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In Reply Refer To:
FWS/CDFW-WRIV- 2023-0000450

October 6, 2022
Sent by email

Adam Rush
Community Development Director
City of Banning
99 E. Ramsey Street,
Banning, CA 92220



Notice of Preparation of Environmental Impact Report
The Banning Commerce Center Project
State Clearinghouse No. 2022090102

Dear Mr. Rush:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter referred to as the Wildlife Agencies, have reviewed the Notice of Preparation (NOP) for the Banning Commerce Center (Project). The City of Banning (City) has requested comments to inform the Draft Environmental Impact Report (DEIR) which will identify the proposed Project's direct, indirect, and cumulative environmental impacts, discuss alternatives, and propose mitigation measures that avoid, minimize, or offset significant environmental impacts.

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). The Department is a trustee agency under the California Environmental Quality Act (CEQA) and is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act, and administers the Natural Community Conservation Planning Program (NCCP).

The Service issued section 10(a)(1)(B) permits for the Western Riverside County Multiple Species Habitat Conservation Plan (WR-MSHCP) and the Coachella Valley MSHCP (CV-MSHCP), collectively the MSHCPs, on June 22, 2004, and October 1, 2008, respectively. The Department also issued Natural Community Conservation Plan Approval and Take Authorizations for the MSHCPs as per Section 2800 et seq., of the California Fish and Game Code (FGC). The MSHCPs established conservation programs to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permits. The Wildlife Agencies request that the Project implementation of effects on the MSHCPs be addressed in the DEIR as discussed below.

PROJECT LOCATION

The proposed Banning Commerce Center Project (Project) would cover approximately 130.72 acres, north of Interstate 10, east of N. Hathaway Street, and west of Cottonwood Road in the City of Banning. The proposed Project includes eight (8) parcels (Assessor Parcel Numbers 532-030-008, 532-030-009, 532-080-008, 532-090-026, 532-090-028, 532-090-030, and 532-110-015) directly adjacent to Interstate 10 between an existing gravel yard and the Interstate 10 weigh station. The Project site is not located within a WR-MSHCP Criteria Cell or Cell group, however it is within the WR-MSHCP Special Linkage Area.

PROJECT DESCRIPTION SUMMARY

The proposed Project includes construction of 1,320,000 square feet (SF) of industrial warehouse buildings including office space and associated loading docks, parking, drive aisles, landscaping, and stormwater detention facilities.

COMMENTS AND RECOMMENDATIONS

The Wildlife Agencies offer the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to enable the Wildlife Agencies to adequately review and comment on the proposed Project with respect to the Project's consistency with the Western Riverside County and Coachella Valley Multiple Species Habitat Conservation Plans.

The Wildlife Agencies recommend that the forthcoming DEIR address the following:

Western Riverside County Multiple Species Habitat Conservation Plan

The proposed Project occurs within the WR-MSHCP area and is subject to the provisions and policies of the WR-MSHCP as described above. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the WR-MSHCP, the Permits, and the Implementing Agreement. The City of Banning is the Lead Agency and is signatory to the Implementing Agreement of the WR-MSHCP. To demonstrate consistency with the WR-MSHCP, as part of the CEQA review, per City Resolution No. 2004-58, the City shall ensure the Project implements the following:

1. Pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the WR-MSHCP
2. Demonstrates compliance with the policies for 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of the WR-MSHCP; 2) the policies for the Protection of Narrow Endemic Plant Species set forth in Section 6.1.3 of the WR-MSHCP; 3) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the WR-MSHCP; 4) the policies set forth in Section 6.3.2 and associated vegetation survey requirements identified in Section 6.3.1; and 5) compliance with 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 WR-MSHCP.

The Project is located within the WR-MSHCP Special Linkage Area and therefore, pursuant to the Implementing Agreement and the City's Resolution No. 2004-58 public and private projects are expected to be designed and implemented in accordance with the Criteria for each Area Plan and all other WR-MSHCP requirements as set forth in the WR-MSHCP and in Section 13.0 of the Implementing Agreement. Section 13.2 of the Implementing Agreement identifies that City obligations under the WR-MSHCP and the Implementing Agreement include, but are not limited to: the adoption and maintenance of ordinances or resolutions (City Ordinance No. 1131 and Resolution No. 2004-58), as necessary, and the amendment of general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the WR-MSHCP, and the Implementing Agreement for private and public development projects (including siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the WR-MSHCP); and taking all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the terms of the project approvals for public and private projects, including compliance with the WR-MSHCP, the Permits, and the Implementing Agreement.

The Special Linkage Area provides a connection between the San Bernardino and San Jacinto mountains and is identified in the South Coast Missing Linkages^{1 2} as one of fifteen critical linkages in southern California. It is considered vital to ensuring regional connectivity from the U.S.-Baja California border to the southern Sierra Nevada. The San Bernardino-San Jacinto Connection is where the Transverse and Peninsular Ranges converge and is in an ecological transition zone between the South Coast and Desert ecoregions.

To examine how the Project might contribute to, or conflict with, assembly of the WR-MSHCP Conservation Area consistent with the reserve configuration requirements the Wildlife Agencies recommend that the DEIR identify the specific Area Plan within which the Project is located, and the associated Planning Species and Biological Issues and Considerations that may apply to the Project, such as the Special Linkage Area discussed further below.

Following this sequential identification of the relationship of the Project to the WR-MSHCP the DEIR should then include an in-depth discussion of the Project in the context of the aforementioned elements, and as mentioned, examine how the Project might contribute to, or conflict with, the conservation criteria of the WR-MSHCP.

1 South Coast Missing Linkages: A Wildland Network for the South Coast Ecoregion:
<http://www.scwildlands.org/reports/scmlregionalreport.pdf>

2 Penrod, K. C. Cabanero, P. Beier, C. Luke, W. Spencer, and E. Rubin. 2005. South Coast Missing Linkages Project: South Coast Missing Linkages Project: A Linkage Design for the A Linkage Design for the San Bernardino-San Jacinto Connection. South Coast Wildlands, Idylwild, CA. www.Scwildlands.org

Special Linkage Area

The proposed Project would be located within the Special Linkage Area described in Section 3.3.10 of the WR-MSHCP. While this area is not within the core conservation area of the WR-MHSCP it is identified as a special wildlife linkage area between the San Bernardino and San Jacinto Mountains via the San Gorgonio River. This is outlined within Exhibit 24 Comment Letter D in Volume V of the WR-MSHCP. More specifically Permittees proposing projects within the Special Linkage area must address and analyze consistent with CEQA § 21083.09, “Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites?”.

The Wildlife Agencies are concerned that the proposed Project activities and development have the potential to interfere substantially with movement of native species through the Special Linkage Area. Please include in the DEIR an analysis addressing Project-related effects to wildlife movement in the special linkage area. The analysis should include any potential impacts to wildlife movement not only within the WR-MSHCP but across both MSHCPs as the Special Linkage Area also serves as a connection between the WR-MHSCP and the Coachella Valley MSHCP. Furthermore, per Section 3.3.10 of the WR-MSHCP, any draft and final CEQA documentation prepared by the City for projects within this Special Linkage Area should be forwarded to the RCA for informational purposes to provide for WR-MSHCP coordination regarding this area.

Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools.

The WR-MSHCP, Section 6.1.2, identifies that information necessary for the assessment of riparian/riverine and vernal resources includes identification and mapping of riparian/riverine areas and vernal pools. The assessment shall consider species composition, topography/hydrology, and soil analysis, where appropriate. The assessment may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines.

The documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species listed above, under “Purpose.” Factors to be considered include hydrologic regime, flood storage and flood-flow modification, nutrient retention and transformation, sediment trapping and transport, toxicant trapping, public use, wildlife Habitat, and aquatic Habitat. The functions and values assessment will focus on those areas that should be considered for priority acquisition for the WR-MSHCP Conservation Area, as well as those functions that may affect downstream values related to Conservation of Covered Species within the WR-MSHCP.

The WR-MSHCP identifies that for mapped riparian/riverine and vernal pool resources that are not included in the WR-MSHCP conservation area, applicable mitigation under CEQA, shall be imposed by the Permittee (in this case the City). Further, the WR-MSHCP identifies that to ensure the standards in Section 6.1.2 are met, the Permittee shall ensure that, through the CEQA process, project applicants develop project alternatives demonstrating efforts that first avoid, and then minimize direct and indirect effects to the wetlands mapped pursuant to Section 6.1.2. If an avoidance alternative is not feasible, a practicable alternative that minimizes direct and indirect

effects to riparian/riverine areas and vernal pools and associated functions and values to the greatest extent possible shall be selected. Those impacts that are unavoidable shall be mitigated such that the lost functions and values as they relate to Covered Species are replaced as through the Determination of Biologically Equivalent or Superior Preservation (DBESP). The City is required to ensure the Applicant completes the Determination of Biologically Equivalent or Superior Preservation process prior to completion of the DEIR to demonstrate implementation of WR-MSHCP requirements (per Section 6.11) in the CEQA documentation.

The following are covered species that are conserved under the WR-MSHCP Section 6.1.3, Narrow Endemic Plant Species Survey Area, and WR-MSHCP Section 6.3.2 for Additional Survey Needs and Procedures based on the location of the project site:

Narrow Endemic Plant Species

The Project site falls within the WR-MSHCP Section 6.1.3 survey area and has the potential to support the Narrow Endemic Plant Species. Therefore, the DEIR should address any potential impacts to these species.

More specifically the DEIR should include surveys for these species done within the appropriate time of years. If surveys detect presence of these species, then 90% of the Project site with long-term conservation value should be conserved onsite. If, however, the site does not hold long-term conservation value and/or avoidance is not feasible then the City should require a DBESP be prepared pursuant to WR-MSHCP Section 6.1.3. Additionally, the DBESP should be submitted prior to completion/adoption of the DEIR per the City's Resolution 2004-58. Site specific surveys for Narrow Endemic Plant Species are required for all public and private projects where appropriate habitat is present.

CDFW recommends that the City follow the recommendations and guidance provided through WR-MSHCP Section 6.1.3 to ensure Narrow Endemic Plant Species requirements are fulfilled.

Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

The Wildlife Agencies recommend the City of Banning follow the survey instructions in the “Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area”⁴. The Survey Instructions specify that first a habitat assessment is conducted. If suitable habitat is not found on site, simply reporting the site is disturbed or under agricultural/dairy use is not acceptable. A written report must be provided detailing results of the habitat assessment with photographs and indicating whether or not the project site contains suitable burrowing owl habitat. If suitable habitat is found, then focused surveys at the appropriate time of year (March 1 to August 31), time of day, and weather conditions must be

completed. Surveys will not be accepted if they are conducted during rain, high winds (> 20 mph), dense fog, or temperatures over 90 °F. The surveys must include focused burrow surveys and burrowing owl surveys. For the focused burrow surveys, the location of all suitable burrowing owl habitat, potential owl burrows, burrowing owl sign, and any owls observed should be recorded and mapped, including GPS coordinates in the report. The focused burrowing owl surveys include site visits on four separate days. The Wildlife Agencies recommend that the site visits are conducted at least a week apart to avoid missing owls that may be using the site. Finally, we recommend the report also include an impact assessment evaluating the extent to which burrowing owls and their habitat may be impacted, directly or indirectly by Project activities. A final report discussing the survey methodology, transect width, duration, conditions, and results of the Survey shall be submitted to the RCA and the City.

Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on 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 burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

Additionally, we recommend that the City of Banning review and follow requirements for burrowing owl outlined in the WR-MSHCP, specifically Section 6.3.2 (Additional Survey Needs and Procedures) and Appendix E (Summary of Species Survey Requirements). Appendix E of the WR-MSHCP outlines survey requirements, actions to be taken if survey results are positive, and species-specific conservation objectives, among other relevant information.

Urban/Wildland Interface Guidelines

As the MSHCP Conservation Area is assembled, hardline boundaries are established between development and MSHCP Conservation Areas. Development near MSHCP Conservation Area may result in edge effects that will adversely affect biological resources within the MSHCP Conservation Area. To minimize edge effects and maintain conservation value within the Conservation Areas, the City is required to implement the Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) for drainage, toxics, lighting, noise, invasives, barriers, and grading/land development. The Project site is within the Special Linkage Area which may contribute to MSHCP Conservation Areas and may be subject to the Urban/Wildland Interface Guidelines, MSHCP Section 6.1.4, for provisions to reduce the direct and indirect impact to conserved lands. Potential indirect impacts for the Project include but are not limited to noise, lighting, invasive plants, and possibly toxic materials such as herbicides and pesticides used in landscaping and maintenance, as well as non-hazardous oils and fuels used during project operations. The MSHCP identifies that project review and impact mitigation are provided through the CEQA process to address the Urban/Wildland Interface guidelines. CDFW recommends that potential Project impacts are addressed by including in the DEIR Project specific biological mitigation measures to address the Urban/Wildland Interface guidelines.

The DEIR should include analysis of Project impacts on edge effects such as noise, lighting, trespass, and toxics that have potential indirect impacts from development. The DEIR should

include Project specific measures that address Projects impacts to avoid and minimize edge effects. Such measures can include, but are not limited to:

1. *Lighting Plan*: A Lighting Plan that identifies existing ambient lighting conditions, analyzes the Project lighting impacts on the adjacent Conservation Area, and demonstrates that the proposed lighting plan will not significantly increase the lighting on the Conservation Area. The Lighting Plan should identify measures that address light and glare from interior and exterior building lighting, safety and security lighting, and vehicular traffic accessing the site at a minimum.
2. *Noise Plan*: A Noise Plan to avoid and minimize noise impacts based on an Noise assessment of Project noise impacts on adjacent conservation areas during construction and post development. The MSHCP identifies that Project noise impacts do not exceed the residential standards within the Conservation Areas.
3. *Landscaping Plan*: A Landscaping plan that includes the use of native plant material on the Project site and avoids the use of invasive plant species identified in Table 6-2 of the MSHCP.
4. *Fencing Plan*: A Barrier and Fencing plan that provides specific details designed to minimize unauthorized public access, domestic animal predation, illegal trespass, and dumping in the MSHCP Conservation Area (such as block walls along areas directly adjacent to potential conservation areas) and
5. *Best Management Practices*: The DEIR should incorporate the guidance in MSHCP Section 7.0 and Appendix C of the MSHCP for addressing Best Management Practices.

Potential Impacts to Coachella Valley Multiple Species Habitat Conservation Plan

The Wildlife Agencies have concerns that the Project activities have the potential to cause significant downstream impacts to sediment transportation through fluvial and aeolian riverine systems, which may further impact federally endangered Coachella Valley (*Astragalus lentiginosus var. coachellae*) and triple-ribbed milkvetch (*Astragalus tricarinatus*) and the fringe-toed lizard (*Uma inornata*), species identified within the CV-MSHCP with specific conservation objectives. Additionally, the Special Linkage Area within the WR-MSHCP directly connects to the CV-MSHCP Cabazon Conservation Area providing further wildlife movement and connectivity between the MSHCPs. The primary goal of the Cabazon Conservation Area is conserve lands that provide for vital sand transport functions to the core conservation areas for the CV-MSHCP covered species.

Thus, the Wildlife Agencies recommend that the DEIR analyze sediment transport effects pre- and post-Project and demonstrate that downstream sediment transport is not impacted by the Project. In addition, the DEIR should analyze indirect impacts to CV-MSHCP covered species downstream, as cumulative impacts may occur due to Project activities within the San Gorgonio River. Furthermore, the Wildlife Agencies recommend the DEIR include an analysis that demonstrates the Project will not negatively affect the goals and objectives set forth in the CV-

MSHCP when establishing the Projects significance under Section 15125(d) of the CEQA Guidelines.

CDFW Additional Recommendations

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 DEIR 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.

CDFW recommends that the DEIR 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. 2009³). 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 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, 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 (CSSC) and California Fully Protected Species (Fish & G. Code, § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species.

³ 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/>

Focused species-specific/MSHCP surveys, 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, are required. 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.

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 (CDFW 2018⁴).
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 DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

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

⁴ CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, State of California, California Natural Resources Agency, Department of Fish and Wildlife: March 20, 2018 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

3. An evaluation of impacts to on-site and 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 DEIR 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

The Wildlife Agencies recommend the DEIR 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]).

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The City of Banning 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 may not be taken or possessed at any time. Project activities described in the DEIR should 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 DEIR 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 Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation 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

CNDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR 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* : CSSC status applies to animals generally not listed under the federal Endangered Species Act 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. CSSCs should be considered during the environmental review process. The DEIR should identify CSSC that have the potential to or have been documented to occur within or adjacent to the Project area.
4. *Mitigation*: CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR 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 DEIR 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 DEIR. 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 DEIR 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 as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act.

Birds have been documented nesting outside of historic nesting bird period. For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and

birds of prey. Nesting bird surveys should not be limited to work during a specific time frame due to recent changes in timing of avian breeding activity.

CDFW recommends that the DEIR 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, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR 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 DEIR, 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.

7. *Moving out of Harm's Way:* To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility 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 (i.e., CDFW does not recommend relocation to other areas). 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 as studies have shown that these efforts are experimental in nature and largely unsuccessful.

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. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DEIR addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

Lake and Streambed Alteration Program

Based on review of material submitted with the NOP and review of aerial photography, at least one drainage feature traverses the 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 DEIR 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, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

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 (CNDDB). Information can be submitted online or via completion of the CNDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT 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

The Wildlife Agencies appreciate the opportunity to comment on the NOP of a DEIR for the Banning Commerce Center Project in the City of Banning (SCH No. 2022090102) and recommends that the City of Banning address the above outlined comments and concerns in the forthcoming Project documents. Additionally, the Wildlife Agencies request a meeting with the City of Banning before the DEIR moves forward. Questions regarding this letter or further coordination should be directed to James Thiede of the Service at james_thiede@fws.gov, and John Dempsey, Environmental Scientist, at john.dempsey@wildlife.ca.gov.

Sincerely,

Karin Cleary-Rose
for
Rollie White
Assistant Field Supervisor
U.S. Fish and Wildlife Service



Digitally signed by Karin Cleary-Rose
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Kimberly Freeburn
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Tricia Campbell, Western Riverside County Conservation Agency