



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



November 7, 2022  
*Sent via email*

Governor's Office of Planning & Research

Jim Hirsch, City Planning Consultant  
City of Adelanto  
11600 Air Expressway  
San Bernardino, CA 92301

**NOV 7 2022**

**STATE CLEARING HOUSE**

Subject: Mitigated Negative Declaration  
AT&T New Tower CSL05972  
State Clearinghouse No. 2022100223

Dear Mr. Hirsch:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Adelanto (City) for the AT&T New Tower CSL05972 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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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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**

The Project site is located in the City of Adelanto, California in San Bernardino County; Latitude 34.507806 N and Longitude -117.414000 W, north of Palmdale Road and east of Bellflower Street. The Project proposes the installation of a 75-foot-tall AT&T mobility mono-eucalyptus tower, a 34-foot by 20-foot outdoor equipment shelter, and a 12-foot-wide and approximately 590-foot-long access route with maintenance parking on approximately nine acres of primarily undeveloped land on Assessor's Parcel Number 3103-481-05-0000.

Timeframe: Unavailable

### **COMMENTS AND RECOMMENDATIONS**

The MND recognizes the potential for burrowing owl (*Athene cunicularia*, CDFW species of special concern [SSC]), desert tortoise (*Gopherus agassizii*, State Threatened proposed Endangered species), Mohave ground squirrel (*Xerospermophilus mohavensis*, state-threatened), and nesting birds to occur within the Project area. The MND also recognizes the presence of a desert wash on the eastern portion of the Project site, an ephemeral drainage on the western portion of the Project site, and at least three western Joshua tree (*Yucca brevifolia*) occurring onsite, a Candidate species for listing as Threatened pursuant CESA. Further, a review of the California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicates that sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) occurs within 80 meters of the Project site. Plants such as sagebrush loeflingia

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with California Rare Plant Rank 2B.2 indicate plants that are rare, threatened, or endangered in California and elsewhere.

While a general biological resources evaluation was prepared by Kidd Biological, Inc. on December 30, 2021, and provided in the MND, the evaluation relied solely on literature review and aerial photography. Absent focused surveys and supporting documentation, the adequacy of the impact analysis and the mitigation measures proposed in the MND, and the ability of the Project to mitigate the significant, or potentially significant, direct and indirect impacts to native habitats and species that rely on these habitats, may not be sufficient. Following review of the MND, CDFW offers the comments and recommendations presented below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to enable the City to update the MND to adequately disclose impacts and measures for CDFW and the public to review and comment on the proposed Project with respect to the Project's compliance with Fish and Game Code sections 3503, 3503.5, 3513, 1600 et seq. and 2050 et seq. CDFW recommends that each of these be addressed prior to finalization of the MND and requests the City evaluate the direct, indirect, and cumulative impacts to nesting birds, desert tortoise, Mohave ground squirrel, burrowing owl, western Joshua Tree, Fish and Game Code section 1602 resources, and rare plants through the appropriate analysis, before approval and certification of the MND.

### **Assessment of Biological Resources**

#### **Nesting Birds**

It is the Project proponent's responsibility to avoid take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory

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nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act.

The timing of the nesting bird season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). It has been observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. In addition, the duration of a pair to build a nest and incubate eggs varies considerably. Therefore, CDFW recommends pre-construction nesting bird surveys be required no more than three (3) days prior to vegetation clearing or ground disturbance activities regardless of time of year, as instances of nesting could be missed if surveys are conducted sooner.

CDFW recommends the MND include completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws and to avoid impacts to nesting birds as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The MND should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site.

Considering the aforementioned and to avoid impacts to nesting birds, CDFW offers the following updates and revisions to MM BIO-1 (edits are in ~~strikethrough~~ and bold) and recommends the inclusion of MM BIO-7 which considers pre-construction surveys for burrowing owl specifically.

*MM BIO-1:*

~~The surrounding habitat are likely to be used by nesting birds during the breeding season. Due to the potential for birds to nest in the vicinity of this site, including burrowing owls, le Conte's thrasher and loggerhead shrikes, if construction of this site should occur during the bird nesting season~~ **Regardless of the time of year, a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, a nesting bird survey shall be conducted by a**

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**qualified biologist** no more than **37** days prior to the ~~start of work initiation of project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests.~~ ~~The nesting season is generally considered February 15–August 30, with peak nesting occurring between March 1 and June 30.~~ **Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment.** If any active nests are found within the work area or the project's zone of influence (generally 100- 300 feet), ~~work may need to be postponed, or other avoidance measures may be required to ensure the work does not cause significant impacts to nesting birds.~~ **a no disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. 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, as confirmed by a qualified biologist. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded.**

If an active nest is encountered during the construction by contractors or future maintenance activities, ~~work should~~ **construction shall** stop immediately until a **qualified** biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.

### Burrowing Owl

The MND acknowledges the potential for burrowing owl and desert tortoise to occur given their historical occurrence within the general area and the large tracts of open desert immediately south of the Project site; however, no focused surveys for either species were conducted to determine their presence onsite.

According to the 2012 Staff Report, burrowing owl surveys should be conducted whenever burrowing owl habitat is adjacent to a Project site. Considering burrowing owls are well-adapted to open, relatively flat expanses and vacant lots

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and prefer habitat with generally short sparse vegetation with few shrubs such as that occurring directly onsite and immediately south of the site, focused surveys should be conducted for burrowing owl. Focused burrowing owl surveys should be conducted during the breeding season and during the day to ensure presence does not go undetected. Considering that habitat loss, degradation, and fragmentation are the greatest threats to burrowing owls in California, CDFW recommends that the City review and follow requirements for burrowing owl as outlined in the 2012 Staff Report to ensure the Project meets burrowing owl survey requirements to avoid impacts to burrowing owl.

#### Mojave Desert Tortoise

Mojave desert tortoise is a state protected species due to its risk to extinction. Considering the Project site is adjacent to suitable Mojave desert tortoise habitat, CDFW recommends that the City review and follow survey requirements for desert tortoise as outlined in the 2019 Mojave Desert Tortoise Pre-Project Survey Protocol to avoid direct and indirect impacts to Mojave desert tortoise.

#### Mohave Ground Squirrel

Following a review of CNDDDB and BIOS, CDFW is aware of the potential for Mohave ground squirrel, a state-threatened species, to occur onsite; however, based on reconnaissance surveys the MND concludes that Mohave ground squirrel is not likely to occur. According to the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), focused surveys should be conducted for Mohave ground squirrel on a project site if the proposed site has potential habitat and if species presence onsite is unknown. The Project site and land immediately adjacent to the Project site contain desert shrubs and western Joshua tree, which Mohave ground squirrel favors for foraging. Since suitable habitat is present onsite, CDFW recommends that the City follow survey requirements for Mohave ground squirrel as outlined in the Mohave Ground Squirrel Survey Guidelines to avoid impacts to Mohave ground squirrel.

Considering all of the above, CDFW requests the City evaluate the direct, indirect, and cumulative impacts to burrowing owl, Mojave desert tortoise, and Mohave ground squirrel through the appropriate analysis before approval and certification of the MND. Appropriate analysis includes conducting habitat assessment and focused surveys according to accepted protocols and a discussion of the results of the surveys for the Project site.

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CDFW offers the following revisions to MM BIO-3 (edits are in ~~strikethrough~~ and **bold**) and recommends the inclusion of MM BIO-6 which considers pre-construction surveys for desert tortoise in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology, MM BIO-7 which considers pre-construction surveys for burrowing owl in accordance with the 2012 Staff Report on Burrowing Owl Mitigation, and MM BIO-8 which considers pre-construction surveys for Mohave ground squirrel in accordance with the Mohave Ground Squirrel Survey Guidelines.

*MM BIO-3:*

A qualified biologist ~~will~~ **shall** conduct a preconstruction survey for special-status biological resources (~~including~~ desert tortoise, ~~and~~ burrowing owls) **and Mohave ground squirrel, in accordance with MM BIO-6, MM BIO-7 and MM BIO-8, respectively.** ~~no more than 7 days prior to the start of work. If any special status wildlife or their sign (scat, active burrows, tracks, etc.) are observed, the qualified biologist will be present during construction and/or develop a plan that best avoids impacts to any sensitive species.~~

- A **qualified** biologist ~~will~~ **shall** provide an Environmental Awareness Training **that consists of a presentation that includes a discussion of the biology of the habitats and species that may be present onsite for (i.e., desert tortoise, Mohave ground squirrel, western Joshua tree, rare plants, and burrowing owl) to all personnel working within the Project site** prior to the start of any ground disturbing activities. **The same instruction shall be provided for any new workers prior to their performing any work on-site. Interpretation shall be provided for any non-English speaking workers.**

- If any **desert tortoise** or sign of desert tortoise are found in the area during the preconstruction survey, **required in MM BIO-6,** ~~A a~~ qualified biologist ~~will~~ **shall** be on site for the duration of the project to ensure no take of the species occurs. ~~Additional avoidance measures will be prescribed by the biologist based on the circumstances of the observations.~~

- If a desert tortoise is encountered, ~~work all activities will~~ **shall immediately stop and CDFW shall be immediately notified (within 24 hours).** **Coordination with respective State and Federal resource agencies shall be required prior to restarting activities to determine appropriate avoidance, minimization, and mitigation measures, including an Incidental Take Permit**

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~~(ITP). until the on-site monitor determines that it is safe to resume work without impacting the tortoise.~~

- Crew ~~will~~ **shall** check for desert tortoise underneath parked vehicles/equipment each time a **vehicle or** piece of equipment is moved.

***MM BIO-6:***

**Pre-construction desert tortoise presence/absence surveys: A CDFW – approved biologist shall conduct pre-construction presence/absence surveys for desert tortoise during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Pre-construction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone. 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 desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.**

**Should desert tortoise presence be confirmed during the survey, 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 (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”) to desert tortoise. If complete avoidance of desert tortoise 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 (ITP) under Fish and Game Code section 2081) is obtained.**



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**If complete avoidance of desert tortoise is infeasible, CDFW recommends that the Project Proponent apply for a CESA ITP and prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and shall be consistent with project permits and current USFWS and CDFW guidelines. The Plan shall also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site.**

**Prior to construction, the Plan shall be subject to the review and approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within occupied desert tortoise habitat and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio determined by CDFW after Project analysis.**

***MM BIO-7:***

**Burrowing owl preconstruction survey: Prior to any ground disturbance, pre-construction surveys for Burrowing Owls on the project site and in the surrounding area in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, shall be conducted no more than 14-days prior to the beginning of project activities, and a secondary survey must be conducted by a qualified biologist within 24 hours prior to the beginning of project construction to determine if the project site contains suitable burrowing owl or sign thereof and to avoid any potential impacts to the species. The surveys shall include 100 percent coverage of the project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and**

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**assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the City, shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.**

***MM BIO-8:***

**Mojave Ground Squirrel Pre-Construction Survey: Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the preconstruction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.**

**Western Joshua Tree**

CDFW is concerned that no mitigation measures were proposed in the MND for the three western Joshua tree (WJT) the MND identifies onsite especially when WJT is a candidate species under CESA. The project has potential to impact WJT and associated habitat considering that WJT is highly dependent upon a network of species interactions for successful seed germination and seedling survival, and as such, are highly sensitive to habitat alteration. For example, WJT

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exclusively rely on yucca moth pollination (*Tegeticula synthetica*) to sexually recruit new individuals (Sweet et al. 2019), rodent seed-dispersing behavior, as this is the primary way WJT seeds are buried deep enough for successful germination (Waitman et al. 2012), and on nurse plants critical for WJT seedling survival (Brittingham and Walker 2000).

To properly calculate demographics and estimate the quality of WJT habitat onsite, CDFW recommends that the City conduct an impact assessment to quantify the entire population of WJT onsite through focused surveys. The WJT survey results should be provided in the final MND and include the following: a) GPS coordinates and accompanying map for each WJT within the Project Area; b) the age class for each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site.

Further, the final MND should include: 1) an impact analysis assessing potential impacts to WJT within a 186-foot buffer zone for each WJT (Vander Wall et al. 2006), 2) implementation of a 300-foot buffer around each WJT not scheduled for removal, and 3) a mitigation strategy addressing impacts to WJT individuals, the WJT seedbank, and indirect impacts to WJT, as noted above

As such, CDFW requests the final MND adequately identify and disclose Project impacts (i.e., direct, indirect, and cumulative) to WJT, propose mitigation to offset impacts to WJT, and demonstrate that impacts to WJT are less than significant and, for the purposes of CESA permitting, are fully mitigated. Therefore, CDFW recommends the adoption of MM BIO-9 below (edits are in ~~strikethrough~~ and **bold**) to avoid take of WJT:

***MM BIO-9:***

**Western Joshua Tree Take: If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or take (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and**

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**Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through either the purchase of conservation or mitigation bank credits or the establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.**

#### Rare Plants

CDFW is concerned that an analysis was not completed to form a complete inventory of rare plants within the Project area and to identify the level of impacts on those species identified as potentially present and thus whether the Project's impacts have been adequately identified, disclosed, and mitigated.

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. For example, plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 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 (Sawyer et al. 2009). The Project site has the potential to support sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) which has a state rare plant ranking of 2B.2 thereby indicating it is rare, threatened, or endangered in California and elsewhere. As such, the MND should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. CDFW therefore recommends a thorough, floristic-based assessment of special status plants at the appropriate time(s) of year, using the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018 or most recent version), before the City adopts the MND. CDFW recommends including the following mitigation measure to avoid and/or mitigate impacts to sensitive plant species:

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***MM BIO-10:***

**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 City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank 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.**

**Lake and Streambed Alteration Agreement**

As noted in the MND, a desert wash occurs on the eastern portion of the site and an ephemeral drainage feature occurs on the western portion of the site. Please note that ephemeral drainages and desert washes are vital components to a desert ecosystem, in that they support high biodiversity and provide natural resources to desert species dependent upon seasonally available water.

The ephemeral drainage and desert wash are subject to Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify

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CDFW prior to commencing any activity that may do one or more of the following: 1) substantially divert or obstruct the natural flow of any river, stream or lake, 2) substantially change or use any material from the bed, channel or bank of any river, stream, or lake, or 3) deposit debris, waste or other materials that could pass into any river, stream or lake. Further, "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round); including ephemeral streams, desert washes and watercourses with a subsurface flow and may also apply to work undertaken within the flood plain of a body of water.

The MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources, including those upon which native wildlife depend upon, such as the ephemeral drainage and desert wash occurring onsite. As such, CDFW offers the following revisions to MM BIO-4 for inclusion in the final MND (edits are in ~~strikethrough~~ and **bold**):

***MM BIO-4:***

**Lake and Streambed Alteration Notification: Prior to construction and issuance of any grading permit, it is highly recommended that a regulatory analysis of the small erosional feature to the west of the communication tower be performed by a qualified regulatory specialist to determine if special permitting or avoidances are required. **the Project Proponent should either: (1) obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or (2) obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.****

**DROUGHT-TOLERANT LANDSCAPING**

Because California has entered another period of extended drought, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species. Information on drought-tolerant landscaping and water-efficient irrigation systems

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is available on California's Save our Water website: [Around the Yard \(saveourwater.com\)](http://AroundtheYard.saveourwater.com).

### **MITIGATION AND MONITORING REPORTING PLAN**

CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

### **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 found at the following link: [Submitting Data to the CNDDDB \(ca.gov\)](http://SubmittingData.to.the.CNDDDB.ca.gov). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](http://CNDDDB-Plants.and.Animals.ca.gov).

### **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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

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environmental review by CDFW. Payment of the 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 requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the AT&T New Tower CSL05972 Project (SCH No. 2022100223) and hopes our comments will assist the City in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at [Corina.Jimenez@wildlife.ca.gov](mailto:Corina.Jimenez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov).

Karin Cleary-Rose  
U.S. Fish and Wildlife Service  
[Karin\\_Cleary-Rose@fws.gov](mailto:Karin_Cleary-Rose@fws.gov)



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## **ATTACHMENTS**

Attachment 1: MMRP for CDFW-Proposed Mitigation Measure

### **ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

#### **PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

#### **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Biological (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
<p>MM BIO-1</p> <p>Regardless of the time of year, a pre-construction sweep shall be performed to verify absence of nesting birds. A qualified biologist shall conduct the pre-activity sweep within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, a nesting bird survey shall be conducted by a qualified biologist no more than 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. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment. If any active nests are found within the work area</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>or the project's zone of influence (generally 100- 300 feet), a no disturbance buffer zone shall be established by the qualified biologist around each nest to prevent nest destruction and disruption of breeding or rearing behavior. 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, as confirmed by a qualified biologist. A qualified biologist shall inspect the active nest to determine whether construction activities are disturbing the nesting birds or nestlings. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded.</p> <p>If an active nest is encountered during the construction by contractors or future maintenance activities, construction shall stop immediately until a qualified biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.</p>		
<p><b>MM BIO-3</b></p> <p>A qualified biologist shall conduct a preconstruction survey for special-status biological resources including desert tortoise, burrowing owl and Mohave ground squirrel, in accordance with MM BIO-6, MM BIO-7 and MM BIO-8, respectively.</p> <ul style="list-style-type: none"> <li>• A qualified biologist shall provide an Environmental Awareness Training that consists of a presentation that includes a discussion of the biology of the habitats and</li> </ul>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>species that may be present onsite (i.e., desert tortoise, Mohave ground squirrel, western Joshua tree, rare plants, and burrowing owl) to all personnel working within the Project site prior to the start of any ground disturbing activities. The same instruction shall be provided for any new workers prior to their performing any work on-site. Interpretation shall be provided for any non-English speaking workers.</p> <ul style="list-style-type: none"> <li>• If any desert tortoise or sign of desert tortoise are found in the area during the preconstruction survey required in MM BIO-6, a qualified biologist shall be on site for the duration of the project to ensure no take of the species occurs</li> <li>• If a desert tortoise is encountered, all activities shall immediately stop and CDFW shall be immediately notified (within 24 hours). Coordination with respective State and Federal resource agencies shall be required prior to restarting activities to determine appropriate avoidance, minimization, and mitigation measures, including an Incidental Take Permit (ITP).</li> <li>• Crew shall check for desert tortoise underneath parked vehicles/equipment each time a vehicle or piece of equipment is moved.</li> </ul>		
<p>MM BIO-4</p> <p><u>Lake and Streambed Alteration Notification:</u>                  Prior to construction and issuance of any grading permit, it is highly recommended that, the Project Proponent should either: (1) obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or (2) obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>impacts to Fish and Game Code section 1602 resources associated with the Project.</p>		
<p>MM BIO-6</p> <p><u>Pre-construction desert tortoise presence/absence surveys:</u> A CDFW – approved biologist shall conduct pre-construction presence/absence surveys for desert tortoise during the desert tortoise active season (April to May or September to October) 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service (USFWS) 2019 desert tortoise survey methodology. Pre-construction surveys shall be completed using 100-percent visual coverage for desert tortoise and their sign and shall use perpendicular survey routes within the Project site and 50-foot buffer zone. 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 desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area.</p> <p>Should desert tortoise presence be confirmed during the survey, 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 (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt,</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>pursue, catch, capture, or kill”) to desert tortoise. If complete avoidance of desert tortoise 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 (ITP) under Fish and Game Code section 2081) is obtained. If complete avoidance of desert tortoise is infeasible, CDFW recommends that the Project Proponent apply for a CESA ITP and prepare a site-specific Desert Tortoise Translocation Plan (Plan) that will provide details on the proposed recipient site, desert tortoise clearance surveys and relocation, definitions for Authorized Biologists and qualified desert tortoise biologists, exclusion fencing guidelines, protocols for managing desert tortoise found during active versus inactive seasons, protocols for incidental tortoise death or injury, and shall be consistent with project permits and current USFWS and CDFW guidelines. The Plan shall also include a requirement for communication and coordination with the Bureau of Land Management (BLM) regarding the desert tortoise recipient site.</p> <p>Prior to construction, the Plan shall be subject to the review and approval of the CDFW and the USFWS. Impacts shall be offset through acquisition of compensatory land within occupied desert tortoise habitat and/or mitigation bank credit purchase from a CDFW-approved mitigation bank mitigated at a ratio determined by CDFW after Project analysis.</p>		
<p>MM BIO-7</p> <p><u>Burrowing owl preconstruction survey.</u> Prior to any ground disturbance, pre-construction surveys for Burrowing Owls on the project site and in the surrounding area in accordance with the Staff Report on Burrowing Owl Mitigation,</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012, shall be conducted no more than 14-days prior to the beginning of project activities, and a secondary survey must be conducted by a qualified biologist within 24 hours prior to the beginning of project construction to determine if the project site contains suitable burrowing owl or sign thereof and to avoid any potential impacts to the species. The surveys shall include 100 percent coverage of the project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the City, shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities onsite and proposed mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl</p>		
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<p>Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.</p>		
<p>MM BIO-8</p> <p><u>Mojave Ground Squirrel Pre-Construction Survey</u>: Pre-construction surveys following the Mohave Ground Squirrel Survey Guidelines (CDFG 2010), or most recent version shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The pre-construction surveys shall cover the Project Area and a 50- foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the Project Proponent should obtain an ITP for Mohave ground squirrel prior to the start of Project activities. CDFW shall be notified if Mohave ground squirrel presence is confirmed during the preconstruction survey. If a Mohave ground squirrel is observed during Project activities, and the Project Proponent does not have an ITP, all work shall immediately stop, and the observation shall be immediately reported to CDFW.</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>
<p>MM BIO-9</p> <p><u>Western Joshua Tree Take</u>: If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent shall obtain an incidental take permit (ITP) from California Department of Fish and Wildlife (CDFW) under CDFW under §2081 of the California Endangered Species Act (CESA), prior to the relocation, removal, or take (California Fish and Game Code Section 86</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>



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<p>defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of western Joshua tree, a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 &amp; 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection through either the purchase of conservation or mitigation bank credits or the establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before starting any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.</p>		
<p>MM BIO-10</p> <p><u>Pre-construction rare plant clearance survey:</u> 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</p>	<p>Prior to initiating Project activities</p>	<p>Project Proponent</p>

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<p>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 City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank 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>		
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