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January 9, 2025  
*Sent via email*

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Thermal Ranch Specific Plan SP00401, GPA2300001, CZ2300003, TTM 38578, PPTs  
230005, 230006, 240016 (PROJECT)  
Draft Environmental Impact Report (DEIR)  
SCH# 2023050624

Dear Russell Brady:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the County of Riverside (County) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related

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

activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Thermal Ranch LLC

**Objective:** The Project proposes a zone change from "Agriculture" to "Community Development" on 619.1±-acres. Within this area, the Project proposed the construction of a 223.1±-acre equestrian center, a mix of residential neighborhoods, workforce housing, estate lots, single-family attached and detached homes, and condominiums. Exterior building and other security lighting is proposed. Lighting plans include having light directed onto the site and away from adjacent properties with appropriate shielding, and no up-lighting is proposed. Landscaping plans include the use of non-invasive drought tolerant plant materials.

Construction of an off-site 5-million-gallon (mg) domestic water reservoir is proposed to meet Project demand and fire flows. CVWD has identified the existing CVWD Middleton Reservoir 7802-1 site located 2.4± miles southwest of the Project site as the appropriate location for the new reservoir. The existing site currently hosts a CVWD 2.5 mg tank and is planned and has been partially improved for multiple tanks. The existing reservoir is located behind a 25-foot earthen berm with existing access and site security. To accommodate the new 5 mg tank, the northerly portion of the existing berm will be shifted farther north approximately 35 feet. The new reservoir will be approximately 163.1 feet in diameter, and a portion of the tank is expected to be constructed sub-grade. Grading is expected to involve 11,900 cubic yards (CY) of earthwork, including 7,500 CY of cut, 4,400 CY of import, and 10,800 CY of fill. The new reservoir will connect to existing lines, and no new off-site reservoir water lines will be required.

**Location:** The Project site is located in the southeastern portion of the Coachella Valley in the central unincorporated area of Riverside County. The subject property encompasses approximately one square mile with a net acreage of 622± acres. It is bounded on the north by Avenue 62, on the south by Avenue 64, on the west by Harrison Street, and on the east by Tyler Street. It is composed of Assessor's Parcel Numbers: 751-020-002, -003, -006, -007, and -010. The CVWD Middleton Reservoir

7802-1 site located 2.4± miles southwest of the Project site is identified in Exhibit 1-11 of the DEIR.

**Timeframe:** Project construction is to be implemented in two phases. Phase I will involve construction of PA-1 (Equestrian Center) and PA-4 (RV Park & Workforce Housing) and is to be completed in 2026. Phase 2 will involve PAs-2, 3, 5, and 6 with completion scheduled for 2032.

## **COMMENTS AND RECOMMENDATIONS**

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The DEIR has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the DEIR are explained in greater detail below and summarized here. CDFW is concerned that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised DEIR, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

### Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting has not been adequately analyzed in the DEIR. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the DEIR may provide an incomplete analysis of Project-related environmental impacts.

The DEIR lacks a complete assessment of biological resources within the Project site and surrounding area specifically as it relates to the Coachella Valley Water District (CVWD) Middleton Reservoir 7802-1 site. For example, the DEIR and its supporting documents lack a desk review of biological resources (e.g., use of data from the California Natural Diversity Database [CNDDDB]), and no field assessment of biological resources or biological surveys were conducted for this portion of the Project. Additionally, within the larger 619-acre Project site, the DEIR lacks a complete assessment of biological resources as it relates to burrowing owl. A complete and

accurate assessment of the environmental setting and Project-related impacts to biological resources at the CVWD Middleton Reservoir 7802-1 site and burrowing owl at the 619-acre Project site is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

### Mitigation Measures

CEQA requires that a DEIR include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the DEIR are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the County in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for assessment of wildlife, artificial nighttime lighting, and the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), as well as revising the mitigation measures for nesting birds and burrowing owl.

#### **1) *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, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed project are adequately investigated and discussed.

Regarding the Project's impacts to biological resources associated with the CVWD Middleton Reservoir 7802-1 site, page 2.6-9 of the DEIR indicates that the "existing reservoir site has previously been graded and partially developed with an earthen berm to accommodate multiple future water tanks. Site vegetation is of the creosote scrub community, is without trees, has few shrubs and no sensitive vegetation or wildlife. Shifting the existing berm 35± feet to the north and construction of the new reservoir will result in limited additional site disturbance. Construction of the new reservoir will occur within the already developed and improved site and will not impact any candidate, sensitive, or special status species." CDFW is concerned that the DEIR does not consider that wildlife, such as burrowing owl, frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats. The DEIR and Biological Resources Assessment & Coachella Valley Multiple Species Habitat Conservation Plan Compliance Report (Biological Assessment), dated September 22, 2022, lacks additional information on an assessment of biological resources at the CVWD Middleton Reservoir 7802-1 site, such as a desk review of biological resources or results of a field assessment or biological surveys. CDFW is concerned that without an appropriate assessment of the biological resources, particularly focused on threatened, endangered, and other sensitive wildlife species associated with the CVWD Middleton Reservoir 7802-1 site, appropriate avoidance, minimization, and/or mitigation measures cannot be identified and it is uncertain if

impacts to biological resources have been reduced to a level less than significant. CDFW recommends the DEIR and its supporting documents are revised to include a complete and recent assessment of biological resources in addition to a discussion of appropriate avoidance, minimization, and mitigation measures. Based on review of aerial imagery using Google Earth Pro, the CVWD Middleton Reservoir 7802-1 site contains sparse cover of vegetation suitable for nesting birds (see Nesting Birds section), and berms surrounding the existing reservoir may provide suitable habitat for burrowing owls (see Burrowing Owl section).

Given the DEIR's lack of a complete assessment of biological resources associated with the CVWD Middleton Reservoir 7802-1 site, CDFW recommends the County include the following mitigation measures to a revised DEIR to support the County in reducing impacts to a level less than significant:

### **Mitigation Measure BIO-[A]: Assessment of Wildlife**

**Prior to Project construction activities associated with the CVWD Middleton Reservoir 7802-1 site, a complete and recent inventory of threatened, endangered, and other sensitive wildlife 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 and Game Code § 3511), will be completed. 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. Focused species-specific 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. 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.**

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for revised MM BIO-1 and MM BIO-2, as well as CDFW-recommended MM BIO-[A], MM BIO-[B], and MM BIO-[C].

### **2) Nesting Birds**

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: section 3503 states that it is 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) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.).

With regard to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), per its associated Implementing Agreement and Permits from CDFW and the U.S. Fish and Wildlife Service (USFWS), Take associated with Covered Activities will not be in violation of the Migratory Bird Treaty Act and will be consistent with Fish and Game Code sections 3503 and 3503.5; therefore, all Covered Activities within and outside Conservation Areas must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds. Having conferred Take Authorization of Covered Species and/or their habitats to this Project, the County of Riverside is obligated to take all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the Project's compliance with the CVMSHCP, the Wildlife Agencies' Permits associated with the CVMSHCP, and the CVMSHCP Implementing Agreement, which include avoiding the take of individuals, nests, and eggs of nesting birds including birds of prey.

The large 619-acre Project site and the CVWD Middleton Reservoir 7802-1 site contain suitable habitat for nesting birds, which have the potential to nest in the existing sparse cover of shrubs and trees around existing structures/facilities, on bare ground (e.g., mourning dove (*Zenaida macroura*), killdeer (*Charadrius vociferus*), horned lark (*Eremophila alpestris*), western meadowlark (*Sturnella neglecta*), etc.), or in agricultural areas that are left fallow or unmaintained where shrubs can quickly recruit. CDFW is concerned about impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities associated with construction conducted over multiple phases and over a protracted timeframe (through 2032). Although the DEIR includes a Mitigation Measure BIO-1 for nesting birds, CDFW finds the measure to be insufficient in scope and timing to reduce impacts to nesting birds to a level less than significant. Mitigation Measure BIO-1 indicates that "the Construction of the Project and the Middleton Reservoir [a.k.a CVWD Reservoir 7802-1 Site] either must avoid initiating site disturbance during the nesting season (February 1 to August 31) or, if construction or other Project-related activities will proceed during nesting season, then nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to on-site disturbance." Conducting work outside the peak nesting season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as 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., 2017<sup>2</sup>). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

To support the County in reducing impacts to nesting birds to a level less than significant, CDFW recommends that the County revise Mitigation Measure BIO-1 with the following additions in **bold** and removals in ~~strikethrough~~:

#### **Mitigation Measure BIO-1: Nesting Birds**

**To the greatest extent feasible, Project construction activities, including those at the 619-acre Project site and the CVWD Middleton Reservoir 7802-1 site, will avoid the peak nesting season (February 1 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. 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 found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.** ~~Construction of the Project and the Middleton Reservoir either must avoid initiating site disturbance during the nesting season (February 1 to August 31) or, if construction or other Project-~~

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<sup>2</sup> 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.

~~related activities will proceed during nesting season, then nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to on-site disturbance. Surveys must be conducted no more than three days prior to commencement of site disturbance. The biologist must have a Memorandum of Understanding (MOU) with the County. If nesting birds are found on the Project site, no work is permitted near the nest until the young have fledged. The CDFW generally recommends avoidance buffers of about 500 feet for birds-of-prey and species listed as threatened or endangered, and 100 to 300 feet for unlisted songbirds.~~

### **3) *Burrowing Owl***

On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl will be afforded the same protection as threatened and endangered species under CESA. If Project activities could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Take of individual burrowing owls and their nests or eggs 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.” Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is 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) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.).

With regard to the CVMSHCP, the CDFW Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 does not provide Take Authorization for burrowing owl individuals, nests, or eggs. To the contrary, section 3.5.6 of the NCCP Permit states burrowing owl “pairs or individuals will not be Taken” and reiterates that the “HCP/NCCP does not authorize Take of [burrowing owl] nests [or] eggs[.]” Therefore, throughout the CVMSHCP area—both within and without Conservation Areas—Permittees must ensure that activities occurring within their jurisdictions do not result in the take, possession, or destruction of burrowing owl individuals, nests, or eggs. Any activity occurring within the CVMSHCP area that results in the take of burrowing owl individuals, nests, or eggs would be unlawful and would not be a Covered Activity under the CVMSHCP.



CDFW is concerned that the DEIR lacks an appropriate assessment of current presence and potential future impacts to burrowing owl across the large 619-acre Project site associated with the Project. Regarding the single field assessment conducted in September 2022, page 5 of the Biological Assessment indicates that the “site was assessed on foot and by vehicle to record pertinent field data and current site conditions. Covering the entire site on foot was not appropriate since the majority of the site consists of plowed, barren agricultural land.” The DEIR and Biological Assessment also lack a discussion of methods used to conduct a habitat assessment and/or surveys for burrowing owl over the large 619-acre Project site. Further, the DEIR and Biological Assessment lack details on if a habitat assessment or focused surveys for burrowing owl were conducted at the CVWD Middleton Reservoir 7802-1 site. Also, note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Given the DEIR’s lack of findings from a complete and recent habitat assessment and focused surveys for burrowing owl for both the Project site and CVWD Middleton Reservoir 7802-1 site following the guidelines in the *Staff Report on Burrowing Owl Mitigation*,<sup>3</sup> the number of suitable and occupied burrows within the large 619-acre Project site and CVWD Middleton Reservoir 7802-1 site and surrounding areas is unknown. CDFW recommends that the DEIR is revised to include the results of focused surveys for burrowing owl within the Project site and CVWD Middleton Reservoir 7802-1 site and surrounding area following the guidelines in the *Staff Report on Burrowing Owl Mitigation*, along with appropriate avoidance, minimization, and mitigation measures for burrowing owl.

Additionally, the DEIR indicates that the Project will be constructed in phases over a protracted time period, with the equestrian center, RV Park, and workforce housing proposed for completion by 2026 and Planning Areas 2, 3, 5, and 6 proposed for completion by 2032. CDFW notes that burrowing owls frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats.<sup>4,5</sup> Since disturbance to the Project site will happen at various times over two phases, and burrowing owl have the potential to move onto the Project site and surrounding area throughout the Project implementation period, CDFW recommends that focused surveys are conducted prior to all ground disturbance and vegetation removal activities throughout the Project implementation period.

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<sup>3</sup> 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>

<sup>4</sup> Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. *Journal of Raptor Research* 42(2): 87-98.

<sup>5</sup> Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162–176.

The DEIR includes Mitigation Measure BIO-2 for burrowing owl, which indicates that a “preconstruction burrowing owl survey following the CDFG (2012) guidelines must be conducted prior to any ground-disturbing activities at the Project and CVWD Middleton Reservoir 7802-1 sites. If found on site, and unless avoidable, all burrowing owls must be relocated prior to any ground disturbing activities. If burrowing owls remain on-site, a Burrowing Owl Relocation and Management Plan must be prepared to describe how the burrowing owl will be actively or passively relocated per CDFW guidelines. Relocation will also require prior permission from the CDFW and shall only occur outside of the breeding season. Relocation plans must also be submitted to and approved by the County Environmental Programs Department prior to implementation.” CDFW considers Mitigation Measure BIO-2 for burrowing owls to be insufficient in scope and timing to reduce impacts to less than significant. CDFW is also concerned that the measure is unclear if focused surveys would be conducted throughout the Project implementation period prior to areas being impacted, and if a burrowing owl relocation and management plan would be prepared prior to all proposed passive or active relocation activities for burrowing owl.

To support the County in reducing impacts to burrowing owl to a level less than significant, CDFW recommends the County revise Mitigation Measure BIO-2 with the following additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure BIO-2: Burrowing Owl Habitat Assessment and Surveys**

**Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012 or most recent version) prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project, including Project activities at the 619-acre Project site and the CVWD Middleton Reservoir 7802-1 site. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a**

last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.

For all phases of Project construction, preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. ~~A preconstruction burrowing owl survey following the CDFG (2012) guidelines must be conducted prior to any ground-disturbing activities at the Project and Middleton Reservoir sites. If found on-site, and unless avoidable, all burrowing owls must be relocated prior to any ground-disturbing activities. If burrowing owls remain on-site, a Burrowing Owl Relocation and Management Plan must be prepared to describe how the burrowing owl will be actively or passively relocated per CDFW guidelines. Relocation will also require prior permission from the CDFW and shall only occur outside of the breeding season. Relocation plans must also be submitted to and approved by the County Environmental Programs Department prior to implementation.~~

#### **4) Artificial Nighttime Lighting**

The large 619-acre Project is located adjacent to agricultural areas on all sides, including a palm plantation to the north with Mexican fan palms (*Washington robusta*) with untrimmed frond skirts, and open-space areas with native habitats to the west and south—areas that provide suitable nesting, roosting, foraging, and refugia habitat for

birds, migratory birds that fly at night, bats including western yellow bat (*Lasiurus xanthinus*; CVMSHCP Covered Species), and other nocturnal and crepuscular wildlife. The Project's proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in the agricultural and natural open-space areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation.<sup>6</sup> Many species use photoperiod cues for communication (e.g., bird song<sup>7</sup>), determining when to begin foraging,<sup>8</sup> behavioral thermoregulation,<sup>9</sup> and migration.<sup>10</sup> Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.<sup>10</sup>

While plans for shielding artificial nighttime lighting outlined in Mitigation Measures AES-3, 4, 5, and 7 support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these measures insufficient in scope and timing to reduce impacts to a level less than significant. To support the County in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends the County add the following mitigation measure to a revised DEIR:

### **Mitigation Measure BIO-[B]: Artificial Nighttime Lighting**

**Throughout construction and the lifetime operations of the Project, the County of Riverside and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County of Riverside and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The County of Riverside and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000**

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<sup>6</sup> Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.

<sup>7</sup> Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

<sup>8</sup> Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

<sup>9</sup> Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

<sup>10</sup> Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

**Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.**

### ***5) Coachella Valley Multiple Species Habitat Conservation Plan***

Page 2.6-13 of the DEIR indicates the “Project will comply with the CVMSHCP, the local multiple species habitat conservation plan, by paying into the land development/mitigation fees required from all new developments in the plan area, which supports the further assembly of lands for conservation.”

To document in a mitigation measure the County’s obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the County add the following mitigation measure to a revised DEIR:

#### **Mitigation Measure BIO-[C]: CVMSHCP Compliance**

**Prior to construction and issuance of any grading permit, the County of Riverside shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.**

### ***6) Landscaping***

Regarding the Project’s landscaping plans, pages 2.12-17 of the DEIR indicates that the “Thermal Ranch Specific Plan landscape guidelines emphasize non-invasive drought tolerant plant materials that are climate-appropriate, water efficient, and sustainable. The plant palette shall utilize a low maintenance and low water palette.” The DEIR lacks additional information on plant species that will be used as part of the landscape plan. CDFW recommends that the DEIR include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>). CDFW also recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at Calscape: <https://calscape.org/>. Local water agencies/cities and resource conservation cities in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and

water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

## **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 to assist the County in identifying and mitigating Project impacts to biological resources. CDFW concludes that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information for a meaningful review of impacts to biological resources, including a complete assessment of biological resources at the CVWD Middleton Reservoir 7802-1 site and a complete assessment of biological resources for burrowing owl at the large 619-acre Project site. CDFW recommends that a revised DEIR, including a complete assessment of biological resources be recirculated for public comment. The CEQA Guidelines indicate that recirculation is required when insufficient information in the DEIR precludes a meaningful review (§ 15088.5). CDFW recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised DEIR.

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Senior Environmental Scientist Specialist, at [jacob.skaggs@wildlife.ca.gov](mailto:jacob.skaggs@wildlife.ca.gov).

Russell Brady, Senior Planner  
Riverside County Planning Department  
January 9, 2025  
Page 15

Sincerely,

DocuSigned by:  
  
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Kim Freeburn  
Environmental Program Manager

**Attachment 1: MMRP for CDFW-Proposed Mitigation Measures**

ec:

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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>Mitigation Measure BIO-[A]: Assessment of Wildlife</b></p> <p><b>Prior to Project construction activities associated with the CVWD Middleton Reservoir 7802-1 site, a complete and recent inventory of threatened, endangered, and other sensitive wildlife 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 and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the</b></p>	<p><b>Timing:</b> Prior to Project construction activities</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> County of Riverside and Project proponent</p> <p><b>Monitoring and Reporting:</b> County of Riverside</p>



<p><b>CEQA definition (CEQA Guidelines § 15380).</b> The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific 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. 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.</p>		
<p><b>Mitigation Measure BIO-1: Nesting Birds</b></p> <p>To the greatest extent feasible, Project construction activities, including those at the 619-acre Project site and the CVWD Middleton Reservoir 7802-1 site, will avoid the peak nesting season (February 1 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. 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 found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The</p>	<p><b>Timing:</b> No more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> County of Riverside and Project proponent</p> <p><b>Monitoring and Reporting:</b> County of Riverside</p>



<p>qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p> <p>The biologist must have a Memorandum of Understanding (MOU) with the County.</p>		
<p><b>Mitigation Measure BIO-2: Burrowing Owl Habitat Assessment and Surveys</b></p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG, 2012 or most recent version) prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project, including Project activities at the 619-acre Project site and the CVWD Middleton Reservoir 7802-1 site. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be</p>	<p><b>Timing: Focused surveys:</b> Prior to vegetation removal or ground-disturbing activities for all phases of the Project. <b>Pre-construction surveys:</b> No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance for all phases of the Project and when there is a pause in construction of more than 30 days.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> County of Riverside and Project proponent</p> <p><b>Monitoring and Reporting:</b> County of Riverside</p>

<p>provided regarding adjacent or nearby suitable habitat available to owls and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.</p> <p>For all phases of Project construction, preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG, 2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p> <p>Relocation will also require prior permission from the CDFW and shall only occur outside of the breeding season. Relocation plans must also be submitted to and approved by the County Environmental Programs Department prior to implementation.</p>		
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<p><b>Mitigation Measure BIO-[B]: Artificial Nighttime Lighting</b></p> <p>Throughout construction and the lifetime operations of the Project, the County of Riverside and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County of Riverside and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). The County of Riverside and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>	<p><b>Timing:</b>          Throughout construction and the lifetime operations of the Project.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b>          County of Riverside and Project proponent</p> <p><b>Monitoring and Reporting:</b> County of Riverside</p>
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<p><b>Mitigation Measure BIO-[C]: CVMSHCP Compliance</b></p> <p><b>Prior to construction and issuance of any grading permit, the County of Riverside shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.</b></p>	<p><b>Timing:</b> Prior to construction and issuance of any grading permit.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> County of Riverside and Project proponent</p> <p><b>Monitoring and Reporting:</b> County of Riverside</p>
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