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



Governor's Office of Planning & Research

February 06 2024

February 5, 2024  
Sent via email

## STATE CLEARINGHOUSE

Adam Rush, Community Development Director  
Community Development Department  
City of Banning  
99 East Ramsey Street  
Banning, CA 90220

Subject: Draft Environmental Impact Report, Sunset Crossroads Specific Plan Industrial and Commercial Development Project, State Clearinghouse No. 2021020011

Dear Adam Rush:

The California CDFW of Fish and Wildlife (CDFW) received and reviewed the Draft Environmental Impact Report (DEIR) from the City of Banning for the Sunset Crossroads Specific Plan Industrial and Development Project (Project), State Clearinghouse No. 2021020011, pursuant 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 (Fish & G. Code, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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.

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.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, et seq., of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. The City of Banning is a permittee to the MSHCP and is responsible for implementation of the MSHCP and its associated Implementation Agreement. CDFW is providing the following comments as they relate to the project's consistency with the MSHCP and CEQA.

## **PROJECT DESCRIPTION AND SUMMARY**

**Location:** The 533.8-acre Project site is located south of Interstate Highway 10 within the San Gorgonio Pass, an east-west trending valley situated between the San Bernardino and the San Jacinto Mountains, on Assessor Parcel Numbers 537-110-003 through -005, 536-110-007 and -008, 537-110-011 through -013, 537-120-025, 537-120-028 through -036. The northern portion of the Project is located in the City of Banning (City) while the southern portion is within the City's Sphere of Influence (SOI) in unincorporated Riverside County (County).

**Description:** The City of Banning's (City: Lead Agency) proposed Project would develop medical offices, professional offices, education, recreational, and commercial uses, including travel center retail uses, a fueling facility, and a hotel with 125 rooms in the 47.9-acre northern portion of development site. The Project also includes 392.0-acres for industrial uses and cold storage, a battery energy storage systems facility, 65.6-acres of land designated for open space, broken down as 53.0-acres for resources and 12.6-acres for open parks. Approximately 28.3-acres of development site would include internal circulation features.

This development would lead to partial or complete grade and fill of portions of unnamed tributary northeast of Pershing Creek, an unnamed ponded area, Smith Creek, and Highland Wash, both of which are within the boundary of the Coachella Valley Groundwater Basin, San Gorgonio Pass Subbasin.

## **COMMENTS AND RECOMMENDATIONS**

Based on the documents for review, CDFW offers the comments and recommendations on the DEIR to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also included to improve the environmental document. CDFW recommends the additional measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring, and reporting program (Pub. Resources Code, § 2108.6; CEQA Guidelines, § 15097)

### **Western Riverside County Multiple Species Habitat Conservation Plan**

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation Plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP.

To be considered a covered activity, Permittees need to demonstrate that the proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; and demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2 of the MSHCP); 2) the Protection of Narrow Endemic Plant Species (Section 6.1.3 of the MSHCP); 3) the Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP); 4) the policies set forth in the Additional Survey Needs and Procedures (MSHCP Section 6.3.2; and 5) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

### **Specific Comments**

#### **Comment #1: Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools**

The MSHCP Protection of Species Associated with Riparian/Riverine and Vernal Pool Resources Section 6.1.2 indicates that if avoidance of onsite impacts to Section 6.1.2 resources is not feasible, then the impacts should be identified and mitigated for through a Determination of Biologically Equivalent or Superior Preservation (DBESP) process prior to or in parallel with CEQA. Implementation of the requirements of MSHCP Section

6.0 are intended to provide full mitigation under CEQA by mitigating Project impacts to the extent feasible and ensures that there is no conflict with the MSHCP, a requirement of CEQA Environmental Impact Report, Biological Resources, Section 4 subitem f. CDFW appreciates the Applicants and Project team filing their DBESP during November of 2023.

The DEIR identifies 1.07 acres of impacts to Smith Creek, Highland Wash, and Pershing Creek as a result of development, however it is not clear which portions will be impacted, avoided, and conserved through easements. The DEIR provides maps regarding future design and open space areas, but does not display which areas would be conserved or avoided riparian/riverine resources serving as mitigation. CDFW recommends the DEIR include a map detailing all proposed onsite riparian/riverine impacts and mitigation, including acreages, as well as the accompanied habitat viability analysis.

The DEIR further states that the Project would increase cumulative flow through the aforementioned onsite streams as described in Mitigation Measures HYD-1 and HYD-2. CDFW requests a pre-Project and post-Project study to ensure that the appropriate levels of sediment transport and deposition, floodplain modification, and potential stream bed incision at, above, and below each of the proposed stream crossings to be included in the DBESP and accompanied any future Lake and Stream Alteration Agreement. However, without this information during CEQA review, the lead agency may not be able to adequately determine if the proposed stream crossings and associated Project would have long term permanent impacts onsite and downstream, where the sediment transport is crucial.

#### **Comment #2: Additional Survey Needs and Procedures:**

Project construction and activities may result in injury or mortality of burrowing owl, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Additionally, the Project may impact breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and State-wide declines of burrowing owl.

CDFW recommends the inclusion of the following measure in the final EIR per the edits below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program":

**MM BIO-7 Burrowing Owl Impacts.** A 30-day pre-construction survey for burrowing owls is required prior to future ground-disturbing activities (e.g.) vegetation clearing, clearing and grubbing, tree removal, site watering, equipment staging, etc.) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities. If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the RCA and the wildlife Agencies and will need to coordinate in the future with the RCA

and the wildlife agencies, including the possibility of preparing a **Burrowing Owl Protection and Relocation Plan** prior to initiating ground disturbance. If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl have not colonized the site since it was last disturbed. If burrowing owls are found ~~the same coordination described above will be necessary.~~, **all activities likely to affect the animal(s) shall cease immediately and regulatory agencies shall be contacted, within 48 hours of detection, to determine appropriate management actions.**

- 1) A Burrowing Owl Protection and Relocation Plan shall be prepared in accordance with guidelines in the CDFW staff report on Burrowing Owl (March 2006) and MSHCP. The Burrowing Owl Protection and Relocation Plan shall describe proposed avoidance, minimization, relocation, and monitoring as applicable. The Burrowing Owl Protection and Relocation Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls and/or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls may also be required in the Burrowing Owl Protection and Relocation Plan. The applicant shall implement the Burrowing Owl Protection and Relocation Plan following CDFW and USFWS review and concurrence. A final letter report shall be prepared by the qualified biologist documenting the results of the Burrowing Owl Protection and Relocation Plan. The letter shall be submitted to CDFW prior to the start of Project activities. When a qualified biologist determines that burrowing owls are no longer occupying the Project site per the criteria in the Burrowing Owl Protection and Relocation Plan, Project activities may begin.
  - a. Please provide a Burrowing Owl protection and relocation (including maps of suitable burrow locations, ground squirrel occupancy, etc) specifically including a Relocation plan with alternatives for review and approval by CDFW

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

**MM BIO-8, Burrowing Owl Protection and Relocation Plan.** Within 90 days of the commencement of grading, a Burrowing Owl Protection and Relocation Plan would be drafted, reviewed **and approved** by CDFW to ensure MSHCP guidelines for protection and/or relocation are followed. As part of that plan, one-way doors shall be installed as part of a passive relocation program. Burrowing Owl Burrows shall be hand-excavated by qualified biologist when determined to be unoccupied and backfilled to ensure animals do not re-enter. Disturbance to active burrows shall be minimized to the extent feasible.

~~If less than three pairs of burrowing owl are identified on the Development Site during~~

~~pre-construction surveys, no additional mitigation is required.~~ If three or more pairs of burrowing owl are identified, MSHCP guidelines require additional conservation land to be set aside to off-set the significant impact to burrowing owl within a survey area. In all scenarios, including the detection of additional burrowing owls, mitigation and equivalency will be achieved through the development project following all MSHCP guidelines and the direction of the Environmental Programs Department, Western Riverside County Regional Conservation Authority, and/or the Wildlife Agencies.

### **Additional Recommendations**

**Native Landscaping.** To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in 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 (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

**Weed Management Plan.** A weed management plan should be developed for the Project site and implemented during the duration of this long-term Project. On-going soil disturbance promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established. The Projects site should be monitored via mapping for new introductions and expansions of non-native weeds.

### **Mitigation and Monitoring Reporting Plan**

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

Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

## **ENVIRONMENTAL DATA**

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


## **ENVIRONMENTAL DOCUMENT FILING FEES**

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

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the DEIR for the Sunset Crossroads Project, State Clearinghouse No. 2021020011, to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that City of Banning address the CDFW's comments and concerns and recirculate the DEIR prior to adoption of the final EIR for the Project. Questions regarding this letter or further coordination should be directed to John Dempsey, Environmental Scientist, at [john.dempsey@wildlife.ca.gov](mailto:john.dempsey@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kim Freeburn,  
Environmental Program Manager

Adam Rush  
City of Banning  
February 5, 2024  
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**Attachment A: Draft Mitigation and Monitoring Reporting Plan**

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project’s final on and/or off-site mitigation plans. that is primarily responsible for implementing the mitigation measure.

<b>Biological Resources (BIO)</b>		
<b>Mitigation Measure (MM)</b>	<b>Timing</b>	<b>Responsible Party</b>
<p><b>MM BIO-7 Burrowing Owl Impacts.</b> A 30-day pre-construction survey for burrowing owls is required prior to future ground-disturbing activities (e.g.) vegetation clearing, clearing and grubbing, tree removal, site watering, equipment staging, etc.) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities. If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the RCA and the wildlife Agencies and will need to coordinate in the future with the RCA and the wildlife agencies, including the possibility of preparing a <b>Burrowing Owl Protection and Relocation Plan</b></p> <p>prior to initiating ground disturbance. If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl have not colonized the site since it was last disturbed. If burrowing owls are found <del>the same coordination described above will be necessary.</del> <b>All activities likely to affect the animal(s) shall cease immediately and regulatory agencies shall be contacted, within 48 hours of detection, to determine appropriate management actions.</b></p>	<p>30-day preconstruction survey</p>	<p>City of Banning or Project Applicant</p>

<p><b>MM BIO-8, Burrowing Owl Protection and Relocation Plan.</b> Within 90 days of the commencement of grading, a Burrowing Owl Protection and Relocation Plan would be drafted, reviewed <b>and approved</b> by CDFW to ensure MSHCP guidelines for protection and/or relocation are followed. As part of that plan, one-way doors shall be installed as part of a passive relocation program. Burrowing Owl Burrows shall be hand-excavated by qualified biologist when determined to be unoccupied and backfilled to ensure animals do not re-enter. Disturbance to active burrows shall be minimized to the extent feasible.</p> <p><del>If less than three pairs of burrowing owl are identified on the Development Site during pre-construction surveys, no additional mitigation is required.</del> If three or more pairs of burrowing owl are identified, MSHCP guidelines require additional conservation land to be set aside to off-set the significant impact to burrowing owl within a survey area. In all scenarios, including the detection of additional burrowing owls, mitigation and equivalency will be achieved through the development project following all MSHCP guidelines and the direction of the Environmental Programs Department, Western Riverside County Regional Conservation Authority, and the Wildlife Agencies.</p>	<p>Within 90 days of the commencement of grading</p>	<p>City of Banning or Project Applicant</p>