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DEPARTMENT OF FISH AND WILDLIFE

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Sent via email

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Subject: Cabazon Infrastructure Plan and Cabazon Community Plan Project (GPA No. 01206 and ZR6234) (PROJECT)
Draft Environmental Impact Report (DEIR)
SCH# 2026030377

Dear Candice Hughes:

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.[1]

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,

[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.

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 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: County of Riverside

Objective: The Project proposes a general plan amendment and associated changes in land use designations with regard to the Cabazon Community Plan and corresponding Cabazon Infrastructure Plan (CIP). The goal of the Cabazon Community Plan (GPA No. 01206) is to address proposed plans for Community of Cabazon's land use and infrastructure, including regional plans for accommodating up to 22,888 new housing units and an additional 49,420,323 square feet of non-residential uses over the next 30 years. The Community Plan proposes amending the existing Riverside County General Plan by revising land use designations within the proposed Cabazon Community Area of the Pass Area Plan, impacting approximately 7,761 acres. Further, the Community Plan addresses topics related to the Cabazon Community such as placemaking, land use, access and circulation, infrastructure and public services, development and design standards, and administration and implementation. The CIP (ZR6234) would support the buildout of the Community Plan by identifying needs and suggesting alternatives for the availability and expansion of infrastructure in the Cabazon Community Plan area.

Location: The Project is located within the northwestern portion of Riverside County, California, immediately east of the City of Banning. The Project area is approximately 7,769 acres and is bounded by the Morongo Indian Reservation to the north, unincorporated areas of Riverside County to the north and south, the cities of Desert Hot Springs and Palm Springs to the east, and the City of Banning to the west.

Timeframe: Regarding timing of the Project, the DEIR(p. 3.2-18) indicates that "although buildout would occur over the next 30 years, the analysis conservatively assumes buildout

would occur in the year 2027."

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 offer 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 requests that additional analysis and avoidance, minimization, and mitigation measures are added to a revised DEIR 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 impacts to biological resources associated with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and the Western Riverside County Multiple Species Habitat Conservation Plan (WR MSHCP). Compliance with approved habitat plans, such as the CVMSHCP and WR 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 CVMSHCP and WR MSHCP as a result of this Project is necessary to address CEQA requirements.

The majority of the proposed Project is located within the CVMSHCP area where activities are subject to the terms and requirements of the CVMSHCP. A portion of the Project area, on its western end, is within the WR MSHCP area where activities are subject to the terms and requirements of the WR MSHCP. As discussed below, the Project is not in compliance with several requirements under the CVMSHCP and the WR MSHCP.

A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources 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 includes 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 CDFW's Lake and Streambed Alteration Program and burrowing owl, as well as revising the mitigation measure for nesting birds.

1) Coachella Valley Multiple Species Habitat Conservation Plan

Within the CVMSHCP Plan Area, significant portions of the Project area are located within the Cabazon Conservation Area including areas designated as fluvial sand transport areas as shown in Figure 3.3-4 of the DEIR. Fluvial sand transport areas are identified in the CVMSHCP as Essential Ecological Processes that are critical in maintaining habitat that supports Covered Species. Seven of the 27 Covered Species, including flat-tailed horned lizard (*Phrynosoma mcallii*), Coachella Valley fringe-toed lizard *(Uma inornata),* Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), Palm Springs pocket mouse *(Perognathus longimembris bangsi),* Coachella Valley milkvetch *(Astragalus lentiginosus var. coachellae),* Coachella Valley Jerusalem cricket *(Ammopelmatus cahuilaensis),* and Coachella Valley giant sand-treader cricket (*Macrobaenetes valgum*), are considered Covered sand-dependent species under the CVMSHCP, species that depend on sand dune and sand field-associated Covered Natural Communities under the CVMSHCP (see CVMSHCP Section 10.2). More specifically, the protection of fluvial sand transport systems and their existing hydrological regimes within the Cabazon Conservation Area is critical in maintaining the Covered Natural Communities associated with sand dunes and sand fields, as well as the sand-dependent Covered Species they support, in downstream areas within both the Snow Creek/Windy Point Conservation Area and the Whitewater Flood Plain Conservation Area.

Per the CVMSHCP Implementing Agreement (IA), Section 13.2, for projects within its land use jurisdiction, the County is obligated to ensure and enforce compliance with CVMSHCP requirements, and as discussed below, requirements apply at the general plan level related to general plan land use designations and policies and to individual development projects within the Project area.

CVMSHCP Requirements Regarding General Plan Land Use Designations and Policies

The CVMSHCP includes several requirements related to fluvial sand transport areas that apply at the general plan level, related to land use designations and policies. Conservation Objective 5 for the Cabazon Conservation Area (CVMSHCP Section 4.3.1) is to "maintain the current capacity for fluvial (water-borne) sand transport along 4,496 acres of the San Gorgonio River and its tributaries." Also, Required Measure 1 of the Cabazon Conservation Area (CVMSHCP Section 4.3.1) further clarifies that "conservation of the identified fluvial sand transport process areas will be achieved through application of the general plan land use designations and policies." Further, CVMSHCP Section 6.12.1 and IA Section 20.2 indicate that "the Parties agree that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances, and the granting of implementing land use entitlements by the County and the Cities are matters within the sole discretion of the County and Cities and shall not require amendments to the IA, MSHCP, or the Permits, or the approval of other Parties to the IA. However, the Parties agree that: (1) no such action by the County or the Cities shall in any way alter or diminish their obligations under the IA, the MSHCP, or the Management and Monitoring Programs; and (2) approval of certain projects may lead to revocation or suspension of the Permits pursuant to Section 23.5 of the IA." **In summary, the County is obligated under the CVMSHCP to ensure that fluvial sand transport areas and their associated acreages within the Cabazon Conservation Area are protected through general plan land use designations and policies and any amendments to the associated general plan.**

The Project proposes changes to land use designations that conflict with the County's obligations under the CVMSHCP to protect fluvial sand transport areas and their associated acreages through general plan land use designations and policies. Comparing Figure 2-3 (Existing Land Use Map) to Figure 2-4 (Proposed Land Use Map) in the DEIR, the Project proposes changes in land use designations that would facilitate residential, industrial, and other development in CVMSHCP-designated fluvial sand transport areas. For example, the land use designations for areas located within San Gorgonio Wash upstream and downstream of the intersection of Pipeline Road and Westward Avenue are proposed to change from the Rural Desert designation to the Heavy Industrial and Light Industrial designations. Also, land use designations for areas of San Gorgonio Wash generally located south of Esparanza Avenue are proposed by the Project to change from the Rural Desert and Open Space – Conservation designations to the Rural Residential designation. The Project's proposed changes in land use designations are inconsistent with the County's obligations under the CVMSHCP to protect fluvial sand transport areas using general plan land use designations and policies and to ensure any changes to general plans do not in any way alter or diminish the County's obligations under the CVMSHCP. To fulfill the County's obligations under the CVMSHCP that apply to general plan land use designations and policies, CDFW recommends the Project is revised so that any changes to land use designations and policies support the protection of fluvial sand transport areas and their

associated acreages in the Cabazon Conservation Area. To this end, CDFW recommends the County revise the Project so that land use designations within fluvial sand transport areas are changed to Open Space – Conservation, Open Space – Water, or similar conservation-focused designations, potentially in combination with other local ordinances, floodplain regulations, or other land use policies, that preserve the existing floodplains as corridors for sediment, floodwater, and wildlife movement as anticipated under the CVMSHCP.

In addition to proposing changes in land use designations that are inconsistent with the County's obligations under the CVMSHCP, the DEIR also lacks an analysis of the Project's compliance with requirements under the CVMSHCP related to general plan land use designations and policies. Considering the Project's proposed changes in land use designations and the DEIR's lack of analysis of the Project's consistency with CVMSHCP requirements that apply to general plan land use designations and policies, CDFW considers the DEIR to be inadequate to reduce impacts to biological resources associated with the CVMSHCP to a level less than significant. CDFW recommends the DEIR is revised to include a discussion and analysis of how the Project impacts CVMSHCP requirements that relate to general plan land use designations and policies.

Flood Control Infrastructure

CDFW also has concerns with the DEIR's proposed flood control infrastructure as it relates to compliance with CVMSHCP requirements to maintain essential ecological processes in fluvial sand transport areas. Page 3.9-31 of the DEIR states that "in addition to the preparation of the regional Master Drainage Plan, there is the need for additional drainage facilities within the Community Plan to provide local flood protection. To this end, the CIP identifies improvements necessary to accommodate the Cabazon Community Plan's proposed land use changes, including over 10 miles of regional and local storm drain facilities; refer to Figure 2-7, *Proposed Storm Drain Facilities.*" Figure 2-7 of the DEIR shows the alignments of proposed levees and channels, including the San Gorgonio Levee Extension, San Gorgonio Levee #2, and Jenson Creek Levee on the south side of the I-10 freeway and the Millard Channel on the north and south sides of the I-10 freeway. CDFW notes that the alignment of these levees and channels would bisect large sections of the Cabazon Conservation Area and fluvial sand transport areas and effectively remove fluvial and geomorphic stream processes from areas to the north and east of the San Gorgonio Levee Extension; the south of San Gorgonio Levee #2; north of the Jenson Creek Levee; and south and west of the Millard Channel. The proposed flood control infrastructure would reduce the floodplain width and impact the function of ecological processes including sand source and sand transport and result in spatial and temporal changes in the local sediment regime (e.g., areas of erosion, sediment transportation and deposition), impacts to fluvial sand transport areas that were not evaluated in the DEIR. Also, the impacts to fluvial sand transport processes, Covered Natural Communities associated with sand dunes and sand fields, and their associated sand-dependent Covered Species, located further downstream have not been

analyzed. The proposed flood control infrastructure would facilitate residential, industrial, and other development in fluvial sand transport areas. CDFW considers the proposed flood control infrastructure to be inconsistent with CVMSHCP requirements and the County's obligations that apply to both general plan land use designations and policies and the individual project level (discussed in the next section). To comply with requirements and the County's obligations under the CVMSHCP, CDFW recommend the DEIR is revised to remove plans for proposed flood control infrastructure. As discussed above, CDFW recommends the County revise the Project so that land use designations align with the County's obligations under the CVMSHCP to protect fluvial sand transport areas and associated acreages.

Fornat Wash Biological Corridor

Also, regarding CVMSHCP requirements related to general plan land use designations and policies, the Project appears to be inconsistent with CVMSHCP requirements for maintaining the function of the Fornat Wash Biological Corridor. The Project area includes portions of the Fornat Wash Biological Corridor, which is discussed in CVMSHCP Section 4.3.1. The Fornat Wash Biological Corridor extends one mile from the Fornat Wash culvert under the I-10 freeway on both the north and south sides of the I-10 freeway (excluding areas within the Morongo Indian Reservation). Conservation Objective 6 for the Cabazon Conservation Area (CVMSHCP Section 4.3.1) is to "maintain functional Biological Corridors under I-10 by conserving at least 631 acres in the Fornat Wash Biological Corridor to maintain ecosystem function for Covered Species. Aside from the freeway culvert, which is an unavoidably narrow segment, the Biological Corridor shall be one mile wide, except where Existing Uses or Indian reservation lands not subject to the Plan preclude this width, to minimize edge effects. It should also be noted that portions of the corridor cross Indian reservation land, which is not a part of the Plan and over which the Plan exerts no control." The DEIR lacks a discussion and analysis of how the Project's proposed changes in land use designations will impact 1) the function of the Fornat Wash Biological Corridor or 2) the County's obligation to conserve at least 631 acres within this specific biological corridor. As shown in Figure 2-4 of the DEIR, the Project proposes changing land use designations for areas within and surrounding the Fornat Wash Biological Corridor from Rural Desert and Rural Residential to Light Industrial and Open Space – Conservation designations. CDFW supports the County in changing the land use designations within and surrounding the Fornat Wash Biological Corridor to Open Space – Conservation. However, the areas proposed to be changed to Light Industrial may be inconsistent with CVMSHCP requirements to maintain the function of the Fornat Wash Biological Corridor and conserve at least 631 acres within this biological corridor. These changes in land use designations would facilitate future industrial development in areas intended to be conserved within the Fornat Wash Biological Corridor. To support the County in complying with CVMSHCP requirements and reducing impacts to biological resources to a level less than significant, CDFW recommend the DEIR is revised so that any changes in land use designations maintain the function of the Fornat Wash Biological Corridor and support the objective of conserving 631 acres within this biological corridor. CDFW also recommends

the DEIR is revised to include a discussion and analysis of how any proposed changes in land use designations impact consistency with the CVMSHCP requirements and the County's CVMSHCP obligations discussed above.

Cumulative Impacts to Biological Resources

At the level of general plan land use designations and policies, the DEIR also lacks an adequate analysis of the Project's cumulative impacts to biological resources. Page 3.3-43 of the DEIR states that "the anticipated impacts associated with the proposed project in conjunction with cumulative development in the County may result in incremental habitat loss, fragmentation, or disturbance to special-status plant and wildlife species, sensitive natural communities, wetlands, and wildlife corridors. Each cumulative project would require separate discretionary permit approval, CV-MSHCP and WR-MSHCP consistency review, and evaluation under CEQA, which would address potential biological resource impacts." Page 3.3-44 of the DEIR adds that "like the proposed project, cumulative development with the potential to impact biological resources would be subject to applicable regulatory requirements and project-specific mitigation measures. Even with these controls in place, the combined effects of the proposed project and other cumulative projects could result in significant cumulative impacts to biological resources." The DEIR lacks additional information on the Project's potential cumulative impacts to biological resources. As discussed further above, CDFW is concerned that the Project's proposed changes in land use designations will facilitate residential, industrial, and other development in areas identified under the CVMSHCP as fluvial sand transport areas and biological corridors. Collectively, these proposed changes in land use designations and plans for flood control infrastructure would have a significant cumulative impact to biological resources including CVMSHCP Covered Species and Natural Communities, both within, adjacent to, and downstream of the Project area. CDFW recommends that the DEIR is revised so that any proposed changes in land use designations support the County in fulfilling its obligations under the CVMSHCP, as discussed above. CDFW also recommends that the DEIR is revised to include an analysis of how any proposed changes in land use designations address cumulative impacts to biological resources, including but not limited to CVMSHCP Covered Species and Natural Communities, and how those impacts would be reduced to levels that are less than significant.

<u>CVMSHCP Requirements for Individual Development Projects within the Project Area</u>

In an attempt to comply with CVMSHCP requirements, the DEIR proposed an approach that defers any CVMSHCP consistency analysis to when future individual development projects are proposed. This proposed approach involves classifying areas within the Project boundary as high, moderate, or low biological sensitivity. Figure 3.3-7 of the DEIR shows the proposed Biological Resources Sensitivity Zones. As indicated on page 3.3-15 of the DEIR, areas categorized as part of the Moderate Sensitivity Zone include "CV-MSHCP Essential Ecological Processes & Biological Corridors and Linkages (sand source, sand transport, and

corridors/linkages), CV-MSHCP Essential Habitat (Peninsular bighorn sheep), and remaining natural vegetation communities on the north-facing slopes of the San Jacinto Mountains to the south of the CV-MSHCP boundary." Mitigation Measure BIO-1 in the DEIR indicates that "prior to construction of CIP or Cabazon Community Plan development projects wholly and/or partially within moderate or high biological resource sensitivity zones as depicted in Figure 3.3-7, the County shall retain a qualified biologist to conduct a site-specific biological resources assessment and Multiple Species Habitat Conservation Plan (MSHCP) Consistency Analysis." **CDFW clarifies that for any future development projects proposed within a CVMSHCP Conservation Area, a CVMSHCP consistency analysis is required regardless of the area's biological sensitivity classification as proposed in the DEIR**. Further, CDFW notes that the DEIR includes an inadequate discussion of CVMSHCP requirements that apply at the level of individual development projects proposed within the Project area. CDFW clarifies that specific CVMSHCP requirements apply to development projects that are proposed within and adjacent to the Cabazon Conservation Area, which include, but are not limited to, the following:

- Projects within the Cabazon Conservation Area are required to comply with Conservation Objectives and Required Measures identified in CVMSHCP Section 4.3.1.
- Projects within Conservation Areas are required go through the Joint Project Review Process as described in CVMSHCP Section 6.6.1.1.
- Projects within or adjacent to Conservation Areas are required to implement Land Use Adjacency Guidelines as described in CVMSHCP Section 4.5.
- Projects within areas designated as fluvial sand transport areas are required to maintain fluvial sand transport essential ecological processes as described in CVMSHCP Section 4.2.2.2.4. More specifically, these require the County to ensure and enforce the following for development projects proposed in these areas:
    - No net reduction in fluvial sand transport.
    - Natural flows onto parcels shall be conveyed offsite in the natural pre-disturbance direction of flow.
    - No impeding of water-borne sand transport across the parcel in its natural direction of flow.
    - Water borne sediments and floodwaters shall not be artificially retained onsite.
    - Concentration of flows and increase in flow velocity offsite shall be minimized to avoid downstream erosion and scour.
    - Any proposed flood control structures must ensure no net reduction of sediment

transport from sand source areas to sand deposition areas. Unless identified as Covered Activities in CVMSHCP Section 7.3, any proposed flood control structures require a Minor Amendment to the CVMSHCP with Wildlife Agencies' concurrence, as set forth in CVMSHCP Section 6.12.3.

The DEIR lacks a complete and accurate description of CVMSHCP requirements that would apply to individual development projects proposed within the Project area. Without these details, CDFW considers the DEIR to be inadequate to reduce impacts to biological resources including CVMSHCP Covered Species to a level less than significant. CDFW recommends that the DEIR is revised to include additional details on CVMSHCP requirements that apply to individual development projects within the Project area.

2) Western Riverside County Multiple Species Habitat Conservation Plan

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County Multiple Species Habitat Conservation Plan (WR MSHCP), as per Section 2800, et seq., of the California Fish and Game Code. The WR 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 WR MSHCP and CEQA. The County of Riverside approved of the WR MSHCP, certified the Environmental Impact Report, and adopted the Resolution No. 2003-299 on July 12, 2003. This led to the County's obligations to implement the WR MSHCP through incorporation of the relevant terms and requirements into its General Plan. Through the approval of the WR MSHCP, the County shall establish general policies in compliance with the WR MSHCP, the Permits, and the Implementation Agreement for the Open Space Element of the County General Plan per section 6.1B of the planning document.

Compliance with approved habitat plans, such as the WR 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 WR MSHCP as a result of this Project is necessary to address CEQA requirements.

<u>Western Riverside County MSHCP Special Linkage Area</u>

The Project may have a significant impact on the WR 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 WR 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 WR MSHCP Special Linkage Area process will work to ensure that WR MSHCP implementation occurs. CDFW recommends the DEIR is revised so that any changes in land use designations align with requirements under the WR MSHCP to protect the Special Linkage Area and that the County fulfills its obligation under Section 6.1B and the Implementation Agreement as discussed above.

Additionally, the Cabazon Community Plan Project area that is within the WR MSHCP area directly conflicts with the City of Banning's approved Rancho San Gorgonio Specific Plan mitigation obligations, the Final Environmental Impact Report, and the approved Determination of Biologically Equivalent or Superior Preservation under Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2) and Additional Survey Needs and Procedures for burrowing owl (*Athene cunicularia hypugaea*) and Los Angeles pocket mouse (*Perognathus longimembris brevinasus)* Section 6.3.2 of the WR MSHCP. The Rancho San Gorgonio Specific Plan states that impacts will be offset through onsite and offsite mitigation areas that would be preserved in perpetuity for WR MSHCP Section 6 resources and CDFW fish and wildlife resources under Fish and Game Code, §1600 et seq. The Project as identified in the DEIR overlaps with the approximately 760 acres of offsite mitigation area for the Rancho San Gorgonio Specific Plan, which will be conveyed into conservation for the WR MSHCP. CDFW recommends the DEIR is revised to ensure that any changes in land use align with the needs of the mitigation area for the Rancho San Gorgonio Specific Plan and fulfill the County's obligation of implementing the WR MSHCP conservation strategy through the Open Space Element of the County's General Plan as discussed above.

3) CDFW Lake and Streambed Alteration Program

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. 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. It may also apply to work undertaken within the flood plain of a body of water.

For impacts to streams within the Project area, the DEIR includes Mitigation Measure BIO-8, which states that "prior to construction of CIP or Cabazon Community Plan development projects wholly and/or partially within moderate or high biological resource sensitivity zones as depicted in Figure 3.3-7, a qualified biologist shall conduct a formal aquatic resources

jurisdictional delineation to determine the extent of jurisdictional aquatic resources regulated by the US Army Corps of Engineers, Regional Water Quality Control Board, and/or California Department of Fish and Wildlife within the impact area. CIP and Cabazon Community Plan development projects shall be designed to avoid jurisdictional aquatic resources regulated by the US Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife through design changes or implementation of alternative construction methodologies. Staking, flagging, and/or fencing shall be established to demarcate no-work areas, which shall include Jurisdictional aquatic resources plus the required buffer established by the applicable regulatory agencies (typically, a minimum 100-foot buffer), to be avoided. For CIP and Cabazon Community Plan development projects that will directly or indirectly impact jurisdictional aquatic resources, the County or Applicant shall obtain the required Federal and/or State permits from the US Army Corps of Engineers, Regional Water Quality Control Board, and/or California Department of Fish and Wildlife, pursuant to Sections 404 and 401 of the Clean Water Act and Section 1600 et seq. of the California Fish and Game Code, respectively. Permits are required to be obtained by the County or Applicant before the impact to the resources. Permits may include additional conditions of approval, such as compensatory mitigation."

CDFW clarifies that the County's determination that only projects within "moderate or high biological resource sensitivity zones" would need to notify CDFW is not consistent with Fish and Game Code section 1600 et seq. Any project that involves one or more of the activities identified in Fish and Game Code section 1602 (see first paragraph of this section) should notify CDFW's Lake and Streambed Alteration Program.

To support the County in avoiding or reducing impacts to fish and wildlife resources subject to Fish and Game Code section 1600 et seq. to a level less than significant, CDFW recommends the County add the following Mitigation Measure to a revised DEIR:

Mitigation Measure BIO-[A]: CDFW's Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or* the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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-6, as well as CDFW-recommended MM BIO-[A] and MM BIO-[B]

4) 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 CVMSHCP, per its associated Permits from CDFW and the U.S. Fish and Wildlife Service (collectively the Wildlife Agencies) and the Implementing Agreement, Authorized Take incidental to Covered Activities must be consistent with, and in compliance with state and federal laws, which include, but are not limited to, California Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act of 1918. Therefore, all Covered Activities within the Plan Area, whether they are located within or outside Conservation Areas, must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds and birds of prey. The CVMSHCP includes a general conservation measure that applies to all Covered bird species to avoid impacts to their habitat during the nesting season (CVMSHCP Section 9.7). Per Implementing Agreement Section 13.2, the County is obligated to ensure and enforce implementation of all applicable requirements of the Wildlife Agencies' Permits, the Implementing Agreement, and the CVMSHCP for all Covered Activities, including ensuring compliance with state and federal laws that protect nesting birds and birds of prey.

To protect nesting birds associated with individual development projects within the Project area, the DEIR proposes Mitigation Measure BIO-6, which indicates "if construction activities occur during the avian breeding season (February 1 through August 31), a focused bird nest survey shall be conducted by a qualified biologist within 72 hours of commencement of construction." 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. CDFW notes that 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[2]). CDFW staff have observed that climate change conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of resident and 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. CDFW considers Mitigation Measure BIO-6 to be inadequate in scope and timing to avoid or reduce impacts to nesting birds to a level less than significant.

To support the County in avoiding or reducing impacts to nesting birds to a level less than significant, CDFW recommends Mitigation Measure BIO-6 is revised with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-6: Nesting Birds

To the greatest extent feasible, the Project will avoid construction and any ground-disturbing activities during the peak nesting season (January 15 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a CDFW-approved qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. 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, the 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. Following documentation of baseline conditions, the qualified biologist familiar with the nesting phenology of the nesting species may choose to adjust the buffers based on nest and buffer monitoring results. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall increase the buffers accordingly. Construction activities may not occur inside the established buffers, which shall remain on-site until the 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. ~~If construction activities occur during the avian breeding season (February 1 through August 31), a focused bird nest survey shall be conducted by a qualified biologist within 72 hours of commencement of construction. The pre-construction survey shall focus on both direct and indirect evidence of~~

[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.

~~nesting, including nest locations and nesting behavior. If active nests are discovered during the nest survey, those nests shall be avoided until the young have fledged. Appropriate nest setback distances shall be implemented during construction based on applicability of noise attenuation measures, the topography between the nest and the proposed disturbance activity, and the surrounding vegetation. These setbacks shall be a minimum of 300 feet for passerine species and 500 feet for raptor species.~~

5) 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, including relocation, 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, per its associated Permits from the Wildlife Agencies and the IA, Authorized Take incidental to Covered Activities must be consistent with, and in compliance with state and federal laws, which include, but are not limited to, California Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act. Therefore, all Covered Activities within the Plan Area, whether they are located within or outside Conservation Areas, must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds and birds of prey. The CVMSHCP includes a general conservation measure that applies to all Covered bird species, including burrowing owl, to avoid impacts to their habitat during the nesting season (CVMSHCP Section 9.7). Per Implementing Agreement Section 13.2, the County is obligated to ensure and enforce implementation of

all applicable requirements of the Wildlife Agencies' Permits, the IA, and the CVMSHCP for all Covered Activities, including ensuring compliance with state and federal laws that protect nesting birds and birds of prey. CDFW's NCCP Permit #2835-2008-001-06 for the CVMSHCP does not authorize Take of burrowing owl individuals, nests, or eggs.

Regarding the potential for the Project area to support burrowing owl, page 3.3-32 of the DEIR states that "the remaining 28 special-status wildlife species (those with a Federal, State, or other protection status) are expected or have at least a moderate potential to occur in the project area: [...] burrowing owl." CDFW agrees that the Project area contains suitable habitat for burrowing owl. The DEIR includes Mitigation Measure BIO-5 that calls for focused surveys for burrowing owls (among other special status wildlife) for development projects within or partially within moderate or high biological resources sensitivity zones depicted in Figure 3.3-7. CDFW notes that burrowing owls can occupy a range of habitats including disturbed areas and prefer areas with gentle slopes and sparse cover of vegetation. CDFW clarifies that surveys for burrowing owl should occur in all areas that contain suitable habitat within the Project area and should not be limited to areas identified as moderate and high biological sensitivity zones as proposed in the DEIR. CDFW further notes that the DEIR lacks a mitigation measure for burrowing owl that outlines survey methodology, appropriate buffers, and additional avoidance and minimization measures. Without appropriate avoidance and minimization measures, CDFW considers the DEIR to be inadequate to reduce impacts to burrowing owl to a level less than significant.

To support the County in avoiding or reducing impacts to burrowing owl to a level less than significant, CDFW recommends the DEIR is revised to include Mitigation Measure BIO-[A]:

Mitigation Measure BIO-[B]: Burrowing Owl Focused and Pre-Construction Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CDFW-approved qualified biologist prior to any Project activities, including vegetation- or ground-disturbing activities. CDFW strongly recommends that focused surveys are conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (*Staff Report*; 2012 or most recent version)[3]. 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 submit the results of focused surveys to CDFW and USFWS as soon results become available and before commencement of any Project activities, including any vegetation- or ground-disturbing activities. CDFW recommends that the information included in the survey results be consistent with Appendix D of the *Staff Report*, including a detailed map showing locations of all burrowing owls, burrowing owl sign,

[3] California Department of Fish and Wildlife (CDFW). 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.

potential burrows, and occupied burrows (occupied 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); a description of the behavior of burrowing owls during surveys; a description of survey methods; and other items listed in Appendix D of the *Staff Report* under "Survey Reports." Consultation with CDFW and USFWS must be completed prior to commencement of any Project activities, including vegetation- or ground-disturbing activities. If impacts to burrowing owl individuals, nests, or eggs cannot be avoided, CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081(b)) should be obtained from CDFW prior to commencement of Project activities, including vegetation- or ground-disturbing activities.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and again within 24 hours prior to ground disturbance. Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys shall be performed by a CDFW-approved qualified biologist, and CDFW strongly recommends that preconstruction surveys follow the recommendations and guidelines provided in Appendix D of the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted and the qualified biologist shall coordinate with CDFW and USFWS. Project activities shall not begin until consultation with CDFW and USFWS is completed.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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, including impacts to the CVMSHCP and WR MSHCP. CDFW also concludes that the DEIR lacks sufficient information for a meaningful review of impacts to biological resources, including a complete assessment of potential impacts to Covered Species, Natural Communities, and Biological Corridors under the CVMSHCP and WR MSHCP. 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 requests a meeting with the County to discuss the proposed Project as it relates to consistency with the CVMSHCP and WR MSHCP. CDFW is available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter as they relate to the CVMSHCP should be directed to Jacob Skaggs, Senior Environmental Scientist Specialist, at jacob.skaggs@wildlife.ca.gov, and as they relate to the WR MSHCP should be directed to Breanna Machuca, Senior Environmental Scientist Specialist, at breanna.machuca@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

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
Mitigation Measure BIO-[A]: CDFW Lake and Streambed Alteration Program **Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or* the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**	**Timing:** Prior to construction and issuance of any grading permit **Methods:** See Mitigation Measure	**Implementation** Individual Development Project within Plan Area **Monitoring and Reporting**: Individual Development Project and County of Riverside
Mitigation Measure BIO-6: Nesting Birds **To the greatest extent feasible, the Project will avoid construction and any ground-disturbing activities during the peak nesting season (January 15 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a CDFW-approved qualified avian biologist no more than 3**	**Timing:** No more than 3 days prior to vegetation removal or ground-disturbing activities.	**Implementation** Individual Development Project within Plan Area **Monitoring and Reporting**:

days prior to vegetation removal or ground-disturbing activities. 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, the 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. Following documentation of baseline conditions, the qualified biologist familiar with the nesting phenology of the nesting species may choose to adjust the buffers based on nest and buffer monitoring results. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall increase the buffers accordingly. Construction activities may not occur inside the established buffers, which shall remain on-site until the 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.	**Methods:** See Mitigation Measure	Individual Development Project and County of Riverside
Mitigation Measure BIO-[B]: Burrowing Owl Focused and Pre-Construction Surveys **Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CDFW-approved qualified biologist prior to any Project activities, including vegetation- or ground-disturbing activities. CDFW strongly recommends that focused surveys are conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (*Staff Report*; 2012 or most recent version). 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 submit the results of focused surveys to CDFW and USFWS as soon results become available and before commencement of any Project activities, including**	**Timing: Focused surveys:** Consistent with timing in Appendix D of the Staff Report on Burrowing Owl Mitigation and prior to commencement of any Project activities, including vegetation- or ground-disturbing activities. **Pre-construction**	**Implementation** Individual Development Project within Plan Area **Monitoring and Reporting**: Individual Development Project and County of Riverside

any vegetation- or ground-disturbing activities. CDFW recommends that the information included in the survey results be consistent with Appendix D of the *Staff Report*, including a detailed map showing locations of all burrowing owls, burrowing owl sign, potential burrows, and occupied burrows (occupied 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); a description of the behavior of burrowing owls during surveys; a description of survey methods; and other items listed in Appendix D of the *Staff Report* under "Survey Reports." Consultation with CDFW and USFWS must be completed prior to commencement of any Project activities, including vegetation- or ground-disturbing activities. If impacts to burrowing owl individuals, nests, or eggs cannot be avoided, CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081(b)) should be obtained from CDFW prior to commencement of Project activities, including vegetation- or ground-disturbing activities. **Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and again within 24 hours prior to ground disturbance. Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys shall be performed by a CDFW-approved qualified biologist, and CDFW strongly recommends that preconstruction surveys follow the recommendations and guidelines provided in Appendix D of the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted and the qualified biologist shall coordinate with CDFW and USFWS. Project activities shall not begin until consultation with CDFW and USFWS is completed.**	**surveys** No less than 14 days prior to start of Project-related activities and again within 24 hours prior to ground disturbance and when there is a pause in construction of more than 30 days. **Methods:** See Mitigation Measure	