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*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



January 9, 2025  
*Sent via email*

Jimmy Duran  
City Manager  
City of Brawley  
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Brawley, CA 92227  
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Subject: Notice of Preparation of a Draft Supplemental Environmental Impact Report  
Rancho Los Lagos Specific Plan Project  
State Clearinghouse No. 2007071107

Dear Mr. Duran:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (DSEIR) from the City of Brawley (City) for the Rancho Los Lagos Specific Plan 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

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

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**

The proposed Project is located in the Imperial Valley region of unincorporated Imperial County, on an approximately 1,076-acre site. The Project is bound by Rockwood Canal and the City of Brawley's southern border to the north, Dogwood Road to the east, State Route 86 and the Central Main Canal to the west, and Pearsol Drain and Schartz Road to the south. The Project site encompasses Accessor's Parcel Numbers (APN) 040-130-010 and 040-130-012. The Project area is within the City's Sphere of Influence and the Project site would be annexed into the City as a part of the proposed Project.

The Project proposes to design a pedestrian-oriented residential community. In addition, the Project would also include a golf course, several public parks, commercial and retail development, a fire station, two schools, the Industrial Business Park, and a resort hotel and spa.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City of Brawley in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW recognizes that this supplemental environmental review of a general plan EIR need not be as detailed as CEQA documents prepared for specific projects that may follow (CEQA Guidelines § 15146). CDFW also recognizes that the level of detail should be reflective of the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4<sup>th</sup> 351). However, please note that the City of Brawley cannot defer the analysis of significant effects of the general plan to later-tiered CEQA documents (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182).

CDFW recommends that the forthcoming DSEIR address the following:

## Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the DSEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the DSEIR specifically include:

1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009<sup>2</sup>). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov) or <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data> to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code (section 1930 et seq.), in the vicinity of the proposed Project.

CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (SSC) and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Species to be addressed should include all those which meet the CEQA definition (CEQA

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<sup>2</sup> Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>

Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys should be completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status.

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species,
- Live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process.

Species-specific surveys for sensitive species that the Project footprint has the potential to support include, but is not limited to:

Western Burrowing Owl (*Athene cunicularia hypugaea*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for western burrowing owl. On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl is afforded the same protection as threatened and endangered species under CESA, and unauthorized take of the species is prohibited. If Project activities, including burrow exclusion and closure, could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081b) should be obtained prior to commencement of Project activities.

Take of individual western burrowing owls and their nests is also prohibited by Fish and Game Code 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.”

For the purposes of CEQA review, CDFW recommends that the City follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW’s website:

<https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to western burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures appropriate. Habitat assessments are conducted to evaluate the likelihood that a site supports western burrowing owl. Western burrowing owl breeding and non-breeding surveys provide information needed to determine the potential effects of proposed projects and activities on western burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which western burrowing owls and their habitat may be impacted, directly or

indirectly, on and within a reasonable distance of the proposed CEQA project activity.

Within the 2012 Staff Report, the minimum habitat replacement recommendation was intentionally excluded as it was shown to serve as a default, replacing any site-specific analysis and discounting the wide variation in natal area, home range, foraging area, and other factors influencing western burrowing owls and western burrowing owl population persistence in a particular area. It hypothesized that mitigation for permanent impacts to nesting, occupied, and satellite burrows and western burrowing owl habitat should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support western burrowing owls present. If mitigation occurs offsite, it should include (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for western burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) be sufficiently large acreage with the presence of fossorial mammals. Furthermore, the report noted that suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to: type and structure of habitat being impacted or conserved; density of western burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range-wide. CDFW recommends consultation prior to obtaining mitigation lands for the species.

Yuma Ridgway's rail (*Rallus longirostris yumanensis*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for Yuma Ridgway's rail, a California fully protected species.

Water diversions can impact Yuma Ridgway's rails through dewatering of wetland habitats. Changes in flow rates can also increase the prevalence of invasive plant species which are a threat to Yuma Ridgway's rails.

Vegetation clearing may impact Yuma Ridgway's rails as they require a dense cover of emergent wetland vegetation for protection from predators. Removal of vegetation can also make communities vulnerable to colonization by invasive plant species.

Noise from road use, generators, and other equipment may disrupt Yuma Ridgway's rail mating calls which could impact their reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has been shown to reduce the density of nesting birds (Francis et al. 2009).

Artificial light may disorient migrating Yuma Ridgway's rails and disrupt their navigation (Rowan 1925, Longcore and Rich 2016).

The EIR should address any Project related potential impacts to Yuma Ridgway's rail and specify avoidance measures, as necessary. Any take of Yuma Ridgway's rail would be a violation of Fish and Game Code.

### Bats

The Project site has the potential to provide suitable habitat for several bat species (collectively, bats) potentially roosting (day, night and maternal) and foraging habitat, which may include some SSC including but not limited to:

- pallid bat (*Antrozous pallidus*) (SSC)
- Townsend's big-eared bat (*Corynorhinus townsendii*) (SSC)
- western mastiff bat (*Eumops perotis*) (SSC)
- western red bat (*Lasiurus blossevillii*) (SSC)
- western yellow bat (*Lasiurus xanthinus*) (SSC)
- hoary bat (*Lasiurus cinereus*) (SSC)
- California myotis (*Myotis californicus*)
- Arizona myotis (*Myotis occultus*) (SSC)
- Cave myotis (*Myotis velifer*) (SSC)
- Yuma myotis (*Myotis yumanensis*) (SSC)
- Pocketed free-tailed bat (*Myctinopops ferosaccus*) (SSC)

Project construction and activities may result in direct and indirect impacts to bats. Direct impacts include removal of structures occupied by roosting bats. This could result in injury or mortality to bats as well as loss of roosting habitat. Indirect impacts to bats and roosts could result from loss of foraging habitat, increased noise disturbances, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, excavating, and grading), and vibrations caused by heavy equipment.

Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1).

The DSEIR should include results of specific surveys for bats over the Project are proposed to be directly or indirectly affected by Project activities and the results of the surveys included in the DSEIR, along with avoidance, minimization and mitigation measures, if appropriate. CDFW recommends if active hibernacula or day roosts are identified in the work area or within 500 feet of the work area, during surveys, a qualified bat biologist be consulted to develop appropriate species-specific avoidance measures for the Project. For maternity roosts, Project

construction shall only occur generally between October 1 and February 28, outside of the maternity roosting season when young bats are present but are yet ready to fly out of the roost (generally March 1 to September 30). Maternity roosts shall not be evicted, excluded, removed, or otherwise disturbed.

American Badger (*Taxidea taxus*)

The Project occurs within the range of the American badger, a California SSC. CDFW recommends the Project complete surveys for American badger over the Project area proposed to be directly or indirectly affected by the Project activities and that the results of such surveys be included in the DSEIR, along with avoidance, minimization, and mitigation measures, if appropriate.

If American badger are found, or have the potential to occupy the Project site, CDFW recommends the City require species specific mitigation to offset impacts and avoidance, minimization and monitoring measures aimed at avoiding or reducing direct impacts to American badger be incorporated into the DSEIR. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate individuals that would need to be avoided or passively relocated, and the burrows that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

Ringtail (*Bassariscus astutus*)

The Project occurs within the range of the ringtail, a California fully protected species. CDFW recommends the Project complete surveys for ringtail over the Project area proposed to be directly or indirectly affected by the Project and that the results of such survey be included in the DSEIR, along with measures to avoid all impacts to the species. Measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens, nests, and areas of cover as inactive, active, and potentially active habitat for the species, and note active natal nests, and methods utilized to quantify and locate individuals that would need to be avoided.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://www.wildlife.ca.gov/Conservation/Plants>).
5. Information on the regional setting that is critical to an assessment of environmental



impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

6. A full accounting of all open space and mitigation/conservation lands within and adjacent to the Project.

### **Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources**

The DSEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project (including the plan's land use designations, policies and programs). To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DSEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g., National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

Please note that the Project area supports biological resources and contains habitat connections, providing for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations. CDFW encourages project design that avoids and preserves onsite features that contribute to habitat connectivity. The DSEIR should include a discussion of both direct and indirect impacts to wildlife movement and connectivity, including maintenance of wildlife corridor/movement areas to adjacent undisturbed and/or utilized habitats.

3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and any long-term operational and maintenance needs.
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DSEIR should analyze the cumulative effects of the plan's land use designations, policies and programs on the environment. Please include all

potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

## **Alternatives Analysis**

CDFW recommends the DSEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would “feasibly attain most of the basic objectives of the Project,” and would avoid or substantially lessen any of the Project’s significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a “no project” alternative (CEQA Guidelines § 15126.6[e]). The No Project alternative should evaluate how the changing environment, such as climate change and drought, may affect the community if a new or revised general plan were not adopted.

## **Mitigation Measures for Project Impacts to Biological Resources**

The DSEIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The City should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species, such as Yuma Ridgeway’s rail (*Rallus longirostris yumanensis*) and ringtail (*Bassariscus astutus*), may not be taken or possessed at any time.

Project activities described in the DSEIR should generally be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DSEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the City include in the analysis how appropriate avoidance measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These

ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DSEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

3. *California Species of Special Concern* (SSC): As previously stated, California SSC status applies to animals generally not listed under the federal Endangered Species Act (ESA) or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. SSCs should be considered during the environmental review process. SSC have the potential or have been documented to occur within or adjacent to the Project area, including, but not limited to: loggerhead shrike (*Lanius ludovicianus*), white-faced ibis (*Plegadis chihi*), horned lark (*Eremophila alpestris*), long-billed curlew (*Numenius americanus*), mountain plover (*Charadrius montanus*), short-eared owls (*Asio flammeus*), prairie falcons (*Falco mexicanus*), Yuma hispid cotton rat (*Sigmodon hispidus eremicus*), Sonoran Desert toad (*Incilius alvarius*), northern harrier (*Circus hudsonius*), yellow warbler (*Setophaga petechia*), western mastiff bat (*Eumops perotis californicus*), American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and western yellow bat (*Lasiurus xanthinus*).
4. *Mitigation*: CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DSEIR should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.

The DSEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DSEIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645

struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DSEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in advance of project impacts in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

CDFW recommends that the DSEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing (e.g., conducting work outside the peak nesting season), monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DSEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the DSEIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

7. *Moving out of Harm's Way*: To avoid direct mortality to any non-listed terrestrial wildlife, CDFW recommends that the lead agency condition the DSEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-fully protected wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release

it into the most suitable habitat near the site of capture. 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 (i.e., CDFW does not recommend relocation to other areas). Only biologists with appropriate authorization by CDFW shall move CESA-listed species. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

8. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. These activities may be considered as minimization measures.

### **California Endangered Species Act**

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the project. It is the policy of CESA to conserve, protect, enhance, and restore state-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. CDFW must comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DSEIR addresses all Project impacts to listed species and specify a mitigation monitoring and reporting program that will meet the requirements of CESA.

Based on review of CNDDDB and Biogeographic Information and Observation System (BIOS), and/or knowledge of the project site/vicinity/general area, CDFW is aware that the following CESA-listed species have the potential to occur onsite/have previously been reported onsite: western burrowing owl (*Athene cunicularian hypugaea*).

### **CDFW Lake and Streambed Alteration Program**

Based on review of material submitted with the NOP and review of aerial photography, areas subject to Fish and Game Code section 1602 are present on site. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of

any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DSEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification package, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

## **ADDITIONAL COMMENTS AND RECOMMENDATIONS**

### **Biological Technical Reports**

Despite their inclusion in the table of contents, the appendices for the DSEIR Initial Study were not provided for public review. CDFW reached out to the City via email on January 3, 2025 to request a copy of the appendices. The City acknowledged receipt of the request on January 5, 2025, but the appendices have not been received to date. Therefore, CDFW comments are limited to the information provided within the Initial Study, and review of the supporting biological information contained in Appendix A could not be completed.

### **Landscaping**

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project

location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. 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, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

## Construction Noise

Project-related construction has the potential to generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project. CDFW recommends that the DSEIR include an analysis of impacts to wildlife from Project-related construction noise, and appropriate avoidance, minimization, and mitigation measures that will reduce impacts to less than significant.

Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB<sup>3</sup>. Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats<sup>4,5,6,7</sup>. Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise<sup>8,9</sup>. Noise has also been shown to reduce the density of nesting birds<sup>10</sup> and cause increased stress that results in decreased immune responses<sup>11</sup>. The City should include measures in the DSEIR to ensure the following: restricting the use of equipment to hours least likely to disrupt wildlife (e.g., not at night

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<sup>3</sup> Barber, J. R., K. R. Crooks, and K. M. Fristrup. 2009. The costs of chronic noise exposure for terrestrial organisms. *Trends in Ecology and Evolution* 25:180-189.

<sup>4</sup> Sun, J. W. C., and P. M. Narins. 2005. Anthropogenic sounds differentially affect amphibian call rate. *Biological Conservation* 121:419-427.

<sup>5</sup> Patricelli, G., and J. J. L. Blickley. 2006. Avian communication in urban noise: causes and consequences of vocal adjustment. *Auk* 123:639-649.

<sup>6</sup> Gillam, E. H., and G. F. McCracken. 2007. Variability in the echolocation of *Tadarida brasiliensis*: effects of geography and local acoustic environment. *Animal Behaviour* 74:277-286.

<sup>7</sup> Slabbekoorn, H., and E. A. P. Ripmeester. 2008. Birdsong and anthropogenic noise: Implications and applications for conservation. *Molecular Ecology* 17:72-83.

<sup>8</sup> Rabin, L. A., R. G. Coss, and D. H. Owings. 2006. The effects of wind turbines on antipredator behavior in California ground squirrels (*Spermophilus beecheyi*). *Biological Conservation* 131:410-420.

<sup>9</sup> Quinn, J. L., M. J. Whittingham, S. J. Butler, W. Cresswell, J. L. Quinn, M. J. Whittingham, S. J. Butler, W. Cresswell, and W. Noise. 2017. Noise, predation risk compensation and vigilance in the chaffinch *Fringilla coelebs*. *Journal of Avian Biology* 37:601-608.

<sup>10</sup> Francis, C. D., C. P. Ortega, and A. Cruz. 2009. Noise pollution changes avian communities and species interactions. *Current Biology* 19:1415-1419.

<sup>11</sup> Kight, C. R., and J. P. Swaddle. 2011. How and why environmental noise impacts animals: An integrative, mechanistic review. *Ecology Letters* 14:1052-1061.



or in early morning); restricting the use of generators except for temporary use in emergencies; provide power to sites by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems; ensure the use of noise suppression devices such as mufflers or enclosure for generators; and sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

### **Artificial Nighttime Lighting**

The Project will introduce new sources of artificial lighting. CDFW recommends that the DSEIR include lighting design specifications for all artificial nighttime lighting that will be used by the Project, an analysis of the direct and indirect impacts of artificial nighttime lighting on biological resources, and appropriate avoidance, minimization, and mitigation measures that will reduce impacts to less than significant. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures should be included in the DSEIR.

Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation<sup>12</sup>. Many species use photoperiod cues for communication (e.g., bird song<sup>13</sup>), determining when to begin foraging<sup>14</sup>, behavioral thermoregulation<sup>15</sup>, and migration<sup>16</sup>. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it<sup>8</sup>. The City should include measures in the DSEIR to ensure the following: eliminate all nonessential lighting throughout the Project area; avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active; lighting for Project activities is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in spill over onto other properties or

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<sup>12</sup> Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.

<sup>13</sup> Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

<sup>14</sup> Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

<sup>15</sup> Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

<sup>16</sup> Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>); the use of LED lighting with a correlated color temperature of 3,000 Kelvins or less; proper disposal of hazardous waste; and recycling of lighting that contains toxic compounds with a qualified recycler.

## 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). Information can be submitted online or via completion of the CNDDDB field survey form 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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

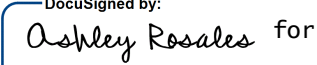
## FILING FEES

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

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DSEIR for the Rancho Los Lagos Specific Plan Project (SCH No. 2007071107) and recommends that the City of Brawley address CDFW's comments and concerns in the forthcoming DSEIR. Questions regarding this letter or further coordination should be directed to Lily Mu, Senior Environmental Scientist (Specialist), at [Lily.Mu@wildlife.ca.gov](mailto:Lily.Mu@wildlife.ca.gov) or (909) 544-2521.

Sincerely,

DocuSigned by:  
 for  
C2A3834574CB4FD...

Brandy Wood  
Environmental Program Manager

Jimmy Duran, City Manager  
City of Brawley  
January 9, 2025  
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