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**Subject: Draft Environmental Impact Report, Banning Commerce Center Project,
State Clearinghouse No. 2022090102, City of Banning, Riverside County**

Dear Emery Papp:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Banning (City) for the Banning Commerce Center Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state 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, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*).

¹ 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.

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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County 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. CDFW is providing the following comments as they relate to the Project’s consistency with the MSHCP and CEQA.

PROJECT DESCRIPTION AND SUMMARY

Description: The City of Banning (City; Lead Agency) are proposing the Banning Commerce Center Project (Project).

The Project proposes the development of approximately 1,320,284 square feet of warehouse spaces, including office space, within one concrete tilt-up building. The Project also proposes associated facilities and improvements of the Project site including loading dock doors, onsite landscaping, trailer parking stalls, passenger vehicle parking stalls, drive aisles, landscaping, stormwater detention, and related onsite and offsite improvements.

Location: The Project site is located north of I-10 freeway, east of north Hathaway Street, and bisected by Wilson Street, in the City of Banning, County of Riverside, State of California, in Township 3 South, Range 1 East, of the U.S. Geological Survey 7.5-minute series Cabazon, California Quadrangle, San Bernardino Baseline and Meridian; Assessor’s Parcel Numbers 532-030-008, 532-030-009, 532-080-008, 532-080-010, 532-090-026, 532-090-028, 532-090-030, and 532-110-015.

COMMENTS AND RECOMMENDATIONS

Based on the documents for review, CDFW offers the comments and recommendations below 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 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, § 21081.6; 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 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 Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP); 3) the policies set forth in Additional Survey Needs and Procedures Section 6.3.2; and 4) 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: Burrowing Owl

Issue: The Project may have a significant impact on burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC).

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owl, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, 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 statewide declines of burrowing owl.

Why impacts would occur: The DEIR identifies that burrowing owl have the potential to occur within the Project site; however, MM BIO-1 provides no buffer or avoidance and minimization measures if burrowing owls are found during the pre-activity surveys. MM BIO-1 would require a pre-activity field survey and findings report to be completed, regardless of what time of year construction begins. However, there was no detail provided for a no-work buffer or any additional avoidance or minimization measures to be implemented if burrowing owl are found during the pre-activity surveys.

Evidence impact would be significant: Burrowing owl is an SSC, which 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 Endangered Species Act (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 (CDFW 2022b). CEQA provides protection not only for ESA and CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). In addition, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.

In California, burrowing owls are in decline primarily because of habitat loss, as well as disease, predation, and drought. Burrowing owls require specific soil and microhabitat conditions, occur in few locations within a broad habitat category of grassland and some forms of agricultural land, require a relatively large home range to support their life history requirements, occur in relatively low numbers, and are semi-colonial.

The Project's impact on burrowing owl has yet to be mitigated below a significant level. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To avoid take of active burrowing owl burrows (nests), CDFW requests the City include the following mitigation measures in the DEIR as shown below

(edits are in ~~strike through~~ and **bold**) and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-1: In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California Fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist ~~for burrowing owls is required~~ prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW.

If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately **stop work** and inform the City of Banning and the Wildlife Agencies (**California Department of Fish and Wildlife [CDFW] and US Fish and Wildlife Service [USFWS]**). **In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken** including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. **CDFW shall be sent written notification within 48 hours of detection of burrowing owls.** **If active nests are identified on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below.** If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.

The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied

burrow sites and details on proposed buffers if avoiding the burrowing owls 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 shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.

A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping.

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 has not colonized the site since it was last disturbed. If burrowing owl is found, the same coordination described above will be necessary.

Comment #2: Nesting Birds

Issue: The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 3513 and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

Why impacts would occur: Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy

equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feathers and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence in the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017²). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey *regardless* of time of year to ensure compliance with all applicable laws pertaining to nesting birds and to avoid take of nests.

The time required for birds to build a nest and incubate eggs varies considerably; therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in Take of nesting birds. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Evidence impacts would be significant: It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 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.). 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

² Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. *Proceedings of the National Academy of Sciences* 114(49): 12976-12981.

provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To address the above issues and help the Project applicant avoid unlawfully taking nesting birds, CDFW requests the City include the following mitigation measures in the Final EIR as shown below (edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-2: Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the **Migratory Bird Treaty Act and California Fish and Game (CDFG) Code Section 3503, 3503.5, and 3513. Site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season.** ~~Construction outside of the nesting season (between September 1st and January 31st) does not require pre-removal nesting bird surveys. If construction is proposed between February 1st and August 31st, a qualified biologist will conduct a preconstruction nesting bird and raptor survey(s) no more than three days prior to initiation of grading to document the presence or absence of nesting birds within or directly adjacent to the Project site.~~ **Regardless of the time of year, a qualified biologist shall conduct a nesting bird survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading.** The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. **The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City’s Planning Department. The Project Applicant shall adhere to the following:**

- 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**

- 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.**

~~If active nests are documented, species-specific measures will be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest will be postponed until the young birds have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, will be submitted to the City of Banning for review and approval prior to initiation of grading in the nest-setback zone.~~ **If no nesting birds are observed during the survey, site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Banning, based on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require**

implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFW Code. Any nest permanently vacated for the season would not warrant protection pursuant to the CDFG Code.

Comment #3: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement

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. CDFW requests the following details be added to MM BIO-3 to further aid the Project Proponent in submission of a complete Streambed Alteration Agreement application.

Recommended potentially feasible mitigation measure(s):

Mitigation Measure #1: To reduce impacts to aquatic and riparian resources to a level less than significant, CDFW recommends that the City include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may be affected by the proposed Project.

CDFW recommends the inclusion of the following measure in the Final EIR as shown below (edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-3: Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certification and a CDFW Section 1602 Streambed Alteration Agreement. **The Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

The notification to CDFW should provide the following information:

1. **A stream delineation including the bed, bank, and channel;**
2. **Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);**
3. **A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and**
4. **A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.**

Currently, the impacted drainages and overall watershed are not within an area served by an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, **at minimum** 1.62-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the Whitewater Watershed, it is assumed **at minimum** 1.62- acres of on-site creation is required as outlined below. If it is determined that on-site mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The offsite location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or offsite, the mitigation site will require long-term maintenance and management by a qualified conservancy and payment of a nonwasting endowment to fund the long-term maintenance.

To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to **a minimum of 0.54-acre** of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP.

- Permanent Impacts to **a minimum of 0.54-acres** of jurisdictional features will be mitigated at a minimum of a 3:1 ratio (1.62 acres) through the creation of in-kind habitat on-site along the

eastern and northern most Project boundary. If it is determined that on-site mitigation or off-site is not feasible, additional alternatives could include payment into an acceptable and approved mitigation bank should one become available at the time of impacts and permitting.

- A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed, and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies.
- A DBESP will be also prepared, reviewed, and approved by the City of Banning and MSHCP wildlife agencies **prior to the adoption of the final EIR.**

Comment #4: Western Riverside County MSHCP Special Linkage Area

The Project may have a significant impact on the Western Riverside County MSHCP Special Linkage Area as defined in Section 3 of the planning document. Project construction and activities may 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 DEIR identifies that the Project is within a Special Linkage Area as shown in Volume 1 of the MSHCP, and tribal coordination regarding American Indian Lands will be necessary in this area. However, the DEIR does not have a specific mitigation measure that recognizes how the MSHCP Special Linkage Area process will work to ensure that MSHCP implementation occurs.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To comply with the Western Riverside County MSHCP, CDFW requests the City include the following mitigation measures in the DEIR as shown below (edits are in strikethrough and bold) and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-XX: **Prior to the adoption of the Final EIR, the City shall coordinate with and obtain concurrence from local Tribes and the Western Riverside County Regional Conservation Authority (RCA) that the project will not adversely affect the Special Linkage Area, nor interfere**

substantially with the movement of any fish or wildlife species or with established wildlife corridors.

Comment #5: Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2)

The procedures described in the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP Plan (MSHCP Section 6.1.2) are to ensure that the biological functions and values of these areas are maintained throughout the MSHCP Plan Area (including all areas of the Plan located outside the Criteria Area). Additionally, this process helps identify areas to consider for priority acquisition, as well as those functions that may affect downstream values related to Conservation of Covered Species within the MSHCP Conservation Area. The assessment of riparian/riverine and vernal pool resources may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines. However, the MSHCP identifies that the U.S. Fish and Wildlife Service and CDFW shall be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). As required by the MSHCP Plan, its Implementation Agreement, and the City's associated take permits from USFWS and CDFW, completion of the DBESP process prior to adoption of the environmental document helps to ensure that the Project will be consistent with the MSHCP Plan, and provides public disclosure and transparency during the CEQA process by identifying the Project impacts and mitigation for wetland habitats and species, a requirement of CEQA Guidelines, §§ 15071, subs.(a)-(e).

The MSHCP identifies that assessment of these areas include identification and mapping of riparian/riverine areas and vernal pools. The assessment shall consider species composition, topography/ hydrology, and soil analysis, where appropriate. 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 identified in Section 6.1.2 of the MSHCP. 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 MSHCP identifies that for mapped riparian/riverine and vernal pool resources that are not included in the MSHCP conservation area, applicable mitigation under CEQA shall be imposed by the Permittee (in this case the Lead Agency). Furthermore, the 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) process.

The City is required to ensure the Applicant completes the DBESP process prior to completion of the EIR to demonstrate implementation of MSHCP requirements in the CEQA documentation. The Wildlife Agencies appreciate the analysis of impacts provided within the EIR and its General Biological Resource Assessment. However, the MSHCP implementation process is not complete, because a DBESP has not been prepared and submitted to the Wildlife Agencies for review and response to determine if the mitigation proposed for the impacts to riparian/riverine resources is biologically equivalent or superior preservation to avoidance. It is not appropriate for the City to adopt the EIR until the DBESP is complete because the City is required to notify the Wildlife Agencies in advance of approval of public and private projects for identified MSHCP activities, such as completion of the DBESP for the riparian/riverine policy (Section 6.11 of the MSHCP).

The Wildlife Agencies request that the City of Banning complete the DBESP process, and once the DBESP is complete, then update the EIR with the riparian/riverine mitigation measures identified in the DBESP. This process would demonstrate the Project's consistency with and the City's implementation of the MSHCP.

Comment #6: Narrow Endemic Plants

Issue: The Project may impact narrow endemic plant species outlined in MSHCP Section 6.1.3.

Specific Impacts: Portions of the Project site fall within the MSHCP Section 6.1.3 survey area and have the potential to support the following narrow endemic plant species: Marvin's onion (*Allium marvinii*) and many-stemmed dudleya (*Dudleya multicaulis*).

Why impact would occur: As noted in the DEIR, the Project site occurs within survey areas for narrow endemic plant species, MSHCP Section 6.1.3, including Marvin's onion (*Allium marvinii*, RPR 1B.2), and many-stemmed dudleya (*Dudleya multicaulis*, RPR 1B.2), which have the potential to occur onsite. While the DEIR indicates that focused surveys were conducted for narrow endemic plant species in November 2021, the results and details of the surveys were not discussed in detail.

Based on rainfall in a given year, surveys for Marvin's onion and many-stemmed dudleya should be typically done at peak blooming, which can be from March through the end of July. The DEIR should include surveys for these species done within the appropriate time of year. Absent further survey details and because survey were

conducted outside of the blooming period for these species, CDFW cannot confirm whether presence or absence for narrow endemic plant species was properly assessed.

Evidence impact would be significant: Narrow endemic plant species are highly restricted by their habitat affinities, edaphic requirements, or other ecological factors, and for which specific conservation measures have been identified in the MSHCP if the species are present. Special surveys are required to ensure conservation of the species if present on the Project site. The MSHCP specifies that survey results shall be documented in mapped and text form and shall be presented for review by the City. Therefore, CDFW recommends that the City evaluate whether focused surveys for narrow endemic plants followed CDFW guidelines below in MM BIO-XX and include such information in detail in the Final EIR. If not, CDFW recommends the City adopt MM BIO-XX in the Final EIR to ensure avoidance, minimization, and mitigation strategies are implemented for the species and to demonstrate consistency with MSHCP requirements.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To avoid take of narrow endemic plant species, CDFW requests the City include the following mitigation measure in the Final EIR as shown below (edits are in ~~strike through~~ and **bold**) and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-XX: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife’s (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate

the loss of the plant(s) through land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis.

Comment #7: Impacts to Species of Special Concern

Issue: The Project identified the special-status plant species chaparral sand-verbena (*Abronia villosa* var. *aurita*), and no special-status wildlife species onsite during the various biological surveys. However, several special-status plant species and special-status wildlife species were described as having high to moderate potential to occur within the Project site.

CDFW is concerned that the proposed mitigation may not provide enough specificity to sufficiently avoid or minimize impacts to species protected as California Species of Special Concern (SSC).

Specific Impact: Based on the information presented in the DEIR and supporting Appendix B, as well as data from the California Natural Diversity Database, the Project site has the potential to support Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), San Diego desert woodrat (*Neotoma lepida intermedia*), and California legless lizard (*Anniella stebbinsi*) within the Project site.

The DEIR does include avoidance or mitigation measures to prevent direct impacts to sensitive plant species; however, it does not include measures to prevent direct or indirect impacts to wildlife species from occurring during ground disturbance and vegetation clearing activities. Direct impacts to SSCs could result from Project construction and activities (e.g., equipment staging, mobilization, and grading); ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Indirect impacts could result from temporary or permanent loss of suitable habitat.

Why Impacts Would Occur: Biological construction monitoring alone may be ineffective for detecting SSCs. This may result in trampling or crushing of these sensitive species. Demolition and paving after false-negative conclusions may trap wildlife hiding under refugia and burrows. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Evidence Impacts Would Be Significant: CEQA provides protection not only for state and federally listed species, but also for California Species of Special Concern, which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of SSC could require a mandatory finding of significance by the City (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1 and 2: To address the above issues and help the Project applicant avoid unlawful take of SSCs, CDFW requests the City include the following mitigation measures in the Final EIR, shown below and also included in Attachment 1 “Mitigation Monitoring and Reporting Program.”

MM BIO-XX: No more than one month from the initiation of any Project-related ground-disturbing activities, the qualified biologist should conduct pre-construction surveys for sensitive species known to occur, or with the potential to occur onsite. Project related activities include construction, equipment and vehicle access, parking, and staging. The surveys should include mapping of current locations of special-status wildlife species for avoidance and relocation efforts and to assist construction monitoring efforts. The survey should be conducted so that 100 percent coverage of the Project site and surrounding areas is achieved. In addition, resumes/and or statements of qualifications shall be provided to the City by the applicant identifying one or more qualified Biological Monitors that will be assigned to the Project to monitor construction activities. Monitors shall be responsible for ensuring that impacts to special-status species, native vegetation, wildlife habitat, jurisdictional waters, and sensitive or unique biological resources are avoided to the extent possible.

MM BIO-XX: Daily biological monitoring should be conducted during any activities involving vegetation clearing or modification of natural habitat. Surveys for Species of Special Concern should be conducted prior to the initiation of each day of vegetation removal activities in suitable habitat. Where applicable, a qualified biologist may guide, handle, or capture an individual non-CESA or non-ESA listed wildlife species to move it to a nearby sage location within nearby refugium or it shall be allowed to leave the project site of its own volition. Special status wildlife should be captured only by a qualified biologist with proper handling permits. Only a USFWS approved biologist should be authorized to capture and relocate ESA-listed species.

If any special-status or listed species are/have been observed on or in proximity to the Project site, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings.

Additional Recommendations

Mitigation and Monitoring Reporting Plan

CDFW recommends updating the DEIR'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

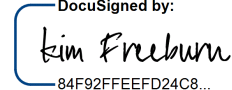
CDFW appreciates the opportunity to comment on the DEIR for the Banning Commerce

Emery Papp
City of Banning
August 1, 2024
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Center Project, State Clearinghouse No. 2022090102, 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 the City of Banning address CDFW's comments and concerns prior to adoption of the DEIR for the Project.

Questions regarding this letter or further coordination should be directed to Breanna Machuca, Senior Environmental Scientist Specialist, at breanna.machuca@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

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state.clearinghouse@opr.ca.gov.

REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>
- Francis, C.D., C.P. Ortega, and A. Cruz. 2009. Noise Pollution Changes Avian Communities and Species Interactions. *Current Biology* 19:1415–1419.
- Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. *Journal of Applied Ecology* 48:210–219.
- Kleist, N. J., R. P. Guralnick, A. Cruz, C. A. Lowry, and C. D. Francis. 2018. Chronic Anthropogenic Noise Disrupts Glucocorticoid Signaling and has Multiple Effects on Fitness in an Avian Community. *Proceedings of the National Academy of Sciences* 115: E648–E657.
- Western Riverside County Multiple Species Habitat Conservation Plan (RCA). 2006. Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area. Available for download at: https://www.wrcca.org/species/survey_protocols/burrowing_owl_survey_instructions.pdf



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Attachment 1: 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 offsite mitigation plans.

Biological Resources (BIO)			
Mitigation Measure (MM)		Timing	Responsible Party
Burrowing Owl	<p>MM BIO-1: In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California Fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist-prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW.</p> <p>If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If</p>	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	<p>burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately stop work and inform the City of Banning and the Wildlife Agencies (California Department of Fish and Wildlife; CDFW and US Fish and Wildlife Service; USFWS). In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.</p> <p>The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If</p>		
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	<p>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 shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.</p> <p>A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping.</p> <p>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 has not colonized the site since it was last disturbed. If</p>		
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	<p>burrowing owl is found, the same coordination described above will be necessary.</p>		
<p>Nesting Birds</p>	<p>MM BIO-2: Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the Migratory Bird Treaty Act and California Fish and Game (CDFG) Code Sections CDFG Code Section 3503, 3503.5, and 3513, site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season. Regardless of the time of year, a qualified biologist shall conduct a nesting bird survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading. The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City’s Planning Department. The Project Applicant shall adhere to the following:</p> <ol style="list-style-type: none"> 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.</p> <p>2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.</p> <p>If no nesting birds are observed during the survey, -site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Banning, based on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall</p>		
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	<p>be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFW Code.</p>		
<p>Lake and Streambed Alteration Program</p>	<p>MM BIO-3: Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certification and a CDFW Section 1602 Streambed Alteration Agreement. The Applicant shall notify the California</p>	<p>Prior to commencing ground- or vegetation</p>	<p>Project Proponent</p>

	<p>Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p> <p>The notification to CDFW should provide the following information:</p> <ol style="list-style-type: none">5. A stream delineation including the bed, bank, and channel;6. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);7. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and8. A hydrological evaluation of the 100-year storm event to provide information on how water and	disturbing activities	
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	<p style="text-align: center;">sediment is conveyed through the Project site.</p> <p>Currently, the impacted drainages and overall watershed are not within an area served by an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, at minimum 1.62-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the Whitewater Watershed, it is assumed at minimum 1.62- acres of on-site creation is required as outlined below. If it is determined that on-site mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The offsite location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or offsite, the mitigation site will require long-term maintenance and management by a qualified conservancy and payment of a nonwasting endowment to fund the long-term maintenance.</p> <p>To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to a minimum of 0.54-acre of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP.</p> <ul style="list-style-type: none">• Permanent Impacts to a minimum of 0.54-acres of jurisdictional features will be mitigated at a minimum of a 3:1 ratio (1.62 acres) through the		
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	<p>creation of in-kind habitat on-site along the eastern and northern most Project boundary. If it is determined that on-site mitigation or off-site is not feasible, additional alternatives could include payment into an acceptable and approved mitigation bank should one become available at the time of impacts and permitting.</p> <ul style="list-style-type: none"> • A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed, and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies. • A DBESP will be also prepared, reviewed, and approved by the City of Banning and MSHCP wildlife agencies prior to the adoption of the final EIR. 		
<p>Special Linkage Area</p>	<p>MM-BIO XX: Prior to the adoption of the Final EIR, the City shall coordinate with and obtain concurrence from local Tribes and the Western Riverside County Regional Conservation Authority (RCA) that the project will not adversely affect the Special Linkage Area, nor interfere</p>	<p>Prior to commencing ground- or vegetation</p>	<p>City of Banning</p>

	substantially with the movement of any fish or wildlife species or with established wildlife corridors.	disturbing activities	
Narrow Endemic Plants	<p>MM-BIO XX: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife’s (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis.</p>	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

<p>Species of Special Concern</p>	<p>MM-BIO XX: No more than one month from the initiation of any Project-related ground-disturbing activities, the qualified biologist should conduct pre-construction surveys for sensitive species known to occur, or with the potential to occur onsite. Project related activities include construction, equipment and vehicle access, parking, and staging. The surveys should include mapping of current locations of special-status wildlife species for avoidance and relocation efforts and to assist construction monitoring efforts. The survey should be conducted so that 100 percent coverage of the Project site and surrounding areas is achieved. In addition, resumes/and or statements of qualifications shall be provided to the City by the applicant identifying one or more qualified Biological Monitors that will be assigned to the Project to monitor construction activities. Monitors shall be responsible for ensuring that impacts to special-status species, native vegetation, wildlife habitat, jurisdictional waters, and sensitive or unique biological resources are avoided to the extent possible.</p> <p>MM-BIO XX: Daily biological monitoring should be conducted during any activities involving vegetation clearing or modification of natural habitat. Surveys for Species of Special Concern should be conducted prior to the initiation of each day of vegetation removal activities in suitable habitat. Where applicable, a qualified biologist may guide, handle, or capture an individual non-CESA, or non-ESA listed wildlife species to move it to a nearby sage location within nearby refugium or it shall be allowed to leave the project site of its own volition. Special status wildlife should be captured only by a qualified biologist with proper handling permits. Only a USFWS approved biologist</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
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	<p>should be authorized to capture and relocate ESA-listed species.</p> <p>If any special-status or listed species are/have been observed on or in proximity to the Project site, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings.</p>		
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