burrowing owls also have a high potential to move into disturbed areas since they are adapted to highly modified habitats (Chipman et al., 2008; Coulombe, 1971)

Evidence impact 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). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. 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." CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that prior to commencing Project activities, focused and pre-construction 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). The surveys shall include 100 percent coverage of the Project site and 500-foot buffer in adjacent habitat. To support the City of Adelanto in reducing impacts to burrowing owl to a level less than significant, CDFW offers the following mitigation measure:

Biological Resources Mitigation Measure 2 (MM BIO-2)

Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). The surveys shall include 100 percent coverage and include a minimum 500-foot buffer in adjacent habitat. A report summarizing the breeding season survey including all requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review.

If burrowing owls, active burrowing owl burrows, or sign thereof 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 at least 30 days prior to ground disturbing 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. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. If the Project cannot ensure burrowing owls and their burrows are fully avoided, consultation with CDFW is warranted to discuss

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how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b). Full mitigation often involves the permanent conservation of quality habitat benefiting the species through a conservation easement, along with habitat enhancement and ongoing management funded appropriately. Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDGW, 2012) may be authorized through the incidental take permit as a minimization measure.

Take avoidance: Pre-construction surveys for burrowing owl occupation shall be conducted by a qualified biologist(s) prior to the start of Project-related activities. The surveys shall follow the methods described in the CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012). Pre-construction surveys shall be conducted no less than 14 days before initial ground disturbance (e.g., grading, grubbing, construction). 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. If burrowing owls or suitable burrowing owl burrows with sign (e.g., whitewash, pellets, feathers, prey remains) are identified on the Project site during the survey, Project activities shall be immediately halted. The qualified biologist shall notify CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval. If avoidance is not feasible, the Project Proponent shall consult with CDFW on next steps, including obtaining an Incidental Take Permit (ITP) for burrowing owl prior to the start of Project activities.

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

Issue: The Project site is within the range of the CESA-threatened Mohave ground squirrel (MGS) and the Project has the potential to result in permanent loss, degradation, and impacts to Mohave ground squirrel habitat.

Specific impact: Despite suitable habitat for this CESA-listed species being present on site the IS/MND does not provide any avoidance, or mitigation measures specific to Mohave ground squirrel. Focused surveys were not conducted, and the Project site is within 2 miles of recorded Mohave ground squirrel occurrences and is within the Mohave ground squirrel predicted habitat according to the California Natural Diversity Database (CNDDDB). The site also supports desert shrub vegetation such as creosote bush scrub (*Larrea tridentata*, present at Project site) which is known to provide habitat for Mohave ground squirrel. Therefore, the Project and Project related activities have the potential to take MGS.

Why impact would occur: Project activities including the 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 MGS. Ground disturbing activity including grading, vegetation clearing, and paving may result in the permanent loss of MGS habitat.

Evidence impact would be significant: Mohave ground squirrels are challenging to detect, and a general survey may not provide an accurate assessment of presence/absence. Without focused protocol surveys during the appropriate survey period, Project activities may adversely impact Mohave ground squirrel. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. Inadequate avoidance, minimization, and mitigation measures for impacts on the Mohave ground squirrel will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a wildlife species identified as special status by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW offers the following measure for inclusion in the final IS/MND:

Biological Resources Mitigation Measure 3 (MM BIO-3)

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Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours by a qualified biologist who can readily identify Mohave ground squirrel (*Xerospermophilus mohavensis*) and white-tailed antelope squirrel (*Ammospermophilus leucurus*). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. 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*)

Section 3, Page 33, and Appendix B – Biological Resource Assessment

Issue: The Project site is within the range of the CESA-endangered desert tortoise and the Project has the potential to result in permanent loss, degradation, and impacts to desert tortoise habitat.

Specific impact: The IS/MND does not provide any avoidance, or mitigation measures specific to desert tortoise. Focused surveys were not conducted as stated in the IS/MND. Project activities have the potential to lead to the take of 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: While the biological assessment concludes that the species is not likely to inhabit the site due to lack of recent documented sightings in the immediate area, CDFW would like to point out that the California Natural Diversity Database (CNDDDB) 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. Desert tortoise has full protection of an endangered species under CESA. 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).

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less than significant: CDFW offers the following measure for inclusion in the final IS/MND

Biological Resources Mitigation Measure 4 (MM BIO-4):

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 U.S. Fish and Wildlife Service 2009 desert tortoise

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survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Preconstruction 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 of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.

COMMENT 6: Crotch's Bumble Bee (*Bombus crotchii*)

Issue: The Project site is within the range of the candidate CESA-threatened Crotch's bumble bee and the Project has the potential to result in permanent loss, degradation, and impacts to Crotch's bumble bee habitat.

Specific impact: The IS/MND and BRA do not consider Crotch's bumble bee, in its evaluation nor do they provide any avoidance, or mitigation measures specific to Crotch's bumble bee and focused surveys were not conducted, The Project has the potential for take of Crotch's bumble bee from collapsing burrows, entombment, displacement, dust from Project operations, and vegetation removal that reduces foraging and nesting habitat and habitat quality.

Why impact would occur: Crotch's bumble bee occurs primarily in California, including the Mediterranean region, Pacific Coast, Western Desert, Great Valley and adjacent to foothills through most of southwestern California (Williams et. al 2014). Crotch's bumble bee are generalist foragers and have been reported visiting a wide variety of flower plants. The plant families most commonly associated with Crotch's bumble bee observations or collections from California include *Fabaceae*, *Apocynaceae*, *Asteraceae*, *Lamiaceae*, *Boraginaceae* and *Asclepiadaceae*.

Evidence impact would be significant: Crotch's bumble bee is a candidate species for listing under CESA; therefore, it receives the same legal protection afforded to endangered or threatened species under CESA pursuant to Fish & G. Code §§ 2074.2 & 2085. If found on-site, the Project could result in crushing or killing Crotch's bumble bees, reduction in sufficient food resources such as nectar and pollen, and/or removal of nesting and overwintering sites. Many bumble bees are threatened with extinction due primarily to reductions in habitat from urbanization, intensive agriculture, and invasive species introductions. If Crotch's bumble bee occurs at the Project site and Project impacts to Crotch's bumble bee occur, this could result in a substantial reduction in the species' population, which would be a mandatory finding of significance (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that the below mitigation measure be included in the final IS/MND to ensure that impacts to bumble bees and their habitats are evaluated and mitigated to a level of less than significant:

Biological Resources Mitigation Measure 5 (MM BIO-5):

Crotch's Bumble Bee Habitat Assessment. Prior to vegetation removal and/or grading, a Designated Biologist shall conduct a habitat assessment to determine whether Crotch's bumble bee habitat is present or absent in the Project site and adjoining area. The habitat assessment shall be performed according to the 2023 CDFW [Survey Considerations for CESA Candidate Bumble Bees.pdf](#).

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If habitat for Crotch's bumble bee is present, a Designated Biologist shall conduct focused surveys prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Survey methodology shall follow the 2023 CDFW Survey Considerations for Candidate Bumble Bee. Surveys shall be conducted during the flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist familiar with Crotch's bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified on site, Project Proponent shall fully avoid the species absent take authorization. If the Project may result in take of Crotch's bumble bee through either nest destruction or destruction of potential nests hidden in bunch grasses or other nesting habitat, or if complete avoidance of Crotch's bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

COMMENT 7: Lake and Streambed Alteration Agreement

IS/MND Section 3, Page 56

Issue: The IS/MND does not address and evaluate Project impacts to Fish and Game Code section 1600 resources in the form of dry desert washes within the off-site improvement Project area. The IS/MND states that "there are no stream channels or natural drainages that occupy the property but are located within the vicinity of the project site". It is difficult for CDFW to discern, given the brief description of the off-site improvements and lack of site plans, whether impacts to stream resources will occur. The Project description in the IS/MND does not provide information that demonstrates how the Project proponent intends to avoid impacts to stream resources. No jurisdictional delineation was conducted so CDFW is unclear of the extent or the number of channels that may be impacted as well as the riparian habitat that exists.

Specific impact: Based on aerial imagery, a stream transects APN 3129-481-15-0000, 3129-491-07-0000, and 3129-491-09-0000 where the proposed off-site improvements are likely to occur. Project activities, including grading, paving, vehicle and equipment staging, and site access could divert or obstruct stream flows, substantially alter the bed, bank, or channel of a stream, use or deposit materials subject to notification pursuant to Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream resources that should otherwise be avoided, minimized, or addressed in an agreement with CDFW.

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

Evidence impact would be significant: California places great value on streams and the resources they provide. CDFW has authority over activities in rivers, streams and lakes that may substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish and Game Code section 1602). For any such activities, the Project Applicant should provide written notification of Lake and Streambed Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602. CDFW considers the fill and permanent conversion of natural ephemeral streams to impervious surfaces a significant impact to stream resources. The conversion of a natural ephemeral stream systems to impervious managed systems results in direct, permanent impacts to the physical form and function of natural stream systems and the habitats they support, increases water flow velocity, increases erosive processes downstream, removes habitat and wildlife corridors, and prohibits groundwater infiltration. Indirect effects associated with streambed conversion include increased habitat fragmentation, increased developmental encroachment on natural stream systems, and increased maintenance activities.

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Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends the IS/MND include a jurisdictional delineation to identify stream resources subject to Fish and Game Code section 1602. Should the Project be unable to avoid impacts to stream resources, the Project applicant will need to notify CDFW per Fish and Game Code section 1602. CDFW recommends the measure below:

Biological Resources Mitigation Measure 6 (MM BIO-6):

Prior to construction and issuance of any grading permit, the Project Applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

COMMENT #8: Nesting Birds

Issue: Development facilitated by the Project could impact nesting birds directly or through habitat loss and modification. Potential impacts to nesting birds are not discussed in the IS/MND or the BRA.

Specific impact: Project activities While the BRA indicates that no birds were observed during the general biological survey, it does not rule out the possibility that conditions could change such that Project activities could result in the disturbance of nesting birds.

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

Evidence impact would be significant: The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends the following mitigation measure to avoid take of nesting birds:

Biological Resources Mitigation Measure 7 (MM BIO-7)

Regardless of the time of year, a preconstruction survey shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, no more than three (3) days prior to the initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present within the work area or the Project's zone of influence (generally 100-300 feet), a no disturbance buffer zone shall be established by the qualified biologist to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting

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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 #9: Sensitive Plant Species

Biological Resource Assessment Page 4.

Issue: CDFW is concerned that the Project may affect sensitive plant species with the potential to occur onsite, such as sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) considering no floristic surveys were performed. Sagebrush loeflingia has a state rare plant ranking of 2B.2 thereby indicating it is rare, threatened, or endangered in California.

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

Why impact would occur: Take of any CESA-listed plant species (i.e., WJT) that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the [Manual of California Vegetation \(MCV\) | California Native Plant Society \(cnps.org\)](https://www.cnps.org/).

Evidence impact would be significant: According to a search of the CNDDDB, sagebrush loeflingia (S2) have occurrences within 5 miles of the Project site.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: To avoid impacts to sensitive plant species, CDFW recommends the adoption of MM BIO-8 below.

Biological Resources Mitigation Measure 8 (MM BIO-8)

Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project

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Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link:

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

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist City of Adelanto in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nicholas Barton, Environmental Scientist at (760) 644-5711 or Nicholas.barton@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachment A: MMRP for CDFW-Proposed Mitigation Measures

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

REFERENCES

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U.S. Fish and Wildlife Service (USFWS). 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.



Attachment A

Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM BIO-1:</p> <p>The western Joshua tree is a candidate threatened species under the California Endangered Species Act. Prior to the initiation of western Joshua tree removal, relocation, replanting, trimming, or pruning or any activity that may result in take of WJT on site, the Project Proponent should obtain California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 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”.</p> <p>Mitigation for CESA will occur at a minimum 1:1 or per the stem count per the WJTCA census in lieu fee. Mitigations fees are updated annually. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-2:</p> <p>Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). The surveys shall include 100 percent coverage and include a minimum 500-foot buffer in adjacent habitat. A report summarizing the breeding season survey including all requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review.</p> <p>If burrowing owls, active burrowing owl burrows, or sign thereof 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 at least 30 days prior to ground disturbing 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. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. If the Project cannot ensure burrowing owls and their burrows are fully avoided, consultation with CDFW is warranted to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081 subdivision (b). Full mitigation often involves the permanent conservation of quality habitat benefiting the species through a conservation easement, along with habitat enhancement and ongoing management funded appropriately.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>Passive relocation, performed according to the Staff Report on Burrowing Owl Mitigation (CDGW, 2012) may be authorized through the incidental take permit as a minimization measure.</p> <p>Take avoidance: Pre-construction surveys for burrowing owl occupation shall be conducted by a qualified biologist(s) prior to the start of Project-related activities. The surveys shall follow the methods described in the CDFW’s Staff Report on Burrowing Owl Mitigation (CDFW 2012). Pre-construction surveys shall be conducted no less than 14 days before initial ground disturbance (e.g., grading, grubbing, construction). 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. If burrowing owls or suitable burrowing owl burrows with sign (e.g., whitewash, pellets, feathers, prey remains) are identified on the Project site during the survey, Project activities shall be immediately halted. The qualified biologist shall notify CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval. If avoidance is not feasible, the Project Proponent shall consult with CDFW on next steps, including obtaining an Incidental Take Permit (ITP) for burrowing owl prior to the start of Project activities.</p>		
<p>MM BIO-3:</p> <p>Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species’ behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours by a qualified biologist who can readily identify Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>) and white-tailed antelope squirrel (<i>Amмосpermophilus leucurus</i>). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. 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.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO 4:</p> <p>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 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. Preconstruction 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</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>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 of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.</p>		
<p>MM-BIO 5:</p> <p>Crotch’s Bumble Bee Habitat Assessment. Prior to vegetation removal and/or grading, a Designated Biologist shall conduct a habitat assessment to determine whether Crotch’s bumble bee habitat is present or absent in the Project site and adjoining area. The habitat assessment shall be performed according to the 2023 CDFW Survey Considerations for CESA Candidate Bumble Bees.pdf.</p> <p>If habitat for Crotch’s bumble bee is present, a Designated Biologist shall conduct focused surveys prior to vegetation removal and/or grading for the presence/absence of Crotch’s bumble bee. Survey methodology shall follow the 2023 CDFW Survey Considerations for Candidate Bumble Bee. Surveys shall be conducted during the flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist familiar with Crotch’s bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW at least 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified on site, Project Proponent shall fully avoid the species absent take authorization. If the Project may result in take of Crotch’s bumble bee through either nest destruction or destruction of potential nests hidden in bunch grasses or other nesting habitat, or if complete avoidance of Crotch’s bumble bee cannot be achieved, Project activities shall be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO 6:</p> <p>Prior to construction and issuance of any grading permit, the Project Applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO 7:</p> <p>Regardless of the time of year, a preconstruction 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</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

<p>limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified biologist shall make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If nesting bird activity is present within the work area or the Project's zone of influence (generally 100-300 feet), a no disturbance buffer zone shall be established by the qualified biologist to be marked on the ground around each nest. The buffer shall be a minimum of 500 feet for raptors and 300 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. Active nest(s) and an established buffer distance(s) shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. If there is no nesting activity, then no further action is needed for this measure. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.</p>		
<p>MM BIO-8</p> <p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the Project Applicant shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project Applicant shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>