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 Sent via e-mail

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

NATHAN PRENK INDUSTRIAL PROJECT ON APN 665-040-021 (PROJECT)
 INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND)
 SCH# 2021020182

Dear Ms. Villagomez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Desert Hot Springs for the Nathan Prenk Industrial Project on APN 665-040-021 (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, 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

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.

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: City of Desert Hot Springs

Objective: The objective of the Project is to construct a 5,296-square-foot building for the indoor cultivation of cannabis on a 0.3-acre parcel in the City of Desert Hot Springs. The Project would involve construction of a road (Binnie Road) on the western side of the parcel, construction of a 6-stall parking lot on the parcel, installation of exterior lighting and perimeter fencing for security, and drought-tolerant landscaping. The cultivation operation would involve the use of fertilizers injected into the irrigation system and the use of pesticides. Cultivation runoff would be collected, filtered, and reused in the facility; storm water would be directed to a dry well on-site; and wastewater would be directed to a septic system installed on-site. The Project is estimated to require 300–400 gallons of water daily, which will be trucked in from an unspecified source initially because the site is not currently served by utility lines. Once utility lines are constructed, the Mission Springs Water District (MSWD) would provide water to the Project. MSWD relies entirely on groundwater extracted from the Mission Creek subbasin of the Coachella Valley Groundwater Basin.

Location: The Project is located on a vacant parcel (APN 665-040-021) east of the intersection of Little Morongo Road and Palomar Lane in the City of Desert Hot Springs, Riverside County. Major highways include Interstate 10 to the south and Highway 62 to the west. The Project is within the Whitewater River watershed. The Whitewater River has its headwaters in the San Bernardino Mountains and drains to the Salton Sea, southeast of the parcel. The Project parcel is situated between Mission Creek to the west and Morongo Wash to the east. The Project is located within the Mission Creek subbasin of the Coachella Valley Groundwater Basin.

Timeframe: Project construction is expected to start in March 2021 and to take 6 months to complete.

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). The IS/MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. CDFW offers the following comments and recommendations to assist the City in adequately identifying and mitigating

the Project's potentially significant impacts to biological resources. In addition to the sections below, CDFW has the following concerns:

- **Incomplete description of Project activities:** The IS/MND does not adequately describe the cultivation facility, so it is unclear if impacts to biological resources are less than significant. To be considered indoor cultivation, a structure should have a permanent roof and walls, as well as an impermeable floor. Page 75 of the IS/MND indicates that "all cultivation operations would occur in enclosed facilities." However, structural specifications provided in Appendix D of the IS/MND include photographs of a building with skylight openings in the roof and large, roll-down doors that may be opened on the sides of the building. Cultivation structures that may be opened to the atmosphere will have different impacts on biological resources than completely enclosed structures (e.g., pesticides and artificial light will have greater impacts if structures are not completely enclosed; see the "Cannabis-Specific Impacts on Biological Resources" below). In addition, page 75 of the IS/MND indicates that "no extraction is proposed"; however, structural specifications in the IS/MND (p. 9 and Appendix D) include an "extraction room." Finally, the IS/MND indicates that water will be trucked in prior to construction of new utility lines; however, the source of the trucked-in water has not been specified. CDFW recommends the IS/MND include a complete description of the facility/Project activities and fully analyze the impacts to biological resources.
- **Landscaping:** The IS/MND indicates that landscaping with drought-tolerant plants is proposed around the perimeter of the property. CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities have drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <http://saveourwater.com/what-you-can-do/tips/landscaping/>. In addition, Section 4.0 of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) includes "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; https://cvmshcp.org/Plan_Documents.htm).

Assessment of Impacts to Biological Resources

Biological Report and Adequacy of Surveys

The IS/MND bases its analysis of impacts to biological resources on a report by ECORP Consulting, which conducted a "biological reconnaissance survey" of the Project site. The biological report, which is not included in the IS/MND, indicates that the site was surveyed for 1 hour on January 23, 2020, by ECORP biologists (ECORP Consulting Inc. 2020). CDFW is concerned that the survey was not conducted at the appropriate time of year to detect the presence of all special status species on-site and that the survey performed for the report may be insufficient for detection of special status species and/or suitable habitat. In addition, the survey is now more than a year old; CDFW generally considers field assessments for wildlife valid for a 1-year period.

The biological report indicates that suitable habitat was observed within the Project site for special status plants. See “Special Status Plants” below for discussion and recommendations. The biological report also indicates that 13 special status wildlife species were found in literature and database searches. Of these, the IS/MND identifies 8 special status wildlife species with “high or moderate potential” to occur on the Project site (p. 54). However, because 5 of these species—burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), Palm Springs pocket mouse (*Perognathus longimembris bangsi*), flat-tailed horned lizard (*Phrynosoma mcallii*), and Coachella Valley fringe-toed lizard (*Uma inornata*)—are covered under the CVMSHCP, the IS/MND concludes that they do not require focused surveys. Mitigation measures are proposed only for burrowing owl and desert tortoise. The IS/MND names the remaining 3 species with high or moderate potential to occur—pallid San Diego pocket mouse (*Chaetodipus fallax pallidus*), red-diamond rattlesnake (*Crotalus ruber*), and desert kit fox (*Vulpes macrotis arsipus*)—and concludes that mitigation measures are only needed for desert kit fox, even though both pallid San Diego pocket mouse and red-diamond rattlesnake have high potential to occur on the site. The biological report, however, acknowledges that these 3 species “may require mitigation or avoidance measures which may include focused surveys, pre-construction surveys, and/or construction monitoring” (ECORP 2020, p. 19) due to the potential for both direct and indirect take. In addition to the 8 species listed in the IS/MND, the biological report includes 5 additional species with “low potential” to occur—Le Conte’s thrasher (*Toxostoma lecontei*), San Diego desert woodrat (*Neotoma lepida intermedia*), desert bighorn sheep (*Ovis canadensis nelsoni*), Peninsular bighorn sheep DPS (*Ovis canadensis nelsoni* pop. 2), and least Bell’s vireo (*Vireo bellii pusillus*).

The IS/MND does not identify all special status species with the potential to occur on-site. The California Natural Diversity Database (CNDDDB) is a positive-detection database only, meaning the absence of species data reported by CNDDDB does not indicate absence of species from a project site. A query of CNDDDB and BIOS (Biogeographic Information and Observation System), including unprocessed data, for the USGS quadrangle (Desert Hot Springs) containing the Project site returned 60 total records, among them 11 special status plants and 28 special status wildlife species. In addition, BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within core breeding habitat for desert tortoise, loggerhead shrike (*Lanius ludovicianus*), and kit fox (*Vulpes macrotis*). CDFW’s California Wildlife Habitat Relationship model indicates that the Project is located within high-quality habitat for American peregrine falcon (*Falco peregrinus anatum*), burrowing owl, Le Conte’s thrasher, desert tortoise, flat-tailed horned lizard, and kit fox.

Mitigation measures in the IS/MND are largely confined to pre-construction surveys. However, even species covered by the CVMSHCP may require avoidance, minimization, and mitigation measures according to provisions of the plan (see “Desert Tortoise” below). CDFW is concerned that waiting to assess the site for the presence of special status species until the time of construction will not reduce impacts to less than significant, particularly for species such as special status plants, burrowing owl, desert tortoise, and desert kit fox (see sections below). The biological report also includes recommended avoidance and minimization measures (ECORP Consulting 2020, pp. 22–23), which overlap with many of those in the *USFWS Standardized Recommendations for Protection*

of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS 2011), but these have been largely ignored in the IS/MND.

Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800, *et seq.*, of the California Fish and Game Code on September 9, 2008. The CVMSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the CVMSHCP, 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 as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

The Project occurs within the CVMSHCP area and is subject to provisions and policies of the CVMSHCP. The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, Upper Mission Creek/Big Morongo Canyon Conservation Area is approximately 0.25 miles east and west of the Project. To be considered a covered activity, Permittees should demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The IS/MND includes a mitigation measure (BIO-1) to address the Project occurring within the CVMSHCP. However, CDFW recommends revising BIO-1 so that the City of Desert Hot Springs (as the Lead Agency and Permittee of the CVMSHCP), rather than the developer, is the responsible party for ensuring compliance with the CVMSHCP:

MM BIO-1: Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure that payment of the CVMSHCP Local Development Mitigation Fee for the proposed Project is remitted to the Coachella Valley Conservation Commission.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1–9 (see Attachment 1).

Special Status Plants

Based on review of CNDDDB and BIOS, plant species that are state and/or federally listed as endangered and plant species with California Rare Plant Ranks of 1B and 2B have the potential to occur in the Project area. The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered in California but more common elsewhere. Impacts to these species must be analyzed during preparation

of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380.

CDFW is concerned that the biological reconnaissance survey was not conducted at the appropriate time of year to detect the presence of special plant status species on the Project site. The biological report indicates that 7 special status plant species were found in literature and database searches and that suitable habitat was observed within the Project site for special status plants. Of the 7 special status plant species, the IS/MND concludes that 3 species that are not covered by the CVMSHCP—white-bracted spineflower (*Chorizanthe xanti* var. *leucotheca*), desert spike-moss (*Selaginella eremophila*), and Harwood's eriastrum (*Eriastrum harwoodii*)—"may require mitigation or avoidance measures which may include focused surveys, pre-construction surveys, and/or construction monitoring" (p. 54). However, only a pre-construction survey is proposed in mitigation measure (MM) BIO-2 included in the IS/MND, which may not be sufficient in timing or scope to identify special status plant species. The biological report also identifies the seventh special status plant species as slender cottonheads (*Nemacaulis denudata* var. *gracilis*), with "low potential" to occur on-site. In addition, CNDDDB/BIOS indicates that other special status plant species not covered by the CVMSHCP may have the potential to occur on-site, including slender-horned spineflower (*Dodecahema leptoceras*), chaparral sand-verbena (*Abronia villosa* var. *aurita*), cliff spurge (*Euphorbia misera*), and spiny-hair blazing star (*Mentzelia tricuspidis*).

The IS/MND indicates that "ground disturbing activities associated with the construction" of the Project could result in a significant impact to special status plant species (p. 54). CDFW therefore recommends a thorough, floristic-based assessment of special status plants at the appropriate time(s) of year, before the City of Desert Hot Springs adopts the MND. CDFW recommends revising BIO-2 as follows:

MM BIO-2: A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018 or most recent version) shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

Burrowing Owl (*Athene cunicularia*)

Based on the biological report, the IS/MND finds that the Project site contains suitable

habitat for burrowing owl, although no burrowing owls or sign (“whitewash, pellets, and/or feathers”; IS/MND, p. 54) were observed during the 1-hour reconnaissance survey on January 23, 2020. CDFW is concerned that because suitable burrowing owl habitat has been found on-site, and because of the high potential for this species to occur on-site, the biological reconnaissance survey is not sufficient or current enough to assess whether burrowing owls are on the Project site.

Although burrowing owl is covered under the CVMSHCP, it is also protected under the Migratory Bird Treaty Act. 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.). The IS/MND acknowledges that “the potential for direct take of burrowing owl and their burrows must be mitigated” (p. 54). CDFW is concerned that waiting until pre-construction surveys to assess whether burrowing owl is on the Project site will not reduce impacts to less than significant. Therefore, CDFW recommends that the City of Desert Hot Springs follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 or most recent version). The *Staff Report on Burrowing Owl Mitigation* specifies that project impact evaluations include the following steps: (1) habitat assessment, (2) surveys, and (3) an impact assessment. The three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance and minimization measures. As a result, CDFW recommends revising BIO-3 as follows:

MM BIO-3: Suitable burrowing owl habitat has been confirmed on the Project site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If the focused burrowing owl surveys detect active burrowing owl burrows outside the breeding season (September 1 through January 31), or within the breeding season (February 1 through August 31) but owls are not nesting or in the process of nesting, passive relocation may be conducted following consultation with the CDFW and USFWS. A relocation plan will be required by CDFW and USFWS if relocation is necessary. The relocation plan will outline the basic relocation process, provide options for avoidance and minimization, and identify the entity responsible for all financial costs associated with the relocation plan.

Pre-construction 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). Pre-construction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the pre-construction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.

According to the IS/MND, no desert tortoises or their burrows were detected during the reconnaissance survey conducted on January 23, 2020. However, chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* indicates that “surveys should be conducted during the desert tortoise’s most active periods (April through May or September through October)” (USFWS 2009, p. 4-8). CDFW is concerned that the timing and scope of the survey were insufficient to determine the presence of desert tortoise on the Project site.

The IS/MND indicates that suitable habitat for desert tortoise was found on-site and that there is high potential for this species to occur on the Project site. The IS/MND acknowledges that desert tortoise could be impacted during construction by mortality and habitat loss, as well as noise and vibrations. However, the IS/MND does not acknowledge that construction of the road (Binnie Road) west of the Project parcel may also pose a hazard to desert tortoises and result in habitat fragmentation (Peaden et al. 2017).

Although desert tortoise is covered under the CVMSHCP, Section 9.6.1.4 of the plan indicates: “Both inside and outside Conservation Areas, avoidance, minimization, and mitigation measures require relocation of individual tortoises if required surveys locate individuals on the site of Covered Activities. For more information about avoidance, minimization, and mitigation measures see Section 4.4.” CDFW is concerned that waiting until pre-construction surveys to assess whether desert tortoise is on the Project site will not reduce impacts to less than significant. CDFW recommends that prior to commencing Project activities, a focused survey for desert tortoise following the *Desert Tortoise (Mojave Population) Field Manual* should be conducted by a qualified biologist. BIO-4 in the IS/MND indicates that pre-construction surveys for desert tortoise and burrowing owl would be combined. CDFW advises against combining these surveys and recommends BIO-4 be revised as follows:

MM BIO-4: Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version), during the species’ most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.

No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

Desert Kit Fox (*Vulpes macrotis arsipus*)

The IS/MND indicates that although no desert kit fox dens were identified during the biological survey on January 23, 2020, suitable habitat for desert kit fox was found on-site. CDFW is concerned that because suitable habitat has been found on-site, and because of the potential for this species to occur on-site, the biological survey conducted on January 23, 2020, is not sufficient or current enough to assess whether desert kit fox is present on the Project site. CDFW is concerned that waiting until pre-construction surveys to assess whether desert kit fox is on the Project site will not reduce impacts to less than significant and may delay Project activities.

Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within core breeding habitat for kit fox. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities for the length of the breeding season because establishing appropriate vegetation and construction buffers would not be possible on a site the size of the Project (0.3 acre). Therefore, CDFW recommends that the City of Desert Hot Springs conduct both focused and pre-construction surveys for desert kit fox. BIO-5 in the IS/MND indicates that pre-construction surveys for desert kit fox and burrowing owl would be combined. CDFW advises against combining these surveys and recommends that BIO-5 be revised as follows:

MM BIO-5: Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

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.).

CDFW is concerned about impacts to nesting birds from vegetation removal on the Project site and from construction of the cultivation facility and road (e.g., noise/disturbance). Although the IS/MND includes a mitigation measure (BIO-6) to address nesting birds, the timing and scope of the mitigation measure are insufficient. CDFW recommends the revised document include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing (avoiding peak breeding season), monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that pre-construction surveys be conducted as a mitigation measure and that they be completed no more than 3 days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner. CDFW recommends BIO-6 be revised as follows:

MM BIO-6: Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance 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, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).

Minimizing Impacts to Other Species

The IS/MND lists 2 CDFW Species of Special Concern, pallid San Diego pocket mouse (*Chaetodipus fallax pallidus*) and red-diamond rattlesnake (*Crotalus ruber*), as having high potential to occur on the site, and the biological report acknowledges that these species “may require mitigation or avoidance measures which may include focused surveys, pre-construction surveys, and/or construction monitoring” (ECORP 2020, p. 19) due to the potential for both direct and indirect take. However, no mitigation measures for these species have been included in the IS/MND. Because of the high potential for these and other special status species to occur on-site, CDFW recommends inclusion of the following mitigation measure:

MM BIO-7: A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured

or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.

Cannabis-Specific Impacts on Biological Resources

There are many impacts to biological resources associated with cannabis cultivation, whether indoor or outdoor cultivation (i.e., pesticides, fertilizers/imported soils, water pollution, groundwater depletion, vegetation clearing, construction and other development in floodplains, fencing, roads, noise, artificial light, dams and stream crossings, water diversions, and pond construction). CDFW recommends that the City consider cannabis-specific impacts to biological resources that may result from the Project activities.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. (Even if used indoors, rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals disposed of outside.) Nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). Anticoagulant rodenticides and rodenticides that incorporate "flavorizers" that make the pesticides appetizing to a variety of species should not be used at cultivation sites. (Note that with the passage of AB 1788, signed by the governor on September 29, 2020, the general use of second-generation anticoagulants is now banned in California.) Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers (e.g., sealing holes in roofs/walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether; these pose a hazard to nontarget wildlife and result in prolonged/inhumane death. California Department of Pesticide Regulation stipulates that pesticides must meet certain criteria to be legal for use on

cannabis. For details, visit: <https://www.cdpr.ca.gov/docs/cannabis/questions.htm>;
<https://www.cdpr.ca.gov/docs/county/cacfltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

The IS/MND indicates that Project cultivation activities will involve pesticides (p. 75). CDFW recommends that the City of Desert Hot Springs include a mitigation measure conditioning the Project to develop a plan to avoid, minimize, and mitigate the impacts of pesticides used in cannabis cultivation. CDFW recommends inclusion of the following mitigation measure focused on avoiding impacts to biological resources:

MM BIO-8: Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers." (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.

Artificial Light

Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in greenhouse structures and indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

The IS/MND indicates that Project activities will involve new sources of artificial light, including "outdoor illumination for nighttime safety and facility security" (p. 39) and potential light from cultivation activities in buildings with uncovered skylights (unclear from building specifications provided in the IS/MND). Because of the potential for artificial light to impact nocturnal wildlife species and migratory birds that fly at night, CDFW recommends the following mitigation measure:

MM BIO-9: Light should not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is

shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. California Department of Food and Agriculture (CDFA) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from CDFA, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through EPIMS (Environmental Permit Information Management System; <https://epims.wildlife.ca.gov>) and learn more about permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>. The Project, which is situated between Mission Creek and Morongo Wash, would involve construction of not only a cultivation facility but also a road (Binnie Road) on the western side of the parcel, from the northern boundary of the parcel southward to Palomar Lane. CDFW's LSA Program should be notified of Project activities prior to construction so that impacts to streams and associated resources may be assessed, and, if appropriate, avoidance and minimization measures may be proposed. CDFW recommends the following mitigation measure:

MM BIO-10: 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.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 CNDDDB. The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the

Patricia Villagomez, Associate Planner
City of Desert Hot Springs
March 11, 2021
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Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final (Cal. Code Regs., title 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Desert Hot Springs in identifying and mitigating Project impacts on biological resources. CDFW concludes that the IS/MND does not adequately identify or mitigate for the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that prior to adoption of the MND, the City of Desert Hot Springs revise the document to include a more complete assessment of the Project's potential impacts on biological resources, as well as appropriate avoidance, minimization, and mitigation measures.

CDFW has Cannabis Unit staff who are available to provide guidance on impacts to biological resources and CDFW permitting. If you have any questions or would like to set up a meeting with CDFW staff to discuss this letter, please contact Heather Brashear, Environmental Scientist, at (909) 948-9625 or Heather.Brashear@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec: Heather Brashear, Environmental Scientist, CDFW
heather.brashear@wildlife.ca.gov

HCPB CEQA Program, Habitat Conservation Planning Branch
CEQAcommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Schedule	Responsible Party
<p>MM BIO-1: CV MSHCP. Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure that payment of the CVMSHCP Local Development Mitigation Fee for the proposed Project is remitted to the Coachella Valley Conservation Commission.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-2: Rare plant surveys. A thorough floristic-based assessment of special status plants and natural communities, following CDFW's <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities</i> (CDFW 2018 or most recent version) shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.</p>	<p>Prior to commencing Project activities.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-3: Burrowing owl surveys. Suitable burrowing owl habitat has been confirmed on the Project site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG 2012 or most recent version). If the focused burrowing owl surveys detect active burrowing owl burrows outside the breeding season (September 1 through January 31), or within the breeding season (February 1 through August 31) but owls are not nesting or in the process of nesting, passive relocation may be conducted following consultation with the CDFW and USFWS. A relocation plan will be required by CDFW and USFWS if relocation is necessary. The relocation plan will outline the basic relocation process, provide options for avoidance and minimization, and identify the entity responsible for all financial costs associated with the relocation plan.</p> <p>Pre-construction 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). Pre-construction 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 pre-construction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. CDFW shall be notified of burrowing owl survey results within 48 hours of detection. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to</p>	<p>Focused surveys: Prior to commencing Project activities.</p> <p>Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p>	<p>City of Desert Hot Springs.</p>

<p>develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.</p>		
<p>MM BIO-4: Desert tortoise surveys. Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the <i>Desert Tortoise (Mojave Population) Field Manual</i> (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.</p> <p>No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.</p>	<p>Focused surveys: Prior to commencing Project activities.</p> <p>Pre-construction surveys: No more than 14 days prior to start of Project-related activities.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-5: Desert kit fox surveys. Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.</p> <p>No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.</p>	<p>Focused surveys: Prior to commencing Project activities.</p> <p>Pre-construction surveys: No more than 14 days prior to start of Project-related activities.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-6: Nesting bird surveys. Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance 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, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid</p>	<p>No more than three (3) days prior to vegetation clearing or ground disturbance activities.</p>	<p>City of Desert Hot Springs.</p>

<p>impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).</p>		
<p>MM BIO-7: Minimizing impacts to other species. A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.</p>	<p>During Project activities.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-8: Pesticide management plan. Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall develop a plan with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot legally be used on cannabis in the State of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers." (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources like pet food, cleaning up refuse, and securing garbage in sealed containers) and physical barriers.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-9: Artificial light. Light should not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.</p>	<p>During Project activities.</p>	<p>City of Desert Hot Springs.</p>
<p>MM BIO-10: Compliance with CDFW LSA 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.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Desert Hot Springs.</p>