



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



February 23, 2023  
 Sent via email

James Hirsch, Planning Consultant  
 City of Adelanto  
 11600 Air Expressway  
 Adelanto, CA 92301  
[jhirsch@ci.adelanto.ca.us](mailto:jhirsch@ci.adelanto.ca.us)

Subject: Initial Study and Mitigated Negative Declaration  
 Highway 395 and Seneca Road Quick N Clean Car Wash  
 State Clearinghouse No. 2023020033

Dear Mr. Hirsch:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Adelanto (City) for the Highway 395 and Seneca Road Quick N Clean Car Wash 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 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:** The City of Adelanto

**Objective:** The Project will develop a 4,552-square-foot car wash (Quick N Clean Car Wash) on approximately 1.60 acres on Assessor's Parcel Number 310-351-105. The Project includes the development of 37 parking stalls with vacuums; a 138-foot drive-through vehicle wash tunnel; three drive-through pay stations; and paved driveways including a 25-foot parking setback adjacent to United States Route-395 (US-395). The

<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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Project site is within a 5 parcel site, on which the Project will construct two-way drive aisles across.

**Location:** The Project site is in the City of Adelanto, San Bernardino County, California; Latitude 34.511944 N and Longitude -117.400222 W. The Project site is a vacant lot occupied by creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) scrub vegetation located at the intersection of US-395 and Seneca Road. The Project site is surrounded by vacant land to the north and south and development to the east and west.

**Timeframe:** Construction is tentatively scheduled to begin in June 2023 and is expected to last approximately 210 working days.

## **COMMENTS AND RECOMMENDATIONS**

CDFW appreciates the IS/MND's Biological Resources (BIO) Mitigation Measures (MM) BIO-1a through MM BIO-4. CDFW recognizes that the proposed measures provide great detail and are overall consistent with CDFW-approved protocols for burrowing owl (*Athene cunicularia*) and sensitive plants. CDFW also appreciates that the measures consider coordination with CDFW and mitigation in the form of land acquisition and/or purchase of bank credits. Further, CDFW appreciates your consideration of a Lake and Streamed Alteration Agreement. CDFW offers the comments and recommendations below to further assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts to biological resources.

### **COMMENT #1: Sensitive Plant Species**

**IS/MND, Section 2.4, MM BIO-1a through MM BIO-1d, pages 36-45.**

**Issue:** Impacts to Sensitive Plant Species

**Specific impact:** CDFW is concerned that the Project may affect sensitive plant species with the potential to occur onsite, such as Beaver Dam breadroot (*Pediomelum castoreum*), which is known to occur in disturbed areas. Beaver Dam breadroot has a state rare plant ranking of 1B.2 thereby indicating it is rare, threatened, or endangered in California.

**Why impact would occur:** Grading, vegetation removal, transplantation, and other ground disturbances are likely to result in direct mortality of sensitive plants.

**Evidence impact would be significant:** Take of any CESA-listed plant 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 (i.e., Beaver Dam breadroot) 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 \(cnps.org\)](#) (CNPS 2022).

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW supports the inclusion of MM-1a through 1d with minor revisions (edits are in ~~strike through~~ and **bold**) in the final MND, as per below to avoid impacts to sensitive plants.

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*Mitigation Measure BIO-1a*

Prior to any vegetation removal or ground-disturbing activities, focused surveys shall be conducted during the blooming period to determine whether **special-status plants such as** Beaver Dam breadroot ~~is~~ **are** present. Surveys shall be conducted in accordance with **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**). These guidelines require rare plant surveys to be conducted at the proper time of year when rare or endangered species **and special-status plants** are both "evident" and identifiable. **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.** Field surveys shall be scheduled to coincide with known blooming periods, and/or during periods of physiological development that are necessary to identify the plant species of concern. **Every plant taxon that occurs in the project area shall be identified to the taxonomic level necessary to determine rarity and listing status.** ~~The rare plant survey shall be conducted between April through May to identify Beaver Dam breadroot during its blooming period. If none~~ **no special-status plants** are found on the project site, ~~then the project will not have any impacts to the species and no additional mitigation measures are necessary.~~

*Mitigation Measure BIO-1b*

If focused surveys indicate that **special-status plants such as** Beaver Dam breadroot is found on the 1.6-acre project site, the project applicant shall evaluate the feasibility of reconfiguring the project design in order to avoid or to minimize impacts to **special-status plant** species. In addition to avoiding direct impacts to Beaver Dam breadroot **or any other special-status plants present**, potential indirect, project construction, and project operation impacts shall be minimized to the maximum extent feasible through means including, but not limited to, the installation of protective fencing and environmentally sensitive area signage. Additionally, a Worker Environmental Awareness Program (WEAP) shall be implemented to educate construction workers about the presence of **special-status plants such as** Beaver Dam breadroot and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case Beaver Dam breadroot ~~or is~~ **other special-status plants are** encountered during construction.

*Mitigation Measure BIO-1c*

If **special-status plants such as** Beaver Dam breadroot ~~is~~ **are** found on-site and cannot be avoided, **the City shall mitigate the loss of the plant(s) through 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.** ~~the~~ **The** City of Adelanto shall consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW), as applicable, to determine feasible impact minimization and mitigation measures for ~~this~~ special status species, which may include, but are not limited to the following:

- Habitat restoration to mitigate for unavoidable temporary construction impacts to ~~Beaver Dam breadroot~~ habitat **supporting special-status plants** on-site.
- Incorporating project features designed to reduce ongoing impacts from project operation, including controlling public access to avoid any remaining ~~Beaver Dam breadroot~~ habitat **supporting special status plants** on-site.
- In conjunction with academic institutions and/or regional native plant nurseries, **and following consultation with CDFW**, a propagation program shall be developed for the salvage and transfer of **special-status plant populations known to succeed after transplantation**, ~~Beaver Dam breadroot~~ populations from the project site before the initiation of construction activities. Permits may be required from the CDFW or USFWS, which shall ensure that certified Biologists are involved in the propagation and transport

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of **special-status plants**. A CESA ITP is recommended for relocation, removal, or take of candidate, threatened, or endangered plant species. **(Note: CDFW generally does not support the use of salvaging, translocation, or transplantation as a mitigation strategy for unavoidable impacts to CESA-listed species.** Propagation methods for the salvaged plant population must be developed on a case-by-case basis and must include the involvement of local conservation easements/preserves/open space, where applicable). The propagation of individual plant species must be performed at the correct time of year and successfully completed before project construction activities eliminate or disturb the plants and habitats of concern.

- Efforts shall be made to salvage portions of the habitat or plant populations that could be lost as a result of implementation of the proposed project. In addition to salvaging **special-status plants, such as** Beaver Dam breadroot plants themselves, salvage efforts shall include soil and seedbanks surrounding impacted plants, if doing so will not contribute to the spread of invasive or noxious plant species.
- Appropriate off-site conservation opportunities shall be identified and, if feasible, protected in perpetuity through ~~the purchase of~~ conservation easements and/or **purchase of** mitigation bank credits **from a CDFW-approved bank at a mitigation ratio determined by CDFW after Project analysis**. The habitat value of off-site conservation areas shall be enhanced where feasible through means such as reducing grazing intensity and restricting off-highway vehicle access. ~~At a minimum, t~~ The acreage of off-site habitat conserved should exceed a 1:1 ratio of impacted rare plant habitat on the project site **and adequate mitigation will be determined by CDFW after Project analysis**. ~~The ratio shall increase depending on the rarity of the affected rare plant species, and the abundance of Beaver Dam breadroot habitat impacted.~~

#### *Mitigation Measure BIO-1d*

If **special-status plants, including** Beaver Dam breadroot ~~is~~ **are** found on-site and MM Bio-1c and MM Bio-1d are implemented, the City of Adelanto shall design and implement a monitoring program to evaluate compliance with and the effectiveness of these mitigation measures. The monitoring program shall be conducted by a qualified Botanist, and shall take place periodically during project construction, and annually, following the completion of construction, for 5 years. The project applicant shall bear the financial responsibility for mitigation measure monitoring and reporting for the entirety of the 5-year reporting period. If the monitoring program identifies mitigation measure noncompliance or ineffectiveness, the project applicant shall fund and implement remedial measures including, but not limited to, on-site habitat restoration, the installation and maintenance of additional fencing, and other appropriate measures. The project applicant shall ensure that sufficient funding exists to complete all reasonably foreseeable remedial actions prior to the commencement of project construction. Annual monitoring reports shall be submitted to the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW), as applicable.

#### **COMMENT #2: Burrowing Owl (*Athene cunicularia*)**

**IS/MND, Section 2.4, MM BIO-2a through MM BIO-2d, pages 36-45.**

**Issue:** The Project site lies within known distribution of burrowing owl (California Natural Diversity Database, CNDDDB) and supports habitat for burrowing owl.

**Specific Impact:** Potential take of burrowing owl and loss of burrowing owl habitat.

**Why impact would occur:** Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to burrowing owl. Project construction may result in the disruption of natural burrowing owl breeding behavior and reduce reproductive capacity. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 1.6 acres of burrowing owl habitat.

**Evidence impact would be significant:** Burrowing owl is a CDFW species of special concern (SSC). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Burrowing owl is an SSC that meets the CEQA definition of rare, threatened, or

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endangered species (CEQA Guidelines, § 15380). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW supports the inclusion of MM BIO-2a through MM BIO-2d with minor revisions (edits are in ~~strike through~~ and **bold**) in the final MND, as per below to avoid impacts to burrowing owl.

*Mitigation Measure BIO-2a*

The project applicant shall hire a qualified Biologist to conduct a habitat assessment of the project site and lands within 500 feet to map suitable burrowing microhabitats, especially California ground squirrel or coyote burrows. The habitat assessment shall be conducted according to protocol defined by the California Department of Fish and Wildlife (CDFW) **in the Staff Report on Burrowing Owl Mitigation (CDFG 2012)**. The survey results shall be reported to the CDFW and shall depict locations of burrows that are occupied or suitable for occupancy by burrowing owl. Following the habitat assessment, breeding season, nonbreeding season, and pre-construction surveys shall be performed **prior to construction activities**.

*Mitigation Measure BIO-2b*

Breeding season and nonbreeding season surveys shall be implemented by a qualified Biologist. Four breeding season survey visits shall be conducted: (1) at least one site visit between February 15 and April 15, and (2) a minimum of three survey visits, at least 3 weeks apart, between April 15 and July 15, with at least one visit after June 15. Nonbreeding season surveys shall be conducted over a series of four visits spaced throughout the nonbreeding season (September 1 through **January 31 February 14**). Each of the survey efforts will be conducted according to protocol defined by the California Department of Fish and Wildlife (CDFW) **in the Staff Report on Burrowing Owl Mitigation**. The results of the breeding season and nonbreeding season surveys shall be reported to CDFW. If both the breeding season and nonbreeding surveys are negative for burrowing owl, the project applicant shall implement MM BIO-2d.

*Mitigation Measure BIO-2c*

If the breeding season or nonbreeding surveys determine that burrowing owl occupies the project site, the City of Adelanto shall consult with the California Department of Fish and Wildlife (CDFW) to determine appropriate mitigation for the loss of burrowing owl habitat due to project implementation. The outcome of the consultation shall determine the need for on-site or off-site mitigation for burrowing owl, including habitat area mitigation ratios. The outcome of the consultation shall be included in a Burrowing Owl Mitigation Plan that shall be prepared by a qualified Biologist retained by the project proponent (see MM BIO-2e).

*Mitigation Measure BIO-2d*

The project applicant shall retain a qualified Biologist to perform a pre-construction burrowing owl survey in order to determine whether burrowing owls are present ~~within 30~~ **no more than 14** days prior to construction activities, according to California Department of Fish and Wildlife (CDFW) (2012) Guidelines. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. The preconstruction survey shall be completed on the project site and areas within 500 feet from the project boundary (where possible and appropriate based on habitat). All occupied burrows will be mapped on an aerial photo. At least ~~7 days~~ **15 days** prior to the expected start of any project-related ground disturbance activities, or restart of activities, the City of Adelanto shall provide a burrowing owl survey report and mapping to the CDFW. If no burrowing owl are detected during the pre-construction survey, no further action is necessary.

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*Mitigation Measure BIO-2e*

If any of the surveys (breeding season, nonbreeding season, or pre-construction) are positive for burrowing owl, the project proponent shall retain a qualified Biologist to develop and implement a Burrowing Owl Mitigation Plan and a Worker Environmental Awareness Program (WEAP). The Burrowing Owl Mitigation Plan shall contain the following elements (as outlined in California Department of Fish and Wildlife [CDFW 2012] Guidelines), at a minimum:

- Avoidance of burrowing owls during construction, including establishment of a 160-foot radius around occupied burrows during the nonbreeding season (September 1 through February 14 ~~February 14~~ **January 31**) or a 300-foot radius around occupied burrows during the breeding season (February 15 through August 31), within which construction activities may not occur until a qualified Biologist has determined that (1) nonbreeding season owls have dispersed from the area; or (2) breeding season owls have fledged their juveniles from the occupied burrows and the juveniles are foraging independently and are capable of independent survival or have dispersed from the area.

- **If avoidance of active burrows is not feasible, A a plan for implementing a passive relocation program shall be implemented for nonbreeding owls, and if no nesting owls are present and/or juvenile owls are no longer dependent on the burrows should it be needed, as determined by a qualified biologist.** The passive relocation techniques should shall be consistent with CDFW (2012) Guidelines in **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)**, including installation of artificial burrows at an off-site location and use of one-way exclusion doors to ensure owls have left the burrow(s). **The passive relocation program shall be submitted for CDFW review and approval prior to the commencement of disturbance activities and shall include proposed mitigation for the permanent loss of occupied burrow(s) and habitat that is consistent with the 2012 Staff Report on Burrowing Owl Mitigation.**

A WEAP shall be implemented to educate construction workers about the presence of burrowing owl and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case burrowing owl is encountered during construction. The WEAP shall include protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. Penalties for violations of environmental laws shall also be incorporated into the training session. All new construction personnel shall receive this training before beginning work on this project.

**COMMENT #3: Nesting Birds**

**IS/MND, Section 2.4, MM BIO-3, pages 36-45.**

**Issue:** The Project site supports nesting bird habitat

**Specific impact:** Potential take of nesting birds and loss of bird nesting and/or foraging habitat.

**Why impact would occur:** Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of creosote bush and white bursage scrub vegetation 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).

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**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW supports the inclusion of MM BIO-3 with edits (edits are in ~~strike through~~ and **bold**) in the final MND, as per below to avoid impacts to nesting birds:

*Mitigation Measure BIO-3*

Nesting Bird Mitigation Measures: **Regardless of the time of year, if project construction activities will be initiated during the nesting season for local avian species (February 15 through August 31), the project proponent shall retain a qualified Biologist to conduct a pre-construction survey for active nests of raptors and migratory birds within and adjacent to the project site (no less than 300-feet outside project boundaries, where possible) no more than 30 days prior to ground-disturbing and/or vegetation removing construction activities. If active nests are located during pre-construction surveys, USFWS and/or CDFW shall be notified regarding the status of the nests. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until it is abandoned or a Biologist deems disturbance potential to be minimal (in consultation with the United States Fish and Wildlife (USFWS) and/or California Department of Fish and Wildlife (CDFW). Restrictions may shall include but not be limited to the establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 5400-feet around the nest for raptors and 300 feet for songbirds) or alteration of the construction schedule. A smaller buffer may be specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species.** A qualified Biologist shall delineate the buffer(s) using nest buffer signs, environmentally sensitive area fencing, pin flags, and/or flagging tape. The buffer zone will be maintained around the active nest site(s) until the young have fledged and are foraging independently, **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 construction, 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.**

A Worker Environmental Awareness Program (WEAP) shall be implemented to educate construction workers about the presence of nesting birds (including burrowing owl and loggerhead shrike) and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case nesting birds are encountered during construction. The WEAP shall include protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. Penalties for violations of environmental laws shall also be incorporated into the training session. All new construction personnel shall receive this training before beginning work on this project.

~~No action is necessary if construction will be initiated during the nonbreeding season (generally September 1 through February 14).~~

**COMMENT #4: Desert Tortoise (*Gopherus agassizii*)**

**IS/MND, Section 2.4, pages 36-45.**

**Issue:** The Project site lies within known distribution of desert tortoise (CNDDDB) and supports habitat for desert tortoise, but the IS/MND does not consider potential impacts to desert tortoise and mitigation thereof.

**Specific Impact:** Potential take of desert tortoise and loss of desert tortoise habitat.

**Why impact would occur:** Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and direct mortality and/or injury to desert tortoise. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 1.6 acres of desert tortoise habitat.

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**Evidence impact would be significant:** Desert tortoise is a state-threatened, proposed endangered species.

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW recommends the adoption of MM BIO-5 in the final MND, as per below to avoid impacts to desert tortoise (edits are in ~~strike through~~ and **bold**):

*Mitigation Measure BIO-5*

**Desert Tortoise Pre-Construction Survey. A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100- percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities should 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.**

**COMMENT #5: Lake and Streambed Alteration**

**IS/MND, Section 2.4, MM BIO-4, pages 36-45.**

**Issue:** CDFW appreciates that a preliminary jurisdictional delineation was conducted for the Project, however it was not provided with the IS/MND. According to the IS/MND, the jurisdictional delineation determined an ephemeral drainage lies adjacent and parallel to the US-395 road shoulder and enters the Project site via a culvert located approximately 620 feet south of the Project site and flows north toward Seneca Road.

**Specific impact:** Potential impacts to Fish and Game Code section 1602 resources from filling, grading, and removal of riparian vegetation.

**Why impact would occur:** The Project plans indicate that the Project will build the car wash within an ephemeral drainage and proposes to reduce impacts through acquisition of regulatory permits.

**Evidence impact would be significant:** CDFW has authority over activities in rivers, streams and lakes that will 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 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 City 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.

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW supports the inclusion of MM BIO-4 with edits (edits are in ~~strike through~~ and **bold**) in the final MND, as per below to address impacts to Fish and Game Code section 1602 resources:



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*Mitigation Measure BIO-4*

Submit Jurisdictional Delineation and Acquire Permits from Regulatory Agencies: **Prior to the issuance of a grading permit or any earth disturbing activities at the Project site** the applicant shall submit the preliminary Jurisdictional Delineation report to the local Regional Water Quality Control Board (RWQCB) and the United States Army Corp of Engineers (USACE) for verification. ~~The applicant~~ **and** shall obtain a fill permit from the RWQCB and a **Fish and Game Code** Section 1602 Lake and Streambed Alteration Agreement (LSA) from the California Department of Fish and Wildlife (CDFW) for impacts to the ephemeral drainage and compensate for the potential loss of regulated aquatic features **and associated habitat** at a 4:1 ratio, ~~or as determined by the RWQCB and CDFW.~~

**Additional Comments and Recommendations**

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

**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 IS/MND to assist the City of Adelanto in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to 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

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**ATTACHMENTS**

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

**REFERENCES**

California Natural Diversity Database (CNDDDB) Government [ds45]. 2023. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System.

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**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.

<b>Biological Resources (BIO) Mitigation Measures (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
MM BIO-1a  Prior to any vegetation removal or ground-disturbing activities, focused surveys shall be conducted during the blooming period to determine whether special-status plants such as Beaver Dam breadroot are present. Surveys shall be conducted in accordance with 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). These guidelines require rare plant surveys to be conducted at the proper time of year when rare or endangered species and special-status plants are both “evident” and identifiable. Surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant	Prior to commencing ground or vegetation disturbing activities	Project Proponent

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<p>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. Field surveys shall be scheduled to coincide with known blooming periods, and/or during periods of physiological development that are necessary to identify the plant species of concern. Every plant taxon that occurs in the project area shall be identified to the taxonomic level necessary to determine rarity and listing status. If no special-status plants are found on the project site, no additional mitigation measures are necessary.</p>		
<p><b>MM BIO 1-b</b></p> <p>If focused surveys indicate that special-status plants such as Beaver Dam breadroot is found on the 1.6-acre project site, the project applicant shall evaluate the feasibility of reconfiguring the project design in order to avoid or to minimize impacts to special-status plant species. In addition to avoiding direct impacts to Beaver Dam breadroot or any other special-status plants present, potential indirect, project construction, and project operation impacts shall be minimized to the maximum extent feasible through means including, but not limited to, the installation of protective fencing and environmentally sensitive area signage. Additionally, a Worker Environmental Awareness Program (WEAP) shall be implemented to educate construction workers about the presence of special-status plants such as Beaver Dam breadroot and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case Beaver Dam breadroot or other special-status plants are encountered during construction.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM BIO-1c</b></p> <p>If special-status plants such as Beaver Dam breadroot are found on-site and cannot be avoided, the City shall mitigate the loss of the plant(s) through 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. The City of Adelanto shall consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW), as applicable, to determine feasible impact minimization and mitigation measures for this special status species, which may include, but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• Habitat restoration to mitigate for unavoidable temporary construction impacts to habitat supporting special-status plants on-site.</li> </ul>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<ul style="list-style-type: none"> <li>• Incorporating project features designed to reduce ongoing impacts from project operation, including controlling public access to avoid any remaining habitat supporting special status plants on-site.</li> <li>• In conjunction with academic institutions and/or regional native plant nurseries, and following consultation with CDFW, a propagation program shall be developed for the salvage and transfer of special-status plant populations known to succeed after transplantation, from the project site before the initiation of construction activities. Permits may be required from the CDFW or USFWS, which shall ensure that certified Biologists are involved in the propagation and transport of special-status plants. A CESA ITP is recommended for relocation, removal, or take of candidate, threatened, or endangered plant species. (Note: CDFW generally does not support the use of salvaging, translocation, or transplantation as a mitigation strategy for unavoidable impacts to CESA-listed species.) Propagation methods for the salvaged plant population must be developed on a case-by-case basis and must include the involvement of local conservation easements/preserves/open space, where applicable). The propagation of individual plant species must be performed at the correct time of year and successfully completed before project construction activities eliminate or disturb the plants and habitats of concern.</li> <li>• Efforts shall be made to salvage portions of the habitat or plant populations that could be lost as a result of implementation of the proposed project. In addition to salvaging special-status plants, such as Beaver Dam breadroot plants themselves, salvage efforts shall include soil and seedbanks surrounding impacted plants, if doing so will not contribute to the spread of invasive or noxious plant species.</li> <li>• Appropriate off-site conservation opportunities shall be identified and, if feasible, protected in perpetuity through conservation easements and/or purchase of mitigation bank credits from a CDFW-approved bank at a mitigation ratio determined by CDFW after Project analysis. The habitat value of off-site conservation areas shall be enhanced where feasible through means such as reducing grazing intensity and restricting off-highway vehicle access. The acreage of off-site habitat conserved should exceed a 1:1 ratio of impacted rare plant habitat on the project site and adequate mitigation will be determined by CDFW after Project analysis.</li> </ul>		
<p>MM BIO-1d</p> <p>If special-status plants, including Beaver Dam breadroot are found on-site and MM Bio-1c and MM Bio-1d are implemented, the City of Adelanto shall design and implement a monitoring program to evaluate compliance with and the effectiveness of</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>these mitigation measures. The monitoring program shall be conducted by a qualified Botanist, and shall take place periodically during project construction, and annually, following the completion of construction, for 5 years. The project applicant shall bear the financial responsibility for mitigation measure monitoring and reporting for the entirety of the 5-year reporting period. If the monitoring program identifies mitigation measure noncompliance or ineffectiveness, the project applicant shall fund and implement remedial measures including, but not limited to, on-site habitat restoration, the installation and maintenance of additional fencing, and other appropriate measures. The project applicant shall ensure that sufficient funding exists to complete all reasonably foreseeable remedial actions prior to the commencement of project construction. Annual monitoring reports shall be submitted to the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW), as applicable.</p>		
<p><b>MM BIO-2a</b></p> <p>The project applicant shall hire a qualified Biologist to conduct a habitat assessment of the project site and lands within 500 feet to map suitable burrowing microhabitats, especially California ground squirrel or coyote burrows. The habitat assessment shall be conducted according to protocol defined by the California Department of Fish and Wildlife (CDFW) in the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The survey results shall be reported to the CDFW and shall depict locations of burrows that are occupied or suitable for occupancy by burrowing owl. Following the habitat assessment, breeding season, nonbreeding season, and pre-construction surveys shall be performed prior to construction activities.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM BIO-2b</b></p> <p>Breeding season and nonbreeding season surveys shall be implemented by a qualified Biologist. Four breeding season survey visits shall be conducted: (1) at least one site visit between February 15 and April 15, and (2) a minimum of three survey visits, at least 3 weeks apart, between April 15 and July 15, with at least one visit after June 15. Nonbreeding season surveys shall be conducted over a series of four visits spaced throughout the nonbreeding season (September 1 through January 31). Each of the survey efforts will be conducted according to protocol defined by the California Department of Fish and Wildlife (CDFW) in the Staff Report on Burrowing Owl Mitigation. The results of the breeding season and nonbreeding season surveys shall be reported to CDFW. If both the breeding season and nonbreeding surveys are negative for burrowing owl, the project applicant shall implement MM BIO-2d</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM BIO-2c</b></p> <p>If the breeding season or nonbreeding surveys determine that burrowing owl occupies the project</p>	<p>Prior to commencing ground or vegetation</p>	<p>Project Proponent</p>

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<p>site, the City of Adelanto shall consult with the California Department of Fish and Wildlife (CDFW) to determine appropriate mitigation for the loss of burrowing owl habitat due to project implementation. The outcome of the consultation shall determine the need for on-site or off-site mitigation for burrowing owl, including habitat area mitigation ratios. The outcome of the consultation shall be included in a Burrowing Owl Mitigation Plan that shall be prepared by a qualified Biologist retained by the project proponent (see MM BIO-2e).</p>	<p>disturbing activities</p>	
<p>MM BIO-2d</p> <p>The project applicant shall retain a qualified Biologist to perform a pre-construction burrowing owl survey in order to determine whether burrowing owls are present no more than 14 days prior to construction activities, according to California Department of Fish and Wildlife (CDFW) (2012) Guidelines. If construction is delayed or suspended for more than 30 days after the survey, the area shall be resurveyed. The preconstruction survey shall be completed on the project site and areas within 500 feet from the project boundary (where possible and appropriate based on habitat). All occupied burrows will be mapped on an aerial photo. At least 7 days prior to the expected start of any project-related ground disturbance activities, or restart of activities, the City of Adelanto shall provide a burrowing owl survey report and mapping to the CDFW. If no burrowing owl are detected during the pre-construction survey, no further action is necessary.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-2e</p> <p>If any of the surveys (breeding season, nonbreeding season, or pre-construction) are positive for burrowing owl, the project proponent shall retain a qualified Biologist to develop and implement a Burrowing Owl Mitigation Plan and a Worker Environmental Awareness Program (WEAP). The Burrowing Owl Mitigation Plan shall contain the following elements (as outlined in California Department of Fish and Wildlife [CDFW 2012] Guidelines), at a minimum:</p> <ul style="list-style-type: none"> <li>• Avoidance of burrowing owls during construction, including establishment of a 160-foot radius around occupied burrows during the nonbreeding season (September 1 through January 31) or a 300-foot radius around occupied burrows during the breeding season (February 1 through August 31), within which construction activities may not occur until a qualified Biologist has determined that (1) nonbreeding season owls have dispersed from the area; or (2) breeding season owls have fledged their juveniles from the occupied burrows and the juveniles are foraging independently and are capable of independent survival or have dispersed from the area.</li> <li>• If avoidance of active burrows is not feasible, a plan for implementing a passive relocation program shall be implemented for nonbreeding owls, and if no</li> </ul>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>nesting owls are present and/or juvenile owls are no longer dependent on the burrows, as determined by a qualified biologist. The passive relocation techniques should shall be consistent with CDFW (2012) Guidelines in 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), including installation of artificial burrows at an off-site location and use of one-way exclusion doors to ensure owls have left the burrow(s). The passive relocation program shall be submitted for CDFW review and approval prior to the commencement of disturbance activities and shall include proposed mitigation for the permanent loss of occupied burrow(s) and habitat that is consistent with the 2012 Staff Report on Burrowing Owl Mitigation.</p> <p>A WEAP shall be implemented to educate construction workers about the presence of burrowing owl and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case burrowing owl is encountered during construction. The WEAP shall include protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. Penalties for violations of environmental laws shall also be incorporated into the training session. All new construction personnel shall receive this training before beginning work on this project.</p>		
<p>MM BIO-3</p> <p>Nesting Bird Mitigation Measures: Regardless of the time of year, the project proponent shall retain a qualified Biologist to conduct a pre-construction survey for active nests of raptors and migratory birds within and adjacent to the project site (no less than 300-feet outside project boundaries, where possible) no more than 3 days prior to ground-disturbing and/or vegetation removing construction activities. If active nests are located during pre-construction surveys, USFWS and/or CDFW shall be notified regarding the status of the nests. Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest until it is abandoned or a Biologist deems disturbance potential to be minimal (in consultation with the United States Fish and Wildlife (USFWS) and/or California Department of Fish and Wildlife (CDFW). Restrictions shall include but not be limited to the establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 500-feet around the nest for raptors and 300 feet for songbirds) or alteration of the construction schedule. A smaller buffer may be specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. A qualified Biologist shall delineate the buffer(s) using nest buffer signs, environmentally sensitive area fencing, pin flags, and/or flagging tape. The buffer zone will be maintained around the active nest site(s)</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p>until the young have fledged and are foraging independently, 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 construction, 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>A Worker Environmental Awareness Program (WEAP) shall be implemented to educate construction workers about the presence of nesting birds (including burrowing owl and loggerhead shrike) and other sensitive resources in and near the project site, and to instruct them on proper avoidance, required measures and practices for protecting biological resources and contacts and procedures in case nesting birds are encountered during construction. The WEAP shall include protection afforded to these species and habitats, and avoidance and minimization measures required to avoid and/or minimize impacts from the project. Penalties for violations of environmental laws shall also be incorporated into the training session. All new construction personnel shall receive this training before beginning work on this project.</p>		
<p>MM BIO-4</p> <p>Submit Jurisdictional Delineation and Acquire Permits from Regulatory Agencies: Prior to the issuance of a grading permit or any earth disturbing activities at the Project site the applicant shall submit the preliminary Jurisdictional Delineation report to the local Regional Water Quality Control Board (RWQCB) and the United States Army Corp of Engineers (USACE) for verification and shall obtain a fill permit from the RWQCB and a Fish and Game Code Section 1602 Lake and Streambed Alteration Agreement (LSA) from the California Department of Fish and Wildlife (CDFW) for impacts to the ephemeral drainage and compensate for the potential loss of regulated aquatic features and associated habitat at a ratio determined by the RWQCB and CDFW.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM BIO-5</p> <p>A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 50-foot buffer no more than 48 hours prior to Project activities and after any pause in Project activities lasting 30 days or more during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100- percent visual coverage for desert tortoise and their sign. Pre-construction</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>



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<p>surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities should 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.</p>		
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