



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Blvd., Suite C220  
Ontario, CA 91764  
[wildlife.ca.gov](http://wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 13, 2022  
*Sent via email*

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
11999 Palm Drive  
Desert Hot springs, CA 92240



Subject: Initial Study and Mitigated Negative Declaration for DHS Research and Development Park CUP No. 21-16; State Clearing House No. 2022040621

Dear Ms. Villagomez:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (ISMND) from the City of Desert Hot Springs (City) for the DHS Research and Development Park Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

### **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.

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

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 2 of 12

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.

### **ASSEMBLY BILL (AB) 819**

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021, and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet (<https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 3 of 12

- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

## **PROJECT DESCRIPTION SUMMARY**

The Project site is located on two vacant parcels in the City of Desert Hot Springs in the County of Riverside, California; Latitude 33.936061 N and Longitude -116.526339 W. The Project site is located adjacent to the Upper Mission Creek/Big Morongo Canyon Conservation Area within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

The Project proposes to build a cannabis cultivation park that includes five buildings totaling 122,812 square feet. The site plan also includes a parking lot, landscaping, trash enclosures, a stormwater retention basin, and perimeter walls and fencing. Two driveways will be constructed for access to the Project site from Little Morongo Road with a guard house at each driveway entrance.

**Timeframe:** The Project is expected to start in 2022 and continue for approximately two years.

## **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned regarding the adequacy of the biological (BIO) mitigation measures (MM) proposed by the City to mitigate potential impacts to biological resources that may occur on-site. Additionally, CDFW is concerned that the ISMND defers the development of a drainage plan to the future rather than include it in the ISMND. CDFW recommends that the City includes the drainage plan in a final ISMND (termed hereafter as ‘final ISMND’).

To assist the City in adequately mitigating the Project’s potentially significant impacts to biological resources, CDFW offers the comments and recommendations presented below, and in Attachment 1 “Mitigation Monitoring and Reporting Program”, pursuant to the CEQA Guidelines, section 15097(f). CDFW requests that the City revise and/or adopt the following mitigation measures prior to finalizing the ISMND:

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 4 of 12

### Nesting Birds

CDFW appreciates the inclusion of MM BIO-1 in the ISMND and recommends MM BIO-1 be amended to include the following language (edits are in ~~strikethrough~~ and **bold**):

#### **MM BIO-1**

**All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.**

~~For any Project activities grading or other sit disturbance or tree or vegetation removal occurring during the nesting season between January 15 and August 31~~**September 15**, a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the consulting biologist, ~~immediately~~ **no more than three (3) days** prior to initiation of Project-related ground disturbing activities. ~~If nesting birds are present, no work shall be permitted near the nest until the young birds have fledged. While there is no established protocol for nest avoidance, when consulted, the CDFW generally recommends avoidance of buffers of about 250 to 500 feet for federally and state listed threatened and endangered avian species and birds of prey, and 100 to 250 feet for songbirds. If ground disturbance occurs outside the nesting season, this requirement shall be waived.~~**Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist**

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 5 of 12

**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.**

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. Although, the Project does not occur within a Conservation Area of the CVMSHCP, the Upper Mission Creek/Big Morongo Canyon Conservation Area is directly adjacent to the east of the Project; thus, section 4.5 of the CVMSHP, Land Use Adjacency Guidelines, must be followed. To be considered a covered activity, the Project should be consistent with the CVMSHCP and its associated Implementing Agreement.

The ISMND includes a mitigation measure (BIO-3) to address section 4.5.5 of the CVMSHCP regarding invasive non-native plant species. However, CDFW recommends revising BIO-3 so that the City of Desert Hot Springs (as the Lead Agency and Permittee of the CVMSHCP) is the responsible party for ensuring compliance with the entirety of the CVMSHCP (edits are in ~~strikethrough~~ and **bold**):

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 6 of 12

### **MM BIO-3**

~~Project landscaping shall be subject to CVMSHCP Section 4.5.5 (Invasives), as follows: Invasive, non-native plant species shall not be incorporated in the landscape for land uses adjacent to or within a Conservation Area. Landscape treatments within or adjacent to a Conservation Area shall incorporate native plant materials to the maximum extent feasible; recommended native species are listed in [CVMSHCP] Table 4-112. The plants listed in [CVMSHCP] Table 4-113 shall not be used within or adjacent to a Conservation Area~~

**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), including Section 4.5 Land Use Adjacency Guidelines, 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.**

#### Employee Awareness of Wildlife Resources

Part of the Project proponent's responsibility is to educate individuals that will be on-site on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW appreciates that the ISMND considers developing a Workers Environmental Awareness Program (WEAP) and offers MM BIO-4 to assist in developing the contents of the WEAP:

### **MM BIO-4**

**A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the WEAP information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, (2) protected species that have the**

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 7 of 12

**potential to occur on the Project site including desert tortoise, Mohave ground squirrel, rare and sensitive plants, and nesting birds, and (3) information pertaining to the Coachella Valley Multiple Species Habitat Conservation Plan (Plan), including Plan boundaries, requirements for compliance, and species authorized for take under the Plan. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.**

#### LSA Notification

The Project site is adjacent to Mission Creek and Project activities may impact this Fish and Game Code section 1602 resource. Thus, CDFW recommends that the Project proponent adopt MM BIO-5 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW-executed Lake and Streambed Alteration Agreement:

#### **MM BIO-5**

**Prior to construction and issuance of any grading permit, the Project proponent should 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 proponent 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 which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB online field survey form, along with the types of information reported to CNDDDB, can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 8 of 12

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW requests that the City include in the final ISMND the suggested mitigation measures (Attachment 1) offered by CDFW to reduce Project impacts.

CDFW appreciates the opportunity to comment on the ISMND for the DHS Research and Development Park Project (SCH No. 2022040621) and hopes our comments assist the City of Desert Hot Springs in identifying and mitigating Project impacts on biological resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Kevin Francis, Environmental Scientist at [Kevin.Francis@wildlife.ca.gov](mailto:Kevin.Francis@wildlife.ca.gov).

## ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:  
  
84FBB8273E4C480...  
Alisa Ellsworth  
Environmental Program Manager

ec: Office of Planning and Research, State Clearing House, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)



Patricia Villagomez, Associate Planner  
 City of Desert Hot Springs  
 May 13, 2022  
 Page 9 of 12

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

### PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

### TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

<b>Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>MM BIO-1            All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>For any Project activities occurring during the nesting season between January 1 and September 15, a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the consulting biologist, no more than</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

Patricia Villagomez, Associate Planner  
 City of Desert Hot Springs  
 May 13, 2022  
 Page 10 of 12

<p>three (3) days prior to initiation of Project 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 qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>MM BIO-3                  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), including Section 4.5 Land Use Adjacency Guidelines, 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</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>City of Desert Hot Springs</p>

Patricia Villagomez, Associate Planner  
 City of Desert Hot Springs  
 May 13, 2022  
 Page 11 of 12

Coachella Valley Conservation Commission.		
<p><b>MM BIO-4</b>          A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site (Workers Environmental Awareness Program; WEAP). The WEAP shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the WEAP information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The WEAP should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, (2) protected species that have the potential to occur on the Project site including desert tortoise, Mohave ground squirrel, rare and sensitive plants, and nesting birds, and (3) information pertaining to the Coachella Valley Multiple Species Habitat Conservation Plan (Plan), including Plan boundaries, requirements for compliance, and species authorized for take under the Plan. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p><b>MM BIO-5</b>          Prior to construction and issuance of any grading permit, the Project proponent should obtain written correspondence from the California Department of Fish and</p>	<p>Prior to commencing Project activities.</p>	<p>Project Proponent</p>

Patricia Villagomez, Associate Planner  
City of Desert Hot Springs  
May 13, 2022  
Page 12 of 12

Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.		
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