

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
INLAND DESERTS REGION  
3602 INLAND EMPIRE BLVD., SUITE C-220  
ONTARIO, CALIFORNIA, 91764



**STREAMBED ALTERATION AGREEMENT**  
EPIMS-SBR-24938-R6  
15<sup>th</sup> Street Catch Basin

DIVERSIFIED PACIFIC  
VILLA SERENA SPECIFIC PLAN

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Diversified Pacific (Permittee) as represented by Mr. Brian Bush.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on November 11, 2021 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

## **PROJECT LOCATION**

The Villa Serena Specific Plan Project (Project) is located within an unnamed stream, within the 15<sup>th</sup> Street Stormwater facility, tributary to West Cucamonga Channel, and thence the Santa Ana River (refer to Exhibit 1: Project Location), situated north of E. 15<sup>th</sup> Street and east of N. Himalayas Drive in the City of Upland (City), County of San Bernardino, State of California; Latitude 34.118289, Longitude -117.634312; Assessor's Parcel Number: 1045-121-04. The Project is bounded to the east, west, and south by single-family residential dwellings, a southern California Edison substation is located northwest, and Upland Hills Country Club and residential community is located to the north.

## **PROJECT DESCRIPTION**

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The proposed Project would consist of the development of the Project site with 65 single-family detached residential units, on-site active and passive recreational amenities, the extension of improvements along 15<sup>th</sup> Street, and construction of off-site public open space improvements. The City has determined the 9.2 acre portion of the flood control detention basin comprising the Project site to be a surplus parcel. The remaining 11.1 acres of the Flood control detention basin would be adequate for continued flood control operations pursuant to completion of modifications to portions of the basin made as part of the proposed Project.

The stream is part of the 15<sup>th</sup> Street Stormwater facility and is approximately 20.3 acres and has a total watershed tributary of 583 acres based on an analysis by Madole & Associates Inc. (2021). The analysis also shows that the stream accepts storm flows from five drainage areas, referred to as Nodes 81, 72.3, 251, 361, and 431. In addition to the analysis by Madole & Associates Inc., Aspen Environmental Group prepared an Aquatic Resources Delineation Report in 2023 which identified a total of 4 drainages, referenced below. The stream in the western portion of the 15<sup>th</sup> Street Flood Basin (9.16 acres) will be filled to accommodate the residential development, and the existing basin infrastructure will be relocated to the eastern portion (11.1 acres) of the basin owned, operated, and controlled by the City to maintain flood control and retention operations. Basin infrastructure modifications include:

- Node 81 (Drainage 1), located at the northwest corner of the proposed site, an existing 90-inch storm drain will be re-routed around the proposed residential project by construction of a new reinforced concrete box storm drain that will outlet into the southwest corner of the reduced basin. Node 81 maintains an area approximately 0.08 acres of stream resources/
- Node 251(Drainage 3) will continue into the reduced basin through a new 60-inch diameter concrete pipe, placed within the Upland Hills Golf Course and routed easterly to outlet into the northwest corner of the reduced basin. Node 241 maintains an area of approximately 1.32 acres of streambed.
- Node 72.3 (Drainage 2) will discharge directly into the storm drain facility that drains the basin. Node 72.3 maintains an area of approximately 0.02 acres of stream resources.
- No changes will occur at nodes 361 and 431 (Drainage 4), which are both located on the eastern portion of the reduced basin. Nodes 361 and 431 together maintain an area of approximately 1.48 acres of stream resources.
- Extension of approximately 1,960 LF of the basin outlet from the western edge of the site to the eastern edge of the site. This extension will consist of an 84-inch RCP that will improve spillway flow and include a new outlet structure in the basin. The proposed pipe will extend from the southeast corner of the reduced basin west to the main Project entry, then south into 15<sup>th</sup> Street and west along

15h Street connecting to the existing outlet pipe. Easements will be granted to the City for all basin infrastructure proposed to be located within the site.

- A trapezoidal emergency spillway, with a base width of 40 feet and a top of 52 feet will be installed at the northerly end of Grove Street within the reduced basin.

Construction equipment to be utilized during Project activities include crawler tractors, rubber-tired dozers, excavators, graders, cranes, forklifts, generator sets, welders, paving equipment, rollers, pavers.

## PROJECT IMPACTS

Existing fish or wildlife resources the Project could substantially adversely affect include:

**BIRDS:** red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), Song sparrow (*Melospiza melodia*), red-winged blackbird (*Agelaius phoeniceus*), Black phoebe (*Sayornis nigricans*), Common yellowthroat (*Geothlypis trichas*), Killdeer (*Charadrius vociferus*), Mallard (*Anas platyrhynchos*), Cinnamon teal (*Spatula cyanoptera*), lesser goldfinch (*Spinus psaltria*), Allen's hummingbird (*Selasphorus sasin*), black-crowned night heron (*Nycticorax nycticorax*), Nuttall's woodpecker (*Dryobates nuttallii*), Pacific-slope flycatcher (*Empidonax difficilis*), ash-throated flycatcher (*Myiarchus cinerascens*), pine siskin (*Spinus pinus*), white-crowned sparrow (*Zonotrichia leucophrys*), chipping sparrow (*Spizella passerina*), hooded oriole (*Icterus cucullatus*), Nashville warbler (*Leiothlypis ruficapilla*), orange-crowned warbler (*Leiothlypis celata*), black-headed grosbeak (*Pheucticus melanocephalus*), great blue heron (*Ardea herodias*); **Mammals:** Coyote (*Canis latrans*), California ground squirrel (*Spermophilus beecheyi*), desert cottontail (*Sylvilagus auduboni*); **Reptiles:** Western fence lizard (*Sceloporus occidentalis*), side-blotched lizard (*Uta stansburiana*); **Vegetation:** cattail marsh (*Typha latifolia*), California buckwheat (*Eriogonum fasciculatum*), showy penstemon (*Penstemon spectabilis*), Pomona milkvetch (*Astragalus pomonensis*), hairy yerba santa (*Eriodictyon trichocalyx*), mulefat (*Baccharis salicifolia*), common monkeyflower (*Mimulus guttatus*), black sage (*Salvia mellifera*), hollyleaf cherry (*Prunus ilicifolia*), scale broom (*Lepidospartum squamatum*), California sycamore (*Platanus racemosa*), coast live oak (*Quercus agrifolia*).

The adverse effects the Project could have on the fish or wildlife resources identified above include: loss of bed or bank, change in contour of channel, soil compaction, short- and long- term release of contaminants from concrete, loss of foraging habitat, loss of riparian habitat, disruption to nesting birds and other wildlife, disruption to wildlife movement, and temporary impacts to water quality.

The Agreement authorizes permanent impacts to 9.16 of Fish and Game Code section 1602 stream resources (Refer to Exhibit 2: CDFW Jurisdictional Areas). If any additional impacts to Fish and Game Code section 1602 resources are anticipated, Permittee shall consult with CDFW and submit a new notification or, if approved by CDFW, apply for an amendment to this Agreement for authorization of those impacts.

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

## 1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with the Agreement.
- 1.5 Additional Project Impacts. Permittee shall submit to CDFW a request to amend this Agreement if any additional projects or impacts subject to Fish and Game Code section 1602 not identified in this Agreement are anticipated. No additional impacts subject to Fish and Game Code section 1602 are authorized unless the projects and/or impacts are expressly authorized by CDFW by amendment to this Agreement.
- 1.6 Take of Listed Species. The issuance of this Agreement does not authorize the take, incidental or otherwise, of any state or federally listed threatened, endangered, candidate or fully protected species. Take of any California Endangered Species Act (CESA) listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 & 2085). Consequently, if the Project, including Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081).
- 1.7 Take of 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. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

## **2. Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Designated Biologist. Permittee shall submit to CDFW for review the name, contact information, and qualifications of each biologist, botanist, or other specialist (Designated Biologist(s)) proposed to perform surveys, prepare or implement mitigation plans, and/or conduct monitoring activities addressed by this Agreement. Permittee shall specify within these submittals which activities each Designated Biologist is being considered for, and clearly identify the qualifications and experience they possess to support the assignment. Permittee shall submit the aforementioned information at least 30 days before commencement of Project activities addressed by this Agreement. Permittee shall notify CDFW in advance and in writing if a Designated Biologist must be changed to a person not previously proposed for the Project.
- 2.2 Qualifications of Designated Biologist(s). Permittee shall ensure that each Designated Biologist is knowledgeable and experienced in the identification, life history, behavior, and habitat requirements of species with potential to be impacted by the Project and shall ensure that the Designated Biologist responsible for overseeing the mitigation, is knowledgeable and experienced in habitat creation, restoration, and enhancement projects in southern California. Permittee shall also ensure that handling of non-listed fish, wildlife, or plant species is conducted only by Designated Biologists approved by CDFW in writing. Handling of state-listed species will require CESA authorization.
- 2.3 Responsibility of Designated Biologist(s). The Designated Biologist(s) shall be responsible for monitoring activities addressed by this Agreement, including, but not limited to all activities that result in clearing, grading, excavation, and/or other ground-disturbing activities. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall confirm and monitor the limits of Project activities addressed by this Agreement.
- 2.4 Authority of Designated Biologist. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall immediately halt any activity that does not comply with this Agreement, and/or order any reasonable measure to avoid the violation of, or maintain compliance with, any measure of this Agreement. The Designated Biologist(s) shall not have the authority to handle any listed species (e.g., threatened, endangered, candidate) and must halt construction and notify CDFW immediately if any listed species identified within or adjacent to the Project area and could be impacted by the Project. If compliance with any measure

of this Agreement fails or if the measures of this permit are violated, Permittee shall notify CDFW immediately in writing at [R6LSAreproving@wildlife.ca.gov](mailto:R6LSAreproving@wildlife.ca.gov) with a cc to [Lisa.Cardoso@Wildlife.ca.gov](mailto:Lisa.Cardoso@Wildlife.ca.gov), and contact Lisa Cardoso at (805) 712-0346.

- 2.5 Pre-Construction Surveys. The Designated Biologist(s) shall conduct pre-Project surveys (in addition to the nesting bird, burrowing owl, and bat surveys as specified in Measures 2.7-2.9) within the Project area, including access route(s) and staging area(s) and an appropriate buffer surrounding those areas, **no more than 3 days prior to initiating Project activities**. The surveys shall be conducted to identify and map nesting birds, burrowing owls, special-status species, or listed species with the potential to occur on site including those identified in the Project Impacts section of this Agreement, and any dens, burrows, nests, etc. capable of harboring a special-status or listed species. The Designated Biologist(s) shall ensure that the methods used to locate, identify, map, avoid and buffer individuals, or dens, burrows, or nests of individuals, are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the Project impact areas and access routes, and an appropriate buffer surrounding those areas. If any listed species (or sign of presence) is discovered, Permittee shall halt all Project activities that could affect the listed species and notify CDFW within 24 hours of the discovery. If the Project activities have the potential to impact a listed species, an ITP may be required before the Project activities can begin (Refer to Measure 1.6 above).
- 2.6 Pre-activity Sweeps. The Designated Biologist(s) shall conduct pre-activity sweeps within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-activity sweeps shall confirm and mark/map for avoidance the location of any known nesting bird(s) and/or special-status species and shall verify that no addition/new nesting bird(s) and/or special-status species have occupied the Project areas or adjacent habitats. If any additional/new nesting bird(s) and/or special-status species (or sign of presence) are identified within or adjacent to the Project areas during the pre-activity sweep, Permittee shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the Project on the identified resource(s) prior to initiating Project activities. If full avoidance of listed species cannot be accomplished, Permittee shall postpone the Project, and seek CESA authorization for those impacts.
- 2.7 Nesting Birds. Permittee shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. Permittee shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology (e.g., Ralph et al. 1993<sup>1</sup> and United States Fish and Wildlife Service and/or CDFW-

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<sup>1</sup> Ralph, C.J., G.R. Geupel, P. Pyle, T.E. Martin, and D.F. DeSanta. 1993. Handbook of field methods for monitoring landbirds. General Technical Report PSW-GTR 144. USDA Forest Service Pacific

accepted species-specific survey protocols, available here: <https://www.wildlife.ca.gov/conservation/survey-protocols>); nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success (e.g., Martin and Geupel 1993<sup>2</sup>); determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

2.7.1 Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, **no more than 3 days prior to the initiation of Project activities** addressed by this Agreement. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The Designated Biologist shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for 1 hour (4 hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate. Results of pre-construction surveys shall be provided to CDFW per Measure 3.1.

2.7.2 When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within

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Southwest Research Station. Albany, CA.

<sup>2</sup> Martin, T.E. and G.R. Geupel. 1993. Nest-monitoring plots: methods for locating nests and monitoring success. *Journal of Field Ornithology* 64:507-514.

the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall monitor the nest at the onset of Project activities addressed by this Agreement, and at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist(s) determines that Project activities may be causing an adverse reaction, the Designated Biologist(s) shall adjust the buffer accordingly.

2.7.3 The Designated Biologist(s) shall be onsite daily to monitor all existing nests, the efficacy of established buffers, and to document any new nesting occurrences. The Designated Biologist(s) shall document the status of all existing nests, including the stage of reproduction and the expected fledge date. If a nest is suspected to have been abandoned or failed, CDFW recommends the Designated Biologist(s) monitor the nest for a minimum of 1 hour (4 hours for raptors), uninterrupted, during favorable field conditions. If no activity is observed during that time, the Designated Biologist(s) may approach the nest to assess the status.

2.7.4 Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering material with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used pose an entanglement risk to birds or other species.

2.7.5 The Designated Biologist(s) shall be responsible for providing summary reports, as specified in Measure 3.2 to CDFW no less than once weekly regarding the nesting species identified onsite, discovery of any of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. If the Project results in the abandonment of, or damage to a nest, Permittee shall notify CDFW within 24 hours.

2.8 Burrowing Owl. Permittee shall ensure that impacts to burrowing owls are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization and mitigation measures.

2.8.1 Surveys shall be conducted by Designated Biologist(s) at the appropriate



time of day/dawn, during appropriate weather conditions, **no more than fourteen (14) calendar days prior to the initiation of Project activities** addressed by this Agreement. The survey shall include inspection of all burrows that exhibit typical characteristics of owl activity such as owls themselves, burrows, and owl sign at burrow entrances, including pellets, feces or other “ornamentation”, feathers, prey remains, whitewash, etc. Survey duration shall take into consideration the size of the property; density and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.

- 2.8.2 Buffers. When an active or occupied burrow is confirmed, Designated Biologist(s) shall immediately establish a conservative buffer surrounding the burrow based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, Designated Biologist(s) may choose to make adjustments to the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. Designated Biologist(s) shall monitor the burrow at the onset of Project activities addressed by this Agreement, and at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If Designated Biologist(s) determines that Project activities may be causing an adverse reaction, Designated Biologist(s) shall adjust the buffer accordingly.
- 2.8.3 Burrowing Owl Mitigation and Monitoring Plan. If burrowing owls are detected on or adjacent to the Project site and cannot be completely avoided, a Burrowing Owl Mitigation and Monitoring Plan shall be submitted to CDFW for review and approval prior to disturbance of the owl(s). The Burrowing Owl Mitigation and Monitoring Plan shall include the number and location of occupied burrow sites that will be disturbed by the Project; proposed relocation, monitoring, and minimization actions; and details on adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation of artificial burrows (numbers, location, and type of burrows) shall be identified in the Burrowing Owl Mitigation and Monitoring Plan. The Burrowing Owl Mitigation and Monitoring Plan shall also include an impact analysis consistent with the 2012 *Staff Report on Burrowing Owl Mitigation* and shall identify mitigation including acquisition, permanent protection, and funding of mitigation lands for the loss of burrowing owl habitat. The Permittee shall implement the Burrowing Owl Mitigation and Monitoring Plan

following CDFW review and approval.

- 2.9 Crotch's Bumble Bee. The Designated Biologist(s) shall conduct focused surveys within one year prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Surveys shall be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist, familiar with Crotch's bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified onsite, Permittee shall apply for an ITP and obtain "take" coverage prior to the initiation of Project activities.
- 2.10 Moving Out of Harm's Way. To reduce direct injury and mortality, the Designated biologist(s) shall be at the Project site prior to and during all ground- and habitat-disturbing activities to move or allow to move out of harm's way any special status species not addressed by specific Measures or other wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety.
- 2.11 Best Management Practices (BMPs). Permittee shall actively implement (BMPs) to prevent erosion and the discharge of sediment and pollutants into streams during Project activities. Permittee shall monitor and repair BMPs if necessary, to ensure maximum erosion, sediment, and pollution control. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within and adjacent to any river, lake, or stream. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.
- 2.12 Equipment Use and Cleaning. All equipment shall be cleaned prior to entering the bed and bank of the stream. Washing must take place where rinse water is collected and disposed of in either a sanitary sewer, landfill, or other facility authorized to accept such rinse water. The cleaning measures must be practical and verifiable. Depending on the nature of the debris, the equipment may be cleaned using mechanical methods (brushing, scraping, prying), compressed air, high-pressure water, or steam. This includes wheels, tires, buckets, stabilizers, undercarriages, and bumpers. The Permittee shall verify and document cleaning has occurred prior to equipment entering the bed and bank of the stream;

documentation of equipment inspections for each date of entry shall be available to CDFW upon request.

- 2.13 Nonnative Plant Species. CDFW recommends the use of native plants to the greatest extent feasible in the landscaped areas adjacent to and/or near mitigation/open space areas and within or adjacent to stream channels. Permittee shall not plant, seed, or otherwise introduce nonnative plant species to the landscaped areas adjacent to and/or near mitigation/open space areas and within or adjacent to stream channels. If Permittee will plant/seed using non-native plant materials, there must be a minimum 100-foot setback from open space areas and a minimum 150-foot setback from stream channels and wetlands/riparian mitigation sites.
- 2.14 Pollution and Litter. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.14.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.14.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.14.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from Project related activities shall be prevented from contaminating the soil and/or entering a lake, streambed, or flowing stream. These materials, placed within or where they may enter a lake, streambed, or flowing stream by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.
- 2.14.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into any river, stream, or lake. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high-water mark of any lake, streambed, or flowing stream. No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.

2.14.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants are from the equipment may enter these areas under any flow.

2.15 Trash Abatement and Refuse Removal. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at the end of each workday to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Upon completion of Project activities, Permittee shall remove and properly dispose of all refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping.

2.16 Stockpile Maintenance. Permittee shall maintain stockpiles to avoid the spread of invasive plants. Permittee shall not stockpile materials within the bed, bank or channel after daily work has been completed.

2.17 Staging Areas. Permittee shall confine all Project site-related parking, storage areas, laydown sites, equipment storage, and any other Project site staging activities to locations outside of the bed and bank of the stream.

2.18 Remove Temporary Flagging and Barriers. Permittee shall remove all temporary flagging and/or barriers from the Project site and vicinity of Fish and Game Code section 1602 resource areas upon completion of Project activities.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 Option 1 - Habitat Mitigation. Within 3 months of completion of the Project, Permittee shall implement the Habitat Mitigation and Monitoring Plan (HMMP) provided in the Notification package, following review and approval by CDFW. Habitat mitigation shall consist of the creation of 1.2 acres of mule fat scrub and enhancement of 0.3 acres of wetland within the 1.5 acres at the eastern portion of the reduced basin bottom (Mitigation Area). The Mitigation Area will be maintained and managed to improve habitat quality and shall meet success criteria established in the CDFW-approved HMMP. Permittee shall provide details of each maintenance visit and the results and each monitoring visit for the Mitigation Area to CDFW annually, as described in Measure 4.3.

3.2 Option 2 – Purchase Credits from Mitigation Bank. Permittee shall purchase 1.5 streambed enhancement credits from CDFW approved mitigation bank(s). **Permittee shall obtain CDFW approval regarding the choice of the mitigation bank prior to credit purchase. Proof of purchase shall be provided to CDFW no later than 30 days prior to initiation of project activities authorized in this agreement.**

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 4.1 Pre-construction Nesting Bird Survey Report. Prior to commencement of Project activities, Permittee shall submit the results of pre-construction nesting bird surveys completed pursuant to Measure 2.7.1 of this Agreement to [R6LSAReprting@Wildlife.ca.gov](mailto:R6LSAReprting@Wildlife.ca.gov).
- 4.2 Nesting Bird Summary Reports. Permittee shall prepare and submit to CDFW a summary, as described in Measure 2.7.5 of this Agreement, of nesting species identified onsite, discovery of any of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. Summary reports shall be submitted on a weekly basis until there is no further evidence of nesting activity. If the Project results in the abandonment of or damage to a nest, Permittee shall notify CDFW within 24 hours.
- 4.3 Annual Reporting – Mitigation Area (Option 1). Permittee shall submit annual reports to CDFW for a minimum of 5 years following the initiation of restoration/enhancement activities, or until CDFW deems the Habitat Mitigation successful (see Measure 3.1 above). At a minimum, the reports shall include the following information: (1) a description of the habitat maintenance and monitoring activities conducted during the previous year: (a) details of nonnative plant removal efforts, such as, the methods used for removal, the amount removed and/or treated, the frequency and timing of removal and treatment, disposal specifics, and a summary of the general successes and failures or failure of the nonnative removal plan; and (b) an overview of any supplemental planting /seeding conducted, including the number of plants/amount of seed installed, and the location and timing of replacement planting/seeding; (2) current site conditions, including: the percent survival, percent cover, and composition of the habitat, and the methods used to assess these parameters; (3) a list of wildlife species observed within the restoration site during monitoring surveys, including sensitive species and/or listed species; and (4) photos from designated photo stations. The first annual report is due to CDFW no later than 13 months following the initiation of restoration/enhancement activities.
- 4.4 Notification to CNDDDB. If any sensitive species (threatened, endangered, candidate, fully protected, species of special concern, etc.) are observed on or in proximity to the Project site, or during Project surveys, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings. The CNDDDB form is available online at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submittign-Data>. A copy of this information shall also be mailed or emailed within seven days to CDFW at the address or email listed below under Contact Information. Please reference Notification No. EPIMS-SBR-24938-R6.

- 4.5 Notification of Start of Construction. Permittee shall notify CDFW, in writing, at least 14 days prior to Project initiation. Notification shall be sent via email to [R6LSAReporting@Wildlife.ca.gov](mailto:R6LSAReporting@Wildlife.ca.gov) with a cc to [Lisa.Cardoso@Wildlife.ca.gov](mailto:Lisa.Cardoso@Wildlife.ca.gov). Please reference Notification No. EPIMS-SBR-24938-R6.

## **CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

### To Permittee:

Brian Bush  
EPIMS-SBR-24938-R6  
Villa Serena Specific Plan  
BBush@diversifiedpacific.com

### To CDFW:

Department of Fish and Wildlife  
Inland Deserts Region  
EPIMS-SBR-24938-R6  
Villa Serena Specific Plan  
[R6LSAReporting@Wildlife.ca.gov](mailto:R6LSAReporting@Wildlife.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited

to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the Project or an activity related to it. For example, if the Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing. Such approval shall not be unreasonably withheld or delayed.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on January 2, 2027, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

## **EXHIBITS**



The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

A. Exhibit 1: Project Location

**AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

**AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

**CONCURRENCE**

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's Environmental Permit Information Management System (EPIMS), the permittee accepts and agrees to comply with all provisions contained herein.

**The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.**

## Exhibit 1: Project Location

